

**PARALLEL LAND USE AND LAND
DEVELOPMENT APPLICATION PROCEDURES
IN A SEMI-URBAN CONTEXT: A CASE STUDY
OF THE THEMBISILE HANI LOCAL
MUNICIPALITY**

BY

LERATO THABO MOTLOUNG

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DECLARATION

In accordance with University Regulation G.28,I hereby declare that this research report is my own, unaided work. It is being submitted for the Degree of Bachelor of Science (Honours) in Urban and Regional Planning at the University of the Witwatersrand, Johannesburg. It has not been submitted before for degree or examination in any other University.

Signed at _____ on this _____ day of _____ 2015

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ABSTRACT

Rural and former homeland areas, mostly within a semi-urban context, are predominantly characterised by parallel statutory and customary legislative regimes which are both fully recognised under the current constitutional dispensation of the Republic of South Africa. The existence of this dichotomy in rural South Africa pre-dates the 1996 Constitutional dispensation and is therefore the legacy of the apartheid era, which saw the passing of various laws such as the Bantu Homelands Constitution Act, 1971 (Act 21 of 1971) which was also later renamed the Self-Governing Territories Constitution Act, 1971 (Act 21 of 1971). The basis of the passing of these laws emanated from subsequent laws such as the Bantu Authorities Act, 1951 (Act 68 of 1951) and the Promotion of Bantu Self-Government Act, 1959 (Act 46 of 1959) which also resulted in the establishment of tribal/traditional, territorial and regional authorities which relied on customary and indigenous understanding to the management of land. The statutory regulation of planning and land use management was later introduced in the self-governing and homeland areas with the promulgation of Proclamations R293 of 1962 and R188 of 1969 which were enacted as Land Use and Planning Regulations in terms of the Black Administration Act, 1927 (Act 38 of 1927). This signalled the beginning of a legacy of parallel land use and land development application procedures found in the semi-urban contexts of Post-Apartheid South Africa.

The Post-1994 planning legislative reform process has resulted in a planning system that is very complex and difficult for the rural communities to comprehend, and for the tribal/traditional authorities to embrace. The reason for the challenge induced on the rural community is due to the current planning laws that prescribe land use and land development application procedures that have very technical and expensive requirements for the majority of the rural community to understand and afford. On the other hand, discontent from the tribal/traditional authorities is due to the fact that the current institutional arrangements in terms of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), the Local Government: Municipal Systems Act & Regulations, 2000 (Act 32 of 2000), as well as the new Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) has placed municipal Councils at Local Government, at the centre of planning and land use and development management decision-making, with tribal authorities as consulted participants in the process. In attaining the intended outcomes of planning, this therefore calls for an incremental approach to the introduction of a statutory land use management system, in as far as land use and development application procedures in a semi-urban context are concerned.

This approach is one that embraces the incorporation of local indigenous and customary knowledge and understanding into land use planning and resource management. With the Thembelesile Hani Local Municipality as a case study, emphasis is placed on the context-specificity of land use management systems and applicable procedures in a semi-urban context.

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ACCRONYMS AND ABBREVIATIONS

CLaRA	COMMUNAL LAND RIGHTS ACT, 2004 (ACT 11 OF 2004)
CoGTA	DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS
CONTRALESA	CONGRESS OF TRADITIONAL LEADERS OF SOUTH AFRICA
DARDLA	DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT AND LAND ADMINISTRATION
DFA	DEVELOPMENT FACILITATION ACT, 1995 (ACT 67 OF 1995)
DRDLR	DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM
EIA	ENVIRONMENTAL IMPACT ASSESSMENT
GEAR	GROWTH, EMPOWERMENT AND REDISTRIBUTION POLICY
IDP	INTEGRATED DEVELOPMENT PLAN
ILM	INDIGENOUS LAND MANAGEMENT
LeFTEA	LESS FORMAL TOWNSHIP ESTABLISHMENT ACT, 1991 (ACT 113 OF 1991)
LUMS	LAND USE MANAGEMENT SYSTEM
MEC	MEMBER OF THE EXECUTIVE COUNCIL
MMC	MEMBER OF THE MAYORAL COMMITTEE
MOU	MEMORANDUM OF UNDERSTANDING
MSA	LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT, 2000 (ACT 32 OF 2000)
MSPLUMB	MPUMALANGA SPATIAL PLANNING AND LAND USE MANAGEMENT BILL, 2012
MPHTL	MPUMALANGA PROVINCIAL HOUSE OF TRADITIONAL LEADERS
NDP	NATIONAL DEVELOPMENT PLAN

NEMA	NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998)
P.T.O	PERMISSION TO OCCUPY
SALGA	SOUTH AFRICAN LOCAL GOVERNMENT ASSOCIATION
SAPS	SOUTH AFRICAN POLICE SERVICES
SDF	SPATIAL DEVELOPMENT FRAMEWORK
SDI	SPATIAL DEVELOPMENT INITIATIVES
SEEA	SOCIO-ECONOMIC AND ENVIRONMENTAL ASSESSMENT
SPLUMA	SPATIAL PLANNING AND LAND USE MANAGEMENT ACT, 2013 (ACT 16 OF 2013)

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CHAPTER 1

Setting the Scene for the Research Report

1.1 Introduction

The choice of this research topic was inspired by the limited literature that exists around the subject of parallel land use and land development application procedures in semi-urban municipalities. This research is aimed at opening an eye towards this under researched subject, whilst aiding and complementing all available academic research and literature around this subject. This research is intended to take on a case-specific approach, particularly focusing on the former KwaNdebele/Bophuthatswa homeland, with a particular focus on the Thembisile Hani Local Municipality as delineated by the new municipal boundaries of the democratic dispensation.

1.2 Background of Research

The context of this research is communicated in the Thembisile Hani Integrated Development Plan 2011-2016, where out of 57 villages within the municipality, only 8 are formally proclaimed townships (Thembisile Hani IDP 2011-2016). The result of this form and type of settlements is born out of the history of the former KwaNdebele and parts of the Bophuthatswana homelands which saw the establishment of self-governing territories established in terms of Proclamation R293 and R188 (Dr JS Moroka IDP 2012/2013). The former represents settlements under communal title and the latter represents the Permission to Occupy (P.T.O) system, both under the jurisdiction of traditional authorities (Dr JS Moroka IDP 2012/2013). Viewing this reality from a Land Use Management point of view, the enforcement of the municipality's Land Use Management Scheme has proven to be quite a challenge, if not impossible in most of the villages. This is mainly due to the parallel, and less formal as well as formal Municipal land use and land development application procedures.

The inability of the municipality to effectively enforce its land use management scheme, given the above-mentioned reality, has resulted in non-compliance by communities in semi-urban municipalities. A semi-urban municipality, as defined in *Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd and Another 2009(1) SA 337 (CC)*, are municipalities that are still characterised by remnants of the Self-Governing Territories Constitution Act, 1971 (Act 21 of 1971) (Steylter, 2009; Zenker, 2014). Furthermore, a semi-urban municipality is characterised by formal urban areas which have been proclaimed as townships in terms of applicable planning legislation, as well as rural areas in the former homeland areas under traditional leadership (Steylter, 2009; Zenker, 2014). Coupled with the above-mentioned, traditional leaders in such contexts have very minimal technical knowledge on matters of the allocation and use of land. This amongst other problems has also resulted in encroachments (the unmanaged and unplanned occupation of land), especially on land that has strategically been earmarked for human settlements in terms of the Municipal Spatial Development Framework, as well as the unauthorized extension of property boundaries. The majority of land within the municipality is owned by state departments and this

questions the municipality's ability to manage land which is situated within its jurisdiction, but is not owned by the municipality.

Given the above account of the background to which this research topic has been formulated, this study is also undertaken at a time when planning in South Africa as well as in the Mpumalanga Province is undergoing a major change with the new Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) (SPLUMA), and the new Mpumalanga Development Planning Bill 2012. The Mpumalanga Development Planning Bill, which is drafted under the auspices and as a legal requirement of the SPLUMA, is aimed at establishing a uniform planning system for the province which will result in the repeal of past planning laws which have done very little to undo the spatial challenges facing semi-urban municipalities that are characterised by former Homeland areas under traditional leadership.

1.3 Rationale Behind Research

As much as this research topic is case-specific, the rationale behind it is justified by the need to question the relevance of a uniform land use management system not only in relation to the Thembisile Hani Local Municipality, but to many other semi-urban contexts in South Africa and within the Mpumalanga Province which are more or less similar to the study area. This has also been informed by an analysis of the findings of this research study. Based on the aforementioned, this research is also intended to come up with context-specific conclusions that must inform the Mpumalanga Development Planning Bill, the implementation of the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) (SPLUMA), as well as current and future research on land use management systems in former homeland areas under traditional leadership. Given the nature of parallel less formal and formal land use and land development application procedures in the Thembisile Hani Local Municipality, this research study has only limited its scope to a comparative analysis between the above-mentioned parallel application procedures.

Furthermore, the main objective of this research report is to propose recommendations that will contribute to an emerging debate within the Mpumalanga Province and country as a whole around the development of more appropriate and context-specific pieces of planning legislation and processes.

1.4 Problem Statement

This research is aimed at responding to many challenges that were identified in the background study in relation to the subject matter. These identified challenges therefore form the basis of the problem statement. The first challenge is the conflict between two parallel legal systems (statutory and customary). There is a vague distinction between the applicable parameters of a Statutory/Regulatory Law system on the one hand, as well as a Customary Law system on the

other. This has therefore led to known cases where the Thembisile Hani Land Use Management Scheme of 2010 is unable to penetrate most villages on communal land under traditional leadership.

In this case the municipality has ended up in a situation where it is unable to effectively regulate the use and management of land in the affected villages, again questioning the relevance of its land use management system in such a context. Furthermore, this challenge also has a negative impact on municipal-led projects aimed at reversing this spatial trend. These municipal-led projects involve processes of the formalization of the villages as well as the upgrading of land tenure rights from informal land occupation rights to formal full ownership rights. The processes undertaken will eventually result in the release of the land owned by state departments through a vesting process which will have the ownership of the land in question transferred to the municipality. The state land release process has in most cases proven quite complicated and cumbersome especially due to the ongoing and unresolved land restitution cases on all land subject to claims in terms of the Restitution of Land Rights Act (No. 22 of 1994) amongst other lengthy procedural challenges.

The above-mentioned processes are quite crucial requisites in order to ensure that all informal areas and settlements are formalized to make it easy for the municipality from a land use management point of view. In relation to the different and complex spatial challenges facing the municipality, which questions the relevance or applicability of a formal and uniform land use management system, there is also a structural problem from a municipal governance point of view. This problem is borne from the unclear distinction between the roles and functions of municipal planners and traditional authorities in land use management and planning. This unclear distinction is the underlying premise why this research topic has been undertaken. Current applicable planning legislation in South Africa is mostly focused on establishing systems that will ensure the successful implementation and operationalization of statutory/regulatory Land Use Management Systems in both formal/urban areas and in traditional and former homeland areas.

Todes *et al* (2010) concede that existing research on alternative land use management systems i.e Context-Specific and Strategic Spatial Planning approaches have not been sufficient enough in responding to the management of land use and development. This concession therefore speaks to the gap that still exists in the pursuit of establishing appropriate/relevant land use management systems in South Africa, in both formal/urban areas and in semi-urban local contexts. This has not only led to the existence of parallel land use and land development application procedures between traditional areas and formal areas only, however, the same parallel application procedures are also a common phenomenon in the formal urban areas of semi-urban municipalities. Based on the above-mentioned, it has become common practice in semi-urban municipalities to have less formal and simplified application procedures for traditional areas on the one hand, and to have the formal application procedures that are informed by an applicable land use scheme for urban areas on the other hand. However, the main problem is that the less

formal applications are also being submitted by the residents of formal/urban areas and they're being acknowledged and accepted by the Local Municipalities. This is despite the fact that only formal application procedures in terms of the applicable land use scheme should apply.

This research study is a move away from the reliance on this bias, whilst questioning the relevance of statutory/regulatory Land Use Management Systems in semi-urban Local Municipalities characterised by former Homeland areas in South Africa. Moreover, battle lines have been drawn in semi-urban Local Municipalities with regards to which institution between Municipal Councils and Traditional Councils must lawfully assume sole responsibility and authority over planning matters in communal land under traditional leadership. Although current planning legislation as well as the Constitution of the Republic of South Africa are clear that the Municipal Council shall be the authority of first instance when dealing with planning matters, however our failure to historically respond to this grey area and find a common understanding has caught up sooner than anticipated.

1.5 Research Question

The background study conducted thus far has resulted in the formulation of the following research question which will also be broken down into sub-questions that will assist in giving effect to the specifics of the research topic. The Thembisile Hani Local Municipality has been used as a case study from which the research questions will be responded to. The research question is as follows:

What are the dynamics underpinning the formal and less formal land use and land development application procedures in semi-urban municipalities?

1.5.1 Research Sub-Questions

The research question will be unpacked under the following research sub-questions:

- Has this parallel land use and land development application procedure been adopted by semi-urban Municipal Councils?
- What informs the less formal and simplified land use and land development application procedure in semi-urban municipalities?
- What are the challenges of having a formal and uniform land use and land development application procedure in semi-urban municipalities?
- How are the challenges impacting on the enforcement of applicable land use and land development management systems in semi-urban municipalities?
- What mechanisms are being used to integrate the formal and less formal land use and land development application procedures in semi-urban municipalities?
- What are the differences and similarities between the formal and less formal land use and land development application procedures?

1.6 Literature

The aim of this literature review is to provide a broader theoretical framework that will inform the research topic. The Thembisile Hani Local Municipality has also been used as a case study from which the debates and arguments drawn from the theoretical framework are tested. Therefore, it is also important that this review takes into consideration the other theoretical debates in a global context, not as a case to case comparison, but rather as a way of drawing some practical and theoretical arguments that have been useful in the analysis of the research findings in order to come up with useful conclusions and recommendations when responding to the research question. The selected literature shares important perspectives from the U.S, Australia, countries of the Pacific Islands, Africa, with a particular focus on Botswana, Namibia, Nigeria, Tanzania and Uganda, as well as South Africa. For the purpose of structure and logic, the theoretical arguments and debates extracted from the selected pieces of literature are grouped into two distinct schools of thought, namely: the Communitarian School of Thought as well as the Individualised School of Thought.

The Communitarian School of Thought argues from a socialist-centred perspective, whilst the Individualised School of Thought argues from a capital-driven point view. This section further discusses more useful debates emanating from matters of institutional arrangements and governance at the local level, this is the level or sphere of government under which the function of land management is undertaken. More literature on universally applicable guiding principles underpinning land use planning and management practices globally has also been explored. A discussion of these guiding principles has proven to be crucial as they have served as a basis upon which the effectiveness and efficiency of land use management systems, for the purpose of this research, are assessed. The principles discussed have provided enough scope for the comparative study between formal and traditional land use management systems as well as the analysis of the research findings to depart from. These guiding principles allude to the fact that they must inform all land use and land management practices universally, formal and traditional, given the fact that they prescribe that the latter be very much sensitive to socio-economic and ecological/environmental conditions (Dale *et al*, 2000; Ministry of Agriculture and Lands, 2007).

As much as the end result of this research report has a focus on South Africa, with the case study of Thembisile Hani Local Municipality in Mpumalanga, various approaches and mechanisms to land use management from various countries around the world have been explored. For a useful comparison between land use mechanisms in South Africa and other countries in the world, this section also explores countries with the same parallel legal systems (statutory and customary), and how these relate to land use management. Based on the fact that the various concepts related to land use management systems are used quite interchangeably and more often in this research report, it is important that these concepts be clearly defined and distinguished in order to limit confusion to the reader. This section therefore focuses on unpacking and framing the various concepts as used in the South African context, although most of the concepts might echo the same meaning globally.

Furthermore, more literature on the socio-historical context under which land use management systems in South Africa have always operated is discussed and debated. The evolution of land use management systems (LUMS) is traced back in history, post-1994, to its current form as it is applicable today. What is also useful for the purpose of this research report is that an extensive discussion is provided in this section on the relationship between traditional leadership in rural areas and formal/statutory land use management systems, focussing on the development as well as the change in policies and legislation with regards to LUMS in South Africa. What this discussion achieves in this section is a clear picture of the policy and legislative frameworks under which LUMS have evolved over time. Existing research papers and literature on the impact of land reform programmes (with particular attention to land tenure reform) on land use management systems in former homeland areas has also been incorporated into the theoretical framework of this research study. Moreover the above, alternative forms of land use management systems appropriate for former homeland areas in South Africa have been explored.

Another important piece of research that relates to the research topic is a paper on the successful implementation and operationalization of Land Use Management Systems in the Rural Areas of KwaZulu-Natal (KwaZulu-Natal Planning and Development Commission, 2010).

1.7 Research Methods

1.7.1 Type of Research Approach

In responding to the research question underpinning this study, an explanatory case study approach has been employed, together with a formative evaluation research approach (Yin, 1994; Sarantakos, 2005). This is the most appropriate research approach given the nature of the underpinning research question and has been useful when it comes to exploring the contextual dynamics that underpin both the formal as well as the customary land development procedures in rural areas. The evaluative research approach has also been useful in identifying the strengths and weaknesses of the subject matter in question with the intention of coming up with workable conclusions and recommendations (Sarantakos, 2005). Yin (1994:13) defines a case study as “an empirical inquiry that investigates a contemporary phenomenon within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident”. The above-quoted definition validates the use of a case study research approach given the fact that the contemporary phenomenon in the study is the existence of a formal and uniform land use management system, parallel with its real-life context being the opposing legal land regimes in rural areas.

Figure 1 below is a depiction of the logical methodological model that has been followed in this research study.

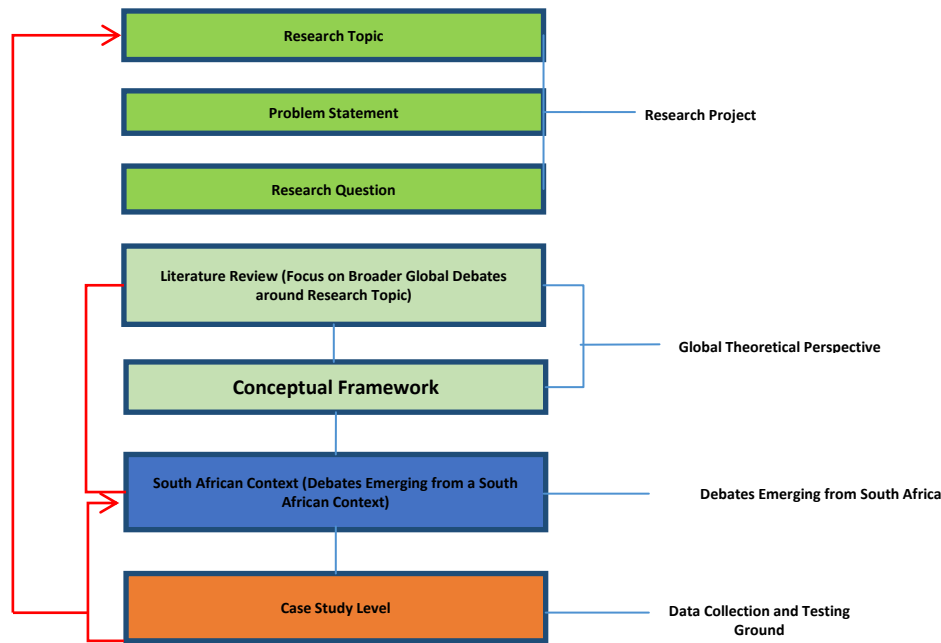


Figure 1: Overall Approach to be Employed for the Research Study (Adopted from Yin's Explanatory Case Study Approach and Sarantakos' Formative Evaluation Research Approach) (Yin, 1994; Sarantakos, 2005)

The first phase, which is the research project definition phase, has comprised of a formulation of the research topic, a problem statement that the research aims to respond to, with brief hypothetical assumptions, as well as the underpinning research question and related sub-questions. The second phase has comprised of a comprehensive literature review in an attempt to locate the research topic within broader and global theoretical debates, thus creating a conceptual framework to depart from. The third phase zooms in on the various debates emerging within the South African context on the subject matter, and this phase also seeks to establish a framework with a set of criteria that will be used to evaluate formal Land Use Management Systems. The fourth and final phase focuses on the Thembisile Hani Local Municipality in Kwaggafontein as a case for the comparative study in response to the research question, using the broader theoretical debates (both in the South African as well as global context) as a guiding framework for the case study.

The Thembisile Hani Local Municipality was selected as the relevant locality for this research study given the fact that it is characterised by opposing legal land regimes, which in turn have also led to parallel land development procedures.

1.7.2 Information for the Type of Approach

The key information that this type of research approach has relied on is as follows:

- Municipal/formal land use management practices in rural areas (with particular attention to land use and land development application procedures)
- Less formal land use management practices in rural areas (with particular attention to land use and land development application procedures)
- Information on received land development applications (eg. Consent for Secondary Land Use Rights, Rezoning, Subdivision, Consolidation, and Site Allocation)
- Practical experience of the researcher having been employed as a Municipal Planner in a rural Municipality (Dr JS Moroka Local Municipality) with similar land management regimes as the Thembisile Hani Local Municipality
- Responses from the Thembisile Hani Local Municipality and the Nkangala District Municipality (under whose jurisdiction the Thembisile Hani Local Municipality is situated), and residents of the Thembisile Hani Local Municipality, as well as the tribal Councils within the municipality.

1.7.3 Forms of Data Collected

In responding to the core research question and its underlying sub-questions, this research study has relied on both forms of quantitative and qualitative data in drawing up balanced conclusions from the required information. Given the nature of the type of research approach being employed in this study as well as its underpinning in theory, a quantitative approach was deemed appropriate at first. This first phase of data collection has entailed a collection of quantitative data, the findings of which has therefore provided focus for the second phase of qualitative data collection in relation to the findings of the former. The various sources of evidence that both forms of data has been collected from are as follows:

- Various documents around the subject of formal land use management systems in rural areas
- The Thembisile Hani Land Use Scheme
- The Thembisile Hani IDP documents
- Records of land use and development applications from within the Thembisile Hani Local Municipality. This source of data has formed the core of the quantitative study by collating a body of data on the number of applications received, both in terms of formal and less formal application procedures. This source of data has also sought to gather quantitative information on approved applications, applications not approved, those that did not go ahead post approval, as well as any illegal developments which are unaccounted for by the municipality.
- Qualitative interviews (supplementary to the first phase of quantitative data collected)

- Quantitative survey with residents/applicants of the Thembisile Hani Local Municipality (20 residents surveyed overall, with 10 from formal/urban areas and another 10 from traditional/rural settlements. Some were selected applicants from the list of less formal applications obtained from the Thembisile Hani Local Municipality, and others were residents who visited the Municipality's Housing & Town Planning Section daily for enquiries) See APPENDIX J.
- Practical experience (As a municipal planner dealing with the enforcement of the municipal land use scheme as well as formal land development application procedures in a semi-urban municipality)
- Practical observations of the study area (Thembisile Hani LM)

1.7.4 Research Strategy

For the successful collection of required data, a sequential explanatory strategic approach, as defined by Creswell (2009), has been the most desirable for this research study (see Figure 2). According to Creswell (2009), the sequential explanatory strategy entails the collection and analysis of quantitative data in a first phase of research followed by the collection and analysis of qualitative data in a second phase that builds on the results of the initial quantitative data.

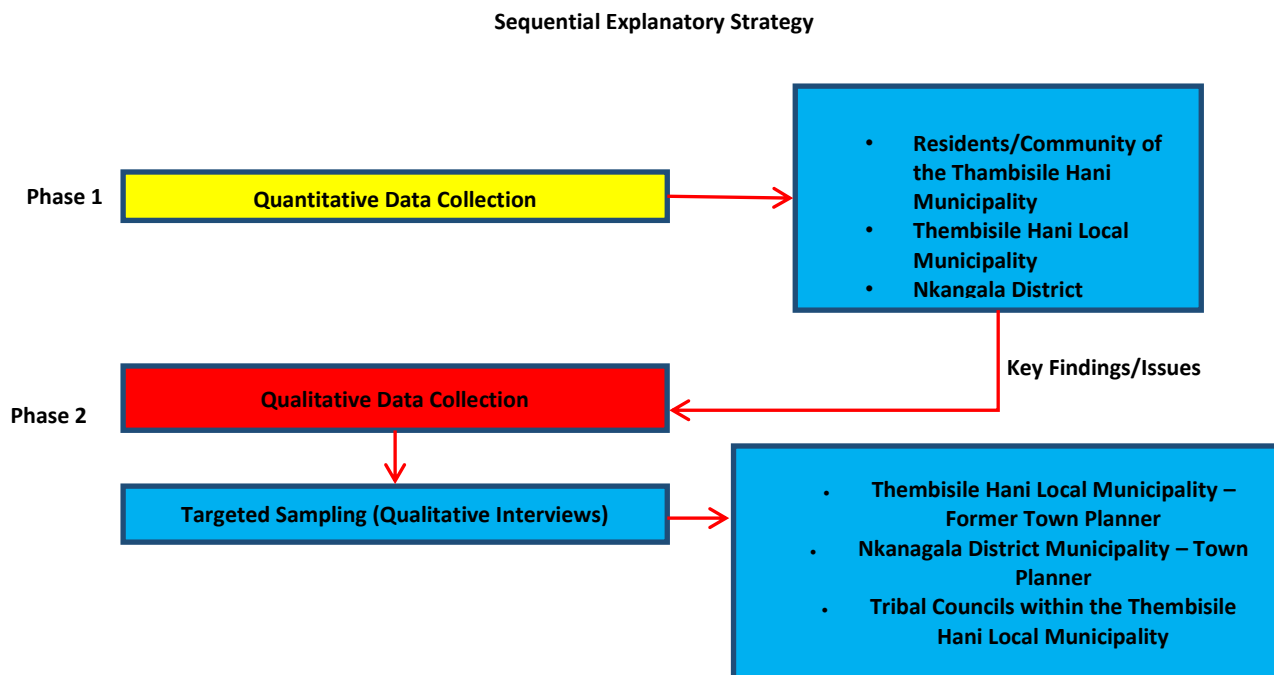


Figure 2: A Strategy Model to be Employed in Data Collection (Adopted from Creswell's Sequential Explanatory Strategy) (Creswell, 2009)

In this research study, the qualitative method has been devised in such a way that the preliminary findings thereof seek to inform the key findings from the quantitative study which begin to respond to certain phenomena pertaining to the subject under study (see Figure 2). The research strategy adopted above applied to the collection of data at the case-study level/phase. During this phase, the quantitative data was collected from the Thembisile Hani Local Municipality as well as from the Nkangala District Municipality. The use of the above-mentioned data sources is due to the fact that more accurate information on formal land development applications was not available in Thembisile. This however, makes sense, especially based on the determination by the MEC for Local Government and Housing, published in the Mpumalanga Provincial Gazette Vol. 10 No. 959 dated 26 May 2003, which saw the municipal planning function for the Thembisile Hani Local Municipality being adjusted and vested under the competence of the Nkangala District Municipality. The adjustment of the Thembisile Hani municipal planning functions were born out of a lack of in-house capacity to carry out the functions pertaining to municipal planning.

