

MSUNDUZI MUNICIPALITY



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The Msunduzi Municipality

BOARDING HOUSE POLICY

February 2017

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 15 September 2016,

on

.....**2017**

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

.....**day****Month 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 15 September 2016

Adopt the

"Msunduzi Municipal Boarding House Policy"

Name and Signature:

.....

CITY MANAGER

Name and Signature:

.....

CHAIRPERSON OF THE EXECUTIVE COMMITTEE

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1. INTRODUCTION

1.1 The Accommodation Crisis and Universal Accessibility

There is currently a crisis in tertiary student and working people's accommodation in Msunduzi Municipal area of jurisdiction that mirrors the accommodation crisis in South Africa¹. This crisis² stems from the fact the Scottsville, Pelham and the northern areas of Msunduzi have exhausted the residential premises available for accommodation. Consequently approximately 16,000 desperate students are currently seeking accommodation in areas such as Hayfields, Prestbury, Raisethorpe, Napierville and elsewhere which are further way from tertiary institutions. These areas in turn, are also exhibiting shortages in rental accommodation suitable for our young professional government workers, graduates, the working classes, and students seeking accommodation. Hence tertiary students, families with school going children (hereafter learners) and working people, seeking accommodation, are now at the mercy of boarding house owners and some unscrupulous landlords many of whom do not even live in Msunduzi³.

There are growing rifts of various kinds between residents, boarding house owners, business owners, university accommodation officials, working people, students and learners all seeking accommodation in the residential and business precincts particularly in Scottsville, Pelham, and the CBD of Msunduzi. The tensions between the range of accommodation seekers, homeowners and business people stems from various issues such as noise pollution, poor management, illegal "slum lording", property devaluation, overcrowding, poor to no accommodation facilities, and amenity deterioration.

The accommodation crisis in South Africa is exacerbated by barriers to accommodation as a consequence of high levels of poverty and outdated regulatory processes that supported social exclusion and segregation during the apartheid era of South African governance. During the apartheid era, people with disabilities were, and continue to be, excluded from mainstream society, experiencing difficulty in accessing their fundamental human rights. Within this context, there is a strong relationship between barriers to access of services and accommodation for vulnerable women, children, the youth, people with disabilities and poverty.

"Poverty makes people more vulnerable to disability and disability reinforces and deepens poverty. Particularly vulnerable are the traditionally disadvantaged groups in South Africa including, additionally, people with severe mental disabilities, people disabled by violence and war and people with HIV and AIDS" (White Paper on the Rights of Persons with Disabilities, South African office of the Deputy President, 2015:5)

In the wake of segregationist approaches, to governance, the White Paper on the Rights of Persons with Disabilities (WPRPD) was developed in the office of the erstwhile Deputy President, Mr Thabo Mbeki, in 1997. Social activists with disabilities put the groundwork to the WPRPD in place through extensive community consultation processes and then "adopted the Disability Rights Charter of South Africa in 1992. This Charter, founded on the principles enshrined in the 1955 Freedom Charter, informed, and continues to inform, the

¹ As documented in research undertaken on behalf of the Honourable Minister of Education Dr. Bonginkosi Emmanuel "Blade" Nzimande in 2011. (DHET 2011: xvii, Report of the Ministerial Committee for the Review of Student Housing at South African Universities).

² The tertiary student and working people's accommodation crisis in Msunduzi Municipal area is discussed in detail in the Status Quo Report of March 2016, covering extensive local public opinion, policy, and international research conducted in support of this Policy document.

³ This policy focus mainly on the crisis in accommodation and the crisis with regard to "Special Residential" areas that are no longer able to cope with the demand for accommodation. The need for a diversified and more in-depth research into the Status quo conditions and requirements of primary and secondary school children, farm labourers and workers living in peri-urban areas in public and private boarding establishments is way beyond the scope of this policy. It is recommended that an in-depth study of this domain be undertaken so that a more nuanced set of policies can be developed.

promotion and protection of the rights of persons with disabilities in South Africa” (White Paper on the Rights of Persons with Disabilities, South African office of the Deputy President, 2015: 5).

The WPRPD of 1997 was reviewed and updated in 2015 and some of the objectives that are relevant to this Policy are to:

- (a) integrate the obligations of the UN Convention on the Rights of Persons with Disabilities (UNCPRD) and in the Continental Plan of Action for the African Decade of Persons with Disabilities (both of which South Africa has signed), with South Africa’s legislation, policy frameworks and the National Development Plan 2030;
- (b) endorse a mainstreaming trajectory for realising the rights of persons with disabilities;
- (c) provide clarity on and guide the development of standard operating procedures for mainstreaming disability;
- (d) guide the review of all existing, and the development of new, sectoral policies, programmes, budgets and reporting systems to bring these in line with both Constitutional and international treaty obligations; and to
- (e) stipulate norms and standards for the removal of discriminatory barriers that perpetuate the exclusion and segregation of persons with disabilities (White Paper on the Rights of Persons with Disabilities, South African Office of the Deputy President, 2015:3).

Central to the WPRPD and international approaches to barriers to municipal and social facilities are the concepts of Universal Accessibility and Universal Design. Universal Accessibility and Universal Design encompasses access to products and services 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: Adapted from <http://www.washington.edu/doi/> December 2016:1.)

1.2 A Municipal Wide, Boarding House Policy

The purpose of this Policy is to address the crisis in accommodation which calls for the facilitation, regulation, and management of boarding house developments in order to address the impact of such developments on the physical, social, economic, and institutional environment of the Municipality. While By-laws and Town Planning Schemes are effective regulatory tools, policies are required in support of By-laws and Scheme based Zoning regulations. This stems from the fact that policies provide for more detailed, norms, standards and operational rules to government officials and the public that have to be complied with across the entire Msunduzi area of jurisdiction which includes the rural, peri-urban and urban areas within the official Municipal boundary irrespective of who the land owners may be.

1.3 Principles, Norms and Policy Implementation

In order for policy to fulfil its normative regulatory role in the context of the entire Msunduzi Municipal area of jurisdiction, policy must unfold in accordance with existing legislation, other relevant policies and the existing Pietermaritzburg and Ashburton Town Planning Schemes. 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 the establishment of boarding houses must be implemented in the following manner:

- i. 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 enshrined in the South African Constitution (Act No. 108 of 1996 – hereafter “the Constitution”):
- (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.

1.3.2 The implementation of the policy must give effect to:

- (a) Section 156(1) of 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;
- (b) 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;
- (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) according 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.
- (d) The Rental Housing Amendment Act 35 of 2014 encompassing the following objectives:
 - i. create mechanisms to promote the provision of rental housing property;
 - ii. promote access to adequate housing through creating mechanisms to ensure the proper functioning of the rental housing market;
 - iii. lay down general principles governing conflict resolution in the rental housing sector;
 - iv. provide for the facilitation of sound relations between tenants and landlords; and
 - v. provide for legal mechanisms to protect the rights of tenants and landlords against illegal actions by the other party by affording speedy means of redress at minimum cost to the parties.’
- (e) In accordance with the Rental Housing Amendment Act 35 of 2014 , the owner who is the landlord, is required to provide for a written lease that is signed and agreed to with the tenant/ occupier and in accordance with this Policy:
 - i. leasehold agreements applicable to each tenant, must accompany the application for the Municipal Consent and approval of a Boarding House and must contain a condition that should the consent be denied, the lease shall be null and void;
 - ii. the land lord is, in accordance with this Policy, the owner of the property; or
 - iii. the landlord is considered to be the Ingonyama Trust Board in accordance with the terms and conditions of the KwaZulu-Natal Ingonyama Trust Amendment Act. No 9 of 1997;
 - iv. all rights and duties of landlords, staff and tenants contained in the Rental Housing Amendment Act 35 of 2014 and particularly clauses relating to health, safety, habitability, maintenance of the property and the financial obligations of the landlord operating the business of rental accommodation, are applicable in this Policy in addition to the norms and standards addressed in this Policy;
 - v. the lease agreement required between tenants and the landlord of the Boarding House must stipulate the duties and responsibilities of landlords, staff and tenants, with regard to the management of the property in relation to this Policy and in relation to municipal services such as refuse disposal, water and electricity payments; and
 - vi. The lease agreement must ensure the maintenance of the property so as to not impinge on the Amenity of the area, the cultural rights of the neighbours or contravene any legislation or Policy such as the National Building Regulations and the National Heritage Resources Act, No. 25 of 1999.

- vii. The landlord, tenants and staff of the Boarding House shall comply with the Pietermaritzburg Noise Control Regulations GR 2544 of 1990 in terms of Section 25 of the Environment Conservation Act No 73. 1989 and hence may not inflict noise pollution upon anyone.

(f) The policy must comply with:

- (a) the town planning imperatives, principles and regulations stemming from the Spatial Land Use Planning Act No 16 of 2013, the Msunduzi SPLUMA By Law of 15 September 2016, Msunduzi Town Planning Schemes and of their subsequent amendments;
- (b) the minimum norms and standards that are prescribed in terms of Sec 3;
- (c) the minimum norms and standards that may be prescribed in terms of Chapter 2 of SPLUMA, the KwaZulu-Natal Planning and Development Act No. 6 of 2008 and Msunduzi SPLUMA By-Law of 2016 and its subsequent amendments;
- (d) policy and legislation addressing Universal Access; and
- (e) Integrated Development Planning, Spatial Frameworks, Capital Investment Plans, Local Development Plans, and policy governing Boarding Houses 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.

1.4 Policy Scope and its Amendment

The scope of this policy encompasses the ***entire “wall-to-wall” Msunduzi Municipal area of jurisdiction***, including all areas outside the approved Pietermaritzburg and Ashburton Town Planning Schemes, all rural and peri-urban areas and all “special case areas” as defined in the Msunduzi Town Planning Schemes.

1.4.1 The accounting officer must:

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

- (a) be 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) ensure that proposed amendments comply with the all applicable Legislation, Policy, Plans and Regulations;
- (d) be effected in accordance with the required Transparent Public Participation Processes in Chapter 4 and 5 of the Local Government Municipal System 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 the Performance Management System with regard to the monitoring, evaluation, and strict regulation of Boarding Houses as is required in Section 38 of the MSA, the Msunduzi SPLUMA By Law of 15 September 2015 and this Boarding House Policy.

