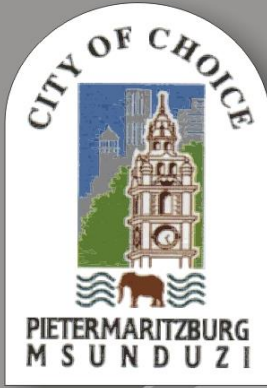


MSUNDUZI MUNICIPALITY



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The Msunduzi Municipality

TUCK SHOP POLICY March 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 2023 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 Tuck Shop Policy"

Name and Signature:


.....

CITY MANAGER

Name and Signature:

.....

CHAIRPERSON OF THE EXECUTIVE COMMITTEE

Date:	22 March 2023
Document Title:	17582: Home Based Policies- Final Draft Tuck Shop Policy
Revision Number	01
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1 INTRODUCTION

1.1 Purpose of this Policy

This policy document updates the existing Msunduzi Tuck Shop Policy so that it complies with the regulatory framework for the management of “tuck shops / spaza shops” within the Msunduzi Municipal Area.

The policy must comply with the planning, and business licencing regulations within the municipality.

1.2 Implementation of the Policy

In order for policy to fulfil its guiding role in the context of Msunduzi Municipality, this policy must unfold in accordance with existing legislation and other relevant policies, which includes, The Spatial Planning and Land Use Management Act (SPLUMA) No 16 of 2013, The KwaZulu-Natal Planning and Development Act (KZN PDA) No 6 of 2008 and , the Msunduzi Spatial Planning and Land Use Management By-laws (Msunduzi SPLUM By-Laws), of 28 October 2021 and the Msunduzi Single Land Use Scheme (Msunduzi Scheme). 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.

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:

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:

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.

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 regulation; and

Section 24 and Section 156(1) of the Constitution entrenching the rights of tenants and all residents of 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.

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) gives 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.

The policy must comply with:

- i) the town planning imperatives, principles and regulations stemming from the Spatial Planning and Land Use Management Act (Act No. 16 of 2013), the Msunduzi Spatial Planning and Land Use Management By-Law of 28 October 2021 (Hereafter referred to as the Msunduzi SPLUM By Law), the Msunduzi Single Land Use Scheme (hereafter referred to as the Msunduzi Scheme) and its subsequent amendments.

- i) the minimum norms and standards that may be prescribed in terms of Chapter 2 of the Spatial Planning and Land Use Management Act (No.16 of 2013), the KwaZulu-Natal Planning and Development Act (No. 6 of 2008) and the Msunduzi Spatial Planning and Land Use Management By-law.
- ii) Msunduzi Municipal Public Health By-law of 2015.
- iii) Policy and legislation addressing universal access.
- iv) Integrated Development Planning, Spatial Frameworks, Capital Investment Plans and Local Development Plans, and policy governing the right to environments that are not harmful to any person, fauna or flora within the Msunduzi Municipal area of jurisdiction; and
- v) is consistent with other applicable legislation.

1.3 Policy scope and its amendment

The scope of this policy encompasses the **entire wall-to-wall Msunduzi Municipal area of jurisdiction**, 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), 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 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 comply with the requirements of the Municipal Performance Management System regarding the monitoring, evaluation, and strict regulation of Tuck Shops as is required in Section 38 of the MSA, the Msunduzi SPLUM By-law of 2021 and this Tuck Shop Policy.

