

Draft KZN Public Interest
Assessment Policy.



KWAZULU-NATAL PROVINCE

ECONOMIC DEVELOPMENT, TOURISM
AND ENVIRONMENTAL AFFAIRS
REPUBLIC OF SOUTH AFRICA



KwaZulu-Natal
LIQUOR AUTHORITY

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1. LIST OF ACRONYMS

CCS - Community Consultation Survey

CIA – Calmative Impact Assessment

Edtea- Department of Economic Development, Tourism and Environmental Affairs

KZNLA - KwaZulu-Natal Liquor Licensing Authority

MKI - Moses Kotane Institute

MEC - Member of the Executive Council

PIA - Public Interest Assessment

(PTY) LTD – Private Company (Proprietary) Limited

2. KEY TERMS AND DEFINITIONS

In this **policy document**, unless the context indicates otherwise-

- a) **“Application”** – means all completed documentation compliant with the provisions of KZN Liquor Act of 2010, as amended.
- b) **“Liquor Outlet”**- an establishment that has a license to sell alcohol to the public.
- c) **“Legislation”** – means law or set of laws.
- d) **“Member of the Executive Council”** – means the MEC of the Department of Economic Development, Tourism and Environmental Affairs.
- e) **“Public Interest”**- means an interest in common to the public at large or a significant portion of the public.
- f) **“Public Interest Assessment”**- means a compulsory assessment to be conducted on each application for licensing of a liquor outlet in KZN residential areas.
- g) **“Premise”** – means an area or location where a proposed liquor outlet will be situated.
- h) **“Respondents/Participants”** – means KZN residents that were interviewed during data collection of the research study.
- i) **“Statute”** – means a written law passed by a legislative body.

3. POLICY OUTLINE AND EXECUTIVE SUMMARY.

The KwaZulu-Natal Department of Economic Development, Tourism and Environmental Affairs (Edtea) in collaboration with the KwaZulu-Natal Liquor Authority (KZNLA) conducted exhaustive research through the Moses Kotane Institute (MKI). The study sought to assess the social effects of licensed liquor outlets in KZN's residential townships, rural and urban areas as well as acquiring household-based perceptions on whether licensing of liquor outlets in residential areas is in the public interest.

Data was collected in eleven (11) municipalities within the Province of KwaZulu-Natal (i.e., Amajuba, King Cetshwayo, EThekweni, Harry Gwala, Ilembe, UGu, uMgungundlovu, UMkhanyakude, UMzinyathi, and Zululand) with a total number of three thousand, two hundred and sixty-one (3261) participants. The target group for this study were KZN residents, aged 16 years and above.

Collection of data in the study was conducted during the peak of Covid-19 using a survey questionnaire through a combination of telephonic and face-to-face methods, ensuring adherence to all Covid-19 regulations that were in place. Data was collected in areas where both licensed and unlicensed liquor outlets are situated in the outskirts of KZN, which majority were unlicensed. The study revealed that erection of liquor outlets in residential areas bears negative social impact in neighbouring households and therefore is not in the public interest. Sixty two percent (62%) of the respondents confirmed that their households are surrounded by liquor outlets (i.e., within 100m radius) which makes them a close target for alcohol related social ills such as crime, nuisance, violence and underage drinking.

The KZN liquor licencing Act supports the protection of the public's social well-being and promotes safety in communities with which liquor outlets are situated, as a response mechanism for enabling better control of liquor related negative effects such as crime, decline of property values and costs of alcohol abuse as per Section 48 (5) (a) and (6) of the Act. However, the Act does not define what "public interest" which has seen, the Department considering an increased number of Appeals even conferred to High Courts on the issue of public interest. These appeals have been recorded to have been filed mainly by applicants intending to trade liquor in townships and rural areas in close proximity to residences, learning institutions and religious institutions. A recent matter dated 10 February 2022, heard in the Durban High Court between Somaphunga Trucking (PTY) LTD and KZN Member of the

Executive Council (MEC) for EDTEA collectively with KZNLA unveiled loopholes and gaps found in the Act.

The argument brought forward on the Somaphunga case was that *“Both the National Liquor Act and the Provincial Liquor Act do not define what is public interest. However, the issues of public interest have been in various Courts and the common interpretation of what constitutes public interest depends on the context and circumstance of each case. The test for public interest is an objective rather than subjective test”*. Hence, it was vital to investigate all factors embedded in the concept of “public interest” and what constitute it to address concerns raised and solicit public views and recommendations towards development of this policy. This policy intends to improve the KZN Liquor regulatory space and address challenges emanating as a result of the gaps in the legislative framework that necessitated a focused research to inform policy development.

In addition to the study that collected primary data, this policy also utilized secondary data acquired through desktop research by consulting various local and international legislations, policies and articles on public interest with a purpose to conduct benchmarking exercise on best practices which have fundamentally made up the contents of this policy. Consultations with the public at large, business chambers, relevant clusters and the Cabinet has been an essential part of drafting and acquiring approval for this policy to ensure thorough workshopping of the policy and incorporating comments received. **(Consultation process to be included as annexure A in the document once consultations are concluded).**

4. BACKGROUND AND PROBLEM STATEMENT.

The promulgation of the KwaZulu-Natal Liquor Licensing Act, 2010 (Act. No. 06 of 2010) empowered the KZN Provincial government to facilitate the implementation of the statute by ensuring creation of a sustainable and enabling environment for an inclusive economy that recognises entry and participation of previously disadvantaged groups in the liquor industry as means of addressing historical consequences on retail of liquor in South Africa.

Alcohol use plays a significant role in the global economy. Trade of alcohol in South Africa has been said to be a major contributor in the South African economy, providing employment and income to thousands of households and making a substantial contribution to government tax revenue and export earnings. According to Mchunu (2016), the liquor industry’s manufacturing operations and capital expenditure significantly contributes to the country’s

GDP, hence regulations and policies need to take cognisance of the valuable economic contribution and opportunities afforded by the liquor industry in the country. However, it is very essential to note that the regulation of the business of selling alcohol goes beyond economic concerns. Regulations on the liquor industry need to be mindful of which factors limits a healthy environment of an economic generating liquor industry, and which factors threatens and violates the social well-being and safety of the society. Hence, the Provincial government in KZN seeks to initiate interventions that balances these various factors.

