



REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID	70455981
CASE OFFICER	J Solomons
CASE OFFICER PHONE NO	021 360 3226
DISTRICT	KHAYELITSHA/MITCHELLS PLAIN
REPORT DATE	06/06/2019

ITEM NO **MPTSE51/06 /19**

APPLICATION FOR AN ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL): ERF 33605, KHAYELITSHA, 24 DIYA STREET, HARARE

1. EXECUTIVE SUMMARY

Property description	Erf 33605, Khayelitsha
Property address	24 Diya Street, Harare
Site extent	142.42m ²
Current zoning	Single Residential 2
Current land use	Dwelling house and ecd centre
Overlay zone applicable	No
Submission date	06/06/2019
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	This application relates to the unauthorised early childhood development centre and unauthorised building work
Has owner applied for the determination of an administrative penalty	Yes
Has the City Manager applied to the MPT for an order that a person who is contravening the MPBL must pay an administrative penalty in an amount determined by the MPT	No
Has the City issued a demolition directive i.t.o section 128 of the MPBL? If yes, an administrative penalty may not be applied for.	No
Has the City served a notice on the owner or other person in respect of the unlawful land use or building work which required the owner or other person to apply for the determination of an administrative penalty?	No

2 DECISION AUTHORITY

For decision by the Municipal Planning Tribunal.

3 BACKGROUND / SITE HISTORY

- 3.1 ERF 33605 (hereafter known as the subject property) is zoned single residential 2 and measures 142m² in extent (**see Annexure A**). The entire building and outdoor area measuring 142.42m² is being used as an unauthorised place of instruction (ecd centre) (**see Annexure B**). The immediate surrounding properties are predominantly zoned single residential 2.
- 3.2 In order to regularise the unauthorised ECD centre on 02/05/2019 an application for a Consent Use in terms of sections 42(i) of the City of Cape Town Municipal Planning By-Law was submitted on behalf of the registered owner Mastza Ester Ndayi.
- 3.3 An administrative penalty is required because item 26 of the Municipal Planning By-Law, 2015 is being contravened. Item 7 is also contravened because the existing part of the dwelling, from which the ecd centre is operating, has a setback closer than 5 metres (there is a 5 metre setback requirement in the CO1 zoning as per the item 7 requirement).

4 SUMMARY OF APPLICANT'S MOTIVATION

The owner's motivation (**see Annexure C**) may be summarised as follows:

- The owner submits that the ECD centre will assist in providing an income for his family.
- The ECD will also assist working parents by providing a safe environment for their kids.
- The owner is the operator of the ECD, but does not reside on the subject property.
- The ECD operates from Monday to Friday from 06:00 – 1800.
- The ECD employs 4 educators and 2 cooks.
- There are 25 children cared for at the ECD aged 0 - 5 years old.
- The learners reside within walking distance of the ECD centre.

5 ASSESSMENT OF APPLICATION

- 5.1 The administrative penalty is required for the unauthorized use and building work on the property which is in contravention of items 26 and 7 of the Development Management Scheme.
- 5.2 In terms of section 129(7)(a) of the By-law an administrative penalty for contravening building work may not be more than 100% of the value the building work unlawfully carried out. In terms of section 129(7) (b) of the By-Law, an administrative penalty for the land use contravention may not be more than 100% of the municipal valuation of the area that is used unlawfully.

Administrative Penalty: Calculation

5.2.1 Unauthorised land use

$$\frac{R19040}{142.42m^2} \times 142.42m^2 = R19040$$

An amount which is not more than 100% of R19 040,00 may be imposed as an administrative penalty.

5.2.2 Unauthorised building work

$$R7\ 060.00 \text{ (as provided in the spreadsheet)} \times \text{Total unlawful area (51.8m}^2\text{)} = R365\ 708.00$$

An amount which is not more than R365708 may be imposed as an administrative penalty.

- 5.3 The following factors need to be considered when determining an appropriate administrative penalty, as contemplated by section 129(8) of the By-Law

a) The nature, duration, gravity and extent of the contravention

Nature – The land use contravention relates to the use of the subject property as an ecd centre without obtaining land use approval and for associated unauthorised building work. The surrounding area is predominantly residential in nature and would be appropriate / compatible with certain non-residential land uses. Ecd centres mostly serve the immediate community. No complaints have been received with regards to the operation of the ecd centre to date. The required building line departure is regarded as technical in nature because it merely relates to the conversion of the structure to a place of instruction.

