



MSUNDUZI MUNICIPALITY



Policy Name:	Tavern Policy
Policy Number:	
Status:	
Date:	February 2023
Approved By:	
Date Approved:	
Date Last Amended:	
Date for Next Review:	
Date Published on Intranet:	

Date:	28 February 2023
Document Title:	17582: Home Based Policies- Draft Tavern Policy
Revision Number	01
Author	Reena Ramsaru
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Approved By:	Kavi Soni
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Client:	Msunduzi Municipality

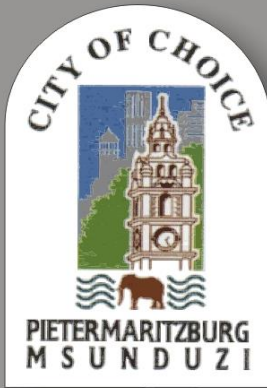
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The Msunduzi Municipality

TAVERN POLICY February 2023

Adopted in terms of the Application Procedures, Principles, Norms and Standards and Spatial Planning requirements of The Spatial Land Use Planning Act No 16 of 2013, the KwaZulu Natal Planning and Development Act No 6 of 2008 and the Msunduzi Spatial Land Use Planning Act by Law adopted on 28 October 2021

on

.....2023

Certified extract of the municipal minutes of the council meeting held on

.....dayMonth of 20..... At

"Council resolves, in terms of section of Application Procedures, Principles, Norms and Standards and Spatial Planning requirements of The Spatial Land Use Planning Act No 16 of 2013, The KwaZulu Planning and Development Act No 6 of 2008 and the Msunduzi Spatial Land Use Planning Act by Law adopted on 28 October 2021

Adopt the

"Msunduzi Municipal Tavern Policy"

Name and Signature:

.....

CITY MANAGER

Name and Signature:

.....

CHAIRPERSON OF THE EXECUTIVE COMMITTEE

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1 INTRODUCTION

1.1 Purpose of this Policy

The purpose of this policy document is to review the Msunduzi Tavern policy and to establish a new development and regulation framework for the management of “Taverns” located within the Msunduzi Municipal Area. This policy applies to Taverns only and excludes activities such as a bar, sports-bar or restaurants which require to be operated from an appropriately zoned area, precinct, and property.

The policy must comply with the planning legislation, business licensing application processes, and the KwaZulu-Natal Liquor Licencing Act, 2010 (Act No.6 of 2010).

1.2 Area of application

This policy is to guide the effective and responsible use of taverns in Msunduzi Municipality. When adopted, this policy will apply to the whole area of jurisdiction within Msunduzi, including Traditional Council controlled areas.

1.3 Existing scheme regulations

Where an existing zoning regulation prescribes standard development parameters (i.e. height, building lines, parking), this policy does not replace these similar provisions, but is applied where such a provision does not exist, or in addition to such provisions.

1.4 Principles, Norms and the Implementation of the Policy

In order for policy to fulfil its role in the context of the Msunduzi Single Land Use Scheme (adopted in April 2021) regulations and its respective development rights conferred, the policy must unfold in accordance with existing legislation and other relevant policies. If a policy is in conflict with any legislation and its regulations, the latter takes precedence, and the policy becomes irrelevant from a legal perspective. Consequently, land management and the acquisition of development rights for Taverns must be implemented in the following manner:

All officials and role players in the Town Planning and Land Use Management System of the municipality must implement this Policy in a way that it is compliant with the National Norms of:

- (a) social, economic, environmental, and administrative justice informing the rights, duties, and principles applicable to the following sector specific norms as is enshrined in the South African Constitution (Act No. 108 of 1996);
- (b) spatial justice, equitable education, sustainability, a safe environment, universal access, amenity, respect for local and indigenous knowledge systems and freedom from discrimination in terms of occupation, profession, trade, race, religion, age, gender and sexual orientation.

1.5 The implementation of the policy must give effect to:

- (a) Section 156(1) of the South African Constitution (Act No. 108 of 1996, hereafter, the Constitution) in accordance with Schedules 4B and 5B, since local municipalities are responsible for municipal planning, land management, child care, health and building regulations.

- (b) Section 24 and Section 156(1) of the Constitution entrenching the rights of tenants and all residents of the Msunduzi Municipal area to “an environment that is not harmful” and the right of all “to choose their trade, occupation, or profession freely” in a manner which is regulated in terms of the law and municipal planning.
- (c) The Promotion of Administrative Justice (Act No 3 of 2000, PAJA) in accordance with Section 33 of the Constitution and the Intergovernmental Relations Framework (Act No 13 of 2005, IGRA) accords everyone in South Africa the right to administrative action which is lawful, procedurally fair, just and accountable. This right includes the right to the provision of written reasons for infringements of PAJA and the imperatives of good governance and efficient administration of municipal responsibilities in accordance with this policy.

1.6 The policy must comply with:

- (a) the town planning imperatives, principles and regulations stemming from the Spatial Planning and Land Use Management Act (Act No.16 of 2013, SPLUMA), the Msunduzi Spatial Planning and Land Use By-Law of 21 October 2021 (hereafter referred to as the Msunduzi SPLUM By -Law, and the Msunduzi Single Land Use Scheme (hereafter referred to as the Msunduzi Scheme) and its subsequent amendments.
- (b) the minimum norms and standards that may be prescribed in terms of Chapter 2 of SPLUMA, the KwaZulu-Natal Planning and Development Act (Act No. 6 of 2008) and the Msunduzi SPLUM By-Law.
- (c) policy and legislation addressing universal access.
- (d) integrated development planning, spatial frameworks, capital investment plans and local development plans, and policy governing bed and breakfasts and the right to environments that are not harmful to any person, fauna or flora including students, work seekers, tenants, homeowners, learners, residents, visitors, or any other person within the Msunduzi Municipal area of jurisdiction; and
- (e) is consistent with other applicable legislation.

1.7 Scope and Application of the Policy

The scope of this policy encompasses the **entire wall-to-wall Msunduzi Municipal area of jurisdiction**, and all rural and peri-urban areas as defined in the Msunduzi Scheme.

The accounting officer must:

Review and amend this Policy in accordance with the time phases of the Integrated Development Plan (IDP), the Spatial Development Framework (SDF) and Scheme review processes so that the proposed amendments to the policy:

- (a) are aligned with Planning and Scheme amendments;
- (b) be submitted timeously for budget allocations in accordance with the Msunduzi Service Delivery Budget Implementation Plan (SDBIP);
- (c) comply with the all applicable legislation, policy, plans and regulations;
- (d) are effected in accordance with the required transparent public participation processes in Chapter 4 and 5 of the Local Government Municipal System Act (Act No. 13 of 2000 as Amended in 2002 and 2004 -MSA); and
- (e) ensure that the performance plans of line function managers and their staff are in compliance with the requirements of the Municipal Performance Management System with regard to the monitoring, evaluation and strict regulation of Tavern developments as is required in Section 38 of the MSA and the Msunduzi SPLUMA By-Law of 28 October 2021 and this Tavern Policy.

1.8 Application procedures, norms and standards

Up to 15 September 2016, all applications for Taverns, were required to be made in terms of Section 67 *bis* of the Town Planning Ordinance No. 27 of 1949, as amended (hereafter “the Ordinance”) in terms of which existing Schemes were established. The Spatial Planning and Land Use Management By-Law was promulgated on 15 September 2016 and repeals Section 67 of the Ordinance. A further amendment was made to the Spatial Planning and Land Use Management By-Law, as of 28 October 2021.

