



**REPORT TO MUNICIPAL PLANNING TRIBUNAL**

CASE ID	70368763				
CASE OFFICER	A Smit				
CASE OFFICER PHONE NO	021 444 1039				
DISTRICT	Northern				
REPORT DATE	11 September 2017				
INTERVIEW REQUESTED	APPLICANT	YES		NO	✓
	OBJECTOR(S)				✓

**ITEM NO MPTNE37/09/17**

**WARD 21: APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF ERF 42, 14 KENDAL STREET, EVERSDALE, BELLVILLE**

**1 EXECUTIVE SUMMARY**

Property description	Erf 42, Eversdale, Bellville
Property address	14 Kendal Road, Eversdal
Site extent	1630.33m <sup>2</sup>
Current zoning	Single Residential Zone 1
Current land use	Dwelling house (with a portion being used as a Place of Instruction)
Overlay zone applicable	None

Submission date	11 September 2017
Subject to PHRA / SAHRA	N/A
Any unauthorised land use / building work?	A portion of the property is being utilised as a Place of Instruction for 11 children. (i.e. 6 more than the 6 permissible in terms Home Child Care per the Development Management Scheme).
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	No

section 128 of the MPBL? If yes, an administrative penalty may not be applied for.	1362
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

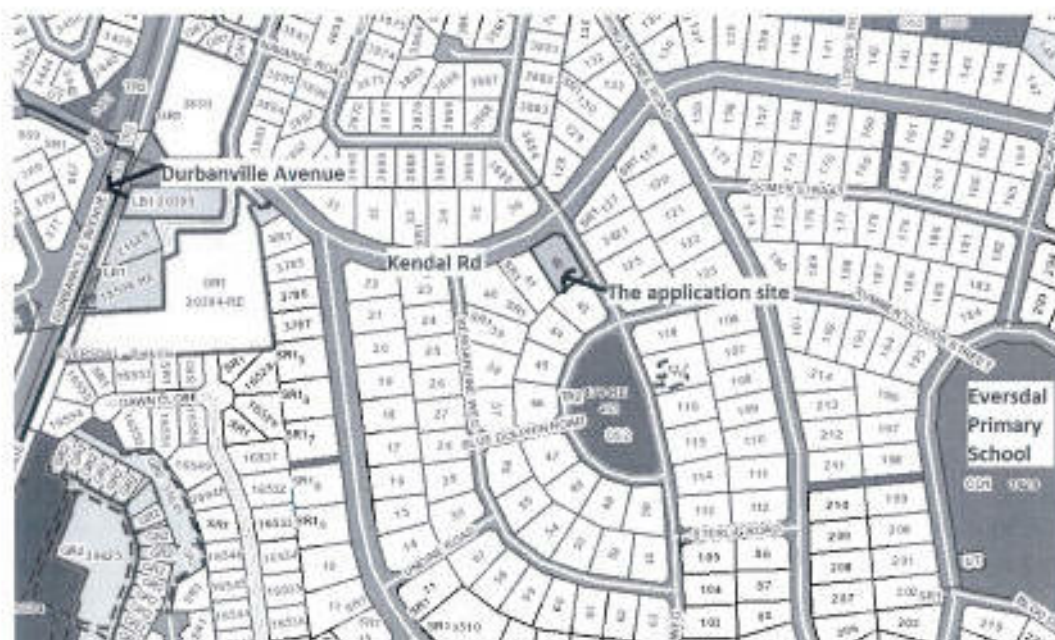
## 2 DECISION AUTHORITY

For decision by the Municipal Planning Tribunal

## 3 BACKGROUND / SITE HISTORY

Erf 42, Eversdal is situated at no 14 Kendal Road and is zoned for Single Residential 1 purposes.

Kendal Road is a circular collector road that links with Durbanville Avenue directly and via Edelweis Steet and Mountain View Drive with Old Oak and Eversdal Roads. The surrounding area is mainly single residential. The Eversdal Primary School is situated in close proximity to the site.



Six children have been accommodated in terms of the Home Child Care criteria (i.e. per item 25 of the Development Management Scheme). An application for consent to accommodate a Place of Instruction for 11

children (7 to 17 years of age) was submitted during May 2017 and is currently being processed. The number of children was increased during July 2017 to 11 children.