Therefore, the targeted sampling of the various informants that were interviewed as part of the qualitative study was based on the key issues which arose from the quantitative study, which in turn successfully provided direction with regards to the subject matter under study.

1.8 Ethical Considerations

As a Municipal Planner by occupation working for a different Local Municipality, Thembisile Hani Local Municipality was chosen as an ideal locality for the research study so as to not compromise one's independence as a researcher. For all respondents that were sampled for the quantitative survey and qualitative study, the aims and possible implications of the research have been explained to them as fully as possible. Furthermore, matters that could place the informant in an embarrassing, false or compromising position vis-à-vis authorities, have been confidentially handled. Therefore, the respondents sampled for the set of qualitative interviews and the residents/applicants survey, willingly consented to their participation in the research without coercion.

1.9 Limitations of the Research Study

There was a challenge of time and distance, as well as the availability of some respondents for the qualitative interviews. In order to get the important information required for the final analysis, the approach was improvised from the intended personal communication approach to communication via telephonic and electronic means. Based on the inability to travel to the Thembisile Hani Local Municipality for the undertaking of the residents/applicants survey, the municipality's student town planner volunteered to conduct the survey to successful completion. As much as the overall stance of this research study proposes an incremental and context-specific

and simplified procedures to land use and development application procedures in a semi-urban context, the research recommendations still fall short on how municipalities will be able to deal with the unintended consequences of having such a flexible approach to land use and development management. This is mainly due to the fact that the interpretation of the provisions of the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013), which necessitate simplified land use and land development procedures for municipalities, remain extremely subjective.

The purpose of this research study was therefore to come up with context-specific recommendations that will be ideal for the study area and similar contexts. The monitoring and evaluation of the actual impact of the proposed recommendations is beyond the scope of this research study. Therefore, this study creates an opportunity for further research in any of the discussed specialized areas pertaining to the management and use of land.

1.10 Chapter Outline

This research report comprises of five Chapters as outlined below.

Chapter One – Setting the Scene for the Research Report

This opening chapter is an important chapter for the reader as its primary aim is to introduce as well as set out the scene for the research study. This chapter will provide an explanation as well as a discussion of the key aspects which informed the research study. Amongst the key aspects to be covered in this chapter is the background of the research study, the problem statement which the research study seeks to respond to, the rationale behind the research study, the research question, and the research methods and approach that was employed during the research study.

Chapter Two – A Theoretical and Conceptual Framework Underpinning the Research Study

This chapter is aimed at developing a theoretical and conceptual framework from the broader debates drawn from a wide range of literature that is relevant to the research study from a global point of view. This chapter is important in order to maintain the premise of this research report as an academic study. Furthermore, this chapter is aimed at providing a historical as well as the current context underpinning Land Use Management in South Africa from a legislative and policy point of view. A broader overview of land use management has enabled one to locate the research study in relation to the evolution of South Africa's legislative and policy framework. This chapter will also provide a discussion of the various pieces of legislation (national and provincial) applicable to planning at the local sphere of government.

Chapter Three – Locating the Research Study within its Legislative and Policy Context

The purpose of this chapter is to place the research study within the historical and current legislative and broader policy context. This chapter will seek to derive appropriate conclusions and recommendations from the underpinning planning principles which have been consistently enshrined in the White Paper on Spatial Planning and Land Use Management, 2001, the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) as well as the National Development Plan (Vision 2030).

Chapter Four – A Comparative Study of Formal and Less Formal Land Use and Development Application Procedures: The Case of the Thembisile Hani Local Municipality

This chapter is aimed at introducing the research study area regarding its physical location in relation to South Africa, its historical background on the state of land and land use management within the municipal area. Due to the fact that this research entails a comparative study of existing formal and traditional/customary land use and development management systems, it is therefore important that the institutional organisation of the municipality be discussed with regards to the roles and functions of the municipality and traditional authorities in the decision-making of matters pertaining to land use and development applications. The comparative study has therefore been informed by the raw quantitative data on the different formal and traditional land use and development applications including a round of qualitative interviews from relevant municipal officials from the Thembisile Hani Local Municipality and the Nkanagala District Municipality. This chapter will conclude with an analysis of all key findings from the round of qualitative interviews. These interviews were based on the key identified trends from the quantitative data that was collected.

Chapter Five – Implications for Current and Future Research (Conclusion)

This closing chapter will be aimed at concluding the research study whilst presenting the implications of the study in the form of brief recommendations that current and future research and legislative drafting processes on Land Use Management in former homeland areas and South Africa as a whole will pick up from.

CHAPTER 2

A Theoretical and Conceptual Framework Underpinning the Research Study

2.1 Introduction

The aim of this literature review is to provide a broader theoretical framework that informs the research topic. This chapter is aimed at developing a theoretical and conceptual framework from the broader debates drawn from a wide range of literature that is relevant to the research study, whilst maintaining the premise of this research report as an academic study. Furthermore, this chapter is aimed at providing a historical as well as the current context underpinning Land Use Management in South Africa from a legislative and policy point of view. A broader international overview of land use management systems will enable one to locate the research study in relation to the evolution of South Africa's legislative and policy framework regarding the latter. This chapter also provides a discussion of the various pieces of legislation (national and provincial) applicable to planning and which guide the implementation of land use management systems at the local level. The Thembisile Hani Local Municipality was used as a case study from which the debates and arguments drawn from this theoretical framework were tested. Therefore, it is also important that this review takes into consideration the other theoretical debates in a global context, not as a case to case comparison, but rather as a way of drawing some practical and theoretical arguments that are useful in answering the research question and all the relevant research sub-questions.

2.2 International Literature and Debates

Todes *et al* (2010) becomes the first piece of literature to present crucial concepts that are of importance to the research study topic. The first key concepts drawn from the article is that of 'social and contextual diversity'. These concepts are relevant for the research topic in that they form part of a discussion of various forms of spatial planning as well as their appropriateness in different contexts (Todes *et al*, 2010). This discussion also forms part of a debate on how traditional old-style type of planning systems, centred on land use control and zoning, pays little attention to social diversity (Todes *et al*, 2010). Another useful concept is that of a common identifiable 'public interest' (Todes *et al*, 2010). This concept is relevant to the topic in that it provides one with the opportunity to question whose interest the current land use management system is intended to serve, the urban or the rural interests?

Obeng-Odoom (2012) also brings to the fore further key concepts that are pivotal for the research topic. A useful concept in this journal article, which is also one that underpins the debates and arguments which follow, is 'Land Reforms' in the African context. This article provides a critical review of land reform initiatives in different countries within Sub-Saharan Africa (Obeng-Odoom, 2012). This concept allows one to draw out the implications that such programs have on land use management systems as a planning component under question. This component of planning is echoed well by Watson (2011) and Berrisford (2011) as they both advocate for planning law reforms in African countries and South Africa respectively. Another key and relevant concept that one can draw from Obeng-Odoom (2012) is that of 'customary

law'. The focus on the concept of customary law is on the impact that land reform programmes in different countries in Africa have had, especially in territories under the rulership of traditional authorities.

Customary law is also discussed in the case of the South Pacific Islands, in a context where custom and tradition clashes with westernization (Boydell and Holzknicht, 2003). What is useful from this concept of land reform is its component of land tenure reform as well as the implications that the latter have on the use and management of land under the said territories (Obeng-Odoom, 2012). A useful concept which emanates from the component of land tenure reform is that of 'land tenure' (Obeng-Odoom, 2012). Land tenure according to Obeng-Odoom (2012), refers to the system of institutions or rules of land ownership, use, and management, obligations, responsibilities, and constraints on how land is owned and used, and there is a distinction drawn between individualised or private land tenure on the one hand as well as communal land tenure on the other. Private land tenure refers to the rights to land that the owner is entitled to, while communal land tenure refers to the land rights which are held by any figure of authority on behalf of the community (Obeng-Odoom, 2012).

Another useful concept is that of 'economic and political power' which is borne from the fact that traditional authorities often apply a form of resistance to state-led policies at the expense of the communities which they govern by using their position and existing community social networks (social capital) for material/economic gain and political power (Boydell and Holzknicht, 2003; Obeng-Odoom, 2012). This concept can further be linked to the discussion of LiPuma and Koelble (2009) as argued by Mamdani (1996, 37-61) on 'participatory deliberative democracy' which seeks to clarify whether traditional leadership in South Africa constitutes a potentially indigenous form of participatory deliberative democracy, or whether it represents a lingering form of despotic domination by traditional leaders.

2.3 Broader Theoretical Debates

The theories, arguments and debates presented in the selected pieces of literature are centred on two ideological schools of thought which will be outlined in this part of the literature review. First this article will present the arguments and debates largely emanating from the global context such as the U.S, countries of the South Pacific Islands (in a context where both individualised and communal tenure systems are legally enshrined in the constitutions of those countries), greater Sub-Saharan Africa, and South Africa. The arguments and debates discussed in this section have been grouped into different perspectives or schools of thought such as the Communitarian School of Thought, the Individualised Tenorial School of Thought, as well as a structuralist perspective with debates and arguments around issues of institutional arrangements and governance at the local sphere of government in South Africa.

Todes *et al* (2010) argue that the traditional-style Modernist Planning or Master Planning is static and rigid in its approach towards complex planning issues. They further argue that too much emphasis is placed on the grand plan with less intent on its implementation, while it also assumes a common identifiable public interest across all contexts and prescribes a “one best way” or a ‘one size fits all’ approach (Todes *et al*, 2010).

2.3.1 Communitarian School of Thought

Theorists of the communitarian school of thought argue that communal and custom-based traditional forms of tenure are the most effective way to ensure tenure security, and this is achieved through the theory of ‘social capital (of existing strong community networks)’ which holds that communal tenure is the most secure form of tenure (Obeng-Odoom, 2012). In the South Pacific, the customary nature of land ownership and control is acknowledged and respected as it is argued that it does not prevent the optimum use and development of land in its many forms (Boydell and Holzkecht, 2003). Champions of the communitarian school of thought argue that insecure tenure is a result of state-led policies that ignore traditional values, and which promote individualised property rights that marginalise rather than empower all equally from a land tenure security point of view (Obeng-Odoom, 2012). Therefore, the individualised perception of the communal system as one with no rules and plagued with problems is too simplistic and lacks both theoretical and empirical deductions (Boydell and Holzkecht, 2003; Obeng-Odoom, 2012).

2.3.2 Individualised Tenorial School of Thought

This school of thought argues that individual land rights are the best form of tenure system as this reduces conflicts in land ownership and land use with key champions of the theory arguing from an economic-based perspective such as Hernando de Soto and Oskar Spate in (Spate, 1959; de Soto, 2000 as referenced in Boydell and Holzkecht, 2003). Theorists in the individualist school of thought argue that a plural legal regime will not prevail in the long run, and hence the individualised tenure systems will incrementally evolve and displace communal tenure systems (Obeng-Odoom, 2012). It is further argued by individualists that the concept of social capital as championed by communitarians to underpin customary and communal forms of tenure is made flawed by traditional leaders who use the existing networks of social capital for political power and economic gains (Boydell and Holzkecht, 2003; Obeng-Odoom, 2012).

However, Boydell and Holzkecht (2003) uses the arguments and debates from both schools of thought, and through weighing the merits and demerits of both perspectives, proposes an accountable and unbiased democratic system of land tenure as a major part of the land reforms agenda in Africa, rather than making formalisation the sole centre of discussion, as a solution

that will create a functional hybrid of the two opposing tenure systems as proposed by LiPuma and Koelble (2009), which will be conducive to present day South Africa.

2.3.3 Institutional and Governance-Related Debates

Todes *et al* (2010) argue that strategic spatial planning or any alternative form of planning for that manner, is marginalised and often made weak by traditional-style Master Planning that still applies in practice, and this is mainly attributed to political and institutional processes. On the issue of how the role of traditional leadership is adaptive to the arrangement of currently existing institutions of governance, Thornton (2002, 1) as referenced in LiPuma and Koelble (2009), argues that the institution of traditional leadership has proven not to be able to adapt to present liberal democracy and it has therefore demonstrated the capacity to evolve its behaviours internally. This argument is important for the research topic in that it allows one to open the discussion of which institution has legitimate authority over local governance in the rural context. Thornton (2002) and Oomen (2005) as referenced in LiPuma and Koelble (2009) provides clarity to the above-posed discussion in their explanation on how South Africa went ahead and crafted a democratic dispensation with the intention of rooting out one of the remnants of apartheid – the power and privilege of traditional leaders in the former homelands – but has since retracted from this oppositional politics to one bordering on collusion and compromise with these rural power holders.

Taking the existing institutional arrangements of local governance in South Africa and their implications for land management as a competency of local municipalities, in rural areas, traditional leaders hold the power to allocate land (as guided by the Communal Land Rights Act) to individuals and families who have no other claim to the land other than the word of the chief and his council (LiPuma and Koelble, 2009). In interviews conducted in several rural communities, several traditional leaders argued that local government reform had brought about a situation of ‘two bulls in a kraal’, meaning that there is now confusion as to where the power and authority lies at the local level (LiPuma and Koelble, 2009). The traditional leaders further argued that the introduction of local government had been a mistake and that traditional leaders were in a better position to administer localities than democratically elected local councillors (LiPuma and Koelble, 2009).

2.4 Universal Guiding Principles for Land Use Planning and Management

For the efficient, effective, and sustainable attainment of land use planning and resource management planning, it is recommended that the economic, the social, and the environmental implications are considered, and that trade-offs are identified with a view to finding solutions to land use conflicts (Ministry of Agriculture and Lands, 2007). The identification of the trade-offs for land use conflicts entail that all land use decisions need to have been weighed against the

economic, the social, and the environmental pillars, whilst maintaining a balance between them respectively. Land use planning recognises that there are pressures from many different interests, and helps to ensure that land and resource management decisions take into account the needs of communities, the economy, as well as the environment or ecological needs (Ministry of Agriculture and Lands, 2007).

In 2002, the University of Michigan State published a very useful report on Sustainability Assessment and Reporting, and the schematic representation below is a clear indication of the integration of the three important pillars of sustainability (see Figure 3) (Rodriguez *et al*, 2001). It is therefore important to note that sustainability in the sense as alluded to in the report, as well as for the purpose of this research report, can be extended to assess land use management practices for the achievement of sustainable outcomes.

2.4.1 Socio-Economic Guiding Principles

The Ministry of Agriculture and Lands in British Columbia, Canada, commissioned a socio-economic and environmental assessment (SEEA) report which provide guidelines for land use planning and resource management planning (Ministry of Agriculture and Lands, 2007). It is important to assess the impact of land use planning on economic development, so as to identify the jobs, income, and other appropriate indicators for each major current and future economic sector that depends on the resources of the outcome or result of land use planning (Ministry of Agriculture and Lands, 2007). Furthermore, it is also important for land as well as resource management plans to take into consideration the concerns and objectives of the community (*ibid*).

2.4.2 Ecological/Environmental Guiding Principles

Based on the global importance of some land use management decisions underpinned by a socio-economic ethos, many of them are taken with limited attention to the ecological as well as the environmental impacts thereof (Dale *et al*, 2000). In other words, Dale *et al* (2000) argue in their report on *Ecological Principles and Guidelines For Managing The Use of Land*, that ecologists' knowledge of the functioning of the earth's ecosystems is needed to broaden the scientific basis of decisions on land use and management. This section will discuss five principles which dictate various universal guidelines for land use planning and management in ensuring that the processes which are of great fundamental importance to the earth's ecosystems are sustained (Dale *et al*, 2000). These ecological principles deal with time, species, place, disturbance, as well as the landscape (Dale *et al*, 2000).

The Three Spheres of Sustainability

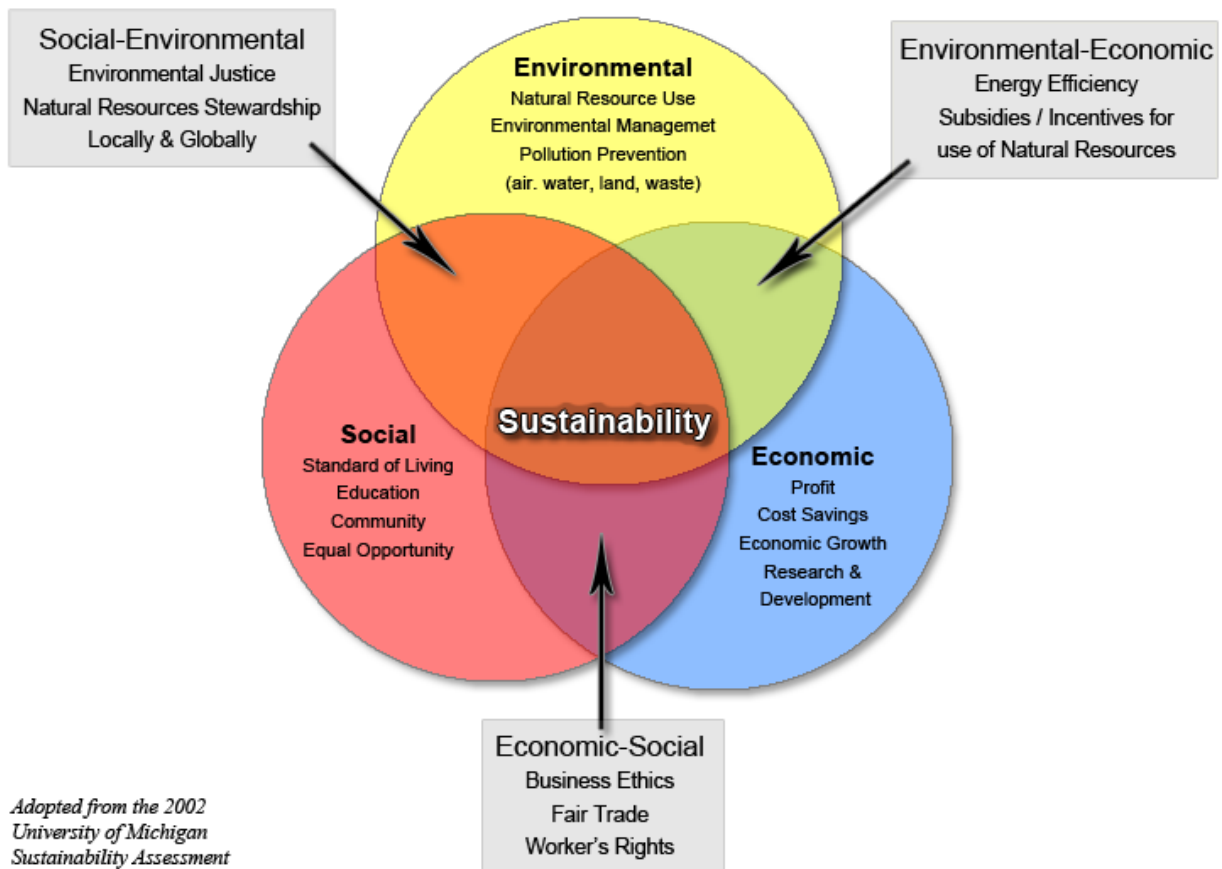


Figure 3: A Schematic Representation of the Integration and Trade-Offs between the Three Pillars of Sustainability (Rogriguez *et al*, 2002)

The guidelines for land use management which emanate from the principles of ecological science as mentioned above, offer practical mechanisms for incorporating the latter into land-use decision-making (Dale *et al*, 2000). These guidelines suggest that custodians and managers of land should: (1) examine the impacts of local decisions within a regional context, (2) plan for the anticipated long-term change including potential unexpected events, (3) preserve as much as possible all rare and endangered landscape elements and associated species, (4) by all means applicable, avoid land uses that contribute towards the depletion of limited ecological and environmental resources, (5) retain large contiguous or connected areas that contain critical habitats, (6) minimize the introduction and spread of non-native species, (7) avoid or compensate for the effects of development on ecological processes, and (8) implement land use and management practices that are compatible with the natural potential of a particular area (*ibid*).

It is important to bear in mind that the discussed principles and guidelines are derived from the conceptual as well as institutional foundations of land use decision-making which outline the

implementation of land use decisions in the United States of America (USA) (Dale *et al*, 2000). However, despite this focus on the United States, the incredible variety of political, economic, social, and cultural institutions encountered throughout the world are more or less similar regardless of context (*ibid*). In other words, the principles and guidelines discussed above are applicable worldwide (*ibid*).

2.5 Mechanisms and Systems of Land Use Management in the Global Context

The discussion throughout this section will centre around various systems and mechanisms of land use management applicable to different countries such as the United States of America (USA), countries of the Pacific Islands, Australia, Botswana, as well as Tanzania.

2.5.1 The Object of Land Use and Land Development Management: Insights from the United States of America (USA)

With the emergence of planning and zoning, the core object and authority rested on three legal traditions of the role of government in (1) reducing harm and nuisances, (2) ensuring orderly timing of development and associated services, and (3) protecting public values (Callies, 1994 as cited in Dale *et al*, 2000). Based on the critique by Dale *et al* (2000), these traditions did not recognize the key role of ecological and environmental systems in maintaining adequate economic and health conditions. The organization of government in the US is based on the concept of jurisdiction: the relationships among spatial area, the discretion of citizens, and the authority of the government within that area (Dale *et al*, 2000). The importance of jurisdiction in organizing government makes it impossible to separate space from law, and this tight coupling is particularly evident in the ways that land-use decisions are taken (Platt, 1996 as cited in Dale *et al*, 2000). Jurisdictions for land-use decisions in the United States form a nested, spatial hierarchy of local, state and federal land owners, where each level has been granted specific freedoms and responsibilities for land-use decision-making by the US Constitution, case law, and statute (Caldwell and Shrader-Fechette, 1993 as cited in Dale *et al*, 2000). Because most of the authority for land-use decisions is vested at the lower levels of this hierarchy, the aggregate effect of land-use change results from many individual decisions that are diffused in time and space (Dale *et al*, 2000).

The concept of private ownership of land, as part of the individualised school of thought, is one of the most important structural attributes of society in the United States as it conveys a great deal of flexibility to the owner in land-use decisions (Dale *et al*, 2000). However, private land-use decisions also depend on the public provision of infrastructure, environmental quality, and public safety (Smith, 1993 as cited in Dale *et al*, 2000). Constraints on land use, in the form of zoning and land use regulations, are imposed by government to ensure that the above needs are met, as well as to make sure that externalities of any type of land use are dealt with (Platt, 1996

as cited in Dale *et al*, 2000). Externalities, as mentioned above, are the current or future effects of land uses that extend beyond the boundaries of individual ownership and thus have the potential to affect surrounding land owners (Dale *et al*, 2000). In the South African context, the externalities of a land use or development are investigated in the form of an Environmental Impact Assessment (EIA) provided that the proposed land use or development is statutorily listed as an activity that requires such environmental authorization in terms of the National Environmental Management Act (No. 107 of 1998) (NEMA, 1998). Externalities can be physical (e.g air or water pollution), biological (e.g habitat fragmentation), aesthetic (e.g noise and effects of view sheds), or economic (e.g changes in commercial activity) (Dale *et al*, 2000).

The fundamental role of government in land-use decision-making is to encourage the externalities that enhance the welfare of society and to discourage those that harm it (Smith, 1993; Platt, 1996 as cited in Dale *et al*, 2000). In playing this role, government can require land uses on private land to meet standards for public health, safety, and general welfare (including aesthetics, population density, and environmental quality (Cullingworth, 1997 as cited in Dale *et al*, 2000). The Constitution of the United States of America bestows power on its states to uphold the above-mentioned standards, and in turn the states delegate most of that authority to local governments who control private land use with zoning regulations (Cullingworth, 1997 as cited in Dale *et al*, 2000). Zoning, according to Garner and Callies, 1972; Platt, 1996 as cited in Dale *et al*, 2000) is a regulatory power that specifies land uses within specific geographic zones as well as a process by which the residents of a local community examine what people propose to do with their land and decide whether or not they will permit it. The above definition defines zoning as both, a regulatory tool for land use, as well as a land use or development application proposal, with the outcome and decision of the latter highly dependent on its endorsement by affected residents of the local community.

Private land use is indirectly influenced by a range of government policies which encompasses taxes and transportation, often with unintended consequences (Dale *et al*, 2000). For example, in the United States, the tax deduction for home mortgage interest payments, concurrent with federal and state highway development, fuelled suburbanization and aided the emerging pattern of exurban development in previously rural areas (Kunstler, 1993 as cited in Dale *et al*, 2000). Estate and capital-gains tax laws also encouraged suburban sprawl as well as large-lot rural residential development in two primary ways (Dale *et al*, 2000). Firstly, homeowners moving from one housing market to another are encouraged by tax laws to reinvest their appreciated housing investment in a new and often larger home (*ibid*). Secondly, estate taxes discourage the passing on of agricultural land from one generation to the next, especially where residential demand has elevated land prices (*ibid*). Dale *et al* (2000) states that local government can set property tax rates which can relate with market forces to determine land-use patterns.

The U.S case is an example and demonstration from the North of how a formal and statutory regulatory land use management system should operate. Furthermore, this example also demonstrates how the universal guiding principles of land use planning and management are

translated into desired spatial outcomes. Therefore, the U.S case is useful in that it is a universal demonstration of the object of land use and development planning and management. This example also demonstrates the direct relationship and link between ownership, the market and land use management.

