

MSUNDUZI MUNICIPALITY



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The Msunduzi Municipality

TAVERN POLICY

2017

Adopted in terms of the Application Procedures, Principles, Norms and Standards and Spatial Planning requirements of the Spatial Planning and Land Use Management Act No 16 of 2013, the KwaZulu-Natal Planning and Development Act No 6 of 2008 and the Msunduzi Spatial Planning and Land Use Management By-Law, adopted 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 Planning and Land Use Management Act No 16 of 2013, the KwaZulu-Natal Planning and Development Act No 6 of 2008 and the Msunduzi Spatial Planning and Land Use Management By-Law, adopted 15 September 2016, to:

*Adopt the
“Msunduzi Municipal Tavern Policy”*

Name and Signature:

Name and Signature:

.....

.....

CITY MANAGER

CHAIRMAN OF THE EXECUTIVE COMMITTEE

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1. INTRODUCTION

1.1 Purpose of this Policy

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

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

1.2 Principles, Norms and the Implementation of the Policy

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

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

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

The implementation of the policy must give effect to:

- (a) Section 156(1) of the South African Constitution (Act No. 108 of 1996, hereafter, the Constitution) in accordance with Schedules 4B and 5B, since local municipalities are responsible for municipal planning, land management, child care, health and building regulations.
- (b) Section 24 and Section 156(1) of the Constitution entrenching the rights of tenants and all residents of the Msunduzi Municipal area to “an environment that is not harmful” and the right of all “to choose their trade, occupation, or profession freely” in a manner which is regulated in terms of the law and municipal planning.
- (c) The Promotion of Administrative Justice (Act No 3 of 2000, PAJA) in accordance with Section 33 of the Constitution and the Intergovernmental Relations Framework (Act No 13 of 2005, IGRA) accords everyone in South Africa the right to administrative action which is lawful, procedurally fair, just and accountable. This right includes the right to the provision of written reasons for infringements of PAJA and the imperatives of good governance and efficient administration of municipal responsibilities in accordance with this policy.

(d) The policy must comply with:

- i. the town planning imperatives, principles and regulations stemming from the Spatial Planning and Land Use Management Act (Act No.16 of 2013, SPLUMA), the Msunduzi SPLUMA By-Law of 15 September 2016, Msunduzi Town Planning Schemes and their subsequent amendments;
- ii. the minimum norms and standards that may be prescribed in terms of Chapter 2 of SPLUMA, the KwaZulu-Natal Planning and Development Act (Act No. 6 of 2008) and the Msunduzi Spatial Planning and Land Use Management By-Law;
- iii. policy and legislation addressing universal access;
- iv. integrated development planning, spatial frameworks, capital investment plans and local development plans, and policy governing bed and breakfasts and the right to environments that are not harmful to any person, fauna or flora including students, work seekers, tenants, homeowners, learners, residents, visitors or any other person within the Msunduzi Municipal area of jurisdiction; and
- v. is consistent with other applicable legislation.

1.3 Scope and Review

The scope of this policy encompasses the **entire wall-to-wall Msunduzi Municipal area of jurisdiction**, including all areas outside of 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.

The accounting officer must:

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

- (a) are aligned with Planning and Scheme amendments;
- (b) be submitted timeously for budget allocations in accordance with the Msunduzi Service Delivery Budget Implementation Plan (SDBIP);
- (c) comply with the all applicable legislation, policy, plans and regulations;
- (d) are effected in accordance with the required transparent public participation processes in Chapter 4 and 5 of the Local Government Municipal System Act (Act No.13 of 2000 as Amended in 2002 and 2004 -MSA); and
- (e) ensure that the performance plans of line function managers and their staff are in compliance with the requirements of the Municipal Performance Management System with regard to the monitoring, evaluation and strict regulation of Tavern developments as is required in Section 38 of the MSA and the Msunduzi SPLUMA By-Law of 15 September 2016 and this Tavern Policy.