1.4 Application of the Policy

This Policy applies to home-based tuck shops/ spaza shops that are located either in (part of) the residential dwelling, or on the residential property attached or adjacent to the dwelling in areas that are zoned:

- i. Residential: in which case municipal consent is required through the town planning procedures, as well as business licencing through the appropriate section of the municipality. These zones include: -
 - Special Residential 1 and 1A.
 - Special Residential 2 and 2A.
 - Special Residential 3 and 3A.
 - Special Residential 4.
 - Special Residential 5.
 - General Residential 1; General Residential 2; General Residential 3;
 - Intermediate Residential.
 - Rural Residential.
 - Public Housing, and
 - Agricultural 2

- ii. Mixed use in which case town planning municipal consent is not required; a business licence is however, still required. These zones are:
- Core Mixed Use 1, and
 - Rapid Urbanisation Management Zone

In both instances (consent and permitted uses), the residential component of the property must be the primary land use, and all the Scheme requirements related to home-based businesses in terms of floor area, parking as discussed below apply. In both cases, all other relevant By-laws, laws and regulations must be complied with.

The Policy shall ultimately apply across the entire Scheme area of the municipality, including areas under the administration of the Ingonyama Trust Board (ITB). In the case of the ITB areas, the appropriate lease must be obtained with the issuing and conditions of that lease being in alignment with the Scheme, and with any spatial planning frameworks and/or local area plans.

2 THE LEGAL AND CONTEXTUAL FRAMEWORK

2.1 Legislative Framework

The legal framework which this planning Policy is set out is based on:

- i. the Constitution of the Republic of South Africa, (Act No. 108 of 1996): S.22 accords the right to freedom of trade, occupation and profession;
- ii. the Municipal Systems Act, (Act No.32 of 2000) which provides for the powers and functions of municipalities, including integrated development planning;
- iii. the Spatial Planning and Land Use Management Act, (Act No. 16 of 2013, SPLUMA), which provides for “the inclusive, developmental, equitable and efficient spatial planning at different levels of government, as well as for policies, principles, norms and standards for spatial development planning and land use management”; and,
- iv. the Msunduzi Municipality Spatial Planning and Land Use Management By-law (adopted 28 October 2021).

In addition to the above legislation, there are a number of additional regulatory frameworks and supplementary By-laws that have a bearing on tuck shops:

- i. National Building Regulations & Building Standards Amendment (Act No 49 of 1995), as amended, which provides for the promotion of uniformity in the law relating to the erection of buildings in the areas of jurisdiction of local authorities and for the prescribing of building standards;
- ii. Businesses Act, (Act No. 71 of 1991) which provides for the licencing of businesses, including informal businesses;
- iii. National Environmental Management Act, (Act No.107 of 1998) and its suite of subsidiary Acts (air quality, dust control regulations, regulations on listed activities, waste management, biodiversity)
- iv. Advertising Signs By-law, No.18 of 14 September 2006;
- v. Fire Prevention and Flammable Liquids and Substances By-laws, No.55 of 24 June 2014;
- vi. Public Health By-laws, No.100 of 25th June 2015; and,
- vii. Manufacture, Storage and sale of Foodstuffs By-laws, No.229 of 3rd May 1973.

In implementing the Policy, all other applicable national, provincial and local legislation / regulations must be adhered to.

2.2 National, Provincial and Local Planning directives

Various national, provincial and local planning directives must be taken into consideration as indicated in the table below. The Policy considers implications from various plans and policies from a National to a local level, and includes:

- National Directives: National Development Plan
- Provincial Planning: Provincial Planning and Development Plan
- Municipal Planning: Integrated Development Plan
 - Spatial Development Framework
 - Local Area Plans
 - Msunduzi Single Land Use Scheme

The legal and institutional framework in respect of B&Bs consists of a number of aspects. The above-listed plans and Acts is summarised under a separate document, referred to as the Status Quo Report.

Table 1: National and Provincial Policy, Provincial Planning 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 too strategic in nature to apply directly at this level.
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 tuck shop 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 Single land Use Scheme	This documents 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.
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.

3 POLICY RATIONALE AND PRINCIPLES

3.1 Policy Rationale

The intention of this policy for tuck shops is to seek out that balance between encouraging home-based micro-businesses that support household income streams while maintaining the amenity of the areas in which they are located as well as the image of the city as a well-managed place to invest and live in, a city which sees good governance as a cornerstone for future growth.

