

GEORGE MUNICIPALITY
TOWN PLANNING POLICY ON HOUSE
SHOPS AND OTHER RESIDENTIAL BASED
RETAIL CONCERNS
(REVISED APRIL 2021)

TOWN PLANNING POLICY ON HOUSE SHOPS AND OTHER RESIDENTIAL BASED RETAIL CONCERNS

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A. BACKGROUND

It is recognised that many residential neighbourhoods built with state subsidy housing funding (townships) function differently to the traditional suburban residential neighbourhoods of our city, towns and villages. This can be attributed to, among others, differences in culture and traditions within these diverse communities, the levels of poverty, unemployment and dependency experienced among the citizenry and the ability of community's residents to access facilities, services, resources and opportunities.

Past planning practises has left many "township" communities isolated from the economically active parts of its city, town or village. This has compromised the resilience of these communities and have left them void of access to local employment opportunities and commercial facilities, forcing these communities to be reliant on formal business and industrial areas to find work and income generating opportunities to provide for their individual needs. While restructuring and spatial transformation are the main strategic priorities in municipal strategies, the lack of funding and human capital impacts of the execution of identified strategies. Citizens in these "townships" continue to travel considerable distances to access retail goods and neighbourhood services. In response, residents and small business owners have established house shops (spaza shops) on residential properties, rendering localised access to basic consumer needs.

Controlling and managing the establishment of shops in the existing business and industrial sections of George generally do not present a problem for the municipality as formal zoning rights are in place and "new" rights can be accommodated through formal land use application processes (rezoning, temporary departure and consent use applications). However, the municipality does not have adequate resources to manage the proliferation of retail concerns that have been unlawfully established within its "townships". To address this, the George Municipality Council approved its first House Shop Policy in June 2013. This policy was revised in June 2014 but must be revised again due to changes in planning laws and the adoption of new spatial planning frameworks.

The Spatial Planning and Land Use Management Act, 2013 (SPLUMA), was implemented in the George Municipality on 1 June 2015. In terms of the principles contained in Section 7 of SPLUMA, the municipality needs to take steps to transform its townships so that they can function more sustainably. Spatial justice and equity also needs to be perused to build spatial resilience in these areas over time, while the municipality also needs to exercise good governance. This is elaborated on later in the document.

The Western Cape Land Use Planning Act, 2014 (LUPA) as well as the Land Use Planning Bylaw for George Municipality, 2015 was also implemented on the same date. These laws repealed and replaced the old order town planning laws on which the existing policy is based.

In September 2017, the George Municipality adopted the George Integrated Zoning Scheme Bylaw, 2017 which replaced the four (4) old zoning schemes. These old schemes did not make provision for house shops and consequently, were treated as temporary departures which lapsed after five (5) years. Under the new zoning scheme bylaw, a house shop is allowed as consent uses under Single Residential Zone I (formal housing) and Single Residential Zone III (informal housing and UISP), allowing greater flexibility in the land use management system to the benefit of landowners.

The integration of the zoning schemes created a uniform set of standards for house shops. It also makes provision for other types of residential businesses (occupational practices) as a primary right, including:

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- **A home occupation** - is the practising of an occupation (architect, attorney, etc) or the conducting of an enterprise by one or more occupants who reside on the property (maximum of 3 employees), provided that the dominant use of the property concerned must remain for the living accommodation of the occupants. A home occupation excludes a noxious trade, risk activity, adult entertainment, adult services, adult shop, sale of alcoholic beverages, motor repair garage, funeral parlour or activities that are likely to generate a public nuisance, including but not limited to panel beating and spray painting, auto electrician, builder's yard, welding works or joinery.
- **A place of instruction** - provided that no more than 6 learners may be accommodated at any given time.
- **Letting to lodgers** – maximum of 2 bedrooms and 2 lodgers.
- **Bed and breakfast establishment** – maximum 2 bedrooms and 4 guests. (Total of guests and lodgers may not be more than 4 persons).

In addition to the above, following residential orientated businesses can be operated as a consent use:

- **Crèche** – up to 20 children
- **Guest house** – up to 6 rooms or 12 guests
- **Place of instruction** - a place for education or training at pre-school, school or post-school levels
- **Halfway house** - a facility that provides temporary accommodation for persons who have completed a formal treatment programme for substance abuse, but does not include inpatient treatment or similar facilities
- **Home care facility** - provide permanent or temporary accommodation and care for the retired, or elderly persons in need of frail care, or people in need of health care to recuperate from a medical condition or procedure (no more than 6 persons)

The George IZS Bylaw therefore makes it possible for residents to earn an income from their property in multiple ways, not only house shops – allowing residential areas to be more resilient.

The policy must also be aligned with the municipality's planning policies, and in this regard, needs to also consider the George Municipality: Integrated Development Plan, 2017 to 2021, the George Spatial Development Framework, 2019 and the respective Local Spatial Development Frameworks adopted in 2015 onwards.

B. PURPOSE OF POLICY

To formulate a set of policy guidelines that allows the George Municipality to consider and manage the operation of house shops as well as other residential based retail concerns within residential neighbourhoods and informal settlement areas to:

- i. Assist residents living in these areas to earn an income from their property while limiting any negative impacts of such home based retail concerns on the rights of the other residents in the area to a safe, clean and quiet living environment;
- ii. Promote an entrepreneurial spirit within these neighbourhoods;
- iii. Aid in achieving the municipality's development objectives with regards to integration, urban restructuring and public transport orientated development as outlined in the George Municipal Spatial Development Framework, 2019 and applicable Local Spatial Development Frameworks;
- iv. Make provision for 3rd party retail concerns operated within these areas as well as for formalised retail business opportunities; and

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- v. Address the rectification of illegal retail business operations.

EXPLANATORY NOTE 1

Why the need for a policy?

All municipalities have zoning schemes to manage complementary and conflicting land uses in its area and determine the types of land uses that can be allowed on each property. A municipality's zoning scheme has different zones for agriculture, business, industrial, residential, community and recreational uses, and each property is assigned a zoning. The municipality then draws up spatial plans to determine the position of these zones and land uses in relation to each other. A typical example of conflicting land uses are industrial uses next to a residential use, or a tavern next to a school. A complementary use is typically a business property next to an industrial property or a residential property next to school or church.

Under ideal circumstances (everything being equal) business uses should not be entertained within residential neighbourhoods as it inevitably leads to conflict and disturbances (businesses generate more noise, traffic, pollution, waste and smells and attract elements to the area) in an area that should be a place of solitude (rest and relaxation, family time, etc.) for the residential property owner and his/her family.

In most residential neighbourhoods you will typically find that business properties are found along main roads and/or on a large centrally located property with the smaller neighbourhood (corner) shops being located on one or two street intersections. This is due to their ease of access and/or the higher levels of passing foot traffic which is needed for these businesses to remain economically sustainable over time.

These positions also minimises potential negative impacts on the surrounding residential uses, and protects the residents' rights to live in a peaceful, safe and clean environment.

The municipality however, acknowledges the reality of the inequities found in the township areas due to past planning practices that made most townships dormitory towns with its residents having limited access to basic goods and services. Residents generally found themselves without access to the economic and employment opportunities found in the wealthier suburbs and thus, found other informal means to meet their needs.

It also acknowledges that most residents in the township areas are not by the economic means to support themselves and that the only real asset they can use to generate an income for themselves is their property. With limited resources and access for formal employment and opportunities available, many owners in poor and vulnerable neighbourhoods (townships) and informal settlements are increasingly resorting to informality to address their needs such as renting rooms in their house to tenants or students, allow backyarders to erect temporary structures on their property, starting small scale workshops (tyre repairs, vehicle repairs, manufacturing), and operating small and micro businesses (home occupations) from home. Most of these activities are done without the municipality's permission or approval.

Poverty, high levels of unemployment, informality and poor accessibility to retail goods and services has also resulted in the establishment of house shops ranging in size from small fruit and vegetable stalls, to tuck shops that sell sweets, cool drinks and chips, to small take-away stalls (typical braai stands) to your larger retail concerns which sell a larger variety of goods and also provide neighbourhood scale services such as hair dressers, barbers, cellphone services, repair services and sale of materials for the erection of informal structures. In response to the above, the municipality took a decision to allow

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owners and occupiers of residential properties located in the townships, the opportunity to operate house shops.

However, in recent years, formal business owners and 3rd parties (operators who do not live on the property) have taken advantage of the house shop concept to establish formal and informal retail concerns in these areas, sometimes to the detriment of the property owner and the community concerned. Even though this activity conflicts with the original spirit or intent of the house shop concession, it is accepted that their presence is a reality and will need to be accommodated.