2.5.2 Land Use Management Systems and Mechanisms in the Pacific Islands

Before the colonisation of the Pacific Islands by the Europeans, the natives' relations to land were governed by different customary tenure systems, although diverse they often shared some common elements (Brown *et al*, 2010). All these evolved to facilitate the allocation of rights of access for subsistence, seafoods, hunting, foraging and to conduct ceremonial acts (Brown *et al*, 2010). In all cases land rights were multiple, conditional and negotiable, and what was owned was not the land or water so much as rights to its use, few of which were absolute (*ibid*). In other words, no one individual held all rights to any one plot, individual rights were nested with extended families, lineages, clans and tribes rights to land were normally acquired as a consequence of membership in a group (*ibid*). Without mapping or writing, rights and boundaries often relied on the memory of group members (Crocombe, 2001 as cited in Brown *et al*, 2010).

Today there are three categories of land which are encountered in Pacific Islands countries and they are as follows: customary, freehold, and government land (Brown *et al*, 2010). Government land was used for infrastructure such as roads, government buildings, national parks, and mining sites (Brown *et al*, 2010). Similar to the South African context, freehold and government lands have been alienated from the customary tenure system and, although many people still claim customary rights to them, are generally governed by statutory and common law (Brown *et al*, 2010). A high proportion of land in the Pacific Island Countries is held under customary tenure and this has therefore played a crucial role in land resource allocation and management (Secretariate of the Pacific Community, 2008). Most of the land has not been registered and cadastral boundaries are at times not known and this has led to conflicts around ownership and has also influenced decision-making around the use, development and conservation of land (Secretariate of the Pacific Community, 2008).

Pacific Island Countries and Territories do not have land use policies or national land use plans (Secretariate of the Pacific Community, 2008). Since approximately 97% of the land in the Pacific is under customary tenure, and based on the fact that customary chiefs have no legal powers of enforcement and in the absence of national land use plans and policies, customary values alone are not enough to respond to unscrupulous land resource usage (Secretariate of the Pacific Community, 2008). An example of such unscrupulous usage of land is the logging companies who are exploitative and operate outside the confines of applicable legislation (Secretariate of the Pacific Community, 2008). This therefore means that a major limitation to sustainable rural development is the lack of data and information on rural land use in the Pacific,

and most Pacific Islands' administrative and institutional frameworks responsible for land resource allocation and management are highly sectoralised (Secretariate of the Pacific Community, 2008). Most pieces of land use legislation applicable in the Pacific, such as in the Cook Islands through the Cook Islands Land Use Act of 1969, have been too rigid and non-context-specific (Secretariate of the Pacific Community, 2008). The implementation of the said Act has therefore been a major challenge because the local peoples do not have a sense of ownership in complying with a piece of legislation that is inappropriate to their local needs (Secretariate of the Pacific Community, 2008).

In response to the above discussed challenges regarding national and rural land use planning, the Pacific Island Countries are now moving towards the establishment of national land use units that will coordinate and facilitate land use issues between national and grassroots levels (Secretariate of the Pacific Community, 2008). Moreover, there is also a move towards the establishment of what is called Landcare groups in local communities that will promote the adoption of sustainable conservation practices and foster cooperation between communities, land users and government agencies (*ibid*). These Landcare boards will assist in the implementation, monitoring and evaluation of land use policies (*ibid*). There is a crucial lesson that this research study can draw from the Pacific Island case when responding to the challenge of land use planning and management legislation that is inappropriate to the local needs of communities. Based on the above, adopting a more cooperative and collaborative approach amongst all stakeholders that are party to land management is ideal.

2.5.3 Land Management Systems and Mechanisms in Australia

In embracing the cross-cultural (statutory western and customary native systems) relations underpinning land management, the Australian government has adopted a collaborative approach as a response to land use and resource management. In recognition of the native communities that are characterised by customary practices to land and resource management, pre-existing indigenous knowledge is accommodated in the Australian land management system in the form of what is termed 'Indigenous Land Management' (ILM) (Davies *et al*, 2013). Indigenous Land Management (ILM) is characterised by a range of activities such as environmental activities, natural resource management activities and cultural heritage management activities that are undertaken by indigenous groups and organisations across Australia (Davies *et al*, 2013). This indigenous approach to land management has its origins traced back over at least 50 000 years ago based on the relationships between traditional Aboriginal and Torres Strait Islander societies and their customary land and country estates (Davies *et al*, 2013). The indigenous peoples of Australia engage with various multiple stakeholders in land management such as the government, scientists, producer groups, conservationists and any other relevant party (*ibid*). These engagements occur in a range of mechanisms such as formal government-supported natural resource management projects, indigenous and co-managed protected areas, endangered

species initiatives, water planning processes and the pursuit of championing cultural objectives in the absence of non-indigenous actors (*ibid*).

The respect for indigenous law and knowledge through Indigenous Land Management (ILM) has resulted in more effective land management outcomes in Australia (*ibid*). Based on the Australian experience, this research study has identified two main drivers of Indigenous Land Management. These are based on the recognition of indigenous rights and interests to land through title and land use agreements as well as the recognition of indigenous leadership at multiple levels of decision-making (Davies *et al*, 2013). Australia has developed different indigenous land tenure systems under various laws and arrangements underpinning same (Davies *et al*, 2013). The most significant of these tenure systems is the 'Native Title' system which is recognised under the Native Title Act of 1993 (*ibid*). Indigenous tenure covers approximately 16% of Australia and most land uses under this tenure system have been classified as traditional indigenous land uses (*ibid*). The traditional indigenous land uses have been recognised and legitimised through indigenous land use agreements which cover almost 39% of Australian land (*ibid*). Through native title recognition and the indigenous land use agreement approach, the Australian government has therefore been able to regulate land management in the entire country (*ibid*).

Traditional 'Indigenous' leaders have since the 1970s played a pivotal role in strengthening Indigenous Land Management arrangements at multiple levels of government decision-making and in practice (Davies *et al*, 2013). An example of this is the Indigenous Advisory Committee which was established to assist the Minister for Sustainability, Environment, Water, Population and Communities (Davies *et al*, 2013). This Advisory Committee comprises indigenous bodies, experts, communities and other stakeholders to ensure that the views of indigenous peoples are incorporated in the implementation of the Australian government's pieces of legislation that are central to environmental, land and resource management (*ibid*). Traditional 'Indigenous' leaders have formed part of round-table engagements with the Parliamentary Secretary for Climate Change and Energy Efficiency to ensure that indigenous land management provisions in the relevant policies and pieces of legislation benefit indigenous people (*ibid*). Indigenous people have also established regional alliances to enable a wide range of land, water and natural resource policy issues to be addressed through their entrusted customary institutions (*ibid*).

The Australian case demonstrates the ability of a cross-cultural country characterised by overarching statutory and customary-native mechanisms underpinning land management to find synergy between the criteria which applies in the former and that which is used by traditional 'indigenous' leaders. Through the 'Indigenous Land Management approach, the Australian example does not prescribe a one-size-fits-all statutory approach to land use and development management, but rather also embraces the native and customary knowledge and practices to land management.

2.5.4 Rural Land Use Planning and Management in Botswana

With much attention given to regulatory urban land use elements for the rural settlements of Botswana, together with the development of land use elements that are important for the planning of these settlements, Cavric and Keiner (undated) have identified two processes that are highly significant for the purpose of this research. The first is the gradual de-agrarianisation and uncontrolled rural urbanisation, especially in the periphery of major towns and cities like Gaborone and the major urban villages (Cavric and Keiner, undated). The second process is on the poor and inadequate use of land according to its capability and suitability, land tenure and ownership (Cavric and Keiner, undated). In the urban periphery of Gaborone, Botswana's capital city, there seems to be an overlap of different ways of using urban and rural land (*ibid*). This is prevalent in rural settlements such as Tlokweng, Mogoditshane and Gabane amongst others, as well as in major urban villages such as Molepolole, Mochudi and Ramotswa (*ibid*). Most of the people still live in major villages of designated rural communities, where the land is predominantly used for agricultural and animal food processing (*ibid*).

The rural settlements and villages in Botswana are administered within strictly defined boundaries, under direct control and management of one or more land boards (*ibid*). Botswana's rural environment presents a territorialised group of people, engaged in cattle raising, agriculture, collecting veldt products and in forestry (*ibid*). Planners in Botswana mostly focus their planning in declared planning areas in terms of the Town and Country Planning Act of 1977 (Cavric and Keiner, undated). The land within the declared planning areas is through planning processes transformed into state land, while the land outside of the planning areas is in most cases communal or tribal land (Cavric and Keiner, undated). It is important to note that a declared planning area can still be situated within the administrative boundaries of the entire rural community which is managed from the primary rural centre and which is under the jurisdiction of main or sub-land boards (Cavric and Keiner, undated). This overlapping of administrative jurisdictions often results in universally inevitable ownership conflicts between state land and tribal/communal land (*ibid*). These conflicts normally come as a result of the transformation of communal land into a declared planning area or state land, and this therefore limits the legal competencies of the land boards (*ibid*).

Based on the above, the authority of the land boards is reduced to the protection of agricultural land and its transformation to alternative uses such as residential, commercial and industrial, applicable within designated planning areas (*ibid*). Within the non-designated parts of the entire rural community, the land boards perform normal land use planning and development functions as well as the allocation of land (*ibid*). With regards to state land situated outside of designated planning areas, planners prepare land use plans, and for the land situated outside designated planning areas on the other hand, so-called land use district plans are developed and used as planning regulatory mechanisms (*ibid*). Based on the above-discussed planning practices and systems, Botswana is in need of an integrated and uniform rural land use management system (Cavric and Keiner, undated).

What can be derived from the Botswana case, in a context that is characterised by overlapping and multiple planning jurisdictions, is the need for an integrated and uniform national land use management system that will be sensitive towards rural land use management.

2.5.5 Customary and Statutory Land Tenure Rights in Tanzania and their Implications for Land Use Planning

In terms of the Land Ordinance Act of 1923, which is still in force, all land in Tanzania belongs to the state or Government and is declared as public or state land (Kauzeni *et al*, 1993). This means that all land is under the control of the President of Tanzania and is held and administered for the use and common benefit of the natives of Tanzania (Kauzeni *et al*, 1993). In 1975, the Tanzanian government passed the Villages and Ujamaa Village (Villagization) Act which established the Ujamaa villages and gave authority to Village Councils to handle all legal land issues in the villages (Kauzeni *et al*, 1993). Under this Act, the state allocated land to registered villages, and in turn the established Village Councils allocated land to households (Kauzeni *et al*, 1993). Currently, Village Councils also hold communal agricultural land, grazing land, forest land and in some cases unutilized reserved land for future allocation and use (Kauzeni *et al*, 1993). The intention of the Villagization Act of 1975 was to ameliorate Customary Law, however there was no proper land management systems to aid the implementation of the Act and therefore the village community continued to abide by customary law and rights (Kauzeni *et al*, 1993).

The pre-colonial indigenous land tenure arrangements have had a significant influence on evolving land tenure and land use planning systems in Tanzania (*ibid*). There are three main forms of land tenure in Tanzania today and they shall be discussed below (*ibid*). The first common tenure system is the right of occupancy which is defined as a title to occupy and use land and includes the title of a native community lawfully occupying or using land in accordance with native law and custom (*ibid*). The second common tenure system is the customary or traditional land tenure system which is underpinned by customs or by-laws which reflect a community's consensus about what can and cannot be done with land and other related resources (*ibid*). The third and final most common form of tenure system is the communal land tenure system which is defined as land that is held under the control of the entire community or village and which has been allocated for use solely by the said community (*ibid*).

Land use in rural Tanzania continues to be dominated by traditional practices informed by cultural norms, customary beliefs, and the local knowledge of the rural communities (Kauzeni *et al*, 1993). This form of traditional land use and resource management in rural Tanzania is therefore in direct conflict with the top-down planning approach practiced by Government (Kauzeni *et al*, 1993). This results in a situation where traditional land use continues without direct neglect of government plans unless these are actively imposed by government (Kauzeni *et al*, 1993). The Ministry of Agriculture, following the introduction of new approaches to land management in the context of rural Tanzania embraced the fact that since land tenure and land

use systems are primarily implemented at the local level, it is therefore the local village authorities that should be responsible for their control (Kauzeni *et al*, 1993). An important milestone for the National Government of Tanzania in 1993 was the development of a Land Use Policy which seeks to, in the village areas, facilitate land use by incentives, acknowledge resource use and rights by incentives, and involves local communities in the management of those resources (Kauzeni *et al*, 1993). With the intention of fostering sustainable land use investments not only in Tanzania, but in Zambia and Mozambique as well, the above-discussed pillars of the 1993 Land Use Policy have culminated into a current legal framework for sustainable land use and resource management (Dalupan *et al*, 2015).

2.6 Conceptualising Land Use Management Systems (LUMS) in South Africa

This section will begin by discussing the most crucial and important concepts regarding land use management systems (LUMS) in South Africa, which include but are not limited to land management, land use management, land use planning, planning and zoning, development planning, and development control (Charlton, 2008; Rubin, 2008; KwaZulu-Natal Planning and Development Commission, 2010). Given the fact that these concepts are used quite frequently and interchangeably in this report, it is therefore crucial that their different meanings be defined and an explanation be provided regarding situations in a land use management system where each concept applies. A land use management system (LUMS) is aimed at achieving coordinated, harmonious and environmentally sustainable development (Ntuli, 2003 as cited in KwaZulu-Natal Planning and Development Commission, 2010). Land management is defined as “the manner in which land is controlled, managed, planned for, utilised, and transacted” (Mahubane, 1998; Sisya, 1998 as quoted in Rubin, 2008:3). Concepts which emanate from the definition of land management include but are not limited to development control, zoning and land use planning (KwaZulu-Natal Planning and Development Commission, 2010). Land use management as a sub-component of the broader concept of land management is defined as an “officially recognized system that determines and regulates use of land” (Charlton, 2008:3). It is further held that land use management represents various systems through which local government seeks to establish influence over the way in which land is used, “including the division of land into lots for different users, forms of activity, nature of buildings as well as the densities” thereof (Chetty, 1998 as cited in KwaZulu-Natal Planning and Development Commission, 2010:15). In other words, the above definition refers to “all actions that are required by a municipality to manage land”, for example, through the zoning of land, the control of development, and through decision-making processes (Kahn, von Riesen and Jewel, 2001 as cited in KwaZulu-Natal Planning and Development Commission, 2010:15).

“Land use planning is a component of land management which involves the approval and regulation of urban and rural land use”, and it refers to “a systematic assessment of land potential, alternatives for land use and economic and social conditions in order to select and

adopt best land use options” (FAO, 1993 as cited in Peacock, 2000; as cited in KwaZulu-Natal Planning and Development Commission, 2010). Development planning and development control are two components of which land use planning is constituted (KwaZulu-Natal Planning and Development Commission, 2010). “Development planning refers to a situation where the physical environment, including the presence or absence of transport, water and other utilities are evaluated and plans prepared about how different land uses and development can best be implemented in the public interest” (KwaZulu-Natal Planning and Development Commission, 2010:15).

Development control has to do with “the implementation side of development planning, because it is where plans that were decided in the outline or policy plan are implemented” (KwaZulu-Natal Planning and Development Commission, 2010:15). In a situation where zoning, as a component of development control does not exist, the development of land shall therefore be managed in terms of the conditions of title of the subject land (Peacock, 2002 as cited in KwaZulu-Natal Planning and Development Commission, 2010). Zoning is “the primary tool for land use management”, and it is “an aspect of town planning which is primarily concerned with certain guidelines, restrictions or limitations on the use of land” (The Planning Initiative, 2005 and Ntuli, 2003; as cited in KwaZulu-Natal Planning and Development Commission, 2010:16).

2.7 LUMS in South Africa: A Socio-Historical Context

2.7.1 The Evolution of LUMS in Post-Apartheid South Africa

The key reason for the introduction and implementation of the new wall-to-wall land use management systems was in an attempt “to redress the injustices of apartheid planning” as well as “to provide a social, legal, economic and technical framework that must benefit the population at large” (Williamson, 2001 as cited in KwaZulu-Natal Planning and Development Commission, 2010:17). Past spatial injustices therefore resulted in a lack of integrated and fragmented settlement patterns in the current context where land administrations in local, provincial and national government should play a pivotal role in reshaping and redefining the spatial outlook of the country (Williamson, 2001 as cited in KwaZulu-Natal Planning and Development Commission, 2010). Land use management systems (LUMS) are therefore intended at providing “precise information for land administrators and decision-makers so as to aid them in the process of determining what land uses are relevant in the new South Africa” (Briginshaw, 2006 as cited in KwaZulu-Natal Planning and Development Commission, 2010:17). Short-comings and grey areas became apparent in KwaZulu-Natal with the implementation of a one-size fits all approach to LUMS with the aim of providing “a commonly applicable system that is applicable throughout the whole province” (KwaZulu-Natal Planning and Development Commission, 2010:18).

In 2005, the KwaZulu-Natal Planning and Development Commission attempted to improve the limited scope and perspective of the LUMS (KwaZulu-Natal Planning and Development

Commission, 2010). This included an addition of a number of elements “such as a valuation and rating system, a system for monitoring property ownership, a system for monitoring infrastructure and services, a system for incorporating building and health by-laws, a means for incorporating environmental issues and requirements, and finally, a means including transportation requirements” (The Planning Initiative Team, 2005 as cited in KwaZulu-Natal Planning and Development Commission, 2010:18). However, regardless of the above attempt, there was a limitation with the revised LUMS in “that rural areas and their economies of scale were not adequately catered for, and this necessitated further studies, such as the application of indigenous knowledge systems in rural areas”, land allocation and “the current land use management systems in rural areas” (KwaZulu-Natal Planning and Development Commission, 2010:18). These “studies sought to unpack the status quo in rural areas towards establishing effective mechanisms for intervention” (KwaZulu-Natal Planning and Development Commission, 2010:18).

2.7.2 Traditional Leadership and LUMS

In order to get an in-depth understanding of existing power dynamics and institutions in rural communities, the “institution of traditional leadership is the starting point and has long been the basis for local government in Africa during the pre-colonial times and most African societies are still ruled by this institution” (KwaZulu-Natal Planning and Development Commission, 2010:18). “Countries such as Botswana, Namibia, Zimbabwe, and South Africa do recognise, in their constitutions, the existence and importance of the institution of traditional leadership” (Shabangu and Khalo, 2008 as cited in KwaZulu-Natal Planning and Development Commission, 2010:18). The institution is intended to co-exist and work in harmony with democratically elected structures such as municipalities (KwaZulu-Natal Planning and Development Commission, 2010). This co-existence between traditional and democratic systems is the basis from which this research report’s exploration of the parallel less formal and formal land use and development application procedures depart.

Areas under traditional leadership in KwaZulu-Natal are diverse in terms of their leadership, tenure arrangements and land use and management practices (KwaZulu-Natal Planning and Development Commission, 2010). “Some traditional areas include privately owned land and may also include commercial agriculture and subsistence agriculture and these variations across the province imply that planners must deal with each traditional authority on a case-by-case basis” (The Planning Initiative Team, 2005 as cited in KwaZulu-Natal Planning and Development Commission, 2010:19). Most parts of rural areas are characterised by communal land tenure system which is categorically seen as less complicated when it comes to acquiring land as well as enjoying land use rights, but it requires to be understood within their particular contexts (The Planning Initiative Team, 2005 as cited in KwaZulu-Natal Planning and Development Commission, 2010). Land allocation for a particular purpose or use in rural areas under

traditional leadership is practiced through customary means (Ntuli, 2003; Mbokazi, Ndlovu, Mtshali, & Bhengu, 2010 as cited in KwaZulu-Natal Planning and Development Commission, 2010).

In light of the above, as in the Australian case, it is very important to take into consideration the indigenous knowledge mechanisms practiced in the use and management of land in rural areas (KwaZulu-Natal Planning and Development Commission, 2010). According to the KwaZulu-Natal Planning and Development Commission (2010:20), the above-discussed knowledge “shapes the ways in which people engage in any endeavour relating to land use, planning and development”. These indigenous knowledge mechanisms to the use and management of land embraces the realities of context in rural areas (Jordaan, Pureng & Roos, 2008 as cited in KwaZulu-Natal Planning and Development Commission, 2010). This mostly conflicts with the essence of the western planning paradigm which has often resulted in one-size-fits all land use management laws and systems (Forse, Doeseds & Botes, 2002 as cited in KwaZulu-Natal Planning and Development Commission, 2010). According to (Jordaan, Pureng & Roos, 2008 as cited in KwaZulu-Natal Planning and Development Commission, 2010:20) “indigenous knowledge systems emphasise the unique, sense of place and identity” of an area.

Apart from South Africa, the land management function has also become the competency of Local Municipalities in countries such as Botswana and Zimbabwe (Shabangu and Khalo, 2008 as cited in KwaZulu-Natal Planning and Development Commission, 2010). The devolution of local government power to traditional councils during the apartheid era has left a legacy of land ownership and jurisdictional conflicts facing the current local governance dispensation (KwaZulu-Natal Planning and Development Commission, 2010). Khoza (2002), maintains that the tribe did not own land, but the traditional leader held it in trust on behalf of the tribe, and it is for this reason that Khoza (2002) sees traditional leadership as the opposite of democracy, rather than a different form of democracy (as cited in KwaZulu-Natal Planning and Development Commission, 2010).

2.7.3 Policy and Legislative Context of LUMS: A Historical Perspective

Historically, land use management systems in South Africa have had to grapple with the dual interface between customary and statutory mechanisms (KwaZulu-Natal Planning and Development Commission, 2010). In the South African context, Kanyeze, Kondo & Martens (2006 as cited in KwaZulu-Natal Planning and Development Commission, 2010) provide a clear distinction between the two forms of land tenure systems as recognised and enshrined in the constitution. The customary land tenure system is often governed by unwritten traditional rules and is administered by traditional leaders, whereas the statutory land tenure system is governed by modern law which is of Roman-Dutch decent and unlike the former system, is supported by documentary evidence such as title deeds or lease certificates administered by government (Kanyeze, Kondo & Martens, 2006 as cited in KwaZulu-Natal Planning and Development

Commission, 2010). In light of its historical land policies, South Africa is a country which has, since the advent of constitutional democracy, always grappled with certain complexities in addressing demographic and racial profiles wherein cultural diversity in relation to land use management systems (LUMS) features as a crucial subject in the attempt of addressing segregation and the disintegration of services to the people. The Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) acknowledges, amongst other things, the diversity that exists in South Africa, as well as the values of democracy, human rights and dignity, redress, and development in its various facets (KwaZulu-Natal Planning and Development Commission, 2010). Given the history of segregation and the imperative to develop a united democratic society, the integration of all systems relating to resource utilisation including land use, remains critical in South Africa (*ibid*). The country has also been confronted with challenges relating to maintaining a healthy equilibrium between development and land use management (Montgomery, 2000; Peacock, 2002 as cited in KwaZulu-Natal Planning and Development Commission, 2010).

Focussing on the traditional land tenure system, Peacock (2002 as cited in KwaZulu-Natal Planning and Development Commission, 2010) argues that there is evidence of environmental degradation within areas governed under this land tenure system mainly due to the lack of statutory regulations as will be discussed. One of Government's intervention, where concerns regarding the future ecological sustainability thereof have been raised, is the South African Spatial Development Initiative Programme (SDI) (KwaZulu-Natal Planning and Development Commission, 2010). The Spatial Development Initiative "is a strategic intervention by the state whose main aim was to integrate and co-ordinate the combined efforts of all government's agencies with a view of unlocking under-utilised economic potential within specific regions through the focus of investment on development corridors" (KwaZulu-Natal Planning and Development Commission, 2010:22). An example of one such initiative was the Maputaland (Lubombo SDI), now known as the N4 Maputo Corridor, where corridor routes were constructed to dissect a number of traditional authority areas on different tribal jurisdictions (KwaZulu-Natal Planning and Development Commission, 2010). The main challenge according to Montgomery (2000 as cited in KwaZulu-Natal Planning and Development Commission, 2010:22) was "around balancing development and nature conservation", with the main criticism being about "uncertain and possible negative impacts associated with implementing a project with potential to cause large scale land use changes within areas which are not subject to efficient and effective statutory land use and environmental regulations".

2.8 The Role and Participation of Traditional Authorities in Municipal Structures

In practice, the available pieces of legislation in South Africa make provision for the involvement of traditional leadership but lack clarity with regards to their specific roles and functions in land use management matters as well as a clear distinction of the parameter of

operation in the latter of both, the traditional leadership and local government (KwaZulu-Natal Planning and Development Commission, 2010). There are various pieces of legislation in local government which seek to regulate the institutions and structures that are involved in land use management and planning, as well as equivalent practices in traditional leadership areas (KwaZulu-Natal Planning and Development Commission, 2010). Some of the pieces of legislation that have guided the implementation of LUMS at the local sphere of government since the advent of the democratic dispensation include the Municipal Demarcation Act (No. 27 of 1998), the Municipal Structures Act (No. 117 of 1998) and its amendments, the Land Use Management Bill of 2001, the Municipal Systems Act (No. 32 of 2000) as well as the Municipal Systems Amendment Act (No. 44 of 2003) (KwaZulu-Natal Planning and Development Commission, 2010).

The Municipal Demarcation Act (No. 27 of 1998) was promulgated in order for rural areas to also be incorporated into municipal wards as part of the wall-to-wall arrangement (KwaZulu-Natal Planning and Development Commission, 2010). Lang (1999 as cited in KwaZulu-Natal Planning and Development Commission, 2010) argues that the implementation of the Municipal Demarcation Act for the first time afforded rural areas with the potential to provide its people with the convenience of a variety of economic and social services, as well as the improvement of the quality of life. Based on the above and with its implications for future land use planning in rural areas, this therefore marked the dawn of a new context within which rural land use finds itself today, and this is characterised by a generation of “employment opportunities, the encouragement of small businesses, the provision of physical, social and economic infrastructure, community involvement and development, empowerment and the education of people as well as the facilitation of development through lessening bureaucratic controls” (Lang, 1999 as cited in KwaZulu-Natal Planning and Development Commission, 2010:22). From a land use planning and management point of view as far as unlocking and fostering development in rural areas is concerned, this is the situation which has municipal planning stuck at a crossroads between rural or traditional land use management procedures on the one hand with limited or no bureaucratic and land use and development controls, versus the formal and regulatory land use management system.