The Msunduzi Scheme accords development rights to properties and building processes in accordance with particular zones which are regulated in the public interest through a continuum of permissible, prohibited, and Municipal Consent development and usage intensities. In this regard:

- (a) the consent process in terms of Section 45 (e) of the Msunduzi SPLUM By Law which regulates applications for which Municipal Approval is required within the Municipality’s area of jurisdiction **or** Schedule 3 of the SPLUMA By-Law in respect of land within the municipality, but outside the scheme-controlled area.
- (b) the registered town and regional planner and or delegated committee, considers the application for procedural and substantive¹ compliance with Section 45(e) of Schedule 3 of the Msunduzi SPLUM By-Law.
- (c) the normative substance of the Msunduzi SPLUMA By-Law as well as the procedural elements² of SPLUMA.
- (d) The municipal planning team calls for a Site Development Plan and a motivation from the applicant proving the desirability, market demand for the development in the said location. Where the demand is established, floatation and incentive zoning is recommended in accordance with the imperatives of the new generation SDF’s as called for in SPLUMA.

2 IMPLEMENTATION PROCESS

2.1 Arrangements

On adoption, this Policy may only be applied to the extent that it doesn’t contradict existing legislation, Scheme and By-laws or where an application for additional rights / land use change is being considered. Consequently, it is recommended at the Scheme amendments recommended by undertaken as soon as possible.

2.2 Commencement date

This Policy was adopted as an official Council Policy in accordance with the adoption resolution as attached in **Annexure A** and comes into full force on the date as shown in the adoption resolution.

2.3 Existing Policy repealed

The existing Draft Tavern Policy is automatically rendered null and void with the adoption of this Policy in accordance with the resolution held in **Annexure A**.

¹ Substantive law addresses the reality of defining rights and duties, as opposed to giving the procedural rules by which those rights and duties are enforced. An application may be procedurally correct in that all the technical rules of the application submission are perfect, but if the application impinges on the right of neighbours to the enjoyment of their property in terms of noise pollution, obscuring neighbours access, and disregards health and safety duties, the application will not be approved.

² If for example the procedure of informing all interested and affected neighbours is not properly undertaken and the application does not contain called for environmental reports or traffic calming measures, the application is procedurally flawed and will not be approved.

3 THE LEGAL AND CONTEXTUAL FRAMEWORK

3.1 Liquor Legislation

The following liquor legislation is applicable to this policy:

- i. Constitution of South Africa, 1996 (Act No. 108 of 1996).
- ii. Liquor Act (Act No. 59 of 2003) and its regulations of 2004.
- iii. The KwaZulu-Natal Liquor Act, 2010 (Act No. 6 of 2010, as amended) and its regulations.

3.2 Legal and Institutional Framework

The legal and institutional framework in respect of taverns consists of a number of aspects. This includes national policies and directives, the planning framework and the Liquor Act and provincial Liquor Authority requirements.

The implications of these different pieces of legislation are summarised in Figure 1 below.

Figure 1: Liquor Legislation Framework

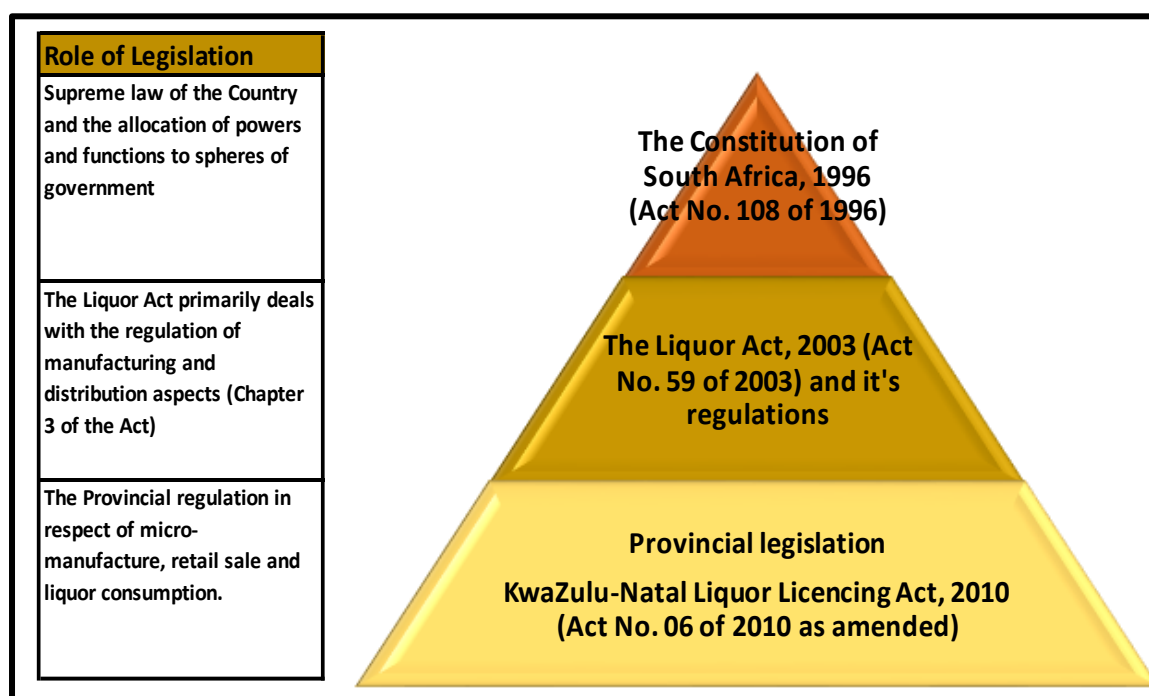


Table 1: National and Provincial Policy, Provincial Planning and liquor licensing and local municipal planning legislation influences on policy

Sphere of influence	Document reference	Implication for this planning policy
National Directives	National Development Plan	The National Directives are of too a strategic nature. Community safety and economic development does have however apply to taverns.

Sphere of influence	Document reference	Implication for this planning policy
Provincial Planning	Provincial Planning and Development Plan	Similarly, the Provincial Planning directives are concerned with provincial wide catalyst projects, and particular regional and strategic interventions.
Municipal Planning	Integrated Development Plan	The Msunduzi Municipality Integrated Development Plan (IDP) includes a section on SMMEs and the informal sector. The number of SMMEs in an area are considered as indicators of growth.
	Spatial Development Plan	The Msunduzi Spatial Development Framework (SDF) focuses on creating viable urban centres and catalytic projects to support growth. Other focus areas include integration, improved public transport and capital investment. The only relevance relating to the tavern policy is the promotion of quality urbanisation and building a safe city.
	Local Development Plan	The informal economy and the need for safety is recognised in the LAPs for Msunduzi.
	Msunduzi Scheme	This document is critical for the application of the policy. The scheme clauses, together with the planning legislation forms the basis for this policy and the assessment of any land use application. It is therefore important that the policy definitions and criteria are aligned to the SPLUMA and scheme requirements. The policy cannot be more restrictive than these core documents.
Liquor Legislation	Liquor Act, 2003 (Act No. 59 of 2003)	The National Act in principle deals with manufacturing and distribution with the mandate for licensing and local management is a provincial authority (Section 41(b) of the National Liquor Licence Act, 2003).
	KwaZulu-Natal Liquor Licensing Act 2010 (Act No. 06 of 2010)	Chapter 6 (Section 38) deals with the registration and licensing for the sale and micro-manufacturing of liquor.
Business Licensing	National Small Business Act, 1996 (Act No. 102 of 1996)	The Act requires all small businesses to make application for operation, which allows for the verification of health, building and planning requirements.