Over the past years, the Department has received numerous appeals against the Liquor Authority as per Section 61 of the Act. These appeals are mainly from applicants intending to operate in residential areas (townships and rural areas), and are refused licenses due to “close proximity to residential households”. Section 48 (5) (a) stipulate that:

“Before granting an application, the Liquor Authority must satisfy itself that: the granting of the application will be in the public interest”. The Act further stipulates in section 48 (6) that *“In determining whether the application will be in the public interest as contemplated in subsection (5) (a), the Liquor Authority must consider, without detracting from the generality thereof, -*

- (a) the prejudice or harm, or potential prejudice or harm, of the proposed license to or on residents, property owners, other businesses including licensed liquor premises, property values, schools and religious institutions within a radius of 500 metres surrounding the proposed premises or in close proximity thereto; and*
- (b) the extent to which the proposed license will contribute to, or detract from the achievement of the objects of the Act, including the extent to which the proposed license-*
 - i. will or is likely to impact on the socio-economic rights of society, including the prevalence of crime, and the costs of alcohol abuse;*
 - ii. will facilitate the entry of new participants and diversity in the liquor industry; and*
 - iii. will contribute to the fostering of an ethos of social responsibility in the liquor industry.*

It has been observed that the absence of a detailed definition of the term “public interest” in the Act, leaves interpreters of this statute in a convoluted state when it comes to the application of section 48. There is currently no criteria or policy guidelines that adequately informs the board on whether the licencing of an outlet will be in the public interest. KZNLA relies on previous or historical decisions of the board to determine whether a prospective liquor outlet is in the public interest or not.

It is against this backdrop that KZNEdtea in partnership with KZNLA has recognized the importance of conducting rigorous research to develop evidence-based policy that will set prescripts on whether to grant or refuse liquor licenses to outlets that are close proximity to residential households, as the term “public interest” has been widely defined and distinctive views of the public on the issue are unpacked in this document.

It is important to note that this policy aims to preserve the sanctity of residential areas where trade of alcohol is associated with nuisance factors, socio-economic impact and the balance between the interest of the public and that of an economic activity is seen not be effectively considered, especially in townships and rural areas of the province.

5. PURPOSE AND OBJECTIVES.

In order to balance the range of different interests in the KZN Liquor industry, this policy aims to:

- a. Provide for the regulation of Liquor Outlets within the vicinity of a 500m radius to Residential Households in KZN.
- b. Bridge the legislative gaps in section 48 of the KZN Liquor Act of 2010 to ensure precise and appropriate interpretation and application of the section.
- c. Reduce disparities within the KZN liquor industry in advocating for protection of both social and economic interests.
- d. Align the KZN Liquor Licensing Act with the Township and Rural Revitalization Strategy, while ensuring a balance of society’s interest in terms of socio-economic impact.

6. LEGISLATIVE FRAMEWORK.

6.1 The Constitution of the Republic of South Africa (1996).

Regulation of liquor in South Africa is subject to concurrent jurisdiction and is shared mandate which requires intergovernmental and cooperative governance. Schedule 5 of the Constitution of the Republic of South Africa provides for regulation of liquor in the country as a concurrent National and Provincial functional competence but exclusive legislative competence. Schedule 5 of the Constitution expressly confer upon the Provincial competence to provide for licensing and control of sale of liquor.

6.2 National Liquor Act, 2003 (Act No.59 of 2003).

The Department of Trade and Industry is responsible for the administration and enforcement of the Liquor Act (59 of 2003) through the National Liquor Authority (NLA). The regulation of the liquor industry is a concurrent national and provincial legislative competence. The Act provides for the establishment of norms and standards, minimum standards, and measures for co-operative governance in the regulation of liquor. It aims to reduce the socioeconomic and other costs associated with alcohol abuse and to promote the development of a responsible and sustainable liquor industry.

6.3 KwaZulu-Natal Liquor Licensing Act, 2010 (Act. No. 06 of 2010).

The KZN Department of Economic Development, Tourism and Environmental Affairs (Edtea) is entrusted with the responsibility to implement the KwaZulu-Natal Liquor Licensing Act, 2010 (Act. No. 06 of 2010) which provides for the regulation and control of licensing of retail sale and micro-manufacture of liquor in the province through the KZN Liquor Authority (KZNLA). The Department ensures the implementation of this mandate in order to promote and maintain an effective and efficient regulatory system for the Liquor Industry.

7. SCOPE AND APPLICATION.

7.1 Given the historical context of South Africa which gave effect to a range of divided and unbalanced social spaces and living areas; i.e. townships, rural and urban areas.

This policy targets prospective and existing liquor traders whom have an intention to operate liquor businesses in residential areas.

7.2 This policy is applicable in the process of reviewing and considering liquor licensing applications intending to trade in townships, urban and rural residential areas of KwaZulu-Natal.

8. INTERNATIONAL CASE STUDIES ON MATTERS OF PUBLIC INTEREST.

This policy makes reference to legislations and policies of various countries that considers “public interest” as one of the key requirements in determining whether to grant or not grant liquor licenses in their respective jurisdictions. This is for the purpose of benchmarking best practices and determining the best possible and feasible approach that can be implementable in the South African context, particularly KZN in conjunction with the findings of the research study conducted.

Public interest is a concept widely utilized by legislators seeking to balance the pursuit of private interests with those matters which may affect the community at large and upon which everyone is entitled to make fair comment. In the context of liquor industry, the public interest provisions enable the licensing authority to consider a broad range of issues specific to each licence application, and flexibility exists to assess each individual application on its merits (Western Australia Department of Local Government, Sports and Cultural Industries website).

8.1 Australia.

The literature in the Australian liquor industry depicts that the density of pubs and bars in residential areas is related to rates of violence. There is strong Australian evidence that increased alcohol outlet density is associated with increased rates of assault and family violence. Moreover, evidence also indicates that an increased in alcohol outlet density bares other social problems, e.g. the rates at which sexually transmitted diseases are spread and rates and rates of child maltreatment also increase. There are few comprehensive national estimates of alcohol’s contribution to crime, in part because of varying methods of data recording used in different jurisdictions, and estimates of the proportion of violence involving alcohol vary from 23% to 73% (Livingston, Wilkinson, & Room 2015, p.6).

Literature shows an estimation that in 2005 more than 70,000 Australians were victims of alcohol-related assault, including 24,000 victims of alcohol-related family violence. Further,

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nearly 20,000 children were estimated to have been victims of substantiated child abuse associated with alcohol consumption. Looking at less serious, but more widespread harms, around 70% of Australians reported being negatively affected in some way by the drinking of strangers in their areas (Livingston, Wilkinson, & Room 2015, p.6).