It is important to bear in mind that at the time that the Municipal Demarcation Act was enacted, and while land use and development control in South Africa was the responsibility of the provincial administration through the Development Facilitation Act (No. 67 of 1995), the institutional adjustments and rearrangements that came with the Municipal Demarcation Act has decentralised the planning function to the local sphere of government where greater community involvement and responsibility occurs (*ibid*). To complement the above however, as years have progressed, the LUMS has been introduced so as to help and enable municipalities to better manage their land (KwaZulu-Natal Planning and Development Commission, 2010). An important issue to interrogate as far as the intended aims of LUMS is concerned, is about whether the means do successfully meet the intended ends equally across all municipalities

within South Africa. The issue of whether the means do meet the ends as far as LUMS is concerned is a fraction of the motivating factors behind this research report. The resulting land use management systems and mechanisms, however differentiated per context and geographical area and borne from whether the former do meet the latter, is what this research report is primarily concerned about.

The Municipal Structures Act, 1998 (Act No. 117 of 1998) provides for the representation and participation of traditional leaders within municipal Councils (KwaZulu-Natal Planning and Development Commission, 2010). Building on the statutory inclusion of traditional leaders in municipal Councils as enshrined in the Municipal Structures Act, in 2001 the Ministry of Agriculture and Land Affairs formulated the White Paper on Spatial Planning and Land Use Management in 2001 which resulted in the enactment of the Land Use Management Bill of 2001 (KwaZulu-Natal Planning and Development Commission, 2010; White Paper on Spatial Planning and Land Use Management, 2001). The Land Use Management Bill of 2001 provided for the first time, a legislative basis for which traditional leaders can participate in all matters pertaining to the use as well as the management of land in rural municipalities (KwaZulu-Natal Planning and Development Commission, 2010).

Traditional leaders were “clearly identified in the Bill as part of the Municipal Land Use Committee consisting of 15 members”, however, the shortcoming of the Bill was that it did not “provide clear guidelines on land use” (KwaZulu-Natal Planning and Development Commission, 2010:23). The Municipal Systems Act, 2000 (Act No. 32 of 2000) made it a requirement for local municipalities in South Africa to prepare and adopt an Integrated Development Plan (IDP), with a Spatial Development Framework (SDF) as a component that will guide municipal land use management systems (The Planning Initiative Team, 2005 as cited in KwaZulu-Natal Planning and Development Commission, 2010). Concurrent with the unfolding developments as far as land use management legislation in South Africa is concerned, there were also various challenges around land ownership that needed to be tackled. The Communal Land Rights Act, 2004 (Act No. 11 of 2004) (CLaRA) was introduced nationally to address land ownership in communal land (KwaZulu-Natal Planning and Development Commission, 2010).

In KwaZulu-Natal for example, traditional leaders have remained sceptical about the CLaRA because it made no mention of their role in the implementation process thereof, hence this has caused enormous challenges in its implementation (KwaZulu-Natal Planning and Development Commission, 2010). Although it has always been common practice for traditional leaders to apply customary means to land management in rural areas, some do believe that land must be formalized, where its size, type and monetary value must be determined (KwaZulu-Natal Planning and Development Commission, 2010). The above-mentioned is however a very expensive exercise given the very large tracts of land held under communal ownership in rural areas (KwaZulu-Natal Planning and Development Commission, 2010). Furthermore, another challenge is that business and potential development investors did not embrace the CLaRA since

it maintained that land be communally owned (*ibid*). This is also due to the fact that business and potential development investors prefer a free-hold system (*ibid*).

The CLaRA was eventually declared unconstitutional and is no longer applicable in the Republic of South Africa (KwaZulu-Natal Planning and Development Commission, 2010). The Province of KwaZulu-Natal, through the KwaZulu-Natal Planning and Development Act (No. 6 of 2008), provided for local municipalities to manage land outside its scheme area, including areas under traditional leadership (KwaZulu-Natal Planning and Development Commission, 2010). Despite the provisions which allow for the management of land under traditional leadership, the participation of traditional leaders in land use management processes has not been properly embraced (*ibid*). Pre-1994, traditional leaders were at the centre of development of rural communities under their jurisdiction, and this meant that they were in charge of administration in their respective jurisdictions (Khanyisa, 2010).

The new democratic dispensation introduced a system of local government which resulted in the administrative and certain governance functions being moved from the institution of traditional leadership to a Council of developmental local government (Khanyisa, 2010). The new democratic government incorporated the institution of traditional leadership into the local governance system, which saw the establishment of ward committees and traditional Councils to ensure participation by communities (*ibid*). Moreover the above-said, individual traditional leaders are allowed to stand for elections to Municipal Councils, Districts, Provincial and National Legislatures (*ibid*). Traditional Leaders had control over the economy, they performed economic functions such as land allocations and distribution, and they also became custodians of the land (*ibid*). Traditional leaders facilitated economic, environmental and developmental matters, including the power to collect tax (Khanyisa, 2010). The traditional leader was a religious leader, a custodian of the culture of his people, a defender of his people, and a judicial officer responsible for the maintenance of law and order (Khanyisa, 2010).

The role that traditional leaders have always been identified with in traditional or former homeland areas can still be allowed to flourish as long as these practices are strategically integrated under the current Constitutional Legal regime. The negotiations that took place during the transition period towards the election of a democratic government proved to have significant implications for the recognition of traditional leaders (Khanyisa, 2010). The role of the Congress of Traditional Leaders of South Africa (CONTRALESA) in shaping the institution of traditional leadership for effective rural development and governance resulted in an authoritarian battle which would haunt the negotiated settlement of accommodating the existence of traditional leaders within the newly created governance structures (Khanyisa, 2010). Moreover, the above-mentioned remains prevalent even despite the passing of pieces of legislation in the new democratic South Africa such as the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), the National House of Traditional Leaders Act, 1997 (Act 10 of 1997), the Traditional Leadership and Governance Framework Act, 2003 (Act 41 of 2003), the Local Government:

Municipal Systems Act, 2000 (Act 32 of 2000) and the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998) (Khanyisa, 2010).

A number of demands from the CONTRALESA, although a settlement was reached in the form of the above-mentioned passed laws, would result in the lack of cooperation and synergy in local spaces of governance. This has therefore formed the basis for locating this research study within local government, specifically focusing on the parallel land use management procedures followed in semi-urban municipalities characterised by former homeland areas under traditional leadership. Based on the above-mentioned, the CONTRALESA pushed for the recognition of traditional authorities and their institutions as the primary level of government in rural areas, while rejecting the notion that, in the rural areas of the former Homelands, municipalities and elected Councillors must be the primary level of local government (Ntsebeza, 2006:270 as cited in Khanyisa, 2010). For the purpose of this research study as well as in an attempt to locate the subject on the recognition of traditional authorities within the current democratic Constitutional order of governance, Section 211(1)(2) of Chapter 12 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) provides a guiding principle as a framework of usefully engaging with the subject matter at hand.

Section 211(1)(2) of Chapter 12 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) reads as follows:

“211 Recognition

- (1) the institution, status and role of traditional leadership, according to customary law, are recognised, subject to the Constitution.*
- (2) A traditional authority that observes a system of customary law may function subject to any applicable legislation and customs, which includes amendments to, or repeal of, that legislation or those customs.”*

(The Constitution of the Republic of South Africa, 1996: 121).

Subject to the correct interpretation of Section 211(1)(2) of Chapter 12 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) as cited above, and for the purpose of this research study, it is therefore argued that the customary means of governance in areas under traditional leadership, must be aligned to other constitutionally recognised pieces of legislation which are applicable in administering land matters and systems of governance such as the Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986), the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013), the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), the Traditional Leadership and Governance Framework Act, 2003 (Act 41 of 2003) and any other applicable pieces of legislation in the above regard. The problem statement of this research study is to a very large extent rationalised around the challenge that exists in rural local communities or in former homeland areas, where the institution of traditional leadership is not

fully embracing the environment that Section 211(2) of Chapter 12 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) seeks to achieve. Section 212 of Chapter 12 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) on the other hand provides for a focused view on local government in as far as the role of the institution of traditional leadership on matters affecting local communities is concerned, matters on land, governance and other developmental aspects impacting on local communities (The Constitution of the Republic of South Africa, 1996). According to Khanyisa (2010), within the context of Section 212(1) of Chapter 12 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), the constitution also indicates that national legislation may provide a role for traditional leadership as an institution at local government level, on the matters affecting local communities as discussed above.

As far as Section 211(2) of Chapter 12 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) is concerned, a situation where the alignment of customary practices and other constitutionally recognised pieces of legislation, with specific reference to matters of land and governance, as envisioned by the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), has become unattainable, and a more negotiated approach in response to this challenge becomes an unescapable reality. An example of this negotiated approach is being enforced within the Mpumalanga Province, in what is regarded as a major milestone in the form of a Memorandum of Understanding (MOU) entered into by and between the Mpumalanga Provincial Department of Cooperative Governance and Traditional Affairs (CoGTA), the South African Local Government Association (SALGA) representing all local municipalities, the Mpumalanga Provincial House of Traditional Leaders, as well as the South African Police Services (SAPS) (See APPENDIX A). The Mpumalanga Department of Cooperative Governance and Traditional Affairs (CoGTA), while carrying the mandate of supporting, monitoring and strengthening the institution of traditional leadership and local municipalities, seeks to effectively and efficiently integrate the role and status of the institution of traditional leadership and the traditional Council to heed the responsibility to plan for land use and land management within its area of jurisdiction (See APPENDIX A). As to whether the Memorandum of Understanding, since its signing in March 2014, has yielded any positive cooperative results in as far as the attainment of sustainable and effective land use and land management practices within the jurisdiction of traditional leadership is concerned, is subject to extensive monitoring and evaluation across the Province.

2.9 Conclusion

This chapter has developed a useful theoretical and conceptual framework around the discussed range of arguments and debates from various global perspectives. This theoretical and conceptual framework has been crucial in locating the South African experience within this global body of literature in order to learn and draw key lessons from international experience. As

much as a large part of the focus of this research report is around the existing land use management systems in South Africa, this chapter has also provided a clear account of land use management systems and mechanisms from other global countries. This global account has enabled this chapter to extract the universal guiding principles that should inform land use management systems and mechanisms and these principles have provided enough scope for the analysis of the effectiveness of the parallel formal and less formal land use and development application procedures in traditional/customary areas as they exist in South Africa. The universal guiding principles as discussed in this chapter and as advocated for by Dale *et al* (2000), Rodriguez *et al* (2002) and Ministry of Agriculture and Lands are as follows, and they require land use management practices to be sensitive towards:

- the social conditions;
- the economic aspects;
- as well as the ecological and environmental conditions of the locality or area of concern

This chapter has also unpacked the conceptualisation of Land Use Management Systems (LUMS) in South Africa, and their applicability given the duality that exists with regards to the difference between the urban as well as the rural contexts respectively. A historical account around the development of LUMS over the past 21 years of the new democratic dispensation has been discussed, whilst providing the socio-historical context underpinning the evolution of LUMS, the reception of LUMS by traditional leaders in rural areas, as well as the policy and legislative developments which have served as a guiding framework for LUMS.

As echoed in this chapter, an important issue to interrogate as far as the intended aims of LUMS is concerned, is about whether the means do successfully meet the intended ends equally across all municipalities within South Africa, urban and rural. The issue of whether the means do meet the ends as far as LUMS is concerned is a fraction of the motivation factors behind this research report, and the resulting land use management systems and mechanisms, however differentiated per context and geographical area and borne from whether the former do meet the latter, is what this research report is primarily concerned about. From a land use planning and management point of view as far as unlocking and fostering development in rural areas is concerned, this is the situation which has municipal planning stuck at a crossroads between less formal and less technical land use management procedures on the one hand, versus the formal and regulatory land use and development procedures.

CHAPTER 3

Locating the Research Study within its Legislative and Broader Policy Context

3.1 The White Paper on Spatial Planning and Land Use Management, 2001

The government approved the White Paper on Spatial Planning and Land Use Management in 2001, also known as “Wise Land Use”, under the guiding underlying premise of Chapter 10 of Local Agenda 21 (Ministry of Agriculture and Land Affairs, 2001). Agenda 21 resulted from the United Nations Conference on Environment and Development held in 1992 in Rio de Janeiro (Ministry of Agriculture and Land Affairs, 2001). With regards to land resources, Agenda 21 was based on the broad objective to facilitate the allocation of land to the uses that provide the greatest sustainable benefits and to promote the transition to a sustainable and integrated management of land resources (Ministry of Agriculture and Land Affairs, 2001). The intention of the White Paper was to show practical ways in which South Africa may move towards an integrated planning for the sustainable management of land resources approach by satisfying the following specific needs: the development of policies which will result in the best use and sustainable management of land; the improvement and strengthening of planning, management, monitoring and evaluation; the strengthening of institutions and coordinating mechanisms; and the creation of mechanisms to facilitate the satisfaction of the needs and objectives of communities and people at the local level (*ibid*). The introduction of the White Paper on Spatial Planning and Land Use Management in 2001 was a first step by government towards introducing new legislation in South Africa that provides a uniform, effective and efficient framework for spatial planning and land use management in both urban and rural contexts (*ibid*).

Cabinet, through the introduction of the above-mention piece of planning legislation, intended to clear up the extraordinary legislative mess inherited from the apartheid planning system and forms of governance (Ministry of Agriculture and Land Affairs, 2001). This was to be achieved by rationalising the existing plethora of planning laws into one national system that will be applicable in each province, in order to achieve the national objective of wise land use (Ministry of Agriculture and Land Affairs, 2001). The White Paper of 2001 draws from the Green Paper on Development and Planning published in 1999 which was developed by the Development and Planning Commission appointed by the minister of Land Affairs, together with the Ministers for Housing and Constitutional Development in 1997 and which was also built from the Development Facilitation Act, 1995 (Act 57 of 1995) (*ibid*). The White Paper of 2001 also builds on the concept of the municipal integrated development plan, the IDP, as provided for in the Municipal Systems Act, 2000 (Act 23 of 2000) (*ibid*).

The White Paper on Spatial Planning and Land Use Management proposed the following elements of a new spatial planning and land use management system (Ministry of Agriculture and Land Affairs, 2001; Padarath, 2015):

- Principles. The basis of the system were principles and norms aimed at achieving sustainability, equality, efficiency, fairness and good governance in spatial planning and land use management, which all planning authorities would adhere to
- Land use regulators. This element would be characterised by authorities in the three spheres of government who will be able to take the different types of decision falling

into the realm of spatial planning and land use management. Provinces would have provincial land use and appeal tribunals as land use regulators in specified situations. Nationally, the Minister would be a land use regulator of last resort, and only acting in cases where there has been neglect or flouting of the national principles and norms. The most prevalent land use regulators will be municipalities

- IDP-based local spatial planning. This element was informed by the Municipal Systems Act which requires that part of each municipality's IDP must be a spatial development framework. The White Paper of 2001 spelled out the minimum elements that must be included in a spatial development framework and also proposes that the spatial development framework operate as an indicative plan, whereas the detailed administration of land development and land use changes will be dealt with by a municipal land use management scheme. The land use scheme will record the land use and development permissions accruing to a piece of land. The inclusion of the spatial development framework, with a direct link to the land use management scheme, was an essential step towards integrated and coordinated planning for sustainable and equitable growth and development.
- A uniform set of procedures for land development approvals. One set of such procedures for the whole country, and the alignment of the procedures for land development approval with those presently required in terms of the Environment Conservation Act (73 of 1989) for environmental impact assessments. The White Paper intended to eliminate the current situation where different procedures apply in different provinces, and even within a province in different apartheid race zones.
- National spatial planning frameworks. In order to achieve more integrated and coordinated spending of public funds it was proposed that the Minister, in consultation with cabinet, is able to prescribe national spatial planning frameworks around particular programmes or regions. This was not intended to be a national plan as such but was intended to be a policy framework for sustainable and equitable spatial planning around national priorities.

The Green Paper of 1999 as a crucial pillar for the White Paper of 2001 was informed by an extensive study of the planning laws which were in place in each province which included the laws inherited from pre-1994 provinces and homelands as well as those designed purely for application in black urban areas (Ministry of Agriculture and Land Affairs, 2001). This revealed an extraordinarily complex and inefficient legal framework which has also resulted in significant land-use planning and management problems, with planning officials in all spheres of government having to deal with numerous different systems within the jurisdiction of each province, and within most municipalities (Ministry of Agriculture and Land Affairs, 2001). Before the enactment of the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) the country was still marred by contrasting land-use management systems in different former race zones (*ibid*). As an inheritance from apartheid policies, every municipality in the country was responsible for the administration of a range of different regulatory systems for

managing land-use (*ibid*). This meant that different procedures had to be followed by applicants, and different standards had to be met where different opportunities were made available to members of the public affected by proposed developments (*ibid*). This further increased the administrative burden on under-capacitated municipalities and contributed to the lengthy time periods it took to get applications processed (*ibid*). Another critical problem which was inherited from the above-discussed history is that of weak enforcement in municipalities where those controls that are in place to prevent illegal, unsafe, environmentally unsound land development are only rarely enforced (Ministry of Agriculture and Land Affairs, 2001). There are two most crucial reasons related to the above for the purpose of this research study and as a basis of the problem statement of same. The first reason is that most of the land use and development controls in local municipalities remain unenforced and are often inappropriate, particularly in as far as they affect the poor (Ministry of Agriculture and Land Affairs, 2001). The second reason is that there is a general lack of law enforcement capacity in local government, especially in under-capacitated municipalities (*ibid*). The most important and unfortunate reality that was conceded by the Ministry of Agriculture and Land Affairs was that both of the above-mentioned reasons created a sense of impossibility in achieving the desired outcomes of the White Paper (*ibid*). Moreover, the problem is so immense that the resources available for achieving the desired outcomes are very limited with the result that the above-discussed problems cannot be addressed (*ibid*).

Based on the above-discussed, the White Paper of 2001 proposed two principles moving forward which will be the core of the planning system to address the above-mentioned problems. The first form is the principle of incrementalism and the second is the principle of minimalism (Ministry of Agriculture and Land Affairs, 2001). The principle of incrementalism was borne from the fact that most municipalities, in particular, have never practiced proper planning functions and have never had any proper planning instruments (Ministry of Agriculture and Land Affairs, 2001). Therefore, these municipalities cannot be expected to develop perfect planning systems at the desired expected pace, but they would have to start with very simplified systems which can develop into much more intricate systems and instruments over time (*ibid*). Minimalism on the other hand acknowledges the limitations that government in all spheres face in as far as carrying out their planning and legislative requirements, especially limitations with regards to resources. The fact that The White Paper of 2001 acknowledged that there is weak enforcement and resource capacity, especially in municipalities within former homeland areas where they have not been extensively involved in land use and land development management, calls for the incremental approach (*ibid*). This approach will entail the ongoing revision of land use and development controls by municipalities to achieve appropriate outcomes whilst building local enforcement capacity (*ibid*).

What is most important to take from the White Paper of 2001 are its founding principles and norms, which would also later, based on their long term relevance, be the basis upon which the guiding principles of the new national Spatial Planning and Land Use Management Act, 2013

(Act 16 of 2013) is found. The founding principles of the White Paper on Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) are as follows: the principle of sustainability which promotes the sustainable management and use of land resources in accordance with the law; the principle of equality where the appropriateness of the use and development of land must be determined on the basis of its impact on society as a whole; the principle of efficiency where the desired result of land use must be produced with the minimum expenditure on resources; the principle of integration; the principle of fair and good governance where the capacities of affected communities should be enhanced to enable them to comprehend and participate meaningfully in development and planning processes affecting them (Ministry of Agriculture and Land Affairs, 2001). This research study has therefore leaned more towards the principle of sustainability in as far as the universal guiding principles for the use and development of land are concerned. Based on this principle therefore, every municipality must have a land use management system in the form of a land use scheme which should be a key part of a municipality's regulatory powers and must therefore be formalised as a by-law of the municipality (Ministry of Agriculture and Land Affairs, 2001). According to the Ministry of Agriculture and Land Affairs, a land use scheme was aimed at being an instrument that can either be a very complex and detailed document which would accommodate a wide range of different land uses especially where there is relatively strong institutional capacity as in metropolitan municipalities (*ibid*). On the other hand, based on the needs and capacity of smaller local or district municipalities in primarily rural areas, a land use scheme can be simplified and customized to be suited to such circumstances. This was what the White Paper of 2001 envisaged to achieve.

3.2 The Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) (SPLUMA)

3.2.1 Introducing the SPLUMA in Relation to the Research Study

This research study is undertaken during a significant time in the country where a major milestone in the form of a ground-breaking national and provincial planning law reform process has been achieved. The new National Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) (SPLUMA) and the Mpumalanga Provincial Spatial Planning and Land Use Management Bill (MSPLUMB) has therefore been drafted as a result of the above-mentioned planning law reform process. The SPLUMA was assented by the President of the Republic of South Africa on the 2nd of August 2013 and has come into operation as from the 1st of July 2015. Even though the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) (SPLUMA) has been promulgated and has come into operation, most municipalities in the country have not yet established the necessary systems as required to start performing their planning functions in terms of the SPLUMA.

The introduction of the SPLUMA is set to aid effective and efficient planning and land use management (Padarath, 2015). In the context of a transformative agenda, the SPLUMA has been

proposed as a possible tool to effect the desired spatial transformation (Padarath, 2015). This spatial transformation agenda is therefore underpinned by the principles of inclusivity, mobility and access, economic development that drives local and national growth prospects and transforms space in a manner that is socially and environmentally sustainable (*ibid*). The above-mentioned principles are also aligned to the universal guiding principles for land use planning and resource management planning as discussed previously. In building on the research study by Padarath (2015), and for the purpose of this research study, the SPLUMA will be discussed in this section in terms of its guiding principles and normative direction to land use management as well as the sections and provisions of same.

Until the promulgation of the SPLUMA, the systemic elements proposed in the 2001 White Paper on Spatial Planning and Land Use Management, and detailed in subsequent spatial policy, were not included in any new legislation governing spatial planning and land use management (Padarath, 2015). The Development Facilitation Act, 1995 (Act 67 of 1995) (DFA), pre-dating the White Paper, which has since been repealed, was the only post-1994 piece of legislation that dealt with spatial development principles and provided a land use management mechanism (*ibid*). The DFA was applied in parallel to existing provincial and former “homeland” planning legislation and mechanisms, and municipal Town Planning Schemes, and it has therefore been repealed with the finalisation of the SPLUMA (*ibid*). Other historic parallel planning related legislation that has been repealed by the SPLUMA include: the Removal of Restrictions Act, 1967 (Act 84 of 1967); the Physical Planning Act, 1967 (Act 88 of 1967); the Less Formal Township Establishment Act, 1991 (Act 113 of 1991) (LeFTEA); and the Physical Planning Act, 1991 (Act 125 of 1991) (*ibid*).

In the absence of a new uniform piece of planning legislation like the SPLUMA, various pieces of legislation governing issues with a direct impact on spatial planning remained in force and some were formulated post-1994 (*ibid*). These pieces of legislation include: the Subdivision of Agricultural Land Act, 1970 (Act 70 of 1970); the National Environmental Management Act, 1998 (Act 107 of 1998) (NEMA); the Heritage Resources Act, 1999 (Act 25 of 1999); and the Mineral and Petroleum Resources Act, 2002 (Act 28 of 2002) (*ibid*). The SPLUMA was therefore developed to legislate for a single, integrated planning system for the entire country as a response to the challenges facing planning (*ibid*). The current legislative compliance requirements of the SPLUMA will demand more innovative sharing and engagement methods in order to transcend the boundaries between technical and authentic engagement (*ibid*). The concepts of engagement and participation should therefore be fully embraced in municipalities, especially when dealing with traditional leaders (*ibid*). The SPLUMA’s impact on transformation is dependent on the quality of mechanisms, process and systems established by the various spheres of government, and specifically the extent to which the development principles are translated into achievable and contextualised spatial outcomes in each spatial impact area (*ibid*).

The enactment of the SPLUMA has brought about the following changes to spatial planning and land use management (Padarath, 2015):

- reiteration of the sole mandate of municipalities where municipal planning (land development, land use management) is concerned, placing municipalities as authorities of first instance whilst invalidating inconsistent parallel mechanisms, parallel systems and measures or institutions that existed to deal with land development applications;
- the development of a single and inclusive wall-to-wall land use scheme for the entire municipality to regulate land use and development;
- the preparation of respective SDFs by all three spheres of government, based on the norms and standards guided by development principles;
- alignment of authorisation processes where necessary on policies and legislation impacting land development applications and decision-making processes;
- the alignment of forward spatial planning in the form of Spatial Development Frameworks (SDFs) with everyday land use management and regulation in the form of Land Use Schemes.

The first point above is the most important for the purpose of this research study as it was the most relevant basis upon which the findings of this study were tested. This has therefore assisted the research process in deriving context-specific conclusions and recommendations in response to the problem statement. Based on the above, the SPLUMA is also a response to the following planning challenges (Padarath, 2015):

- clearly defining each element of the planning system, from strategic spatial planning to the management of land development, and specifying the links between the elements
- legislating principle-led planning, giving normative direction to the content and intended outcomes of plans and planning mechanisms
- through the planning principles, attempting to address the fragmented, unsustainable spatial development patterns still characterising the country
- creating a single, integrated legal system dealing with planning in a uniform way for the country
- specifying the role of each sphere of government in the planning system.

In the context of this research study, the SPLUMA is intended to serve as a framework for spatial planning and land use management as a response to the following challenges which have also partly informed the problem statement of this study: past spatial and regulatory imbalances; inconsistency and lack of uniformity in the application procedures and decision-making by authorities responsible for land use decisions and development applications; and poor facilitation and enforcement of land use and development measures (Department of Rural Development and Land Reform, 2013). Furthermore, the SPLUMA was enacted during a time when the following contextual planning problems continue to plague the country (Department of Rural Development and Land Reform, 2013):

- many people in South Africa continue to live and work in places defined and influenced by past spatial planning and land use laws and practices which were based on racial inequality, segregation, and unsustainable settlement patterns;
- multiple laws at national and provincial spheres of government in addition to the laws applicable in the previous homelands and self-governing territories which have created fragmentation, duplication and unfair discrimination, continue to exist and operate;
- parts of the country's urban and rural areas currently do not have any applicable spatial planning and land use management legislation and are therefore excluded from the benefits of spatial development planning and land use management systems;
- various laws governing land use give rise to uncertainty about the status of municipal spatial planning and land use management systems and procedures and frustrates the achievement of cooperative governance and the promotion of the public's interest;
- informal and traditional land use development processes are poorly integrated into formal systems of spatial planning and land use management.