4 DEFINITIONS AND INTERPRETATION

4.1 Background

The definitions listed in this policy are aligned with the content of the current Msunduzi Scheme. Where applicable, recommendations to the existing Town Planning Scheme are recorded in the Annexures to this policy. The Status Quo Report that informs this policy and consultation schedules are held in separate documents.

Applications submitted to the municipality prior to the approval of the Msunduzi Scheme (April 2021), must at least comply with the definitions of the erstwhile Pietermaritzburg and Ashburton Town Planning Schemes, if within the relevant scheme-controlled area, or schedule 3 of the Msunduzi SPLUM By-Law, if outside the scheme controlled areas.

Such definitions shall be amended accordingly should the definitions in the Msunduzi Scheme be amended in the light of the recommendations of this policy and subsequent consultation processes.

Applications that fall outside of the Msunduzi Scheme, must comply with the applicable legislation such as the KwaZulu-Natal Ingonyama Trust Amendment Act. (Act No 9 of 1997).

4.1.1 In terms of the Msunduzi Scheme, a Tavern is only allowed by Municipal Consent.

Municipal Consent refers to the consent, in writing, by the Municipality for any activity on, or use of land or buildings for which an application is made, in terms of the applicable Municipal Town Planning Scheme and other relevant legislation. The intention of the Municipal Consent applications process is to accord consideration of applications that have low impact consequences for the overall character of the zone in which such an application is located. In addition, **Municipal Consent is accorded as a secondary usage** which means that the primary usage intention must be adhered to. For example, the primary intention of the “Special Residential Zone” is to allow for development rights that are limited to low impact, family oriented, largely single story residential usage. The overall development impact per site is low with development controls that ensure a limited building footprint, large garden spaces around the building for tranquillity, low noise pollution and an aesthetically pleasing primarily residential environment that is valued by homeowners. Municipal Consent is accorded to individually considered, low impact, limited deviations from the primary usage. Consequently, for example **the Tavern approval is accorded as a secondary, low impact usage and cannot make up the entire usages of the building or site in a “Special Residential Zone”.**

4.2 Scheme and other relevant definitions

The policy listed in this policy are aligned with the content of the Msunduzi Scheme. Consequently, land development will be subject to the scheme definitions and provisions. Land development outside the scheme will be subject to schedule 3 of the Msunduzi SPLUM By-Law. **In terms of the Msunduzi Scheme adopted in April 2021, a “Tavern”** Means a licensed building or portion of a building used for the consumption of liquor on the premises and may include facilities associated with the preparation and consumption of food.

In terms of Schedule 3 of the SPLUM By-Law (2021), for Municipal planning approval outside the area of a land use scheme, a “Tavern” means a building that is used for the sale of alcoholic beverages to be consumed on the premises and “bar” and “pub” have a corresponding meaning.

Since the Msunduzi Municipality has adopted a 'Wall to Wall Scheme', within its current Municipal Delineation, there should be no land that is situated outside a Scheme area. The entire Msunduzi Municipal area is therefore regulated by a Scheme.

"Adequate" when used to describe a standard or manner in which anything required by this By-Law shall be done, means the standard or manner that, in the opinion of and the Town and Regional Planner or "authorised official" is sufficient to safeguard public interest and to achieve the purpose and apply the norms and intent of this policy and "adequately" has a corresponding meaning.

"Amenity" means a natural or created feature that enhances a particular property, uses, place or area from the perspective of its aesthetic quality or visual appeal, which may make it more attractive or satisfying or unique.

"Ambient sound level" means the reading on an integrating impulse sound level meter taken at a measuring point in the absence of any alleged disturbing noise at the end of a total period of at least 10 minutes after such meter was put into operation in terms of the Noise Control Regulations GR 2544 of 1990 in terms of Section 25 of the Environment Conservation Act (Act No. 73 of 1989).

"Authorised official" means any official of the Municipality who has been authorized by the Municipality, in accordance with the Msunduzi SPUM By-law of 2021, to administer, implement, and enforce the provisions of this Policy.

"Business Purposes" Means purposes normally or otherwise reasonably associated with the use of land for business activities, including but not limited to shops, offices, showrooms, and restaurants other than a scrap yard, place of public entertainment and similar activities at the discretion of the Municipality which may require its consent.

"Coverage" means the maximum proportion of Erf that may be covered by roofed buildings and is expressed as a percentage of the Erf area. Provided that any roofed-area over pedestrian concourse or mall, or roof overhangs or unroofed cantilevered canopy or unroofed or carport or balcony shall be excluded from such coverage and further that in the case of an open-sided structure, coverage shall be taken as the area contained within the outer limits of the upright supporting columns thereof.

"Dwelling" Means a building, with inter-connected suite of rooms containing a kitchen and the applicable ablutions, used for the living accommodation and housing of one household, together with such outbuildings and subsidiary dwelling units as is ordinarily permitted therewith. Save with the Consent of the Municipality a second kitchen may be permitted. Additional dwelling units shall exclude auxiliary units.

"Existing use rights": means any existing building or existing use which is not in conformity with this Policy or amended Schemes, but for which legal authority was obtained from the Municipality prior to 28 October 2021, being the adoption of the Msunduzi SPLUMA By-Law and/ or prior to the adoption date of this Tavern Policy and which is currently used for the purpose for which it was designed and/or was completed legally and so used after the said adoption dates may continue to be so used, subject to compliance with any conditions which may have been imposed by the Municipality in the application process, and provided that:

- a. any alteration or addition or change of use which in the opinion of the Municipality alters the character of an existing building or use of land, shall automatically remove such building or land from the category of building or existing use.
- b. where the free entry uses, written authority or Municipal Consent of the Municipality has previously been obtained for a specific development, the approval is deemed to be valid, provided that the general and other specific requirements of the scheme for that zone at the time of approval are observed.

- c. any subsequent alterations, additions or extensions to any building or additional uses within the building will be subject to the submission of a new Site Development Plan and a Building Plan that are in accordance with this policy, its amendments, Scheme and Building regulations operative at the time of application.
- d. provided further that if, in the opinion of the Municipality, the character of the area will change as a result of any such alterations, additions or extensions, the Municipality shall require the applicant to apply for such authority or Municipal Consent, as the case may be; and
- e. where the non-conforming existing use of any building or land is discontinued for a continuous period of 18 months or longer, such an existing use shall be deemed to have lapsed and shall not be recommenced.

“Family “means a societal group that is related by blood (kinship), affinity, adoption, foster care or the ties of marriage (civil, customary, or religious), civil union or cohabitation, and go beyond a particular physical residence. Family preservation services are services to families that focus on family resilience in order to strengthen families, so as to keep families together as far as possible. Family strengthening is the deliberate process of giving families the necessary opportunities, relationships, networks, and support to become functional and self-reliant. The strengthening of families is driven by certain core areas, namely: family economic success, family support systems, and thriving and nurturing communities (White Paper on the Rights of Persons with Disabilities, South African office of the Deputy President, 2015: 7).

“Floor Area”, Means the sum of the areas of the building on each floor level, inclusive of wall thickness but excluding:

“Floor Area Ratio”: The ratio of the permissible floor area of an Erf in relation to the surveyed area expressed as a decimal.

“Frontage”: The length of the boundary of an Erf which fronts onto an existing or proposed road.

“Human Dignity” refers to an individual or group's sense of self-respect and self-worth, physical and psychological integrity and empowerment. Human dignity is inherent to every human being, inalienable and independent of the state. In contrast, other human rights can be suspended in a state of emergency or limited in terms of law of general application. (White Paper on the Rights of Persons with Disabilities, South African office of the Deputy President, 2015: 8).