3.2 Policy principles

In applying this Policy, the following principles must be taken into consideration:

- (a) the informal sector, of which home-based tuck shops / spaza shops form a part, is to be nurtured, and not simply regulated.
- (b) this transformative approach away from pure regulation towards support and encouragement recognises the vital role of the informal sector and micro-business in household survival strategies, as well as the contribution of the sector as a whole to the wider economy of the city.
- (c) enable and encourage "illegal" home businesses to regularise their businesses.
- (d) ensure simple and user-friendly application processes for home businesses to comply with the relevant regulations.
- (e) the amenity value of the residential nature of the neighbourhood and consideration of direct neighbours to be taken into account in the operation of home activities and businesses.
- (f) expansion of the business beyond the norms and standards explained elsewhere in this Policy requires that the business owner moves out of the household property and establish the business in an appropriately zoned and regulated location; and,
- (g) tuck shops / spaza shops that infringe upon the street or expand into public space shall no longer be classified as home-businesses and must then be governed by the Street Trading By-laws (18th June 2015) and the Public Open Spaces By-laws (24th June 2014) and other applicable municipal Scheme and other regulations.

4 DEFINITIONS AND INTERPRETATION

4.1 Definition of a Tuck Shop

"Tuck shop" as defined in the Msunduzi Scheme: -

Means a home-based business or home-based activity defined at the discretion of the Municipal Senior Town Planner, depending on the scale of the usage, in the form of a micro or small convenience kiosk or shop situated on or within a residential property which sells basic foodstuffs and other products in response to local needs in a small neighbourhood within walking distance of people's homes.

4.2 Scheme and other relevant definitions

The policy is applicable across the entire Msunduzi area of jurisdiction. Consequently, land development in any of the Scheme Area is subject to the relevant Scheme definitions and regulations. Land development outside the Msunduzi Scheme Area is subject to Schedule 3 of the SPLUMA By-law of 2021.

"Adequate" when used to describe a standard or manner in which anything required by this policy shall be done, means the standard or manner that, in the opinion of the registered 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. "Adequately" has the same meaning.

"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 No 73. 1989.

"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.

"Animal" means a creature or living thing, other than human, being able to move of its own accord and in this policy includes birds and poultry.

"Authorised official" means any official of the Municipality who has been authorized by the Municipality, in accordance with the SPLUMA Bylaw, to administer, implement, and enforce the provisions of this policy.

"Dwelling" 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 the adoption date of this Tuck Shop Policy and, which continues to be used for the purpose for which it was designed and/or was completed legally and so used after the said adoption date may continue to be so used, subject to compliance with all conditions which may have been imposed by the Municipality in the application process, and provided that:

- i. 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.
- ii. where the free entry uses, written authority or consent of the Municipality have 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.
- iii. 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, Schemes, National Building Regulations and Building Standards Amendment Act (No 49 of 1995) and any amendments thereto operative at the time of application.
- iv. 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
- v. 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.

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

- i. any basement
- ii. garages, canopies, or carports or shelters,
- iii. In the case of fuelling and service stations, the areas covered by canopies,
- iv. staircases, lift shafts /lift motor rooms other than on one floor,
- v. balconies, verandas, porches or colonnade and similar type of structures that are roofed but open to the elements on at least one side,
- vi. corridors that are open to the elements on at least one side,

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

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

“Home Activity” means an activity or use in, or in conjunction with a Dwelling or Residential Building, or a structure erected on the Site of an existing Dwelling or Residential Building which: -

