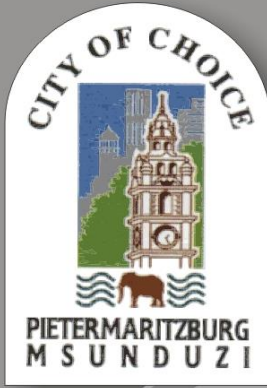


# MSUNDUZI MUNICIPALITY



<b>Policy Name:</b>	<b>Bed and Breakfast Policy</b>
<b>Policy Number:</b>	
<b>Status:</b>	<b>Final</b>
<b>Date:</b>	03 February 2017
<b>Approved By:</b>	
<b>Date Approved:</b>	
<b>Date Last Amended:</b>	
<b>Date for Next Review:</b>	
<b>Date Published on Intranet:</b>	





# **The Msunduzi Municipality**

## **BED AND BREAKFAST POLICY**

**February 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 of 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 to:*

*Adopt the  
Msunduzi Municipal Bed and Breakfast Policy”*

Name and Signature:

Name and Signature:

.....

.....

CITY MANAGER

CHAIRMAN OF THE EXECUTIVE COMMITTEE

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## 1. INTRODUCTION

### 1.1 Purpose of the Policy

The purpose of this document is to review the Msunduzi Bed and Breakfast Policy to establish a new development and regulation framework for the management of “Bed and Breakfast” (herein after referred to as B&B) establishments located within the Msunduzi Municipal Area. This policy also includes the regulation of Air Bed and Breakfast establishments.

### 1.2 Implementation of the Policy

In order for policy to fulfil its role in the context of the entire Msunduzi Municipal area of jurisdiction, the 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 B&Bs must be implemented in the following manner:

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

- (a) Social, Economic, Environmental, and Administrative Justice informing the rights, duties, and principles applicable to the following sector specific norms as is enshrined in the South African Constitution Act No. 108 of 1996:
- (b) Spatial Justice, Equitable Education, Sustainability, a Safe Environment, Universal Access, Amenity, Respect for Local and Indigenous Knowledge Systems and Freedom from Discrimination in terms of Occupation, Profession, Trade, Race, Religion, Age, Gender and Sexual Orientation.

#### 1.2.2 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; and
- (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), 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 the Spatial Planning and Land Use Management Act (Act No. 16 of 2013), the KwaZulu-Natal Planning and Development Act (Act No. 6 of 2008) and the Msunduzi Spatial Planning and Land Use Management By-Law of 2016 and its subsequent amendments;
- 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 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 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.

**1.3.1 The accounting officer must:**

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

- (a) are aligned with planning and Scheme amendments;
- (b) are 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 B&Bs as is required in Section 38 of the MSA, the Msunduzi SPLUMA By-Law of 15 September 2016 and this B&B Policy.

**1.4 Application procedure, norms and standards**

Up to 15 September 2016, all applications for B&Bs were 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 Special Consent development and usage intensities. In this regard:

- i. the consent process in terms of Section 46 (c) of the Spatial Planning and Land Use Management Act, (Act No. 16 of 2013, SPLUMA) which regulates applications in accordance with the adopted Msunduzi SPLUMA By-Law in respect of land development in either the Pietermaritzburg or Ashburton Town Planning Scheme areas or Schedule 3 of the SPLUMA By-Law in respect of land within the municipality, but outside either of these two scheme controlled areas;
- ii. the registered town and regional planner and or delegated committee, considers the application for procedural and substantive<sup>1</sup> compliance with Section 46(c) of Schedule 3 of the Msunduzi SPLUMA By-Law.
- iii. B & B's are only permissible through consent based applications in the Ashburton Scheme in the Special Residential Zones 1, 2, & 3 and in Garden Lot Zones 1 & 2;
- iv. B & B's are only permissible through consent based applications in most of the Pietermaritzburg Scheme zones. The exclusions are: General Business, Civic Centre, Car Park, Educational, Agricultural, Undetermined, and Special Area zones;
- v. B & B's are only permissible through consent based applications in the Msunduzi areas and outside of the Schemes through a process of discretionary planning considerations. Schedule 3 of the SPLUMA By-Law which allows for development outside of the Schemes, does not define B&Bs as a permissible land use right in Schedule 3 for areas outside of the Schemes. Consequently, until such time as a wall-to-wall Scheme is developed or the SPLUMA By-Law is amended to accommodate B&B's, discretionary planning is required. The municipal planning team calls for a Site Development Plan and a motivation from the applicant proving the desirability and market demand for the development in the said location. Where 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<sup>2</sup>.