Duration – The subject property has been used as an ecd centre for 4 months.

Gravity – Should the application submitted by the applicant be approved, conditions may be imposed in order to mitigate against any potential negative impacts posed (e.g. potential negative noise, traffic and parking and safety impacts). Furthermore, standard health and fire safety related conditions may also be imposed in relation to a consent use approval.

Extent – The contravention is 142.42m² in extent and the ecd centre accommodates 25 children. The activity occupies 100% of the total extent of the property and can therefore be regarded as being excessive in extent.

b) **The conduct of the person involved in the contravention**

The consent use, departure and administrative penalty application were both submitted by the property owner on becoming aware of the need to regularize the ecd centre.

c) **Whether the unlawful conduct has stopped**

The unlawful conduct has not stopped. It is also not reasonable to expect the operation to cease because there would be no facilities available for the children.

d) **Whether a person involved in the contravention has previously contravened this By-Law or any other planning law**

As far as can be ascertained, the owner has not previously contravened this By-Law or any other planning law.

- 5.4 In view of the aforementioned considerations in terms of section 129(8) and the recent amendments to section 129 this department recommends that an approximate **R1000** administrative penalty be charged for the unauthorised land use and **R0** administrative penalty be charged for the unauthorised building work.

6 REASONS FOR DECISION

Reasons for the recommended decision may be summarized as follows:

- 6.1 The contravention relating to the unauthorised building work is technical in nature.
- 6.2 As far as can be ascertained, the owner of the property has not previously contravened the Municipal Planning By-Law, 2015 or any other planning law.
- 6.3 The use of the entire property as an ECD is considered to be excessive.

7 RECOMMENDATION

In view of the above, it is recommended that:

- a) That an administrative penalty in the amount of **R1000.00** for the unauthorised land use (ecd centre) and **R0** for the unauthorised building work in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 on erf 33605, Khayelitsha **be approved** in terms of section 98(b)i of the City of Cape Town Municipal Planning By-Law, 2015.

ANNEXURES

Annexure A Locality Plan
 Annexure B Plan of contravention
 Annexure C Owner's motivation
 Annexure D Valuation details