“Inclusion” is a universal human right and aims at embracing the diversity of all people irrespective of race, gender, disability or any other differences. It is about equal access, opportunities, eliminating discrimination, and intolerance for all. It is about a sense of belonging: feeling respected, valued for who you are; feeling a level of supportive energy and commitment from others so that you can best fully participate in society with no restrictions or limitations. Inclusion implies a change from an ‘individual change model’ to a ‘system change model’ that emphasises that society has to change to accommodate diversity, i.e. to accommodate all people. This involves a paradigm shift away from the specialness’ of people to the nature of society and its ability to respond to a wide range of individual differences and needs. Inclusion is the ultimate objective of mainstreaming. White Paper on the Rights of Persons with Disabilities, South African Office of the Deputy President, 2015: 9).

“Independence” means a state of being whereby available and adequate support services, assistive devices and personal assistance to persons with all disabilities enables persons with disabilities to exercise choice, bear responsibility and participate fully in society. (White Paper on the Rights of Persons with Disabilities, South African office of the Deputy President, 2015: 9).

“Independent living” means the ability of a person to live just like anyone else, to have opportunities to make decisions that affect their lives and to be able to pursue activities of their own choosing with the necessary support to enable persons with disabilities to live independently. (White Paper on the Rights of Persons with Disabilities, South African office of the Deputy President, 2015: 9).

“Informal social area” means the space used by older learners and students to socialise and younger learners to play and interact. (Source: Adapted from Space Planning Norms and Standards for Public Schools 2014:2, KwaZulu-Natal Department of Education).

“Interested and affected party”: any person or body who, in accordance with the provisions of this By-Law and the Msunduzi Scheme and adopted By-Laws in terms of SPLUMA, has lawfully submitted, in writing, any objection, comment or representation, in respect of any matter regulated in terms of this By-Law, the Msunduzi Schemes or any other legislation or policy applicable to the Msunduzi area of jurisdiction providing for objections, comments or representations.

“Liquor” any liquid substance, specifically alcoholic or spirituous fluid, either distilled or fermented, as brandy, wine, whisky, beer etc.

“Land Use Zone/ Zone” means an area of Land, indicated by an appropriate colour notation on the Land Use Scheme Map whereon the use is limited in accordance with the appropriate land use schedules contained in Section 3 of the Scheme.

“Liquor Licence” means license obtained in terms of the KwaZulu-Natal Liquor Licensing Act, 2010(No. 6 of 2010) as amended.

“Licensed Premises” means premises authorized by a permit obtained in terms of the applicable national or provincial or municipal legislation to conduct a particular land use activity.

“Municipality” means the Msunduzi Local Municipality, a Category B Municipality established in terms of Section 12 of the Municipal Structures Act represented by the Municipal Council or the City Manager as the case may be

“Municipal Consent” means the written consent of the Municipality for any activity on or use of land or buildings for which an application is made, in terms of the applicable Municipal Land Use Scheme and other relevant legislation.

“National Building Regulations and Building Standard Act” means the National Building Regulations made in terms of Section 17 of the National Building Regulations and Building Standards Act (No.103 of 1977), as amended.

“Nodes” means concentrations of economic and social activity located at accessible locations such as modal interchanges and the intersections of public transport routes. Nodes should be positive performing environments that are able to attract business and economic developments to these points. Well-functioning nodes are vibrant areas comprising shopping, work, social, and cultural opportunities and public transport facilities in a high quality, safe public environment (Source: Adapted from, The Spatial Development Concept, Mogale City Local Municipality www.mogalecity.gov.za 2017)

“Norms and Standards” Spatial and Development Planning, policy, and legislation are required to deal with specific subject matter in such a way that transformative planning is achieved across the country by establishing applicable norms and standards which are in accordance with the rights and duties contained in the Constitution. In this Policy, **“norms”** refer to the universal rights and duties accorded to all people and to the environment in the South African Constitution and Bill of Rights. **“Standards”** associated with each norm specify the various social,

environmental, economic administrative, spatial, cultural, and technical specifications/ measurements/conditions that are set in accordance with each norm that the standard is associated with.

"Noise control officer" means a person with a qualification equivalent to a senior certificate plus three years tertiary education in engineering, physical sciences, or health sciences, who is registered with a professional council.

"Noise disturbance" means any sound which disturbs or impairs or may disturb or impair the convenience or peace of any person.

"Noise level" means the reading on an integrating impulse sound level meter taken at a measuring point in the presence of any alleged disturbing noise at the end of a total period of at least 10 minutes after such meter was put into operation, and if the alleged disturbing noise has a discernible pitch, for example, a whistle, buzz, drone or music, to which 5 dBA is added.

"Noisiness index" means a number expressed in dBA, as defined in SABS 0117.

"Occupier ", in relation to any premises, means any person -

- (a) Occupying the premises;
- (b) Leasing the premises;
- (c) Who is not occupying the premises or a business on the premises on behalf of
- (d) a person referred to in paragraph (a), (b) or (c).

"Outbuilding" means structure, whether attached or separate from the main building, which is ancillary and subservient to the main building on a land unit. It shall not exceed 25% of the main dwelling coverage. Save with Consent of the Municipality the size may be increased to a maximum of 40% of the main dwelling coverage. The outbuilding shall not be used for business purposes save with the consent of Municipality. Refer to Section 5.33 for additional controls.

"Owner" means:

- (a) the person in whose name the land is registered in the deeds registry within whose area of jurisdiction the land is situated.;
- (b) the beneficial holder of a real right in land and
- (c) the person in whom land vests; and
- (d) the legal representative of an owner or his or her estate where such registered owner lacks legal capacity for any reason, including age, mental health, mental disability, death, or insolvency.

(f)

"Ownership" in relation to property, means the person or entity in whose name that property is registered in a deed's registry, and may include the holder of a registered servitude right or registered lease, and any successor in title.

"Peace officer" means a peace officer as defined in terms of the Justice of the Peace and Commissioners of Oaths Amendment Act No 36 of 1986.

"Permit" means a public health permit issued by the Municipality in terms of the section 11; the Msunduzi Municipal Public Health By-Laws of 2015.

"Person" means a natural person or a juristic person and includes an organ of state.

“Permitted liquor trading hours” as per the KwaZulu-Natal Liquor Act, 2010 (Act No. 3 of 2010).

“Premises” means:

- (a) any land without any buildings or other structures on it.
- (b) any building or other structure and the land on which it is situated.
- (c) any land which adjoins land referred to in paragraph (a) or (b) and any building or other structure on the adjoining land, if that land, building or structure is occupied or used in connection with any activity carried out on the premises referred to in paragraph (a) or (b); or
- (d) any vessel, vehicle or movable structure which is used for a scheduled use.

“Powers and Functions” If any provision in this By-Law vests or imposes any power, function or duty of the Municipality in or on an employee of the Municipality, and such power, function or duty is in terms of Section 81 (2) of the Local Government: Municipal Systems Act, (Act No. 32 of 2000), or any other law, assigned to a service provider:

- (a) the reference to such employee shall be read as a reference to the service provider; or
- (b) where applicable, an employee of the service provider authorized by it.

“Property” That to which a person has a legal title, whether in their possession or not; thing owned; an estate, whether in lands, goods, or money; as, a person of large property, or small property.

“Public health nuisance” means the use of any premises or place in a manner which creates conditions that significantly increase the risk of a public health hazard occurring or which compromises any aspect of public health to an extent that is more than trivial or insignificant, and without limitation, includes those circumstances in which a public health nuisance is considered to exist in terms of Schedule 1 of the Msunduzi Municipal Public Health By-Laws of 2015.