It is acknowledged that most of the 600+ house shops and retail concerns operated from residential properties in the municipal area are illegal and that the approach adopted by the municipality to address this issue, since adoption of the first House Shop Policy in 2013, has been unsuccessful. A new cost-effective approach to rectifying these illegal activities needs to be identified, considering the overall objectives of the policy, the spatial planning objectives set in the George MSDF and respective Local SDF's, the statutory requirements of the Municipality's Land Use Planning Bylaw, 2015 and the George Integrated Zoning Scheme Bylaw, 2017.

The purpose of this policy is thus to manage the allowance of house shops and other retail concerns within residential areas and in informal settlements in such a way that it:

- allows the municipality's residents, especially those living in the townships and informal areas to earn a sustained income from their property;*
- limits any negative impact on the rights of the other residents in the area to a safe, clean and quiet living environment;*
- promotes an entrepreneurial spirit among the residents;*
- make provision for existing 3^d party retail concerns within these residential neighbourhoods; and*
- addresses the proliferation of illegal retail concerns;*

Notwithstanding the above, the municipality gives recognition to other home-based businesses that can be permitted on a residential property as explained further in this document.

C. DEFINING A HOUSE SHOP

According to the George Integrated Zoning Bylaw, 2017 the land use description of 'House Shop' means "the conducting of a retail trade from a dwelling house, second dwelling, shelter or outbuilding by one or more occupants who must reside on the property; provided that the dominant use of the property must remain for the living accommodation of the occupants."

Development parameters:

- (a) Development parameters applicable to "dwelling house", "second dwelling" and "shelter" apply.*
- (b) Any new structure or alteration to the property to accommodate the "house shop" must be reconcilable with the residential character of the area, particularly regarding the streetscape, and must be capable of reverting to use as part of the "dwelling house", "second dwelling" or "shelter".*

EXPLANATORY NOTE 2

What is a house shop?

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A house shop is a convenience retail concern that serves mostly the immediate community and includes, but is not limited to, the selling of daily groceries and other food stuffs, as well as convenience services and trades such as a hair salon and barber, cellular phone / landline airtime sales and service, photocopy and faxing service, shoe repair, road side take-away, butchery and bakery.

A retail concern that does not comply with the land use description of house shop, for example - if it is bigger than the house or operated by a 3rd party (a person who does not lawfully reside on the property), is not a house shop. It is a formal business (neighbourhood shop) to which strict locality criteria as outlined in the policy below will apply.

House shops do not include industrial type activities such as furniture manufacturing and repair, motor repair workshops and part sales, panel beaters and spray painting, and tyre repair and sales. The sale of liquor (liquor store) and places of entertainment (pub, tavern, games shop, gambling place) and other businesses that generate noise, air pollution and traffic or businesses that invariably attracts a broader spectrum of customers than just the local residents are also not recognised as house shops.

What does “dominant use” mean?

Dominant use basically means that more than 50% of the buildings on the property and the property itself must still be used for residential purposes. In other words, the house shop must be smaller than the house.

Who can operate and work in a house shop?

*The land use description of ‘house shop’ implies that it may only be operated by an **occupant** of a main house or second dwelling of single residential property, or an occupant of an informal structure in an informal settlement or temporary relocation area.*

*In terms of the zoning scheme, a dwelling house can only be occupied by a **single family**. A family is defined as: one or more individuals occupying a dwelling who are related through marriage or common law, blood relationship, legal adoption, or legal guardianship and no more than **3 unrelated people**; or a group of not more than 5 unrelated persons, **including domestic workers or boarders**. **The operator of the house shop can therefore be any member of the family lawfully living in a house on the property / informal structure – i.e. an owner, tenant, boarder or live-in domestic worker.***

Why are house shops being allowed in residential neighbourhoods?

The allowing of house shops in residential neighbourhoods is first and foremost a concession and response by the municipality to address the socio-economic needs of the poor and unemployed residents living in residential township areas, subsidy housing areas and informal settlements. It is intended to assist families in living in such areas, to obtain a sustainable income from their properties while at the same time, developing and fostering an entrepreneurial spirit within these communities. It is one of the municipality’s short and medium-term strategies to uplift the poor – through either getting them to work for themselves and/or earn an income through renting space on their property to a tenant, boarder or 3rd party – decreasing their dependency on the state or the municipality.

The municipality also recognises the need to address the legacies of Apartheid planning practices and to develop ways to assist in spatially transforming these areas to become integrated and functional residential neighbourhoods. The municipality has developed a long-term strategy to spatially transform these areas but it may take a long time to implement. The impacts of rapid urbanisation and increasing informality in these areas also causes the dynamics in these areas to continuously shift.

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Within such an environment, the municipality cannot afford to be rigid, and thus - in the short and medium term, it will need to allow for a greater degree informality in the abovementioned areas and not attempt to predetermine the final spatial structure of these neighbourhoods. However, the municipality will still need to keep the long-term goals and objectives of its spatial plans in mind.

Thus, allowing house shops must facilitate a dual role – a social intervention to assist the poor, and an instrument of spatial transformation that assists in the establishment of sustainable and functional neighbourhoods.

What is a 3rd party?

*A person who is not a member of the family (owner or tenant), **their boarder or live-in domestic worker** living in the house / shelter or outbuilding on the property is regarded as a 3rd party. Retail concerns that are operated by 3rd parties cannot (by description) be regarded as house shops. These 3rd party operations do however comply with the land use description of a 'neighbourhood shop' – and therefore, need to be regarded as formal businesses and not house shops.*

Why are mid-block 3rd party retail concerns being discouraged?

Ideally, no retail concern, whether run by an occupier of the dwelling house or shelter concerned, or a 3rd party operator, should not be allowed mid-block in residential neighbourhoods as they inevitably create conflicts with the surrounding owners' rights and amenity to a quiet and safe residential living environment. House shops should thus only be allowed on mid-block properties as a short-term intervention to alleviate poverty and unemployment in the townships, with the intention that formalised business area established in better allocated areas.

The practice of property owners renting out of retail space on a residential property to a 3rd party is seen to be another form of subsidisation, which defeats the municipality's objective of encouraging entrepreneurship within the township community. Further, such practice leads to the owner losing their indigent support and having to pay Business rates and services charges. The small rental fee that the owner receives is ultimately wiped out by the increased tariffs and charges, leaving them in a worse financial position.

There are also other consequences for the property owner as they are often tied into a lease agreement with the business owner for a certain period of time. They cannot afford to get out of these agreements and thus, in reality, 3rd party shops do not help the property owner / registered tenant to improve their lives.

Lastly, it is found that many of the present 3rd party operators do not comply with health regulations relating to basic hygiene, which requires that they have access to a toilet and hand basin, and that they not sleep in the shop. If the operators complied and added a bathroom and bedroom to their shop, they would technically be boarders and no longer 3rd parties – making it possible for them to apply for a house shop.

This arrangement benefits the operator and the property owner, promoting the principle of spatial resilience. The operator benefits through lower application fees and knowing that he/she apply for permanent rights to operate from the property. He/she can enter a lawful lease agreement with the owner making it possible for him/her to invest into a better structure and the business over time. The owner benefits by not losing his/her indigent support (depending on the size of the retail area) and gains a reliable source of income from his/her property.

Does the policy preclude 3rd parties from operating a retail concern in a residential neighbourhood?

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As stated above, the land use description of 'house shop' does not allow for a 3rd party retail concern. However, the policy has been designed to make allowance for the operation of 3rd party retail concerns on a residential property.

D. ASPECTS TO BE ADDRESSED BY THE POLICY

The revised policy must establish sustainable land use management guidelines for the allowance and operation of house shops or similar micro enterprises from residential properties, specifically those located in townships and informal settlement areas.

House shops play a critical role in providing access to essential goods and services in these areas. However, cognizance is also taken of the fact that their presence in the township areas has become a sensitive issue, especially as some of them are used for illicit activities while others attract crime (especially at night). It is thus essential that this policy finds a balance the regulatory framework within which these businesses must be conducted, against the needs and rights of the residents and property owners which these businesses must serve.

The influx of 3rd party business operators along with the lack of capacity to adequately manage these enterprises, has resulted in the proliferation of illegal retail businesses and industrial enterprises into the township areas. As these enterprises are unlawful, both landlords and operators are often subjected to abuse owing to unlawful contracts and corruption, while the municipality is denied income through the application of the correct rates and services charges.

Cognizance is also taken of the fact that most informal settlements are located on properties owned by George Municipality, Garden Route District Municipality, Provincial Government, or National Government. Informal dwellers living in temporary relocation areas are also subject lease agreements signed with the municipality. These agreements require the occupants to first obtain permission from the municipality before a retail concern may be operated.