1.5 Definitions and interpretation

The definitions listed in this Policy are aligned, wherever possible, with the content of the current Msunduzi Town Planning Schemes. Where applicable, new and amended definitions are introduced. Recommendations addressing the revision of the existing Town Planning Schemes in accordance with this Policy and its adherence to various national and provincial Policy and legal requirements are listed in the Annexures to this Policy. More detailed supporting extracts of legislation, the Status Quo Report and associated community consultation processes that inform this Policy are held in separate set of documents called “The Portfolio of Evidence to the Msunduzi Boarding House Policy of 2017.”

Applications submitted to the municipality prior to the approval of the Msunduzi Draft Consolidated Town Planning Scheme must comply with the definitions of the existing applicable Pietermaritzburg and Ashburton Town Planning Schemes and their subsequent amendments, if within the relevant scheme controlled area, or schedule 3 of the Msunduzi SPLUMA By-Laws, if outside the Scheme controlled areas.

In this Policy, unless the context otherwise indicates:

1.5.1 Scheme and other relevant definitions

1.5.1.1 Pietermaritzburg Scheme Clauses of 2015 (Hereafter PMB Scheme)

“Dwelling” means a coherent suite of rooms used, or designed for use, as residential accommodation for a family such as it may consist of from time to time. (Source: Town Planning Appeals Board Ruling on APPEAL NO. 3350 relating to 1 Oban Drive, Scottsville) and shall in respect of sites within various density Zones allowing for 20 units/ha and greater, comprise not more than six (6) habitable rooms, save with Municipal Consent, includes not more than one (1) kitchen and the number of bedrooms that are in keeping with the norms and standards, universal access, no discrimination of any kind , as defined in the Boarding House Policy and other relevant Policies that may be Adopted by Council.

“Outbuilding” means a Building attached to or separate from a Dwelling and ancillary to a Dwelling and may:

- (a) in respect of Sites located within “General Residential” Zones and other Zones, excluding “Special Residential Zones, within density zones allowing for 20 units/ha and more, comprise domestic garages for not more than two (2) motor cars and bedroom with toilet and bathroom facilities and with the Consent of the Municipality, other rooms that are in keeping with the norms and standards and intent of the Boarding House Policy and other relevant Policies that may be Adopted by Council);
- (b) in respect of Sites within Density Zones allowing 15 units/ha and less, comprise domestic garages for not more than four (4) motor cars, two (2) bedroom rooms with toilet and bathroom facilities and with Municipal Consent, other rooms in compliance with the norms and standards applicable to Boarding House Policy , Universal Access criteria and other relevant Policies that may be Adopted by Council);
- (c) provided that the floor area of the Outbuilding shall not exceed 30% of that of the Dwelling to which it is ancillary, save with the Municipal Consent; and,
- (d) provided further that, if the owners of the properties adjoining the sites in question, as well as any other owners whom the Council may determine, give their consent in writing to such an Outbuilding, the Council may waive the Municipal Consent Procedure.

“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 (Source PMB Scheme 2015:5 Section1.3.21).

“Owner” means:

- (a) the person in whose name the land is registered in the deeds registry for KwaZulu-Natal;
- (b) the beneficial holder of a real right in land and
- (c) the person in whom land vests” (source: Msunduzi SPLUMA by Law 2016).

“Self-Contained Residential Unit” means a Building utilised for habitable residential purposes and which shall comply with the following:

- (a) the unit shall be for the accommodation of not more than 2 persons in accordance with the norms and standards of the Msunduzi Boarding House Policy;
- (b) the unit shall comprise not more than one bedroom, a lounge/dining room, a kitchen and a bathroom/ toilet;

- (c) except in special circumstances satisfactory to the Council, the unit shall not be accessible from within a Dwelling or Outbuilding to which it may be attached;
- (d) the total floor area of the unit shall not exceed 25% of the total coverage of the Dwelling on the Site, save with the Consent of the Council; and,
- (e) provided further that, if the owners of the properties adjoining the site in question, as well as any other owners and/or organisations whom the Council may determine, give their consent in writing to a unit in excess of 25% of the total coverage of the dwelling on the site, the Council may waive the Consent procedure.

1.5.1.2 Ashburton Town Planning Scheme of 1970 (hereafter Ashburton Scheme)

“Amenity” means those qualities or conditions in an area, which may be:

- (a) a locality,
- (b) a precinct,
- (c) a district, or
- (d) any defined area,

that contributes to the pleasantness, harmony and coherence of the environment and to the public's enhanced enjoyment of any permitted use. Amenity includes the normative requirement that all qualities and conditions of usage are to be respectful of the multicultural values and customs of all inhabitants of the site, area, locality, precinct, district or any defined area where the development may have an impact on the enjoyment of the area in compliance with the norms and standards, Universal Access and inalienable rights to human dignity as defined in this Policy and in the Boarding House, Bed and Breakfast, and Tuckshops Policies of the Msunduzi Municipality of 2017)

“Dwelling” means a coherent suite of rooms used, designed for use, as residential accommodation for a family such as it may consist of from time to time. (Source: Town Planning Appeals Board Ruling on APPEAL NO. 3350 relating to 1 Oban Drive, Scottsville) and shall:

- (a) in respect of sites within Density Zones allowing for 20 units/ha and greater, comprise not more than six (6) habitable rooms, save with the Special Consent of the Council, and shall, include not more than one (1) kitchen;
- (b) in respect of Sites within Density Zones allowing 15 units/ha and less, comprise not more than ten (10) habitable rooms, save with the Special Consent of the Council and shall include not more than one (1) kitchen, which may be in addition to the allowable number habitable rooms.

“Outbuilding” means a Building attached to or separate from a Dwelling and ancillary to a Dwelling and may:

- (a) in respect of Sites located within “General Residential” Zones and other Zones, excluding “Special Residential Zones, within density zones allowing for 20 units/ha and more, comprise domestic garages for not more than two (2) motor cars, and with the Consent of the Municipality, domestic staff quarters with one (1) bedroom, for a single person no smaller than 8² metres, toilet, bathroom, and kitchen facilities;
- (b) in respect of Sites within Density Zones allowing 15 units/ha and less, comprise domestic garages for not more than four (4) motor cars, and with the Consent of the Municipality, domestic staff quarters with two (2) bedrooms for single persons no smaller than 8² each with toilet bathroom and kitchen facilities;
- (c) provided that the floor area of the Outbuilding shall not exceed 30% of that of the Dwelling to which it is ancillary or 60² metres, whichever is the lessor, save with the Municipal Consent; and,
- (d) provided further that, if the owners of the properties adjoining the sites in question, as well as any other owners whom the Council may determine, give their consent in writing to such an Outbuilding, the Council may waive the Municipal Consent Procedure.

Coverage: means the proportion of an Erf covered by buildings with an impermeable roof, as seen vertically from the air but measured from outer face of exterior walls so as to exclude any roof eaves less than 1 metre, expressed as a percentage. Thus 25 % Coverage means that buildings may cover only one quarter of the Erf.

1.5.1.2 Msunduzi Spatial Planning and Land Use Management By-Law: Schedule 3

"Owner" means:

- (a) the person in whose name the land is registered in the deeds registry for KwaZulu-Natal;
- (b) the beneficial holder of a real right in land and
- (c) the person in whom land vests." (Source: Msunduzi SPLUMA by Law 2016)

1.5.1.3 None-scheme related definitions

"Activity spines" means a concentration of development along movement routes which are characterised by high intensity, mixed land uses that are oriented towards the street. Development can take either the form of continuous linear development or a series of nodes along the activity spine (Source: Adapted, from The Spatial Development Concept, Mogale City Local Municipality⁴, www.mogalecity.gov.za 2017).

"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 an 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 of 1989.

"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.

"Assistive Technology" It is an umbrella term that includes assistive, adaptive, and rehabilitative devices and services for persons with disabilities, which enable persons with disabilities and learning differences to attain independence. They include for example, loop systems, sub texting, and alternative input for cognitive assistance and computer or electrical assistive devices (White Paper on the Rights of Persons with Disabilities, South African office of the Deputy President, 2015: 3).

"Authorised official" means any official of the Municipality who has been authorized by the Municipality, in accordance with the Msunduzi SPLMA By law of 2016, to administer, implement, and enforce the provisions of this Policy.

"Basic Services" means any device, product, equipment, or tool that is designed or adapted to enable people with disabilities to participate in activities, tasks, or actions. One of the key features of a developmental state is to ensure that all citizens especially the poor and other vulnerable groups, have access to basic services, including

⁴ The Mogale City Local Municipality is a Category B municipality located within the West Rand District in the Gauteng Province. It lies directly south and west of the City of Tshwane and City of Johannesburg Metropolitan areas respectively. The northern part of Mogale City comprises the bulk of the Cradle of Humankind World Heritage Site

municipal services such as bulk water, energy, lighting roads, sustainable housing, welfare, health care, education and supporting infrastructure delivery. The Constitution of the country places the responsibility on government to ensure that such services are progressively expanded to all, within the limits of available resources (White Paper on the Rights of Persons with Disabilities, South African office of the Deputy President, 2015: 5).

“Boarding House” means a business conducted by the owner of a property, located in a “Special Residential Zone”, who shall be resident therein. The use shall be limited to being conducted by the applicant, who is the owner of the property and who shall reside on the property as his / her primary residence together with his / her family such as it may consist of from time to time. (Source: Town Planning Appeals Board Ruling on APPEAL NO. 3350 relating to 1 Oban Drive, Scottsville)⁵. In accordance with the Msunduzi Public Health By-law of 2016, a Boarding House is designed for use, or used for human habitation, comprising a number of boarding rooms and associated communal facilities:

- (a) such facilities include a kitchen, ablution blocks, lounge, dining room and/or any other communal facilities that the Municipality does require for use by the occupants;
- (b) no latrine, passage, staircase, landing, bathroom, cupboard, outbuilding, garage, stable, tent, store room, lean -to, shed, kitchen, dining room, food preparation area, cellar or loft, motor car or any other container may be used as sleeping accommodation; and,
- (c) provided that extent of boarding rooms and the nature and extent of associated communal facilities shall be to the satisfaction of the Municipality and the norms and standards as set out in in Tables 2,3 & 4 held in section 2 of this Policy;
- (d) No more than 3 bed-rooms and 6 tenants may be accommodated in a “Boarding House” in the “Special Residential Zone” for any period of time;
- (e) not impose a greater load on any public utility service than that is ordinarily required by other uses permitted in the area in which the activity or use is situated; and
- (f) not interfere with the Amenity of the surrounding area

“Digs or “Commune” is local term used by students / residents in order to describe a residential facility that a group of students/ residents establish in order to reduce accommodation costs. A “Digs” or a “Commune” is:

- (a) required to comply with the norms and standards as set out in in Tables 2,3 & 4 held in section 2 of this Policy;
- (b) required to comply with the intent of this Policy to protect local Amenity in all Zones and particularly in **Special Residential Zones**;
- (c) required to comply in all regards with the stipulations of this policy;
- (d) a “Digs” or “Commune” is required to be conducted as a “Boarding House” in all respects as is defined in this Policy; and

⁵ **“Boarding House”**: in accordance with the Pietermaritzburg Scheme, means, a building providing permanent lodging to persons not comprising a family, with or without meals, for more than three (3), but not more than fourteen (14) persons⁵, and shall include a **“Digs”**. *This definition is problematic and needs to be amended in accordance with numerous Appeals Board decisions such as that of No 3350, and as stated above, have overtaken its relevance and applicability.*

“Boarding House”: in accordance with the Ashburton scheme, means, a building, or portion of a building, other than a block of Flats, in which three (3) or more persons are accommodated for reward. The Ashburton Scheme does not impose the limitation of fourteen people (14) as does the Pietermaritzburg scheme and hence it is even more problematic than the Pietermaritzburg Scheme definition. In the interim, the precedent set by the Appeals Board ruling No 3350 pertains for the definition of a Boarding House in a “Special Residential Zone” as defined in the Msunduzi Schemes. The Msunduzi Public Health By Law of 2015 as stated above, prescribes that a Boarding House is designed for use, or is used for human habitation, comprising a number of boarding rooms and associated communal facilities. This byelaw prohibits the ad hoc use of any room under a roof and as per clause (a) –(c) of the Msunduzi Public Health By Law of 2015, stated above for accommodation purposes as is prevalent in “illegal Digs” situations and in applications which attempt to use all spaces of a residence for “sleeping” or “bedroom usage”.

- (e) shall be conducted to the satisfaction of the Municipality, in keeping with the National Minimum Standards for in Tertiary Student Accommodation of 2015, Government Gazette No 897 and various noise, health, amenity stipulations such that social cohesion and human dignity are fostered in compliance with this Policy.

“Disability” The UNCRPD⁶ does not attempt to define disability per se, but rather recognises disability as an evolving concept. Disability is imposed by society when a person with a physical, psychosocial, intellectual, neurological, and/or sensory impairment is denied access to full participation in all aspects of life, and when society fails to uphold the rights and specific needs of individuals with impairments. Persons with disabilities experience three main types of interrelated barriers:

- (a) social barriers (including high cost, lack of disability awareness, and communication difficulties);
- (b) psychological barriers (such as fear for personal safety); and
- (c) Structural barriers (including infrastructure, operations and information) (White Paper on the Rights of Persons with Disabilities, South African office of the Deputy President, 2015: 5).

“Disability Discrimination” Discrimination on the basis of disability means any distinction, exclusion or restriction of persons on the basis of disability, which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, on all human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field. It encompasses all forms of unfair discrimination, whether direct or indirect, including denial of reasonable accommodation. (White Paper on the Rights of Persons with Disabilities, South African office of the Deputy President, 2015: 20).

“Disability Mainstreaming” means a systematic integration of the priorities and requirements of persons with disabilities across all sectors and built into new and existing legislation, standards, policies, strategies, their implementation, monitoring, and evaluation. Barriers to participation must be identified and removed. Mainstreaming therefore requires effective planning, adequate human resources, and sufficient financial investment accompanied by specific measures such as targeted programmes and services. (White Paper on the Rights of Persons with Disabilities, South African office of the Deputy President, 2015: 20).

“Discrimination” is any act or omission, including a Policy, law, rule, practice, condition, or situation which directly or indirectly:

- (a) Imposes burdens, obligations or disadvantages on; and/or
- (b) Withholds benefits, opportunities or advantages from, any person on one or more of the prohibited grounds, which include disability and any other ground that might disadvantage a person, undermines human dignity or adversely affects an individual's rights and freedoms (White Paper on the Rights of Persons with Disabilities, South African office of the Deputy President, 2015: 5).

“Dwelling” means a coherent suite of rooms used, or designed for use, as residential accommodation for a single family”

“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

⁶ The South African Government ratified the United Nations Convention on the “Rights of Persons with Disabilities (UNCRPD) and its Optional Protocol without reservation in 2007, thereby committing the country to respect and implement the rights of persons with disabilities” (White Paper on the Rights of Persons with Disabilities, South African office of the Deputy President, 2015: 20)

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).

“Flat” means a suite of rooms, located in Zones which are specifically designed for high density living, not being a single dwelling or semi-detached house in a “Special Residential Zone”, contained in a building having one or more floors.

Floor Area: Means, the sum of a building at each floor level, and including wall thickness **but excluding:**

- (a) any basement used exclusively for the parking of motor vehicles, service installations and storage,
- (b) garages or carports,
- (c) In the case of fuelling and service stations, the areas covered by canopies,
- (d) staircases, lift shafts /lift motor rooms other than on one floor,
- (e) balconies, verandas, porches or colonnades and similar type of structures that are roofed but open to the elements on at least one side,
- (f) 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.

“Foundation Phase” refers to Grades R (Reception year) to Grade 3 learners. (Source: Adapted from Space Planning Norms and Standards for Public Schools 2014:2, KwaZulu-Natal Department of Education).

“Full Time Equivalent (FTE)” represents a measure of the occupation of the building. One FTE represents one (1) learner occupying space for a full school day. A part-time learner only occupies space for half a school day, and would therefore be represented as a 0,5 FTE. (Source: Adapted from Space Planning Norms and Standards for Public Schools 2014:2, KwaZulu-Natal Department of Education).

“Further Education and Training (FET)” band encompasses the FET schools phase (Grades 10 to 12) and FET colleges (vocational) phase. (Source: Adapted from Space Planning Norms and Standards for Public Schools 2014:2, KwaZulu-Natal Department of Education)

“General Education and Training (GET)” band encompasses the foundation (Grades R to 3), the intermediate (Grades 4 to 6) and the senior (Grades 7 to 9) phases. (Source: Adapted from Space Planning Norms and Standards for Public Schools 2014:2, KwaZulu-Natal Department of Education).

“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”: 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.

"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 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 processes 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, **the Boarding House 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”.**

"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.

"National Building Regulations and Building Standard Act" means the National Building Regulations and Building Standards Amendment Act No 49 of 1995 and any amendments thereto.

“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)

“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.

“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) Residing on the premises in accordance with the conditions of the lease agreement between the owner and the occupier/ tenant, or
- (b) The owner the premises who is required to reside on the premises with his/her family, in accordance with the intent of this Policy.

“Organ of state” means an organ of state as defined in Section 239 of the Constitution of the Republic of South Africa Act No 108 of 1996.

“Owner” means:

- (a) the person in whose name the land is registered in the deeds registry for KwaZulu-Natal;
- (b) the beneficial holder of a real right in land; and,
- (c) the person in whom land vests” (source: Msunduzi SPLUMA by Law 2016).

“Ownership” in relation to property, means the person or entity in whose name that property is registered in a deeds 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;

"Play Areas" are informal social areas used by younger learners. They should cater for different age groups and interests, provide stimulating/educational equipment (e.g. climbing frames, swings, sandpits, hopscotch markings) for younger learners, especially in the foundation and intermediate phases. (Source: Adapted from *Space Planning Norms and Standards for Public Schools 2014:2*, KwaZulu-Natal Department of Education).

"Poverty" means a pronounced deprivation in well-being, and comprises many dimensions. It includes low incomes and the inability to acquire the basic goods and services necessary for survival with dignity. Poverty also encompasses low levels of health and education, poor access to clean water and sanitation, inadequate physical security, lack of voice, and insufficient capacity and opportunity to better one's life. (White Paper on the Rights of Persons with Disabilities, South African office of the Deputy President, 2015: 12).

"Powers and Functions" means any provision in this Policy which 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 where:

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

"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.

"Progressive Rights" The term refers to economic, social and cultural rights and human rights relating amongst others to the workplace, social security, family life, participation in cultural life, and access to housing, food, water, health care and education.

"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.

“Reasonable Accommodation” Reasonable accommodation refers to necessary and appropriate modification and adjustments, as well as assistive devices and technology, not imposing a situation, where needed in a particular case, to ensure persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms (White Paper on the Rights of Persons with Disabilities, South African Office of the Deputy President, 2015:11)

“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).

“Schedule 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).

“Site Development Plan (SDP)”: means a plan required for application purposes. The SDP must show the layout, extent, position, and elevations of buildings on the proposed development of a site. This shall include:

- (a) Site layout and landscaping specifications;
- (b) Slope analysis and topography;
- (c) The Gross Floor Area (GFA); Floor Area Ratio (FAR) and Coverage of the proposed development;
- (d) The establishment shall not require any additions or alterations to a building on a site that would prevent the building from reverting to being used as a single family “dwelling” in the event of the use ceasing;
- (e) Universal access conditions and signage layout on all building and landscape plans;
- (f) Infrastructure requirements to the satisfaction of the Municipal Manager and City Health Inspector;
- (g) Proposed Parking allocation in accordance with the Town Planning Scheme and SPLUMA By-law requirements;
- (h) Swimming pools, recreation areas, boarding accommodation in relation to entertainment areas, ablution and communal rooms and any other information, as prescribed in the Msunduzi Schemes, By-laws, Spatial Plans and as requested by the Municipal officials implementing this Policy;.
- (i) Site Development Plans are required for all business applications irrespective of the Zone in question;
- (j) All Site Development Plans, Building Plans and Landscape Plans require the comment of Amafa on each and every plan and their subsequent amendments prior to submission of the application;
- (k) An application can only be considered as being complete in accordance with the Msunduzi SPLUMA By-law if all elements (a) to (k) and any other consideration called for by Planners and Sector Departments, including Amafa, are addressed to the satisfaction of the Municipality.

- (l) In circumstances where a site development plan is required in terms of this policy, no application for building plan approval in terms of the National Building Act shall be granted by the Municipality, unless a Site Development Plan has first been approved by the Chief Town Planner; and
- (m) An approved Site Development Plan shall be considered as setting additional development rules applicable to the development rights accorded in terms of the applicable Zone in which the development is located; and
- (n) any application for amendment to the Site Development Plan, shall comply with the Municipality's requirements for such amendments.

“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/doit/>).

“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.