1.4 Application procedures, norms and standards

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

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

- (a) the consent process in terms of Section 46 (c) of SPLUMA which regulates applications in accordance with the adopted Msunduzi Spatial Planning and Land Use Management Act (SPLUMA) By-Law in respect of land development in either the Pietermaritzburg or Ashburton Town Planning Scheme areas or Schedule 3 of the SPLUM By-Law in respect of land within the municipality, but outside either of these two scheme controlled areas;
- (b) the registered Town and Regional Planner and or delegated committee, considers the application for procedural and substantive¹ compliance with Section 46(c) of Schedule 3, the normative substance of the Msunduzi SPLUMA By-Law as well as the procedural elements² of SPLUMA;
- (c) taverns are only permissible through Consent based applications in the Ashburton Scheme in the Commercial Zone;
- (d) taverns are only permissible through Consent based applications in the Pietermaritzburg Scheme in all zones as per section 3 below; and,
- (e) taverns are only permissible through Consent based applications in the Msunduzi areas outside of the Schemes through a process of discretionary planning consideration. Schedule 3 of the SPLUMA By-Law allows for development outside of the scheme, and defines a Tavern as a permissible land use right in Schedule 3 for areas outside of Schemes, subject to the requirements of the scheme and the By-Law. Consequently, until such time as a wall-to-wall Scheme is developed or the SPLUMA By-Law is amended to accommodate Taverns, discretionary planning is required. The municipal planning team calls for a Site Development Plan and a motivation from the applicant proving the desirability, market demand for the development in the said location. Where the demand is established, floatation and incentive zoning is recommended in accordance with the imperatives of the new generation SDF's as called for in SPLUMA.

2. DEFINITIONS AND INTERPRETATION

2.1 Background

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

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

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

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

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

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

2.2 Scheme and other relevant definitions

The policy relates to development in the Pietermaritzburg and Ashburton Town Planning scheme areas. Consequently, land development in either of these schemes will be subject to the relevant scheme definitions and provisions. Land development outside these schemes will be subject to schedule 3 of the Spatial Planning and Land Use Management By-Laws.

The scheme clauses in respect of the two schemes differ and therefore the relevant scheme clauses are captured separately. In addition the common definitions are indicated accordingly.

2.2.1 Pietermaritzburg Scheme Clauses of 2015 (Hereafter PMB Scheme)

“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 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 Consent of the Council and shall include not more than one (1) kitchen, which may be in addition to the allowable number habitable rooms; and
- (c) comply with all accommodation the norms and standards as shown in Tables 2,3,and 4, section 2 of the Msunduzi Boarding House Policy.

“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.

“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 8 square 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 8 square metres 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 60 square metres, whichever is the lessor, save with the Municipal Consent.
- (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.

“Place of Public Entertainment” means any of the places where members of the public have access to a theatre, cinema, music hall or concert hall, a dance hall, **tavern**, night club, bar premises licensed to sell on-site consumption of liquor; and may provide eating facilities.

“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, may be leased for accommodation purposes in accordance with the Msunduzi Boarding House Policy of 2017
- (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.

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

“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 Municipal 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 Municipal 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 8 square metres, with 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 8 square metres 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 60 square metres, whichever is the lessor, save with the Municipal Consent.
- (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.

“Public House” means a Building or portion of a Building designed and used primarily **for the sale of alcoholic beverages for consumption on the premises.**

“Coverage”: means the proportion of an Erf covered by buildings with an impermeable roof, as seen vertically from the air but measured from the 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 only one quarter of the Erf may be covered by buildings.

2.2.3 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)

"**Tavern**" means a building that is used for the sale of alcoholic beverages to be consumed on the premises and "bar" and "pub" have a corresponding meaning.

2.2.4 Non-Scheme related definitions required for policy coherence

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

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

"**Amenity**" means those qualities or conditions in an area, which may be:

- (i) a locality,
- (ii) a precinct,
- (iii) a district, or
- (iv) 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. 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)

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

"**Coverage**": means the proportion of an Erf covered by buildings with an impermeable roof, as seen vertically from the air but measured from the 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 only one quarter of the Erf may be covered.

"**Existing use rights**": means any existing building or existing use which is not in conformity with this Policy or amended Schemes, but for which legal authority was obtained from the Municipality prior to 15 September 2016, being the adoption of the Msunduzi SPLUMA By-Law and/ or prior to the adoption date of this Tavern Policy and which is currently used for the purpose for which it was designed and/or was completed legally and so used after the said adoption dates may continue to be so used, subject to compliance with any conditions which may have been imposed by the Municipality in the application process, and provided that:

- (a) any alteration or addition or change of use which in the opinion of the Municipality alters the character of an existing building or use of land, shall automatically remove such building or land from the category of building or existing use;
- (b) where the free entry uses, written authority or Municipal Consent of the Municipality has previously been obtained for a specific development, the approval is deemed to be valid, provided that the general and other specific requirements of the scheme for that zone at the time of approval are observed;
- (c) any subsequent alterations, additions or extensions to any building or additional uses within the building will be subject to the submission of a new Site Development Plan and a Building Plan that are in accordance with this policy, its amendments, Scheme and Building regulations operative at the time of application;
- (d) provided further that if, in the opinion of the Municipality, the character of the area will change as a result of any such alterations, additions or extensions, the Municipality shall require the applicant to apply for such authority or Municipal Consent, as the case may be; and
- (e) where the non-conforming existing use of any building or land is discontinued for a continuous period of 18 months or longer, such an existing use shall be deemed to have lapsed and shall not be recommenced.

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

“Floor Area”: means, “the sum of the areas of the building on each floor level, and including wall thickness but excluding:

- (a) any basement used exclusively for the parking of motor vehicles, service installations and storage;
- (b) garages, canopies 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 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”: The length of the boundary of an Erf which fronts onto an existing or proposed road.

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

“Inclusion” is a universal human right and aims at embracing the diversity of all people irrespective of race, gender, disability or any other differences. It is about equal access, opportunities, eliminating discrimination, and intolerance for all. It is about a sense of belonging: feeling respected, valued for who you are; feeling a level of

supportive energy and commitment from others so that you can best fully participate in society with no restrictions or limitations. Inclusion implies a change from an 'individual change model' to a 'system change model' that emphasises that society has to change to accommodate diversity, i.e. to accommodate all people. This involves a paradigm shift away from the specialness' of people to the nature of society and its ability to respond to a wide range of individual differences and needs. Inclusion is the ultimate objective of mainstreaming. White Paper on the Rights of Persons with Disabilities, South African Office of the Deputy President, 2015: 9).

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

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

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

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

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

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

"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 these By-Law or a service provider fulfilling a responsibility under these By-Law, assigned to it in terms of Section 81 (2) of the Local Government: Municipal Systems Act (Act No 32 of 2000), or any other law, as the case may be.

"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)

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

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

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

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

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

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

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

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

- (a) in respect of Sites within Density Zones allowing 20 units/ha and more, comprise domestic garages for not more than two (2) motor cars and servant's room with toilet and bathroom facilities and with the Municipal Consent of the Council, other domestic rooms;
- (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) servant's rooms with toilet and bathroom facilities and with Municipal Consent of the Council, other domestic rooms.
- (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 of the Council.
- (d) provided further that, if the owners of the properties adjoining the Site in question, as well as any other owners whom the Council may determine, give their consent in writing to such Outbuilding, the Council may waive the Municipal Consent Procedure.

"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.

“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.

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

"Premises" means:

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

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

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

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

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

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

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

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

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

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

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

- (a) the unit shall be for the accommodation of not more than 2 persons who shall be aged parents of the owner or, in exceptional circumstances satisfactory to the Council, other members of the owner's family;
- (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 Municipal Consent of the Council. 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 Municipal Consent procedure.

“Shebeen” an unlicensed outlet, either for the on and/or off consumption/sale of liquor in accordance with:

- (a) obtaining liquor license; and
- (b) adhering to the age restrictions applicable to trading.

“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.

"Tavern" means any residentially zoned premises where liquor is sold for consumption on the premises, and where food may be provided incidentally thereto;

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

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

3. 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. In terms of the Pietermaritzburg scheme, "Taverns" are included under the definition of **"Place of Public Entertainment"**. Table 1 shows the expressly permitted development and Municipal Consent rights in fourteen (12) zones where Taverns (Place of Public Entertainment) can be developed in accordance Pietermaritzburg Town Planning Scheme of 2016.

As is shown in Table 1, ten (10) zones and nine (9) special areas in the Pietermaritzburg Scheme require applicants to apply for "Municipal Consent" to open a Tavern within the Pietermaritzburg Town Planning Scheme Area. Seven (7) Special Business Zones expressly permit "Place of Public Entertainment" and by implication "Taverns". In respect of the "Municipal Consent" zones, the Municipal planning officials and the interested and affected public can check the applications for compliance with the Tavern Policy and Scheme regulations and recommend approval if it is compliant or recommend that the application be turned down if it is not compliant. Interested and affected parties can also object to the application based on amenity, procedural, substantive, or normative flaws within the application. In addition, the Municipal Consent accorded can be withdrawn if the policy and scheme regulations are not adhered to. "Municipal Consent" should only be granted if the character of the area and the amenity of the area is not adversely affected by the establishment of Taverns.

