



CITY OF CAPE TOWN  
ISIXEKO SASEKAPA  
STAD KAAPSTAD

1210

## REPORT TO: MUNICIPAL PLANNING TRIBUNAL

### ITEM NO

WARD 61: APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL): ERF 2953 KOMMETJIE, 18 NERINA AVENUE

**MPTSW35/08/19**

Case ID	70461693
Case Officer	P Absolon
Case Officer phone number	021 444 7728
District	Southern
Ward	61
Ward Councillor	S Liell-Cock
Report date	2019-08-02

## 1 EXECUTIVE SUMMARY

Property description	Erf 2953 Kommetjie
Property address	18 Nerina Avenue
Site extent	560m <sup>2</sup>
Current zoning	Single Residential Zone 1
Current land use	Dwelling house and unauthorised place on instruction.
Overlay zone applicable	No
Submission date	2019-06-12
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	Unauthorised place of instruction in the form of ceramic art and music classes.
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?	Yes. A property inspector issued a notice on 2019-01-10.

## 2 DECISION AUTHORITY

For decision by the Municipal Planning Tribunal.

## 3 BACKGROUND / SITE HISTORY

- 3.1 As a result of the complaint by a neighbour that was initially submitted to the Environmental Health Department due to the impact of the smoke and odour from the kiln, a property inspector issued a notice on 2019-01-10.
- 3.2 The application for consent for a place of instruction and relates parking and setback departures was submitted on 2019-06-25. It is incomplete and has not yet been advertised.

## 4 SUMMARY OF APPLICANT'S MOTIVATION

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

- The contravention has occurred since 2010.
- The applicant had no prior knowledge of the MPBL.
- The applicant submitted a land use application after a complaint was received from a neighbour.
- The applicant has since closed the evening classes.
- The applicant sustains herself financially by the ceramic art and music lessons.

## 5 ASSESSMENT OF APPLICATION

- 5.1 The administrative penalty is required for the unauthorised place of instruction in the form of ceramic art and music lessons. This contravenes Items 21, 22 and 137 of the Development Management Scheme (DMS), relating to the use that necessitates a consent for the place of instruction as well as the 5m setbacks from the street and the required on-site parking bays. It must also be noted that the activity does not comply with the development rules of a home occupation in terms of the area used, hours of operation and parking provided.
- 5.2 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.
- 5.3 The municipal value of the property is R2 584 000.00 as per GV2018 (see Annexure D).
- 5.4 According to the applicant the total area used is 38.8m<sup>2</sup>.  

$$\frac{R2584000}{560m^2} \times 38.8m^2 = R179\ 034.29$$
- 5.5 An amount which is not more than 100% of R179 034.29 may be imposed as an administrative penalty.

- 5.6 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 nature of the contravention relates to the use of the dwelling house on the property as a place of instruction which is a consent use in Single Residential Zone 1.

**Extent:** At 38.8m<sup>2</sup>, the extent of the contravention is moderate.

**Gravity:** The gravity of the contravention is serious in this context as the activity involves a baking process which produces fumes and smoke which appears to cause a nuisance to the abutting owners.

**Duration:** According to the applicant, the unauthorized place of instruction on the property commenced in 2010. The duration of the contravention is thus long.

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

Given the nature of the activity, scale of the classes (up to 10 students per class) and frequency, it is difficult to accept the applicant's statement that the owner only became aware that a land use application was required after the property inspector issued a notice. However, in the event that this is correct, it could reflect negligence on the part of the owner/operator. The conduct of the owner cannot be condoned.

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

The unlawful conduct was not stopped. However, the activity has been significantly downscaled since the notice was served.

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

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

- 5.7 In view of the abovementioned considerations, and considering that the scale of the use had been reduced since the notice was served, and the intension of the MPBL that administrative penalties shall, in part at least, serve as a deterrent, this Department recommends that an administrative penalty of R3 000.00 be imposed.

