

MSUNDUZI MUNICIPALITY



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The Msunduzi Municipality

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-laws, adopted on 15 September 2016

on

.....**2017**

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

.....**day****Month of 20**..... **at**

“Council resolves, in terms of section of *Application Procedures, Principles, Norms and Standards and Spatial Planning requirements of The Spatial 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-laws*, to:

*Adopt the
Msunduzi Municipal Tuck Shop Policy”*

Name and Signature:

.....

CITY MANAGER

Name and Signature:

.....

CHAIRMAN OF THE EXECUTIVE COMMITTEE

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1. INTRODUCTION

1.1 Purpose of this Policy

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

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

1.2 Implementation of the Policy

In order for policy to fulfil its guiding role in the context of the Pietermaritzburg and Ashburton Town Planning Scheme regulations as well as the requirements of the Msunduzi SPLUMA By-law requirements for all areas outside of the approved Town Planning Scheme, this 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.

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 regulation; and
- (b) Section 24 and Section 156(1) of the Constitution entrenching the rights of tenants and all residents of Msunduzi Municipal area to “an environment that is not harmful” and the right of all “to choose their trade, occupation, or profession freely” in a manner which is regulated in terms of the law and municipal planning.
- (c) The Promotion of Administrative Justice Act No 3 of 2000 (PAJA) in accordance with Section 33 of the Constitution and the Intergovernmental Relations Framework Act No 13 of 2005 (IGRA) gives everyone in South Africa the right to administrative action which is lawful, procedurally fair, just and accountable. This right includes the right to the provision of written reasons for infringements of PAJA and the imperatives of good governance and efficient administration of municipal responsibilities in accordance with this policy.
- (d) The policy must comply with:
 - i. the town planning imperatives, principles and regulations stemming from the Spatial Planning and Land Use Management Act (No 16 of 2013), the Msunduzi SPLUMA By-law of 15 September 2016, and the 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 (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;
- iii. Msunduzi Municipal Public Health By-law of 2015;
- iv. policy and legislation addressing universal access;
- v. integrated development planning, spatial frameworks, capital investment plans and local development plans, and policy governing the right to environments that are not harmful to any person, fauna or flora within the Msunduzi Municipal area of jurisdiction; and
- vi. 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.

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

- (a) are aligned with planning and Scheme amendments;
- (b) be submitted timeously for budget allocations in accordance with the Msunduzi Service Delivery Budget Implementation Plan (SDBIP);
- (c) comply with 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 Tuck Shops as is required in Section 38 of the MSA, the Msunduzi SPLUMA By-law of 15 September 2016 and this Tuck Shop Policy.

1.4 Application procedures, norms and standards

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

Consequently, all new Tuck-Shop applications shall be considered in terms of the Msunduzi Spatial Planning and Land Use Management By-law of 2016, the KwaZulu Natal Planning and Development Act (No 6 of 2008), the Pietermaritzburg and Ashburton Schemes, this Policy and other relevant policy and legislation as noted in section 1.2 above. In this regard:

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

- (b) The relevant committee or delegated official considering the application must consider applications in accordance with procedural, technical and substantive requirements as defined in in terms of Section 46 (c) of the Spatial Planning and Land Use Management Act, (No. 16 of 2013) which regulates applications in accordance with the adopted Msunduzi Spatial Planning and Land Use Management Act (SPLUMA) By-law. This occurs through development regulated either through the Pietermaritzburg or Ashburton Town Planning Scheme areas or through Schedule 3 of the Msunduzi SPLUMA By-law in respect of land within the Municipality, but outside either of the two current Scheme regulated areas; and
- (c) The registered Town and Regional Planner and delegated committee, considers the application for substantive¹, normative and procedural;² compliance with SPLUMA and the Msunduzi Municipal Public Health By-law of 2015; .

As is shown in Table 1, below, this policy is applicable to a number of different zones and special case areas across the municipal area of jurisdiction and the two schemes applicable to Msunduzi. 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 will be consideration of 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 clauses in conjunction with the norms and standards that underpin the policy and the strategic planning frameworks will be the first of its kind in the Municipality. This will be the first step in implementing the integrated spatial planning and land use management systems based on the new legislation and new norms, principles and standards.

