



REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID	70498231				
CASE OFFICER	Jevon Jacobs				
CASE OFFICER PHONE NO	021 444 7514				
DISTRICT	TYGERBERG				
REPORT DATE	14 April 2020				
INTERVIEW REQUESTED	APPLICANT	YES		NO	X
	OBJECTOR(S)				X

ITEM NO MPT11/06/20

APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF ERF 3751, DELFT, 53 ROOSTOU CRESCENT, ROOSENDAL.

1 EXECUTIVE SUMMARY

Property description	Erf 3751, Delft.
Property address	53 Roostou Crescent, Roosendal
Site extent	242m ²
Current zoning	Single Residential 1.
Current land use	Dwelling house and unauthorised tuck shop.
Overlay zone applicable	None.

Submission date	16 March 2020.
Subject to PHRA / SAHRA	No.
Any unauthorised land use / building work?	Unauthorised house shop operating from an unapproved garage.
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

Erf 3751, Delft is currently zoned as Single Residential 1 (SR1). However, the property has an unauthorised house shop of 27,13m² operating from a garage. It is also noteworthy that there is no approved building plan for Erf 3751, Delft for the two rear bedrooms, storage space and garage, however these conform to the building parameters for properties smaller than 350m² (see Annexure D for the previously approved plan).

Thus, the owners have unlawfully operated the house shop prior to any building plan or Land Use Management Application approval. Hence the application for the determination of an Administrative Penalty in terms of Item 129 of the MPBL, 2015.

4 SUMMARY OF APPLICANT'S MOTIVATION

The applicant's motivation of the proposed is attached as Annexure C and may be summarised as follows:

- The owners are currently operating an unlawful house shop from the unapproved garage abutting Roostou Crescent.
- The owners were unaware of the need for relevant building plan or Land Use approval(s) prior to the operation of the house shop or construction to the main dwelling additions.
- The draughts-person made the owners aware of relevant approvals required.
- The owners were not issued a notice from the City of Cape Town.
- The house shop serves the community who are in need of closely-situated amenities.

5 ASSESSMENT OF APPLICATION

- 5.1 As indicated above, the unauthorised land use is in contravention of the Development Management Scheme (DMS).
- 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.

Administrative Penalty: Calculation

- 5.2.1 Unauthorised land use

$$\frac{\text{Total Municipal Value of property (R338 000)}}{\text{Total area of property (242m}^2\text{)}} \times \text{Total Unlawful Area (27.13m}^2\text{)} = \text{R37 892, 31}$$

An amount which is not more than 100% of R37 892, 31 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 contravention involves an unauthorised land use in the form of a house shop that operates from the existing garage.

Duration – The applicant motivates that the unlawful house shop has been in existence for approximately 4 years.

Gravity - The unlawful land use contravention is regarded to be of moderate gravity considering the potential impact thereof on adjoining neighbours in terms of such activity. The conversion of an existing unauthorised garage into a shop has also now left the property without a parking opportunity.

Extent – The total extent of the unauthorised land use is approximately 27.13m².

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

According to the motivational report, the owner of the property was unaware of the requirements of building plan or Land Use approval for the operation of the house shop. Therefore, the owner now wishes to comply with all legislation and policy to rectify the unauthorised house shop. The applicant/owner is willing to rectify the unauthorised land use and was forthcoming with information on request.

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

The unlawful land use remains in operation.

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

Other than the land use contravention under discussion in this report, there is no evidence that the owner has previously contravened the provisions of the MPBL or any other planning legislation.

- 5.4 Given the moderate gravity and scale and relatively long duration of the activity as well as the fact that no evidence can be found of previous contraventions by the owner, an Administrative Penalty to the amount of R1000,00 is recommended.

6 REASONS FOR DECISION

Reasons for the recommended decision may be summarised as follows:

- The nature of the contravention involves an unlawful house shop land use which has been in existence for a duration of approximately 4 years, as per the applicant's motivation.
- The extent of the land use contravention is of moderate scale in comparison to the size of the property.
- The gravity of the contravention is regarded as moderate given the nature of the activity potentially causing a noise disturbance for neighbours.
- The applicant/owner is willing to rectify the unauthorised land use and was forthcoming with information on request.
- There is no evidence that the owner has previously contravened the MPBL or any other planning law and has conscientiously applied for the determination of an Administrative Penalty in terms of Item 42(r) of the MPBL, 2015.