## 6 REASONS FOR DECISION

Reasons for the recommended decision may be summarised as follows:

- 6.1 The administrative penalty is required for the unauthorised place of instruction that is in contravention of Items 21, 22 and 137 of the Development Management Scheme.
- 6.2 The gravity of the contravention is serious in this context.
- 6.3 The extent of the contravention is moderate.
- 6.4 The duration of the contravention is long.
- 6.5 The conduct of the owner cannot be condoned.
- 6.6 As far as can be ascertained, the owner of the property has not previously contravened this By-Law or any other planning law.

## 7 RECOMMENDATION

In view of the above, it is recommended that:

- a) That an administrative penalty in the amount of R3 000.00 be determined in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 2953 Kommetjie, regarding the unauthorised place of instruction in the form of ceramic art and music classes as per the plans drawn by Gisela with drawing number DB/2 dated April 2019.

## ANNEXURES

Annexure A	Locality plan
Annexure B	Building plan
Annexure C	Applicant's motivation
Annexure D	Municipal valuation
Annexure E	Notice served



### Section Head : Land Use Management

Name P Hoffa

Tel no 021 444 7724

Date 2019-08-02

Comment



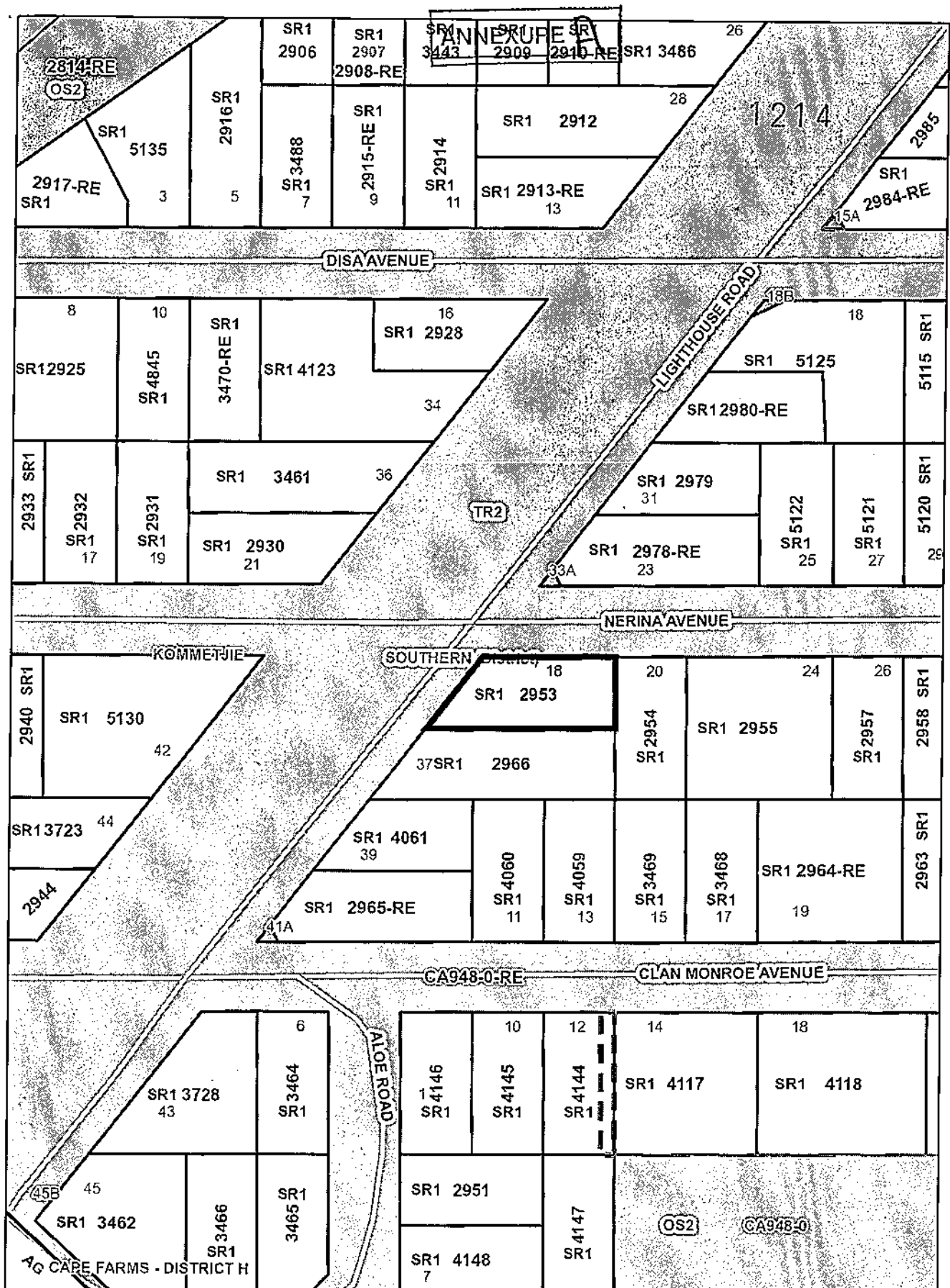
### Acting District Manager

Name P Hoffa

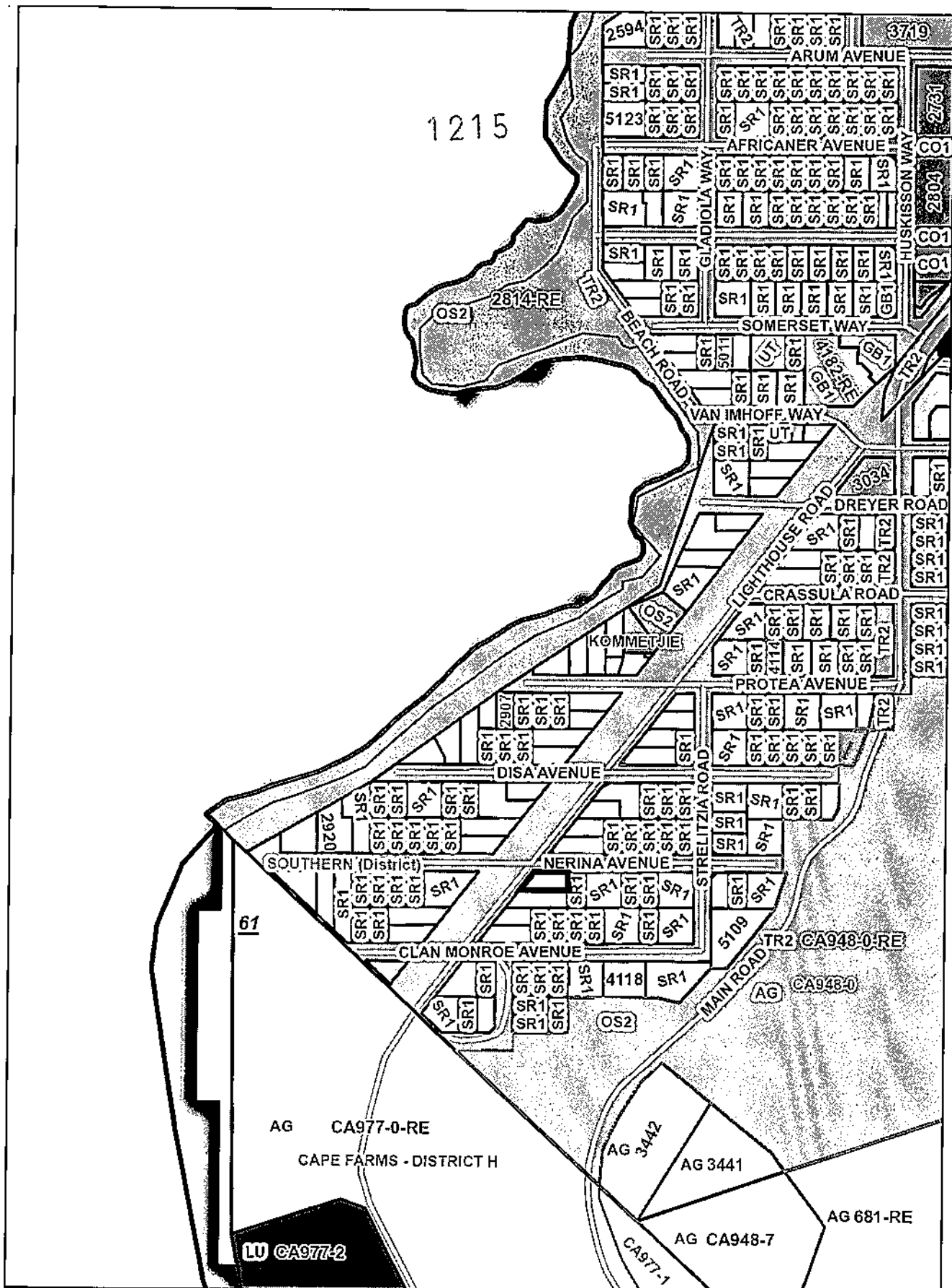
Tel no 021 444 7724