## 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 Schemes 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

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<sup>1</sup> 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.

<sup>2</sup> After careful public scrutiny, this draft policy was amended in the light of comments made and finally adopted by council for application on a citywide basis. One additional element was the consideration accorded to the norms and standards as agreed to through the official planning steering committee consultation and the subsequent public consultation process. This procedure of public scrutiny of the policy clauses in conjunction with the norms and standards that underpin the policy and the strategic planning frameworks is the first of its kind in the Municipality. This is the first step in implementing the integrated spatial planning and land use management systems based on the new legislation and new integration of norms, principles and standards.

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.

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 across the entire Municipal area of jurisdiction including the Pietermaritzburg and Ashburton Town Planning scheme areas. Consequently, land development in both of these Scheme areas will be subject to the relevant scheme definitions and provisions. Land development outside these schemes will be subject to schedule 3 of the SPLUMA By-Laws.

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

### Pietermaritzburg scheme clauses

**“Bed and Breakfast”** means the provision of short-term accommodation for travellers in, or in conjunction with, a dwelling on a site located within the Special Residential Zone provided that the activity or use shall:

- i) be limited to being conducted by the owner of the site who shall be resident therein, provided that Council may grant its Special Consent, in exceptional circumstances, for the activity or use to be conducted by a person other than the owner;
- ii) not require any additions or alterations to a building on a site that would prevent the site from reverting to being used as a single family “Dwelling” in the event of the use ceasing;
- iii) be limited to accommodating a maximum of 12 travellers at any one time, save with the Special Consent of Council;
- iv) not require the regular parking of vehicles with a tare mass exceeding 2000 kg on or adjacent to the site;
- v) not require the employment of more than three persons in addition to the domestic employees;
- vi) 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;
- vii) not interfere with the amenity of the surrounding area;
- viii) be limited to providing vehicular parking within the boundaries of the Site on the basis of one bay per guest room and that such parking shall be located and screened to the satisfaction of Council;
- ix) be operated in accordance with all relevant Council By-Laws and other legislation which shall include registration of the premises in terms of the Regulations Governing General Hygiene requirements for food premises under Government Notice No. R918(1999) and compliance with the provisions of the Noise Regulations R 2544 under the Environment Conservation Act, (Act No. 73 of 1989);
- x) be limited to the erection of a sign which shall:
  - not be larger than 600 mm by 450 mm,
  - be in compliance with the Sign’s By-Laws,
  - 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
  - be of a material and style which shall compliment the character of the dwelling.

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

- i) in respect of sites within density zones allowing 20 units/ha and greater, comprise not more than six (6) habitable rooms, save with the Special Consent of the Council, and shall in any event, include not more than one (1) kitchen, which may be in addition to the allowable number of habitable rooms;

- ii) 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 in any event include not more than one (1) kitchen, which may be in addition to the allowable number habitable rooms.

**“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:

- i) 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 Special Consent of the Council, other domestic rooms;
- ii) 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 Special Consent of the Council, other domestic rooms.
  - a. 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 Special Consent of the Council.
  - b. 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 Special Consent procedure.

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

- i) 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;
- ii) the unit shall comprise not more than one bedroom, a lounge/dining room, a kitchen and a bathroom/toilet;
- iii) 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;
- iv) the total floor area of the unit shall not exceed 25% of the total coverage of the dwelling on the site, save with the Special Consent of the Council.
  - a. 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 Special Consent procedure.

### **Ashburton Town Planning Scheme**

**“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,

which contribute to the pleasantness, harmony and coherence of the environment and to the public's enhanced enjoyment of any permitted use.

**“Bed and Breakfast”** means the provision of accommodation for travellers in, or in conjunction with, a Dwelling or a structure erected on the Lot of an existing Dwelling which is located in the Garden Lot or Special Residential zones, provided that the activity or use shall:

- i) be limited to being conducted by the Owner of the Lot, who shall be resident therein, provided that the Council may, in exceptional circumstances which do not prejudice the continued use of the Dwelling as a residence, permit the activity or use to be conducted by a person other than the owner;
- ii) not require the regular parking of:
  - a. more than five motor vehicles, or
  - b. any vehicle with a tare mass exceeding 2 500 kg, on or adjacent to the Lot at any one time, and that such parking shall be located to the rear of the Dwelling, where possible;
- iii) not require the employment of more than three persons in addition to the domestic employees;
- iv) not occupy a floor area in excess of 25 % of the floor area of the Dwelling, subject to a maximum floor area of 50 m<sup>2</sup>;
- v) 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;
- vi) not detrimentally affect the Amenity of the surrounding area; and
- vii) be limited to the erection of a sign, indicating the nature of the activity, which shall :
  - a. not be larger than 600 mm by 450 mm,
  - b. be in compliance with the Council's By-Laws, and
  - c. and shall compliment the character of the Dwelling.