1.6 Application norms, procedures and standards

Before 15 September 2016, all applications for Boarding Houses, were 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 Msunduzi Spatial Planning and Land Use Management By-Law was promulgated on 15 September 2016 and repealed Section 67 of the Ordinance.

Consequently, all new Boarding-House applications shall be considered in terms of the Msunduzi SPLUMA By-Law of 2016, the KwaZulu Natal Planning and Development Act No 6 of 2008, the Pietermaritzburg and Asburton Schemes, this Policy and other relevant policy and legislation as noted in section 1.3 above. 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 SPLUMA which regulates applications in accordance with the adopted Msunduzi SPLUMA By-Law. This occurs through development regulated either through the Pietermaritzburg or Ashburton Town Planning Scheme areas 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
- (c) The registered Town and Regional Planner and delegated committee considers the application for substantive⁷, normative and procedural⁸ compliance with SPLUMA.

⁷ 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.

⁸Examples 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.

1.6.1 Nonconforming existing rights

Any existing building or existing use which is not in conformity with this Policy or existing amended Schemes, but for which legal authority was obtained from the Municipality prior to 15 September 2016, being the Adoption of the Msunduzi SPLUMA By Law; and /or prior to the adoption date of this Boarding House 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 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 new Building Plan that are in accordance with this Policy, its amendments, Schemes and Building regulations operative at the time of the subsequent alterations, additions or extensions;
- (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.

1.6.2 Development rights, consent usage & policy compliance

The Pietermaritzburg and Ashburton Schemes accord development rights to properties and building processes in accordance with particular zones. These zones regulate permissible, prohibited, and Municipal Consent usage. All Municipal Consent applications have to be in accordance with Scheme Clauses inter alia, such as FAR, Coverage, Parking, Side, and Rear Spaces, Density and all policy regulations such as Norms and Standards, a Site Development Plan, Amenity, Noise Pollution and Universal Access. Table No 1 shows the Expressly Permitted Development and Municipal Consent rights in thirteen (13) zones where Boarding Houses can be developed in accordance Pietermaritzburg Town Planning Scheme of 2016.

As is shown in Table 1, the first nine (9) zones in the Pietermaritzburg Scheme require applicants to apply for "Municipal Consent" to operate Boarding Houses. Municipal planning officials and the interested and affected public can check the applications for compliance with the Boarding House 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, norms, or standards 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 development intensity of an area and the character of the area are not adversely affected by the establishment of Boarding Houses. Such applications rely on the Town Planning Scheme, Policy intent and the discretionary planning skills of the planning officials and the Planning Tribunals considering objections to applications lodged that deviate from the intent of the "Special Residential Zone". Consequently, one of the intentions of this Boarding House Policy is to support of the overall intent of the Municipal Consent process particularly in the "Special Residential Zones" of the City that are experiencing a crisis in accommodation, largely but not exclusively, for tertiary students and working people seeking residence in the City.

Similarly, in a “Light Industrial Zone” where Municipal Consent is accorded to Boarding House usage, the primary character of Light Industry Zone must be adhered to and the Zone cannot become dominated by the secondary usage of Boarding Houses.

TABLE NO 1: PIETERMARITZBURG TOWN PLANNING SCHEME ZONES THAT ALLOW BOARDING HOUSE DEVELOPMENT BY MUNICIPAL CONSENT & FREE ENTRY USAGE

	Town Scheme Zones	Kind of Application	Boarding house policy Compliance Criteria
1	Special Residential	Municipal Consent	Application based on Scheme Clauses and Policy
2	Intermediate residential	Municipal Consent	Application based on Scheme Clauses and Policy
3	Limited business	Municipal Consent	Application based on Scheme Clauses and Policy
4	General	Municipal Consent	Application based on Scheme Clauses and Policy
5	Light, & General Industrial	Municipal Consent	Application based on Scheme Clauses and Policy
6	Institutional	Municipal Consent	Application based on Scheme Clauses and Policy
7	Public worship	Municipal Consent	Application based on Scheme Clauses and Policy
8	Transitional Zone 1	Municipal Consent	Application based on Scheme Clauses and Policy
9	Special Areas 19, 32, 41, 42	Municipal Consent	Application based on Scheme Clauses and Policy
10	Special Area 25	Permissible	Site Development Plan, Building Plan & Policy
11	Office & Transitional Office	Permissible	Site Development Plan & Building Plan: Policy
12	General Residential	Permissible	Site Development Plan & Building Plan: Policy

The subsequent three (3) zones in Table 1 are zones where Boarding houses are “expressly permitted” or are “free entry zones” where Boarding houses are permitted and encouraged to develop. These zones are specifically “Office”, “Transitional Office Zones”, and “General Residential Zones” where; the main character of the area is that of fairly high intensity office usage; or “General Residential” areas where higher density residential activity occurs. Such zones are characterised by blocks of flats or multiple residential units as opposed to the single dwellings of the “Special Residential” and “Limited Residential zones”. However, norms and standards are invoked in all zones in order to ensure that higher intensity Boarding House usage does not degenerate into “slum lording” and residential conditions for occupants that is detrimental to their health, dignity, independence, the environment, social cohesion, progressive rights, universal accessibility, universal design, inclusion, and the amenity of the area.

In the Ashburton Scheme, Municipal Consent applications for Boarding Houses are required when the property is located in the “Intermediate Residential Zone”. Boarding Houses are “expressly permitted” in the “Commercial 1 Zone” in the Ashburton Scheme where the higher density is encouraged, but also need to be managed through Site Development Plans, norms and standards in support of residential and commercial amenity at nodes or along activity spines.

1.6.2.1 In the areas outside of the Schemes, Boarding Houses are only permissible through Municipal Consent applications based on discretionary planning practice since:

(a) the Msunduzi SPLUMA By Law which allows for development in areas outside of the Scheme, does not define Boarding House, as a permissible land use right in Schedule 3 for areas outside of Schemes. Consequently until such time as a “wall-to-wall” Scheme is developed or the SPLUMA By-law is amended to accommodate Boarding Houses, discretionary planning is required. In such instances:

- i. the municipal planning team must call for a Site Development Plan as defined in this Policy;
- ii. the municipal planning team must call for a Planning Motivation from the applicant proving evidence for desirability, market demand and sustainability of the proposed development in the said location; and
- iii. where the demand for the Boarding Houses is established, “Floatation and Incentive Zoning” is recommended for Boarding Houses as a consequence of the considerable costs associated with establishing Boarding Houses for poor communities and in accordance with the imperatives of the new generation Schemes as called for in SPLUMA⁹.

1.6.2.2 Planning officials need to be particularly vigilant with regard to Policy and Scheme compliance in “expressly permitted” or “free entry zones” because compliance is only checked when Building Plans are submitted for approval. Consequently all free entry Boarding-House developments must:

- (a) submit a Site Development Plan with the Building Plan for Planning Approval;
- (b) all Site Development Plans, as defined in this Policy, with Building Plans and building alterations, extensions and additions must comply with this Policy, its norms, and standards as prescribed by SPLUMA and other relevant legislation and policy; and
- (c) all Boarding Houses are required to register as businesses.

2. NORMS STANDARDS AND BOARDING HOUSES

In accordance with this Policy, the norms and standards for Boarding Houses are categorised into three sections:

Firstly, Boarding Houses accommodating learners and their caretakers within rural, peri-urban and urban areas where the ravages of the HIV and Aids pandemic has resulted in approximately a 42% infection rate in Pietermaritzburg in 2015 (<http://www.avert.org/professionals/hiv-around-world/sub-saharan-africa/south-africa>). Pietermaritzburg is known to be one of the areas with the highest incidents of HIV and Aids infections in the country. Consequently vulnerable children and young people up to the age of 21 are accommodated in Boarding Houses, SOS children’s homes, and orphanages.

Secondly, there is a serious lack of Boarding House regulation in the rural, smallholder, peri-urban and urban areas where farm workers, groomsmen, domestic workers, blue and white-collar workers are located.

Thirdly there is a critical shortage of accommodation for tertiary institution students resulting in unregulated and poorly managed “shack lording”, “slum-lording” and overcrowding of residential, urban and CBD areas in Msunduzi.

The terms of reference of this Policy does not cover the extensive research that is required to address the full range of accommodation facilities such as youth hostels, orphanages, SOS homes, public, and private school

⁹ After careful public scrutiny, this draft policy will be amended in the light of comments made and finally adopted by Council for application on a Municipal wide basis. Additional elements are consideration accorded to norms and standards as agreed to through official planning steering committee consultation and the subsequent public consultation process. This procedure of public scrutiny of the policy clauses in conjunction with the norm and standards that underpin the policy and the linkage to the strategic planning frameworks will be the first of its kind in the Municipality. This policy is the first step in implementing the integrated spatial planning and land use management approach based on the new legislation and new integration of norms, principles and standards with new forms of Zoning and transformative regulation.

boarding facilities, farm worker accommodation, or people hiring informal accommodation facilities in informal settlements. Such research is urgently required for “wall-to-wall” scheme development but is beyond the scope and brief of this particular Policy.

The threefold distinction invoked in this section of the Policy can only be considered as a contribution towards a more extensive research and human rights investigation that is urgently needed in order to develop a more nuanced and diversified Policy and Scheme clauses. Such a comprehensive approach to Scheme clauses and regulation is required for “wall-to-wall” Town Planning Schemes and their associate Diversified Policy. In addition, Diversified Policy approaches are also heavily dependent on Precinct and Local Area Strategic Planning and Planning Design.

One of the recurring themes stemming from public comments and Municipal Planners administering Municipal Consent applications is the need for demarcated areas where Boarding Houses, particularly for student accommodation, can be established and areas where they are prohibited. This particular Policy cannot address this problem since it is heavily dependent on Strategic Local Area Planning and Design which is usually undertaken prior to Town Planning Scheme development and subsequent Policy refinement for operational activities. The Municipal Planners are fully aware of this dilemma and have put plans in place to address it.

In the interim, the norms and standards applicable to the regulation of the three categories of Boarding Houses as noted above, are shown in Tables No 2, 3 and 4 respectively.