Date 2019-08-02

Comment



<p><b>Map Title</b></p> <p><b>DIRECTORATE</b> : Energy, Environmental &amp; Spatial Planning</p> <p><b>DEPARTMENT</b> : Planning and Building Development Management</p> <p><b>BRANCH</b> : Systems Integration</p> <p><b>DIVISION</b> : Technical Information Systems</p> <p><small>Scale: 1:1 200</small></p>	<p><b>Legend</b></p> <table style="width: 100%;"> <tr> <td></td> <td>SG Approved</td> <td></td> <td>Sub Council</td> </tr> <tr> <td></td> <td>Registered</td> <td></td> <td>P&amp;BDM Title Deed Restriction areas</td> </tr> <tr> <td></td> <td>Confirmed</td> <td></td> <td>P&amp;BDM Suburbs</td> </tr> <tr> <td></td> <td>P&amp;BDM Districts</td> <td></td> <td>Public</td> </tr> <tr> <td></td> <td>Corporate GIS Wards (2011)</td> <td></td> <td>Private</td> </tr> </table>		SG Approved		Sub Council		Registered		P&BDM Title Deed Restriction areas		Confirmed		P&BDM Suburbs		P&BDM Districts		Public		Corporate GIS Wards (2011)		Private	 <p><b>CITY OF CAPE TOWN</b>  <b>ISIXEKO SASEKAPA</b>  <b>STAD KAAPSTAD</b></p>
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<b>Map Title</b> DIRECTORATE : Energy, Environmental & Spatial Planning DEPARTMENT : Planning and Building Development Management BRANCH : Systems Integration DIVISION : Technical Information Systems Scaled: WGS_1984 Projection: Linear Unit: Transverse Mercator Meter (1:000000) Map Compiled By: Printed By Date Compiled: 