**“Dwelling”** means a building, designed for use as a residence for, and used exclusively by, a single Family and shall comprise a single kitchen and not more than ten (10) habitable rooms, save with the Special Consent of the Council.

**“Outbuilding”** means a Building ancillary to a Dwelling, attached to or separate from a Dwelling, which is used for or as the following:

- i) the garaging of private motor vehicles,
- ii) a storeroom,
- iii) domestic worker's room and associated ablution facilities, and
- iv) workroom.

**“Special consent waiver”** – The Asburton Town Planning scheme provides for the waiver of the Special Consent procedure may in respect of the Bed and Breakfast application, provided that a fully motivated application is submitted to the Council and the written consent of the Owners of all abutting and any other properties determined by the Council is obtained. This waiver is applicable to the following zones in respect of Bed and Breakfast applications: -

Town Planning Scheme Clause	Specific Zone
5.1.3	Special Residential 1
5.2.3	Special Residential 2
5.3.3	Special Residential 2
5.5.3	Garden Lot Zone 1
5.6.3	Garden Lots Zone 2

**None-scheme related definitions required for policy coherence**

**"Adequate"** when used to describe a standard or manner in which anything required by these By-Laws 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).

**"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.

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

- i. a locality
- ii. a precinct
- iii. a district, or
- iv. any defined area

which contributes to the pleasantness, harmony and coherence of the environment and to the public's enhanced enjoyment of any permitted use.

**"Authorised official"** means any official of the Municipality who has been authorized by the Municipality to administer, implement, and enforce the provisions of these By-Laws.

**"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 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 Bed and Breakfast 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 Special Consent of the Municipality have previously been obtained for a specific development, the approval is deemed to be valid, provided that the general and other specific requirements of the scheme for that zone at the time of approval are observed;
- 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 Special 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.

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

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

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

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

**“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.

**“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-Laws or a service provider fulfilling a responsibility under these By-Laws, 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”** National Building Regulations and Building Standards Amendment Act (Act No. 49 of 1995) and any amendments thereto.

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

**"Owner"** means:

- (a) the person in whose name the land is registered in the deeds registry 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.

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

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

**"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, 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.

**"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.

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

**"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.

**“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.

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

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

- i. 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;
- ii. the unit shall comprise not more than one bedroom, a lounge/dining room, a kitchen and a bathroom/toilet;
- iii. 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;
- iv. the total floor area of the unit shall not exceed 25% of the total coverage of the Dwelling on the Site, save with the Special 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 Special Consent procedure.

**“Municipal Consent”** (previously Special 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. Such **Municipal Consent** is usually accorded to individually considered, low impact developments **that have no impact on the overall character of the Special Residential Zone.**

The intention of the Municipal 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, low noise pollution and an aesthetically pleasing environment that is valued by home owners.

**“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:

- i. site layout and landscaping specifications;
- ii. slope analysis and topography;
- iii. the Gross Floor Area (GFA); Floor Area Ratio (FAR) and Coverage of the proposed development;
- iv. universal access conditions and signage layout on all building and landscape plans;
- v. infrastructure requirements to the satisfaction of the Municipal Manager and City Health Inspector;
- vi. proposed Parking allocation in accordance with the Town Planning Scheme requirements;
- vii. 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;
- viii. all Site Development Plans are required for all applications irrespective of the Zone in question;
- ix. require the comment of AMAFA on each and every SDP and its subsequent amendments prior to submission of the application; and
- x. an application can only be considered as being complete in accordance with the Msunduzi SPLUMA By-Law if all elements (i) to (x) and any other consideration called for by planners and sector departments, including AMAFA, are addressed to the satisfaction of the Municipality.



**“Zoning”** The zoning of a particular site or set of sites in a Town Planning Scheme means the development rights and controls accorded to the property and its associated buildings either as free entry rights, rights that area accorded in term of Special 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 special consent usage. Table 1 shows the expressly permitted development and special consent rights in four (4) zones where B&Bs can be developed in accordance with the Pietermaritzburg Town Planning Scheme of 2016.