Since the commencement and operation of the SPLUMA, the implementation thereof has been marred by a dark cloud which might potentially have implications on its current form. During the Minister of Rural Development and Land Reform's parliamentary address to the National House of Traditional Leaders which took place on the 3rd of July 2015, traditional leaders expressed great resistance against the SPLUMA Act, which they say does not recognise them as traditional leaders and land owners (Ndenze, 2015). The traditional leaders argue that the Act bestows sole discretion and responsibility to local municipalities to preside over planning matters as well as on who gets to sit on Municipal Planning Tribunals, even on communal land (Gasa, 2015; Ndenze, 2015). The House of Traditional Leaders further claims that the implementation of the Act undermines their authority in communal areas under their jurisdiction (Gasa, 2015). The Minister confirmed that the Act was already in operation as from the 1st of July 2015, and that it was not only meant to empower municipalities in their planning functions, but that they also needed to take ownership of the Act themselves (Ndenze, 2015). The Minister further assured the traditional leaders that as the "de facto owners" of traditional land, they should be consulted on all land use and land development matters in terms of the SPLUMA which affects land under their jurisdiction (Ndenze, 2015).

The House of Traditional Leaders has pleaded with the Minister to suspend the implementation of the Act until amendments which confirms them as the owners of the land under their jurisdiction are made (Gasa, 2015; Ndenze, 2015). It is important to note that the debate on the ownership of traditional land is not the main concern of this research study, although if left unresolved, it has the potential to render the land use and land development management systems in terms of the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) ineffective in traditional areas.

3.2.2 Guiding Principles of the SPLUMA and Key Provisions in Relation to the Research Study

3.2.2.1 Underpinning Development Principles of the SPLUMA Relevant to the Research Study

This subsection of the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) (SPLUMA) will discuss the guiding normative principles of the Act in the context of this research study. Furthermore, there will be a particular focus on only those sections and provisions of the Act and its regulations that are relevant to this research study. This is not in any way meant to render the rest of the guiding principles and provisions of the SPLUMA as least important, but it is to rather ensure that those parts of the Act that have been used as a basis upon which to test the findings of this study are thoroughly discussed and analysed for meaningful conclusions and recommendations. It is important to note that the White Paper on Spatial Planning and Land Use Management, 2001 established the foundation for the planning principles currently contained in the National Development Plan and the SPLUMA (Padarath, 2015). Based on the above-said, there is therefore close alignment and clear policy transitional direction visible in these sets of principles (Padarath, 2015).

The development principles discussed below are in terms of Chapter 2 of Section 7 of the Spatial Planning and Land Use Management Act, 2013 (Department of Rural Development and Land Reform, 2013). The first relevant guiding development principle of the SPLUMA that will be discussed is the principle of spatial justice. The most important aspects to draw from this principle are the following: the past spatial and other development imbalances must be redressed through improved access to land and its use; spatial development frameworks and policies at all spheres of government must address the inclusion of persons and areas that were previously excluded, with an emphasis on informal settlements, former homeland areas and areas characterised by widespread poverty and deprivation; land use management systems must include all areas of a municipality and specifically include provisions that are flexible and appropriate for the management of disadvantaged areas, informal settlements and former homeland areas; land development procedures must include provisions that accommodate access to secure tenure and the incremental upgrading of informal areas (Department of Rural Development and Land Reform, 2013; Padarath, 2015). As far as this research study is concerned, this principle seeks to respond to the past spatial and development imbalances through the improved use of land. This is to be achieved through the inclusion of formerly excluded areas such as informal settlements and former homeland areas, within applicable regulatory spatial planning and land use management systems. This principle also emphasises on how municipal land use management must be applicable throughout the entire municipal space, wall-to-wall.

Based on the above-mentioned, this means that land use and land development procedures must be developed to be flexible, appropriate and context-specific especially with regards to the

formerly excluded areas. This principle also echoes the importance of applying an incremental approach in order to achieve all that is envisaged above. Given the spatial planning and land use management legislative background as well as the challenge that lies ahead in as far as the implementation of the SPLUMA is concerned, an incremental approach is warranted. The second guiding principle is the principle of spatial sustainability with the key aspect being upholding consistency of land use measures in accordance with environmental management instruments (Department of Rural Development and Land Reform, 2013; Padarath, 2015). This principle speaks to the fact that regardless of the context of any area in question, as well as the leadership regime characterizing same, customary or otherwise, land use management measures must be standard.

The third guiding principle is the principle of efficiency, whereby decision-making procedures are designed to minimise negative financial, social, economic or environmental impacts, and where development application procedures are efficient and streamlined with timeframes adhered to by all parties (Department of Rural Development and Land Reform, 2013; Padarath, 2015). This principle promotes an environment whereby all spatial planning, land use and land development procedures, as well as all decision-making procedures of same are efficiently adhered to. The above is to ensure that the financial, social, economic and environmental well-being of communities is not compromised. The fourth guiding principle is the principle of spatial resilience, whereby flexibility in spatial plans, policies and land use management systems are accommodated to ensure sustainable livelihoods in communities most likely to suffer the impacts of economic and environmental shocks (Department of Rural Development and Land Reform, 2013; Padarath, 2015). This principle seeks to ensure that land use management systems in any context within the country, are developed in such a manner that they become sensitive to the needs and livelihoods of communities. In other words, this means that the regulation or management of any land use or development must take into consideration the fact that residents of previously disadvantaged communities often conduct income-generating land uses as the main means of survival. It is therefore very important that land use and development management in terms of the SPLUMA takes this into consideration.

The fifth and last guiding principle is the principle of good administration (Department of Rural Development and Land Reform, 2013; Padarath, 2015). The key aspects to draw from this principle are the following: all spheres of government must ensure an integrated approach to land use and land development that is guided by spatial planning and land use management systems that are underpinned by the SPLUMA; the preparation and amendment of spatial plans, policies, land use schemes as well as procedures for development applications must include transparent processes of public participation that afford all parties the opportunity to provide inputs on matters affecting them; and policies, legislation and procedures must be clearly set in order to inform and empower members of the public (Department of Rural Development and Land Reform, 2013; Padarath, 2015). Padarath (2010) provides an argument that, as with any normative or conceptual statement, the principles will always be open to interpretation when

applied to a specific local context. Another positive aspect emanating from the guiding principles is the adoption of a flexible and incremental approach which allows for a differentiated set of spatial planning and land use management mechanisms in different circumstances (Department of Rural Development and Land Reform, 2013; Padarath, 2015). Padarath (2010) further argues that, based on the above-mentioned approach, if clear guidance is not provided, the outcomes strived for in terms of the SPLUMA, may not be achieved as they will be lost at the highest levels of planning that should guide other detailed plans and planning mechanisms.

3.2.2.2 The Sections and Provisions of the SPLUMA Relevant to the Research Study

In terms of Section 24(1), a municipality must adopt a single wall-to-wall land use scheme for its entire municipal area (Department of Rural Development and Land Reform, 2013). This will therefore entail the introduction of context-specific and appropriate categories of land use zoning and regulations into areas not previously covered by a land use scheme, such as areas under traditional leadership (*ibid*). Section 24(2)(c) makes provision for land use schemes to adopt an incremental approach in the introduction of land use management and regulation, especially in the above-mentioned areas that were previously not covered by a land use scheme (Department of Rural Development and Land Reform, 2013; Padarath, 2015). From an administrative and institutional point of view, more flexibility and responsiveness should be built into land use schemes (Padarath, 2015). Padarath (2015) interprets the achievement of this view through the incremental introduction of regulations, shortened provisions in certain areas, the promotion of incentives and providing provisions that can respond to the application of policy and set priorities. In terms of the above-discussed, it is clear that the SPLUMA considers land use management mechanisms to do more than just control land use and development (Padarath, 2015).

Based on the above, Padarath (2015) further emphasises on the need to recognise that the introduction of regulatory land use management systems, especially in formerly excluded areas, cannot address a range of issues that also impact on the spatial transformation agenda of the SPLUMA. This is due to the lack of capital resources prohibiting land ownership, unresolved land claims as well as the security of tenure for most in the above-mentioned formerly excluded areas (Padarath, 2015). Therefore, municipalities need to develop land use management systems that are cognisant of all citizens (*ibid*). In understanding their context, municipalities can employ innovative ways of addressing land use management and establish same as more than just assessing development applications and development control (*ibid*). Padarath (2015) therefore argues that simply having a wall-to-wall land use management system will not automatically realise the desired regulatory outcomes of the SPLUMA. The SPLUMA does not prescribe a specific spatial form, this will solely be the responsibility of the local municipalities (Padarath, 2015). An example of how municipalities have taken responsibility as mentioned above is within the Mpumalanga Province, where the Department of Rural Development and Land Reform has

developed a standard generic model by-law that can be customized to the respective local context of municipalities within the province. Section 16(1)(d) of the model by-law makes provision for the accommodation of cultural customs and practices of traditional communities in land use management (Department of Rural Development and Land Reform, 2013). In terms of Section 17(1) and (2) a Municipality must develop and adopt a land use scheme in the prescribed manner and may, on its own initiative or on application, create an overlay zone for land in areas that are prioritized for shortened and special land use and land development application procedures (Department of Rural Development and Land Reform, 2013).

Section 33(1) of the SPLUMA requires that all land development applications must be submitted to a municipality as the authority of first instance, in the prescribed manner as contemplated in Section 14(1)(a) and (i) of the SPLUMA Regulations (Department of Rural Development and Land Reform, 2013). In terms of Section 14(1)(a) of the SPLUMA Regulations, a municipality is tasked with determining the manner and format in which a land development and land use application must be submitted (Department of Rural Development and Land Reform, 2013). Furthermore, Section 14(1)(i) also makes provision for a municipality to determine a procedure that provides for the submission, assessment, and determination of a land development and land use application (*ibid*). In terms of Section 35(1) of the SPLUMA, a municipality is required to establish a Municipal Planning Tribunal in order to determine land use and development applications within its municipal area (Department of Rural Development and Land Reform, 2013; Padarath, 2015). A Municipal Planning Tribunal must, in terms of Section 36(1) of the SPLUMA, consist of officials in the full-time service of the municipality as well as persons appointed by a Municipal Council and who are not municipal officials, but who have the knowledge and experience in spatial planning, land use management and land development (Department of Rural Development and Land Reform, 2013).

In terms of Section 38(1)(b) of the SPLUMA, a person may not be appointed as a member of a Municipal Planning Tribunal if that person is either a member of Parliament, Provincial Legislature, Municipal Council, or the House of Traditional Leaders (*ibid*). In other words, and for the purpose of research study, this means that local Ward Councillors and traditional leaders may not take part in the decision-making on land use and land development applications. As far as Ward Councillors are concerned, they are not completely removed from the process since the Municipal Councils are the ones who are required to in terms of Section 36(1) of the SPLUMA to appoint members to serve on the Municipal Planning Tribunal, and to, in terms of Section 37(1) determine the terms and conditions of service of those members (Department of Rural Development and Land Reform, 2013). As for traditional leaders, Section 23(2) of the SPLUMA, subject to Section 81 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998) and the Traditional Leadership and Governance Framework Act, 2003 (Act 41 of 2003), makes provision for municipalities to, in the performance of their land use management functions, allow the participation of traditional councils (Department of Rural Development and Land Reform, 2013). Based on the above, it becomes clear that this indirect role of Councillors

and traditional leaders, marks the professionalization of the planning profession at local government, in as far as decision-making is concerned.

There is however, provision as an alternative for traditional Councils in traditional areas where there is resistance against their indirect role in land use, land development, and general land management matters. Regulation 19 of the Spatial Planning and Land Use Management Act, 2013 provides for a traditional council to conclude a service level agreement with the municipality in whose municipal area that traditional council is located, subject to the provisions of any relevant national or provincial legislation in terms of which the traditional Council may perform land use management powers and duties on behalf of the municipality in the traditional area concerned (Department of Rural Development and Land Reform, 2013). Based on the above, a traditional council can only undertake land use management in its traditional area in accordance with the provisions of the service level agreement entered with the concerned local municipality (Department of Rural Development and Land Reform, 2013). In a situation where a traditional Council does not conclude a service level agreement with the municipality as mentioned above, and that traditional Council continues to engage in land use and land development management matters, that traditional Council is still obliged to provide proof of the allocation of land rights in terms of the customary law applicable in that traditional area to the applicant of a land development and land use application (*ibid*). This is to allow for the applicant to submit a land development or land use application in accordance with the provisions of these Regulations (*ibid*).

3.3 The National Development Plan 2030 (NDP)

The National Development Plan (the NDP), Vision 2030, was developed by the National Planning Commission as a strategic guiding document significant for planning. Through the NDP, the National Planning Commission was successful in crafting a broad and strategic vision that will underpin the planning system into the future. Chapter 8, also referred to as desired Outcome 8 of the National Development Plan is aimed at transforming the human settlement landscape as well as the entire country's space economy (National Planning Commission, 2011). This transformation agenda meant that all planning related systems and legislation in South Africa will be restructured in order to reverse the legacy left by apartheid spatial planning (National Planning Commission, 2011). As part of this new vision, emphasis is placed on a set of normative principles that will underpin the planning system in the country, and they are as follows: to create spaces that are liveable, equitable, sustainable, resilient, efficient and supportive of economic opportunities and social cohesion (National Planning Commission, 2011). Therefore based on the NDP's embrace of the above guiding normative principles, a smooth transition from the White Paper on Spatial Planning and Land Use Management 2001 from which the normative principles were enshrined, to the final promulgation by cabinet of the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) was ensured.

In ensuring that the desired outcomes of planning are achieved into the future, whilst acknowledging the challenges that lie ahead in as far as achieving the transformative agenda, the overall vision of the NDP embraces an incremental approach (National Planning Commission, 2011). This incremental approach is viewed in the context of this research study wherein the NDP acknowledges that the country has a dysfunctional and inequitable settlement pattern, especially in former homeland areas (*ibid*). Many of these settlements in the former homeland areas have population densities approaching that of urban areas but which lack the suitable mix of land uses and economic activities to support local economies, including the necessary infrastructure and governance arrangements to manage this change (*ibid*). The NDP further acknowledged that the past systems governing land use in traditional areas were not working and the institutional capabilities to manage processes such as the development of appropriate regulatory systems were non-existent (*ibid*). Before the enactment of the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013), the NDP identified the need for a guiding framework for national spatial development due to the fact that the often parallel and conflicting legislation that regulated land-use management was largely unreformed and dated back to apartheid (*ibid*). The inefficiencies in the processing of land use and land development applications by municipalities was also identified as a challenge based on the fact that the applicable planning legislation did not distinguish between procedural requirements for small municipalities that receive only few large applications and big metropolitan municipalities that receive many (*ibid*).

As part of Vision 2030, the NDP proposed a number of recommendations which sought to respond to most of the above-discussed challenges underpinning the South African planning system. Interventions that include economic solutions, institutional reform, changes to land management systems and infrastructure investment were proposed (*ibid*). More work is required to ensure that there is a sufficiently differentiated understanding of rural areas in South Africa, especially traditional areas within former homeland areas (*ibid*). A differentiated approach to spatial planning is required which allows simple approaches to be adopted in uncontested areas such as traditional areas, and which provides for mechanisms to address the conflicts that are likely to emerge in other cases more speedily than at present (*ibid*). A reform of the current planning system is recommended in order to eliminate inefficiencies in administrative procedures for land development without compromising the need for careful evaluation of proposals (National Planning Commission, 2011). Municipalities are required to re-assess and adopt context-specific procedural mechanisms for land use and land development applications whilst strengthening the enforcement of planning and building control regulations (National Planning Commission, 2011). Attention has to be paid to land use management processes as well as the quality of development applications in areas under traditional governance (National Planning Commission, 2011). What the National Planning Commission was aiming to achieve from the above-discussed recommendations of Outcome 8 of the National Development Plan is a combination of a strategic vision and realistic incremental changes (National Planning

Commission, 2011). Based on the above-discussed therefore, the NDP has the necessary strategic impetus to inform ongoing legislative reforms well into the future.

3.4 Conclusion

This chapter was able to locate the research study within its broader legislative and policy context. This has proven crucial for the purpose of analysis that has been able to derive conclusions and recommendations that are based on the underpinning principles of the country's broader planning legislative and policy framework. The key principles that are enshrined in the White Paper on Spatial Planning and Land Use Management of 2001, the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) (SPLUMA), as well as the National Development Plan has served as a litmus guide from which to test the findings of this research report, whilst ensuring informed conclusions and recommendations.

CHAPTER 4

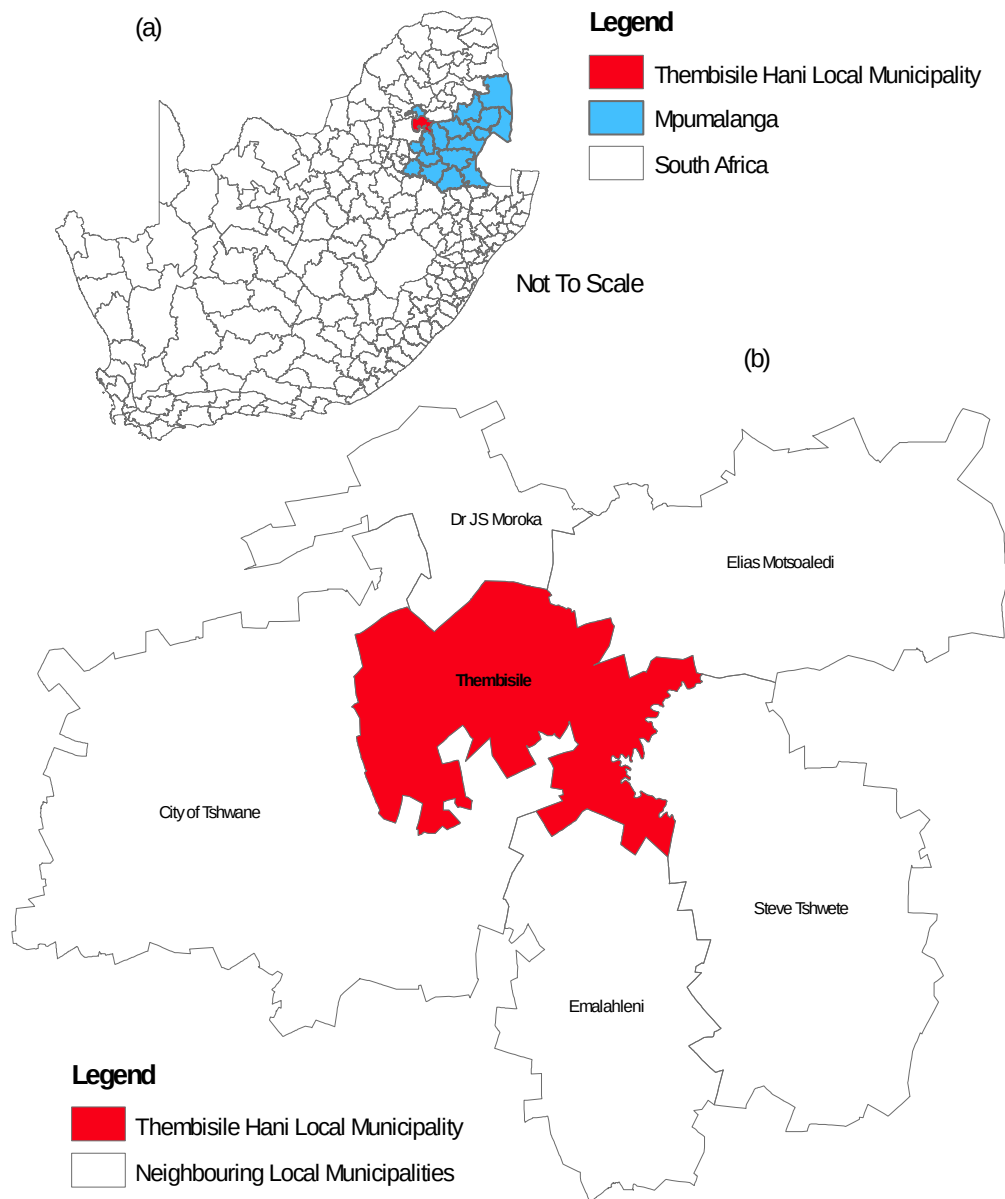
A Comparative Study of Formal and Less Formal Land Use and Development Application Procedures: The Case of the Thembisile Hani Local Municipality

4.1 Introduction: The Thembisile Hani Local Municipality

Established in terms of the provisions of the Local Government: Municipal Demarcation Act, 1998 (Act 27 of 1998) together with the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), within the democratic context of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), the Thembisile Hani Local Municipality is situated on the north-western part of the Mpumalanga Province under the Nkangala District Municipality, Republic of South Africa (see Map 1(a) on page 64). In relation to its location, the Municipality shares its municipal boundaries with the Tshwane Metropolitan Municipality (Gauteng), the Dr JS Moroka Local Municipality (Mpumalanga), Elias Motsoaledi Local Municipality (Limpopo), Emalahleni Local Municipality (Mpumalanga), and Steve Tshwete Local Municipality (Mpumalanga) (see Map 1(b) on page 65). The Thembisile Hani Local Municipality, together with the Dr JS Moroka Local Municipality are home to a majority of settlements that formed part of the former KwaNdebele Homeland which was established by the former apartheid Government as a self-governing state in terms of the Bantu Homelands Constitution Act (Act 21 of 1971) (Thembisile Hani IDP, 2014/2015; Zeuker, 2014).

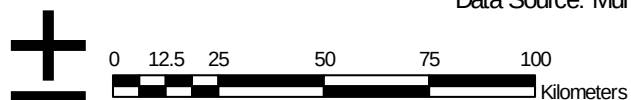
Based on the situation of the Thembisile Hani Local Municipality in terms of the municipal demarcations of the democratic dispensation, and within the context of the former KwaNdebele Homeland, the Municipality is comprised of seven (7) traditional authorities which are recognised by the Department of Cooperative Governance and Traditional Affairs (COGTA) (Thembisile Hani IDP, 2011-2016). The seven (7) traditional authorities with jurisdictions overlaid or superimposed on the current Municipal Ward delineations are as follows: the Ndzundza Fene Tribal Authority, the Ndzundza Sompalali Tribal Authority, the Ndzundza Mabhoko Tribal Authority, the Manala Mbongo Tribal Authority, the Manala Mgibe Tribal Authority, the Manala Makarena Tribal Authority, and the Machipe Tribal Authority (Thembisile Hani IDP, 2011-2016). Within the above-mentioned recognised seven (7) traditional authorities in the Municipality, there are fifty seven (57) settlements and villages, and eight (8) of which have been proclaimed in terms of Proclamation R293 of 1962 as legally established townships (Thembisile Hani IDP, 2011-2016).

The legal status of the settlements and villages within the Thembisile Hani Local Municipality, as mentioned above, means that there are only eight (8) settlements where property owners or households have freehold title ownership to their properties in the form of full title deeds or Deed of Grants registered against their properties (Thembisile Hani IDP, 2011-2016). The rest of the settlements do have preliminary plans, and some do have approved and registered Township General Plans, however the households residing in these settlements do not have freehold or full ownership of their properties (Thembisile Hani IDP, 2011-2016). The type as well as the legal status of the above-mentioned settlements represent the settlements that were established in terms of Proclamation R188 of 1969.



Author: Lerato Thabo Motloun

Data Source: Municipal Demarcation Board Boundary Data



Scale 1:1,250,000

Map 1: (a) Location of Thembisile Hani Local Municipality in Relation to South Africa and Mpumalanga;
(b) Locality Map of the Thembisile Hani Local Municipality

The types of ownership or tenurial systems that exist within the Municipality will be further discussed in-depth in the following section of this Chapter. Covering the types of ownership or tenurial systems is crucial for the purpose of this research, especially when viewed through the lens of Dale *et al*, 2000 one of the prominent theorists of the individualised tenurial school of thought who for the relationship between form of tenure/ownership and land use. The uniqueness and desirability of the chosen study area is borne from the fusion of the former KwaNdebele Homeland, with its status as an independent self-governing territory, with the new democratically delineated Municipal Ward jurisdictions of the new dispensation. The study area is significant for the purpose of this research study in that it is the basis upon which the research can begin to explore the dual or parallel land use application procedures which are experienced in a semi-urban and semi-rural Municipality.

This Chapter will begin to focus on the dichotomy that exist within the established realm in Local Government, and which can be attributed to the following: i) the formally established Municipal Council structure where in terms of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) municipal planning is a vested function, and ii) versus the recognition and incorporation of the institution of traditional authorities in processes of municipal council functions, together with the unintended and legitimization of the self-governing aspect of the traditional authorities, especially around matters of land management. Hence when one carefully pays attention to the overlapping authorities within the chosen study area, as well as within the context of the prevalent parallel land use application procedures, a comparative study of the latter is made ideal.

4.2 Historical Background and State of Land Use and Development Management

4.2.1 Legacy of Past Planning Legislation and Processes

The overlapping jurisdictions and authorities found in the Thembisile Hani Local Municipality as introduced in the previous section are due to the history of the study area being a former homeland with a number of regional traditional authorities established under the constitutional regime of the apartheid Bantu Homelands Constitution Act (Act 21 of 1971), and which was therefore incorporated into and recognised in the current democratic constitutional regime of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) following the transition from the former to the latter regime (Zeuker, 2014). Within the Mpumalanga Province, the planning law environment has been heavily influenced by the composition of parts of former homelands such as the former KwaNdebele Homeland, Kangwane Homeland, Gazankulu Homeland and the Lebowa Homeland, including parts of the Old Transvaal Province (Zeuker, 2014). Based on this historical background, the South African planning landscape in the new democratic dispensation found itself inheriting, apart from varying systems and forms of ownership/tenurial systems, a number of applicable and more often conflicting pieces of planning legislation, and both these factors which define the planning landscape in semi-rural

and semi-urban contexts will be discussed further within the context of the Thembisile Hani Local Municipality.