Table 1: Pietermaritzburg and Ashburton Schemes: Zones that allow Tuck Shops (Home Business) by Municipal Consent or free entry use

| PIETERMARITZBURG SCHEME | | | |
|-------------------------|-----------------------------|------------------------------|---|
| | Town Planning Scheme Zones | Kind of Application Required | TUCK SHOP POLICY: APPLICATIONS COMPLIANCE CHECK |
| 1 | Special Residential | Municipal Consent | Application based policy compliance check |
| 2 | Intermediate residential | Municipal Consent | Application based policy compliance check |
| 3 | General residential | Municipal Consent | Application based policy compliance check |
| 4 | Limited business | Municipal Consent | Application based policy compliance check |
| 5 | General | Municipal Consent | Application based policy compliance check |
| 6 | General Business Zone | Municipal consent | Application based policy compliance check |
| 7 | City Centre Zone | Municipal consent | Application based policy compliance check |
| 8 | Light, & General Industrial | Municipal Consent | Application based policy compliance check |
| 9 | Agricultural zone | Municipal Consent | Application based policy compliance check |

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

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

| PIETERMARITZBURG SCHEME | | | |
|-------------------------|--------------------------------------|------------------------------|--|
| | Town Planning Scheme Zones | Kind of Application Required | TUCK SHOP POLICY: APPLICATIONS COMPLIANCE CHECK |
| 10 | Undetermined zone | Municipal Consent | Application based policy compliance check |
| 11 | Special Areas 7, 15, 36, 37, 38 | Municipal Consent | Application based policy compliance check |
| 12 | Special Business Area 6, 19 | Municipal Consent | Application based policy compliance check |
| 13 | Transitional Zone 1 | Municipal Consent | Application based policy compliance check |
| 14 | Special Area 25 | Expressly Permissible | Site Development Plan & Building Plan: Policy compliance check |
| 15 | Office & Transitional Office | Expressly Permissible | Site Development Plan & Building Plan: Policy compliance check |
| 16 | Special Business Area 23, 24, 25, 26 | Expressly Permissible | Site Development Plan & Building Plan: Policy compliance check |

| ASHBURTON TOWN PLANNING SCHEME | | | |
|--------------------------------|-----------------------------------|------------------------------|--|
| | Town Planning Scheme Zones | Kind of Application Required | TUCK SHOP POLICY: APPLICATIONS COMPLIANCE CHECK |
| 1 | Special Residential Zones 1, 2, 3 | Municipal Consent | Application based policy compliance check |
| 2 | Intermediate Residential Zone | Municipal Consent | Application based policy compliance check |
| 3 | Garden Lot Zones 1,2 | Municipal Consent | Application based policy compliance check |
| 4 | Agricultural Zone | Municipal Consent | Application based policy compliance check |
| 5 | Commercial zone | Expressly Permissible | Site Development Plan & Building Plan: Policy compliance check |
| 6 | Limited Commercial zone | Expressly Permissible | Site Development Plan & Building Plan: Policy compliance check |

2. DEFINITIONS AND INTERPRETATION

2.1 Definition of a Tuck Shop

“Tuck shop” is not defined in either the Pietermaritzburg or Ashburton Scheme definitions. Depending on the source, “tuck shop” has different meanings for different people and sometimes the term is seen as interchangeable with “spaza shop”. Given that both tuck shops and spaza shops can operate out of kiosks and containers located at key trading positions on streets, at taxi ranks and along transit routes, such forms of trading occur outside the realm of “home-based business”.

This Policy only applies to home-based tuck shop and spaza shop businesses and is defined in this Policy as follows:

“Tuck-Shop and Spaza-Shop” means a home-based business or home based activity defined at the discretion of the Municipal Senior Town Planner, depending on the scale of the usage, in the form of a micro or small convenience kiosk or shop situated on or within a residential property

which sells basic foodstuffs and other products in response to local needs in a small neighbourhood within walking distance of people's homes.

2.2 Scheme and other relevant definitions

The policy is applicable across the entire Msunduzi area of jurisdiction including the Pietermaritzburg and Ashburton Town Planning Scheme areas and areas outside of the Msunduzi Scheme areas. Consequently, land development in any of the Msunduzi Scheme Area are subject to the relevant Scheme definitions and regulations. Land development outside the Msunduzi Scheme Area Schemes are subject to Schedule 3 of the SPLUMA By-law of 2016.

The clauses in respect of the Pietermaritzburg and Ashburton Town Planning Schemes differ and therefore the relevant Scheme clauses are captured separately. In addition the common definitions are indicated accordingly.