Table No 2: Norms and Standards for Boarding- Houses Accommodating School going learners located outside of Scheme areas in rural, peri- urban, rapidly urbanizing areas and within Scheme areas

Norms	Standards	Source
Boarding-House occupants have the right to a safe living environment	<p>a) The facility must be registered in compliance with the Children's Act No 38 of 2005, as amended.</p> <p>b) The safety, security and structures of the facility is to be in accordance with the National Building Regulations & Building Standards Amendment Act No 49 of 1995, The National Building Regulations, (South African National Standard [SANS] 2011), to further promote accessibility for persons with disabilities (Part S: Facilities for persons with disabilities) and any amendments thereto, and must comply with:</p> <p>c) An approved Site Development Plan and Building Plans as defined in this Policy and to the satisfaction of the Senior Town & Regional Planner, Amafa, all relevant Sector Departments such as the Departments of Health, Education, Infrastructure, Water & Sanitation, Safety and Security, Local Economic Development, Human Settlements and any other relevant approval authority as may be called for from time to time by the Msunduzi Municipal Manager.</p> <p>d) The Facility may not be located close to, nor adjacent to:</p> <p>e) (i) Cemeteries; (ii) Business Centre's; (iii) Railway Stations; (iv) Taxi Ranks; (v) Sewage Treatment Plants; (vi) Public Hostels; (vii) Busy Roads, and (viii) Bottle Stores or "Shebeens"</p>	<p>Norm: The South African Constitution Act No. 108 of 1996; Standards: National Building Regulations & Building Standards Amendment Act No 49 of 1995, The National Building Regulations (South African National Standard [SANS] 2011), to further promote accessibility for persons with disabilities (Part S: Facilities for persons and any amendments thereto).</p> <p>Standards: Department of Education: Regulations relating to Minimum Norms and Standards for Public Infrastructure, 2013, p7;</p>
Universal Access and Design	<p>All facilities must comply with the White Paper on the Rights of Persons with Disabilities(WPRPD), South African office of the Deputy President, 2015, such that for each occupant</p> <p>(i) 12 m³ of free air space for each person over the age of 10 years;</p> <p>(ii) 6 m³ of free air space for each person under the age of 10 years.</p> <p>(iii) In accordance with the norms and standards of the WPRPD</p> <p>a) no latrine, passage, staircase, landing, bathroom, cupboard, outbuilding, garage, stable, tent, storeroom, lean -to, shed, kitchen, dining room, food preparation area, cellar or loft may be used as sleeping accommodation;</p> <p>b) In accordance with the Department of Social Development Norms and Standards of 28.10 m² of the total area of a dormitory is required per child;</p> <p>c) an area for the preparation and cooking of food, easily accessible to any occupier residing in the Boarding-House</p> <p>d) adequate separate wash -up facilities;</p> <p>e) an adequate dining area, including the area occupied by tables, chairs and benches, of at least 1.2 m² for every seat provided for dining purposes;</p> <p>f) 1 basin per 4 learner, 1 shower cubicle per 7 learners , 1 lavatory per 5 learner.</p> <p>g) shower & lavatory cubicles must be designed for privacy (i.e., no communal showers or toilets),</p> <p>h) Universal access must be afforded to people with disabilities in keeping with the White Paper on the Rights of Persons with Disabilities(WPRPD), South African office of the Deputy President, 2015 (Source: Universal Access Policy, Towards a Barrier-Free Society , 2002, S.A Human Rights Commission). Consequently, barrier free access shall apply for example to</p>	<p>Standards: Department of Social Development (2010;23) Blue Print, Minimum Norms and Standards for Child Care / Secure Care Facilities in South Africa</p> <p>Standards: Msunduzi Municipal Public Health By-laws of 2015; , Universal Access Policy, Towards a barrier-free Society S.A Human Rights Commission 2002.</p> <p>Standards: Msunduzi Municipal Public Health By-laws of 2015;</p>

Universal Access and Design	<ul style="list-style-type: none"> i. entrances, lighting facilities, lift buttons, alarm bells, window openings, pathways, buses, play and recreation areas which must comply with universal design criteria. ii. all rooms and passages shall be provided with adequate ventilation and lighting, water, and fire extinguishers as prescribed in the National Building Regulations and Buildings Standards Act No 49 of 1995, The National Building Regulations (South African National Standard [SANS] 2011; iii. a store -room for the storage of furniture and equipment and a separate linen room , shall be provided; iv. all walls and ceilings shall have a smooth finish and be painted with a light coloured washable paint, or have some other approved finish; v. the floor surface of every kitchen, scullery, laundry, bathroom, shower, ablution room, toilet and sluice room shall be constructed of concrete or some other approved material ; vi. facilities shall be clean, provide for employees, and manage refuse as prescribed in terms of the Msunduzi Municipal Public Health By-laws of 2015. 	<p><i>Msunduzi Municipal Public Health By-laws of 2015; , Universal Access Policy, Towards a barrier-free Society S.A Human Rights Commission 2002</i></p>
Children have the right to play and social encounter	2.5 square metres per child for play and social encounter in keeping with their developmental, cognitive, and emotional needs.	Standards Department of Social Development (2010) Blue Print, Minimum Norms and Standards for Child Care / Secure Care Facilities in South Africa
Children have the right to education and health care.	<p>1.32 square metres per child for study and also library space,</p> <p>1.72 square metres per child for a medical facility</p>	Standards Department of Social Development (2010) Blue Print, Minimum Norms and Standards for Child Care / Secure Care Facilities in South Africa
Children have the right to respect and human dignity	All matters pertaining to the rights of the child need to be adhered to in the facility in accordance with the norms and standard as set by the Department of Social Development	Standards Department of Social Development (2010) Blue Print, Minimum Norms and Standards for Child Care / Secure Care Facilities in South Africa

Overall, farmworkers living in rural and peri- urban areas are still living under deplorable conditions such as by lack of access to potable water, adequate shelter, and poor health and education facilities. Security of tenure and access to sanitation are tenuous and inhumane. The research required to develop an in depth diversified Policy relating to boarding house conditions for workers in rural areas is urgently needed but has not been undertaken within the limitations imposed upon this project. Consequently, within the boarding house Policy, the following initial basic norms and standards shall be applicable as are shown in Table No 3, although it is understood that this is section of the Policy still needs extensive Local Area Planning, research, and development.

Table No 3: Norms and Standards for Boarding- House regulation in the rural, smallholder ,peri- urban and urban areas where farm workers, grooms-men, domestic workers, blue and white-collar workers are located

Norms	Standards	Source
Boarding-House occupants have the right to a safe living environment	<p>The safety, security and structure of the facility is to be in accordance with the National Building Regulations, Approved Site Development Plan and Building Plan and to the satisfaction of the Chief Planner , Amafa, relevant Infrastructure and Sector Departments Of the Msunduzi Municipality.</p> <p>Occupiers may not be housed in:</p> <ul style="list-style-type: none"> (i) stables, shacks along river beds, within the 50 year flood line, on unstable steep slopes or in any location that poses as danger to the learner; (ii) close to, or adjacent to rural/ peri-urban sewage and waste disposal sites (iii) along busy roads, and within Bottle Stores and Shebeens 	<p>Norm: <i>The South African Constitution Act No. 108 of 1996;</i></p> <p>Standards: National Building Regulations & Building Standards Amendment Act No 49 of 1995, The National Building Regulations (South African National Standard [SANS] 2011, to further promote accessibility for persons with disabilities (Part S: Facilities for persons and any amendments thereto.</p>
Universal Access Design	<p>For each occupant of a bedroom, there must be:</p> <ul style="list-style-type: none"> i) 12 m³ of free air space for each person over the age of 10 years; ii) 6 m³ of free air space for each person under the age of 10 years. iii) Single rooms, accommodating one person is to be no smaller than 8m². iv) Double rooms, accommodating two people, is to be no smaller than 14m². v) Buildings must comply with the following minimum standards for ablution facilities: vi) 1 basin per 4 people, 1 shower cubicle per 7 people, 1 lavatory per 5 people. Shower & lavatory cubicles must be designed for privacy (i.e., no communal showers or toilets), vii) All Social and Recreational facilities and infrastructure is to be in accordance with the National Building Regulations and SANS of 2011. 	<p><i>Department of Education: Regulations relating to Minimum Norms and Standards for Public Infrastructure, 2013, p7;</i></p> <p>Minimum Norms and Standards for Student Housing at Public Universities of 2015, Government Gazette No 897;</p>
Universal Access and Liveable design	<ul style="list-style-type: none"> i) no latrine, passage, staircase, landing, bathroom, cupboard, outbuilding, garage, stable, tent, storeroom, lean -to, shed, kitchen, dining room, food preparation area, cellar or loft may be used as sleeping accommodation; ii) all zones where boarding houses are permissible, except in Special Residential Zones, may have beds in dormitories that accommodate two beds per 14²metres of floor area. iii) an area for the preparation and cooking of food, easily accessible to any occupier residing in the Boarding-House iv) adequate separate wash -up facilities and adequate dining area, with furniture and 1.2 m² for every seat provided for dining purposes; v) showers, and sanitary facilities are to be placed in a separate compartment, which comply with the provisions of the National Building Regulations and SANS of 2011 . vi) all rooms and passages shall be provided with an adequate ventilation and lighting, water provision, and fire extinguishers as prescribed in the National Building Regulations and SANS of 2011 .; vii) a store -room for the storage of furniture and equipment and a 	<p>Standard: <i>Msunduzi Municipal Public Health By-laws of 2015.</i></p> <p>Standards: National Building Regulations & Building Standards Amendment Act No 49 of 1995, The National Building Regulations (South African National Standard [SANS] 2011, to further promote accessibility for persons with disabilities (Part S: Facilities for persons and any amendments thereto.</p>

	<p>separate linen room , shall be provided;</p> <p>viii) all walls and ceilings, floors and facilities shall be clean, provide for employees and manage refuse as prescribed in terms of the <i>Msunduzi Municipal Public Health By-laws of 2015</i>.</p>	
Access to medical care	<p>The accommodation providers must provide for:</p> <ul style="list-style-type: none"> i) adequate provision for access to medical and psychological services to cater for the well-being of workers and residents during work hours, and ii) Emergency support after hours. This includes the provision of a first aid kit and instructions on the use thereof iii) a list of accredited medical service providers. iv) adequate provision for access to medical and psychological services to cater for the well-being of residents during work hours a 	<p>Standards: National Building Regulations & Building Standards Amendment Act No 49 of 1995, The National Building Regulations (South African National Standard [SANS] 2011 (Part S: Facilities for persons and any amendments thereto.</p>
Access to Social and Recreational Facilities	<p>Appropriate Social and Recreational facilities and infrastructure is to be provided in accordance with the National Building Regulations and SANS of 2011</p>	
Access to Municipal services	<p>Appropriate cooking, refuse removal , sanitation facilities and infrastructure is to be provided in accordance with the National Building Regulations and SANS of 2011</p>	