- (a) shall be limited to the owner of the property, who shall reside thereon, provided that the Council may in exceptional circumstances, and if it is satisfied that the prime use of the Dwelling as a residence will in no way be prejudiced, permit the activity to be conducted by a person other than the owner.
- (b) shall not involve work on more than four motor vehicles provided that the Council may in exceptional circumstances and if it is satisfied that the prime use of the Dwelling as a residence and the amenities of the neighbourhood will not be prejudiced, permit work to take place on more than four motor vehicles.
- (c) shall not involve the parking of any vehicle with a tare mass exceeding 2000kg, being parked on or adjacent to the site.
- (d) shall not involve the regular congregation of more than five persons on the site nor the employment of more than three persons on the site.
- (e) shall not involve any activity or work between the hours of 18h00 and 06h30, except with the specific approval of the Council.
- (f) shall not occupy a floor area greater than 10% of the total area of the site subject to this not being in excess of 25% of the floor area of the dwelling but shall not, in any event exceed 50m² save with the Special Consent of the Council.
- (g) shall not involve the erection of a sign larger than 600mm by 450mm, indicating the nature of the activity. Such sign shall be of a material and shall utilise a style and size of lettering which will complement the residential character of the dwelling, and which shall be placed on the main wall of the Building and shall comply with the Msunduzi Signs By-laws.
- (h) shall not produce a noise level exceeding 7db above the ambient noise level, measured at any point on the property boundary.
- (i) shall not generate traffic sufficient to warrant the provision of additional parking.
- (j) shall not involve the quoting of any residential address in any advertisement of the activity.
- (k) shall not involve any major storage of goods or items associated with the activity on or adjacent to the site.
- (l) shall in the case of the keeping of livestock, be subject to the requirements of the Health and other By-laws.
- (m) shall in the case of the establishment of a child-minder /playschool:
 - i) generally, shall be operated by one person only, who shall reside on the property, although an assistant may be employed at the discretion of the Council.
 - ii) shall be limited to the accommodation and care of not more than twelve children, other than those of the applicant; and
 - iii) shall be limited to operate between the hours of 07h00 and 17h30.

“Home Business” Means a business conducted by the owner of a property, who shall reside thereon, provided that the Municipality may in certain circumstances, upon application to it and provided that the Municipality is satisfied that the primary use of the dwelling as a residence will in no way be prejudiced, permit the activity to be conducted by a person other than the owner. A home business shall exclude activities which in the opinion of the Municipality will interfere with the amenity of the area for example, welding and panel beating etc.

“Interested and affected party”: means any person or body who, in accordance with the provisions of this policy and the Msunduzi Schemes 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 policy, the Msunduzi Schemes or any other legislation or policy applicable to the Msunduzi area of jurisdiction providing for objections, comments or representations.

“Land Use Zone” means an area of Land, indicated by an appropriate colour on the Town Planning Scheme maps whereon the use is limited in accordance with the appropriate land use schedules contained in Part Two of the Scheme.

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

“Municipality” means the Msunduzi Municipality or its successors in law and includes its Executive Committee or any other body, acting by virtue of powers delegated to it in terms of legislation, or any officer to whom the Executive Committee has delegated any powers and duties with regard to this policy or a service provider fulfilling a responsibility under this policy, assigned to it in terms of Section 81 (2) of the Local Government: Municipal Systems Act No 32 of 2000, or any other law, 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.

“Municipal Manager” means a person appointed as such by the Municipality in terms of section 82 of the Local Government Municipal Structures Act No. 117 of 1998.

“Municipal Planning Approval Authority” means the Municipal Planning Approval Authority which comprises of the –

- (a) the Municipal Planning Authorised Officer
- (b) the Municipal Planning Tribunal; and
- (c) the Municipal Council.

“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.

“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 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.

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

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

"Non-perishable goods": these are food and non-food items that will not spoil or decay e.g. tinned or bottled goods.

"Norm 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 country by establishing applicable norms and standards which are in accordance with the rights and duties contained in the South African Constitution Act No. 108 of 1996. 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.

"Nuisance": any activity which spills over beyond the property and causes problems for immediate and surrounding neighbours; this includes noise levels, excessive vehicles parked in front of the property blocking access, activities which may cause health or pollution problems such as smoke or flies / vermin, vehicle oil or unsightly activities / storage of goods which detract from the amenity of the neighbourhood.