Table 1: Pietermaritzburg Town Planning Scheme Zones that allow Taverns by Municipal Consent & Free Entry Usage

PIETERMARITZBURG TOWN PLANNING SCHEME ZONES THAT ALLOW TAVERNS DEVELOPMENT BY MUNICIPAL CONSENT & FREE ENTRY USAGE		
Town Planning Scheme Zones	Kind of Application Required	TAVERN POLICY: APPLICATIONS COMPLIANCE CHECK

1	Limited Business Zone	Municipal Consent	Application based policy compliance check
2	General Zone	Municipal Consent	Application based policy compliance check
3	General Business Zone	Municipal Consent	Application based policy compliance check
4	City Centre Zone	Municipal Consent	Application based policy compliance check
5	Civic Centre Sub Zone	Municipal Consent	Application based policy compliance check
6	Light Industrial Zone	Municipal Consent	Application based policy compliance check
7	General Industrial Zone	Municipal Consent	Application based policy compliance check
8	Car Park Zone	Municipal Consent	Application based policy compliance check
9	Religious purposes/Public Worship Zone	Municipal Consent	Application based policy compliance check
10	Educational Zone	Municipal Consent	Application based policy compliance check
11	Special Area 2,3,7,26,29,30,31,37,42	Municipal Consent	Application based policy compliance check
12	Special Business Zone Area 2,5,6,7,11,13,18	Expressly permitted	Application based policy compliance check

The final zone in Table 1 provides for where Taverns are “expressly permitted” or are “free entry zones”.

In the Ashburton Scheme, Municipal Consent applications for Taverns are required when the property is located in the “Commercial Zone”. Taverns are not expressly permitted in terms of the Ashburton scheme.

Table 2: Ashburton Town Planning Scheme Zones that allow Taverns by Municipal Consent and Free Entry Usage

TABLE NO 2: ASHBURTON TOWN PLANNING SCHEME ZONES THAT ALLOW TAVERN DEVELOPMENT BY MUNICIPAL CONSENT & FREE ENTRY USAGE			
	Town Planning Scheme Zones	Kind of Application Required	TAVERN POLICY: APPLICATIONS COMPLIANCE CHECK
1	Commercial Zone	Municipal Consent	Application based policy compliance check

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

- i. the Msunduzi SPLUMA By-Law which allows for development in areas outside of the Scheme, does define Taverns as a permissible land use right in Schedule 3 for areas outside of Schemes. Consequently, until such time as a wall-to-wall Scheme is developed or the SPLUMA By-Law is amended to accommodate Taverns, discretionary planning is required;
- ii. the municipal planning team calls for a Site Development Plan as defined in this policy and a Planning Motivation from the applicant proving evidence for desirability, market demand and sustainability of the proposed development in the said location.

4. THE LEGAL AND CONTEXTUAL FRAMEWORK

4.1 Liquor Legislation

The following liquor legislation is applicable to this policy:

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

Figure 1 below depicts the Liquor Legislation Framework in South Africa.