Table No 4: Norms & Standards for Tertiary Student Boarding House regulation located in Urban & Rural Areas

Norms	Standards	Source
Boarding-House occupants have the right to a safe living environment	<ul style="list-style-type: none"> i) The safety, security and structure of the building is to be in accordance with the National Building Regulations. ii) An approved Site Development Plan and to the satisfaction of the Chief Planner and Municipal Manager as defined in this Policy document. iii) Approved building plan as is defined in this Policy document and showing; <ul style="list-style-type: none"> a. the numbers of rooms to be used for family occupation; b. the rooms for tenants occupation; c. number of people per room needs to be limited to one person in a single room of 8² metres and limited to two people in a double room of a minimum size of 14² metres d. other required ablution, social, educational, infrastructure, cooking and dining areas need to be shown in accordance with the National Building Regulations and SANS of 2011. 	<p>Norm: <i>The South African Constitution Act No. 108 of 1996;</i></p> <p>Standards: National Building Regulations & Building Standards Amendment Act No 49 of 1995, The National Building Regulations (South African National Standard [SANS] 2011, to further promote accessibility for persons with disabilities (Part S: Facilities for persons and any amendments thereto.</p>
	<p>Provision for student villages within university grounds is an essential component of this Policy so that</p> <ul style="list-style-type: none"> i. Safe access is secured through fingerprint identity and digital recording of registered and legitimate students as occurs at DUT. ii. sound NASFAS management of funding through private sector agencies for suitability and viability of student village access for the poor and disadvantaged student body iii. Boarding houses off campus dedicated to safe accommodation for women students and workers and catering for the needs of their children in accordance with the Children's Act No 38 of 2005 which stipulates that child's right to a safe living environment and protection from maltreatment, abuse, neglect, degradation, discrimination, exploitation and any other physical, emotional or moral harm or hazards environment iv. the establishment of a high level, Ministerial Management committee comprising the MEC's, The Msunduzi Municipal Manager, Tertiary Institutions Strategic Planning and Finance Office, the Private Sector Student accommodation specialists, designers and implementers, Student Representatives and the Senior Planning and Management team of Msunduzi Municipality in order to Intervene in the student accommodation crisis and: <ul style="list-style-type: none"> — forge a rapid and sustainable solution to its current impasse. — implement state of the art student accommodation villages in Msunduzi that are accessible to all students irrespective of their financial paucity and high levels of distress; and to — implement at least three student villages by the end of November 2018. 	<p><i>Public participation and public sector developers comments</i></p> <p><i>Children's Act No 38 of 2005</i></p> <p><i>Department of Education: Regulations relating to Minimum Norms and Standards for Public Infrastructure, 2013, p7;</i></p> <p><i>Msunduzi Municipal Public Health By-laws of 2015; , Universal Access Policy, Towards a barrier-free Society S.A Human Rights Commission 2002.</i></p> <p>Standards: <i>Msunduzi Municipal Public Health By-laws of 2015;</i></p> <p>Standards: Student Housing at Public Universities of 2015, Government Gazette No 897</p>

<p>Universal Access and Livable design</p>	<p>Single rooms, accommodating one person to be no smaller than 8m² Double rooms, accommodating two people, to be no smaller than 14m². Buildings must comply with the following minimum standards for ablution facilities:</p> <p>a) 1 basin per 4 student residents, 1 shower cubicle per 7 students, 1 lavatory per 5 student residents. shower & lavatory cubicles must be designed for privacy (i.e., no communal showers or toilets)</p> <p>All facilities must comply with the National Building Regulations & Building Standards Amendment Act No 49 of 1995, The National Building Regulations (South African National Standard [SANS] 2011, to further promote accessibility for persons with disabilities (Part S: Facilities for persons with disabilities) and any amendments thereto, , (Source: Universal Access Policy, Towards a Barrier-Free Society , 2002, S.A Human Rights Commission)</p> <p>All room requirements, furniture, study area passages, utility areas, foyer, laundry, ablutions, linen rooms, wardens rooms, repairs and maintenance standards as per Policy on the Minimum Norms and Standards for Student Housing at Public Universities of 2015, Government Gazette No 897 must be adhered to in accordance with this Boarding- House Policy</p>	
<p>Boarding-House occupants and owners have the right sound management, information and human dignity</p>	<p>Sound management of Boarding houses in accordance with this Policy requiring that the owner lives on the property, the submission of signed leases and protocols governing rights and duties of tenants, landlords, workers and neighbors such that:</p> <p>(i) the Amenity of residential areas of the Msunduzi Municipal area of jurisdiction is upheld and improved thus obviating capital flight</p> <p>(ii) That all the noise management tools of this Policy are acted upon by the Municipality who's duty it is to impose fines and stringent control over noise pollution as per this Policy, in terms of the KwaZulu-Natal Noise Control Regulations GR 2544 of 1990 and Section 25 of the Environment Conservation Act No 73 of 1989.</p> <p>(iii) The safety, security and structure of the building is to be in accordance with the National Building Regulations, Rental Housing Amendment Act No. 35 of 2014, Approved Site Development Plan, Amafa, and to the satisfaction of the Chief Town Planner and Municipal Manager.</p> <p>(iv) The securing of a visible sign on the outside of a boarding house or "Digs: that clearly shows:</p> <p>The boarding house owner's name, telephone number, emergency contact details, date of municipal approval, municipal noise control officer's name and emergency telephone number, dates of all municipal and university housing committee inspections per annum. Confirmation that of the maximum of students accommodated in terms of the Site Development Plan, which may not be more than 2 students per room and each room may not be less than 8² metres in size per single room and 14 ² metres per double room.</p>	<p>Norm: <i>The South African Constitution Act No. 108 of 1996;</i></p> <p>Standards: National Building Regulations & Building Standards Amendment Act No 49 of 1995, The National Building Regulations (South African National Standard [SANS] 2011, to further promote accessibility for persons with disabilities (Part S: Facilities for persons and any amendments thereto.</p> <p><i>KwaZulu-Natal Noise Control Regulations GR 2544 of 1990 in terms of Section 25 of the Environment Conservation Act No 73 of 1989</i></p> <p><i>Department of Education: Regulations relating to Minimum Norms and Standards for Public Infrastructure, 2013, p7;</i></p>
<p>Respect for gender, age, cultural diversity, sexual orientation, and people with</p>	<p>Through the use of social media, develop healthy, respectful communication channels that draw people together in order to resolve the student accommodation crisis and build social cohesion and solutions to the rapid decline of the Msunduzi Municipal area of jurisdiction in the wake of the crisis.</p>	<p><i>Children's Act No 38 of 2005</i></p> <p><i>Msunduzi Municipal Public Health By-laws of 2015; , Universal Access Policy, Towards a barrier-</i></p>

disabilities.		<p>free Society S.A Human Rights Commission 2002.</p> <p>Standards: <i>Msunduzi Municipal Public Health By-laws of 2015;</i></p> <p>Standards <i>Research in status quo report and public meeting with stakeholders.</i></p>
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3. NOISE REGULATION

Noise regulation in this by law is strictly in accordance with the KwaZulu-Natal Noise Control Regulations GR 2544 of 1990 in terms of Section 25 of the Environment Conservation Act No 73 of 1989 which specifically addresses noise regulation in the erstwhile "Pietermaritzburg Municipality" in schedule one (1) and is held in full in detail in the Companion document to this By-law.

The Msunduzi accounting officer may at any reasonable time, enter premises, without prior notice:

- (a) to conduct thereon any appropriate examination, enquiry, or inspection it may deem expedient, and
- (b) to take any steps it may deem necessary in order to determine whether a vehicle using any road including a private, provincial or national road crossing in its area of jurisdiction, complies with the provisions of these regulations;
- (c) instruct the owner or person in control of the vehicle to have any appropriate inspection or test deemed necessary by the local authority conducted on the vehicle on a date and at a time and place determined in writing by the local authority; to stop the vehicle or cause it to be stopped;
- (d) if a noise emanating from a building, and animal, premises, a vehicle, recreational vehicle or street is a disturbing noise/or noise nuisance;
 - i) instruct in writing the person who causes such noise or is responsible therefore, or the owner or occupant of the building, premises, vehicle, recreational vehicle or street whence such noise emanates or may emanate, or all those persons, to discontinue the noise or cause it to be discontinued within the period stipulated in the instruction;
 - ii) provided that the provisions of this paragraph shall not apply in respect of a disturbing noise or noise nuisance caused by rail vehicles or air traffic or by vehicles that are not used as recreational vehicles on a public road;
- (e) before changes are made to existing facilities, or existing uses of land or buildings, or before new buildings are erected, in writing require that noise impact assessments or tests be conducted to the satisfaction of the local authority by the owner, developer, tenant or occupant of the facilities, land or buildings;
- (f) that reports or certificates relating to the noise impact be submitted to the local authority, to the satisfaction of the local authority, by the owner, developer, tenant or occupant; and
- (g) if excavation, earthmoving, pumping, drilling, construction or demolition work or any similar activity, power generation or music causes or may cause a noise nuisance or a disturbing noise, instruct in writing that such work, activity, generation or music be forthwith discontinued until any conditions deemed necessary by the local authority have been complied with.

3.1 Animal noise

If the owner or person in charge of an animal fails to comply with an instruction referred to in paragraph (d), subject to the applicable provisions of any other law, impound such animal or cause it to be impounded.