The development parameters of a house shop require that any new structure or alteration to the property to accommodate the "house shop" must be reconcilable with the residential character of the area, particularly regarding the streetscape, and must be capable of reverting to use as part of the "dwelling house", "second dwelling" or "shelter". The policy will therefore need to focus on how to regulate the appearance and design of these establishments.

As the turnover of the house shops is relatively small it is virtually impossible to operate the house shop as an economically feasible establishment, especially considering potential rates and services charges increases. It is therefore important to ensure that the policy allows for the short-term sustainability of these retail concerns while also promoting the longer term spatial planning objectives of the municipality.

This policy also needs to establish enforcement procedures that will encourage existing illegal operators whose establishments are found in desirable locations, or do not comply with other requirements, to legalise their activities and to operate within the proposed framework while discouraging non-conforming enterprises.

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E. CONTEXTUAL FRAMEWORK

1. George Municipality: Integrated Development Plan, 2017 to 2021

The George Municipality’s IDP states the following institutional strategies which apply to the policy:

- a) *Deliver quality services in George* - It is essential that all citizens in George have access to basic services as provided by local government. Access to basic services by all citizens should be 100%.
- b) *Grow George* - In order to grow the local economy of George the Municipality has to create an enabling environment which will attract investment into the area. This will stimulate economic activity and result in new business sales and job creation to alleviate poverty. The aim is to ensure an annual growth rate of 8% is achieved.
- c) *Keep George Safe & Green* – George possesses is a beautiful and safe living environment. The quality of lifestyle which is offered in the George area is a key selling factor to attract investment.
- d) *Good Governance in George* – Ensuring that good governance is key and free of corruption to ensure the city is run as effectively, efficiently, transparently and sustainably as possible.
- e) *Participate in George* – Ensure all members of public and organized business and other organizations can participate in the decision-making process.

2. Spatial Planning and Land Use Management Act, 2013 and Western Cape Land Use Planning Act, 2014

In terms of Section 22(1) of SPLUMA, a municipality may not take a decision on a land use application which conflicts with its Municipal Spatial Development Framework unless site specific circumstances exist as contemplated by Section 22(2). Notwithstanding Section 22(2), the decision-making authority must, when considering an application, be guided by:

- (a) The development principles contained in Section 7 of SPLUMA (and Section 56 of LUPA);
- (b) Policies and directives aimed at protecting agricultural land;
- (c) National and provincial government policies;
- (d) The (guidelines and policies of) Municipal SDF;
- (e) Constitutional transformation imperatives and related duties of the state;
- (f) All relevant facts and circumstances applicable to the application;
- (g) The rights and obligations of all parties affected;
- (h) Impact on services infrastructure, social services and needs for open space;
- (i) Compliance with applicable laws and administrative processes;
- (j) Compliance with applicable environmental legislation;

In consideration of the above, the decision-maker will need to, among others, address the following questions when assessing a house shop application:

NO	EVALUATION CHECKLIST (S. 65)
1.	Does the application submitted comply with the provisions of this bylaw?
2.	Has the motivation submitted been considered?

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3.	Were the correct procedures followed in processing the application? (see land use application process checklist)
4.	Was a condonation required and granted with regards to the process followed? (<i>see land use application process checklist</i>)
5.	Have the desirability guidelines as issued by the provincial minister to the utilise land for the proposed land uses been considered? (<i>not yet applicable</i>)
6.	Have the comments received from the respondents, any organs of state and the provincial minister been considered? (<i>s. 45 of LUPA</i>)
7.	Have the comments received from the applicant been considered?
8.	Have investigations carried out in terms of other laws and that are relevant to the application being considered?
9.	Was the application assessed by a registered town planner? (<i>see land use application process checklist</i>)
10.	Has the impact of the proposed development on municipal engineering services been considered?
11.	Is the application in line, consistent and/or compatible with the IDP of the municipality?
12.	Is the application in line, consistent and/or compatible with the municipal SDF?
13.	Is the application in line, consistent and/or compatible with the local SDF applicable to the area?
14.	Is the application in line, consistent and/or compatible with any other municipal policy or by-law applicable to the proposed land use?
15.	Is the application in line the consistent and/or compatible with the principles as contained in Section 7 of SPLUMA / 59 of LUPA?
16.	Is the application in line with the applicable provisions contained in the applicable zoning scheme by-law?
17.	Will the natural environment and/or open space systems be negatively affected?
18.	Will application result in trees/ indigenous vegetation being removed on site or in the road reserve?
19.	Does the application have any negative impact on heritage resources?
20.	Will the character of the surrounding area be negatively affected?
21.	Will the architectural character of the streetscape be negatively affected?
22.	Will there be any negative impact on vehicle traffic and pedestrian safety?
23.	Will there be a negative impact on traffic movement?
24.	Will there be a negative impact on vehicle sight distances?
25.	Is there adequate on-site parking / loading facilities provided?
26.	Is there adequate vehicle access/ egress to the property?
27.	Will the neighbour's amenity to sunlight be negatively affected?
28.	Will the application result in overshadowing onto neighbours properties?
29.	Will the neighbours amenity to privacy / enjoyment of their property/views be negatively affected?
30.	Will the proposal have a negative impact on scenic vistas or intrude on the skyline?
31.	Will the intended land use have a negative impact on adjoining uses?
32.	Will the land use pose a potential danger to life or property in terms of fire risks, air pollution or smells or compromise a persons right to a safe and secure environment?

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33.	Will there be a negative impact on property values?
34.	Will the application result in a nuisance, noise nuisance, and disturbance to neighbours?
35.	Will adequate open space and/or recreational space be provided (for residential developments)?

The following principles of Section 7 of SPLUMA and Section 56 of LUPA are specifically relevant to house shops:

1.	Redress spatial and other development imbalances of the past through improved access to and use of land
2.	Address the inclusion of persons and areas previously excluded in the past, specifically informal settlements and areas characterised by wide-spread poverty and deprivation
3.	Consider the potential impact of the development proposal on the value of the affected land /properties
4.	Recognise the impact of the application on the existing rights of the surrounding owners
5.	Promote a spatially compact, resource frugal development form
6.	Accommodate development within the existing fiscal (budget), institutional and administrative means of the municipality
7.	Promote and stimulate the equitable and effective functioning of land market
8.	Promote development that is sustainable, discourages urban sprawl, encourages residential densification and promotes a more compact urban form
9.	Promote development that will result in or enable the establishment of viable communities
10.	Strive to ensure that the basic needs of all the citizens are met in an affordable way
11.	Sustain and/or protect the economic potential of the relevant area or region
12.	Mitigate against the potential impacts of climate change
13.	Include measures to reduce consumption / conserve water and energy resources
14.	Consider geological formations and topographical (soil and slope) conditions
15.	Promote development that benefit the long-term social and economic priorities for the area over any short-term benefits
16.	Development should contribute towards the optimal use of existing resources, infrastructure and/or facilities
17.	Development should contribute towards social, economic, institutional and physical integration aspects of land use planning
18.	Promote the availability of employment and residential opportunities in proximity to each other or the integration thereof
19.	Promote the establishment of a diverse combination of land uses
20.	Contribute towards the correction of distorted spatial patterns of settlements within the town/city/village
21.	Contribute towards and /or promote the creation of a quality and functional open spatial environment does the development
22.	Make an area or town more spatially resilient to ensure a sustainable livelihood for the affected community most likely to be affected by economic and environmental shocks

It is evident from the above, that assessing a house shop application is quite complex, thus the need for a policy that can give direction and provide greater certainty on the outcome of said application.

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Key to the above is to ensure that the policy promotes the 5 key development principles of SPLUMA, being spatial sustainability, spatial justice, equality, *spatial* resilience and good governance. The policy therefore needs to assist decision-makers in establishing sustainable, flexible, diverse, healthy, risk adverse settlements that responds to the environmental, social and economic needs of the community concerned.