Pietermaritzburg scheme clauses

“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 Municipal 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 Municipal 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

Floor Area: means, the sum of a building at 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 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 or colonnade and similar type of structures that are roofed but open to the elements on at least one side,
- vi. corridors that are open to the elements on at least one side,

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

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

- i. shall be limited to the owner of the property, who shall reside thereon, provided that the Council may in exceptional circumstances, and if it is satisfied that the prime use of the Dwelling as a residence will in no way be prejudiced, permit the activity to be conducted by a person other than the owner;
- ii. shall not involve work on more than four motor vehicles provided that the Council may in exceptional circumstances and if it is satisfied that the prime use of the Dwelling as a residence and the amenities of the neighbourhood will not be prejudiced, permit work to take place on more than four motor vehicles;
- iii. shall not involve the parking of any vehicle with a tare mass exceeding 2000kg, being parked on or adjacent to the site;
- iv. shall not involve the regular congregation of more than five persons on the site nor the employment of more than three persons on the site;

- v. shall not involve any activity or work between the hours of 18h00 and 06h30, except with the specific approval of the Council;
- vi. shall not occupy a floor area greater than 10% of the total area of the site subject to this not being in excess of 25% of the floor area of the dwelling but shall not, in any event exceed 50m², save with the Special Consent of the Council;
- vii. shall not involve the erection of a sign larger than 600mm by 450mm, indicating the nature of the activity. Such sign shall be of a material and shall utilise a style and size of lettering which will complement the residential character of the dwelling, and which shall be placed on the main wall of the Building and shall be in compliance with the Signs By-laws;
- viii. shall not produce a noise level exceeding 7db above the ambient noise level, measured at any point on the property boundary;
- ix. shall not generate traffic sufficient to warrant the provision of additional parking;
- x. shall not involve the quoting of any residential address in any advertisement of the activity;
- xi. shall not involve any major storage of goods or items associated with the activity on or adjacent to the site;
- xii. shall in the case of the keeping of livestock, be subject to the requirements of the Health and other By-laws;
- xiii. shall in the case of the establishment of a child-minder /playschool:
 - a. generally, shall be operated by one person only, who shall reside on the property, although an assistant may be employed at the discretion of the Council;
 - b. shall be limited to the accommodation and care of not more than twelve children, other than those of the applicant; and
 - c. shall be limited to operate between the hours of 07h00 and 17h30.

“Home Business” means the conduct of an occupational activity in a Dwelling or Residential Building which:

- i. shall be limited to the Owner of the property, who shall reside thereon, provided that the Council may in exceptional circumstances, and if it is satisfied that the prime use of the Dwelling as a residence will in no way be prejudiced, permit the activity to be conducted by a person other than the Owner.
- ii. shall not involve work on motor vehicles ;
- iii. shall not involve the regular parking of more than two motor vehicles with a tare mass exceeding 2000kg, on or adjacent to the Site at any one time, and such parking to be located to the rear of the Dwelling, where possible;
- iv. shall not involve the regular congregation of more than five persons on the Site nor the employment of more than three persons on the Site;
- v. shall not produce a noise level exceeding 7db above the ambient noise level, measured at any point on the property boundary;
- vi. shall not utilise machinery other than electrically driven or hand machinery, provided that no single machine shall be rated at more than 1,5kW ;
- vii. shall not involve any activity or work between the hours of 21h00 and 06h00 , except with the specific approval
- viii. shall not occupy a floor area greater than 10% of the total area of the Site subject to this not being in excess of 25% of the floor area of the Dwelling but shall not, in any event, exceed 50m²;
- ix. shall not involve the erection of a sign larger than 600mm by 450mm, indicating the nature of the activity. Such sign shall be of a material and shall utilise a style and size of lettering which will complement the residential character of the Dwelling, and which shall be placed on the main wall of the Building and shall be in compliance with the Signs Bylaws.

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

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

“Owner” means:

- i. the person in whose name the land is registered in the deeds registry for KwaZulu-Natal;
- ii. the beneficial holder of a real right in the land; and,
- iii. the person in whom the land vests.

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

“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 Municipal 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. workshop.