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

- (a) Residing on the premises in accordance with the conditions of the lease agreement between the owner and the occupier/ tenant, or

The owner the premises who is required to reside on the premises with his/her family, in accordance with the intent of this Policy.

"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

"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.

"Perishable goods": these are food items that will spoil or decay e.g. fresh fruit and vegetables.

"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.

"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 policy 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, 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.

"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.

"Property" means that to which a person has a legal title, whether in his possession or not; thing owned; an estate, whether in lands, goods, or money; as, a man of large property, or small property.

"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).

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

"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.

“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 area accorded in term of Municipal Consent or are prohibited.

5 APPLICATION PROCEDURES, NORMS AND STANDARDS

Up to September 2016 all applications for tuck shops were required to be made in term 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 further revised on the 28 October 2021, and therefore repeals Section 67 of the Ordinance.

Consequently, all new Tuck-Shop applications shall be considered in terms of the Msunduzi SPLUM By-law of 2021, the KwaZulu Natal Planning and Development Act (No 6 of 2008), the Msunduzi Scheme, this Policy and other relevant policy and legislation. In this regard:

- (a) The delegated planning official will advise the relevant planning committee on the normative, procedural, technical, and substantive merits of each application in a written report.
- (b) The relevant committee or delegated official considering the application must consider applications in accordance with procedural, technical and substantive requirements as defined in in terms of Section 46 (c) of the Spatial Planning and Land Use Management Act, (No. 16 of 2013) which regulates applications in accordance with the adopted Msunduzi Spatial Planning and Land Use Management Act (SPLUMA) By-law. This occurs through development regulated through the Msunduzi Scheme, and;
- (c) The registered Town and Regional Planner and delegated committee, considers the application for substantive¹, normative and procedural;² compliance with SPLUMA and the Msunduzi Municipal Public Health By-law of 2015;.

As is shown in Table 1, below, this policy is applicable to a number of different zones across the municipal area of jurisdiction applicable to Msunduzi.

¹ Substantive law addresses the reality of defining rights and duties, as opposed to 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 cannot be approved from a substantive and normative perspective.

² Examples of procedural flaws include: all interested and affected neighbours are not informed; the application does not contain called for environmental reports; traffic calming measures are not considered; incentive zoning called for in SPLUMA is not considered.

Table 2: Msunduzi Schemes: Zones that allow Tuck Shops (Home Business) by Municipal Consent or free entry use

MSUNDUZI SCHEME			
	Town Planning Scheme Zones	Application Required	TUCK SHOP POLICY: APPLICATIONS COMPLIANCE CHECK
CONSENT/ MUNICIPAL CONSENT USE			
1.	Special Residential 1	Municipal Consent	Application based policy compliance check
2.	Special Residential 1A	Municipal Consent	Application based policy compliance check
3.	Special Residential 2	Municipal Consent	Application based policy compliance check
4.	Special Residential 2 A	Municipal Consent	Application based policy compliance check
5.	Special Residential 3	Municipal Consent	Application based policy compliance check
6.	Special Residential 3A	Municipal Consent	Application based policy compliance check
7.	Special Residential 4	Municipal Consent	Application based policy compliance check
8.	Special Residential 5	Municipal Consent	Application based policy compliance check
9.	Intermediate residential	Municipal Consent	Application based policy compliance check
10.	General Residential 1	Municipal Consent	Application based policy compliance check
11.	General Residential 2	Municipal Consent	Application based policy compliance check
12.	General Residential 3	Municipal Consent	Application based policy compliance check
13.	Intermediate Residential	Municipal Consent	Application based policy compliance check
14.	Rural Residential	Municipal Consent	Application based policy compliance check
15.	Public Housing	Municipal Consent	Application based policy compliance check
16.	Agricultural 2	Municipal Consent	Application based policy compliance check
PERMISSIBLE/ FREELY PERMITTED			
	Core Mixed Use 1	Permissible	Site Development Plan & Building Plan: Policy compliance check
	Rapid Urbanisation Management Zone	Permissible	Site Development Plan & Building Plan: Policy compliance check