2018-07-19		<b>Legend</b> <div style="display: flex; justify-content: space-between;"> <div> <div style="border: 1px solid black; width: 20px; height: 10px; margin-bottom: 2px;"></div> SG Approved  <div style="border: 1px solid black; width: 20px; height: 10px; margin-bottom: 2px;"></div> Registered  <div style="border: 1px solid black; width: 20px; height: 10px; margin-bottom: 2px;"></div> Confirmed  <div style="border: 1px solid black; width: 20px; height: 10px; margin-bottom: 2px;"></div> P&amp;BDM Districts  <div style="border: 1px solid black; width: 20px; height: 10px; margin-bottom: 2px;"></div> Corporate GIS Wards (2011)         </div> <div> <div style="border: 1px solid black; width: 20px; height: 10px; margin-bottom: 2px;"></div> Sub Council  <div style="border: 1px solid black; width: 20px; height: 10px; margin-bottom: 2px;"></div> P&amp;BDM Title Deed Restriction areas  <div style="border: 1px solid black; width: 20px; height: 10px; margin-bottom: 2px;"></div> P&amp;BDM Suburbs  <div style="border: 1px solid black; width: 20px; height: 10px; margin-bottom: 2px;"></div> Public  <div style="border: 1px solid black; width: 20px; height: 10px; margin-bottom: 2px;"></div> Private         </div> </div>	 <b>CITY OF CAPE TOWN</b> <b>ISIXEKO SASEKAPA</b> <b>STAD KAAPSTAD</b>
Scale: 1:4 600 GEOGRAPHICAL / SPECIAL AREA NOTATIONS			
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# ANNEXURE B