None-scheme related definitions

"Adequate" when used to describe a standard or manner in which anything required by this policy shall be done, means the standard or manner that, in the opinion of an the registered Town and Regional Planner or

"authorised official" is sufficient to safeguard public interest and to achieve the purpose and apply the norms and intent of this policy. "Adequately" has a the same meaning;

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

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

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

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

- i. any alteration or addition or change of use which in the opinion of the Municipality alters the character of an existing building or use of land, shall automatically remove such building or land from the category of building or existing use;
- ii. where the free entry uses, written authority or consent of the Municipality have previously been obtained for a specific development, the approval is deemed to be valid, provided that the general and other specific requirements of the scheme for that zone at the time of approval are observed;
- iii. any subsequent alterations, additions or extensions to any building or additional uses within the building will be subject to the submission of a new Site Development Plan and a Building Plan that are in accordance with this policy, its amendments, Schemes, National Building Regulations and Building Standards Amendment Act (No 49 of 1995) and any amendments thereto operative at the time of application;
- iv. provided further that if, in the opinion of the Municipality, the character of the area will change as a result of any such alterations, additions or extensions, the Municipality shall require the applicant to apply for such authority or municipal consent, as the case may be; and
- v. where the non-conforming existing use of any building or land is discontinued for a continuous period of 18 months or longer, such an existing use shall be deemed to have lapsed and shall not be recommenced.

"Floor Area": means, "the sum of the areas of the building on each floor level, 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”: means any person or body who, in accordance with the provisions of this policy and the Msunduzi Schemes and adopted By-laws in terms of SPLUMA, has lawfully submitted, in writing, any objection, comment or representation in respect of any matter regulated in terms of this policy, the Msunduzi Schemes or any other legislation or policy applicable to the Msunduzi area of jurisdiction providing for objections, comments or representations.

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

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

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

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

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

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

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

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

- i. occupying the premises;
- ii. leasing the premises;
- iii. who is not occupying the premises or a business on the premises on behalf of:
 - a. a person referred to in paragraph (a), (b) or (c).

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

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

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

"Premises" means -

- i. any land without any buildings or other structures on it;
- ii. any building or other structure and the land on which it is situated;
- iii. 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
- iv. any vessel, vehicle or movable structure which is used for a scheduled use.

"Powers and Functions" If any provision in this policy vests or imposes any power, function or duty of the Municipality in or on an employee of the Municipality, and such power, function or duty is in terms of Section 81 (2) of the Local Government: Municipal Systems Act, 2000, or any other law, assigned to a service provider:

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

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

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

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

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

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

"Municipal Consent": means the consent, in writing, by the Municipality for any activity on, or use of land or buildings for which an application is made, in terms of the applicable Municipal Town Planning Scheme and other relevant legislation. The intention of the municipal consent applications processes is to accord consideration of applications that have low impact consequences for the overall character of the zone in which such an application is located. In addition, municipal consent is accorded as a secondary usage which means that the primary usage intention must be adhered to. For example, the primary intention of the "Special Residential Zone" is to allow for development rights that are limited to low impact, family oriented, largely single story residential usage. The overall development impact per site is low with development controls that ensure a limited building footprint, large garden spaces around the building for tranquillity, low noise pollution and an aesthetically pleasing primarily residential environment that is valued by homeowners. Municipal consent is accorded to individually considered, low impact, limited deviations from the primary, "Special Residential" usage.

“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. 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;
- v. universal access conditions and signage layout on all building and landscape plans;
- vi. infrastructure requirements to the satisfaction of the Municipal Manager and City Health Inspector;
- vii. proposed Parking allocation in accordance with the Town Planning Scheme requirements;
- viii. 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;.
- ix. Site Development Plans are required for all business applications irrespective of the Zone in question;
- x. 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;
- xi. an application can only be considered as being complete in accordance with the Msunduzi SPLUMA By-law if all elements (i) to (xi) 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 of free entry rights, rights that are accorded in term of Municipal Consent or are prohibited.

3. THE LEGAL AND CONTEXTUAL FRAMEWORK

3.1 Legislative Framework

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

- i. the Constitution of the Republic of South Africa, (Act No. 108 of 1996): s.22 accords the right to freedom of trade, occupation and profession;
- ii. the Municipal Systems Act, (Act No.32 of 2000) which provides for the powers and functions of municipalities, including integrated development planning;
- iii. the Spatial Planning and Land Use Management Act, (Act No. 16 of 2013, SPLUMA), which provides for “the inclusive, developmental, equitable and efficient spatial planning at different levels of government, as well as for policies, principles, norms and standards for spatial development planning and land use management”; and,
- iv. the Msunduzi Municipality Spatial Planning and Land Use Management By-law (adopted September 2016).

