

**CITY OF CAPE TOWN  
ISIXEKO SASEKAPA  
STAD KAAPSTAD**

## **REPORT TO MUNICIPAL PLANNING TRIBUNAL**

CASE ID	70498662				
CASE OFFICER	Erhard Pienaar				
CASE OFFICER PHONE NO	021 444 7507				
DISTRICT	Tygerberg				
REPORT DATE	12 August 2020				
INTERVIEW REQUESTED	APPLICANT	YES		NO	✓
	OBJECTOR(S)				✓

**ITEM NO** MPTNE22/09/2020

**APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF ERF 23664, DELFT, 16 AMOUR STREET, VOORBRUG**

### **1 EXECUTIVE SUMMARY**

Property description	Erf 23664, Delft
Property address	16 Amour Street, Voorbrug
Site extent	103m <sup>2</sup>
Current zoning	Single Residential 2 (SR 2)
Current land use	Residential/ECD centre(unauthorised)
Overlay zone applicable	No

Submission date	19 March 2020
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	Yes - creche
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	No

demolition directive i.t.o section 128 of the MPBL? If yes, an administrative penalty may not be applied for.	
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

The ECD centre was approved as a land use departure in 2011, which approval has lapsed in 2016. Hence, the existing ECDC is currently unauthorised.

The applicant now wishes to apply for the consent use to permit the ECD centre for 34 children but was instructed to first apply for an Administrative Penalty, hence this application.

Furthermore, an unauthorized structure has been erected of which a substantial portion encroaches the property boundary. The applicant intends to demolish the said structure as indicated on the plan attached as Annexure B.

## 4 SUMMARY OF APPLICANT'S MOTIVATION

- There is a need for the ECD centre.
- The owners have not contravened the by-law previously.
- The unauthorized structure will be demolished.

## 5 ASSESSMENT OF APPLICATION

- 5.1 As indicated above, the unauthorized use is in contravention of the Development Management Scheme (DMS).
- 5.2 The subject property is zoned Single Residential 2 (SR2) and, save for a vacant Community 1 and a Open Space 2 zoned property directly opposite Armour Road, is surrounded by similar SR2 zoned properties.

- 5.3 In terms of section 129(7)(b) of the By-Law, an administrative penalty for the ECD centre may not be more than 100% of the municipal valuation of the area that is used unlawfully.
- 5.4 In terms of section 129(7)(a) of the By-Law, an administrative penalty for a building work contravention may not be more than 100% of the value of the building, construction and engineering work unlawfully carried out.

### **Administrative Penalty: Calculation**

#### Unauthorized land use

$$\frac{R259\,000}{103.1m^2} \times 23.7 = R59\,595.00$$

An amount which is not more than 100% of R59 5951.00 may be imposed as an administrative penalty.

- 5.5 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 property owner is currently operating the ECD centre, which is considered an active business operation without the necessary land use approval or Health and Safety compliance certificates in place.

Duration: The unauthorized use has only been in operation for 4 years which is regarded as a long duration.

Extent: The property measures 103.8m<sup>2</sup> and the extent of the unauthorized land use is 23.7m<sup>2</sup> and regarded as significant considering the limited size of the subject erf. The predominant use of the dwelling is also for ECD purposes. Notwithstanding this, the facility itself is regarded as small scale in terms of Council's Policy regarding ECDC's.

Gravity: The operation of an ECDC without the necessary planning approvals in place whereby health and safety concerns can be addressed, is regarded to be of serious gravity.

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

After submission of this Administrative Penalty application for unauthorized use the applicant was also made aware of an unauthorized structure, of which a portion encroaches the property boundary onto public road.

The applicant has subsequently submitted a plan indicating that the unauthorized structure is to be demolished.

Although these encroachments do not relate to the proposed ECD center at hand but would however be required to be demolished prior to building plan approval. This will be imposed as a condition in the event of the consent use approval of the ECD centre.

The existing ECD centre is operating from a portion of the existing house.

Furthermore, the applicant did initially obtain planning approval for the ECDC although such has lapsed in 2016.

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

The activity is operational and is therefore ongoing.

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

No Council records can be found that the property owner has been previously charged for a land use violation.

5.6 Having considered the factors mentioned above, I am of the opinion that an administrative penalty fee of R2 000,00.

## **6 REASONS FOR DECISION**

Reasons for the recommended decision may be summarized as follows:

- 6.1 The owner of the ECDC had obtained Planning Approval in the past which has, however now lapsed.
- 6.2 The unauthorized operation of the ECDC has been active for 4 years which is considered to be a relatively long period.
- 6.3 The extent of the operation is regarded as significant considering the limited size of the property and the fact that the predominant use thereof is for ECDC purposes.

- 6.4 The operation of an ECDC in the absence of planning approval and health and safety certification is considered to be of serious gravity.
- 6.5 The owner submitted the administrative penalty.

## 7 RECOMMENDATION

In view of the above, it is recommended that:

an administrative penalty for the land use contravention in the amount of R2 000.00 be determined in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 23664, Delft, Voorbrug.