8.1.1 Regulation of Liquor in Australia.

Liquor licensing legislation in Australia provides for control of sale, supply and, in some instances, the consumption of liquor (Trifonoff, Andrew, Steenson, Nicholas, & Roche 2011, p.40). Just like in South Africa and its provinces, Liquor licensing legislation in Australia is developed independently in each state and territory. Different approaches to managing the liquor related economic activities and minimising harms from alcohol misuse are employed by liquor licensing authorities throughout Australia in response to localised problems. Subsequently, many of these approaches are prescribed by state and territory liquor licensing legislation. Others have also been voluntarily adopted by licensees in an effort to reduce alcohol-related violence on their premises (Roche & Steenson 2013, p.1-2).

Every jurisdiction contains provisions within their legislation to ascertain public opinion regarding new license applications and amendments to existing licenses. The legislation generally adopted two following methods of determining the ways in which an application could impact on the community:

- a) The applicant provided statements and documents to assess the impact on community amenity; and
- b) People were able to object, or lodge submissions.

In some jurisdictions, a combination of the above two methods are employed. Jurisdictions prescribes who can lodge an objection, as well as the grounds upon which an objection or submission can be lodged. Typical grounds of objection in each jurisdiction includes assessing if:

- a) Community amenity will be adversely affected and/or the people who lives, work, or regularly attend the area for educational and religious purposes will be negatively impacted;
- b) The applicant is not unfit and is a proper person; and
- c) The premises are suitable.

Several jurisdictions also provided that an objection could be raised on the grounds that granting a license could affect the health, safety, and/or welfare of people living, working, or regularly attending the area for educational, or religious purposes (Roche & Steenson 2013, p.58).

This policy consulted and reviewed several legislations within all jurisdictions of Australia with a purpose to cross reference practical implementations of the provisions containing issues of public interest. The Government of the Western Australia through its legislation, the Liquor Control Act of 1988 has a policy in place which serve as prudent guidelines for consideration of liquor licenses in conjunction with all aspects of public interest. The policy is crafted in the following manner as detailed in clause 8.1.2

8.1.2 Public Interest Assessment Policy.

The purpose of the public interest assessment policy is to provide guidance on the possible content of public interest assessment submissions and the issues that an applicant should consider, including the reports decision makers may have in regard to informing their decisions (Western Australia Department of Local Government, Sports and Cultural Industries Website).

In accordance with section 38 of the Liquor Control Act of 1988 of the Western Australia Territory, the licensing authority is required to assess whether the granting of an application is in the public interest. The licensing authority has an absolute discretion to grant or refuse an application on any grounds, or for any reason, that the licensing authority considers not to be in the public interest.

Western Australia employs a mechanism called the “public interest test” where the applicant of a prospective liquor outlets undergoes a Public Interest Assessment (PIA) by completing and lodging a “2A Form” *attached in this policy as annexure B* with the licensing authority with respect to section 38 of the Act, sub section 2. A PIA assists the licensing authority in assessing the impact of the application, if granted, on the community, including existing services and amenity. It is also a valuable document for informing the community about the proposed manner of trade and provide an outline of how the applicant will manage any impact. 2A Form for PIA entails the following:

- a) As part of a PIA submission, applicants must provide details regarding the community in the vicinity of the licensed premises (or proposed licensed premises) and any amenity issues in the locality;

- b) Evidence to support an application being in the public interest includes, but is not limited to petitions; survey results; and letters of support and statements of consumers having a requirement for the type of liquor to be sold and supplied under the licence sought.

Therefore, consideration of applications varies, depending on the location of the prospective outlet, each community is different and has individual characteristics.

8.2 United States of America (New York State).

New York City is a unique environment which has both areas of very high alcohol outlet density and low alcohol outlet density. It also has areas with very high population density and areas where the population is much less concentrated (Mello, MS, Tuazon, Hillary Kunins, & Paone, 2019, p.1). NYC is a geographically large i.e., approximately 300 square miles city and has the highest population density of any major city in the United States.

According to Mello, MS, Tuazon, Hillary Kunins, & Paone, 2019, p.1, the association between alcohol outlet density, social and health outcomes in NYC is not known. However, The New York Times published an article in year 2018 that approximately 50 people marched on Lower East Side of Manhattan to discuss a common villain which they said was causing problems in their neighbourhoods; the rising number of bars in New York City. The public accused the New York State Liquor Authority of issuing too many liquor licenses and eroding their quality of life. They further alluded that the NYS Liquor Authority is less concerned with the public welfare and more concerned with granting licenses to bar owners (Moynihan, 2018).

In NYC, there is little doubt that liquor licenses contribute positively in reshaping a neighborhood. On one hand, the State Liquor Authority believes that bars and restaurants are “a vital part of the city’s economy and revenue generation strategy.” On the other hand, residents are of the view that a flood of drinking spots can turn neighborhoods into unruly entertainment zones, hasten gentrification and make streets less safe (Moynihan, 2018).

8.2.1 Regulation of Liquor in the New York City.

In the United States, liquor licenses are issued under different laws in each state; separately by each individual state. Typically, each state makes regulations specific to that particular state, and in some instances; municipalities may also have their own local laws. In general, states

regulate the manufacture and sale of alcoholic beverages as “licensing states” or “control states.” A licensing state issues licenses to the entities that will manufacture and sell alcoholic beverages while control states are involved in the actual distribution. Control states will have a monopoly over the sale at wholesale or retail of some (or all) of the different categories of alcoholic beverages. New York is a licensing state. New York also uses the three-tier system, separating for many purposes the three groups (manufacturers, wholesalers and retailers) involved in the distribution of alcoholic beverages (New York State Liquor Authority website).

In dealing and responding to concerns regarding high density of alcohol outlets and its negative impacts on the social welfare of residents living and working in the vicinity where alcohol outlets are situated. The Liquor Authority in New York initiated a 500 Foot rule, which is a policy that forbids the Liquor Authority from issuing a liquor license to any premises within 500 feet of three existing licensed establishments, unless the authority consults a community board or a municipality, holds a hearing, and finds that the license would be in the public interest, and records its reasons. The implementation of the 500 Foot rule is further elaborated on 8.2.2

8.2.2 The 500 Foot Policy.

The 500-foot rule was adopted in 1993 after an alcohol-fueled brawl led to the fatal shootings of an off-duty police officer and another man on Bell Boulevard in Queens, where two dozen bars lined an eight-block strip. The State Liquor Authority only considers and approves applications that had gone through the hearings and there is recorded evidence that there is no community opposition and no other reason for disapproval (Moynihan, 2018).