As discussed in the previous section, the different forms of tenure that currently exist within the Thembisile Hani Local Municipality were inherited and are part of the legacy of the former KwaNdebele Homeland Government as well as the legal status of the settlements and villages that were established in terms of Proclamations R293 of 1962 and R188 of 1969 which were promulgated as Land Use and Planning Regulations in terms of the Black Administration Act, 1927 (Act 38 of 1927) (Baylis, 2011; Thembisile Hani IDP, 2011-2016). Proclamation R293 regulated settlements over land that is held under communal titleship and where households are in possession of Deed of Grant documents as guarantees to their land, and it further applied to urban development (township development, granting and registration of tenure as well as the issuing of building permits) in the former homelands and self-governing territories, including the former KwaNdebele Homeland, other than in Kangwane and Lebowa (Baylis, 2011; Thembisile Hani IDP, 2011-2016). Within settlements that were established in terms of Proclamation R188 on the other hand, a system of ownership which is characterised by the Permission-to-Occupy principle was enforced, where the allocating authority of land in this case would be the appointed headmen of the recognised traditional authorities (Thembisile Hani IDP, 2011-2016). This meant that upon the allocation of land, households were not issued with freehold title deeds, but rather with Permission-to-Occupy (P.T.O) certificates which did not guarantee them an indefinite right to their allocated land (Thembisile Hani IDP, 2011-2016).

Proclamation R188 regulations also apply to rural land tenure and development where lesser requirements for survey and registration is required, making it more difficult to upgrade tenure and formalize development in these areas (Baylis, 2011). A guideline document has been developed by the Mpumalanga Province for the formalization of settlements and the upgrading of land tenure rights in townships proclaimed in terms of Proclamation R293 of 1962, and dense rural settlements situated on land governed by R188 of 1969 (Baylis, 2011). The guideline recognizes that the formalization of settlements and upgrading of land tenure rights requires cooperation between spheres of government, traditional authorities and the affected communities (Baylis, 2011). This form of cooperative governance will be discussed further in the following section of this Chapter, with a specific focus on the role of traditional authorities in Municipal structures for the purpose of this research study.

More regulations were promulgated at a later stage in terms of the Black Administration Act, 1927 such as Proclamations R1886 of 1990 and R1888 of 1990, where the former applied to township establishment while the latter applied to the preparation of town planning schemes in released areas in former homelands and self-governing territories (*ibid*). The above-mentioned seeks to demonstrate that, despite the fact that these areas were homelands and self-governing territories within a rural context, there was still a considerable amount of thought given to establishing and maintaining a land use management and planning regulatory framework. As to why planning within the Thembisile Hani Local Municipality as well as Local Municipalities of

a similar rural context within the Mpumalanga Province and the rest of the country has left an open window for the traditional authorities of former homelands and self-governing territories to operate outside of any applicable land use management and planning regulatory framework, is a question that this research study will also seek to respond to through thorough analysis.

The majority of the land within the Thembisile Hani Local Municipality is held in trust by either National or Provincial State Departments on behalf of the community, and most of this land is governed under customary law by the recognised traditional authorities (Thembisile Hani IDP, 2014-2015). With only eight (8) proclaimed settlements within the Municipality, this means that private land ownership on the rest of the settlements which represent a majority of the land within the Municipality, is impossible to attain (Thembisile Hani IDP, 2011-2016; Thembisile Hani IDP, 2014-2015). This is mostly due to the fact that the applicable pieces of legislation which are aimed at securing tenure to land for the community, such as the Less Formal Township Establishment Act, 1991 (Act 113 of 1991) as well as the Upgrading of Land Tenure Act, 1991 (Act 112 of 1991) involve a very lengthy and often cumbersome application process, and in most cases such applications are never finalised. What came out of the findings of the qualitative interviews is that the municipality would engage with the above-discussed application process until the application is acknowledged by the municipality and the applicants are advised to pursue their applications further with the relevant Provincial or National Departments, and that's as far as most applications would progress (Mashishi, I. personal communication 3 October 2015). The Less Formal Township Establishment Act, 1991 (Act 112 of 1991) (LeFTEA) has been widely used in rural municipalities within the Mpumalanga Province such as the Thembisile Hani Local Municipality for the establishment of new settlements and townships, especially in former homeland areas (Baylis, 2011). The Upgrading of Land Tenure Rights Act, 1991 (Act 112 of 1991) on the other hand provides for the formalization of townships where the general plans have been approved and where the registration of full ownership can take place (Baylis, 2011).

From experience, the role and cooperation of traditional authorities in formalization and tenure upgrading processes is the most crucial part of the application process, and it is therefore at this point where these processes more often than not reach a deadlock. This is due to the fact that traditional Councils are generally very hesitant to issue out tribal resolutions in support of the State's efforts to formalize and upgrade tenure within the informal villages and settlements that are also within the jurisdictions of the recognised traditional authorities (Thembisile Hani IDP, 2014-2015). Before the promulgation of the new National Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013), planning country-wide and especially within the Mpumalanga Province has always been marred by multiple and often conflicting pieces of legislation which apply in different areas depending on the legal land status of the areas in question, as discussed previously (Baylis, 2011).

The impact that this disjointed legacy had on the planning system, which is most evident in semi-rural municipalities such as the Thembisile Hani Local Municipality, has resulted in some pieces

of legislation being administered by the municipality and some by the Province, and this is what has complicated planning and development within the municipality (Thembisile Hani IDP, 2014-2015; Baylis, 2011). Amongst those already discussed in this chapter so far, there is also the Black Communities Development Act, 1984 (Act 4 of 1984) and its Land Use Regulations (Baylis, 2011). The Black Communities Development Act of 1984 provided existing leaseholders to land certain security of rights until the township register is opened and full ownership can be conferred (Baylis, 2011). The Act, together with the Township and Land Use Regulations R1897 of 1986 was assigned to the Mpumalanga Province, and in terms of Proclamation R163 of 1994, Regulations R1897 of 1986 was used for land use management within townships established in terms of the Act (*ibid*).

The former KwaNdebele homeland also developed its own planning law in the form of the KwaNdebele Town Planning Act, 1992 (Act 10 of 1992) (*ibid*). This Act was intended to apply to parts of the former homeland and was aimed at regulating the planning, as well as the establishment and development of towns (*ibid*). The Mpumalanga Province was also responsible for the administration of the KwaNdebele Town Planning Act of 1992, although in other homelands, it continued to use the provisions of Proclamations R293 of 1962 and R188 of 1969 (*ibid*). The assignment of the administration of all past planning laws regarding land matters to all provinces was enforced with the enactment of the Land Administration Act, 1995 (Act 2 of 1995) which further made provision for the creation of uniform land legislation, and other matters incidental thereto (Baylis, 2011). The Land Administration Act of 1995 pertains to proclaimed areas including former homelands, areas for which a legislative assembly was established in terms of the Self-Governing Territories Act of 1971, and any area that was established in terms of the Black Administration Act of 1927, and which is situated outside the two aforementioned areas (Baylis, 2011). Later followed the Communal Land Rights Act, 2004 (Act 11 of 2004) (CLaRA) which was aimed at addressing land use management and relations between traditional and elected authorities in the former homeland areas as well as any other matters incidental thereto as discussed in Chapter 2 (Baylis, 2011).

4.2.2 Current State of Land Use and Development Management

As far as the current state of land use and development management is concerned, the Thembisile Hani Local Municipality is presently dealing with a serious challenge of inadequate availability of properly planned land for human settlement (Thembisile Hani IDP, 2011-2016). The above-mentioned challenge has therefore resulted in the eruption of informal settlements in most areas within the Municipality, where some of the traditional authorities are further perpetuating this phenomenon by the allocation of people on the unplanned land (Thembisile Hani IDP, 2011-2016). This practice of the allocation of land by the traditional authorities for either residential purposes or for development is not regulated correctly and this therefore makes it very difficult for the Municipality to plan properly (Thembisile Hani IDP, 2011-2016).

Traditional Authorities more often allocate land for a particular use or development without due consideration for the long term impact that the proposed use or development on the environment and service infrastructure, and vice versa, and consequently the impact that the development will have on the people who will directly be affected by it (Thembisile Hani IDP, 2014-2015). This sporadic means of allocating land by the traditional authorities means that the importance of ensuring that proper planning is undertaken, together with all required accompanying specialist studies, is often neglected (Thembisile Hani IDP, 2014-2015). As emphasised in the Thembisile Hani Integrated Development Plan, it is important that the municipality addresses the above-discussed scourge in order to prevent a worse scenario where the allocation of land for human settlement purposes is done on danger-prone or environmentally sensitive areas (Thembisile Hani IDP, 2011-2016). Moreover, another challenge includes community members who apply to the Municipality for use or development on raw and unplanned land, and this makes it difficult for the Municipality to process and have a final determination on these applications without proper planning and specialist investigations conducted (Thembisile Hani IDP, 2014-2015). Examples of this will be explored in the form of the quantitative data on land use and development applications, under the Quantitative Data Analysis section.

The sporadic allocation of land as discussed above has also resulted in the second most crucial challenge for the Municipality, and that is the non-compliance of the above-mentioned practices with the Thembisile Hani Spatial Development Framework of 2010, as well as the Thembisile Hani Land Use Scheme (LUS) of 2010 (Thembisile Hani IDP, 2011-2016). In terms of Section 26 of the Municipal Systems Act, 2000 (Act 32 of 2000) (MSA), and as a component of the Municipality's Integrated Development Plan (IDP) which is developed in terms of Section 5 of the Municipal Systems Act, 2000, and now read with Section 20 of the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) (SPLUMA), the Municipality is required to develop and adopt a Spatial Development Framework (SDF). The Municipal Spatial Development Framework is the principal planning document which is aimed at informing all decisions pertaining to spatial planning, land use and development within a Municipality (Thembisile Hani IDP, 2014-2015). The Spatial Development Framework is aimed at achieving the following objectives: i) to set out the desired spatial form of the Municipality; ii) to set out basic guidelines for a land use management system within a Municipality; iii) to indicate the desired patterns of land use within the Municipality; iv) to indicate where public and private land development and infrastructure investment should take place; v) to indicate the desirable and undesirable utilisation of space in a particular area; vi) to provide a strategic assessment of the environmental impact of the Spatial Development Framework; vii) to identify projects and programmes for the development of land within the Municipality (Thembisile Hani IDP, 2014-2015).

Baylis (2011) argues that the Spatial Development Frameworks that are prepared under the Municipal Systems Act of 2000 have tended to have an urban bias, and far more work is needed to relate planning and land use management schemes to the local circumstances, particularly in

rural and traditional areas. Therefore, this is the kind of bias that the SPLUMA seeks to respond to, and that this study has drawn its research findings from. In giving effect to, as well as for the effective implementation of the Thembisile Hani Municipal Spatial Development Framework, 2010, the Municipality has developed and adopted a wall-to-wall land use scheme which is currently known as the Thembisile Hani Land Use Scheme, 2010. The majority of land uses within the Thembisile Hani Local Municipality, some of which are also regulated by the Municipality's Land Use Scheme include commercial, conservation, cultivated land, residential, subsistence farming and large parcels of unspecified land, fundamentally zoned agricultural (Thembisile Hani IDP, 2014-2015).

In the context of the current disjointed planning system within South Africa and the Mpumalanga Province, this makes it almost impossible for the Municipality to have complete control over its area of jurisdiction in terms of land use management, and thus rendering the enforcement of its land use scheme ineffective (Thembisile Hani IDP, 2014-2015). With regard to the regulatory land use management component of planning within the Mpumalanga Province, the Mpumalanga Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986) applicable to former "white", "indian", and "coloured" areas, is the main Provincial Legislation relating to the regulation of land use (Baylis, 2011). As can be seen from the description of the laws and their applications in the previous section, the complexity of this status-quo is heightened by the limited geographic applicability of certain laws, the new reality of wall-to-wall municipal areas, and the differing needs of communities in urban, traditional, and rural areas (Baylis, 2011). Apart from the multiple pieces of legislation applicable depending on jurisdiction, there are also various role-players involved in the allocation as well as the determination of the use of land, and these are the recognised traditional authorities, the Municipality, as well as the Mpumalanga Provincial Department of Cooperative Governance and Traditional Affairs (formerly with the Department of Rural Development and Land Administration DARDLA) and the Department of Rural Development and Land Reform (DRDLR). The above-mentioned has therefore resulted in the parallel land use and land development management practices that this research is concerned about.

Before the commencement of the new National Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) (SPLUMA) which seeks to establish a uniform system of planning in South Africa, the Mpumalanga Province had authorised most local municipalities, including the Thembisile Hani Local Municipality, to deal with land use regulation within their areas of jurisdiction, however this excluded former black areas or released areas in terms of the repealed Black Laws Amendment Act, 1949 (Baylis, 2011). The traditional areas and former homelands that are subject to a variety of customary and "black areas" laws relating to settlement, land use and different forms of tenure such as the Less Formal Townships Establishment Act of 1991, and the Land Use and Planning Regulations in terms of the Black Administration Act of 1927 are administered by the Provincial Government and have not been integrated into the municipal planning system (*ibid*). The overall objective of the Less Formal Townships Establishment Act,

1991 (Act 113 of 1991), which has now been repealed by the SPLUMA, was to formalize settlements or villages to be deemed to be townships established in accordance with the Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986) as the law governing the establishment of townships in force in the area in which the designated land is situated (Baylis, 2011). This therefore meant that all future land use and development applications undertaken within townships established in terms of the repealed Less Formal Townships Establishment Act, 1991 would be administered in terms of Ordinance 15 of 1986. In addition, the laws that are applicable to the former rural areas of Mpumalanga and which constituted the old Transvaal Province were also still administered by the Mpumalanga Province (*ibid*).

All of the above-discussed status-quo is despite the fact that the National Government's designation of the administration of the Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986) to the provinces where it is currently applicable, in terms of Proclamation 161 of 1994, assigned its applicability to entire areas of municipal jurisdictions, including former tribal and black areas (*ibid*). However, in practice, the application of different laws to different geographical and types of communities indicates that the applicability of the Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986) to entire areas of municipal jurisdictions has not been generally embraced and adhered to (*ibid*). The Provincially authorised municipalities have generally been geared for procedures in the Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986), but still fell short in adapting to the wider scope of their jurisdictions before the new wall-to-wall land use management schemes were introduced (*ibid*). The geographic applicability of old area/town-specific town planning schemes, some of which were promulgated in terms of Ordinance 15 of 1986, were generally limited in scope, leaving large parts of the new wall-to-wall municipal areas unregulated other than by customary laws, other old order laws, as well as the Development Facilitation Act, 1995 (Act 67 of 1995) (Baylis, 2011).

Some old order laws, such as Proclamation R292 of 1962, while providing a valuable option for land use development, have shortcomings that have had to be addressed by provincial adjustment to the information required by the authorities for decision-making (Baylis, 2011). These laws do not match the structures at municipalities, fail to integrate the outcomes with the planning systems at local level, are outdated, and do not involve interested and affected parties (*ibid*). The diversity of laws of similar planning intent but with different approving authorities and conflicting competencies require specialized knowledge and insight on the part of the implementing authorities for a balanced outcome (*ibid*). The potential for confusion is significant and can result in delays, wrong outcomes, and poor integration with municipal systems, often to the detriment of communities that require assistance (*ibid*). Interventions such as the new wall-to-wall land use management schemes will improve the formal framework for land use administration, but unless supported by adequate capacity and traditional leadership buy-in will not resolve the problems (*ibid*). The above-mentioned buy-in and role of traditional authorities

will be elucidated further in the following section when this research study begins to explore the participation and role of Traditional Authorities in Municipal Structures.

4.3 A Quantitative Analysis of Formal and Less Formal Land Use and Land Development Applications (2011 – 2014)

4.3.1 Findings

This section will seek to provide an analysis drawing from a set of quantitative data in the form of available records on the number of applications received, both in terms of formal as well as less formal land use and development application procedures. There are two sets of received application records, and in consideration of the parallel or dual land use application procedures which characterise the Thembisile Hani Local Municipality as a semi-urban municipality, they have been categorized as both the formal applications received in terms of applicable planning legislation as well as the less formal/simplified applications received. The formal as well as the less formal/simplified applications received and processed within the Thembisile Hani Local Municipality consist of the following types, which have been organised in the form of Table 1. and 2. respectively: the formal applications consist of township establishment applications, rezoning applications, subdivision applications and consolidation applications, whilst the less formal applications consist of site/land allocations and consent use applications that are of a lesser technical nature compared to the formal applications (see Table 1. and 2. with populated information). With regards to the timeframe of the collected application records for this quantitative study, from 2011 to 2014, this is due to the fact that the most available and reliable application information collected from the Thembisile Hani Local Municipality as well as the Nkangala District Municipality for both categories of land use and development applications is between 2011 and 2014. For a clearer understanding of the above, this section will further provide a distinction between the different types of applications profiled as part of this quantitative study.

Table 1. shows that between 2011 and 2014 there was only a total of 17 formal land use and development applications received and approved. Table 2. shows that between the same time period as above there was a total of 380 less formal land use and development applications received. The 380 number of applications are comprised of applications for both site allocations (196 applications) and consent use applications (184 applications). However, for the purpose of this research study and analysis, the focus will be on the 184 less formal consent use applications. This is all in order to successfully achieve proper comparative analysis with the formal type of applications. Based on the manner in which the less formal applications are captured in the Thembisile Hani application register, it is clear that the municipality has developed a template that will assist with systematically capturing these applications. This register has assisted the municipal planners, after advising the applicants with the proper

application procedures to follow, to keep track of the process and status of same, especially where the relevant provincial and national state departments are affected.

THEMBISILE HANI QUANTITATIVE LAND USE AND DEVELOPMENT APPLICATION DATA

TABLE 1: FORMAL LAND USE AND DEVELOPMENT APPLICATIONS 2011-2014				
	Township Establishment	Rezoning	Subdivision	Consolidation
Approved	8	5	3	1
Not Approved	0	0	0	0
No Follow-Up	0	0	0	0
Unauthorised Development	Undetermined	Undetermined	Undetermined	Undetermined
TOTAL	8	5	3	1
TOTAL (%)	47	29	18	6

Table 1: A Table of Formal Land Use and Development Applications in Thembisile Hani Local Municipality (Source: Minutes of the Town Planning and Land Use Committee Meetings – Nkangala District Municipality)

Based on the above, any form of land use, land development and site allocation application from areas under traditional authorities, must be accompanied by letters of recommendation/consent from both the tribal authority under whose jurisdiction the affected application land/property is situated as well as the local ward councillor under whose ward the application property is situated. Although most of the less formal applications are received from areas predominantly under traditional leadership, records still show that the same type of applications are also received from the formal/urban areas within the municipality. The above-mentioned application composition is therefore also being used for most of the less formal type of applications received from formal/urban areas. The reason for this is discussed later under the analysis subsection.

TABLE 2: LESS FORMAL LAND USE AND DEVELOPMENT APPLICATIONS 2011-2014			
	Site Allocation	Consent Uses	
Council Approval	0	0	
Not Approved	196	184	
No Follow-Up	0	0	
Unauthorised Development	Undetermined	Undetermined	
TOTAL	196	184	380
TOTAL (%)	52	48	100
Ward Councillor's Consent	14	57	
Tribal Authority Consent	14	71	
No Consent	168	56	

Table 2: A Comparative Table of Less Formal Land Use and Development Applications in Thembisile Hani Local Municipality (Source: Land Use and Development Application Register – Thembisile Hani Local Municipality)

In defining the different types of applications, this section will begin by discussing the formal land use and land development applications, wherein the Thembisile Hani Local Municipality in terms of the Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986) (pending its repeal) is an authorised Municipality to assess these form of applications (Assessment Criteria for Land Use Applications in Thembisile Hani Municipality, undated). However, regardless of the above-mentioned, the Thembisile Hani Local Municipality is not, as per standing determination by the MEC for the Mpumalanga Department of Cooperative Governance and Traditional Affairs (CoGTA) due to inadequate planning capacity reasons, authorised to exercise its planning functions as they are currently vested with Nkangala District Municipality (Assessment Criteria for Land Use Applications in Thembisile Hani Municipality, undated). This means that the Nkangala District Municipality is responsible for administering all planning functions on behalf of the Thembisile Hani Local Municipality, and this includes the assessment of land use, development and planning applications (*ibid*). Formal land use and development applications in this sense means complete applications, in terms of applicable planning

legislation, that are usually submitted by qualified town planning and land surveying applicants for larger developments (*ibid*).

In most cases in practice, such formal applications will either be submitted in terms of an applicable Land Use Scheme, in this case the Thembisile Hani wall-to-wall Land Use Scheme of 2010 (Assessment Criteria for Land Use Applications in Thembisile Hani Municipality, undated; Nkangala District Municipality: Municipal Planning Capacity Building Strategy for the District Municipality of Nkangala and the Local Municipalities of Dr JS Moroka, Thembisile and Emakhazeni – Town Planning “Quick Reference” Guide, 2006). In cases where the affected land is state-owned land, the above-mentioned applications are often subjected to a state land release process that is facilitated by the National Department of Rural Development and Land Reform, as the custodians of which all state land is vested, in order to procure land use and development rights (Assessment Criteria for Land Use Applications in Thembisile Hani Municipality, undated).

The first type of these common applications is the application for township establishment in terms of Section 96 or 108 of the Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986) which is intended to consist of at least two proposed erven (Nkangala District Municipality: Municipal Planning Capacity Building Strategy for the District Municipality of Nkangala and the Local Municipalities of Dr JS Moroka, Thembisile and Emakhazeni – Town Planning “Quick Reference” Guide, 2006). The second type of application is a rezoning or the amendment, in terms of Section 56 of the Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986), of land use rights to an alternative zoning, use or development conditions in terms of a proclaimed and applicable Land Use Scheme (*ibid*). The third and fourth type of common applications are the applications for subdivision and consolidation, in terms of Section 92(a)(b) of the Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986), of erven in an approved township respectively (*ibid*). These will include all approved townships that were established in terms of the Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986), or any other repealed law relating to townships (*ibid*).

It is important to note that despite the fact that the above-discussed types of applications are defined in terms of the Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986) even though the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) (SPLUMA) has been promulgated and has come into operation as from the 1st of July 2015, most municipalities in the country have not yet established the necessary systems as required to start performing their planning functions in terms of SPLUMA. This also means that most municipalities are not yet in a position to commence with the assessment of land use and development applications in terms of the SPLUMA. Traditional or less formal applications when compared to the formal applications as discussed above, and for a clear distinction between the two types, are those applications that are submitted by local residents predominantly situated on state-owned land, and of which their quality and content are very limited, and often lacking the following: clear intent of the applicant, locality diagrams, insufficient motivation for proposed

rights, insufficient cadastral information (Surveyor General Diagrams, stand boundaries, etc) (Assessment Criteria for Land Use Applications in Thembisile Hani Municipality, undated). The most common of these less formal types of applications received by the municipality are applications for land/sites for either residential or for business purposes, as well as applications for business rights (Assessment Criteria for Land Use Applications in Thembisile Hani Municipality, undated).

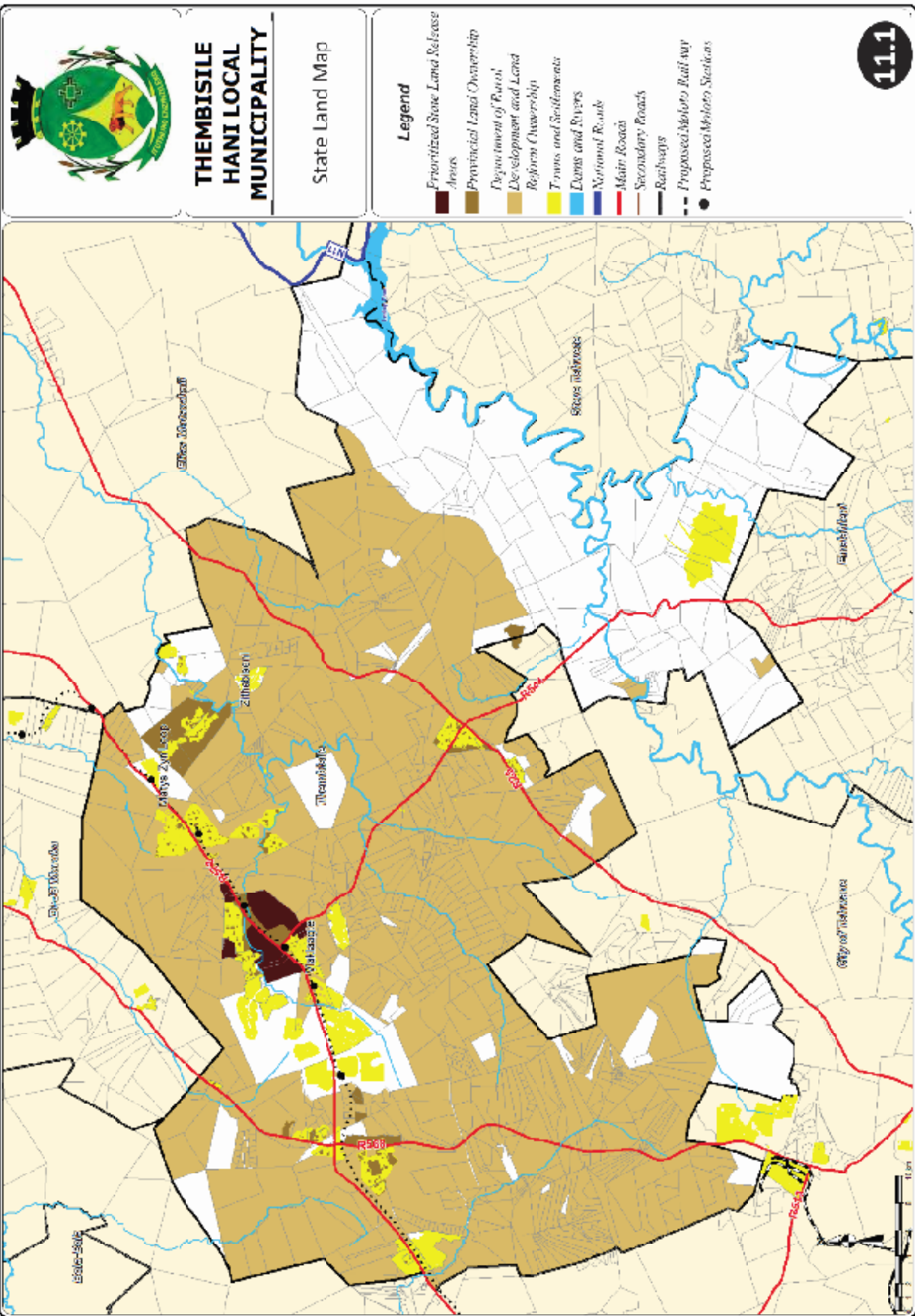
TABLE 3: LESS FORMAL LAND USE AND DEVELOPMENT APPLICATIONS (2011 - 2014)			
	Consent Use Applications		
	Traditional Areas	Formal Areas	
Council Approval	0	0	
Not Approved	116	68	
No Follow-Up	0	0	
Unauthorised Developments	Undetermined	Undetermined	
TOTAL	116	68	184
TOTAL (%)	63	37	100
Ward Councillor's Consent	39(34%)	18(26%)	
Tribal Authority Consent	49(42%)	24(35%)	
No Consent	28(24%)	26(38%)	

Table 3: A Comparative Table of Less Formal Land Use and Development Applications from Traditional Areas and Formal Areas within the Thembisile Hani Local Municipality (Source: Land Use and Development Application Register – Thembisile Hani Local Municipality)

The common challenges associated with these types of applications are that the residents applying in the above-mentioned manner do not have the understanding of a Land Use Management Scheme or land use controls, and another challenge is that both the Thembisile Hani Local Municipality and the Nkangala District Municipality are unable to process and have a determination on all the applications given the ownership status of the land whereupon the applicants are situated (*ibid*).