The aim of the policy should thus be to:

- a) protect the health and wellbeing of the community, landlord and tenant (operator) concerned;
- b) ensure that there can be peaceful co-existence between the house shops and the community concerned;
- c) protecting the adjoining neighbours rights and amenity by ensuring that the quality of neighbourhood and living environments are not compromised;
- d) ensure that the residents are adequately informed of applications and can participate in decision-making processes;
- e) ensure that house shop operations are feasible and can derive a sustainable income for the operator and landlord;
- f) allow for the scaling up of operations over time, should the enterprise prove to be successful;
- g) promote investor confidence through the granting of permanent rights to operators that offers a level of certainty that protects their investment;
- h) create safe places for operators to trade and customers to access – by ensuring that applicable regulations including trading hours, laws and bylaws are enforced;
- i) develop an entrepreneurial spirit within the local community by permitting the establish a diverse mix of neighbourhood scale retail enterprises and services in well-located areas and
- j) broaden the economic base to develop a greater diversity of employment opportunities and promote sustainable job creation over time;
- k) Align the policy with the concepts of Transit Orientated Development (locating near bus stops and interchanges), Non-motorised Transport (bicycles), and walkability – providing a high degree of accessibility to services, facilities and opportunities within a walkable distance of about 500m from any residential property;

3. George Municipal Spatial Development Framework (GMSDF), 2019

The purpose of the George MSDF, as set out in SPLUMA, is to, among others:

- (a) Interpret and represent the spatial development vision of the municipality;
- (b) Guide planning and development decisions across all sectors of government – including municipal and provincial government spatial planning and land use management decisions;
- (c) Provide clear and accessible information to the public and private sector and provide direction for investment purposes;
- (d) Include previously disadvantaged areas (townships) and informal settlements, and address their inclusion and integration into the spatial, economic, social and environmental objectives of government;
- (e) Address historical spatial imbalances in development;
- (f) Provide direction for strategic developments, infrastructure investment, promote efficient, sustainable and planned investments by all sectors and indicate priority areas for investment in land development;
- (g) Promote a rational and predictable land development environment to create trust and stimulate investment;

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- (h) Assist in integrating, coordinating, aligning and expressing development policies and plans emanating from the various spheres of government;

The George MSDF plays a leading role in the broader municipal planning system. It is the spatial expression of the IDP and the long term spatial vision for the municipal area that also considers the vision, principles and policy directives set out in national and provincial legislation, strategies, policies and plans. All municipal land development policies must be aligned to the vision, spatial strategies and plans set out in the MSDF. The MSDF also leads the Municipality's policy-driven Land Use Management System. The MSDF provides the long term spatial framework for decisions made in terms of the Land Use Planning By-Law for George Municipality (2015) and George Integrated Zoning Scheme By-Law (2017).

It is important to note that a MSDF does not confer or take away land use rights but guides decisions associated with the awarding and management of such rights. When deciding on an application, the Municipal Planning Tribunal, or any other authority required or mandated to make a land development decision must make a decision which is consistent with the MSDF (S22 of SPLUMA,2013).

The spatial planning vision to guide the George MSDF is to: *Develop George as a resilient regional centre of excellence for inclusive, smart urban and rural prosperity.*

There are three spatial drivers that give form to the George MSDF, of which two (2) are of relevance to the House Shop Policy as it concerns the ideal location of economic activities. The first is the system of activity nodes and corridors and nodes which must be reinforced and developed in a managed way to function as a productive and efficient system. The second is the local accessibility networks (motorised and non-motorised) connecting people and activities along corridors to nodes within the city of George, enabling choice and participation in society and the economy within the urban areas.

The performance of these elements is supported by three spatial strategies and accompanying policies for managing, guiding and promoting development in George, elaborated in the diagram below:



The municipal area of George hosts several urban settlements, each playing a distinct role in the regional economy. The business centres of towns and small rural settlements outside George are being consolidated and reinforced, and the decentralisation of economic activity curtailed.

Within the George city area, a network of existing and proposed mixed use nodal centres, serving as points of high accessibility and opportunity for surrounding communities at strategic locations, has been identified. These are the points of investment priority, where higher order facilities and business activities are concentrated and supported by a high quality public realm.

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It is proposed that George CBD (the primary economic centre) is revitalised and redeveloped into a thriving city centre that accommodates a variety of complementary activities and a substantially larger and mixed-income residential component. Secondary nodes (existing and proposed) will complement the George CBD as centres with specialisations relating to commercial, industrial or mixed-use local activities. Additional points of high accessibility have been identified that should be prioritised for transit-oriented development to harness the potential of their location, existing uses and high connectivity in the public transport network.

In the context of the MSDF, house shops are classified as part of the informal economy. The activity is not recognized as a potential significant economic generator within our urban settlements, but rather a generator of informal employment opportunities and a mechanism to aid in settlement restructuring and building greater resilience and efficiencies within residential neighbourhoods.

The ability of residents and visitors to access the opportunities, services and amenities in the George area is a precondition for growth of the economy and development of its communities. It is important that the functionality of particularly, public transport services networks as well as (non-motorised transport and pedestrian) movement networks are strengthened so that the community can have access to a higher level of choice. Increasing footfall in an area enhances the viability of street level commercial activity (such as house shops) and enables the development of a productive and growing local economy, especially within the townships. The MSDF identifies a 500m walkable land use intensification zone along the principal public transport corridors, which will also perform the role of the Municipality's Restructuring Zone – where higher density mixed residential, mixed use development is promoted.

All development need to strive towards creating quality urban and rural environments. A well-structured, safe and high quality built environment, being the public realm (public streets, open spaces and amenities) and the buildings which bound these spaces (such as house shops and other retail enterprises), should be pursued. Transforming these spaces and making them more appealing makes neighbourhoods (townships) more attractive for economic investment and thus, establishing quality urban environments should be included in economic development strategies (to which this policy is linked).

The MSDF promotes the clustering of public facilities and public space in areas that have direct access to public transport routes, with higher order clusters of facilities being located along the priority public transport corridors and regional accessibility networks. Complimentary private sector investment is encouraged around these clusters to support efficiencies and land use and social integration. Clustering facilities and services achieves higher levels of resource efficiency, supports public transport usage and walkability, and improves security. Private investment in preferred well-located areas should be incentivised.

Compact and diverse neighbourhoods, offering places to live, work, recreate all within proximity, served by streets scaled to people so that they are comfortable to walk must be pursued. Small development projects that offer opportunities for improved inclusivity, empowering emerging contractors, developers and investors should be promoted. The George CBD, Thembalethu and Pacaltsdorp CBD's and the high streets of Uniondale and Haarlem present the best prospect for generating a private sector response at a scale proportionate to the public-sector intervention.

Public spaces and streets within nodes, along main corridors, main bus routes and priority investment areas should be upgraded and maintained to give

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dignity and priority to the pedestrian and public transport movement to stimulate footfall in support of small businesses at the street scale. Sidewalk spaces should be planned and designed to allow the local service economy (formal and informal) to thrive.

Public investment should be prioritised in well-located areas to enable commercial opportunities at the street level. Areas requiring intervention should be identified in close consultation with the local formal and informal business community.

The concept of walkability should be promoted within the intensification zone and especially within the priority nodes. Make walking safe and comfortable, ensure good street edges, encourage active ground floor use, promote fine grained development, promote mixed land use and inclusivity and well as universal access principles.

Further details with regards development opportunities for business are discussed in detail in the respective local spatial development frameworks.

F. LEGISLATIVE AND REGULATORY FRAMEWORK

The revisions to this section of the policy are thus informed primarily by new legislation and policy guidelines.

1. Title Deed

A house shop may not be permitted on a property if the use conflicts with a restriction contained in the title deed of that property. An additional application for removal of title deed conditions may be required.

2. Land Use Planning By-law for George Municipality, 2015

The LUP By-law sets the minimum requirements for submitting land use applications, procedures that must be followed in processing a land use application, the general considerations that must be considered when deciding on an application, and the procedures for addressing illegal land uses and buildings. The policy will need to be consistent with the by-law.

3. George Integrated Zoning Scheme Bylaw, 2017

Prior to the implementation of the GIZS By-law, house shops were only allowed as temporary departures. These departures could only be approved for a maximum of five (5) years, where after the house shop would either need to close or a new application had to be permitted. In terms of the new By-law, a house shop can be allowed as a consent use under the Single Residential Zones I and III which means that the owner or operator need only apply once, and the approval will not lapse if certain requirements are complied with.

The zoning table describes the intent of Single Residential Zones as follows –

“The objective of this zone is to provide for residential development where the predominant type of accommodation is a dwelling house for a single family, where each dwelling has its own land unit, and adequate outdoor space. Limited employment and additional accommodation opportunities are possible as primary or consent uses, provided that the dominant use of the property remains

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residential, and impacts of such uses do not adversely affect the quality and character of the surrounding residential environment.”.

The zoning scheme does not impose specific conditions on house shops in terms of size and only states that it needs to be reconcilable with the definition of dwelling or shelter as well as not impact negatively on the streetscape and surrounding residential character.

EXPLANATORY NOTE 3

What is the consequence of this new integrated zoning scheme?

In terms of the provisions of the scheme, a house shop approval that was approved under the old planning laws before the new zoning scheme was implemented, that approval will be regarded as valid until it lapses (5 years after approval granted).