As is shown in Table 1, B&Bs are only permitted by “Special Consent” in the Special Residential Zones in respect of the Pietermaritzburg Scheme Area. In these cases the Municipal planning officials and the interested and affected public can check the applications for compliance with the B&B 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 Special Consent accorded can be withdrawn if the policy and scheme regulations are not adhered to. “Special Consent” should only be granted if the residential character of the area and the amenity of the area is not adversely affected by the establishment of B&Bs.

*Table 1: Pietermaritzburg Town Planning Scheme Zones that allow B&Bs by Special Consent and Free Entry Usage*

<b>PIETERMARITZBURG TOWN PLANNING SCHEME</b>			
<b>ZONES THAT ALLOW B&amp;B DEVELOPMENT BY SPECIAL CONSENT &amp; FREE ENTRY USAGE</b>			
	<b>Town Planning Scheme Zones</b>	<b>Kind of Application Required</b>	<b>BED AND BREAKFAST POLICY: APPLICATIONS COMPLIANCE CHECK</b>
<b>1</b>	<b>Special Residential</b>	Special Consent	Application based policy compliance check
<b>2</b>	<b>Transitional Zone 1</b>	Special Consent	Application based policy compliance check
<b>3</b>	<b>Special area 34</b>	Expressly Permissible	Portion 2 (of 1) of Erf 194, the Remainder of 14 of Erf 340 and Portion 14 of Erf 567 all of Pietermaritzburg, being 1 and 3 Riverton Road : Scottsville
<b>Appendix 2: SCHEDULE OF AMENDMENTS RELATING TO INDIVIDUAL PROPERTIES</b>			
<b>4</b>		Expressly Permissible	(150). Ptns 10 and 15, of Erf 540 PMB, 6 Surrey Road, Allow guest house, bed-and-breakfast
<b>5</b>		Expressly Permissible	(151). Ptn 17 (of 7) of Erf 37 PMB, 317 Alexandra Road, Allow guest house, bed-and-breakfast

The subsequent three (3) zones in Table 1 are zones where B&Bs are “expressly permitted” as special zones.

In the Ashburton Scheme, “Special Consent” applications for B&Bs are required when the property is located in the three (3) Special Residential Zones 1 to 3, Garden Lot Zone 1 and Agricultural Zone 1. B&Bs are “expressly permitted” in Commercial Zone 1 in terms of the Ashburton scheme.

Table 2: Ashburton Town Planning Scheme Zones that allow B&amp;B by Special Consent and Free Entry Usage

ASHBURTON TOWN PLANNING SCHEME ZONES THAT ALLOW B&B DEVELOPMENT BY SPECIAL CONSENT & FREE ENTRY USAGE			
	Town Planning Scheme Zones	Kind of Application Required	BEDAND BREAKFAST POLICY: APPLICATIONS COMPLIANCE CHECK
1	Special Residential Zone 1	Special Consent	Application based policy compliance check
2	Special Residential Zone 2	Special Consent	Application based policy compliance check
3	Special Residential Zone 3	Special Consent	Application based policy compliance check
4	Garden Lot Zone 1	Special Consent	Application based policy compliance check
5	Agricultural Zone 1	Special Consent	Application based policy compliance check
6	Commercial Zone 1	Expressly Permissible	Application based policy compliance check

In the areas outside of the Schemes, B&Bs, 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 **not** define B&Bs 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 B&Bs, 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.

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 B&B developments must:

- (a) submit a Site Development Plan with the Building Plan for Planning Approval; and
- (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.

#### 4. THE LEGAL AND CONTEXTUAL FRAMEWORK

The legal and institutional framework in respect of B&Bs consists of a number of aspects. This includes national policies and directives, the planning framework and business licence and tourism registration requirements.