The restriction applies in municipalities with a population of 20,000 or more. The restriction applies to:

- a) on-premises liquor licenses (bars, restaurants, hotels);
- b) special on-premises liquor licenses (taverns, theatres);
- c) bottle club licenses (establishments that provide alcoholic beverages for free or allow BYOB, no sales permitted); and
- d) restaurant-brewer licenses (brew pubs).

If the location is subject to the 500 Foot Law, the license cannot be issued unless the Authority makes an affirmative finding that it is in the public interest to issue the license. This clearly

creates a presumption that the license should not be issued. When considering whether it would be in the public interest to approve the application, the Authority may consider the following:

- a) the number, classes and character of other licensed premises not only in the area where the proposed establishment will be located, but also in the particular municipality or subdivision of the municipality;
- b) whether the applicant has obtained all other necessary governmental licenses and permits;
- c) the effect on vehicular traffic and parking in proximity to the location;
- d) the impact on the existing noise level;
- e) the history of violence and reported criminal activity at the location; and
- f) any other factor specified by law or regulation that would be relevant to deciding whether public convenience and advantage, as well as the public interest, would be served by approving the application.

The 500 Foot Law requires that the Authority consult with the municipality and conduct a hearing to gather facts to determine whether the public interest would be served by issuing the license. This is commonly referred to as the "500 Foot Hearing." The Authority can also hold a public meeting on notice to the applicant and the municipality. The meeting can be conducted by one or more Members of the Authority.

If there is no opposition to the application, and no other issues presented that requires consideration by the Members of the Authority, the application is acted on by the Authority's Licensing Bureau (New York State Liquor Authority website). In situations where there is opposition to an application, applicants may come to an agreement on stipulations concerning the operation of the establishment (e.g., closing hours, live music, etc.). In such cases, the applicant may incorporate those stipulations into the approved method of operation. These stipulations then become conditions of the license privilege and failure to comply subjects the licensee to disciplinary action. The Authority can impose certain conditions on the operation of the establishment without the consent of the applicant if there is good cause to do so.

8.3 United Kingdom (England).

There is a general view that there is excess alcohol consumption in the UK, especially amongst teenagers particularly young women (Fone, Farewell, White, Lyons, & Dunstan 2013, p2). It

is associated with neighborhood behavior and around half of all violent crimes in the UK. between 20% and 40% of people presenting to accident and emergency departments are intoxicated, increasing to 80% after midnight.

Given the wide range of harm resulting from this substantial level of consumption, the potential impact on health at the population level from a reduction in consumption is considerable (Fone, Farewell, White, Lyons, & Dunstan 2013, p2). Studies show that levels of low income and unemployment, is a determinant of harmful levels of consumption in the rural of the UK. Further, longitudinal research on the spatial relationships shows there is a significance relationship between alcohol consumption, outlet density and socioeconomic deprivation at individual and neighborhood levels (Fone, Farewell, White, Lyons, & Dunstan 2013, p8).

8.3.1 Regulation of Liquor in the United Kingdom.

The alcohol licensing laws of the United Kingdom regulate the sale and consumption of alcohol, with separate legislation for England, Wales, Northern Ireland and Scotland being passed, as necessary, by the UK parliament, the Senedd in Wales, the Northern Ireland Assembly, and the Scottish Parliament respectively. The age at which people are legally allowed to purchase alcohol is 18 or over in most circumstances.

Applications for liquor licenses have by the Licensing Act 1964, with now the Licensing Act of 2003. The liquor licenses are granted on the bases that:

- a) the applicant is not disqualified for holding a license;
- b) is a fit and proper person; and
- c) that the premises are structurally adapted to the type of license required.

Additionally, licensing justices in the UK have a big role in deciding whether applicants are granted licenses under the Act (s) and also considering factors other than those mentioned in the Act when processing applications, including the need or demand for the proposed outlet. Provided this discretion is exercised judicially, the High Court will not interfere with their decisions. While it is considered necessary for the justices to find the need or demand in order to grant a license, the concept is not included in the legislation. Just like in South Africa, there is no general template that exists for assessing whether establishment of the alcohol outlet will be in the public interest or in demand. Justices refuse application based on case laws in related matters (Light, & Heenan, 1999, p.9). However, licensing of liquor outlets in residential areas

of the UK are considered based on certain conditions outlined in clause 8.2.2, utilising cumulative impact assessment (CIA) tool imitated on the basis of Section 182 guidance of the Licensing Act 2003.

If authorities have evidence that the high number or density of licensed premises in a particular area is having a detrimental effect on one or more of the licensing objectives, the licensing authority may consult on a cumulative impact assessment (Licensing Act 2003, p.16).

8.3.2 Cumulative Impact Assessments.

A CIA is essentially an evidence-based tool for licensing authorities to limit the growth of licensed premises in a problem area. Whilst the concept of cumulative impact was not initially included in the Act, it has been included in the Section 182 guidance and has since been resulted in a number of liquor authorities introducing cumulative impact policies (Licensing Act 2003, p.16). The effect of having a cumulative impact assessment is that it creates a presumption that applications for new (or sometimes variations to) licences that receive relevant representations will be refused unless the applicant can show that granting the application will not add to the cumulative impact of existing premises.

During application for a liquor license, applicants are expected to have regard to the statement of licensing policy for their area. They must also be aware of the expectations of the licensing authority and the responsible authorities as to the steps that are appropriate for the promotion of the licensing objectives, and to demonstrate knowledge of their local area when describing the steps which they propose to take to promote the licensing objectives. Licensing authorities are expected to publish information regarding what is meant by the promotion of the licensing objectives and to ensure that applicants can readily access advice about these matters. In some instances, applicants are also expected to undertake their own enquiries about the area in which the premises are situated to inform the content of the application (Revised Guidance issued under section 182 of the Licensing Act 2003, p. 44).

Additionally, it is assumed that enquiries regarding the locality assist applicants when determining the steps that are appropriate for the promotion of the licensing objectives. For example, premises with close proximity to residential premises should consider what effect this will have on their smoking, noise management and dispersal policies to ensure the promotion of the public nuisance objectives. Applicants must consider all factors which may be relevant

to the promotion of the licensing objectives, and where there are no known concerns, applicants ought to acknowledge this in their application (Revised Guidance issued under section 182 of the Licensing Act 2003, p.44).

Applicants are expected to include positive proposals in their application on how they will manage any potential risks. Where specific policies apply in the area (for example, a cumulative impact policy), applicants are also expected to demonstrate an understanding of how the policy impacts on their application; any measures they will take to mitigate the impact; and why they consider the application should be an exception to the policy.

