

POLICY REGULATING CHILD CARE FACILITIES IN RESIDENTIAL AREAS

1. Introduction

- 1.1 Currently there are different zoning schemes applicable to the Kouga Municipality and also different terminology being used for the care taking of children away from their parents.
- 1.2 The formulation of a uniform policy regarding the processing of applications for the operation of child care facilities in general, on residential zoned erven, becomes imperative, since no guidelines exist to address the increasing demand for such facilities. The policy will distinct between different types of facilities, as well as the type of application that is required in terms of the relevant legislation, in which instances Child Care facilities would be permitted to operate as home enterprises/occupational practices or as Special Consent uses.
- 1.3 Another issue that will be addressed in this policy is the specification of the maximum number of children that can be accommodated on a site, to enable the applicant to comply with the requirements of the Children's Act, 2008 (Act No. 38 of 2008), and the **National Health Act, 2003 (Act No.61 of 2003)**, as well as to avoid possible adverse effects of the proposed Child Care facility on the residential amenity of the subject area.
- 1.4 In order to ensure some measure of consistency in the town planning approach to the regulation of Child Care facilities and the assessment of applications for such uses, this report proposes the following policy for dealing with applications.
- 1.5 In order to ensure alignment with the existing Zoning Schemes the following is recommended:
 - If the scheme is in line with the policy, the scheme must prevail.
 - If the scheme is not in line with the policy, the scheme must be amended.

2. Terminology

- 2.1 Numerous terms are in use to describe various child-minding facilities, both in legislation and vernacular usage. Since the applicable legislation refers to "Child Care", as per the Children's Act, "Day-care centre", "Crèche" and "Place of Instruction", as per zoning schemes it is recommended that this terminology be restricted to "Child care facility" in accordance with the said act, with the acknowledgment that the following be included in the definition:
 - crèches
 - play groups
 - kindergartens
 - day mothers
 - day care facilities/centres
 - any other form of child-minding facility

3. Legislation

3.1 In terms of the Jeffreys Bay Zoning Scheme Regulations (Jeffreys Bay, Paradise Beach & Aston Bay) any of these facilities which perform a child care and/or teaching function can be regarded as “Places of Instruction”, Crèches and Day-care Centres and are defined as follows:

“Place of instruction” means a school, college, technical institute, academy, lecture hall, cloister, public library, art gallery, museum, gymnasium, crèche or any other similar use regarded by the Council as an educational nature, but excludes a university, reformatory, industrial school or a school for the mentally handicapped;

“Crèche” means any building or site which is maintained or is used, whether for profit or otherwise, for the reception, protection and temporary care of children away from their parents, but does not include a hostel, institution or any place of instruction;

“Day-care centre” means a building which is used for human habitation by the owner or occupier, but which is also maintained or is used, whether for profit or otherwise, for the reception, protection and temporary or partial care of not more than 15 children away from their parents, but does not include a hostel, institution or any educational institution.

These different types of child care facilities are allowed as follows:

TYPE	ZONING	USE
Place of Instruction	Single Residential B	Consent Use
	Group Housing	Consent Use
	General Residential	Consent Use
Crèche	Single Residential B	Consent Use
	Group Housing	Consent Use
Day-care Centre	Single Residential B	Secondary Use
	Group Housing	Secondary Use

The Spatial Planning and Land Use Management By-law for Kouga Municipality makes no provision for secondary uses, therefore all secondary uses are dealt with in the same manner as consent uses and will be included as such in the Integrated Land Use Scheme for Kouga Municipality.

In terms of the Section 8 (LUPO) Zoning Scheme (rest of Kouga Municipal Area) no provision is made for child care facilities as Consent Uses on residential zoned erven and are therefore dealt with as a departure from the said zoning scheme provisions in order to obtain the required consent from the Council.

- 3.2 In addition to planning permission, these facilities must also comply with the requirements of the Children's Act, 2008 (Act No. 38 of 2008), which requires registration as a "place of care" for the care of more than 6 children (excluding the child minder's own children)

4. Proposed Policy

It is recommended that Council take a positive view of the services provided by child care facilities. In doing so, it is considered desirable from a town planning point of view to encourage the easy establishment of small, community Child Care facilities with a minimum of bureaucratic intervention and unnecessary delay.

