

SPC 20/09/01
EXCO 49/09/01

POLICIES TO SUPPORT SUB- COUNCILS

(SOUTH PENINSULA ADMINISTRATION)

RESOLVED that:

- (a) the executive and legislative organs of the Council be requested to frame policies and by-laws as proposed in this report
- (b) the respective Portfolio Committees be requested to expedite the drafting of the necessary policies as a matter of urgency
- (c) the following two amendments to the FRAMEWORK FOR POLICY DEVELOPMENT TO ENABLE SUBCOUNCILS TO FUNCTION EFFECTIVELY be adopted:

PART D: DELEGATIONS

5. Land use management (HO 18/6/P/1)

At present, old rezoning and town planning schemes are in use. There is a Provincial Act (not yet in operation) which still requires further discussion.

And

NB: The national Bill recently published on land use and development appears to have sections which are unconstitutional.

Extract from report is attached [\[go to next page/s\]](#).

Previous policy decision: -

File Ref. No. (HO 4/4/4 X 4/1/1/3)

Extract:

5 September 2001

**A FRAMEWORK FOR POLICY DEVELOPMENT
TO ENABLE SUBCOUNCILS TO FUNCTION EFFECTIVELY**

The basis of this framework is Schedule 2 to the Cape town Subcouncil By-law 2001 titled Functions, Duties and Powers of Subcouncils.

PART A : FUNCTIONS ALLOCATED

This is a general allocation of functions and empowers subcouncils beyond the provisions of section 64(1)(b) of the Municipal Structures Act. Many of the matters listed in Part A are included in Part B (public participation) and Part D (delegations). Most of the remaining matters will probably be dealt with in terms of policies on credit control, customer care, performance management, etc.

PART B : PUBLIC PARTICIPATION MATTERS

In General

In general any policy on a matter in Part B so far as subcouncils are concerned should:

- State the nature of the matter, eg animals, customer care, health, etc.
- Explain what the Council seeks to do.
- Deal with or set out legal requirements.
- State what input is required from the public
- Explain how the policy will work once it has been approved.
- Inform the public how they may use the policy to solve their problems.

The IDP

In the case of the IDP, the policy should deal with the elements of the IDP as set out in the Municipal Systems Act, namely:

- The vision
- Assessment of existing levels of development
- The Council's development priorities and objectives
- The Council's development strategies
- The spatial development framework
- The Council's operational strategies
- Applicable disaster management plans
- The financial plan
- The key performance indicators and performance targets.

By-laws

In the case of credit control and debt collection, services tariffs and rates policy the Council must pass by-laws. To create legal certainty the Council should pass by-laws on matters such as animals, business licensing, the environment, outdoor advertising, markets, public nuisances, the use of public places and pollution.

PART C : MATTERS ON WHICH ADVICE MAY BE TENDERED

No specific policies are required.

PART D : DELEGATIONS**1. Building Plans**

,The existing legislation is adequate.

2. Business LicensingUnder Act 71 of 1991 : Health / Entertainment Facilities

At this stage the existing legislation and practice is probably adequate but the situation can be reviewed in the light of operational experience.

Under Act 71 of 1991 : Hawking

A by-law to ensure public health seems indicated.

Under Act 71 of 1991 : Prohibition of Hawking

A single policy and by-law for the whole of the metropolitan area is required.

Undertakings that Sell Food to the Public

The By-law has reasonably comprehensive provisions as an interim measure but item 6(b) of Part D of Schedule 2 contemplates that there will be a by-law on the matter. Because the rights of both traders and the public are at issue, a by-law on this form of licensing is an urgent matter.

Undertakings that Sell Liquor to the Public

The Constitution gives the power to licence such undertakings to the provincial Government and the power to control them to the Council. The basic meaning of the verb "to licence" is to "authorise the use of (premises) for a certain purpose, especially the sale and consumption of alcoholic liquor" (OED). The verb "to control" means to "have control or command; regulate; directing an activity". From this it can be inferred that the provincial power to licence is weaker than the local government power to control.

Taking this with the municipal powers of planning and to deal with public nuisances, the control of undertakings that sell liquor to the public permits the Council to:

- Decide where, in terms of land use management, on or off consumption of liquor may take place.
- Decide the hours during which liquor for consumption on or off the premises may take place.
- Restrain a trader who does not comply with licence conditions, the zoning scheme or who causes a public nuisance.

The By-law contains an interim arrangement but a more comprehensive by-law is needed urgently. The Province is taking its time over its liquor policy but in the meantime liquor traders could cause problems. The control over liquor undertakings is consistent with the Council's goal of a Safe City but unless the City Police have a law to operate under, they will be handicapped.

3. **Environmental Matters**

Although there are national regulations on noise pollution, the Council has the option of enacting its own by-law. At the least, there might be a policy on how and when the national regulations are to be used. An important issue with noise pollution is the possession of the necessary instruments to measure noise levels.

4. Health Matters

This matter will have to be dealt with in the formulation of district health policy.

5. Land Use Management

At present, old rezoning and town planning schemes are in use. There is a Provincial Act (not yet in operation) of dubious constitutionality. What is needed as soon as possible is:

- (i) An overarching land use management framework.
- (ii) District and local plans within that framework.
- (iii) Zoning scheme by-laws legislated by the Council.

The process for the above would be part of the IDP.

NB: The national Bill recently published on land use and development is substantially unconstitutional.

6. Markets

A by-law is required on markets to cover the following aspects:

- (i) Public health;
- (ii) Public safety;
- (iii) Services, traffic and parking;
- (iv) And in the case of markets on land owned by the Council, how sites are to be allocated and how the rentals for the sites are to be calculated (unless such markets are let to contractors to manage in which case only a policy will be required).

7. Public Nuisances and Pollution

A by-law is needed on public nuisances. Such a by-law should define a public nuisance following the wording of item 8(1) of Part E of Schedule 2, and also deal with the procedural aspects. There are more than enough precedents available to enable this to be done quickly.

8. Public Places

To ensure fairness in allocation **and policy** there should be a by-law which provides for public health and safety as well as conduct, at public places when they are used for carnivals, circuses, fetes and the like.

9. Transport and Roads

Most of the items under this heading require the development of policies but consideration should be given to enacting a by-law dealing with the permanent or temporary closure of municipal roads (not national or provincial roads). Such a by-law, being new legislation, would override pre-1994 old provincial legislation and would remove the need to obtain the MEC's approval where objections to a closure are received. Municipal roads are a municipal function in terms of Schedule 5 to the Constitution.

PART E : LIMITATIONS, CONDITIONS AND DIRECTIONS ON DELEGATIONS

No comment is required on Part E : the comment on Part D applies.

AN APPEAL BODY

Although this issue is somewhat away from the issues dealt with above, it must be accepted that there will be appeals from decisions taken by subcouncils. Bearing in mind the size of the population there could be appeals on any of the delegated matters for subcouncils. Most but not all of these would be on planning issues. There could also be appeals on licensing, markets, public nuisances, road closures, etc.

The Municipal Systems Act in section 62 requires that there be an "appeal authority" in the case of an appeal against a (delegated) decision taken by a political structure (this includes a subcouncil), political office-bearer, councillor or official. The Promotion of Administrative Justice Act requires all such appeals to be dealt with in a procedurally fair manner.

If all appeals against all decisions were, for example, to go to the Executive Committee or the full Council, the position would soon become untenable.

Accordingly, the Council should consider setting up an appeal authority. Such an authority would only hear and decide appeals. It would not have executive or policy-making powers. An appeal body could be established and regulated by means of a by-law.