#### 4 SUMMARY OF APPLICANT'S MOTIVATION

The applicant's motivation is attached as **Annexure C** and may be summarized as follows:

- The school has been in operation since 2015 with maximum 6 children. Only two rooms within the dwelling are being utilized for the Place of Instruction.
- The children struggle to achieve their potential in mainstream classrooms due to ADD/ASHD, dyslexia, dyspraxia, speech and language delays, motor difficulties, sensory difficulties, Asperger's Syndrome, etc.
- The consent use application to accommodate 11 children was submitted during May 2017.
- The minimum requirement for registration with the Education Department is 9 children. The owners wish to register and therefore applied for the consent application.
- 4 Children had to be taken in after the July 2017 school holiday as they were not coping in the normal school environment and they had no place to go.
- The consent application is nearing completion and the owners anticipated that the approval would be in place by end of July 2017.
- The school is operational from 8 am to 1pm during the week.
- No aftercare or holiday programs.
- The children have two twenty minute breaks.
- It is requested that no penalty fee be paid as they only wanted to assist the children and did not want to cause any problems.
- They are willing to co-operate with the department.
- The number of children will be reduced to 6 if the consent use application is not approved. This will however be unfortunate for the children and the special need catered for.

#### 5 ASSESSMENT OF APPLICATION

The applicants applied for an administrative penalty, as the unauthorized use (i.e. 4 children more than per the Home Child Care rules) is in contravention of the Development Management Scheme.

In terms of the Development Management Scheme, a Place of Instruction is a Consent use within the Single Residential 1 Zone. A consent use application was submitted during May 2017 and is nearing completion.

In terms of section 129(7)(b) of the Municipal Planning Amendment By-Law (2016), the administrative penalty for the land use contravention may not be

more than 100% of the value of the <sup>1364</sup> municipal valuation of the area that is used unlawfully, as determined by the City.

## 5.1 Administrative Penalty Calculation

For land use contraventions, the formula that must be used is:

$$\frac{\text{Total Municipal Value of property}}{\text{Total area of property (m}^2\text{)}} \times \text{Total Unlawful Area (m}^2\text{)} = R$$

In terms of the existing contravention to accommodate the Place of Instruction the following applies:

$$\frac{R3\,600\,000}{1630\text{m}^2} \times 44\text{m}^2 = R97\,158$$

For ease of evaluation, the table below sets out the penalty scale based on both the valuation of the property, as well as the value of the land based on valuation of vacant properties:

PENALTY SCALE (rounded)						
		0.5%	1%	3%	5%	10%
Area contravening amended MPBL	44m <sup>2</sup>					
Value of the land use based on valuation of property	R97 158	R485	R971	R2 915	R4 858	R9716

## 5.2 Factors to consider

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, gravity and extent of the contravention:

The Place of instruction (age 7 to 17 years) caters for special needs children. Only 6 children were accommodated since 2015 to July 2017 when 4 additional children were accepted.

The 4 additional children are accommodated in the same space as the permissible 6 children, i.e. two rooms of 44m<sup>2</sup> in total.

The application for consent to accommodate the Place of Instruction (case 70348196) is to accommodate a maximum of 11 children within the 2 rooms within the existing dwelling. Also sufficient parking is available on-site (refer **Annexure B**).

School hours: 8:00 to 13:00 during weekdays.

No aftercare.

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

The operator of the Place of Instruction has shown a willingness to cooperate with the City to rectify the unauthorized activity. They adhered to the maximum of 6 children from 2015 up to July 2017.

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

The 4 children are currently still accommodated. The applicant motivated that they do not cope in the main stream schools and currently do not have an alternative school to attend.

**(d) Whether the person was involved in the contravention has previously contravened this By-Law or a previous Planning law:**

The owner has not been previously charged with contravening the MPBL or previous Planning Law.

**5.3 Administrative Penalty**

In terms of section 129(7) of the Municipal Planning By-Law the MPT can, after considering the representations, choose if they want to impose an administrative penalty.

It is recommended that a **0%** administrative penalty based on the valuation of the property be approved, based on the following:

- Cooperation of the applicant in submitting an administrative penalty and a land use application.
- There is no record of previous contraventions by the owner.
- The short period (July 2017 to current - September 2017) for which the 6 children has been exceeded (i.e. by 4 children within the same extent as the permissible 6 children).
- The application for the consent use to accommodate the Place of Instruction for 11 children could be finalized following the admin penalty application.