Despite the challenge identified as part of the findings, in the context of a lack of understanding of formal/legal application procedures by the residents of traditional areas, the collected data shows that same is also a challenge in the formal urban areas (see Table 3 above). Unless there is a provision for a simplified procedure for these types of applications catered for in legislation, the current standard and legally acceptable application procedures, with the exception of SPLUMA, 2013, dictate that if a person who is not the registered owner wishes to apply for a specific land use on land registered to the state, a rental agreement needs to be reached or the person needs to buy the land (*ibid*). The above-mentioned process entails that the person or applicant needs to undertake a state land release process which is a very complicated and often cumbersome process that prolongs both the acquisition of planning rights for the applicant, as well as compromises the ability of the Thembisile Hani Local Municipality and Nkangala District Municipality to speedily decide on applications (Assessment Criteria for Land Use Applications in Thembisile Hani Municipality, undated).

On the other hand, all the formally compiled applications have registered owners who, with the attachment of a special power of attorney, authorises professional planning and land surveying consultants to motivate and lodge the applications on their behalf. It is important to note that the traditional areas represent the fifty seven (57) traditional settlements and villages on state land and under the jurisdiction of traditional leadership (see Map 2 on Page 78) for State-Owned Land within the Thembisile Hani Local Municipality), while the formal areas represent the eight (8) areas which have been proclaimed in terms of regulation 4(1)(a) of Chapter 1 of Proclamation R293 of 1962 and any other applicable planning legislation, as legally established township areas (Thembisile Hani IDP, 2011-2016). The data that was sampled for the formal areas in Table 3. include semi-registered areas with preliminary township layouts that are registered at the Surveyor-General's office, but not yet proclaimed. According to the Thembisile Hani IDP (2011-2016) such areas represent 13 out of the 57 unproclaimed areas. From the 184 number of less formal consent use applications sampled, as depicted in Table 3., 68 represent the same type of applications received from formal areas as defined above.



4.3.2 Quantitative Survey: Analysis of the Responses From Residents on Land Use and Land Development Application Procedures in Urban and Traditional Areas

In an attempt to validate the assumptions and some conclusions regarding the reasons why there is a high number of less formal land use consent applications as opposed to the formally compiled and technically motivated applications in terms of applicable legislative requirements and criteria, a survey was undertaken which targeted the local residents of the Thembisile Hani Local Municipality as participants. In light of the questions that the local residents were asked to respond to, and for the purpose of analysis of same, these were organised into three (3) categories of analysis. The categories for analysis are as follows: 1.) testing the community's knowledge of the common applicable law governing the use and development of land within the municipality; 2.) testing the community's knowledge and understanding of land use and land development application procedures; 3.) testing the community's reliance on professional consultants to undertake technically motivated and compliant applications in the prescribed form on behalf of the community; and 4.) testing the community's affordability of all fees associated with land use and land development application procedures. Table 4. below is a representation of results derived from the responses of the community of Thembisile Hani. Which will also be discussed in the following sub-sections.

4.3.2.1 Knowledge of the Law Governing the Use and Development of Land

The fact that 73% of sampled residents residing in traditional areas demonstrated a significant lack of knowledge of the common applicable law governing the use and development of land, proves that there is generally low propensity to comply and abide by the law in such areas. On the other hand, the proportional difference between those who have knowledge of planning legislation governing the use and development of land and those who do not is very minimal. The fact that there is 53% of residents who have knowledge of planning legislation as compared to just 47% of those who do not, demonstrates the conclusion that the residents in urban areas have more knowledge of the laws governing the use and development of land than those residing in traditional areas. Although the above results hold true, 47% of those who do not have knowledge of planning legislation in urban areas is still very significant to warrant why less formal applications have also been submitted to the municipality by urban residents as will also be further discussed in the following sub-section.

TABLE 4: RESIDENTS QUANTITATIVE SURVEY RESULTS IN URBAN AND TRADITIONAL AREAS (FROM 5 OCTOBER 2015 – 26 OCTOBER 2015)

	No.	Indicators of Analysis	Responses					
			Yes		No		Do Not Understand	
			Tradition al Areas	Urban Areas	Tradition al Areas	Urban Areas	Tradition al Areas	Urban Areas
Knowledge of Legislation and Regulations	1.	Understanding Current Applicable Planning Legislation						
	1.1	Town Planning and Townships Ordinance (Ordinance 15 of 1986)	2 (20%)	2 (20%)	8 (80%)	8 (80%)	0 (0%)	0 (0%)
	1.2	The SPLUMA (Act 16 of 2013)	3 (30%)	6 (60%)	7 (70%)	4 (40%)	0 (0%)	0 (0%)
	2.	Knowledge Land Use Schemes						
	2.1	Thembisile Hani Land Use Scheme of 2010	3 (30%)	6 (60%)	7 (70%)	4 (40%)	0 (0%)	0 (0%)
		AVERAGE:	27%	47%	73%	53%	0%	0%
Knowledge of Application Procedures	3.	Knowledge of Type of Land Use Rights Applicable on my Property	1 (10%)	2 (20%)	9 (90%)	8 (80%)	0 (0%)	0 (0%)
	4.	Knowledge of Land Use and Land Development Applications	1 (10%)	2 (20%)	9 (90%)	8 (80%)	0 (0%)	0 (0%)
	5.	Knowledge of Land Use and Land Development Application Procedures	6 (60%)	5 (50%)	4 (40%)	5 (50%)	0 (0%)	0 (0%)
	6.	Experience in Lodging Land Use and Land Development Applications	1 (10%)	0 (0%)	9 (90%)	10 (100%)	0 (0%)	0 (0%)
	7.	Knowledge of Prescribed Format Land Use and Land Development Applications	0 (0%)	0 (0%)	10 (100%)	10 (100%)	0 (0%)	0 (0%)
		AVERAGE:	33%	18%	67%	82%	0%	0%
Reliance on Professional Consultants	8.	Possible Reliance on Professional Planner or Land Surveyor	10 (100%)	10 (100%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
		AVERAGE:	100%	100%	0%	0%	0%	0%
Affordability	9.	Affordability of Professional Fees	2 (20%)	0 (0%)	8 (80%)	10 (100%)	0 (0%)	0 (0%)
		AVERAGE:	20%	0%	80%	100%	0%	0%

Table 4: Results of the Comparative Quantitative Survey of Responses from Residents of the Thembisile Hani Local Municipality: Knowledge and Affordability of Land Use and Land Development Application Procedures (Source: Survey Conducted by Sibusiso Chili, Student Town Planner, Human Settlement and Town Planning - Thembisile Hani Local Municipality)

4.3.2.2 Knowledge and Understanding of Land Use and Land Development Application Procedures

The survey results show that 67% of sampled residents residing in traditional areas also demonstrated a significant lack of knowledge and understanding of land use and land development application procedures. This, in essence, further proves that there is generally a lack of ability by the community to comprehend the application procedures that are imposed by the local municipality. The fact that on the other hand, there is a very high proportional difference between those who do not, and those who have knowledge and understanding of application procedures in urban areas, at 82% and 18% respectively, further proves why there is submission of less formal applications in not only the traditional areas, but also in the urban areas. The above-presented results support why there is generally a lack of knowledge and understanding of land use and land development application procedures in a semi-urban municipality such as the Thembelesile Hani Local Municipality.

4.3.2.3 Reliance on Professional Consultants for the Compilation and Motivation of Land Use and Land Development Applications

The conclusions derived at in the previous sub-sections, together with the results from the residents surveyed (with 100% of residents in both urban and traditional areas indicating a reliance on professional consultants for the compilation and motivation of land use and development applications), prove that the only means available for most applicants in Thembelesile Hani to comply with applicable laws and procedures governing the use and development of land, is the reliance on professional town planning and land surveying consultants. This further demonstrates how planning is such a legally and professionally inclined practice, which directly compares to the legal/law profession as argued by Mashishi, I. (personal communication, 3 October 2015).

4.3.2.4 Affordability by Residents of Fees Associated with Professional Consultants and Land Use & Land Development Application Procedures

The results from the high and significant number of the residents sampled (with 100% of residents in urban areas and 80% in traditional areas respectively) demonstrated a very low propensity and ability to afford the fees that are associated with land use and land development application procedures, including the services provided by professional town planning and land surveying consultants for same. This survey has proven that in order for most residents within the Thembelesile Hani Local Municipality to comply with all formal requirements of land use and land development application procedures, they will require the services of professional consultants. However, the inability to afford such services means that the attempts of most residents who apply for land use and development rights remain futile.

4.3.3 Analysis of Findings

With the basis of argument found within the context of practice in the United States of America, Dale *et al*(2000) argues that the concept of private ownership of land conveys a great deal of flexibility to the owner in land-use decisions. The significance of the legal status of the settlements and villages within the Thembisile Hani Local Municipality will also be demonstrated in the following section of this Chapter, where the Municipality's authority to fully enforce its Land Use Scheme for land use regulation is challenged within the realm of, i) the multiple pieces of planning legislation, ii) the overlapping and often conflicting jurisdictions between the Municipal Ward delineations versus the recognised and gazetted jurisdictions of traditional authorities, and iii) the lack of understanding of formal/legal application procedures by the residents of the municipality (both from traditional as well as formal areas). In responding to the problem statement of this research study in terms of the unclear distinction and grey area that exists in as far as the roles and functions of municipal planners and traditional authorities in land use management and planning in traditional areas is concerned, the above-mentioned approach ensured that the planner embraced the coexistence of municipal and traditional structures and procedures in matters of land by basing decisions on consent use applications on the comments received from the affected ward Councillor as well as the traditional authority. Although this form of approach has never been based on any piece of applicable land use and planning legislation until the Spatial Planning and land Use Management Act, 2013 (Act 16 of 2013) was promulgated.

In terms of Table 1. and 2. above, with regards the monitoring and follow-up in weighing the impact of this approach in space, no records were available as to how many of these consent use applications have been approved by the Municipality. This also means that the municipality is unable to determine the level and extent of unauthorised/unmanaged development within its municipal space. The available quantitative data was therefore analysed under the assumption that, by submitting both letters of recommendation from the affected traditional authority and local ward Councillor constituted a blessing or principle approval by the Municipality as well. In other words, this approach has in practice proven not to be a more strict and regulatory procedural approach, but has been rather reduced to a minimum measure for ensuring that what would inevitably be an established use, with or without the final approval or consent of the Municipality, is to a certain extent made known to the municipality for some level of management and control [(Mashishi, I.(personal communication 3 October 2015)]. The above-discussed assumptions are based on personal reflection and experience having worked as a Town Planner in a similar semi-urban Municipality. Table 2. shows that all the less formal applications were not approved. Although according to Mashishi, I. (personal communication 3 October 2015), the planning officials of the Thembisile Hani Local Municipality would be stuck at a cross-roads of following legislation on the one hand, as well as helping the community since for most, an improvement in the livelihood strategies depended on it. Based on the above, for the minor applications that will not have a major significant impact on the context of the community at large, the applicants thereof would be permitted to go ahead, especially in cases where they are

most likely to continue anyway in an uncontrolled manner, although on record, such permissions would not be recorded as approved[(Mashishi, I. (personal communication, 3 October 2015))].

Based on the number of formal applications received and approved between 2011 and 2014 being reasonably less, as depicted in Table 1., this is attributed to the nature of the study area being a semi-urban municipality, with predominantly traditional and unproclaimed areas. As much as the low number of applications received and approved is significant for analysis, the fact that all the received applications are approved shows that both the Thembisile Hani Local and Nkangala District Municipalities are committed to facilitating development [Mangani, J.P. (personal communication 5 October 2015)]. In other words, most of the approved applications are high-impact applications such as township establishment and rezoning applications. With regards to the less formal consent use applications data in Table 2., the fact that all 184 applications have not been approved is also a significant point of departure for analysis. The above-mentioned observation further strengthens the finding that both the Thembisile Hani Local Municipality as well as the Nkangala District Municipality are unable to process and have a determination on these types of applications. This may be based on the fact that they lack the necessary minimum requisite technical information as well as due to the fact that the ownership status of the land whereupon the applicants are situated involves a very lengthy and technical state land release process.

Therefore based on the less technically packaged and incomplete nature of these applications, the municipality is unable to decide, or yet properly facilitate the state-land release process with the Department of Rural Development and Land Reform (DRDLR) as the state Department to which all state land is vested. Based on Table 3., the fact that there is a significant amount (68) of less formal type of consent use applications received from the formal areas as well, means that the challenge of a lack of technical and legal understanding of formal land use and development applications is not only a problem amongst residents in traditional areas, but this is also a problem in the formal proclaimed areas. Table 3. further shows that there seems to be a relative level of reliance on the simplified application procedure even in the formal/proclaimed areas. Twenty six percent (26%) of the 68 applications are accompanied by letters of recommendations from the respective local ward Councillors, while 35% of the number of received applications are accompanied by same from traditional Councils. The main question that the qualitative analysis section will be responding to, is as to why the municipality seems to be accepting these types of less formal applications in formal/proclaimed areas. The qualitative analysis phase has therefore endeavoured to get to the bottom of what informs this simplified approach, legislative or otherwise.

4.4 A Qualitative Analysis: Responses from the Municipal Planning Officials of Thembisile Hani Local & Nkangala District Municipalities and Tribal/Traditional Councils Within Thembisile Hani

As a means of responding to or qualifying the significant findings and conclusions derived from the quantitative analysis, a number of points have been identified from which to analyse the responses of the participants of the qualitative interviews. The conclusions from the quantitative analysis that this section has responded to, and where assumptions were made, are as follows:

- conclusions around the reasons for the submission of less formal land use and land development applications in both traditional and urban/proclaimed areas (i.e lack of understanding or affordability);
- conclusions around the significance of the legal status of settlements in Thembisile Hani Local Municipality;
- conclusions around the Thembisile Hani Local Municipality's inability to enforce its wall-to-wall land use scheme and manage contraventions within the municipality;
- conclusions and assumptions around the Assessment Criteria for Land Use Applications in Thembisile Hani Municipality not being based on any applicable piece of planning legislation;
- conclusions around the non-approval of the less formal land use and development applications (i.e based on their less technically packaged and incomplete nature);

The round of qualitative interviews were conducted firstly with the former Town Planner of the Thembisile Hani Local Municipality due to the fact that the Municipality is currently without a planner. Another interview was conducted with the Town Planner from the Nkangala District Municipality responsible for overseeing planning matters in Thembisile Hani. Where assumptions were made regarding the Assessment Criteria for Land Use Applications in Thembisile, the Town Planner from the company that was commissioned to develop the criteria, Mr Herman Strydom of Plan Associates Urban & Regional Planners, was consulted for confirmation and validation.

4.4.1 Conclusions Regarding the Reasons for the Submission of Less Formal Land Use and Land Development Applications in both Traditional and Urban/Proclaimed Areas

It is found that the reason why most residents of Thembisile Hani, whether from traditional or urban/proclaimed areas, cannot compile a technically complete application, and if referred to a professional planner they also cannot afford the fees charged by these professionals [Mashishi, I. (personal communication 3 October 2015)]. According to [Mangani, J.P. (personal communication 5 October 2015)] the Nkangala District Municipality also shares the same sentiments that the reason why residents in Thembisile submit less formal applications is that most of them do not understand the technical and legislative aspects that must go into a land use and land development application and they also cannot afford to undertake such a process. Based

on the above, this also limits the ability and capacity of the community to participate, engage and interrogate the application process on merit [Mangani, J.P. (personal communication 5 October 2015)].

4.4.2 Conclusions around the Significance of the Legal Status of Settlements within the Thembisile Hani Local Municipality

With most of the land in Thembisile Hani being state-owned land, the Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986) does not apply in most areas and as a result there was no other alternative manner to assess the applications that are from Ordinance 15 of 1986 excluded areas [Mashishi, I. (personal communication 3 October 2015)]. Moreover, the applicants from traditional areas did not have ownership over their allocated land and this would pose a serious challenge in as far as obtaining ownership power of attorney from the National Government (Department of Rural Development and Land Reform) to lodge a land use or land development application [Mashishi, I. (personal communication 3 October 2015); Mangani, J.P. (personal communication 5 October 2015)]. Based on the above-discussed responses from the Nkangala District Town Planner and from the former Town Planner of the Thembisile Hani Local Municipality, the legal status of settlements, as well as the ownership of the underlying land, is a key pre-requisite to dealing with land use and land development applications.

4.4.3 Conclusions around the Thembisile Hani Local Municipality's Inability to Enforce its Wall-to-Wall Land Use Scheme and Manage Contraventions within the Municipality

The main challenges which were the reasons why the Municipality could not effectively enforce its land use scheme is due to the fact that there was no land use management by-law and that no legal action would be taken by the municipality against residents who contravene the land use scheme [Mashishi, I. (personal communication 3 October 2015)]. Routine land use and building inspections are performed and once contraventions are detected, notices of transgression against the municipality's land use scheme would be served to the culprit owners, even after undertaking the above-discussed actions against transgressors, they would still not comply [Mashishi, I. (personal communication 3 October 2015)]. An example of this challenge was experienced when a local businessman was caught building an unauthorized mortuary structure without an approved land use, land development or building plan application (*ibid*). After exhausting all procedural means to notify the businessman to halt all construction works, they proceeded with the development to completion regardless because they knew that the municipality does not have the legal capacity to take them to court (*ibid*).

Most of the traditional areas within the municipality are not reflecting on the land use scheme due to their informal nature with no cadastral registration [Mangani, J.P. (personal

communication 5 October 2015)]. There is a lack of understanding of the purpose of the Thembisile Hani Land Use Scheme by the Local Municipality as well as how it should be enforced in traditional areas [Mangani, J.P. (personal communication 5 October 2015)]. This therefore leads to a situation where the municipality relaxes its enforcement of the land use scheme within traditional areas (*ibid*). This therefore means that in effect, proper land use management in most parts of the Thembisile Hani Local Municipality is very minimal.

4.4.4 Conclusions and Assumptions around the Assessment Criteria for Land Use Applications in Thembisile Hani Municipality and its Underpinning Applicable Piece of Planning Legislation

The Thembisile Hani Local Municipality, with the assistance of the Nkangala District Municipality attempted to develop an Assessment Criteria for Land Use Applications but it was not completed and could therefore not be used as a land use management tool [Mashishi, I. (personal communication 3 October 2015)]. According to Mr Herman Strydom of Plan Associates, the town planning firm that was commissioned to develop the assessment criteria, the fact that the criteria was not completed was based on two important reasons. The first reason was due to the fact that the Nkangala District and Thembisile Hani Councils could not adopt the criteria [Strydom, H. (electronic communication 23 October 2015)]. The reason for this was that the Department of Rural Development and Land Reform (DRDLR) had to approve the principle criteria, as the custodians to which all state-owned land is vested [Strydom, H. (electronic communication 23 October 2015)]. The DRDLR further had to authorise the Nkangala District and Thembisile Hani municipalities to deal with the applications and keep a database of all approvals [Strydom, H. (electronic communication 26 October 2015)]. These requirements could not be fulfilled at the time because the DRDLR was under a lot of work pressure and was unable to delegate officials to engage with the development and finalisation of the assessment criteria [Strydom, H. (electroniccommunication 26 October 2015)].

Based on the above, the second reason for non-completion of the assessment criteria is that the Department of Cooperative Governance and Traditional Affairs (CoGTA) then commenced with the development of by-laws for the Thembisile Hani Local Municipality that will contain provisions that will recognise informal land ownership which would allow for the community to apply for change in land use rights, and for the Nkangala District and Thembisile Hani municipalities to be able to deal with such applications [Strydom, H. (electronic communication 23 October 2015)]. However, due to the fact that the criteria was based on best practices emanating from the Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986) together with the Interim Protection of Informal Land Rights Act, 1996 (Act 31 of 1996) and the Thembisile Hani Land Use Scheme, 2010, Ordinance 15 of 1986 as the primary planning legislation did not have provisions that will legitimize the implementation of the assessment criteria once complete [Strydom, H. (electroniccommunication 23 October 2015)]. The rationale

behind the assessment criteria was based on two aspects. The first being that most of the land within the municipal area is vested with the National Government of South Africa (the DRDLR) and it is further under the inherited authority of tribal/traditional leaders [Strydom, H. (electronic communication 23 October 2015)]. The second reason is that the people within the municipality have limited resources and capacity (financial and technical), therefore making the application for the change in land use very difficult [Strydom, H. (electronic communication 23 October 2015)]. Responses from Mashishi, I. (personal communication 3 October 2015) and Mangani, J.P. (personal communication 5 October 2015)] also emphasised the same reasons.

The purpose of the assessment criteria was therefore meant to allow a person to apply for a change in land use without having to go through the entire state land release process [Strydom, H. (electronic communication 5 October 2015)]. This mechanism would therefore allow the applicant to execute a land use application and provide the municipality with a mechanism to execute land use control [Strydom, H. (electronic communication 23 October 2015)].

4.4.5 Conclusions around the Non-Approval of the Less Formal Land Use and Land Development Applications

A reason for the non-approval of the pending less formal land use and land development applications is due to the fact that the municipality had not fully developed and adopted criteria to assess them on [Mashishi, I. (personal communication 3 October 2015)]. Another reason is that since the Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986) did not apply in most areas, these applications could not be assessed and would have to be referred to either Province or National departments who have jurisdiction to release the affected land in order for the Municipality to proceed with assessing the applications [Mashishi, I. (personal communication 3 October 2015)]. This would therefore be the responsibility of the applicants to approach the relevant Departments and comply with their requirements in order for the land to be released to the applicants. In other words, regardless of the fact that the Thembisile Hani Local Municipality had a land use scheme in place, the municipality was still not able to assess applications from the state land areas (*ibid*). Furthermore, [Mangani, J.P. (personal communication 5 October 2015)], to a certain extent, attributes the inability from the Thembisile Hani Local Municipality to deal with most of these undeterminable less formal applications to the fact that both the Town Planning officials and the Management in Planning within the municipality do not have a broad and substantive understanding of the purpose of land use scheme procedures, and how these apply in state land areas under traditional leadership. This therefore leads to a situation where the planning officials are unable to firmly and clearly advise the community, more especially the applicants, on the correct application procedures to follow in a way that the community will be able to comprehend [Mangani, J.P. (personal communication 5 October 2015)].

The Town Planning Section at the Thembisile Hani Local Municipality as well as the Nkangala District Municipality could not assess any other application except an application that is submitted in terms of applicable planning legislation[Mashishi, I. (personal communication 3 October 2015); Mangani, J.P. (personal communication 5 October 2015)]. Mashishi, I. (personal communication 3 October 2015), was quoted as saying “even in terms of law, not anyone can draft a legal contract, so why should it in our case everyone do as they please?” as well as saying “their applications were not up to standard”. According to Mashishi, I. (personal communication 3 October 2015) and Mangani, J.P. (personal communication 5 October 2015) the less formal applications are acknowledged and they are referred back to the applicants with advise that they need to submit full applications in the prescribed format, however, the spirit of both respondents echo the fact that this becomes too much of a burden to the applicants, both in terms of understanding and affordability.

Most of these types of applications are acknowledged but a decision cannot be determined and this situation is always explained to the applicants as to why their applications cannot be assessed [Mashishi, I. (personal communication 3 October 2015); Mangani, J.P. (personal communication 5 October 2015)]. Applicants are further advised on their acknowledgement letters to consult with the relevant Provincial or National departments with regards to their applications (*ibid*). Even though this was the standard practice, there are some applications that would get a verbal go-ahead from the town planning officials in Thembisile Hani [Mashishi, I. (personal communication 3 October 2015)]. These would be those applications that will have no major detrimental impacts and does not significantly change the context of the affected area(*ibid*). Mashishi, I. (personal communication 3 October 2015) was quoted as saying “We were always caught in between. We have to follow legislation, at the same time we have to help these people, you understand” as well as saying “sometimes if you don’t allow them, like in a controlled manner, they will do it anyway, so it is better if you just allow them”. The District Planning Department however took a resolution that the less formal applications in the form of less technical letters shall not be recognised and the Thembisile Hani Local Municipality is therefore also compelled not to have any determination of such applications as they do not have a mandate to do such, neither delegated by the District nor permitted by legislation [Mangani, J.P. (personal communication 5 October 2015)]. Therefore based on the evidence extracted from the response of Mashishi, I. (personal communication 3 October 2015), versus the fact that Table 2. of the quantitative findings show that all the less formal applications were not approved, it can be assumed that some of the rights applied for were exercised by the applicants anyway.

4.5 Tribal/Traditional Land Allocation and Land Use and Development Mechanisms in Thembisile Hani: Responses from the Manala-Makerana and the Manala-Mgibe Tribal Councils

In an attempt to explore the logics and practices which characterise land allocation, land use and land development mechanisms and procedures in areas under tribal/traditional authority, the Manala-Makerana, based in KwaMhlanga, and the Manala-Mgibe Tribal Councils, based in Empumalanga were consulted. These are two (2) out of the seven (7) recognised tribal councils within the Thembisile Hani Local Municipality. The logics which emanate from the responses of both tribal councils are discussed in the context and in comparison to formal legislated processes employed by municipalities.