Applicants are, in particular, expected to obtain sufficient information to enable them to demonstrate, when setting out the steps they propose to take to promote the licensing objectives, that they understand:

- a) the layout of the local area and physical environment including crime and disorder hotspots, proximity to residential premises and proximity to areas where children may congregate;
- b) any risk posed to the local area by the applicants' proposed licensable activities; and
- c) any local initiatives (for example, local crime reduction initiatives or voluntary schemes including local taxi-marshalling schemes, street pastors and other schemes) which may help to mitigate potential risks.

8.4 Kenya

Alcohol is the most abused drug in Kenya such that the population of alcohol lifetime usage stands at 6,668,776, and illegal trade on illicit alcohol being a major contributing factor leading to the current state of alcoholism and several deaths (Matelong, Choge, Njure, 2022. p.2).

According to Gitatui, Kimani, Muniu, Okube (2019. p. 2907) the prevalence of alcohol-related problems is high with an estimated 5.8% of adult Kenyan males (15- 64 years old) having some level of alcohol dependency and 2.4% categorized as abusing alcohol. Alcohol-related problems are attributed to unrecorded alcohol, an issue that has a national dimension with urban slum settlements significantly affected because of affordability. These alcoholic beverages are prone to abuse because they are affordable, available and culturally acceptable products that are consumed during community activities and special occasions.

Studies show correlation of young age drinking to alcohol dependency and related social economic impacts. However, the factors surrounding pervasive alcohol use and abuse are poorly understood in Kenya despite alcoholism having reached alarming levels. High alcohol abuse has been thought to contribute to increased morbidity and mortality among Kenyan adult men (Gitatui, Kimani, Muniu, Okube, 2019. p. 2907), as alcohol is strongly associated with health burden and negative socioeconomic consequences (Matelong, Choge, Njure, 2022. p.2).

8.4.1 Regulation of Liquor in Kenya

Liquor industry in Kenya is among the highest regulated industries through the regulatory authority called National Authority for Campaign against Alcohol and Drug Abuse (NACADA) oversees the functioning of these businesses. However, different regions in the country impose further laws for the sale of alcohol in their respective jurisdictions.

The production, sale and consumption of alcoholic drinks in Kenya is regulated by the Alcoholic Drinks Control Act also famously known as Mututho laws that was promulgated in 2010. Regulation of liquor in Kenya was previously coordinated by liquor licensing courts whose role was limited to liquor licensing. All other critical components relating to Alcohol control such as the provision of regulations for promotion and advertising, treatment and rehabilitation services and quality control were not comprehensively addressed (Njenga 2015). Therefore, the enactment of the Alcoholic Drinks Control Act in 2010 allowed all components related to alcohol control to be coordinated by one agency i.e. The National Drug Control Authority-NACADA.

According to Section 12 (1) (a) of the Alcohol Drinks Control Act, NACADA and its agencies observes public interest when considering liquor licensing application. The Act stipulates that:

(9) Every person making an application shall, save as otherwise provided, appear in person or by an advocate before the District Committee, and shall satisfy the District Committee that there is need for the grant of a licence of the type applied for in the particular locality in respect of which the application is made.

12 (a) The District Committee shall not grant a new licence for the sale of an alcoholic drink to be consumed on the premises unless the District Committee is satisfied—

(a) that it would be in the public interest for provision to be made for the sale of alcoholic drink for consumption on the premises in the particular locality in respect of which the

application is made, and that the number of such premises in respect of which such licences have already been granted is insufficient for the requirement of the locality given the population density per square kilometre and the permitted maximum number of such premises as shall be prescribed by law:

Provided that no licence shall be granted to sell alcoholic drinks in any institution of basic education including primary and secondary schools or any residential area as have been demarcated by or under the relevant written laws;

8.4.2 Guidelines for Implementing Alcohol Drinks Control Act.

The Alcoholic Drinks Control Act, 2010 provides for comprehensive control of manufacture, sale, consumption, distribution and promotion of alcoholic drink in Kenya. The Act and the Alcoholic Drink Control (Licensing) Regulations, 2010, provide for effective licensing process as well as strengthened institutional framework for the control of alcoholic drink. However, it does not provide guidelines that clearly navigates the practical application of the provisions of the Act as effective implementation and enforcement are essential.

Guidelines for Implementing and Enforcing the Alcoholic Drinks Control Act, 2010 were therefore developed to provide guidance to District Alcoholic Drink Regulation Committee as well as other law enforcement officers on how to adequately interpret and apply the provisions of the statute. This was done to ensure standardization of the implementation process across the country to achieve optimal compliance and better management of the alcoholic drink control process.

Clause 4.4 of the Guidelines for implementation and enforcement of the Act depicts how District Committees should review prospective applications to operate in residential areas to ensure that public interest is considered when granting a license. According to the guidelines, applicants are compelled to submit their applications accompanied by the following three (3) reports:

- i. **Police Report** that shall cover matters such as:
 - a) Security issues related to location of the premises;
 - b) Peace and public order and safety in the locality- is the premises likely to interfere with peace and public order of the neighborhood;

- c) Proximity to institutions of basic education (300m rule);
- d) Public interest of residents in the locality;
- e) The number of similar premises in the same locality offering the same service;
- f) The appropriateness of the premises in relation to proximity to religious institutions, health facilities and other community facilities and amenities.

ii. **Medical Officer of Health Report** to cover the following issues:

- a) Report of the officer in charge of public health in the district;
- b) Impact on public health in the neighborhood by the premises;
- c) Conformity with section 9 (16) of the Act;
- d) Safety of the premises/ occupational health and safety;
- e) Public interest of residents in the locality;
- f) Public health certificate;
- g) Suitability of the premises for establishment of the business for which license is applied for.

iii. **Local Authority Report** to present the:

- a) Zoning and classification of areas within the local authority or district in terms of residential, commercial and industrial and whether the premises is located within a residential area;
- b) Public interest of residents in the locality;
- c) The appropriateness of the premises in relation to proximity to religious institutions, health facilities and other community facilities and amenities;
- d) The number of similar premises in the same locality offering the same service;
- e) The structural plan of the premises and its suitability for the license applied for.

District Alcoholic Drink Regulation Committees base their discretion to grant or refuse a license on the information provided in aforementioned reports where public interest is concerned.

9. LOCAL CASES ON MATTERS OF PUBLIC INTEREST.

Regulation of retail sale, control and licensing of liquor in South Africa is a provincial mandate. South Africa has nine (9) provinces with which each province has its own unique legislation and regulations for the control and licensing of the retail sale and micromanufacturing of liquor.