1216

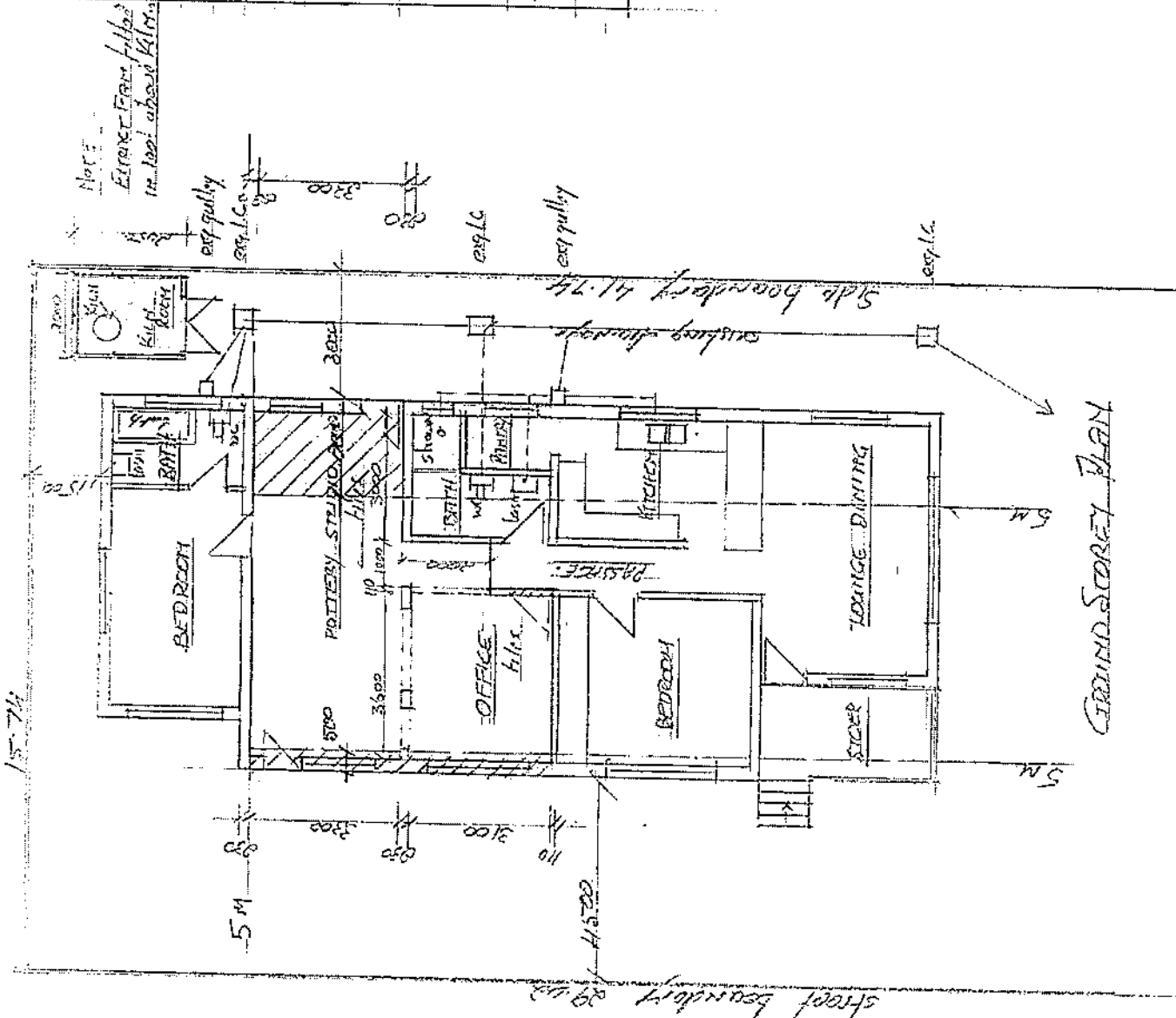
DRIVEN BY GLASS  
Reg No 1226 01783813  
NEW FILM ROOM AT  
ERF 2953 NO 18  
NERINGA RD KOMETEIE  
FOR D BUS