Section Head : Land Use Management

Name M Muller

Tel no 021 360 1132

Date 06 June 2019

Comment


District Manager

Name M Muller




Tel no 021 360 1132

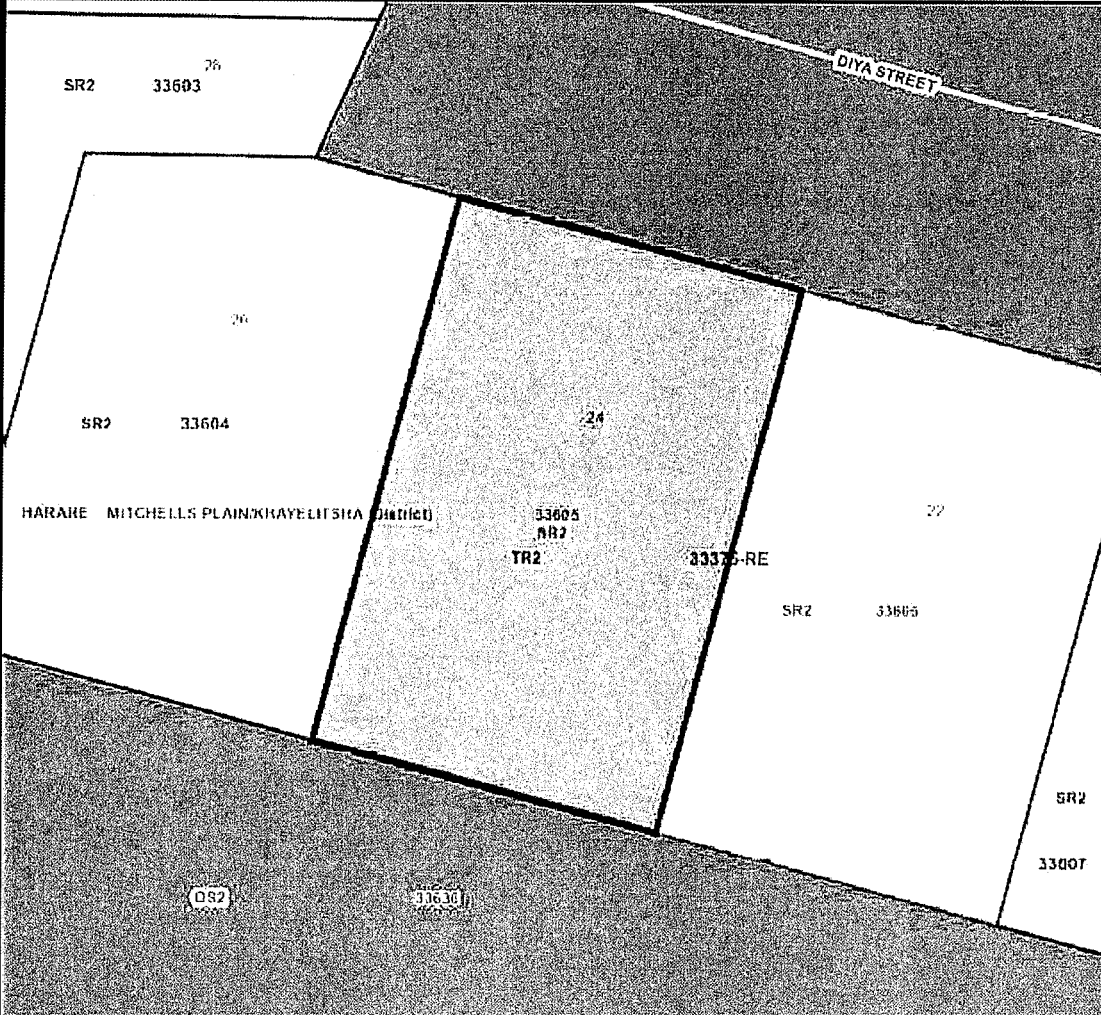




Date 06 June 2019

Comment

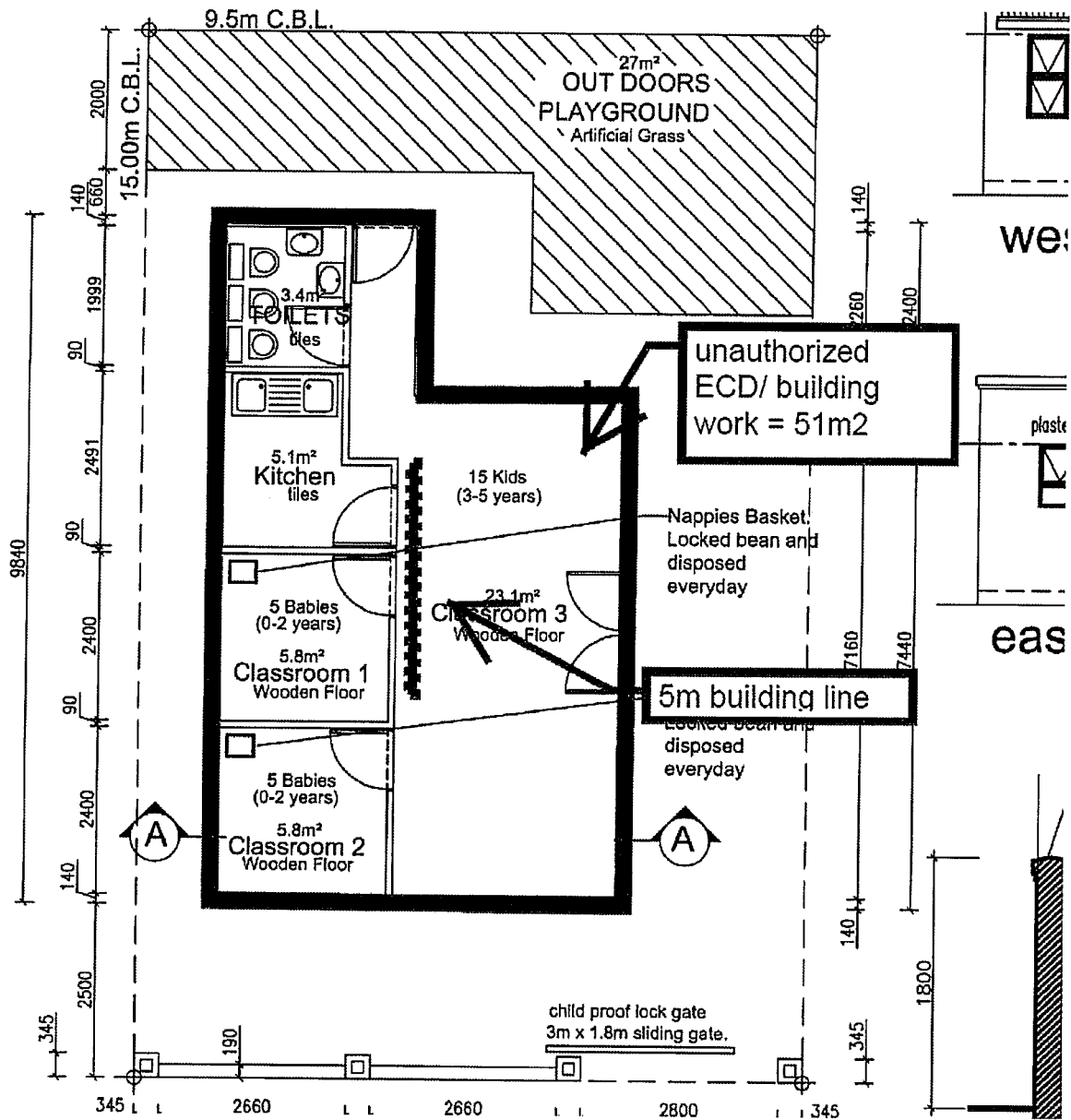
None

Annexure A

PLANNING AND BUILDING DEVELOPMENT MANAGEMENT LOCALITY MAP		ANNEXURE :	
			
Overview	Erf: Allotment: Ward:	District: Suburb: Sub Council:	
 1:4 800	Notices Served	●	Support Received
	Petition Signatory	■	Objections Received
Generated by:		 CITY OF CAPE TOWN INKQOBALEKAPA SIAD KAAPSTAD <small>Making progress possible together</small>	
Date: Thursday, June 06, 2019			
File Reference:			

PLANNING AND BUILDING DEVELOPMENT MANAGEMENT LOCALITY MAP		ANNEXURE :						
								
Overview	<div style="display: flex; justify-content: space-between;"> <div> Erf: Address: Ward: </div> <div> District: Suburb: Sub Council: </div> </div>							
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File Reference:			 <div style="font-size: small;"> CITY OF CAPE TOWN ISIIXO SASEKAPA STAD KAAPSTAD <i>Masinga phila phila: Tsiphele</i> </div>					

Annexure B



Annexure C

33605 Diya Street
Harare
Khayelitsha
7784

01 APRIL 2019

Dear Sir/Madam

Motivation letter for ECD CENTRE on ERF 33605