This policy consulted and assessed all liquor licensing legislations in the country, and found that seven (7) provinces (i.e. KZN, Gauteng, Western Cape, Northern Cape, North West, Mpumalanga and Free State) consider public interest in the adjudication process of considering liquor licensing applications. However, there are no subsequent policies or guidelines in place that set out the criterion for a prescript determination of public interest when applications are considered. Hence, the judiciary in the country relies and bases its judgement only on case law when presiding over matters and reviews arising from Section 48 (5) of the KZN Liquor Act.

10. CHALLENGES RAISED BY KZN HOUSEHOLD MEMBERS.

The study conducted by MKI on behalf of the Department and KZNLA interviewed a number of KwaZulu-Natal citizens in various Municipalities whom their households are surrounded by liquor outlets from about a radius of within 100m and above. The study discovered that a majority of the liquor outlets within which data was collected were unlicensed.

Participants in the study alluded to have been faced with various alcohol related problems due to liquor outlets in the vicinity of their living areas.

The concept of public interest in the study was alienated into different categories entailed in the justification of the concept in the Act as per Section 48 (6) (a) (b) (i) to ensure thorough investigation of each element separately. The Act bases its discretion on the following aspects in determining whether the prospective license is in the public interest or not:

- a) Potential harm to society, other businesses, and property owners;
- b) Socio-economic rights of society;
- c) Prevalence to crime; and
- d) Cost of alcohol abuse.

The study noted numerous negative impacts of liquor outlets situated in the vicinity of residential areas. Sixty two percent (62%) of the respondents confirmed that there are liquor outlets within the vicinity of 100m radius to their households. Participants submitted concurring views that licensing of liquor outlets in residential areas contributes a significance percentage towards alcohol abuse, high rate of crime, underage drinking, violent behavior and decline in property value.

10.1 Prejudice or harm caused in households nearby liquor outlets.

The research study recorded that availability of alcohol and easy access to liquor outlets is one of the major problems that KZN residents in areas where liquor outlets are the vicinity of their households are faced with. They expressed their frustrations on the increased level of violence, nuisance as a result of high level of noise, and therefore a total percentage of Fifty-three (53%) respondents indicated that availability of alcohol causes harm to their households. Respondents alluded that easy accessibility to liquor contributes to alcohol abuse and gender-based violence in their areas of residence. Only nineteen percent (19%) of the respondents indicated that their households are not affected by the sale and availability of alcohol. Twenty-eight percent (28%) of the participants were not certain whether availability of alcohol causes harm to their households or not.

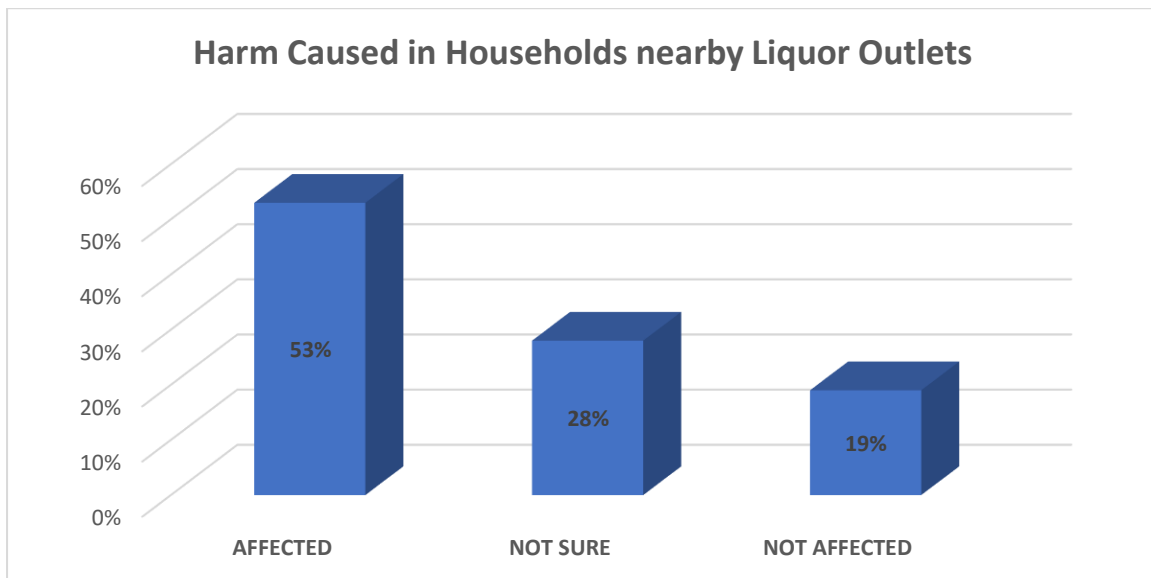


Figure 1: Harm caused in Households nearby Liquor Outlets in KZN.

10.2 Liquor outlets as attractors of crime in bordering households.

The findings of the study showed that liquor outlets have a negative impact on communities in terms of increase in crime. Forty seven percent (47%) of the respondents reported that liquor outlets contribute to the increase in crime in their respective areas, while twenty seven percent (27%) were not certain whether they play a role or not. Moreover, 26% believe that the sale of alcohol or existence of liquor outlet does not contribute to increased crime. Respondents further suggested that a new approach towards monitoring of liquor outlets trading hours should be introduced.