Scale	Original	Day	No
1:100			
Date	Drawn by	Day	No
2009			

EXISTING HOUSE 1415 m<sup>2</sup>  
POTTERY STUDIO FLOOR AREA  
Studio 7.71 x 3.30 = 25.44  
Office 3.60 x 3.10 = 11.16  
Part passage 200 x 1.10 = 2.20  
TOTAL FLOOR AREA 39.80 m<sup>2</sup>

AREA OUTSIDE S.M. LINE  
OF BUSINESS AREA

3.30 x 2.100 = 6.93 m<sup>2</sup>  
6.63 x 1.50 = 9.94 m<sup>2</sup>  
KITCHEN ROOM  
2.00 x 2.45 = 4.90 m<sup>2</sup>



GROUND FLOOR PLAN

**Application for determination of an administrative penalty / 11 JUNE 2019****MOTIVATION LETTER / ERF 2953, 18 NERINA AVENUE, KOMMETJIE****Nature of contravention:**

I, Jenny Chadwick (ID 7302230269089) have developed and run a ceramics and music studio in my home (Erf 2953 -18 Nerina Avenue, Kommetjie) over the last 9 years.

**Present working hours for music and ceramic instruction:**

- Guitar lessons are held on Monday, Tuesday and Wednesday afternoons.
- Max 10 individual guitar students per week.
- Lessons are between 30 and 45 mins.
- Guitar lessons run during school term only.
- Ceramic classes happen 3 times a week:
- Tuesday Evenings 18h45-21h30. *(NB. I closed this class on the 12 March 2019 due to the advice of the land use inspector as a result of the complaint).*
- Thursday mornings - 09h30-12h30.
- Friday mornings - 09h30-12h30.
- Attendance ranges from between 4 to 10 students per class.
- I make my own ceramics to sell at the bi-annual Potters Markets run by Ceramics Southern Africa Western Cape (CSA WC) of which I am a committee member.
- I exhibit at exhibitions and art galleries in Cape Town.
- I run a half day pottery workshop on a Saturday morning twice a year.
- Max 6 students.
- I fire my kiln once a week.

**Duration of contravention:**

- From January 2010 to present day April 2019.

**Gravity of contravention:**

- I had no personal prior knowledge of the Land Use Municipal By-Laws 2015.
- I have opened my home to the public and offered ceramic classes and guitar lessons.
- I receive payment from students who attend my ceramic classes and guitar lessons.

**Extent of contravention:**

- Non-conforming land use - Municipal By-Laws 2015
- 5m building line

**Conduct:**

- Due to the recent complaint from a neighbour a land use inspection was carried out at my home. 09-01-2019
- This complaint against my business has been a shock to me and I have responded as quickly as possible to this grave threat to my business and my livelihood.
- I have immediately called on the services of 2 people to assist me with this process, one to draw plans for submission and another to liaise with council on my behalf.
- This is at my expense.
- From that inspection I understood that what I had to do was not exceed operating hours (08:00-17:30 Mondays to Fridays and 08:00-13:00 Saturdays) and that I had to close my evening class. I was told that I had 30 days to comply (by the 15-03-2019.)



- On 12-03-2019 I closed my Tuesday evening class that has been running for 9 years.
- I have consequently lost income and students.
- I was informed that if I wanted to re-instate my evening classes I had to contact TDA Cape Town and Development management. I did so and am now in the process of applying for consent to run a **place of instruction** from my home.