7 RECOMMENDATION

In view of the above, it is recommended that:

- a) That an administrative penalty in the amount of R1 000,00 **be determined** in terms of Item 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 3751, Delft in accordance with Annexure B.

ANNEXURES

Annexure A	Locality Plan
Annexure B	Building plan
Annexure C	Applicant's motivation
Annexure D	Previously approved plan



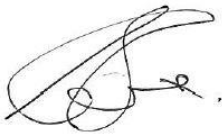
Section Head : Land Use Management

Name Tess Kotze

Tel no 021 444 7506

Date 9 April 2020

Comment



District Manager

Name Dewaldt Smit

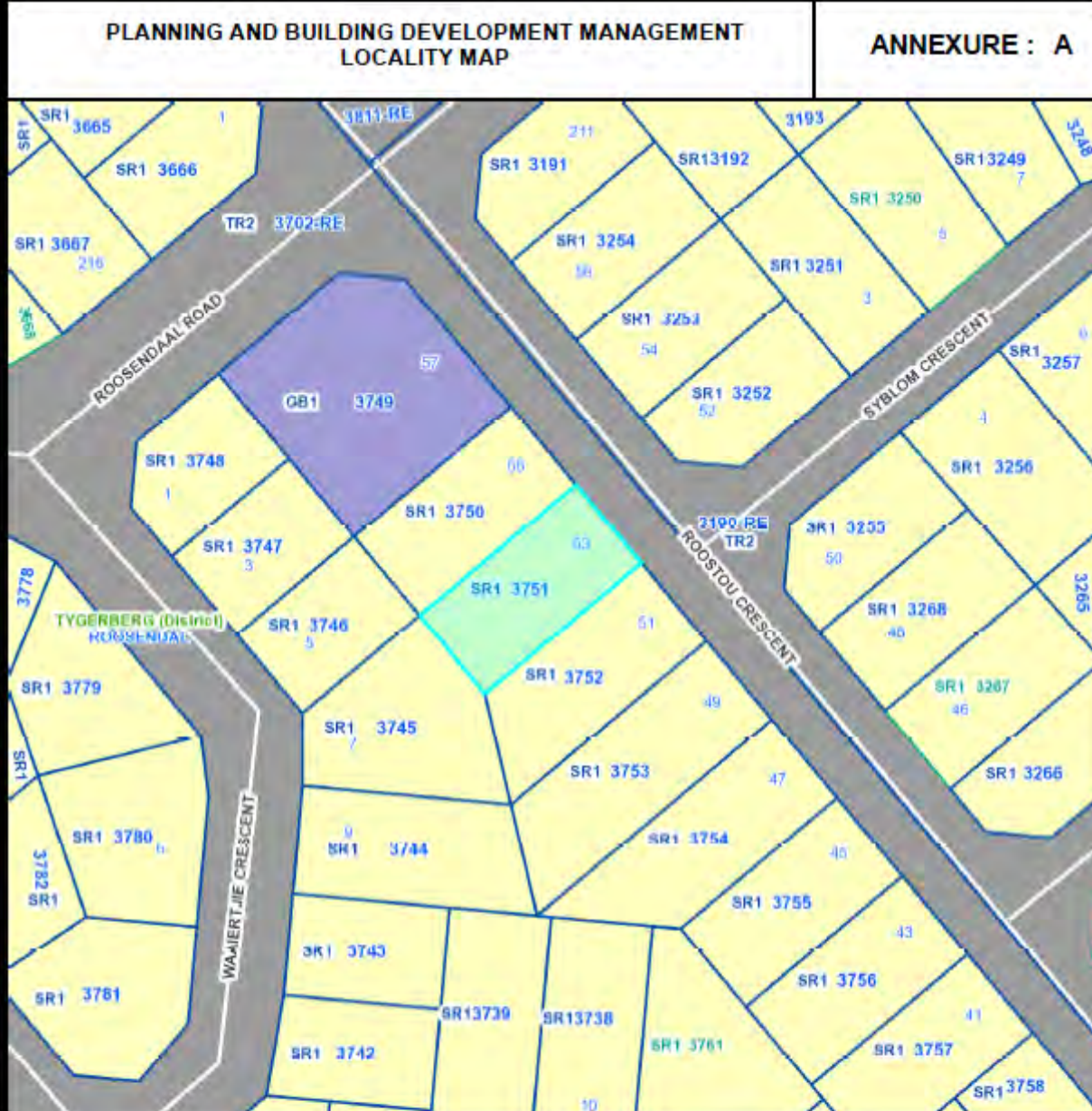
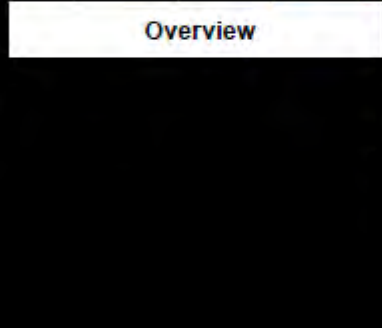