The approval cannot be extended and thus, operator or owner will then need to submit a new application for a consent use to operate the house shop. The consent use can be granted as a temporary or a permanent right.

All existing house shops in Thembaletu (except Zone 9) which comply with the old zoning scheme conditions and/or which have approved building plans can automatically be granted Consent Use status. If the zoning maps do not indicate an approval the owner can apply to rectify the map. There is no cost involved.

G. LAW ENFORCEMENT

Law Enforcement procedures for illegal land uses are stated in Sections 85 to 97 of the Land Use Planning By-law for George Municipality, 2015. The following aspects are highlighted:

Enforcement

85. (1) The Municipality must comply and enforce compliance with—
- the provisions of this By-law;
 - the provisions of a zoning scheme;
 - conditions imposed in terms of this By-law or previous planning legislation; and
 - title deed conditions;

(2) The Municipality may not do anything that is in conflict with subsection (1)

Offences and Penalties

86. (1) A person is guilty of an offence and is liable on conviction to a fine or imprisonment not exceeding 20 years or to both a fine and such imprisonment if he or she—
- ...;
 - utilises land in a manner other than prescribed by a zoning scheme without the approval of the Municipality;
 - ...;
 - supplies particulars, information or answers in an application, or in an appeal against a decision on an application, or in any documentation or representation related to an application or an appeal, knowing it to be false, incorrect or misleading or not believing them to be correct;
 - ...; or

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- (f) hinders or interferes with an authorised employee in the exercise of any power or the performance of any duty of that employee;
- (2) An owner who permits his or her land to be used in a manner set out in subsection (1) (b) and who does not cease that use or take reasonable steps to ensure that the use ceases, or who permits a person to contravene the zoning scheme, is guilty of an offence and liable upon conviction to a fine or imprisonment not exceeding 20 years or to both a fine and such imprisonment.
- (3) A person convicted of an offence in terms of this By-law who, after conviction, continues with the action in respect of which he or she was so convicted, is guilty of a continuing offence and liable upon conviction to imprisonment for a period not exceeding three months or to an equivalent fine or to both such fine and imprisonment, in respect of each day on which he or she so continues or has continued with that act or omission.

Serving of Compliance Notices

87. (1) The Municipality must serve a compliance notice on a person if it has reasonable grounds to suspect that **the person or owner** is guilty of an offence in terms of section 86.
- (2) A compliance notice must instruct the occupier and owner to cease the unlawful utilisation of land or construction activity or both, without delay or within the period determined by the Municipality, and may include an instruction to—
 - (a) demolish, remove or alter any building, structure or works unlawfully erected or constructed or to rehabilitate the land or restore the building concerned to its original form or to cease the activity within the period determined by the Municipal Manager;
 - (b) submit an application for the approval of the utilisation of the land or construction activity in terms of this By-law within 30 days of the service of the compliance notice and to pay the contravention penalty within 30 days after approval of the utilisation; or
 - (c) rectify the contravention of or non-compliance with a condition of approval within a specified period;
 - (3) A person who has received a compliance notice with an instruction contemplated in subsection (2) (a) may not apply in terms of subsection (2) (b).
 - (4) An instruction to submit an application in terms of subsection (2) (b) must not be construed as an indication that the application will be approved.
 - (5) If the application submitted in terms of subsection (2)(b) is refused, the owner must demolish, remove or alter the building, structure or work unlawfully erected or constructed and rehabilitate the land or restore the building.
 - (6) A person who received a compliance notice in terms of this section may object to the notice by submitting written representations to the Municipality within 30 days of receipt of the notice.

Failure to Comply with Compliance Notice

90. If a person fails to comply with a compliance notice, the Municipality may—

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- (a) lay a criminal charge against the person;
- (b) apply to the High Court for an order—
 - (i) restraining that person from continuing the unlawful utilisation of the land;
 - (ii) directing that person to, without the payment of compensation—
 - (aa) demolish, remove or alter any building, structure or work unlawfully erected or constructed; or
 - (bb) rehabilitate the land concerned;
- (c) in the case of consent use or a temporary departure, withdraw or revoke the approval granted and act in terms of section 87.

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 house shops and other types of similar land uses - e.g. building regulations, nuisance/noise by-laws, tobacco legislation and health and safety by-laws. The by-law however prohibits the imposing conditions requiring the approval being contingent on the approval of an application in terms of another law.

H. PROPOSED POLICY

1. House Shop Categories

It is proposed that the policy make allowance for three categories of house shops, each with its own criteria, namely:

- (a) A tuck shop;
- (b) A traditional house shop; and
- (c) A large house shop (conversion into traditional corner shop)

Tuck Shop

A tuck shop is less than 6m² in extent and is operated from a room in or on the front stoep of the dwelling house, second dwelling or shelter (informal structure) of the property. It is normally confined to the selling confectioneries such as chocolates and sweets, cigarettes, bread, milk, chips and other small goods, home-made foods and preserves. It is often limited to a single operator - typically an unemployed resident in the house trying to earn a little extra money to make ends meet.

Traditional House Shop

The traditional house shop typically ranges in size from 6m² to 20m² (single garage) in extent or half the size of the house, whichever is lesser. These types of shops offer a wider variety of goods and services and have a larger footprint / impact on the surrounding community. The shops are typically operated from outbuildings or temporary structures/shipping containers and are generally separated from the main house.

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An additional area of up to 15m² but not greater than the retail area, can be applied for to accommodate any water closet, change room and/or storeroom if it does not exceed 50% of the total floor space of the dwelling unit;

Large House Shop

This type of shop is typically larger than 20m² (single garage) but less than 40m² (double garage / size of a subsidy house) in extent or half the size of the main house, whichever is lesser and has quite a significant impact on the residential environment. It is proposed that the locality criteria be strictly applied to these types of shops and that these shops be allowed to grow into a formal business premises.

An additional area of up to 15m² can be applied for to accommodate any water closet, change room and/or storeroom if this does not exceed 50% of the total floor space of the dwelling unit;

Neighbourhood Shop

A retail concern / service with a floor area larger than 40m² in extent and/or that is larger than the main house, and that does comply with the land use description of house shop, is regarded as a neighbourhood shop and not a house shop. This type of retail concern may only be considered if it complies with the locality criteria as set out in the policy for a Large House Shop.

2. Locality

Tuck Shops

It is suggested that this type of house shop will not have to comply with the locality criteria as set out further in the policy and thus, all property owners or occupiers of the house / shelter on the property can apply to the municipality for such shop.

Traditional and Large House Shops

Traditional and large house shops should ideally be located within existing and proposed business nodes as well as along existing and proposed activity corridors and activity spines as indicated in the George Spatial Development Framework and respective Local Spatial Development Frameworks, as well as along designated public transport routes and on land already designated (zoned / earmarked) for business purposes. These areas are usually highly accessible to the public and ideal for the establishment of business facilities. Care must however be taken not to create monotonous ribbon development and compromise the municipality's objectives of consolidating, diversifying and strengthening these identified areas.

Apart from the above, traditional and large house shops should only be allowed within a residential neighbourhood/ informal settlement under the following circumstances (see *Figure 1*):

- (a) The retail concern should be located at least 500m walking distance away from established activity corridors, activity streets, business nodes, main bus routes and established business sites.
- (b) The retail concern should be restricted to a corner stand at an intersection of at least two roads at a location that would be suitable for the development of a neighbourhood (corner) shop.
- (c) The locality of the site is of such a nature that it can serve a wider surrounding area and has a reasonable chance of being developed into a feasible business site in future.

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- (d) Two or more retail concerns may be permitted on the same street intersection if said shops do not provide similar convenience goods and/or services to the surrounding neighbourhood.
- (e) Retail concerns that comply with all locality criteria as set out in the policy may be allowed to expand over time to become traditional neighbourhood shops/ formal businesses.

The municipality may consider a deviation from the above locality criteria and allow a traditional house shop on a residential property / within an informal settlement away from a street corner and/or midblock provided that:

- (a) The locality criteria shall not apply to the existing house shops that operated in terms of the rights granted in terms of the Thembalethu Zoning Scheme prior to the adoption of the George Integrated Zoning Scheme on 1 September 2017 as well as all other house shops lawfully exists in terms of other applicable planning laws;
- (b) The extent of the retail concern does not exceed 20m² or the size of the dwelling house, second dwelling or shelter (as the case may be), whichever is lesser, and may not be allowed to expand;
- (c) No valid objections are received from an interested and affected party/ surrounding neighbour;
- (d) The application complies with other aspects addressed by the policy; and
- (e) It is only allowed as a temporary use right.

3rd party retail concerns will not be allowed midblock. Existing operators will be given the opportunity to comply with the requirements of a traditional house shop above. They will therefore need to live as a boarder on the property with sleeping quarters (a bedroom) separate to the shop.