4.2 Legal and Institutional Framework

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

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

Figure 1: Liquor Legislation Framework

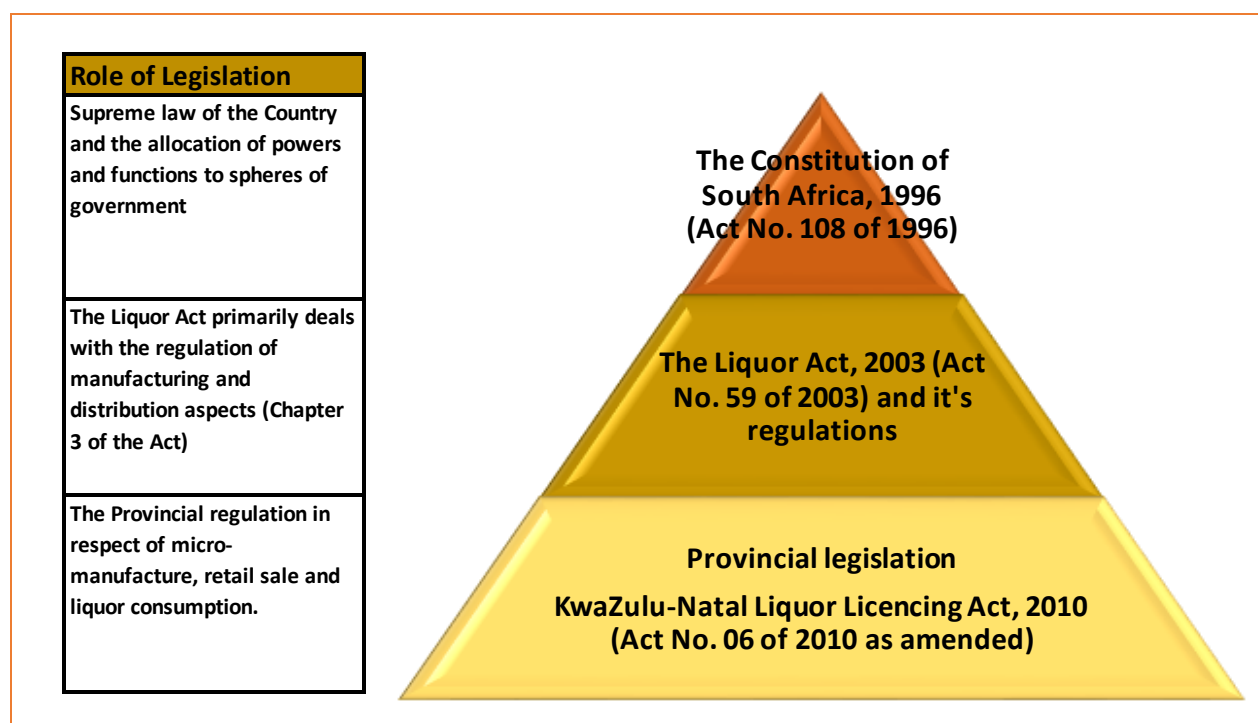


Table 3: National and Provincial Policy, Provincial Planning and liquor licensing and local municipal planning legislation influences on policy

Sphere of influence	Document reference	Implication for this planning policy
National Directives	National Development Plan	The National Directives are of too a strategic nature. Community safety and economic development does have however apply to taverns.
Provincial Planning	Provincial Planning and Development Plan	Similarly, the Provincial Planning directives are concerned with provincial wide catalyst projects, and particular regional

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

5. POLICY PRINCIPLES

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

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

6. THE PLANNING POLICY CRITERIA

6.1 Planning Schemes and Consent

- (a) The Town Planning Schemes (Pietermaritzburg and Ashburton) (herein after referred to as “the Schemes”), were established in terms of the Ordinance, and are used by the Council to accord development rights within Municipalities. The Schemes define a number of Zones and Reservations

within which development rights are classified as being either expressly permissible, expressly prohibited or which may be permitted by the Council's Municipal Consent.

- (b) The Council must consider any applications for its Consent in terms of a procedure which is laid down in section 46 and the associated provisions of the By-Law which became the application process on 15 September 2016. These procedures include the public advertisement of the application by the applicant and the serving of individual notices as per the provisions of the applicable law. (See attached procedure, **Annexures B & C**).
- (c) In terms of Schedule 8 of the SPLUMA By-Law, the decision-making authority must consider the matters listed in this schedule, including the information contained in the application, the municipal IDP, the SDF, the Scheme, the planner's comments, norms and standards, and other matters mentioned. The municipal decision-making authority, in terms of the provisions of item 17 of schedule 4, has 60 days to make a decision on an application on referral of an application to it for a decision, once the administrative and consultation processes provided in schedule 4 have been concluded.

6.2 Planning Principles

- (a) **Amenity:** any new structure or alteration to the existing house or outbuilding must fit in with the development intensity and character of the relevant area.
- (b) **Authority limitations:** Tavern owners must apply annually to the KwaZulu-Natal Liquor Authority as per section 62 of the KwaZulu-Natal Liquor Licencing Act, 2010 (Act No. 06 of 2010) for the renewal of their licences.
- (c) **Building regulations:** a Tavern may only be operated from a structure approved in terms of the National Building Regulations and Building Standards and thus informal/temporary structures or containers cannot be permitted.
- (d) **Building design:** the holder of an on-consumption liquor licence from a tavern premises, as per section 50(6) of the KwaZulu-Natal Liquor Licencing Act, 2010 (Act No. 06 of 2010, as amended) must ensure that the licensed premises are separate from any other dwelling, especially a residential dwelling, and if attached to a dwelling, it must be separated by means of walls constructed out of brick and mortar, separate access points of entry into the licenced premises and securable doors.
- (e) **Business floor area:** the business component may not exceed 50% of the total floor area, excluding toilets, restrooms and storage place.
- (f) **Business Licence:** the owner shall apply and obtain a Municipal Business Licence prior to commencing any operations.
- (g) **Dominant use of property:** in addition to the Tavern the property must have a residence occupied by the owner of the Tavern.
- (h) **Grounds for reviewing a decision:** should the business cause a nuisance or criminal activity be reported after approval, the approval will be withdrawn. Similarly, if the property owner deviates from the municipal planning authority, business licence or liquor licence authority conditions, the approval will be withdrawn.
- (i) **Locational restrictions:**
 - i. No Tavern is permitted in flats or municipal rental units or allowed to encroach upon public open spaces or road reserves.
 - ii. In terms of section 48(5) of the KwaZulu-Natal Liquor Licencing Act, 2010 (Act No. 06 of 2010, as amended): -