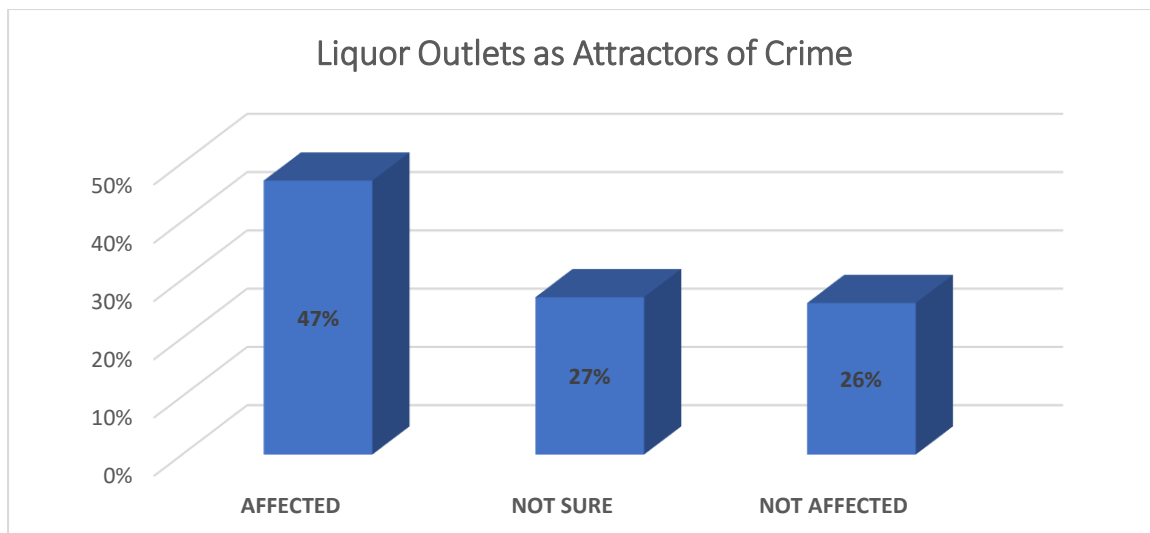


Figure 2: Liquor Outlets as Attractors of Crime in KZN Residential Areas.

10.3 Direct effects to property value of households surrounded by liquor outlets.

The sale of liquor does not necessary affect the value of the properties. This is highly dependent on the nature and type of the outlet. In some instances, it can even boost the property value. Only 32% of the participants believe that the sale of liquor or existence of liquor outlets adversely affects the value of their properties. Most of the respondents (40%) were not certain whether the sale of alcohol affects the overall value of their properties. Twenty eight percent (28%) of the participants were not convinced that the sale of alcohol affects the property value (Figure 29).

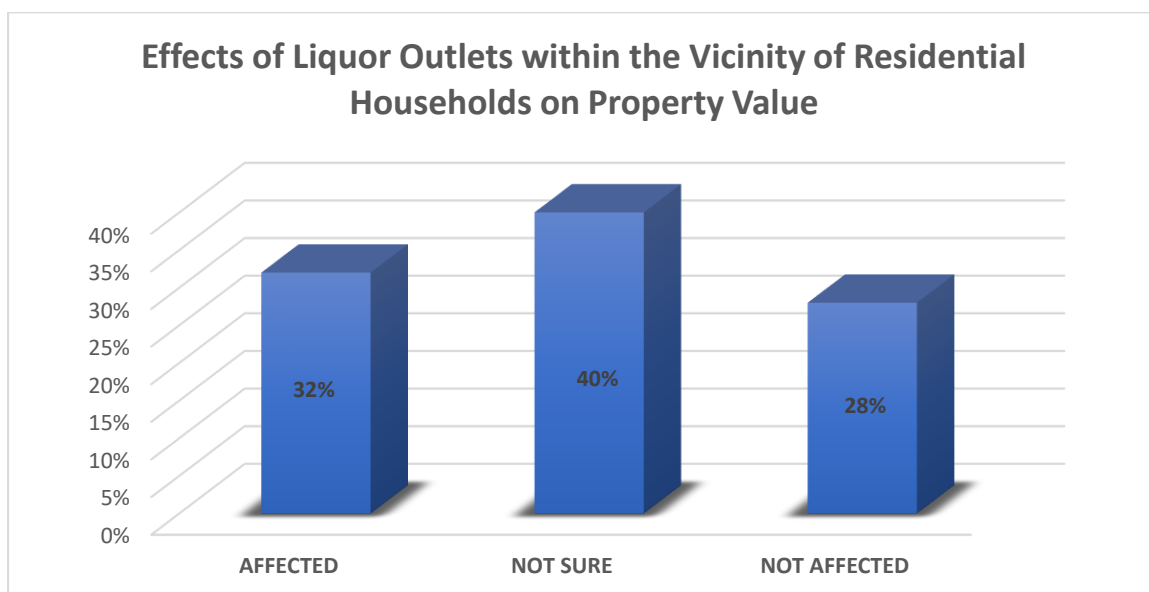


Figure 3: Effects of Liquor Outlets within the Vicinity of Residential Areas in KZN.

10.4 The potential use of disposable income on alcohol in households surrounded by liquor outlets. (Alcohol abuse)

Respondents were asked to indicate whether the sale and availability of liquor outlets near their households means disposable income is spent on alcohol as depicted in Figure 30. Sixty-two (62%) of the respondents believed that more disposable income is spent on alcohol since alcohol outlets are literally on their doorstep. Moreover, 11% of the participants were not convinced that this is the case, whereas 27% were unsure.

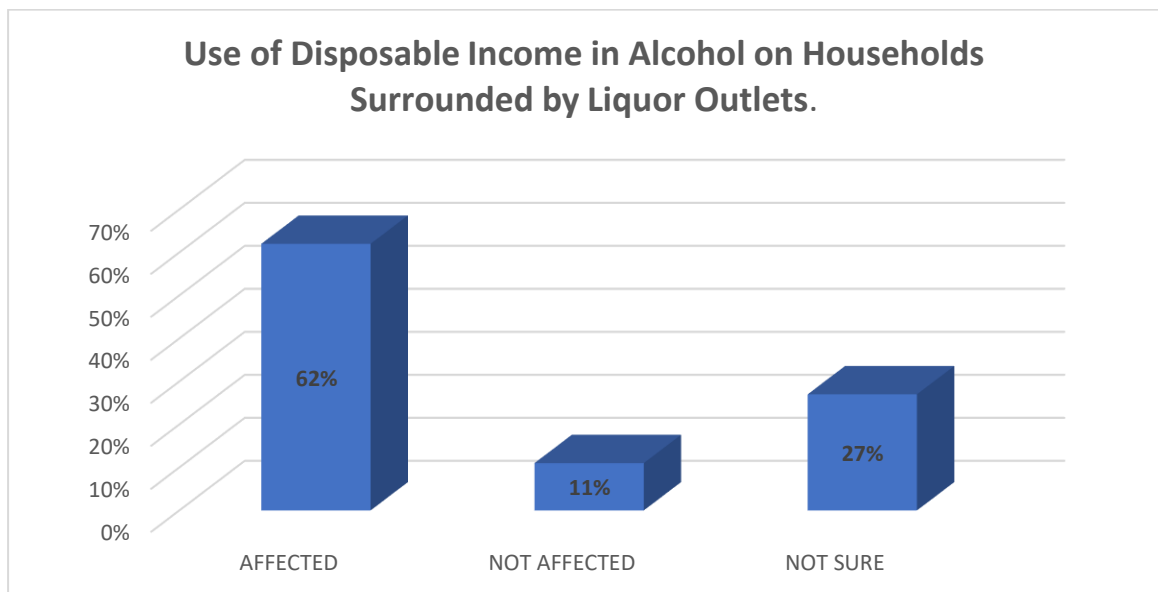


Figure 4: Use of Disposable Income in Alcohol on Households Surrounded by Liquor Outlets.