3.2 General Prohibition

No person shall:

- (a) establish a new township unless the lay-out plans concerned that are required by the local authority indicate, in accordance with the specifications of the local authority, the existing and future sources of noise, with concomitant dBA values, which are foreseen in the township for a period of 15 years following the date on which the erection of the buildings in and around the township commences;
- (b) erect educational, residential, hospital, church or office buildings in an existing township, unless acoustic screening measures have been provided in the buildings to limit the reading on an integrating impulse sound level meter, measured inside the buildings after completion, to 40 dBA; provided that any air-conditioning or ventilating system shall be switched off during the course of the noise measurement;
- (c) make changes to existing facilities or existing uses of land or buildings or erect new buildings, if these will house or cause activities that will after such changes or erection, cause a disturbing noise;
- (d) unless precautionary measures to prevent the disturbing noise have been taken to the satisfaction of the local authority;
- (e) build a road or change an existing road, or alter the speed limit on a road, if this will cause an increase in noise in or near residential areas or offices, churches, hospitals or educational buildings, unless the need for noise control measures has been properly determined by the local authority in consultation with the road authority concerned to ensure that the land in the vicinity of that road will not be designated as a controlled area;
- (f) site educational, residential, hospital or church even within a controlled area in a new township: provided that such siting may be allowed by the local authority concerned in accordance with the acoustic screening measures mentioned by that local authority in the approved building plans;
- (g) fail to comply with a written condition, instruction, notice, requirement or demand issued by a local authority in terms of these regulations;
- (h) stage an open-air music festival or similar gathering, without the prior written consent of a local authority;
- (i) drive a vehicle, or allow it to be driven, on a public road, if the sound level at the measuring point, measured in accordance with the procedure prescribed in SABS 0181, exceeds:
 - i) in the case of a non-exempted vehicle, the sound level specified in Table I of SABS 0281 for that type of vehicle;
 - ii) in the case of an exempted vehicle, the applicable reference sound level reflected in the tables of Annexure A to SABS 0281 for that type of vehicle, by more than 5 dBA; and,
 - iii) provided that the provisions of this paragraph shall not apply in respect of a disturbing noise or noise nuisance caused by vehicles that break down en route
- (j) tamper with, remove, put out of action, damage or impair functioning of a noise monitoring system, noise limiter, noise measuring instrument, acoustic device, road traffic sign or notice placed in a particular position by or on behalf of a local authority;
- (k) for the purposes of these regulations, in respect of a duly authorised employee of a local authority fail or refuse to allow the employee to enter and inspect premises;
- (l) fail or refuse to give information that the employee may lawfully require of him or her; and,
- (m) not to hinder or obstruct, or lie to the employee in the execution of his or her duties: or to give false or misleading information to such employee.

3.3 Prohibition of Disturbing Noise

- (a) No person shall make, produce or cause a disturbing noise, or allow it to be made, produced or caused by any person, animal, machine, device or apparatus or any combination thereof.

3.4 Prohibition of noise nuisance

No person shall:

- (a) operate or play a radio, television, drum, musical instrument, sound amplifier, loud speaker system or similar device that produces, reproduces or amplifies sound, or allow it to be operated or played so as to cause a noise nuisance;
- (b) offer any article for sale by shouting, ringing a bell or making other sounds or by allowing shouting, the ringing of a bell or the making of other sounds in a manner which may cause a noise nuisance;
- (c) as the-owner or person in control of an animal, allow it to cause a noise nuisance;
- (d) build, make, construct, repair, rebuild modify, operate or test a vehicle, vessel, aircraft or object on near residential premises, or allow it to be built, made, constructed, repaired, rebuilt, modified, operated or tested there, if this may cause a noise nuisance;
- (e) erect a building or structure on residential premises or allow it to be erected there if this may cause a noise nuisance;
- (f) use or discharge any explosive, firearm, or similar device that emits an impulsive sound and may cause a noise nuisance, or allow it to be used or discharged, except with the prior consent in writing of the local authority concerned and subject to such conditions as the local authority may deem necessary;
- (g) on-a piece of land or on water or in airspace on or above that piece of land designated by a local "authority by means of a notice in the press;
- (h) move about on or in a recreational vehicle;
- (i) exercise control over a recreational vehicle, or
- (j) as the owner or person in control of the piece of land, water or airspace, allow such activity to take place, if this may cause a noise nuisance;
- (k) except in an emergency emit a sound, or allow a sound to be emitted, by means of a bell, carillon, siren, hooter, static alarm, whistle, loud-speaker or similar device, if it may cause a noise nuisance;
- (l) operate any machinery, saw, sander, drill, grinder, lawnmower, power garden tool or similar device or allow it to be operated, if it may cause a noise nuisance;
- (m) load, unload, open, shut or in any other way handle a crate, box, container, building material, rubbish container or any other article; or allow it to be loaded, unloaded, opened, shut or handled, if this may cause a noise nuisance: or
- (n) drive a vehicle on a public road in such a manner that it may cause a noise nuisance: or
- (o) use any power tool or power equipment used for construction work, drilling work or demolition work, or allow it to be used in or near a residential area if it may cause a noise nuisance.
- (p) Use of measuring instruments shall be in accordance with the Noise Control Regulations GR 2544 of 1990 in terms of Section 25 of the Environment Conservation Act No 73. 1989.

3.5 Exemptions

The provisions of these regulations shall not apply:

- (a) if the emission of sound is necessary for the purpose of warning people of a dangerous situation, or
- (b) the emission of sound takes place during an emergency;
- (c) any person may by means of a written application, in which the reasons are given in full, apply to the local authority concerned for exemption from any provision of these regulations;
- (d) an exemption shall be granted in writing by a local authority, and the conditions under which and the period for which the exemption is granted shall be stipulated in the exemption;
- (e) an exemption shall not take effect before the applicant has undertaken in writing to comply with all conditions imposed by a local authority under sub regulation provided that:
 - i) if activities commence before the undertaking has been submitted to the local authority concerned, the exemption shall lapse;
- (f) if any condition of exemption is not complied with the exemption shall lapse forthwith.

3.6 Attachment

- (a) A vehicle attached shall be kept in safe custody by a local authority;
- (b) A local authority may lift the attachment if the owner or Person in control of the vehicle concerned has been instructed in writing by the local authority;
- (c) to repair or modify the vehicle concerned or to cause it to be repaired or to be modified; and
- (d) to have any inspection or test deemed necessary by the local authority conducted on the vehicle on a date and at a time and place mentioned in the instruction.

3.7 Penalties

- (a) Any person who contravenes or fails to comply with a provisions of the noise regulations shall be guilty of an offence and liable on conviction to a fine not exceeding R20 000 or imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.
- (b) In the event of a continuing contravention, a fine not exceeding R250 or imprisonment for a period not exceeding twenty days, or to both such fine and such imprisonment for each day on which such contravention occurs, shall be applied.

4. PLANNING CRITERIA AND CONDITIONS OF APPROVAL

4.1 Boarding House in a “Special Residential Zone”

- (a) **Who may operate a Boarding House in a Special Residential Zone:** The Boarding House shall be conducted by the owner of the property who shall be resident therein, within the “Special Residential Zone”. The use shall be limited to being conducted by the applicant, who is the owner of the property and who shall reside on the property as his / her primary residence together with his / her family such as it may consist of from time to time. (Source: Town Planning Appeals Board Ruling on APPEAL NO. 3350 relating to 1 Oban Drive, Scottsville)
- (b) **The Municipal Consent** is attached to the owner and shall not be transferred.
- (c) **Area of operation** as set out in the Town Planning Scheme and this Policy, the regulations for the operation of the Boarding House are specified in accordance with the FAR and Coverage, of the Scheme, the Site Development Plan, the Policy requirements and the Norms and Standards as stipulated in this Policy in Tables 1-4 of section two (2) of this Policy.
- (d) **Demand on services:** The establishment shall not impose a greater load on any public utility service than that which is ordinarily required by other uses permitted in the area in which the activity or use is situated.

4.2 Parking:

- (a) Shall be limited to providing vehicular parking within the boundaries of the site on the basis of one parking bay per tenant's room and be in accordance with the applicable Town Planning Scheme parking regulations. .
- (b) Not require the regular parking of vehicles with a tare mass exceeding 2 000kg, on or adjacent to the site.
- (c) Parking for tertiary student accommodation can be waived at the discretion of the Chief Town Planner, if the tenants do not own motor vehicles.

4.3 Signage

Is required to be placed on the building such that it is visible to neighbors at all times and is limited to the erection of a sign which shall:-

- (a) Not be larger than 600mm x 450mm.

- (b) Be in compliance with the Signs By-laws.
- (c) Be placed either on the wall of a Building within the site or on the boundary wall or fence adjacent to the entrance to a site, and
- (d) Be of material and style which shall complement the character of the dwelling and shall entail all information as stipulated in the norms and standards section of this Policy.

4.4 Health Requirements

Be operated in accordance with all relevant Council By-laws and other Legislation, which shall include:

- (a) Registration of the premises in terms of the Regulations Governing General Hygiene Requirements for Food Premises under Government Notice No. R918 (1999).

4.5 Compliance and Illegal operation

- (a) Compliance with the provisions of the Noise Regulations R2544 under the Environment Conservation Act, 1989 as detailed within this Policy.
- (b) Compliance with the all applications and Development Plan conditions of this Policy.
- (c) All illegally operating boarding houses will be subject to a fine as determined from time to time by the Municipality.

4.6 Grounds for Reviewing a Decision

Should the operation result 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 license conditions, the approval will be withdrawn.

4.7 Compliance and Illegal operation

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. All illegally established Boarding Houses will be subject to a fine as set in accordance with the Municipal fines and tariffs criteria.

4.8 Operations Ceased

Applicants who have ceased the operation of the business must inform the municipality in writing.

4.9 Liquor Use

No sale of liquor shall be permitted on site.

4.10 Number of Rooms

- (a) Shall be in accordance with the requirements of the relevant schemes and the approved Site Development Plan as per Municipal Planning specifications and the norms and standards stipulated in the Policy

4.11 Building Regulations

- (a) A Boarding-House may only be operated from a structure approved in terms of the National Building Regulations and Building Standards Act.
- (b) May not impose a greater load on any public utility service than that which is ordinarily required by other uses permitted in the area in which the activity or use is situated.
- (a) May not interfere with the amenity of the surrounding area.

4.12 Nuisance

- (a) No activities which may cause a nuisance or disturbance to the residents in other neighbouring residences are permitted.

5. APPLICATION PROCEDURES

Application procedures shall be in accordance with the SPLUMA process as shown in **Annexure B**.

6. THE PLANNING PROCESS AND TIMEFRAMES

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

7. SCOPE AND APPLICATION OF POLICY

7.1 Area of application

This Policy is to guide the effective and responsible use of Boarding Houses in Msunduzi Municipality. When adopted, this Policy will apply to the whole area of jurisdiction of Msunduzi, including all areas outside of schemes at present.

7.2 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.

8. SCHEME IMPLICATIONS

The revision of the Policy has identified the need to amend the two Town Planning Schemes currently operative within Msunduzi, namely, the Pietermaritzburg and Ashburton Town Planning Schemes. Recommended amendments are held in **Annexure C**.

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. Consequently, it is recommended at the Scheme amendments recommended by undertaken as soon as possible.

9.2 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.

9.3 Existing Policy repealed

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

10. LAW ENFORCEMENT

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.

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.