6 MUNICIPAL CONSENT APPLICATION CRITERIA

6.1 When a Municipal Consent approval is needed

All new applications shall be considered in terms of the Msunduzi Spatial Planning and Land Use Management By-law of 2021, the KwaZulu Natal Planning and Development Act No 6 of 2008, the Msunduzi Scheme, this Policy and other relevant policy and legislation.

- (a) The delegated planning official will advise the relevant planning committee on the normative, procedural, technical, and substantive merits of each application in a written report.

The relevant committee or delegated official considering the application must do so in accordance with procedural, technical and substantive requirements as defined in in terms of Section 45 (e) of the Spatial Planning and Land Use Management Act, (No. 16 of 2013) which regulates applications in accordance with the adopted Msunduzi SPLUMA By-law. This occurs through development regulated either within the Municipality's area of jurisdiction or

through Schedule 3 of the Msunduzi SPLUMA By-law in respect of land within the Municipality, but outside either of the two current Scheme regulated areas; and

The registered Town and Regional Planner and delegated committee, considers the application for substantive, normative and procedural compliance with SPLUMA. The Msunduzi Scheme is used by the council to manage the use of land and buildings within its municipal area. The Scheme defines a number of land use zones and reservations and uses are classified as either being permissible, prohibited or requiring municipal consent from Council.

An application for municipal consent must be made in terms of the Scheme for the tuck shop / spaza shop which is a business being conducted on a property zoned for residential land use; in other words, for the operation of a home-based business.

The scale of a tuck shop will determine the application process requirements. All tuck shops are required to make application for municipal consent. Small scale, low key tuck shops, may apply for exemption from some of the application requirements, based on the discretion of the Senior Town and Regional Planner responsible for planning application processes.

6.2 Planning Guidelines

- (a) The Msunduzi Scheme is used by the Council to manage the use of land and / or buildings within the KZ 225 Municipal area. The Scheme define a number of Land Use Zones and Reservations within which uses are classified as being either permissible, prohibited or which may be permitted by the Council's Consent.

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, Annexure A and B).

In terms of Schedule 8 of the SPLUMA By-laws, 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 section 34 (6) (a) of the Msunduzi SPLUM By Law, has 60 days to make a decision on an application, once the administrative and consultation processes provided in schedule 5 has been concluded.

6.3 Planning criteria – conditions for approval

This section considers the definitions, the planning principles and criteria.

The tuck shop / spaza shop must abide by the following conditions:

- (a) Who may operate the business: the owner who resides on the property, may operate the business. Only in exceptional circumstances may the business activity be conducted by anyone other than the owner, provided that all other laws are complied with, and only if the residential nature of the property is in no way prejudiced. The consent approval is attached to the owner and may not be transferred. Should the tuck-shop operator be different from the owner, the consent approval must include the details of the tuck-shop operator.
- (b) Area of business: as set out in the Msunduzi Scheme additional provisions applicable to for Home-Business, the floor area of the tuck shop / spaza shop shall not occupy more than 10% of the total area of the property subject to this not being in excess of 25% of the floor area of the residential dwelling; in any event, the floor area of the shop space must not exceed 50m². A Tuckshop with 50m² or less requires written consent from

neighbours. If the proposed tuckshop net space area is more than 50m² a full consent application will be required.