The implications of these different pieces of legislation are summarised in the table below:

Table 3: National and Provincial Policy, Provincial and local municipal planning legislation, business licence requirements and influence on this policy

Sphere of influence	Document reference	Implication for this planning policy

Sphere of influence	Document reference	Implication for this planning policy
National Directives	National Development Plan	In terms of National directives, the National Development Plan (NDP) provides a blue print for development and planning in South Africa. This is a high level document and thus specific land use activities such as B&Bs are not mentioned by name in the NDP. The development of Small, Medium and Micro Enterprises (SMMEs) are however part of the NDP planning.
Provincial Planning	Provincial Planning and Development Plan	SMMEs, which include B&Bs are an important component of the KZN PGDP. In addition, there is also a requirement to review the business regulations and reduction of red-tape for small enterprises (KwaZulu-Natal Planning Commission, 2014: 21). The intentions of this project to review the policy and to make it more user friendly, will contribute to the fulfilment of both the provisions of the NDP and the KZN PGDP.
Municipal Planning	Integrated Development Plan	The Msunduzi Municipality Integrated Development Plan (IDP) is at too a strategic level to refer to B&Bs however it 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 B&B policy is the promotion of quality urbanisation and building a safe city.
	Local Development Plan	The Msunduzi Municipality has undertaken three local area plan studies, one for the central area and the CBD, the 2nd for the South Eastern District and the 3rd in respect of Vulindlela. These documents were scanned, but were found to be more strategic in their approach. There was no reference to SMMEs, Activity corridors or B&Bs. 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	KwaZulu-Natal Liquor Licensing Act 2010 (Act No. 06 of 2010)	Where Bed and Breakfast establishments do offer liquor on site, a licence has to be obtained from the Liquor Board.
Business Licensing	National Small Business Act, 1996 (Act No. 102 of 1996)	The Act requires all small businesses to make applications for operation, which allows for the verification of health, building and planning requirements.

## 5. POLICY RATIONALE AND PRINCIPLES

### 5.1 PRINCIPLES AND CRITERIA STEMMING FROM LEGAL AND CONTEXTUAL RESEARCH

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

Table 4: Policy criteria

Conditions		Standard	Principle
Authorisation	Consent use maximum of 2 rooms	X	
	Rezoning & Council approval 3 or more rooms	X	
Conditions	No more than 20% -25% of dwelling unit for use in renting	X	
	Rights not transferable		X
	Owner operate lodging, B&B and/ or GH	X	
	Owner reside in dwelling	X	
	Rooming & lodgings max 2 bedrooms 4 guests	X	
	GH & B&Bs Max 6 paying guests & 3 bedrooms	X	
	GH & B&Bs max 8 paying guests & 4 rooms	X	
	GH & M&Bs max 12 paying guests & 6 rooms	X	
Zones where accommodation options permitted	SR 1	X	
	SR 2	X	
	GR	X	
Amenity	No interference with amenity surroundings	X	
	Capability reverting back to dwelling if rights lapse	X	
	Not pose greater load on public utility services	X	
Parking	Off street parking to be provided as provided below		X
	1 bay per rented room	X	
	1 bay per 25m squared used for guest occupation	X	
	No more than 2 vehicles for home use	X	
Signage	Signal sign on boundary fence	X	
	Free standing	X	
	Unilluminated	X	
	600x450mms	X	
	22.5x22.5mms	X	
	420x544mms	X	
Health requirements	In accordance with health by-laws meet health and safety requirements as per the relevant legislation	X	
	Meet requirements of food regulations	X	
Employment	No more than 3 additional workers allowed over and above 2 domestic workers	X	
Trading	No sale of liquor on site	X	
	Sale of liquor to guests only	X	
Hours of operation	Normal business hours	X	
Nuisance	No loud music or events permitted outside the provisions of the KwaZulu-Natal Noise Control Regulations GR 2544 of 1990 in terms of Section 25 of the Environment Conservation Act No 73 of 1989	X	
	No illegal activities result in conditions that significantly increase the risk of a public health hazard occurring or which compromises any aspect of public health or degrading of neighbourhood	X	

## 5.2 STANDARDS BASED ON THE TOURISM

The Tourism Council grading system provides a large range of standards which are useful in guiding the more important aspects associated with Bed and Breakfast establishments. A few of the important norms are provided below.

Table 5: Grading Standards (Tourism Council Grading Standards)