We have been operation the ECD since January 2019. We were not aware of the LUMS and we pleading for lenience. We operate as we thought the crèche is for the good of the community.

This is the owners only source of income and it assist about 25 families are the area and keeps kids safe and impact knowledge at a very young age.

The community is very impressed with the work we are doing and always lend a helping hand.

Operating Hours

The ECD operates from Monday to Friday (5 days) from 06:00 to 18:00

Number of employees

We have 4 educators and 2 people that ae cooking (6 employees)

Staff Transportation

All staff members are using public transport to and from work.

In terms of parking we departure of 0 in lieu of 2.5 parking bays

Learners Groups and Age

Age Group	Number of learners
0 – 2	10
3 – 5	15
TOTAL	25

Kind regards

Ms Mamsiza Ester Ndayi

Annexure D

Usage Code	A10
Usage	Informal residential
Area (Calculated)	142.42 m2
Total Value	18655
Valuation Year	20160701
Approval Date	
Registered Date	
Purchase Date	
Purchase Price	
Title Deed Number	
Business Partner Nr	
Owner Title	
Owner Name	
Owner First Name	
Language	
Owner Postal Address	
ID Number	
Rate payer Name	CITY OF CAPE TOWN
Rate payer Street Address	DIYA STREET 24 KHAYELITSHA ZA
Rate payer Postal Address	DIYA STREET 24 KHAYELITSHA 7784
key	591149
Physical Address	24 DIYA STREET, HARARE
Erf No	33605