- (c) Area of Home Activity: should the homeowner be selling tuck shop goods on a very small scale, i.e. there is no dedicated room or separated space for the tuck shop, and is limited to three shelves in a living area, only then this activity will be classed as a Home Activity and will not require municipal consent.
- (d) Building regulations: the dwelling, including the area for the business, whether part of the dwelling or separate from it, must comply with the standards set out in the National Building Regulations, particularly in terms of structure and fire safety.
- (e) Amenity: Any new structure or alteration to the existing dwelling or outbuilding must fit in with the residential character of the relevant area;
- (f) Goods sold: the goods that may be sold are both perishable and non-perishable items which include: snacks, sweets, fruit and vegetables, bread and milk, cold drinks, sugar, spices and salt, flour, rice, mealie meal, and cigarettes;
- (g) Goods / activities prohibited or sold with conditions: liquor may not be sold from the premises; flammable substances such as paraffin may only be sold in small containers and be subject to the Fire Prevention and Flammable Liquids and Substances By-laws (No 55 of 25th June 2014);
- (h) Vehicles and parking: the business shall not involve the regular parking of more than two vehicles with a tare mass exceeding 2000kg on or adjacent to the property at any one time; parking to be at the rear of the dwelling where possible;
- (i) Trade restrictions: Trading must be restricted to the boundaries of the property and within the street building lines. No parking is permitted on the pavements and no trading is permitted on either the pavements or road reserve.
- (j) Nuisance: the business shall not cause any nuisance or disturbance to neighbours, including noise levels not in excess of 7 decibels (db) above the ambient noise level measured at any point on the property boundary; no appliances other than electricity driven hand appliances may be used, and no single appliance shall be rated at more than 1.5kW..
- (k) Business hours: the business may not involve any activity or work between the hours of 21h00 and 06h00, except with specific approval of the Council.
- (l) Advertising / Signage: no signs advertising the business shall be larger than 600mm by 450 mm. Such sign shall be of a material and shall utilise a style and size of lettering which will complement the residential character of the dwelling and shall be in compliance with the Advertising Signs By-law, No.18 of 14 September 2006.
- (m) Criminal record: there must be no record of any criminal activity on the property in question.
- (n) 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, or business licence authority conditions, the approval will be withdrawn.
- (o) 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.
- (p) Operations ceased: applicants who have ceased the operation of the business must inform the municipality in writing.

The applicant may appeal against the refusal of an application or any terms and conditions which have been imposed.

7 APPLICATION PROCEDURES

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

8 THE PLANNING PROCESS

Annexure C depicts the planning process and the business licence process; summarized below in Table 3 below..

Table 3: Planning consent and business licence process and linkages

MONTH	PLANNING PROCESS	CONSENT APPLICATION	BUSINESS PROCESS	LICENCE APPLICATION
0	Application preparation process		Application preparation process	
1	Application submission			
2	Advertisement		Application submission	
3	Application assessment and consultation		Advertisement	
4			Application assessment and consultation	
5	Municipal decision-making process			
6	Municipal decision		Municipal decision-making process	
7	Decision linked to planning authority		Municipal decision	

9 IMPLEMENTATION PROCESS

9.1 Transitional 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. 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.

9.2 Repeal of former Tuck Shop Policy

The Tuck Shop Policy, dated 2017 is automatically rendered null and void with the adoption of this Policy in accordance with the resolution held in **Annexure A**.

10 LAW ENFORCEMENT

Chapter 7 of the SPLUM by-law of 2021 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) 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.

Non-compliance with legislation is strictly Prohibited. Should the operation of a Tuckshop be illegal and non-compliant, the offenders will be subject to fines and closure. If a Tuckshop is considered non-compliant, the owner will need to remedy this by making the necessary applications to legalise their activity.