Facility	Tourism Council Standards
<b>Bedrooms</b>	Recommended reasonably spacious room 6m <sup>2</sup> . Good access to all furniture and facilities. No areas of restricted access or obstruction. Not necessary to have a self-contained sitting area but room must be large enough to comfortably contain 2 easy chairs in addition to the standard bedroom furniture. No creaky boards or intrusive noise.
<b>Bathrooms</b>	Shower/bath and hand basins may be built open plan within the bedroom however the toilet should be enclosed. Establishments with open plan bathrooms must inform guests of the design before the booking procedure goes through.
	Bathroom facilities must be en-suite. If not, exclusive use of bathroom facilities per room is mandatory.
<b>Dining room</b>	Standard “domestic” style and quality of décor. No wear and tear. Use of wall hangings, pictures, etc. Competent workmanship.
<b>Parking, Driveways and signage</b>	Provision of all on-site and/ or designated parking areas should conform to local municipal by-laws inclusive of signage which needs to be of an acceptable condition, be clearly visible, fit for purpose, ensuring guests are correctly guided to the appropriate entrances at all times, with appropriate safety measures in place.
	Acceptable external security lighting in all areas. Clear signage directing guests to and from designated parking bays. Signage where provided to be clearly visible, illuminated or reflective.
<b>Safety and security</b>	All external public pathways must be well lit. Person responsible for safety and security must be contactable. Emergency information, procedures and after hours contacts for assistance clearly communicated in English, and in pictograms.
<b>Universal Accessibility</b>	Clear signage and pictograms
	Grounds and garden pathways kept clear of obstacles / obstructions
	Textured surfaces, such as roughened finishes, on all ramps, stairways and main circulation paths.

## 6. THE PLANNING POLICY CRITERIA

### 6.1 Planning guidelines

- (a) The Town Planning Schemes (Pietermaritzburg and Ashburton) (herein after referred to as “the Schemes”), were established in terms of the Ordinance, are used by the Council to manage the use of land and / or buildings within the KZ 225 Municipal area. These Schemes define a number of Land Use Zones and Reservations within which uses are classified as being either expressly permissible, expressly prohibited or which may be permitted by the Council’s Special 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 A and B).
- (c) In terms of Schedule 8 of the SPLUMA by-laws, the decision-making authority must consider the matters listed in this schedule, including the information contained in the application, the municipal IDP, the SDF, the Scheme, the planner’s comments, norms and standards, and other matters mentioned. The municipal decision-making authority, in terms of the provisions of item 17 of schedule 4, has 60 days to make a decision on an application on referral application to it for a decision, once the administrative and consultation processes provided in schedule 4 have been concluded.

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

### 6.2 Planning Criteria

#### i. Amenity

There shall be no interference with the amenity of the surroundings. Any new structure or alteration to the existing house or outbuilding must fit in with the residential character of the relevant area.

#### ii. Building regulations

A Bed and Breakfast, including an Air Bed and Breakfast, 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.

#### iii. Business floor area

The business component may not exceed 50% of the total floor area, excluding toilets, restrooms and storage place, in respect of B&B applications in the Ashburton scheme controlled area.

#### iv. Compliance with the provisions of the Noise

Regulations R2544 under the Environment Conservation Act, (Act No.73 of 1989) stipulate that a home based business shall not produce a noise level exceeding 7db above the ambient noise level, measured at any point on the property boundary

#### v. 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.

**vi. Health Requirements**

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

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

**vii. Liquor Use**

No sale of liquor shall be permitted on site.

**viii. Location**

Applications for municipal consent are restricted to those zones, specified by the Pietermaritzburg and Ashburton schemes or the future consolidated scheme.

**ix. Maximum number of persons**

The Bed and Breakfast operation shall be limited to accommodation of a maximum of 12 persons at any one time, subject to the number of bedrooms and the associated square metres.

**x. Nuisance**

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

**xi. Number of Rooms**

Not more than six bedrooms shall be used for Bed-and-Breakfast accommodation. Applications for a larger number of rooms must be considered as a rezoning application.

**xii. Owner resident on property**

The Bed and Breakfast establishment shall be conducted by the owner of the property who shall be resident therein, provided that, as provided in the current Town Planning Scheme definitions, Council may grant its Special Consent, in exceptional circumstances, for the activity or use to be conducted by a person other than the owner.

**xiii. Parking**

(a) Be limited to providing vehicular parking within the boundaries of the site on the basis of one parking bay per guest room.

(b) Not require the regular parking of vehicles with a tare mass exceeding 2 000kg, on or adjacent to the site.

**xiv. Retaining residential character**

The establishment shall not require any additions or alterations to a building on a site that would prevent the site from reverting to being used as a single family "dwelling" in the event of the use ceasing.

**xv. Signage**

Be limited to the erection of a sign which shall:

- not be larger than 600mm x 450mm.
- be in compliance with the Sign's By-Laws.
- 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
- be of material and style which shall complement the character of the dwelling.

**xvi. Universal access**

Applications to include universal access provisions, including appropriate signage, wheelchair access and related universal access provisions.