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

- i. National Building Regulations & Building Standards Amendment (Act No 49 of 1995), as amended, which provides for the promotion of uniformity in the law relating to the erection of buildings in the areas of jurisdiction of local authorities and for the prescribing of building standards;
- ii. Businesses Act, (Act No. 71 of 1991) which provides for the licencing of businesses, including informal businesses;

- iii. National Environmental Management Act, (Act No.107 of 1998) and its suite of subsidiary Acts (air quality, dust control regulations, regulations on listed activities, waste management, biodiversity)
- iv. Advertising Signs By-law, No.18 of 14 September 2006;
- v. Fire Prevention and Flammable Liquids and Substances By-laws, No.55 of 24 June 2014;
- vi. Public Health By-laws, No.100 of 25th June 2015; and,
- vii. Manufacture, Storage and sale of Foodstuffs By-laws, No.229 of 3rd May 1973.

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

3.2 National, Provincial and Local Planning directives

Various national, provincial and local planning directives must be taken into consideration as indicated in the table below:

Table 2: National and Provincial Policy, Provincial Planning and Local Municipal Planning legislation influences on policy

| Sphere of influence | Document reference | Implication for this planning policy |
|---------------------|---|---|
| National Directives | National Development Plan | The National Directives are too strategic in nature to apply directly at this level. |
| Provincial Planning | Provincial Planning and Development Plan | Similarly, the Provincial Planning directives are concerned with provincial wide catalyst projects, and particular regional and strategic interventions. |
| Municipal Planning | Integrated Development Plan | The Msunduzi Municipality Integrated Development Plan (IDP) includes a section on SMMEs and the informal sector. The number of SMMEs in an area are considered as indicators of growth. |
| | Spatial Development Plan | The Msunduzi Spatial Development Framework (SDF) focuses on creating viable urban centres and catalytic projects to support growth. Other focus areas include integration, improved public transport and capital investment. The only relevance relating to the tuck shop policy is the promotion of quality urbanisation and building a safe city. |
| | Local Development Plan | The informal economy and the need for safety is recognised in the LAPs for Msunduzi. |
| | 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. |
| Business Licensing | National Small Business Act, 1996 (Act No. 102 of 1996) | The Act requires all small businesses to make application for operation, which allows for the verification of health, building and planning requirements. |

4. POLICY RATIONALE AND PRINCIPLES

4.1 Policy Rationale

The intention of this policy for tuck shops is to seek out that balance between encouraging home-based micro-businesses that support household income streams while maintaining the amenity of the areas in which they are

located as well as the image of the city as a well-managed place to invest and live in, a city which sees good governance as a cornerstone for future growth.

4.2 Policy principles

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

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

5. SCOPE AND APPLICATION OF THE POLICY

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

- i. Residential: in which case municipal consent is required through the town planning procedures, as well as business licencing through the appropriate section of the municipality.
- ii. Mixed use: in which case town planning municipal consent is not required; a business licence is however, still required.

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

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

6. MUNICIPAL CONSENT APPLICATION CRITERIA

6.1 When a Municipal Consent approval is needed

Before 15 September 2016, all applications for Tuck Shops were made in term of Section 67 bis of the Town Planning Ordinance No. 27 of 1949, as amended (hereafter “the Ordinance”) in terms of which existing Schemes were established. The Spatial Planning and Land Use Management By-law was promulgated on 15 September 2016 and repealed Section 67 of the Ordinance.

Consequently, all new applications shall be considered in terms of the Msunduzi Spatial Planning and Land Use Management By-law of 2016, the KwaZulu Natal Planning and Development Act No 6 of 2008, the Pietermaritzburg and Ashburton Schemes, this Policy and other relevant policy and legislation as noted in section 1.2 above. In this regard:

- a) The delegated planning official will advise the relevant planning committee on the normative, procedural, technical, and substantive merits of each application in a written report.
- b) The relevant committee or delegated official considering the application must do so in accordance with procedural, technical and substantive requirements as defined in in terms of Section 46 (c) of the Spatial Planning and Land Use Management Act,(No. 16 of 2013) which regulates applications in accordance with the adopted Msunduzi SPLUMA By-law. This occurs through development regulated either through the Pietermaritzburg or Ashburton Town Planning Scheme areas or through Schedule 3 of the Msunduzi SPLUMA By-law in respect of land within the Municipality, but outside either of the two current Scheme regulated areas; and
- c) The registered Town and Regional Planner and delegated committee, considers the application for substantive, normative and procedural compliance with SPLUMA. The Town Planning Scheme (Scheme) is used by the council to manage the use of land and buildings within its municipal area. The Scheme defines a number of land use zones and reservations and uses are classified as either being permissible, prohibited or requiring municipal consent from Council.
- d) An application for municipal consent must be made in terms of the Scheme for the tuck shop / spaza shop which is a business being conducted on a property zoned for residential land use; in other words, for the operation of a home-based business.
- e) The scale of a tuck shop will determine the application process requirements. All tuck shops are required to make application for municipal consent. Small scale, low key tuck shops, may apply for exemption from some of the application requirements, based on the discretion of the Senior Town and Regional Planner responsible for planning application processes.

6.2 Planning Guidelines

- a) The Town Planning Schemes (Pietermaritzburg and Ashburton) (hereinafter referred to as “the Schemes”), were established in terms of the Ordinance, and 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, Annexure 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.

6.3 Planning criteria – conditions for approval

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

- i. **Who may operate the business:** the owner who resides on the property, may operate the business. Only in exceptional circumstances may the business activity be conducted by anyone other than the owner, and only if the residential nature of the property is in no way prejudiced. The consent approval is attached to the owner and may not be transferred. Should the tuck-shop operator be different from the owner, the consent approval must include the details of the tuck-shop operator.
- ii. **Area of business:** as set out in the Scheme definitions for Home-Business, the floor area of the tuck shop / spaza shop shall not occupy more than 10% of the total area of the property subject to this not being in excess of 25% of the floor area of the residential dwelling; in any event, the floor area of the shop space must not exceed 50m².
- iii. **Area of Home Activity:** should the homeowner be selling tuck shop goods on a very small scale, i.e. there is no dedicated room or separated space for the tuck shop, and is limited to three shelves in a living area, only then this activity will be classed as a **Home Activity** and will not require municipal consent.
- iv. **Building regulations:** the dwelling, including the area for the business, whether part of the dwelling or separate from it, must comply with the standards set out in the National Building Regulations, particularly in terms of structure and fire safety.
- v. **Amenity:** Any new structure or alteration to the existing dwelling or outbuilding must fit in with the residential character of the relevant area;
- vi. **Goods sold:** the goods that may be sold are both perishable and non-perishable items which include: snacks, sweets, fruit and vegetables, bread and milk, cold drinks, sugar, spices and salt, flour, rice, mealie meal, and cigarettes;
- vii. **Goods / activities prohibited or sold with conditions:** liquor may not be sold from the premises; flammable substances such as paraffin may only be sold in small containers and be subject to the Fire Prevention and Flammable Liquids and Substances By-laws (No 55 of 25th June 2014);
- viii. **Vehicles and parking:** the business shall not involve the regular parking of more than two vehicles with a tare mass exceeding 2000kg on or adjacent to the property at any one time; parking to be at the rear of the dwelling where possible;
- ix. **Trade restrictions:** Trading must be restricted to the boundaries of the property and within the street building lines. No parking is permitted on the pavements and no trading is permitted on either the pavements or road reserve.
- x. **Nuisance:** the business shall not cause any nuisance or disturbance to neighbours, including noise levels not in excess of 7decibels above the ambient noise level measured at any point on the property boundary; no appliances other than electricity driven hand appliances may be used, and no single appliance shall be rated at more than 1.5kW.;
- xi. **Business hours:** the business may not involve any activity or work between the hours of 21h00 and 06h00, except with specific approval of the Council;
- xii. **Advertising / Signage:** no signs advertising the business shall be larger than 600mm by 450 mm. Such sign shall be of a material and shall utilise a style and size of lettering which will complement the residential character of the dwelling and shall be in compliance with the Advertising Signs By-law, No.18 of 14 September 2006.

- xiii. **Criminal record:** there must be no record of any criminal activity on the property in question;
- xiv. **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.
- xv. **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;
- xvi. **Operations ceased:** applicants who have ceased the operation of the business must inform the municipality in writing.

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

7. APPLICATION PROCEDURES

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

8. THE PLANNING PROCESS AND TIME FRAMES

Annexure C depicts the planning process; the time frames are summarized below in Figure 1.

Figure 1: Planning consent and business licence process, timeframes and linkages

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

9. 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**.