### ANNEXURES

Annexure A Locality Plan  
 Annexure B Site development plan  
 Annexure C Applicant's motivation




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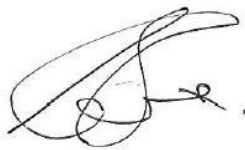
#### Section Head : Land Use Management

Name Tess Kotze

Tel no 021 444 7506

Date 19 August 2020

Comment




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#### District Manager

Name Dewaldt Smit

Tel no 021 444 7840

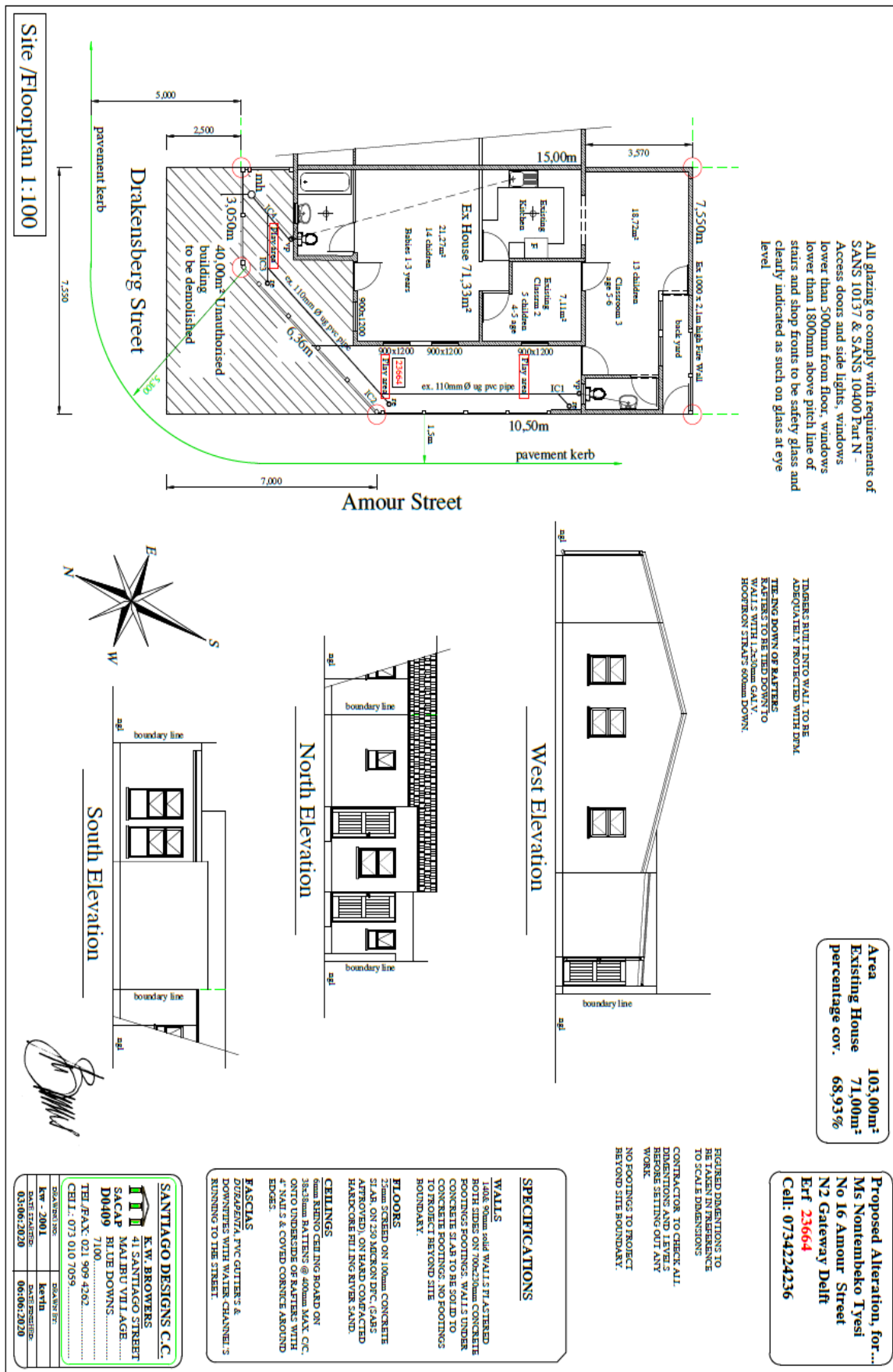
Date 24/08/2020

Comment





## ANNEXURE B



## ANNEXURE C: BUILDING PLAN





**ANNEXURE C**

Ms NM Tyesi  
16 Amor Street  
DELFT

Land Use Management Branch  
Development Management Department:  
Spatial Planning and Environmental Directorate  
Northern District

Dear Sirs/Mesdames

**ADMINISTRATIVE PENALTY  
DELFT, ERF 23664**

The owner of the subject property has made application for Consent Use in terms of Section 42(i) of City of Cape Town By-law on Municipal Land Use Planning, 2015 to utilise a portion of the property as an Early Childhood Development Facility.

The owner and operator has been operating the facility since 2011 as per previous approval of Temporary Land Use Departure which had lapse in 2016. The owner now wishes to apply for the necessary consent by obtaining the necessary approval from the local authority. The ecd is small scale in nature which consist of 34 learners. The owner and operator opened the facility in 2011 given the need of the community and no openings at other facilities to accommodate the learners in the area.

The owner has not previously contravened the By-law or a previous Planning By-law

In light of the above motivation in respect of the facility and meeting all criteria set out in the given legislation we wish to request that an admin penalty be impose of that which is fair and reasonable.

We thank you kindly for the consideration

Yours faithfully

JOBEN Consulting (Pty) Ltd  
On behalf of  
NM Tyesi (owner) and Y Tyesi (operator)