**xvii. Criminal record**

There must be no record of any criminal activity on the property in question;

**xviii. 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. 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;

**ii. 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 B&Bs (including Air B&Bs) in Msunduzi Municipality. When adopted, this policy will apply to the whole area of jurisdiction within Msunduzi, including Traditional Authority 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 Boarding House 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 B&Bs, - e.g. building regulations, nuisance/noise by-laws, 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.

## REFERENCES

### National South African Government Reports

South African National Planning Commission. 2013. National Development Plan 2030. Our future – make it work.

### National South African Legislation

Environment Conservation Act No 73. 1989

Justice of the Peace and Commissioners of Oaths Amendment Act No 36 of 1986.

Local Government Municipal Structures Act No. 117 of 1998.

Local Government: Municipal Systems Act, No 36 of 2000.

National Building Regulations and Building Standards Amendment Act No 49 of 1995.

Promotion of Administrative Justice Act No 3 of 2000.

South Africa. National Building Regulations (SANS 010400 2011

Spatial Planning and Land Use Management Act No 16 of 2013.

South African Constitution Act No. 108 of 1996.

### Provincial KwaZulu-Natal, South African Legislation, and Plans

KwaZulu-Natal Ingonyama Trust Amendment Act. No 9 of 1997

KwaZulu-Natal Planning and Development Act No 6 of 2008

KwaZulu-Natal Planning and Development Plan: 2011 – 2030. August 2014 revision, KwaZulu-Natal Planning and Development Commission.

KwaZulu-Natal Noise Control Regulations GR 2544 of 1990 in terms of Section 25 of the Environment Conservation Act No 73 of 1989

### Local & Metropolitan Municipal Legislation, Reports Schemes & Policies

City of Cape Town By-Law & Schedule 3: Development Management Scheme, June 2015,

[www.capetown.gov.za](http://www.capetown.gov.za)

Cambridge County Council (2006). Local Development Plan and Local Area Plans. Council Website

Cork County Council (2009). Local Development and Local Area Plans, [www.corkcoco.ie/co/](http://www.corkcoco.ie/co/)

Ekurhuleni Metro (2015). Town Planning Scheme, [www.ekurhuleni.gov.za](http://www.ekurhuleni.gov.za)

Ethekwini (2005). Consolidated Outer West Town Planning Scheme, [www.ekurhuleni.gov.za](http://www.ekurhuleni.gov.za)

Ethekwini (2015). Municipal Planning By-law. Council, [www.ekurhuleni.gov.za](http://www.ekurhuleni.gov.za)

Musinduzi Municipality (undated). Bed and Breakfast Policy- Annexure B

Msunduzi Municipality. 1997. Ashburton Town Planning Scheme. May 1997.

Msunduzi Municipality. 2015. Pietermaritzburg Town Planning Scheme 2015.

Msunduzi Municipal Public Health By Laws of 2015.

Msunduzi Municipality. 2015. Integrated Development Plan 2014/15.

Msunduzi Municipality. 2015 Msunduzi Spatial Development Framework 2014/2015

Msunduzi Municipality. 2015. Msunduzi Central Area and CBD Extension Node Local Area Plan. February 2015.

Msunduzi Municipality. 2016. Vulindlela Local Area Plan.

Msunduzi SPLUMA By-Law, September 2016 [www.msunduzi.gov.za](http://www.msunduzi.gov.za)

Pietermaritzburg Noise Control Regulations GR 2544 of 1990

### **Books and Journal Articles**

Tourism Grading Council South Africa. 2013. Grading Criteria and minimum requirements: Guest Accommodation. Country Houses, Guest Houses and Bed and Breakfast Establishments  
United Nations General Assembly, 2006, 'Convention on the Rights of Persons with Disabilities', resolution / adopted by the General Assembly, 24 January 2007, viewed 03 May 2012, from <http://www.refworld.org/docid/45f973632.html>  
West Berkshire County Council (2011). Bed and Breakfast Charging Policy. Council website <http://www.roomsforafrica.com/dest/south-africa/kwazulu-natal/pietermaritzburg>: 31 August 2016  
<https://www.airbnb.com/s/Pietermaritzburg> .31 August 2016

### **Personal Communications**

Allopi, L. 2016. Personal communication. 17 May 2016.