In the case of larger facilities where the impact on a neighborhood is likely to be greater, it is considered that Council ought to exercise greater circumspection and insist on a greater level of investigation before approval is granted.

4.1 Proposed Policy: Child Care facilities operating as home enterprises/occupational practices

- 4.1.1 In terms of regulation 3.5 of the Jeffreys Bay Zoning Scheme and regulation 4.9 of the Section 8 (LUPO) Zoning Scheme, the resident/occupier of a dwelling unit may practice an occupation from such a dwelling unit, subject to a number of conditions.
- 4.1.2 For consistency in our approach, a line has to be drawn between a Child Care facility operated as an occupational practice versus a Child Care facility that needs Council's Consent.
- 4.1.3 It is recommended that the same number of children at the Child Care facility that requires registration in terms of the Act, should be used as the cut off point for Town Planning purposes, that requires consent from Council.
- 4.1.4 Therefore, any person intending to operate a Child Care facility for 6 or less children, must apply for consent from the municipality for the operation of an occupational practice/ home enterprise as provided for by the different town planning schemes.
- 4.1.5 The following conditions shall apply to child care facilities which is operated as a home enterprise/occupational practice by the from a dwelling house, by the occupant himself:
- a) Not more than 6 children are permitted at any time;
 - b) A register of children must be kept, and must be available for inspection on the request of the Municipality;
 - c) The facility shall be primarily day care or educational and not medical;
 - d) The hours of operation shall be restricted to 7:00 till 18:00 from Monday to Friday and from 7:00 till 13:00 on Saturdays;
 - e) The proprietor of the facility/centre shall reside on the property;

- f) Not more than two assistants may be employed at the facility/centre;
- g) The minimum indoor and outdoor play area shall be provided as follows”

Indoor play area	Outdoor play area
1,5m ² per child	2,0m ² per child

4.2 Proposed policy: Child Care facilities operating with Council’s Special Consent

4.2.1 If an applicant for a Child Care facility proposes to accommodate more than 6 children, such applicant would be required to apply simultaneously for registration in terms of the Child Care Act and Council’s Special Consent in terms of the Spatial Planning and Land Use Management By-law: Kouga Municipality, 2016. Should the Department of Welfare and Kouga Municipality approve the relevant applications, the most restrictive conditions shall apply.

4.2.2 It is not the aim of this report to address health and on-site safety aspects of child care facilities, as these are more than adequately addressed by the Children’s Act, 2008 (Act No. 38 of 2008) and the **National Health Act, 2003 (Act No. 61 of 2003)**.

4.2.3 From a town planning point of view, the following issues need to be addressed:

- **Locality:** As these facilities are generators of traffic and noise, their locality must be of concern particularly with regards to the proximity from other residential premises, their relationship to major traffic routes, distance from intersections and their proximity to other traffic or noise generators.
- **Size of the site:** The ability to on and off load children, provide parking and outdoor play areas will be influenced/determined by the size of the site.
- **Number of children to be accommodated.**
- **Traffic and Parking:** The mode of transport of children to and from the facility, the ability to load and off load children on site and the ability to provide parking on site will influence the assessment of the facility.
- **Terms and hours of operation.**

4.3 The application

4.3.1 A Consent Use application will be required from 6 children and up to and including 29 children. In this category a childcare facility is seen as a local development where the needs of the surrounding community are being accommodated and is a fairly low-key activity.

4.3.2 For 30 children and more, a rezoning application must be submitted. This category facility is not only supporting the local community any more but, is considered as a regional activity is extending beyond the borders of of the local community. The property must be rezoned to a n appropriate zoning, as contained in the relevant zoning schemes, where a “Place of Instruction” is allowed as a primary right by definition. Failing which a “Special Zone” will have to be utilized should the zoning scheme not have a definition for the proposed facility.