Tel no 021 444 7840

Date 14 April 2020

Comment

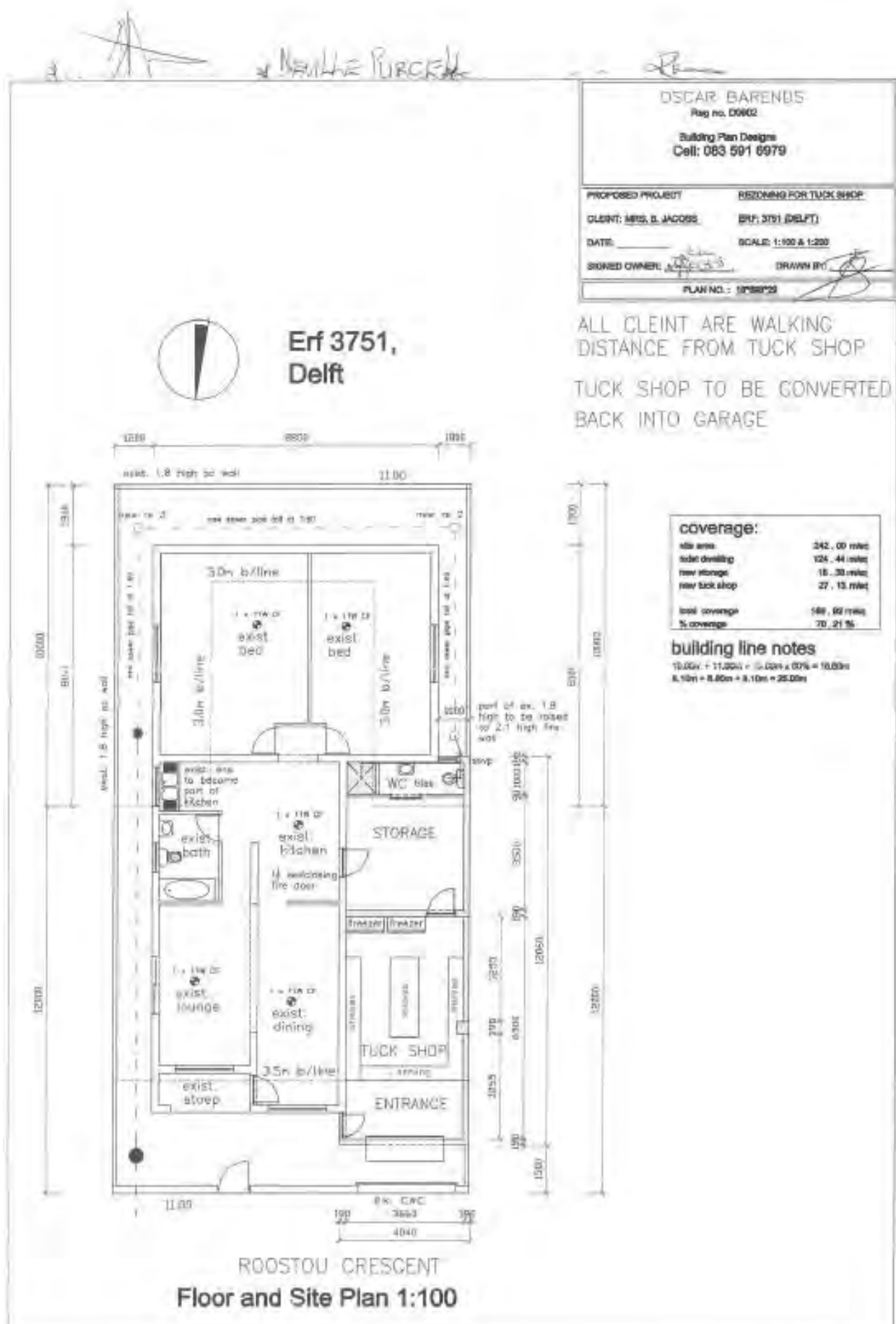
Annexure A

Locality Plan

PLANNING AND BUILDING DEVELOPMENT MANAGEMENT LOCALITY MAP				ANNEXURE : A	
					
Overview		Erf: <input type="text"/> Allotment: <input type="text"/> Ward: <input type="text"/>		District: <input type="text"/> Suburb: <input type="text"/> Sub Council: <input type="text"/>	
		Notices Served <input type="checkbox"/>		Support Received <input checked="" type="checkbox"/>	
		Petition Signatory <input type="checkbox"/>		Objections Received <input checked="" type="checkbox"/>	
Generated by: J Jacobs				 <div style="margin-top: 5px;"> CITY OF CAPE TOWN ISIKHO SASAKAPA STAD KAAPSTAD <small>Making progress possible. Together.</small> </div>	
Date: Monday, 23 March 2020					
File Reference: 70498231					

Annexure B

Building plan



Annexure C

Applicant's motivation

Motivation for Administrative penalty for erf 3751, delft.

We the owners of 53 Roostou crescent, Roosendal would like to rectify the operating of a tuck shop from our premises. We have been operating for the past 3-4 years and was ignorant that we needed permission from council. We were not served with a notice, however the draughtsman enquired if we had approval for the tuck shop when we approached him about renovations we wanted to do at our place. The reason for operating a tuck shop from the premises is that most of the people in the community travel early in the morning and arrive after the shops has closed at home. This serves as a means for them to get the daily goods that they might need.