10. IMPLEMENTATION PROCESS

10.1 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 that the Scheme amendments recommended by undertaken as soon as possible

10.2 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

10.3 Existing Policy repealed

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

11. LAW ENFORCEMENT

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

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

The monitoring and control of the illegal entities will require a high level of commitment and dedication as well as co-operation between all role players including the South African Police Services and the law enforcement section of the Municipality.

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

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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.

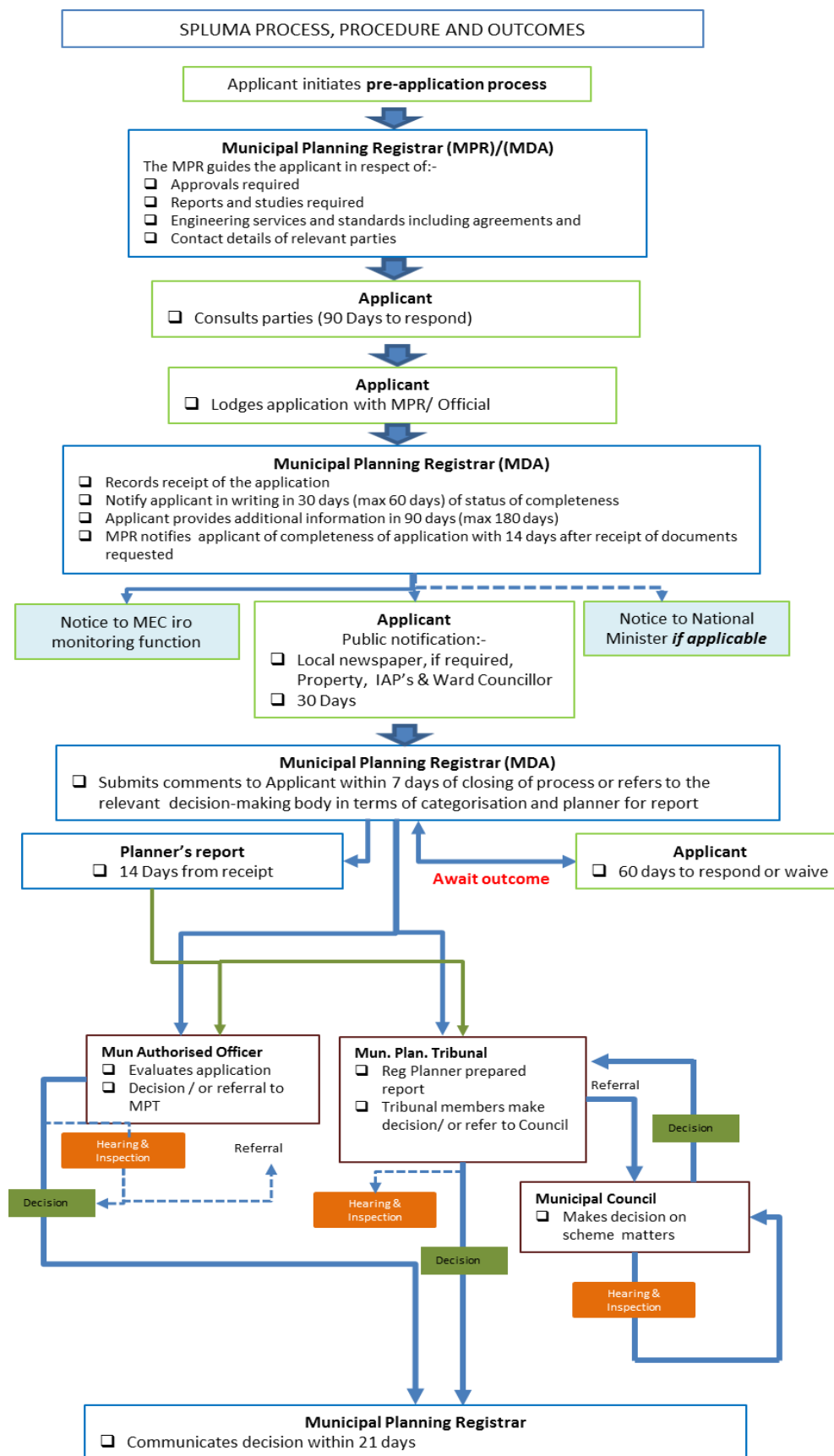
The closing date for the submission of comments may not be less than 30 days from the date of notice.



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.

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