11. PUBLIC INTEREST CRITERION IN RESPECT OF OUTLETS IN THE VICINITY OF RESIDENTIAL HOUSEHOLDS IN KZN

KZN Provincial government recognizes the public outcry due to proliferation of liquor outlets in residential areas, particularly nearby homesteads. Although the public outcry in the study was to the predominantly unlicensed liquor outlet in close proximity to their homes, all concerns raised in the research study that solicited perceptions of KZN residents regarding licensing of liquor outlets in residential areas has been noted and analysed, and the province is therefore introducing supplementary guidelines to be considered when the Liquor Authority is determining whether prospective outlets in residential areas are in the public interest as contemplated in Section 48 (5) and (6), which the guidelines are based on both the primary and secondary data collected for the purpose of development of this policy.

11.1 A liquor outlet intending to trade within the vicinity of 0m to 100m radius to residential households may be granted a liquor license given that a **Public Interest Assessment (PIA)** has been conducted.

11.2 PIA is also applicable to liquor outlets intending to trade within the vicinity of 100m to 500m to learning and religious institutions.

11.3 Applicants lodging liquor licensing applications to trade on premises where PIA is applicable as stipulates in clause 11.1 and 11.2 must complete the following:

- i. A completed **Public Interest Assessment Form** attached in this policy as (*Annexure C*).

11.4 In determining whether granting of the license will be in the public interest, the board should consider any of the following factors:

- a) The density of liquor outlets in the area;
- b) The crime statistics in the area;
- c) Population density and status of residence in terms of age norms;
- d) Socio-economic conditions of households (perceived level of income and poverty index);
- e) Observations of the area in terms of suitability of location and condition in relation to the proposed license premises;
- f) The harm or ill-health that might be caused to people, or any group of people, due to the use of liquor (underage drinking and gender-based violence).
- g) Whether offence, annoyance, disturbance or inconvenience might be caused to people who reside or work in the vicinity of the licensed premises or proposed licensed premises;
- h) Proximity to religious institutions, schools, health facilities and other community facilities and amenities;
- i) The potential economic contribution of the outlets; and
- j) Any other factors to be considered.

11.5 Applicants must include proposals in their applications on how they will manage any potential risks detected.

12. REFERENCES

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Available at:

<https://www.dlgsc.wa.gov.au/department/publications/publication/public-interest-assessment-policy>



Annexure C

PUBLIC INTEREST ASSESSMENT FORM PART A *(To be completed by the Applicant)*

APPLICATION DETAILS

WHERE A PUBLIC ASSESSMENT IS REQUIRED, THIS FORM MUST BE FULLY COMPLETED AND LODGED AS AN ATTACHMENT TO THE APPLICATION.

Application name _____

Outlet Category:

<input type="checkbox"/>	Accommodation	<input type="checkbox"/>	Sports Ground
<input type="checkbox"/>	Restaurant	<input type="checkbox"/>	Pub
<input type="checkbox"/>	Club	<input type="checkbox"/>	Tavern
<input type="checkbox"/>	Night Club	<input type="checkbox"/>	Theatre
<input type="checkbox"/>	Gaming Premises		
<input type="checkbox"/>	Other		

Name of Outlet: _____

Address of proposed outlet: _____

MANNER OF TRADE

DESCRIPTION OF THE PROPOSED BUSINESS, MANNER OF PROPOSED TRADE AND HOUSEHOLDS AT RISK. ***PLEASE PROVIDE PHOTOGRAPHS OF THE AREA.***

What is the proposed manner of trade?

What are facilities or services that will be provided by the proposed outlet different from those offered by other similar businesses in the area?

Please indicate the following:

- a) How many licensed liquor outlets are within the vicinity of 0m to 500m of the proposed outlet?**
- b) How many learning institutions are within the vicinity of 0m to 500m of the proposed**
- c) How many religious institutions are within the vicinity of 0m to 500m of the proposed outlet?**

IMPACT ON AMENITY

DESCRIPTIVE REPORT ON THE IMPACT ON AMENITY OF THE LOCALITY OF THE PROPOSED PREMISE.

What will be the positive benefits of the proposed outlet to its community?

What measures you intend to implement to address potential offence (underage drinking and violence), disturbance or inconvenience (noise and nuisance) to households in close proximity?

DECLARATION

I declare that the contents of this document and attachments are true, correct and complete. I have made reasonable inquiries to obtain the information.

I acknowledge that under Section 92 (g) of the Act, it is an offence to provide false and misleading information on this document.

Signature of the applicant/s

Date

PUBLIC INTEREST ASSESSMENT FORM PART B *(For Office Use Only)*

DOCUMENTARY EVIDENCE

KZNLA seeks to solicit documentary evidence from relevant government bodies/institutions to provide the Board with credible information on the Crime Statistics, Population Density, and Poverty Levels on proposed areas.

What is the nature and character of the area and the community? *Must be accompanied by a Police Report indicating the Crime Statistics from SAPS for a 1-year cycle.*

Based on the Report from Social Development, what are the poverty dynamics in the proposed area?

Based on the Report from COGTA, what is the population density of the proposed area?

SOCIAL IMPACT

RISK ASSESSMENT ON BOTH NEGATIVE AND POSITIVE SOCIAL IMPACTS TO BE CONTRIBUTED BY THE PROPOSED OUTLET IN THE COMMUNITY.

What is the potential impact of the outlet on the level of noise and anti-social activities in the area?

Are there any social ills observed in the community that needs to be considered in granting a license for the proposed outlet?

Based on the documentary evidence provided, is it recommended to grant a liquor license to the proposed liquor outlet in this community?

YES

NO

Please provide reasons:

.....

.....

.....



PUBLIC INTEREST ASSESSMENT FORM (Inspector's Report)

KZNLA deems it important to conduct an integrated Public Interest Assessment to confirm and verify the credibility of data provided by the applicant on the Public Interest Survey. Therefore, an Inspector's Report is mandatory in PIA.

The Inspector's Report must indicate the following:

1. List of residential households and their distances from the proposed premises.
2. List of learning and religious institutions within a vicinity of between 100m to 500m radius of the proposed area.
3. List of licensed liquor outlets within 0m to 500m radius of the proposed area.