11 ANNEXURE A: COUNCIL RESOLUTION

12 ANNEXURE B: MUNICIPAL BY-LAW 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

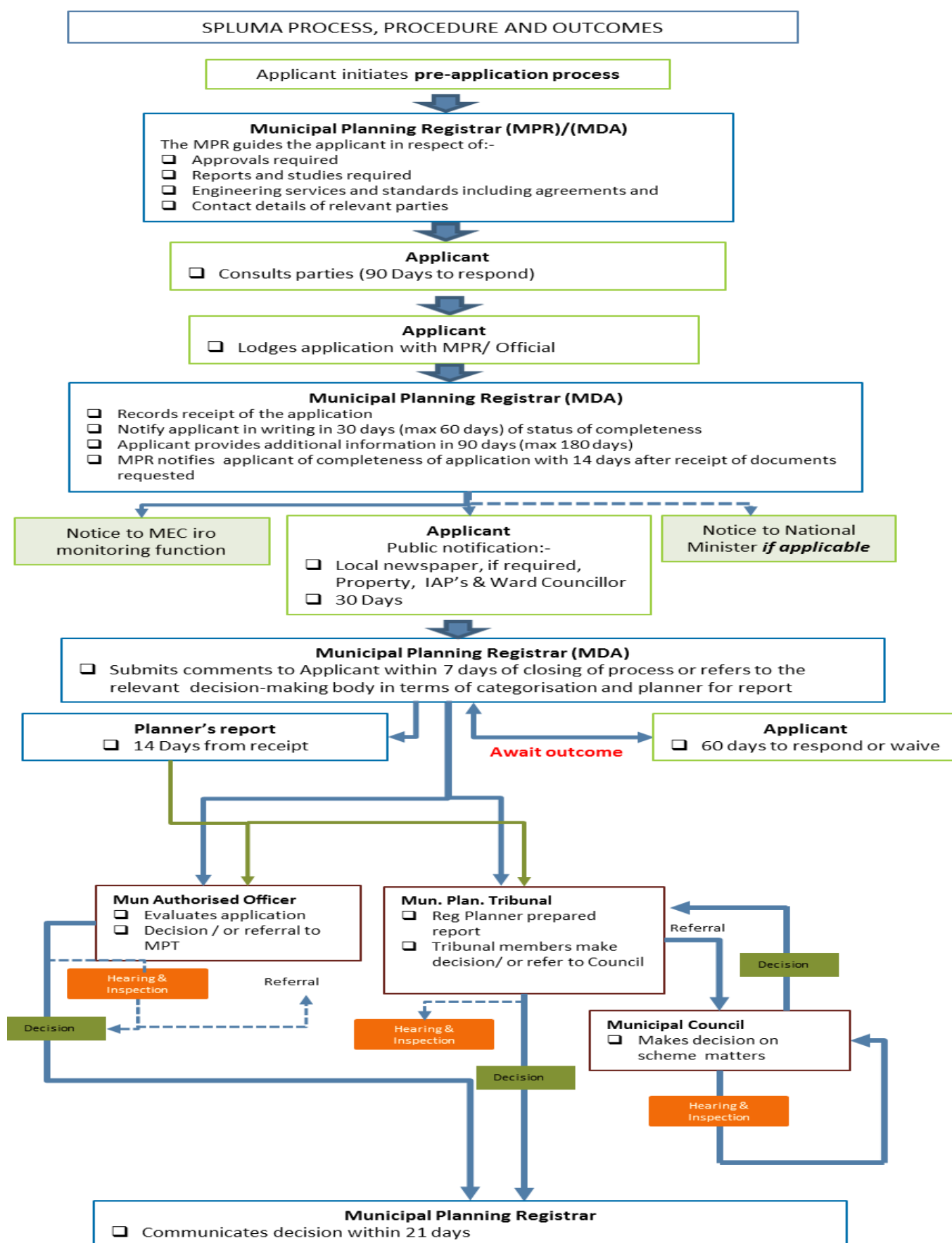
The Municipal Registrar must determine if it is necessary to consult the public for the application concerned. Where public comments are required, the processes in schedule 5 (Public Notice) must be followed.

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.

13 ANNEXURE C: PLANNING PROCESS AND TIME FRAMES



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