“Public place” means any road, street thoroughfare, bridge, overhead bridge, subway, foot pavement, footpath, sidewalk, lane square, open space, garden park, path, bus or taxi rank, servitude or enclosed space vested in the Municipality and includes any road, place or thoroughfare which is in the undisturbed use of the public or which the public have the right to use.

“Segregation” means a system that keeps different groups separate from each other, either through physical dividers or using social pressures and laws, or programmes thereby treating them differently. It is the action or state of setting someone or something apart from others causing separation, setting apart, keeping apart on the basis of differences defined by a system. It also results in exclusion, closeting, protection, shielding, partitioning, division, detachment, disconnection, dissociation; sequestration and partition (White Paper on the Rights of Persons with Disabilities, South African office of the Deputy President, 2015: 12)..

“Scheduled use” means a use listed in Schedule 2 of the Msunduzi Municipal Public Health By-laws of 2015.

“Social Cohesion” is the degree of social integration and inclusion in communities and society at large, and the extent to which mutual solidarity finds expression among individuals and communities. A community or society is cohesive to the extent that the inequalities, exclusions, and disparities based on ethnicity, gender, class, nationality, age, disability or any other distinctions which engender divisions distrust and conflict are reduced and/or eliminated in a planned and sustained manner. Community members are therefore active participants, working together for the attainment of shared goals, designed and agreed upon to improve the living conditions for all. (White Paper on the Rights of Persons with Disabilities, South African office of the Deputy President, 2015: 13).

“Residential Areas” a residential area is a type of land use where the predominant use is housing. In areas that are zoned residential, buildings may include single family housing, multiple family housing such as apartments, duplexes, and townhomes.

“Self-Contained Residential Unit/ Granny Flat” means a self-contained, interleading group of rooms, with not more than one kitchen and used for living accommodation. It shall not contain more than two bedrooms. The Unit shall not be used for business activities, save with the consent of Municipality. It is an Ancillary to the dwelling and shall not exceed 30% of the main dwelling coverage. Save with Consent of the Municipality the size may be increased to a maximum of 50% of the main dwelling coverage.

“Site Development Plan (SDP)”: means a plan required for application purposes. The site development plans shall amongst others provide for but not be limited to:

- (a) To-scale drawing of the site/s, indicating statistical information about the extent of the proposed development (floor area ratio, coverage and height), and building lines applicable, and parking supply; existing services, existing and proposed servitudes, etc.
- (b) The design and layout of proposals including details as to the functioning thereof.
- (c) The layout of the property, indicating the use of different portions thereof.
- (d) The position, use and extent of buildings.
- (e) A programme of development.
- (f) Sketch plans and elevations of proposed structures, including information about external finishes.
- (g) Cross-sections of the site and buildings on site.
- (h) External signage details.
- (i) Details of and programme for the provision of essential services including storm water, sewerage disposal, electricity and solid waste disposal.
- (j) Traffic engineering details on the vehicular and pedestrian elements thereof.
- (k) General landscaping proposals, including vegetation to be preserved, removed or to be planted, external paving, and measures for stabilising outdoor areas where applicable.
- (l) Relationship of the proposed development to adjacent sites, especially with respect to access, overshadowing and scale.
- (m) Any other details as may reasonably be required by Municipality.

“Universal Accessibility and Universal Design” means access to products that are “designed and environments that are usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. For example, sidewalks with curb cuts and doors that automatically open when a person moves near them are examples of universally designed products. They benefit people with disabilities, parents with baby strollers, delivery workers, old people, and others. Characteristics considered in universal designs may include considerations of age, people with disabilities of various kinds, gender, stature, race/ethnicity, culture, native language and learning preference (Source: December 2016: 1 Adapted from <http://www.washington.edu/doi/>.)

“Zoning” The zoning of a particular site or set of sites in a Town Planning Scheme means the development rights and controls accorded to the property and its associated buildings either as of Free Entry Rights, rights that are accorded in terms of Municipal Consent or are Prohibited.

“Tavern” Means a licensed building or portion of a building used for the consumption of liquor on the premises and may include facilities associate with the preparation and consumption of food accorded in terms of Municipal Consent or are Prohibited.

5 DEVELOPMENT RIGHTS, CONSENT USAGE & POLICY COMPLIANCE

The Msunduzi Scheme accords development rights to properties and building processes in accordance with particular zones. These zones regulate permissible, prohibited, and Municipal Consent usage.

The Msunduzi Scheme allows for a Tavern only via Municipal Consent. A tavern is not freely permitted in any of the Msunduzi Scheme Zones. Table 2 shows the Zones that allow for a Tavern via Municipal Consent.

In respect of the “Municipal Consent” zones, the Municipal planning officials and the interested and affected public can check the applications for compliance with the Tavern Policy and Scheme regulations and recommend approval if it is compliant or recommend that the application be turned down if it is not compliant. Interested and affected parties can also object to the application based on amenity, procedural, substantive, or normative flaws within the application. In addition, the Municipal Consent accorded can be withdrawn if the policy and scheme regulations are not adhered to. “Municipal Consent” should only be granted if the character of the area and the amenity of the area is not adversely affected by the establishment of Taverns.

Table 2: Msunduzi Scheme Zones that allow Taverns by Municipal Consent

Msunduzi Scheme Zones that allow Taverns Development by Municipal Consent			
	Town Planning Scheme Zone	Application Required	Tavern Policy: Applications Compliance Check
1	General	Municipal Consent	Application based policy compliance check
2	Core Mixed Use 1	Municipal Consent	Application based policy compliance check
3	Commercial	Municipal Consent	Application based policy compliance check
4	Low Impact Mixed Use	Municipal Consent	Application based policy compliance check
5	Medium Impact Mixed Use	Municipal Consent	Application based policy compliance check
6	General Industry	Municipal Consent	Application based policy compliance check
7	Light Industry	Municipal Consent	Application based policy compliance check
8	Special Residential 1	Municipal Consent	Application based policy compliance check
9	Special Residential 2	Municipal Consent	Application based policy compliance check
10	Special Residential 3	Municipal Consent	Application based policy compliance check
11	Special Residential 4	Municipal Consent	Application based policy compliance check
12	Special Residential 5	Municipal Consent	Application based policy compliance check
13	Rapid Urbanization Management Zone	Municipal Consent	Application based policy compliance check
14	Rural Residential	Municipal Consent	Application based policy compliance check
15	Special Area 37: Village 7 (Mixed Use Development)	Municipal Consent	Application based policy compliance check

In the areas outside of the Scheme area, Taverns, are only permissible through Consent applications based on discretionary planning practice since:

- i. the Msunduzi SPLUMA By-Law which allows for development in areas outside of the Scheme, does define Taverns as a permissible land use right in Schedule 3 for areas outside of Schemes.
- ii. the municipal planning team **calls for a Site Development Plan** as defined in this policy and a Planning Motivation from the applicant proving evidence for desirability, market demand and sustainability of the proposed development in the said location.

6 POLICY PRINCIPLES

In reviewing the Msunduzi policy, consideration was given to three contemporary municipal tavern policies and the principles at the core of these policies.

- (a) Enable and encourage bona fide illegal traders to regularise their businesses.
- (b) Improve the process to be simpler and user friendly.
- (c) Encourage community involvement in determining the location of taverns.
- (d) Improve enforcement in respect of illegal taverns /shebeens with the focus on regularisation.
- (e) The municipality to be actively involved in the issuing of liquor licenses.
- (f) The process to provide for the public, ward councillor and ward committees to be involved in the decision-making process, location and approvals on applications.