3. Number of House Shops Within an Area

The number of traditional and large house shops within a predominantly residential neighbourhood should be restricted to protect and enhance the character of the residential environment, protect the residents' rights and amenity to a quality human friendly living environment, to protect the vulnerable members of the community and to ensure that any adverse social impacts and unlawful activities can be controlled.

In this regard, it is suggested that large house shops and 3rd party retail concerns are only located in areas which can grow into fully fledged neighbourhood shops. The number of shops will thus depend on the number of opportunities available.

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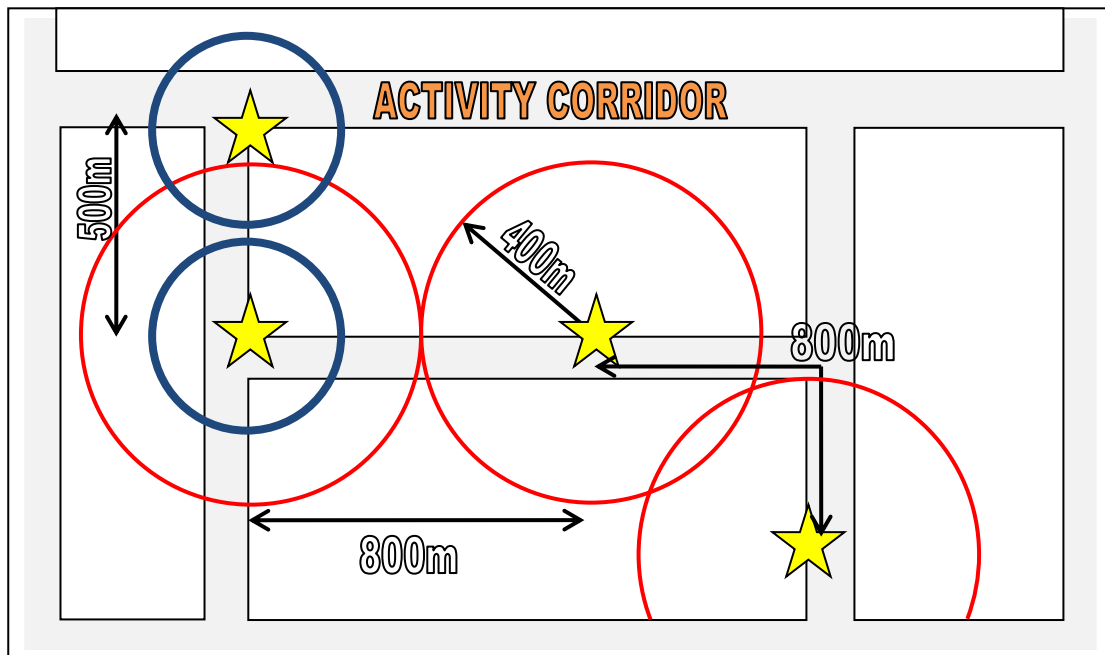


Figure 1: Permitted Position of House Shops

The optimum distance that a resident should walk to access convenience shops and services is 500m. For house shops to be sustainable over time, it is suggested that traditional and large house shops located in a residential neighbourhood, which sell similar convenience services, should be located no closer than 400m in radius from each other or 800m walking distance apart. (See Figure 1 for explanation).

The above spacing distances should be applied less restrictively on the properties located along existing and proposed activity corridors, activity spines, designated public transport routes and activity nodes as indicated in the George Spatial Development Framework and applicable Local Spatial Development Framework as well as on land already designated (zoned or earmarked) for business purposes.

The spacing criteria shall not apply to the existing house shops that operated in terms of the rights granted in terms of the Thembalethu Zoning Scheme prior to the adoption of the George Integrated Zoning Scheme on 1 September 2017 as well as all other house shops lawfully existing in terms of other applicable planning laws.

4. Types of Structures Allowed for a House Shop

The zoning scheme parameters attached to house shops require that the retail concern either be operated from existing approved structures on the property (part of the house or an outbuilding) or from a new structure. The structure must also be designed in such a way that it can be converted back as part of the “dwelling house”, “second dwelling” or “shelter” or outbuilding in future.

The house shops must therefore be operated from structures that comply with the requirements for human occupancy in terms of the National Building Regulations and Building Standards Act, 1977 or that meet the requirements for storage or garaging of motor vehicles.

In considering the above, a house shop / 3rd party retail concern located on Single Residential Zone I property may only be operated from a temporary shipping container or

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an informal timber structure (shelter) if it complies with the NBR&BS Act. These requirements may be waived on Single Residential Zone III properties.

A new structure erected for a house shop / 3rd party retail concern should have a similar appearance to the existing buildings on the property and/or other permanent residential structures in the area, especially when viewed from the street. Acceptable exterior finishes for new house shop structures and business buildings may include face-brick, plastered brick, timber half-rounds, nu-tec board and vibracrete panel walls – possibly painted the same colour as the house - keeping in mind that the finish must not detract from the existing house and other houses in the surrounding area. The roof finishes (flat or pitched roof) will also depend on the materials and finishes found in the surrounding area.

Alternatively, the applicant may apply for a temporary departure to erect a shelter (informal structure) from which to conduct the house shop subject to compliance with applicable municipal policy, development guidelines and/or bylaws governing the erection of such structures.

House shops operated from shelter should have at least: an adequate foundation or a raised concrete platform on which the structure rests. The buildings should make use of quality fire retardant materials, be structurally sound, and meet the minimum requirements in terms of fire safety, natural or artificial ventilation, natural light, access to a toilet and a hand basin for sanitation purposes (connected to the municipal network), electrical and plumber certification, and storm-water run-off control (roof with gutters or a concrete apron around structure).

EXPLANATORY NOTE 4

In terms of the National Building Regulations and Building Standards Act, 1977, a retail concern may only be operated from a structure that has approved building plans. The occupation certificate is required for the operator to obtain the necessary trading licenses.

A standard shipping container (the ones typically rented and supplied for house shops) cannot be used as a house shop as it does not comply with the regulations and thus cannot be occupied. It is however possible that a container can be converted to comply with the regulations and used for the purposes of a house shop. The container will however, need to resemble a typical residential outbuilding and be suitably painted to blend in with the house.

Similarly, a timber or corrugated iron structure can be permitted if it complies with the National Building Regulations and Building Standards Act, as well as fire regulations.

The structure should be designed to resemble a typical residential outbuilding.

5. Operating Hours

House shops should have limited operating times to respect the residential character of the area within which it is located.

It is proposed that retail concerns located in desirable areas as described in section 2 of the policy have less restrictive trading hours than those located within residential neighbourhoods. Shops located in the middle of residential neighbourhoods are more isolated and susceptible to incidents of crime. Limiting the trading hours of these retail

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concerns makes it easier for the South African Police to monitor and control these retail concerns as well as prevent these incidents.

Limiting the trading hours of shops located in residential streets also limits negative impacts on the residents and better protects neighbours rights and amenities. Further, allowing extended trading hours for well-located shops creates an incentive for 3rd party retail concerns to relocate their shops to better locations.

Thus, in general application, trading hours in the residential neighbourhoods should be restricted to 06h00 to 20h00. The SAPS recommended that these trading hours be restricted to between 06h00 and 18h00 in high crime areas. As an incentive, it is recommended that trading hours for shops located along activity corridors, activity spines, and public transport routes as well as within business nodes and business sites be permitted extended hours from 06h00 to 21h00 on request and only after consultation with the SAPS.

Note:

Council should introduce a By-law regulating the trading hours of these retail concerns as it will make it easier for the Law Enforcement / SAPS to enforce them.

6. Compatibility with Surrounding Land Uses

The location of house shops must also consider its compatibility with other land uses generally found in a residential neighbourhood. Ideally these facilities should be located near to community facility clusters such as schools, crèches, house of worship, old age homes, hospitals, clinics, libraries or public open spaces. However, it is advised that no house shop is authorised or established should it be evident that the house shop will have a negative impact on the facility.

It is acknowledged that parks and public spaces and places are also often used as shortcuts to access house shops. However, the house shop should not be permitted if the house shop owner/ operator cannot provide a solution should the resultant increase in foot traffic cause faster erosion and degradation of the facility.

House shops must not be located near a tavern given the government's obligation to protect and not expose our young and most vulnerable citizens to the anti-social behaviour and crimes associated with such facilities.

For the purposes of the policy, a minimum impact radius of 100m will be applied when assessing the impact of traditional house shops and a 200m radius will apply for large house shops.