4.3.3 An application to Council for Consent Use to establish a Child Care facility (i.e. accommodating more than 6 children) shall be considered by Council on receipt of a full motivation from the applicant, including:

a) A description of the locality of the property concerned, stating its relationship to and proximity from:

- adjacent residential properties
- major traffic routes and intersections
- other noise generating facilities

b) An indication of proposed access to and egress from the site showing proposed arrangements for the off-loading and collection of children.

c) An indication of the number of on-site parking bays to be provided, which should be sufficient to provide for all the parking requirements for the facility. It is considered that the Department of Transport’s standard currently applicable in terms of the Town Planning Scheme of 1 bay per classroom and/office is inadequate in certain areas. A ratio of 1 bay per 10 people simultaneously participating in the Child Care activity on the site is suggested as a point of departure.

d) Mode of transport of children to and from the facility.

e) Scale of the facility, including number and age of children to be accommodated.

f) Hours of operation of the facility.

g) A detailed Site Plan showing:

- All structures - existing and proposed and the use thereof.
- Internal layout of the building/structure indicating the proposed uses i.e. classrooms and office/s, etc
- Children’s outdoor play areas (measured in sqm) and site landscaping.
- Vehicular access and egress to and from the site.
- Drop-off and pick-up of children
- Parking areas
- Vehicular/pedestrian circulation areas.

- 4.3.4 The applicant's main responsibility in submitting a Consent Use Application is to prove the need and desirability of the specific facility/centre. Need is usually determined by the proximity to other similar centres (a good indication of this is objections from other centres/facilities in the neighbourhood) or the waiting list/present number of children.
- 4.3.5 The desirability of the centre/facility is determined by the location of the application site in terms of access, but also affects the site in terms of the noise level created by the facility.
- 4.3.6 Lower order roads are usually quieter and even a small increase in noise levels will have a disturbing effect on the neighbours and is mostly not supported. If there are objections the issue of noise/nuisance is of critical importance and must be taken into consideration by the municipality. It is often found that, in the case of a lower order road, the neighbours are very vocal about the application. If not, they usually accept it rather well.
- 4.3.7 Thirdly, physical factors must be taken into consideration and therefore must be well motivated by the applicant. The Community Services Department: Health Section, has the controlling authority regarding the area (in square meters) per child as required by legislation. On receipt of an application it must be referred to the Health Section, Traffic Section, Fire Section, as well as the Technical Services Section for consideration.
- 4.3.8 Lastly, parking, and the on- and off-loading of children is often a nuisance factor and must the application must comply with the following requirements:
- Adequate space must be provided for off- and on-loading of children (no parking or stopping in the road reserve will be permitted);
 - One parking space is required per classroom or office;
 - Additional parking as, and if required by the Traffic Section and the Technical Services Section, must be provided.

4.4 Conditions

- 4.4.1 Approval, if granted by Council, shall be subject to such conditions as Council shall deem fit, including:
- a) A condition relating to ingress and egress to and from the site.
 - b) Loading and offloading of children to be conducted within the confines of the property.
 - c) A condition relating to parking provision eg. On-site parking being provided, to at a ratio of 1 bay per classroom or office, or on the basis of 1 parking bay per 10 people simultaneously participating in the activity on the site, where applicable.

- d) A maximum of 29 children to be accommodated at the child care facility, or such lesser limit as determined by the Department Community Services: Health Section.
- e) The submission of a Site Development Plan in terms of the relevant zoning schemes.
- f) The submission of Building Plans in terms of National Building Regulations.
- g) Noise attenuation measures must be taken by the applicant at all times to protect the amenity of the surrounding residences.
- h) Hours of operation to be specified.
- i) All signage to comply with Municipal regulations.
- j) Compliance with the requirements of the Department Community Services: Health Section.
- k) In the event of a nuisance being created, or any of the above conditions not being complied with, this Consent may be summarily suspended or withdrawn.

4.4.2 The inclusion of Conditions 1-3 shall be determined by the individual merit of the application, the socio-economic area in which the Child Care facility will operate, and the mode of transport used to transport the children to and from the child care facility.



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DATE