What is strictly prohibited in this Policy is the non-compliance with legislation. Offenders are subject to fines and closure and they may not continue the illegal activities whilst they make the necessary applications to legalise their activities. Applications can take a long time to process and the general public will suffer the consequences if illegal and uncontrolled activities are allowed to continue. Affected persons are known to be subjected to intimidation by offenders, making evidence needed for prosecutions more difficult to elicit. www.dsd.gov.za

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ANNEXURE A: ADOPTION RESOLUTION

ANNEXURE B: MUNICIPAL BY-LAW APPLICATION PROCESS

Schedule 4: Section 2: Preparing and application

2.(2) A consent application must be made by an appropriately qualified person as per subsection 1 or a person working under the guidance of an appropriately qualified person.



Pre-application procedure

- 3.(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.
4. 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 5: Application requirements

- (a) an application form;
- (b) a written 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) Not applicable
- (i) the proposed property descriptions
- (i) any other plans, diagrams, documents, ESRI Shapefiles, information or fees that the Municipal Planning Registrar may require.



Section 5(2) Lodging of the application

5(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.

In terms of item 7(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 11. 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 must be followed.

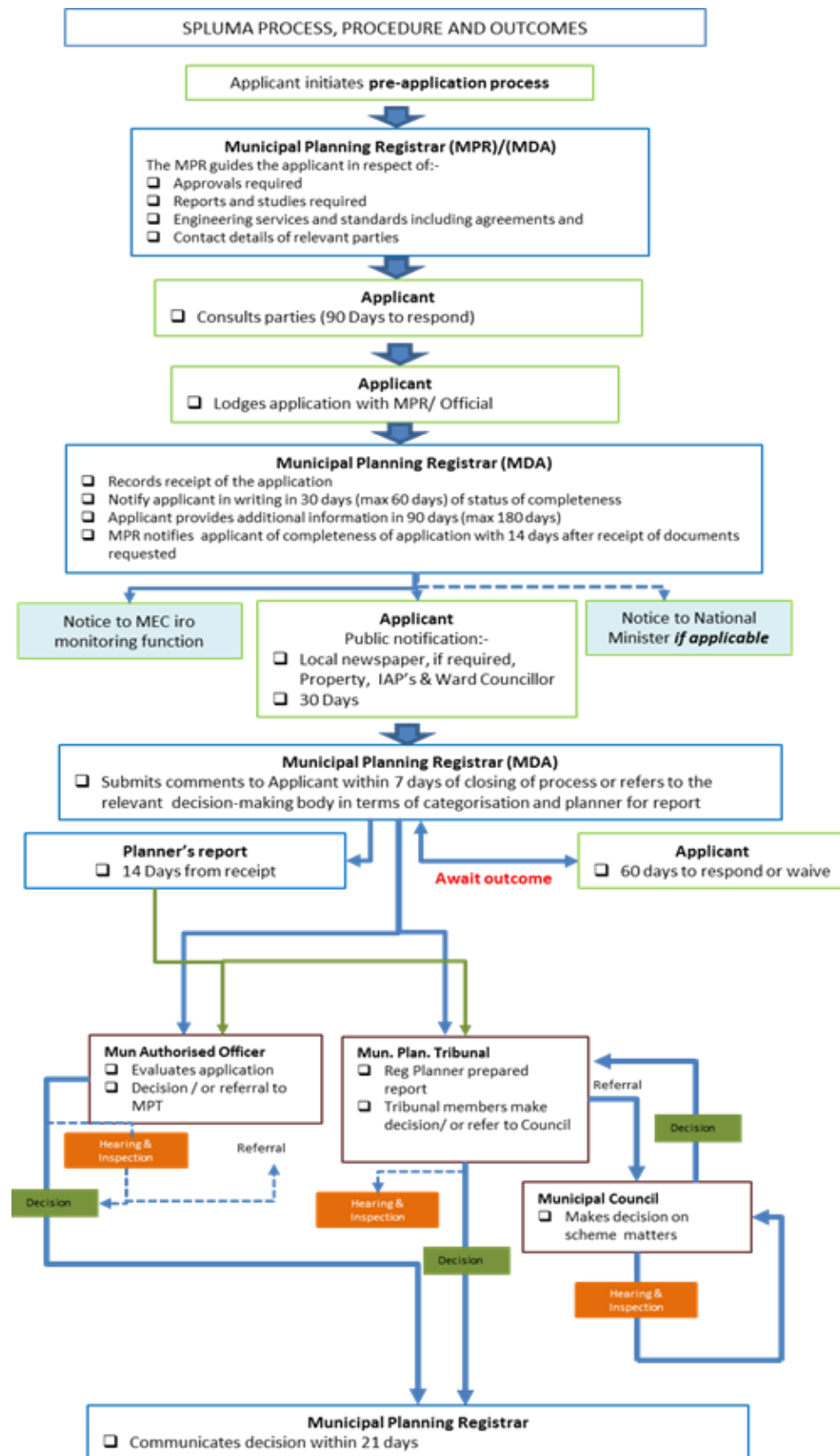
The closing date for the submission of comments may not be less than 30 days from the date of notice.



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.

ANNEXURE C: PLANNING PROCESS AND TIME FRAMES



ANNEXURE D: EXTRACT FROM THE SPACE PLANNING NORMS AND STANDARDS FOR PUBLIC SCHOOLS, 2014:5, 2.1 (KWAZULU-NATAL DEPARTMENT OF EDUCATION)

“2.1 Structure of South African Schools

The diagram below indicates the structure of South African schools. There are two bands within the schooling systems, namely:

General Education and Training band

- Foundation phase (Grades R – 3)
- Intermediate phase (Grades 4 – 6)
- Senior phase (Grades 7 – 9)

Further Education and Training band

- FET phase (Grades 10 – 12)

For the purpose of this document, these phases have been separated into two commonly used groups – the primary schools (i.e. Grades R – 7) and secondary schools (i.e. Grade 8 to 12), as per the Regulations Relating to Minimum Norms and Standards for Public School Infrastructure

Age (yrs)	6	7	8	9	10	11	12	13	14	15	16	17	18
Grade	R	1	2	3	4	5	6	7	8	9	10	11	12
Phase	Foundation												
					Intermediate								
								Senior					
											FET		
Band	GET Band										FET		
School	PRIMARY								SECONDARY				

ANNEXURE E: PROPOSED SCHEME AMENDMENTS

Proposed scheme amendments

The current Pietermaritzburg and Asburton Town Planning Schemes used to guide development in Msunduzi require significant updating. This is particularly as a consequence of the implementation of the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013) and the associated promulgation of the Municipal Spatial Planning and Land Use Management by-Law of 2016.

Much of the existing schemes are closely linked to Municipal Consent procedures as contained in the Town Planning Ordinance, 1949 (Ordinance No. 27 of 1949) (TPO), but with the advent of SPLUMA, the ordinance has lapsed and new processes and requirements have been brought into operation.

The current schemes therefore need to be amended to:

- i) Encompass the new planning agenda and Zoning processes that are different in kind to those of the Ordinance era. .
- ii) The definitions in the schemes are outdated and need to be substantially revised in accordance with SPLUMA, norms and standards and the Boarding House Policy definitions.
- iii) There are some fundamental errors in both schemes relating to definitions and their application that need urgent attention

Recommended interventions

The following interventions are recommended: -

- i) Augmenting the current enforcement capacity and associated system of the municipality to effectively enforce and regulate its policies and Scheme.
- ii) There are considerable differences in the tone, manner and levels of technical accuracy in which the two existing schemes operate. This this could expose the municipality to various forms of litigation processes. Consequently the in depth consolidation of the two Schemes is required as a matter of urgency.
- iii) The development of wall-to-wall schemes is required
- iv) The diversification of the Boarding House Policy is urgently required for effective regulation of areas outside of the scheme
- v) SPLUMA calls for a discretionary form of innovative planning in order to stimulate competitive advantage in this era of austerity. The current schemes is at odds with this approach and is hence hampering sound economic development.

ANNEXURE F: SPECIFIC MATTERS THAT REQUIRE ATTENTION

Specific matters which require attention

The following matters requiring attention were identified.

1. Enforcement

The main issue raised by both owners and the community members was enforcement. A number of operators questioned the lack of enforcement against illegal operators. A similar request was made at the public meetings on 16 July 2016 and 27 August 2017. It is recommended that the municipality gives specific attention to the enhancement of its enforcement capacity. As mentioned in the Boarding House and Student accommodation status quo report, consideration should also be given to building on the ratepayers association through the formation of a formal, municipal funded monitoring and management group that are delegated in accordance with the Noise Control Regulations of 1990, in terms of Section 25 of the Environment Conservation Act No 73 of 1989. In accordance with this legislation, a delegated representative of the Municipality can enter premises, investigate noise pollution, and issue a notice prohibiting such a pollution. The penalty for noise pollution is severe and will soon restrict such activity.

3 Application costs

Stakeholders have questioned the fact that planning levies paid during application processes are high. Therefore it is suggested that the municipal application costs and advertising cost be re-considered.

1. Planning Tribunal Procedures

There is considerable stakeholder discontent regarding the procedural processes within planning tribunals and appeals processes. In accordance with this Policy and the legal framework underpinning the planning application and appeals processes, all decisions, including tribunal processes are subject to compliance with the following:

- (a) 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) in terms of which everyone in South Africa is accorded 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; and
- (b) an **“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. Consequently, the inalienable right to be treated with Dignity, to Administrative Justice, to Freedom from Discrimination of any kind and to Universal Access, with no exceptions, is strictly required in terms of this Policy.

4. Capital Flight or Competitive Advantage

The Msunduzi Municipal area of jurisdiction has been facing an accommodation crisis of monumental proportion for some time now. Strong and decisive leadership is required in order to address this impasse and the capital flight that is already underway in the wake of this crisis. Amending and consolidating the Schemes and the application of this Policy will form part of the solution to the crisis, however, area specific, Local Area Planning is urgently needed in order to augment the Policy and to manage the crisis instead of adopting a litigation, command and control approach. SPLUMA offers the Municipality a unique opportunity to address its distorted and spatially unsustainable regulatory system and the high demand for accommodation. It is therefore essential that the “wall-to-wall” scheme development, Specific Local Area Planning, and development interventions are initiated as soon as is possible in order to:

- (a) facilitate appropriate land allocation for accommodation development and development rights;
- (b) initiate new management protocols and innovative zoning mechanisms ;
- (c) address the demand for accommodation appropriately;
- (d) facilitate competitive advantage in the accommodation sphere; and
- (e) stimulate appropriate supply of land and incentives in order to address the existing demand for appropriate accommodation for students, learners, vulnerable people and children, workers, and farm labourers, in accordance with this Policy.