**6 REASONS FOR DECISION**

Reasons for the recommended decision may be summarised as follows:

- The unauthorized use has been in operation for a very short period of time (school term started 24 July 2017 to date), i.e. after the submission of the consent use application for maximum 11 children.
- The unauthorized use involves only 4 additional children, while the property has enough space to accommodate a total of 11 children.
- The extent of the dwelling utilized for the Home Child Care vs the Place of Instruction did and will not increase.
- The applicant has been cooperative throughout the process.

**7 RECOMMENDATION**

1366

In view of the above, it is recommended that:

- 7.1 An administrative penalty in the amount of **R0 (zero)** be determined in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 42, Eversdale, Bellville in accordance with the plan attached as Annexure B.

**ANNEXURES**

- Annexure A Locality plan
- Annexure B Site development plan
- Annexure C Applicant's Motivation

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<b>Section Head : Land Use Management</b>	Comment
Name _____	_____
Tel no _____	_____
Date _____	_____

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<b>District Manager</b>	
Erf 42, Eversdal_Admin Penalty _Sept 17_MPT	
Name _____	Comment
Tel no _____	_____
Date _____	_____

## Extract from DMS: Single Residential 1 zoning

**25 Home child care**

In addition to item 21(b), the following conditions shall apply where a portion of property is used for home child care:

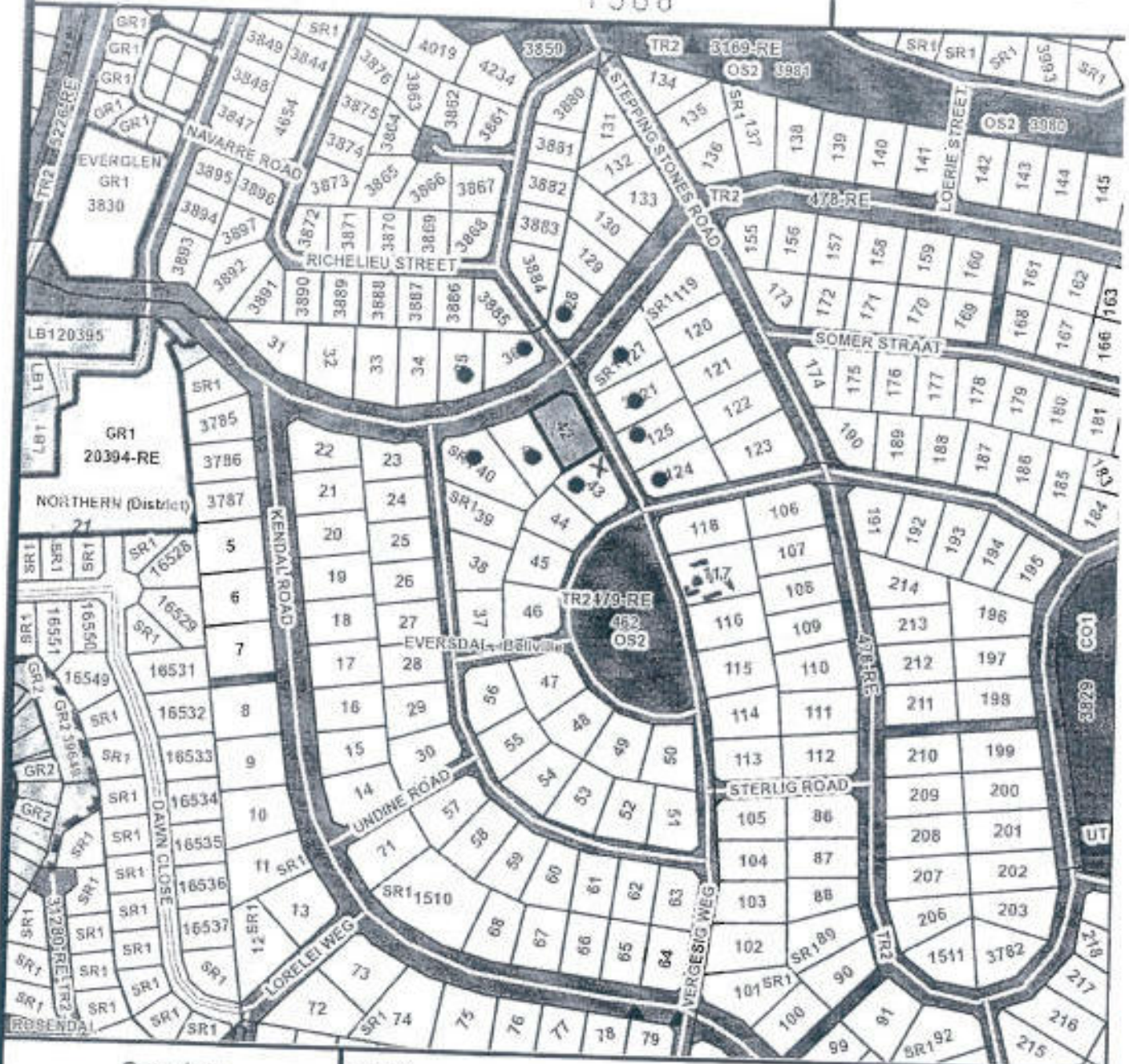
- (a) No more than 6 children shall be enrolled at the home child care facility at any time;
- (b) Services shall be primarily day care or educational and not medical;
- (c) Services shall not operate outside the hours of 07:00 to 18:00 on Mondays to Fridays, and from 08:00 to 13:00 on Saturdays, and shall not include public holidays or Sundays;