7 THE PLANNING POLICY CRITERIA

7.1 Planning Scheme and Consent

- (a) The Msunduzi Scheme was established in terms of SPLUMA and is used by the Council to accord development rights within the Municipality. The Scheme defines a number of Zones and Reservations within which development rights are classified as being either expressly permissible, expressly prohibited or which may be permitted by the Council's Municipal Consent.
- (b) The Council must consider any applications for its Consent in terms of a procedure which is laid down in section 45 and the associated provisions of the By-Law which became the application process on 28 October 2021. These procedures include the public advertisement of the application by the applicant and the serving of individual notices as per the provisions of the applicable law. (See attached procedure, Annexures B & C).
- (c) In terms of Schedule 8 of the SPLUMA By-Law, the decision-making authority must consider the matters listed in this schedule, including the information contained in the application, the municipal IDP, the SDF, the Scheme, the planner's comments, norms and standards, and other matters mentioned. The municipal decision-making authority, in terms of the provisions of Chapter 4, Section 43 and 44 of the Msunduzi SPLUMA By Law, the Municipal Council or the Municipal Planning Tribunal has 60 days to make a decision on an application on referral of an application to it for a decision, once the administrative and consultation processes provided in schedule 5 have been concluded.

7.2 6.2 Planning Principles

- (a) **Amenity:** any new structure or alteration to the existing house or outbuilding must fit in with the development intensity and character of the relevant area.
- (b) **Authority limitations:** as per Chapter 6 of the KwaZulu Natal Liquor Licencing Act, 2010 (Act No. 06 of 2010), section 38 (1) No person may sell liquor for retail or micro-manufacture liquor unless that person is licensed in terms of this Act. Tavern owners must apply annually to the KwaZulu-Natal Liquor Authority as per section 64 of the KwaZulu-Natal Liquor Licencing Act, 2010 (Act No. 06 of 2010) for the renewal of their licences, referred to as Annual Fees. The below is extracted from the KZN Liquor Licencing Act, 2010,
 - (c) **Annual fee in terms of Section 64 of the KZN Liquor Act**
 - (1) All licensed persons must pay the prescribed annual fee in respect of each licence issued to such licensed persons, on or before the prescribed date.
 - (2) All licence holders where licences that are due for payment of the fees as contemplated in subsection (1) must, in compliance with the provision of section 2(d) read with section 4(b) of the Act, and in the prescribed manner -
 - (a) apply to the Liquor Authority, for an evaluation of their original licence;
 - (b) ensure that application referred to in subsection (a) is made six (6) months prior to the expiry of the validity of the licence; and
 - (c) ensure that the original licence conditions issued by the Liquor Authority, are retained,
 - (d) In terms of **Section 48 (5) of the KZN Liquor Act**, certain preconditions need to be met by the applicant before the Liquor Authority can consider an application. These are as follows:-
Before granting an application, the Liquor Authority must satisfy itself that -
 - (a) the granting of the application will be in the public interest;
 - (b) the applicant is not disqualified from holding a licence in terms of this Act;
 - (c) the premises upon which the sale or consumption of liquor will take place are or will upon completion be suitable for use by the applicant for the purposes of the licence;
 - (d) the use of the proposed premises for the proposed activity would not be contrary to existing zoning laws or land use rights;
 - (e) the proposed premise is not located within a circumference of 500 metres of any religious or learning institutions; and)f) the proposed premise is not located within a circumference of 500 metres of other licensed premises within residential areas.
- (e) **Building regulations:** a Tavern may only be operated from a structure approved in terms of the National Building Regulations and Building Standards and thus informal/temporary structures or containers cannot be permitted.
- (f) **Building design:** the holder of an on-consumption liquor licence from a tavern premises, as per section 50(6) of the KwaZulu-Natal Liquor Licencing Act, 2010 (Act No. 06 of 2010, as amended) must ensure that the licensed premises are separate from any other dwelling, especially a residential dwelling, and if attached to a dwelling, it must be separated by means of walls constructed out of brick and mortar, separate access points of entry into the licenced premises and securable doors.

- (g) **Business floor area:** the business component may not exceed 50% of the total floor area, excluding toilets, restrooms and storage place.
- (h) **Business Licence:** the owner shall apply and obtain a Liquor Licence from the Liquor Authority, as well as a Municipal Business Licence prior to commencing any operations.
- (i) **Dominant use of property:** in addition to the Tavern the property must have a residence occupied by the owner of the Tavern, such residence shall be separate from the Tavern.
- (j) **Grounds for reviewing a decision:** should the business cause a nuisance or criminal activity be reported after approval, the approval will be withdrawn. Similarly, if the property owner deviates from the municipal planning authority, business licence or liquor licence authority conditions, the approval will be withdrawn.
- (k) **Locational restrictions:**
 - i. No Tavern is permitted in flats or municipal rental units or allowed to encroach upon public open spaces or road reserves.
 - ii. In terms of section 48(5) of the KwaZulu-Natal Liquor Licensing Act, 2010 (Act No. 06 of 2010, as amended): -
 - iii. The proposed premise may not be located within a circumference of 500 metres of any religious or learning institutions; and
 - iv. The proposed premise may not be located within a circumference of 500 metres of other licensed premises within residential areas.
- (l) **No criminal record:** there must be no record of any criminal activity on the property under application.
- (m) **Nuisance:** no activities which may cause a nuisance or disturbance to the residents in other neighbouring residences are permitted.
- (n) **Operations ceased:** applicants who cease to operate the business must inform the municipality in writing.
- (o) **Owner:** the applicant must be the legal owner and permanent inhabitant of the property.
- (p) **Parking requirements:** all parking must be provided on the property concerned in accordance with the regulations of the Msunduzi Scheme. On-Site Parking Requirements are 1 bay for every 25m² of gross floor area, and loading and unloading shall be provided to the satisfaction of the Municipality.
- (q) **Prohibitions:** the storage of sale of any explosive or flammable goods (excluding matches) are not permitted in a Tavern:
- (r) **Signage:** the relevant sign may only indicate the name and nature of the business. Signs sponsored by the liquor industry including branding are permitted.
- (s) **Suitability:** the premises and the surroundings of the premises should be suitable for such business.

- (t) **Trade restrictions:** trading must be restricted to the boundaries of the property and within the street building lines. No parking is permitted on the sidewalks and no trading is permitted on either the sidewalks or road reserve.
- (u) **Trading hours:** the trading hours of a tavern must adhere to the Provisions of the KwaZulu-Natal Liquor Licencing Act, 2010 (Act No.6 of 2010), as amended. Section 78(1) of the KZN Liquor Act states:
78(1) A licensed person may sell liquor only on such days and during such trading hours as the Liquor Authority may determine. Provided that the trading days and hours imposed by the Liquor Authority may not exceed the trading days and hours-
 - (a) as stipulated in Schedule 3 for the particular category of licence; or
 - (b) as determined by a municipal by-law in respect of the business to which the liquor licence relates,
- (v) **Grounds for reviewing a decision:** should the business cause a nuisance or criminal activity be reported after approval, the approval will be withdrawn. Similarly, if the property owner deviates from the municipal planning authority, business licence or liquor licence authority conditions, the approval will be withdrawn.
- (w) **Lapse of approval:** the approval will be linked to the owner and/or permanent resident of the property and will lapse in the event of any change of ownership / occupation.
- (x) **Transfer of liquor Licence:** The Liquor Authority may grant or refuse any application by a licensee to transfer a licence from one person to another in terms of section 74, or transfer of a licence from one licenced premise to other premise's in terms of section 75
- (y) **Operations ceased:** applicants who have ceased the operation of the business must inform the municipality in writing.