7. Gaming Machines, etc.

To ensure that there is no loitering around the house shop it is recommended that no activity such as video games, gaming machines and pool tables be allowed within a house shop. No place of entertainment or liquor outlet will be allowed to operate from a house shop.

8. Health Regulations

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In terms of the Garden Route District Municipality's requirements, the following health regulations need to be complied with if food is to be sold or prepared from the premises (i.e. this is applicable to all house shops and shops), namely:

- (1) that the premises comply with the general hygiene requirements for food premises and the transport of food regulations R962 of November 2012 promulgated under the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act 54 of 1972);
- (2) that a Certificate of Acceptability be obtained as required by regulations R962 of November 2012 promulgated under the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act 54 of 1972); and
- (3) that the premises comply with government notice R264 of 30 March 2012 relating to the smoking of tobacco products in public places as promulgated in terms of the Tobacco Products Control Act, 1993 (Act 83 of 1993) as amended.

Any house shop where food is prepared and/or disposed of must also obtain a permit from the Directorate: Civil Engineering Services in terms of Chapter 5, Section 6 of the Water and Sanitation Services By-law for the disposal of industrial effluent.

9. Business License

A business license application must be submitted to the Department: Environmental Services of the George Municipality for the preparation of meals as required in terms of the Business Act, 1991 (Act 71 of 1991).

10. Noise or Public Nuisance

The house shop may not constitute a noise nuisance (people shouting, loud music being played, extraction fans, etc), create a nuisance for any neighbouring property owner (because of vehicles parking in the street, damaging neighbour's property, smoke from fires, cars hooting/stopping in front of neighbours property, etc). All music played in a house shop must be limited to listening music set at a low volume and speakers may not be placed outside the house shop. Juke boxes will not be allowed within a house shop.

11. Property Rates and Service Charges

At present the approval of house shops results in a substantial increase in property rates and service charges for residential property owners. It also causes indigent households to lose their indigent support. As the turnover of the house shops is relatively small, and these actions make it virtually impossible for these owners to operate an economically feasible house shop establishment. It is therefore suggested that the municipality's rates and indigent policies be adjusted to make provision for the following:

- (a) Property owners or tenants who receive indigent support - may continue to receive such support so long as the retail area of an approved house shop does not exceed 20m² in extent;
- (b) Property owners or tenants who do not receive indigent support – may continue to pay normal residential rates and services charges so long as the retail area of the approved house shop does not exceed 20m² in extent;
- (c) If the retail area of the approved house shop, on either a residential or indigent rated property exceeds 20m² but is not more than 40m², residential rates and services charges will apply, except that the service charge for refuse removal will be adjusted to Business;

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- (d) Property owners or tenants will pay full business rates and service charges for neighbourhood shops, 3rd party retail concerns and illegal house shops;

To receive the applicable rates and services charges rebate, the property owner must provide the Finance Department with the compliance certificate issued the Town Planning Department to confirm the legal standing of the house shop.

12. South African Revenue Services (SARS)

All owners and/or operators of traditional house shops, large house shops and neighbourhood shops must register for tax with SARS. Proof of registration with SARS must be submitted for the rectification of existing house shops.

13. Rectification of Illegal House Shops and 3rd Party Retail Concerns

Following the approval of this policy, all owners and/or operators of illegal (unauthorised) house shops / 3rd party retail concerns (including those who have previously been served a notice) as on date that Council adopts the revised policy will be granted an amnesty period of 3 months to rectify their operation and avoid the payment of any penalties or fines.

The amnesty shall only be granted if the operator can present proof of the shop's existence prior to abovementioned date. The granting of amnesty shall not be construed as an indicator of support for their illegal businesses, or that their application will be approved.

All owners and/or operators shall be served a notice in accordance with the applicable provisions of the Land Use Planning By-law for George Municipality, 2015 requesting them to rectify the contraventions (the illegal activity and/or building works) within 30 days of date of notice being served. The notice will also request the owner / operator to contact and visit the Town Planning department to discuss options in rectifying the contravention.

If the house shop owner and/or operator do not adhere to the municipality's notice, a second notice shall be served by the municipality allowing the owner and/or operator a further 14 days to address the contravention.

Should the house shop owner and/or operator adhere to the above-mentioned notices, he/she will be assisted by the Planning department and advised on the requirements of submitting the necessary land use applications. They will also be advised that the submission of such application does not give them the authority to continue operating the illegal shop and further, that submission of the application does not guarantee that their application will be successful.

The owner and/or operator will then be provided one (1) month to submit the required land use application. Should the second notice not be adhered to or the land use application not be submitted, the matter will be handed over to the Department: Legal Services and Compliance for the instituting of further legal action.

This Legal Department will issue a final compliance notice allowing the owner and/or operator a final opportunity (14 days) to address the contravention, failing which, said Department will be instructed to either lay a criminal charge with the SAPS or appoint an attorney to institute civil proceedings against the owner and/or operator.

The municipality may depart from the above procedures and institute legal action if the activity and/or structure pose an imminent danger to life or property, or if illicit activities

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taking place on the property poses a threat to the health and wellbeing of community concerned.

14. Application Details to be Submitted

Tuck Shops

A person wanting to operate a tuck shop does not need to submit all the compulsory information as required by the Land Use Planning Bylaw, 2015 but should at least submit application fees, application forms, a short motivation in the form of a cover letter, copy of title deed, neighbours' consent letters and site plan to register the Tuck Shop with the Town Planning Department.

The application will be circulated internally and the department will check for its compliance with the policy. If the Tuck shop complies with the policy, the department will issue a compliance letter which will be valid for a period of 5 years. General approval conditions will be attached to the letter to which the Tuck Shop owner will need to comply.

If the application does not comply with the policy, title deed of the property, and/or the applicable zoning scheme, a formal application as outlined for traditional and large house shops will need to be followed.

Traditional and Large House Shops, and Neighbourhood Shops

For an application relating to a traditional house shop, large house shop, neighbourhood shop or 3rd party retail concern, the Municipality may - in addition to the compulsory information required in terms of the Land Use Planning By-law, 2015 - request the submission of the following additional information:

- a) Surrounding land use plan (200m or 400m radius).
- b) Internal photos of the existing building to be used / being used for the retail concern clearly showing each room used by the shop, furnishings, decor, fittings, sound proofing, floor coverings, ablution facilities, internal storage areas, etc. (if applicable)
- c) External photos clearly indicating the external finishes of the structure which is used, its relationship to the existing dwelling unit on the erf, external storage areas, parking areas, treatment of erf boundaries, garbage disposal area, signage. (if applicable)
- d) A motivation stating the type of house shop being applied for and as to why he regards the establishment to be compatible with the surrounding land uses; how nuisance factors such as noise disturbance and the adjoining neighbours' right to privacy is respected;
- e) How health and safety requirements are addressed; and how the industrial effluent generated by the business, if any, will be disposed of (grease traps etc).

Note:

A shorted zoning rectification process as outlined in Section 8 of the George IZS By-Law, 2017 can be followed for traditional and large house shops that existed under the Thembaletu Zoning Scheme Regulations, 1989 prior to the implementation of the new zoning scheme on 1 September 2017 provided that the owner / operator can provide proof its existence prior to 1 September 2017 and accepts the General Conditions of Approval as stated in Subsection 19 below.

15. Advertising and Processing of Applications

All applications will be processed in accordance with the provisions of the Land Use Planning By-law, 2015 as well as the system of delegations granted by Council. The following advertising provisions shall apply:

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- (a) Tuck shops – neighbours consent letters, unless removal of restrictions application is also required. Garden Route DM, SAPS and SARS to be informed of application if approved.
- (b) Traditional or Large House shops:
 - i. Registered Notices shall be served on surrounding property owners affording those 30 days to comment. Copies of these notices may also be served by hand to these property owners.
 - ii. Notices shall be served on surrounding community, welfare, educational and religious organisations located within 400m radius of property, as well as commenting bodies, Ward Councillor and Proportional Councillor allowing 30 days to comment;
 - iii. Notices served on other commenting government departments and SAPS affording 60 days to comment;
 - iv. Notices to be placed on the property and be clearly visible to passers-by for 30 days from date of notification;
 - v. Advertising in the press will only be required if the removal of a title deed restriction is required;
- (c) Applications for retail concerns larger than 40m² must be advertised in the press in addition to (b) above.
- (d) Applications for house shops may be sent to the Traffic Services/ Law Enforcement Section of the George Municipality for their comments to ascertain whether:
 - i. any criminal activities such as illegal gambling, sale or distribution of narcotics, etc. have occurred or alleged to have occurred on the property;
 - ii. incidents such as murders, stabbings, fights, etc. have been reported in the immediate vicinity of the property;
 - iii. vehicle and/or pedestrian accidents occurred near the property; and
 - iv. any illegal sale of liquor has been reported.