- 
- (d) Indoor and outdoor play space shall be provided in accordance with any health requirement or a policy plan as might be approved by the City from time to time, and outdoor play space shall be fenced off from any public street;
  - (e) No advertising sign shall be displayed, other than a single un-illuminated sign or notice in accordance with the City's Outdoor Advertising and Signage By-Law, not projecting over a public street, and such sign shall not exceed 0,5 m<sup>2</sup> in area; and
  - (f) At least one off-street parking bay shall be provided, plus one additional parking bay which is suitable for the use of parents to drop off or collect their children, unless the City's approval is obtained to waive this requirement. The City may at any stage require additional on-site parking where parking is not sufficient.

PLANNING AND BUILDING DEVELOPMENT MANAGEMENT  
LOCALITY MAP

1368

ANNEXURE : B



Overview



Ert. 42

Attachment: EVERSDALE

Ward: 21

District: NORTHERN

Suburb: EVERSDALE - Bellville

Sub Council: Subcouncil 7



1:4 106

Notices Served



Support Received



Petition Signatory



Objections Received



Generated by:

Date: 11 May 2017

File Reference:



CITY OF CAPE TOWN  
ISIXEKO SASEKAPA  
STAD KAAPSTAD

www.capetown.gov.za

# Annexure

## B



# Annexure

# C

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25  
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Planning & Building Development Management District  
 Oostenberg Municipality

Attention: Anne Smit

**RE: Application for No Administrative Penalty on ERF 42, Kendal Road, Eversdale:  
 Unlawful use of premises educating 10 children**

We would like to apply for no penalty on the above premises based on the following considerations.

The school has been in operation from 2015, only 6 children maximum has been educated on the premises. My client applied for consent use to occupy the premises for 11 children and send the application in May 2017 this year. They have shown their commitment by applying for this consent.

After the July holidays they had no option and had to take on another 4 children. These children could not operate in the normal school environment, and had no place to go for educating purposes. My client admit that she operated unlawful for the past 3 months, but they anticipated that the application would have been approved by end of July.

The only reason my client asked for consent, was due the fact they want to register the school with the education department. The minimum requirements for registration is 9 pupils. Currently they cannot accommodate more than 11 pupils and application was made for 11 pupils.

The school is only operational from 8 till 1pm during week. No aftercare or holiday programs are done at the premises. The children only have 2 x 20 minutes breaks during school hours.

We ask the department to consider applying no penalty to our client. They only wanted to assist these children and did not want to cause any problems. They have been willing to co-operate with the department at any time.

If the application is not approved, they would be forced to move premises or reduce the number of children to 6. This would be unfortunate for the children and the specific needs they cater for.

We hope that the department would consider the above

Kind regards



Jaco Serfontein



100% COMPLIANT WITH THE GREEN BUILDING COUNCIL OF SOUTH AFRICA (GBCSA) GREEN STAR RATED GREEN BUILDING  
 100% COMPLIANT WITH THE GREEN BUILDING COUNCIL OF SOUTH AFRICA (GBCSA) GREEN STAR RATED GREEN BUILDING

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