#### **Has unlawful conduct stopped?**

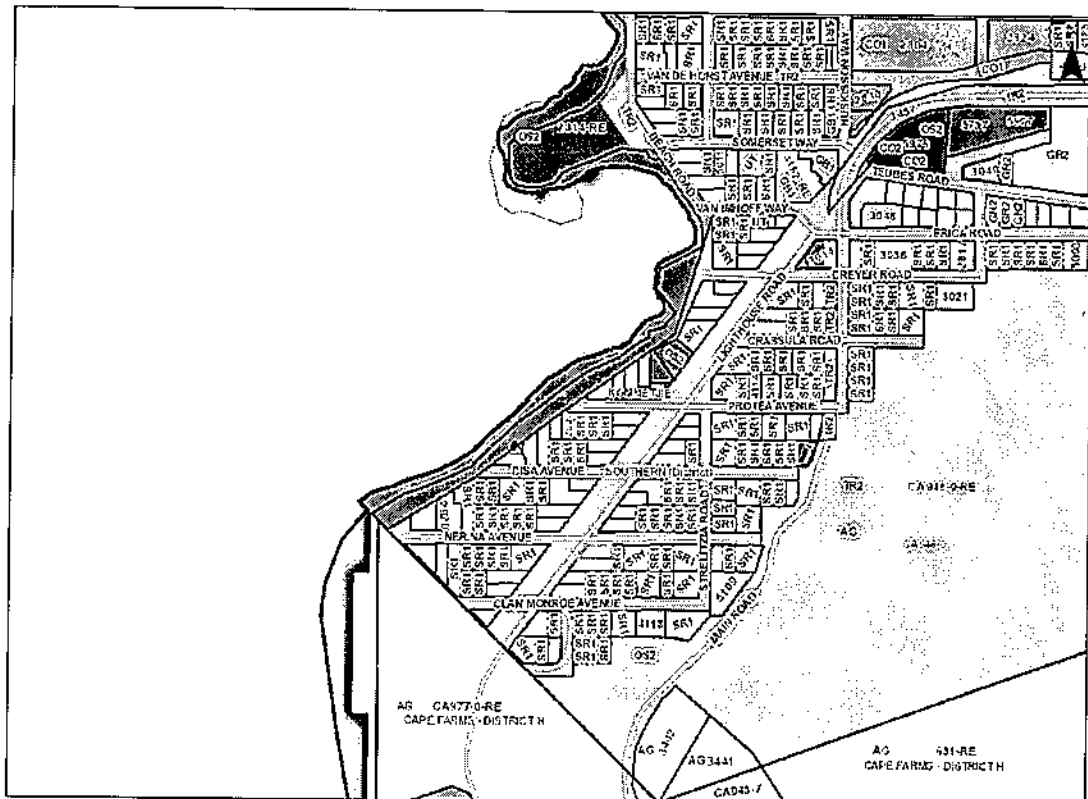
- No.

This is impossible for me to comply with for the following reasons:

- For 9 years I have spent all my time developing this studio.
- I have managed to grow my studio to the point where I can financially support myself.
- If I were to close my studio I would be unable to sustain myself. Already the loss of my Tuesday night ceramics class is putting me under financial stress.
- I have learned over the last 9 years that consistency is of great importance to the growth of my business. This has become a core value of my business.
- This momentum is easily lost and so to avoid losing students and having to start all over again I have had little choice but to keep my doors open. In the interim I am applying to the COCT for consent to run a place of instruction.
- I have a responsibility to my students who rely on their classes. I have a range of students with differing needs and it would be a real loss to them not to be able to continue their classes.
- Following on from this it is well known how health promoting a creative outlet is and I think my student's quality of life and wellbeing would be negatively affected if I were to close my studio.
- I support a wellness group by firing the pottery created by people who attend a group run by my wife Debbie Bub who is a Psychiatric Occupational Therapist. The participants of this group are people living with mental illnesses and addictions. I do not charge for this service.
- I am a musician, artist, ceramic artist and teacher. This is my career. I have created a way to earn a living and to share my skills and knowledge from my home studio in Kommetjie.

## City of Cape Town

1219



Usage Code	A01
Usage	One dwelling residential
Area (Calculated)	561.47 m2
Total Value	2584000
Valuation Year	20190701
Approval Date	0000-00-00
Registered Date	2018-07-16
Purchase Date	--
Purchase Price	0,0
Title Deed Number	T33313/2018
Business Partner Nr	1002149628
Owner Title	MS.
Owner Name	DEBORAH BUB
Owner First Name	DEBORAH
Language	EN
Owner Postal Address	35 LIGHTHOUSE AVENUE KOMMETJIE 7975
ID Number	6810070046087(SA Identity Doc, expired)
Rate payer Name	DEBORAH BUB
Rate payer Street Address	LIGHTHOUSE AVENUE 35 KOMMETJIE ZA
Rate payer Postal Address	35 LIGHTHOUSE AVENUE KOMMETJIE 7975
key	399100
Physical Address	18 NERINA AVENUE, KOMMETJIE
Erf No	2953