The house shop should be refused if any of the abovementioned poses a problem.

16. Validity Period of Approvals

All approvals in terms of this policy shall be valid for a maximum period of 5 years. Ideally located house shops and 3rd party retail concerns may be approved as a permanent consent use and thus remains in place (cannot lapse) if the owner / operator complies with the conditions of approval.

However, house shops and 3rd party retail concerns that are located within informal settlements and/or not well-located will only be permitted on a temporary basis either as a consent use or temporary departure, as these retail concerns made need to be moved to a more ideal location.

Note:

Currently SPLUMA does not allow for an extension of an approval period beyond 5 years. The Municipality is in the process of amending its Bylaws to accommodate an extension of the approval period for up to 10 years in total. Approvals granted on a temporary basis will only be valid for 5 years. An extension of the approval period will need to be applied for prior to the original approval lapsing.

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17. Phased Implementation of Conditions of Approval

The owner or operator of the house shop, may apply to the municipality to phase the implementation the house shop approval over a period of 5 years, which if approved, the following additional conditions shall apply:

The implementation of the conditions of approval may be phased as follows:

- (1) Year 1: The owner and/or the operator must ensure that the house shop structure meets minimum ventilation, lighting and fire safety standards. The shop must be provided with an adequate wash-up and ablutions facility and the operator must provide or be provided with living quarters that are separate from the shop on-site.
- (2) Year 2: If the structure is positioned over the property boundary and/or over the approved street building lines, the owner and/or operator must demolish that portion of the structure or move the structure to a position within property boundaries and within the street building lines.
- (3) Year 3: The owner and/or operator must submit building plans for approval of a house shop structure in accordance with the requirements of George Integrated Zoning Scheme Bylaw, 2017, the conditions of approval and the National Building Regulations and Building Standards Act, 1977.
- (4) Year 4: The owner and/or operator must alter the temporary structure to comply with these requirements or replace the temporary structure that complies with these requirements.
- (5) Year 5: Owner and/or operator must obtain the occupation and fire safety certificates for the approved building.

The operator is required to obtain a certificate of compliance from the Planning Department on completion of each phase. The certificate will be valid for one (1) year from date of issue and must be displayed on site along with the approval granted and other required compliance certificates and licenses issued by other authorities.

The municipality may grant an extension of phasing on submission of an application for extension of any temporary approval period. The municipality may grant permanent rights should the owner or operator obtain an occupation certificate for the house shop building.

18. Lapsing and Revoking of an Approval

An approval granted for a house shop or 3rd party retail concern will be withdrawn and lapse in accordance with the provisions of the Land Use Planning By-law for George Municipality, 2015.

The approval may be revoked should:

- (1) it be used for any form of illicit trade or crime;
- (2) it be found dumping waste or create unhealthy living conditions;
- (3) it be a source of noise of public nuisance; or
- (4) the phasing requirements for rectifying an existing house shop not be implemented within the time-frames stipulated;

19. General Conditions

The following general conditions shall apply to all approved house shops:

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- (a) The type of house shop shall be described and the house shop shall be limited to this use right;
- (b) The owner and/or operator of an existing house shop shall rectify the structure from which it is operated in accordance with the phases below, as calculated from date of approval:
 - (1) Year 1: The owner and/or the operator must ensure that the house shop structure meets minimum ventilation, lighting and fire safety standards. The shop must be provided with an adequate wash-up and ablutions facility and the operator must provide or be provided with living quarters that are separate from the shop on-site.
 - (2) Year 2: If the structure is positioned over the property boundary and/or over the approved street building lines, the owner and/or operator must demolish that portion of the structure or move the structure to a position within property boundaries and within the street building lines.
 - (3) Year 3: The owner and/or operator must submit building plans for approval of a house shop structure in accordance with the requirements of George Integrated Zoning Scheme Bylaw, 2017, the conditions of approval and the National Building Regulations and Building Standards Act, 1977.
 - (4) Year 4: The owner and/or operator must alter the temporary structure to comply with these requirements or replace the temporary structure that complies with these requirements.
 - (5) Year 5: Owner and/or operator must obtain the occupation and fire safety certificates for the approved building.
- (c) The operator is required to obtain a certificate of compliance from the Planning Department on completion of each phase. The certificate will be valid for one (1) year from date of issue and must be displayed on site along with the approval granted and other required compliance certificates and licenses issued by other authorities;
- (d) Permission to operate the house shop is only granted to the property and the operator concerned and is not transferable;
- (e) The operator of the house shop must reside on the property in quarters or a room separate from the house shop;
- (f) No more than 3 (three) persons, including the occupants of the dwelling unit, are permitted to be engaged in retail activities on the property;
- (g) Trading must be restricted to the boundaries and within the street building lines of the property. No trading is permitted on the sidewalks or road reserve;
- (h) Unless otherwise permitted, trading may only be allowed from structures that comply with and have been approved in terms of the National Building Regulations and Building Standards Act, 1977;
- (i) Any new structure, or alteration to the existing dwelling unit or outbuilding, must conform to the residential character of the area concerned;
- (j) Trading hours shall be limited to 06h00 to 19h00, unless otherwise approved. The municipality may restrict trading hours further depending on any complaints received;
- (k) Stock deliveries must be restricted to normal business hours (06h00 to 18h00 weekdays only);

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- (l) The sale of liquor or alcoholic beverages, the storage or sale of gas and gas containers, paraffin and other hazardous substances is prohibited;
- (m) No place of entertainment and thus no activity such as video games, gaming machines, gambling machines and pool tables be allowed within a house shop;
- (n) The sale of cellular phone/telephone recharge vouchers and the provision of any other services or trades must be explicitly applied for and approved by the George Municipality;
- (o) The house shop may not constitute a noise nuisance or create a nuisance for any neighbouring property owner;
- (p) Juke boxes will not be allowed within a house shop. Should music be played in a house shop, it must be limited to listening music set at a low volume and speakers may not be placed outside the house shop;
- (q) All parking for the house shop must be provided on the property concerned to the satisfaction of the Directorate: Civil Engineering Services. No parking will be allowed in the road reserve;
- (r) Disposal of refuse must be addressed to the satisfaction of the Directorate: Community Services;
- (s) Only one non-illuminated sign shall be permitted and shall not exceed 5000cm² in area. Such sign shall indicate only the name of the owner, the name of the business and the nature of the retail trade. Any other sign must be applied for and approved by the George Municipality before it can be erected;
- (t) The owner must submit proof that he/she and/or his/her business is registered with the South African Revenue Services for tax.
- (u) A business license for the preparation of meals as required in terms of the Business Act, 1991 (Act 71 of 1991) must be obtained from the Directorate: Community Services for approval.
- (v) A permit application must be submitted in terms of Chapter 5, Section 6 of the Water and Sanitation Services By-law for the disposal of industrial effluent to the Directorate: Civil Engineering Services for approval.
- (w) The following health regulations need to be complied with if food is to be sold or prepared from the premises (i.e. this is applicable to all house shops and shops), namely:
 - (1) that the premises comply with the general hygiene requirements for food premises and the transport of food regulations R962 of November 2012 promulgated under the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act 54 of 1972);
 - (2) that a Certificate of Acceptability be obtained as required by regulations R962 of November 2012 promulgated under the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act 54 of 1972); and
 - (3) that the premises comply with government notice R264 of 30 March 2012 relating to the smoking of tobacco products in public places as promulgated in terms of the Tobacco Products Control Act, 1993 (Act 83 of 1993) as amended.

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- (x) The approval may be revoked should:
 - (1) it be used for any form of illicit trade or crime;
 - (2) it be found dumping waste or create unhealthy living conditions;
 - (3) it be a source of noise of public nuisance; or
 - (4) the phasing requirements for rectifying an existing house shop not be implemented within the time-frames stipulated;

20. Non-Compliance with Approval Conditions

- (a) If approval conditions are not complied with, the Town Planning Section will issue a written notice to the owner to rectify any irregularities within 30 days.
- (b) If complaints are received regarding the legally approved house shop, the Town Planning Section will evaluate the validity thereof. If necessary, the owner will be informed of the complaints and given 30 days to comply with the approval conditions.
- (c) By failure to comply with (a) or (b) above, appropriate legal action will be instituted.
- (d) In case of a serious crime or illicit trade activities, the approval may be immediately revoked. A court interdict will be obtained against the owner / operator to cease trade from the property and/or the structure to be demolished/ removed from the property. A criminal charge may also be laid for the matter to be referred to the state prosecutor's office for further action.

21. Delegation

All decisions on land use applications shall be in accordance with the system of delegation approved by Council.