8 APPLICATION PROCEDURES

The SPLUMA application process requirements are depicted in **Annexure B**.

9 THE PLANNING PROCESS AND TIMEFRAMES

The planning process and timeframes is depicted in **Annexure C**.

10 CONSENT USE REGULATIONS

In terms of the Msunduzi Scheme, Section 5.52, the Scheme notes Additional Clauses to consent Use which are as follows: -

- (a) A consent use is restricted to the land use applied for and shall not be construed to be consent for all land uses listed under the relevant Consent Land Use column, unless stated otherwise.
- (b) A consent use shall not adversely affect the potential use of the property for its primary uses in terms of scheme.
- (c) A consent use that is not a primary use of that particular zone shall not occupy more than 50% of the total floor area.
- (d) A consent use shall be approved in relation to the level of available services and the Municipality shall take into consideration the impact of the proposed use on the surrounding area and may impose any conditions it deems necessary to protect the amenities of the area.

- (e) Council may direct an applicant to rather apply for rezoning instead of consent in cases where, in the opinion of Council, the use will be better regulated by means of a land use zone instead of granting its consent.
- (f) Consent granted by the Council in terms of this Land Use Scheme may be subject to termination by the Council if any breach of a condition upon which such written consent was granted is not remedied in compliance with a notice served by the Council upon the owner or occupier of the erf or site concerned after affording the applicant an opportunity for a hearing.

11 LAW ENFORCEMENT

Chapter 7 of the SPLUM by-law of 2021 provides for enforcement of the provisions of the By-law.

Section 87 of the SPLUMA by-laws provides for enforcement of the provisions of the By-Law.

The above provisions give Council the right to investigate a complaint/alleged illegal activity, to ascertain the validity and/or extent thereof. It also allows Council to serve a notice on an offender to cease activities which may also include a notice of intent to take further legal action, if required.

Any aggrieved person may lodge a complaint contemplated in **Section 107(1)** (which refers to Offences and penalties in relation to municipal planning approval) and in accordance with **Section 113 (1) of the Msunduzi SPLUM By Law**. The complaint must include: -

- (a) the name of the alleged offender, if known.
- (b) street Address and or property description if known.
- (c) photographs if available.
- (d) description of the alleged contravention of the scheme and the impact.

The Municipality must investigate, within 30 days of receipt of the complaint.

In terms of **Section 113A (1)** of the SPLUM By-Law, the Municipality must serve a compliance notice on a person if the person is suspected of being guilty. The offender has 14 days to respond.

In terms of **Section 113B**, A compliance notice must –

- (a) identify the person at whom it is directed.
- (b) describe the activity concerned and the land on which it is being carried out; state that the activity concerned is illegal and inform that person of the particular offence contemplated in section 107 of the Msunduzi SPLUM By-law, which that person allegedly has committed or is committing through the carrying on of that activity.
- (c) invite the person to comment in writing on the alleged contravention.
- (d) call on the person to lodge the comments with the contact person stated in the notice.
- (e) state how the comments may be lodged.
- (f) state the date by when the comments must be received.
- (g) inform the person identified of the latter's right to remain silent, and of the fact that any confession, admission or other statement made by that person could be used in evidence against that person; and
- (h) Issue a warning to the effect that (i) the person could be prosecuted for and convicted of an offence contemplated in 107 of the SPLUM By-law.
- (i) on conviction of an offence, the person could become liable to the penalties provided for in sections 107 and 108; and
- (j) if convicted, the person could be required by an order of the High Court to demolish, remove or alter any building. Structure or work illegally erected or constructed. Or to rehabilitate the land concerned.

The monitoring and control of the illegal entities will require a high level of commitment and dedication as well as co-operation between all role players including the South African Police Services and the law enforcement section of the Municipality. There are other sets of legislation (Acts, municipal by-laws and regulations) that are potentially applicable to the operation of taverns, e.g., building regulations, nuisance/noise by-laws, tobacco legislation and health and safety by-laws.

12 ANNEXURE A: COUNCIL RESOLUTION

13 ANNEXURE B: MUNICIPAL BY-LAW MUNICIPAL CONSENT APPLICATION PROCESS

Chapter 4: Section 32: Preparing and application.

23(3) A consent application must be made by an appropriately qualified person as per subsection 1 or a person working under the or under the direction or in association with such a person who is registered with his or her appropriate governing body.

Section 24: Pre-application procedure

24(1) An applicant must obtain approvals from organs of state, including municipal departments, and any other information which are necessary for determining an application for municipal planning approval.

(2) Organs of state, including municipal departments, must provide an applicant with the information that he or she needs in order to make an application for municipal planning approval within 60 days from being served with a request for the information, or such further period as agreed upon with the applicant.

25(1) An organ of state shall be regarded as having no comment on an application for municipal planning approval, if it did not provide comment on the proposed application within the time permitted, unless the use or development of land is dependent on an engineering service that it must provide.

Section 26: Application requirements

- (a) an application form;
- (b) a comprehensive motivation by the applicant in support of the application;
- (c) proof of registered ownership and a copy of the property diagram;
- (d) written consent of the registered owner of that land, if the applicant is not the owner thereof;
- (e) written consent of the land owner's association, if applicable;
- (f) written support of the traditional council for the application, if the land is located in a traditional authority area;
- (g) proof of circulation of an application to organs of state, including municipal departments.
- (h) if an application is an application for the subdivision or consolidation of land or township establishment- see **26 (1) (h) I and ii** of SPLUM By Law
- (i) the proposed property descriptions
- (j) a layout Plan if applicable
- (k) an approved service agreement, if applicable
- (l) a phasing plan, if applicable;
- (m) any other plans, diagrams, documents, ESRI Shapefiles, information or fees that the Municipal Planning Registrar may require.
- (n) the application fee.

Section 26 Lodging of the application, Section 27 Records of Receipt and Section 28 Additional Information from Registrar

26(2) An application for municipal planning approval must be lodged with the Municipal Planning Registrar, the Municipal Manager or another person designated by the Municipal Manager to receive applications.

27(3) An application for municipal planning approval is regarded as complete, if the Municipal Planning Registrar did not request additional information within 30 days, or a further period (not more than 60 days) as agreed upon with the applicant.

In terms of item 28(1), an applicant must provide the Municipal Planning Registrar with the additional information required for the completion of an application within 90 days, or such further period as agreed upon with the applicant, which may not be more than 180 days from the request for additional information.