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**TDA**  
CAPE TOWN

The City of Cape Town's Transport  
and Urban Development Authority

DEVELOPMENT MANAGEMENT

C JACOBSON  
Land Use Inspector

T: 00844000832

E: christoff.jacobson@capetown.gov.za

70440300

## PERSONAL SERVICE

10 January 2019

DEBORAH BUB &  
JENNY CHADWICK  
18 NERINA AVENUE  
CAPE TOWN  
7975

Dear Sir / Madam

**COMPLIANCE NOTICE IN TERMS OF SECTION 126 OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015:  
ERF: 2953 KOMMETJIE (18 NERINA AVENUE):**

You are the registered owner and resident of Erf 2953 KOMMETJIE situated at 18 NERINA AVENUE KOMMETJIE.

An inspection carried out on 09 January 2019 indicated that you are operating a home occupation (ceramics studio) from the abovementioned property.

The property is zoned 'SR1 Single Residential Zone 1 : Conventional Housing' in terms of the development management scheme, which constitutes schedule 3 of the City of Cape Town Municipal Planning By-law, 2015 ("the By-Law"). A list of the uses that are permitted in terms of this zoning is attached as Annexure A.

Your property is subject to development rules specific to the operation of home occupations. A copy of the conditions are attached as Annexure B.

The conduct described above is in contravention of Chapter 5, Part 1, Item 23 (j). The hours of operation extend beyond 8:00 to 17:30 on Mondays to Fridays.

Sections 35(3) of the By-Law provides that:

35(3) No person may contravene or fail to comply with a condition of approval imposed or deemed to have been imposed in terms of this By-Law.

In terms of section 133 of the By-Law, a person is guilty of an offence if the person-

(a) contravenes a -

- (i) decision taken or a condition imposed or deemed to have been taken or imposed in terms of this By-Law;
- (ii) provision of the development management scheme;
- (iii) uses land in a manner other than permitted by the development management scheme;
- (iv) compliance notice issued in terms of section 126; or
- (v) directive issued in terms of section 128.

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You are hereby instructed to rectify the unlawful conduct and to comply with the provisions of the By-

Law, zoning of the property & development rules within 30 days.....15/03/2019..... by not exceeding the operating hours (8:00 to 17:30 Mondays to Fridays and 8:00 to 13:00 Saturdays).

In terms of section 133(2) of the By-Law, a person is liable to a fine of R800 000.00 or imprisonment not exceeding 20 years, or to both a fine and such imprisonment.

In terms of section 133(4) of the By-Law, an owner -

(a) who permits their land to be used, or fails to take reasonable steps to ensure that their land is not used in a manner which constitutes an offence in terms of this By-Law is guilty of an offence and upon conviction is liable to the penalties contemplated in subsection (2).

The City may, in the event of non-compliance with this notice, take one or more of the following measures -

- (i) if relevant, take steps contemplated in section 127 to withdraw an approval for a temporary departure or an approval granted for a limited period of time;
- (ii) take steps contemplated in section 128 to issue a directive in the terms specified in the notice;
- (iii) apply in terms of section 129 for the determination of an administrative penalty;
- (iv) apply to a competent court for appropriate relief including the costs of the application; and
- (v) institute a criminal prosecution.

Note that in terms of section 130 of the By-Law, you may apply to the City for the necessary approval.

If you submit an application, you must submit an application for and pay an administrative penalty determined in terms of section 129 of the By-Law before the City may consider an application.

Kindly note that if you do not cease the unlawful conduct, this may increase the amount of the penalty determined in terms of section 129 of the By-Law

Note: In terms of section 130(4) of the By-Law the submission of an application for, determination of, or payment of an administrative penalty in terms of section 129, or the approval of an application does not limit the City's power to investigate an offence or institute a criminal prosecution.

Yours faithfully

C JACOBSON  
DEVELOPMENT MANAGEMENT

Received by JENNY CHADWICK  
Signature J. Chadwick  
ID no. 1973 02 23  
Capacity married to the owner  
Date 13-2-2019  
Served by [Signature] at EAF. 2953.  
Signature C JACOBSON.  
Capacity INSPECTOR.  
Date 13/2/2019