**ANNEXURE A: COUNCIL 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.

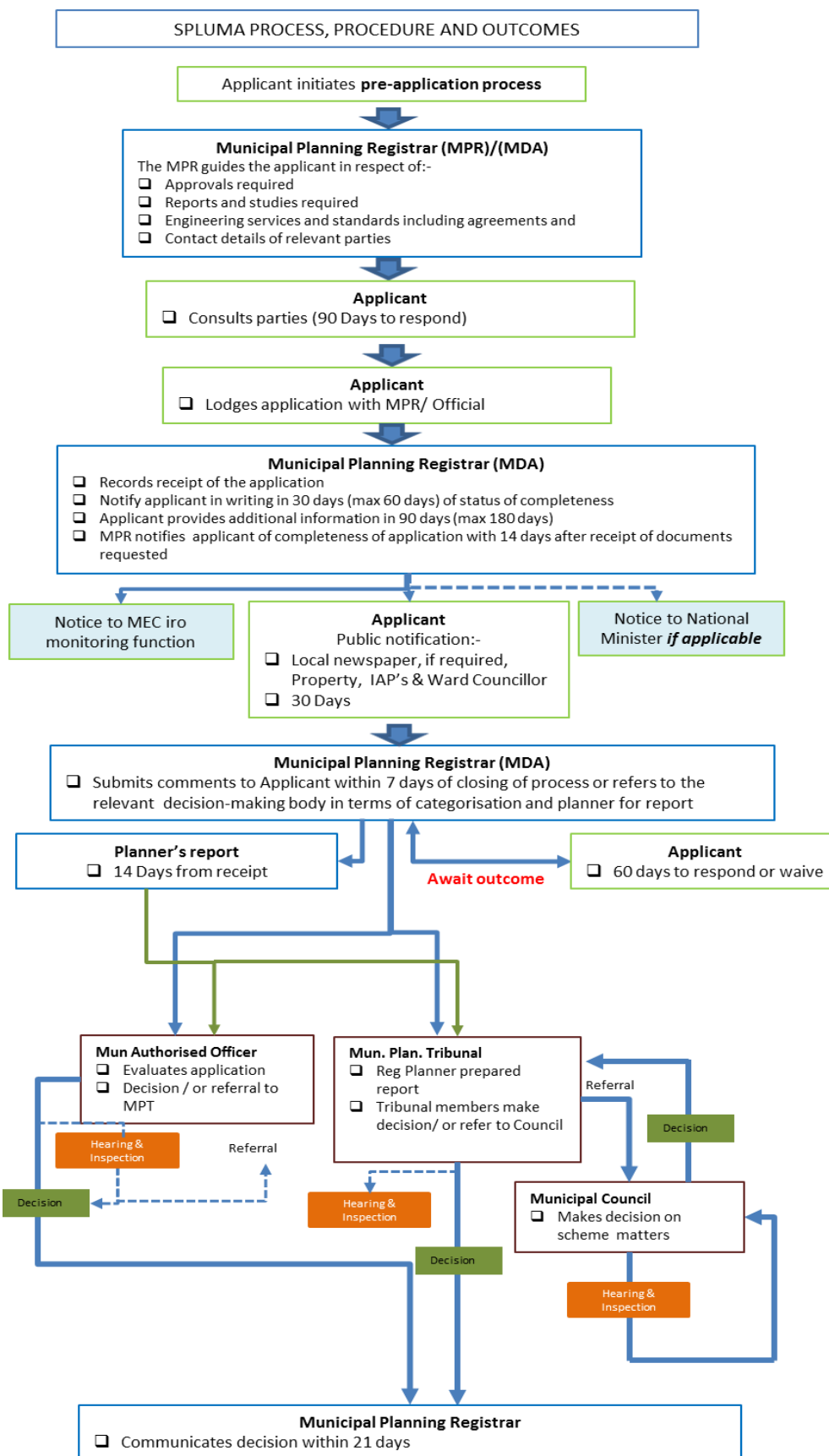
The closing date for the submission of comments may not be less than 30 days from the date of notice.



### 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: PROPOSED SCHEME AMENDMENTS**

### **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 Special 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: -

1. 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.
2. 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.
3. Including Air Bed and Breakfast establishments in the policy.

### **Recommended interventions**

**The following interventions are recommended: -**

1. Augmenting the current enforcement capacity and associated system of the municipality to effectively enforce and regulate its scheme.
2. 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.
3. The development of Wall to Wall schemes is required
4. The diversification of the Bed and Breakfast Policy is urgently required for effective regulation of areas outside of the scheme