Section 32. Public consultation

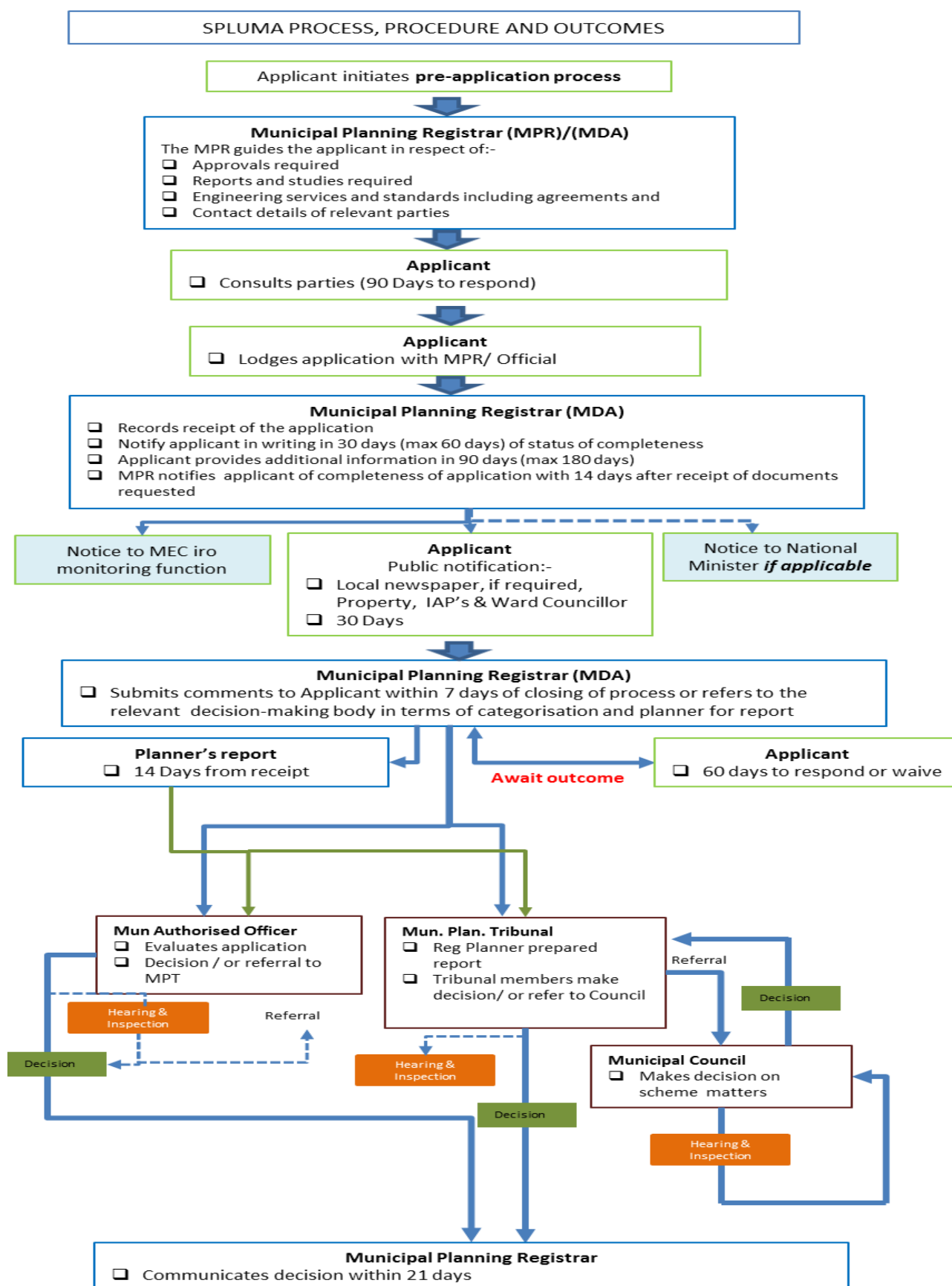
The Municipal Registrar must determine if it is necessary to consult the public for the application concerned. Where public comments are required, the processes in schedule 5 (Public Notice) must be followed.

The closing date for the submission of comments may not be less than 30 days from the date of notice.

Section 34- 38. Assessment of the application, hearing and inspection if required and decision

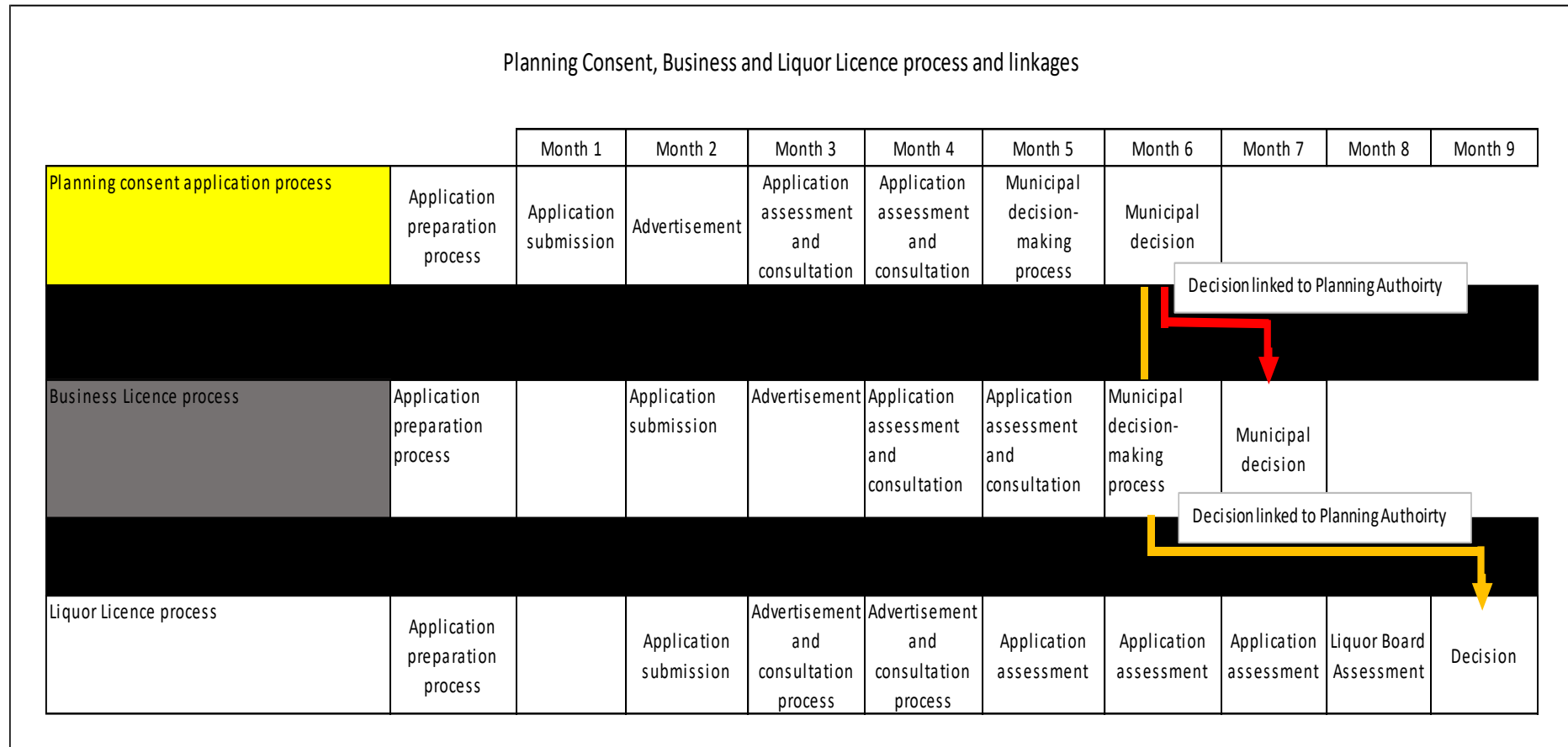
Following the above process, the Municipal Planning Registrar will confirm the correctness of the application, refer it to the Municipal Planning Tribunal for a final decision. This decision-making process may include a hearing and inspection.

14 ANNEXURE C: PLANNING PROCESSES AND TIME FRAMES



15 PLANNING CONSENT, BUSINESS AND LIQUOR LICENCE PROCESS AND LINKAGES

Figure 2: Planning consent, Business and Liquor Licence process and linkages



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