We sincerely hope that this motivation is enough for you to process the application.

Yours truly

Mr & Mrs Jacobs

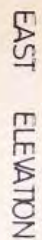
Annexure D

Previously approved plan

SECTION
11 000 (s)

6 000
1 200
2 725
2 725
20
20

ERF 3752
22 000 (s)
ERF 3751



Technical drawing showing a cross-section of a wall and floor junction. The wall has a total width of 400. The floor slab is 150 thick. The wall is reinforced with 150 micron diameter plastic deformed concrete (dpc) and 50mm sand. The floor slab is reinforced with 100mm diameter reinforcement bars. The wall is labeled 'SECTION AA'.

scale 1-10

scale	date	drawn	checked
1"=20'	aug. 83	c. forbes	d. edwards

drawn by

eddie edwards
1 second avenue,
fair harts,
oregon.
7800
ph 705 8754

HOUSE: J. JACOBS
ERF: 3751 ROOSENDAL
TYPE: C2.24/M
plans by:
DELFT CONSTRUCTION:

Wes-Kaapse Streeksdiensteraad
 Western Cape Regional Services Council
 Plan No.: DEL/3076/91
 Goedgekeur onderhewig aan die
 voorwaardes uiteengesit in
 brief verwysing No.: DEL/3076/91
 gedateer 12/7/91
 Approved subject to the conditions
 stated in letter reference
 No. _____ Dated _____
 INGENIEUR/ENGINEER [Signature]
 DATUM/DATE 12/7/91

GOEDKEURINGS	HANDTEKENING	DATUM
INGENIEUR		
GESONDHEID	<u>[Signature]</u>	<u>27/6/91</u>
BEPLANNING		
BEHUISING		
BRANDWEER		
ANDER		