- iii. The proposed premise may not be located within a circumference of 500 metres of any religious or learning institutions; and
 - iv. The proposed premise may not be located within a circumference of 500 metres of other licensed premises within residential areas.
-
- (j) **No criminal record:** there must be no record of any criminal activity on the property under application.
 - (k) **Nuisance:** no activities which may cause a nuisance or disturbance to the residents in other neighbouring residences are permitted.
 - (l) **Operations ceased:** applicants who cease to operate the business must inform the municipality in writing.
 - (m) **Owner:** the applicant must be the legal owner and permanent inhabitant of the property.
 - (n) **Parking requirements:** all parking must be provided on the property concerned in accordance with the regulations of the applicable zoning scheme.
 - (o) **Prohibitions:** the storage of sale of any explosive or flammable goods (excluding matches) are not permitted in a Tavern:
 - (p) **Signage:** the relevant sign may only indicate the name and nature of the business. Signs sponsored by the liquor industry including branding are permitted.
 - (q) **Suitability:** the premises and the surroundings of the premises should be suitable for such business
 - (r) **Trade restrictions:** trading must be restricted to the boundaries of the property and within the street building lines. No parking is permitted on the sidewalks and no trading is permitted on either the sidewalks or road reserve.
 - (s) **Trading hours:** the trading hours of a tavern must adhere to the Provisions of the KwaZulu-Natal Liquor Licencing Act, 2010 (Act No.6 of 2010), as amended.
 - (t) **Grounds for reviewing a decision:** should the business cause a nuisance or criminal activity be reported after approval, the approval will be withdrawn. Similarly, if the property owner deviates from the municipal planning authority, business licence or liquor licence authority conditions, the approval will be withdrawn.
 - (u) **Lapse of approval:** the approval will be linked to the owner and/or permanent resident of the property and will lapse in the event of any change of ownership / occupation.
 - (v) **Operations ceased:** applicants who have ceased the operation of the business must inform the municipality in writing.

7. APPLICATION PROCEDURES

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

8. THE PLANNING PROCESS AND TIMEFRAMES

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

9. SCOPE AND APPLICATION OF POLICY

9.1 Area of application

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

9.2 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.

10. SCHEME IMPLICATIONS

The revision of the policy has identified the need to amend the Town Planning Schemes in respect of Msunduzi which operates on two schemes, i.e., the Pietermaritzburg and Ashburton Town Planning Schemes. These requirements are contained in **Annexure D**.

11. IMPLEMENTATION PROCESS

11.1 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.

11.2 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.

11.3 Existing Policy repealed

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

12. 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.

There are also numerous other sets of legislation (Acts, municipal by-laws and regulations) that are potentially applicable to the operation of taverns, e.g. building regulations, nuisance/noise by-laws, tobacco legislation and health and safety by-laws.

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.

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ANNEXURE A: COUNCIL RESOLUTION

ANNEXURE B: MUNICIPAL BY-LAW MUNICIPAL CONSENT 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 D

Proposed scheme amendments

The current Pietermaritzburg and Ashburton 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 By-laws.

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, new processes and requirements have been brought into operation.

The current schemes therefore need to be amended to: -

- i. Provide for both the procedure of the new By-law and the TPO, but linked to the transitional clauses as per the promulgation notice of the SPLUMA By-law.
- ii. The definitions in the schemes are outdated and need to be aligned to the By-law provisions and definitions as well as the policy definitions.

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 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.

Diagram 1: Planning consent, Business and Liquor Licence process and linkages