4.5.1 Land Allocation Procedures by Tribal Councils

When members of the community apply to the tribal council for the allocation of land, in most cases for purposes of either residential, business or place of public worship, the first aspect that is considered is the applicant's lineage to that particular community [*'Ndabezitha'* Chief Mabena, SJ. (telephonic communication 26 October 2015); *'Ndlovikazi'* Queen Mabena (telephonic communication 26 October 2015)]. The most common mechanism is to further verify if the land to be potentially allocated to an applicant has not previously been allocated to anyone [*'Ndabezitha'* Chief Mabena, SJ. (telephonic communication 26 October 2015)]. Once confirmed that the subject land has previously not been allocated, the tribal Council therefore grants permission for occupation to the applicant in the form of a Permission-to-Occupy (P.T.O) agreement as discussed earlier in this chapter [*'Ndabezitha'* Chief Mabena, SJ. (telephonic communication 26 October 2015)]. According to *'Ndlovukazi'* Queen Mabena (telephonic communication 26 October 2015), still on the same subject of land allocation procedures, after the tribal council has identified land that is suitable to be allocated for occupation, the Local Municipality (Thembisile Hani) is engaged in order to verify if the identified land is indeed suitable for occupation, as well as to also determine if the municipality will be able to provide the necessary infrastructure.

Based on the responses from both tribal councils, it is clear that there seems to be some differences and inconsistencies in the manner in which different Councils manage the process of land allocation. As much as, based on the findings and common observations as discussed in the problem statement, there seems to be a level of disregard, by tribal councils, of laws and regulations governing the allocation of land, there is also some degree of willingness to at least comply with formal processes imposed by the municipality. For example, as discussed earlier in this chapter, with most of the land under tribal authority vesting on the Province or National Government, the only process for land allocation or disposal that the Thembisile Hani and any other Local Municipality recognises, is the Provincial or State Land Release process [Mashishi, I. (personal communication 3 October 2015); Mangani, J.P. (personal communication 5 October 2015)].

4.5.2 Land Use and Land Development Application Procedures Followed by Tribal Councils

When the community requests permission from the tribal council to use their allocated land for any other use other than residential, the applicants are referred to the Local Municipality to seek advice and guidance on the planning process that they need to undertake and comply with [‘Ndabezitha’ Chief Mabena, SJ. (telephonic communication 26 October 2015); ‘Ndlovikazi’ Queen Mabena (telephonic communication 26 October 2015)]. The most common of the land use permissions sought by the community are ‘Spaza’ Shops, Taverns and Places of Public Worship [‘Ndabezitha’ Chief Mabena, SJ. (telephonic communication 26 October 2015); ‘Ndlovikazi’ Queen Mabena (telephonic communication 26 October 2015)]. The tribal Council supports most of these applications due to the fact that they are deemed as vital livelihood strategies for the community [‘Ndabezitha’ Chief Mabena, SJ. (telephonic communication 26 October 2015)]. The tribal council ensures that they have a representative that will be involved in the entire application process, especially when it is a very high-impact development such as a Shopping Mall [‘Ndlovikazi’ Queen Mabena (telephonic communication 26 October 2015)]. As discussed previously in this chapter, often the tribal Council’s support for a land use or development application is declared in the form of a Tribal Council Resolution [‘Ndlovikazi’ Queen Mabena (telephonic communication 26 October 2015)].

It is clear from the above-discussed mechanisms that there is no specific criteria that is used by tribal councils in assessing land use and land development applications within their jurisdiction. Instead, the facilitation and major decision-making of the entire application process is deemed to be the sole responsibility and function of the municipality.

4.6 Conclusion

Based on the qualitative analysis of the findings drawn from the round of interviews, most of the assumptions and conclusions made from the findings of the quantitative analysis have been qualified. The qualitative study has been successful in responding to the five (5) key basis points of analysis derived from the quantitative study and this has therefore gone a long way in as far as making appropriate and context-specific recommendations and conclusions. This chapter has gone a long way in deriving the key aspects of this research study, and that are worth proposing achievable recommendations and conclusions. The key aspects that the final chapter deals with are as follows: 1.) the ownership and authority aspects associated with managing the use and development of land in a semi-urban context; 2.) capacity and resource constraints associated with land use and land development in a semi-urban context; and 3.) embracing the realities of context in land use and land development management.

CHAPTER 5

Conclusion: Implications and Recommendations for Current and Future Research

5.1 Recommendations

5.1.1 Shifting Focus from Ownership and Authority to the Management and Use of Land

Based on the findings which came out of the quantitative and qualitative study, this research report is therefore of the view that in order to manage the resistance by traditional leaders, the use and management of land should not depend on the ownership of same. There are two areas that the above recommendation will respond to. The first is that this will eliminate the obstacles and technicalities associated with state-land ownership, and which often prevents the majority of the rural public from exercising their desired land use and development rights. Secondly, based on the positive responses from the tribal councils that were interviewed in this research study, there is a sense of willingness to actively engage and cooperate with the municipality in as far as land use and land development management matters are concerned. Although there seems to be an embedded sense of ownership and authority in some of the tribal Councils' responses, the above recommendation should therefore be the starting point. Furthermore, current ongoing debates centering around resolving this resistance of the SPLUMA by traditional leaders should identify and focus on agreeing on a common goal of achieving sustainable land use and resource management, spatial transformation, and context-specific land use management mechanisms that the majority rural community can comprehend and embrace.

The key fundamental principle which underpins the above-discussed recommendations, and which presents a counter-argument to what Dale *et al* (2000) contends, is that the private ownership of land need not be an important structural attribute for land use management systems in semi-urban municipalities. In other words, the ownership status of land in such contexts should not have a bearing on the applicant's flexibility to exercise their land use choices. This, according to Strydom, H. (electronic communication 5 October 2015), can therefore be realised by recognising the informal or insecure ownership of land which is characteristic of state land areas under traditional leadership. This will therefore allow the communities in such contexts to apply for changes in land use rights [Strydom, H. (electronic communication 5 October 2015)].

5.1.2 Embracing the Realities of Context in Land Use Management

The Australian case of Indigenous Land Management (ILM) practices has provided a pivotal element in coming up with key recommendations that can assist with the development of context-specific land management mechanisms in a semi-urban context. Embracing the local contextual realities is the first step towards guiding the proposed simplified and context-specific criteria for the majority of residents in a semi-urban municipality, as long as such a criteria will put emphasis on the protection of the broader community and environment from potential negative impacts. Instead of drafting prescriptive land use management laws in the South African context, we need laws that will recognise and accommodate land use practices under traditional leadership, as long as this is under the guiding principles underpinning the laws. Such principles should also include the universally accepted guiding principles of sustainability. The above-

mentioned recommendation is crucial as research in the country has shown that there has been some form of land use management in traditional areas that has been fused with some degree of customary responsibility and authority, with the participation of tribal Councils in the formal planning process.

With the participation of traditional authorities in the Integrated Development Planning process, including the development of the Spatial Development Frameworks as a component thereof, there shouldn't be any non-compliance with the Spatial Development Framework by traditional authorities. The fact that there is non-compliance with the Spatial Development Framework exposes a deeper problem or shortcoming in the way in which traditional authorities participate in the development of same. The participation of traditional leaders in the above-mentioned process is very crucial in order for them to realise how important it is to comply and be guided by the Spatial Development Framework in all their land use and land allocation practices. Based on the above-mentioned, there is a need for a shift away from a passive approach by the municipality to the involvement and participation of traditional leaders in the establishment of the municipality's regulatory land use management system. The municipality should adopt a negotiated approach to land use management for areas within the municipality that are within traditional authority jurisdictions. This will entail the formulation of a special criteria for the regulation of land use and development in the priority areas, as long as the criteria is informed by the underpinning principles and provisions of the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013). Based on these recommendations, the operationalization of which depends on the implementation of the SPLUMA, the resistance of the SPLUMA by traditional leaders should however not be ignored.

It is important to note that this research study has uncovered that the main challenge which also emanates from the problem statement is not only the coexistence of municipal councils and traditional authorities within the space of land use and development management in a semi-urban and former homeland context. The main problem however, is that apart from the laws that are administered by municipal councils in as far as land use management is concerned, there are also provincially administered laws which serve to regulate land use management in former self-governing and homeland areas. These provincially administered pieces of planning legislation have thus been able to accommodate the role of traditional leaders. In practice and from observation however, in the context of the above-mentioned, traditional leaders have to an extent operated outside of this regulatory framework. Another problem with regards to the above is that despite the Memorandum of Understanding (MOU) entered into by and between the Mpumalanga Provincial Department of Cooperative Governance and Traditional Affairs (CoGTA), the South African Local Government Association (SALGA) representing all local municipalities, the Mpumalanga Provincial House of Traditional Leaders, as well as the South African Police Services (SAPS) in March 2014 (See APPENDIX A), there is continued resistance from the Mpumalanga House of Traditional Leaders as well as the National House of Traditional Leaders against the SPLUMA.

Based on the resistance from the House of Traditional Leaders, the successful cooperation between local municipalities and traditional leaders in land use and land development management as well as the implementation of the SPLUMA is compromised. It is therefore clear that the above-mentioned MOU is unlikely to yield any positive cooperative results based on the sentiments from traditional leaders within the province. This is therefore a gap that local municipalities that are characterised by traditional areas need to fill in terms of Regulation 19 of the SPLUMA. This means that in local municipalities where there is this kind of resistance, service level agreements would have to be entered into between Municipal Councils and Traditional Councils, and these agreements will clearly set out the roles and functions of both institutions in land use and land development management matters. This type of cooperative relationship will ensure that better and more integrated decision-making between the Provincial and Local spheres of government, including traditional structures, is achieved. As much as the above-mentioned recommendations of this research study embrace a more synergistic and cooperative approach to land use and land development management, they need to be considered in the context of Section 2(2) of the SPLUMA. Section 2(2) of the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) reads as follows:

“(2) *Except as provided for in this Act, no legislation not repealed by this Act may prescribe an alternative or parallel mechanism, measure, institution or system on spatial planning, land use, land use management and land development in a manner inconsistent with the provisions of this Act.*”

(Department of Rural Development and Land Reform, 2013: 11 and 12).

As illustrated through the Thembisile Hani Local Municipality case through the lens of a prescriptive land use management regulatory law system, instead of viewing the existing and prevalent parallel land use and development application procedures in municipalities with predominantly traditional areas as a problem, there is an opportunity to find synergy between both types of procedures. This is also primarily due to the fact that the constitutional recognition of traditional leaders observing a system of customary or indigenous law and situated on land within the area of jurisdiction of an elected local government has signalled a protection of the role and authority of traditional leaders in structures of governance. The above recommendations are also in line with the provisions of the Spatial Planning and Land Use Management Act, 2013 and Regulations (Act 16 of 2013) (SPLUMA). Based on the quantitative analysis of this research report, the fact that 100% of the received formal land use and development applications have been determined, versus the 0% of the less formal applications determined, should not be viewed as a problem but rather as an opportunity to come up with simplified and context-specific criteria and procedures that will make the latter determinable. The above further reinforces the need for a synergistic approach to dealing with parallel land use and development application procedures in a semi-urban municipality subject to compliance with Section 2(2) and Regulation 19 of the SPLUMA.

In other words, semi-urban local municipalities may, as a solution to the inconsistent and parallel land use and land development application systems, develop simplified application procedures with the formal procedures as long as they are not inconsistent with the guiding development principles and provisions of the Spatial Planning and Land Use Management Act. An example of the above-mentioned is found currently with the interim measures put in place by the Mpumalanga Province by the Department of Cooperative Governance and Traditional Affairs (CoGTA) in preparation for the implementation of the SPLUMA, this follows a legal opinion that was sought by the Department (see APPENDIX G). Local municipalities within the province will continue their land use and land development management procedures in terms of the Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986) and any other current Provincial Planning legislation until they have completely established the necessary systems to commence with the implementation of the SPLUMA (see APPENDIX G). This arrangement is meant to be an interim measure, and is in no way intended at delaying the achievement of the intended outcomes of transformation, as embedded in the Constitution of the Republic of South Africa and the SPLUMA. As soon as Local Municipalities finalise the establishment of all their systems required for the implementation of the SPLUMA, the above-mentioned intended outcomes will be realised.

These recommendations capture the spirit of the incremental approach advocated by this research study, towards fully achieving a uniform and integrated planning system. Based on the findings from the responses presented in this research study, emanating from the side of the Local Municipality as well as the Tribal/Traditional Councils, there is only one applicable and recognised criteria and procedure for evaluating land use and land development applications. Such criteria is one which is prescribed in terms of applicable planning legislation, a municipality's Spatial Development Framework, municipal by-law and a Land Use Scheme. Simplified and context-specific procedures can be established, as long as these are not inconsistent with the provisions of Section 2(2) of the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013).

5.1.3 Addressing the Capacity and Resource Constraints Associated with Land Use Management in a Semi-Urban Municipality

With reference to the findings from both the quantitative as well as the qualitative studies of this research, the recommendations which are aimed at addressing the capacity and resource constraints have focused on the knowledge and understanding of the community, traditional leaders, local political leadership and municipal planning officials, as well as the community's affordability of land use management procedures respectively. In addressing the capacity challenge, extensive educational and awareness programmes with all of the above-discussed interested and affected parties must be embarked upon. Such programmes must also involve the role of the relevant Provincial and National Departments such as the Department of Cooperative

Governance and Traditional Affairs (CoGTA) as well as the Department of Rural Development and Land Reform (DRDLR). Through these capacitation programmes, the broader community must be made aware of the benefits associated with complying with formal and applicable land use management regulations and application procedures, whether simplified, flexible or otherwise. This can also be aided by the municipality's willingness to compromise and provide incentives to complying community members.

In addressing the affordability aspect of the community, two crucial aspects with a major financial-bearing impact are key. The first aspect involves the simplification of application procedures, especially those applications that will have a low and no material impact on the broader context of the community. This will assist by eliminating the need for all the expensive requisite specialist studies that are unnecessary for low impact applications, thus resulting in a massive cost-saving by the community for a land use and development application. The second aspect is to ensure that local municipalities adopt town planning application tariffs that are reflective of the demographics of its context. This will be achieved by lowering the town planning application fees that the community is being charged for the submission of an application for determination.

Moreover the above-discussed recommendations, key lessons can be drawn from the case studies of the Countries of the Pacific Islands and Tanzania, who have successfully adopted a cooperative, collaborative as well as a bottom-up approach to the use and management of land in general, amongst all parties affected by the latter.

5.2 Concluding Remarks

The main conclusions of this research report have been derived from developing an understanding of the historical and current Provincial pieces of legislation on spatial planning and land use management within the Mpumalanga province and the rest of the country. Therefore, the recommendations which are derived from the conclusions of this research study will seek to aid the currently on-going research around the subject of land use management systems in traditional areas. The recommendations contained herein also respond to the challenges which emanate from the grey areas that continue to exist due to the parallel land use and land development application procedures found in a semi-urban municipality. The main objective of these recommendations is to contribute to an emerging debate within the Mpumalanga Province and country as a whole around the development of more appropriate and context-specific pieces of planning legislation and processes. This is to ensure the facilitation of better land use and development management and the delivery of development in a semi-urban municipal context.

Based on the above-mentioned, this research study has thus discovered a significant problem around the subject matter under study, and this has been through historical findings from

planning legislation and practice within the Mpumalanga province. With regards to the above, the province inevitably found it quite challenging to preserve the effective regulatory spirit of the planning laws that were applicable in former homeland and former self-governing territories within the current democratic wall-to-wall municipal jurisdictions. As much as the province had assumed the role of administering most of these past planning laws, local municipalities in terms of the Constitution of the Republic of South Africa, 1996 (Act 103 of 1996) have also been bestowed with both executive and legislative authority over planning matters within their municipal jurisdictions. The uncertainty of semi-urban municipalities in Mpumalanga with regards to the extent to which their planning jurisdictions end has opened a wide window for traditional leaders to operate outside of any applicable land use management and planning regulatory framework. This problem is also exacerbated by the province's passive administration of all the past planning laws assigned to it. With regards to Baylis's argument of the work that is still needed to relate planning and land use management schemes to the local circumstances of traditional areas, this further strengthens the call made by this research study of a negotiated approach to planning and land use management in a predominantly traditional and semi-urban context.

Based on the above-discussed recommendations, in the context of the Thembisile Hani case study, perhaps a solution to the problem identified by this research study in a semi-urban context, is one which will not base the diagnosis of the problem on right or wrong. The fact that there is a serious lack of understanding, knowledge, affordability and inability of the community to comply with former land use management prescriptions needs to be embraced, whilst incrementally introducing the latter and educating the local political leadership, the traditional leaders, the community as well as the municipal planning officials. A crucial prerequisite to actualising the above is the simplification and the context-specification of application procedures in the main areas of priority for such. The cross-reference approach that was applied for the purpose of this type of research study was a key cornerstone in responding to the main research question of this study in a multi-dimensional manner.

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APPENDIX

**APPENDIX A: MEMORANDUM OF UNDERSTANDING BETWEEN CoGTA,
SALGA, MPHTL AND SAPS [SEE APPENDIX CD AT THE BACK
COVER OF THE THESIS]**

**APPENDIX B: INTERVIEW TRANSCRIPTION – MS MASHISHI I. [FORMER
TOWN PLANNER, THEMBISILE HANI LOCAL
MUNICIPALITY]**

Interview Transcripts for the Qualitative Analysis Phase

Personal Communication 1:

Participant: Ms Itumeleng Mashishi

Designation: Former Town Planner – Human Settlements and Town Planning, Thembisile Hani Local Municipality

Date: 3 October 2015

Time: 15:00 pm

Venue: Standerton (Lekwa)

1. Does the Thembisile Hani Local Municipality have a wall-to-wall land use scheme that covers the entire municipal space?

Response: Yes, it does.

2. If yes, when was it developed and adopted by the Municipal Council?

Response: It was adopted in 2010.

3. Is this land use scheme also applicable in communal or traditional areas under traditional leadership?

Response: No, since it was done in terms of the Ordinance (Referring to the Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986)).

4. Are the land use and development application procedures in terms of the land use scheme applicable to both formal/urban areas and traditional areas?

Response: No they are not. I think it relates to the first, like the previous questions that I've just answered. Like I said before, some of the properties, like they are not proclaimed. So some of the requirements, like, they are not applicable, for example they don't have ownership to their properties.

5. What measures has the municipality put in place to ensure that the land use scheme is enforced and complied with within the entire municipal space?

Response: I think it will be the, the thing we were just talking about (referring to our earlier conversation on the Assessment Criteria for Land Use Applications in Thembisile Hani, prior to the commencement of our interview), they developed that, kana keng? (Sesotho question meaning ‘What is it again?’), the assessment criteria, ya.

- a. (Question that focuses on enforcement and compliance) Otherwise Itu (short expression for ‘Itumeleng’), in terms of maybe detecting contraventions if people do not comply with the land use scheme, what measures were there?

Response: Well, what we would do was, we would go and inspect like now and then, and then if we see that there are contraventions we would write, like, contravention letters. But the main challenge was, like, the legal part of it. Like, we would write contravention letters but if they don’t act, then it would be a problem because we didn’t have any...like, the process would just end with that letter and going forward we can’t do anything. ‘Cause I remember there was even this case, like, there was this guy who wanted to build a mortuary and then there was no application that was submitted, and then we even went on site just to find out ‘gore’ who gave him permission and all of that. And then we wrote him a letter to get him to stop, but he didn’t stop, he even continued up until, ya, because legally we can’t challenge him.

6. Does the municipality have land use management by-law?

Response: At the time we didn’t (referring to her employment tenure in Thembisile Hani).

7. If yes, are there any contraventions that committed against the by-law or the land use scheme?

Response: It will be land use scheme (clarifying that the part of the question on the by-law is not applicable). Ya there are.

8. How does the municipality deal with case of contraventions against the by-law or land use scheme?

Response: I think I’ve already.. (clarifying that she has already answered a similar question).

9. Based on the status of all the pending less formal applications submitted, none of them seem to be approved. What is the reason for this?

Response: Emm..like I said, ‘ankere’ we tried to develop that criteria (referring to the Assessment Criteria for Land Use Applications in Thembisile Hani) so it was not final. So we could not use it, and I’ve already mentioned the fact that, uuhm..the Ordinance [referring to the Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986)] was not applicable, so like, we didn’t know how to assess those applications. Even the issue ya ownership was a problem, most of them we had to refer them to province [referring to the Department of Agriculture, Rural Development and Land Administration (DARDLA) for applications that are subjected to provincially administered planning legislation and jurisdiction] or national [referring to the Department of Rural Development and Land Reform (DRDLR) for applications that must first be subjected to a state land release process before determination] to acquire that land first before we can proceed with the application. Some of them, like, you’d advise them, like you’d find gore like they stay in KwaMhlanga, they have formal stands and all of that, but the issue, like they didn’t have money for those..kirra (Sipedi for ‘I mean’) some of them they don’t know how to compile applications obviously. You’d refer them to a town planner but they don’t have, like money, they can’t afford like the..the town planning fees. Kirra even according to us, when we say, like, an application is complete, it has to be done in a certain way. So once its not like that, like...and only the professional planners know how to compile those.

But do you think its wrong, like, for us to have, like, standards for how our applications should be and all of that?

My Response: I don’t think its wrong.

Itumeleng’s Response: ‘Cause I’m thinking, like, in terms of law, not everyone can draft a legal contract. So why should like in our case everyone...ya (meaning that why should everyone do as they want).

My Response again: I don’t think its wrong weitsi (Sesotho for ‘you know’) Itu because if you look at the implications of any development, ‘yabona (Zulu for you see), there are serious implications, there are big implications, and its law hantle ntle (Sesotho for exactly). The only thing that can regulate that is law.

10. Based on the above, are there any applications of this nature that have ever been approved?

Response: No.

11. Are there any of the applications of this nature that have been acknowledged by the municipality and the status of each application communicated with the applicants?

Response: Ya..we've..like most of them, like on this (referring to the table received from the Thembisile Local Municipality on the less formal land use and land development and consent use applications) we drafted some acknowledgement letters, but like the process just ended there with acknowledgement letters. There was nothing done. And then some of them (referring to the applicants of the above-discussed applications) who don't understand they'll even come to the office, then we'll explain..ya. Some, even on the acknowledgement, we'd tell them what to go to the relevant departments..ya.

12. If there are none that have ever been approved nor acknowledged, what would be the main reason for the non-attendance of these applications? (Reflect in the qualitative analysis write-up about the pressures and forces that a planner faces either for or against and application, or both and which essence results in stagnation and inaction in as far the assessment and determination of an application is concerned).

Response: I'll be repeating what I've already said. 'Cause the main issue ya Thembisile, Ordinance doesn't apply. So we didn't have any other, ketla reng (Sipedi for 'what will I say'), like, the reason why they even decided to come up with a criteria, like, there was no any other way to assess the applications because Ordinance did not apply. Even the applications were not up to standard, they didn't have ownership to those properties, so.. Ibile (Sipedi for 'however') I don't think the issue of the applications being up to standard, like, is an issue. Ke hore (Sipedi for 'its just that') the problem is that Ordinance doesn't apply. We'd tell them, make your applications to be up to standard, but in terms of which legislation because Ordinance doesn't apply.

Apart from that Itu ne, mhlawumbe wena as the planner, sitting ko Thembisile, uhhm.. From your discretion maybe, receiving this application knowing exactly gore this is the intention of this person, yabona. Obatla tavern or spaza shop, yabona. I mean Thembisile and JS Moroka (referring to the neighbouring Dr JS Moroka Local Municipality) it's a unique context where sometimes ke survival yabona batho bao yabona, it's a livelihood matter. You get this letter, you have this piece of legislation, it does not comply in any way in terms of this piece of legislation, uhhm.. Was there any pressure nje, from both sides, either from not complying with the legislation, or from the need coming from this person or maybe councillors saying 'no maan, thosang batho', whatever you know, but you're the planner there in between.. those forces. Would you say that would basically be

main reason why there in most cases be no action as much as we know gore at face value you can't assess this application vele, ku checklist it's a no, ya, but using your discretion maybe saying ey..you know there's a need, there's a genuine need you know, le kamo I'm a planner?

Itumeleng's Response: Ke gore we were always caught in between. We have to follow legislation, at the same time you have to help these people you understand. But, like, for your small applications, your consent (referring to minor consent use applications) sometimes we would just go against the law, mara on things that are not major you understand, on things that won't change, like, the context of the area. Most of the time we were in between, like, someone coming to you everyday pleading, pleading but you can't go against the law. Sometimes if you don't allow them, like, in a controlled manner, they'll do it anyway. So its better to just allow them you understand, ya.. 'Cause I think ke the whole point of town planning even, like we know people want to develop but let's help you develop in a controlled, ya..

**APPENDIX C: INTERVIEW TRANSCRIPTION – MR MANGANI J.P [TOWN
PLANNER, NKANGALA DISTRICT MUNICIPALITY]**

Personal Communication 2:

Participant: Mr Johan Prince Mangani

Designation: Town Planner – Development and Planning, Nkangala District Municipality

Date: 5 October 2015

Time: 18:29 pm

Venue: Middleburg

[Interview conducted in english, with the use of some untranslated IsiZulu slang and often calling the participant by nick-name]

1. Does the Thembisile Hani Local Municipality have a wall-to-wall land use scheme that covers the entire municipal space?

Response: Ya, mm.

2. If yes, when was it developed and adopted by the Municipal Council?

Response: 2010.

3. Is this land use scheme also applicable in communal or traditional areas under traditional leadership?

Response: Ya, in theory its applicable..not practically

- 3.1 Do you care maybe to, just to explain the rationale behind that?

Response: No, I think in my analysis or in my view, most of the traditional areas, although it's a wall-to-wall scheme, they are not reflected on the scheme. So you find that certain properties are not appearing on the scheme. I think the issue of ilack of understanding of the purpose of the land use scheme and how to apply it kuma rural area, or kuma traditional areas, it channel us to a situation whereby we become very relaxed kuma traditional areas.

4. Are the land use and development application procedures in terms of the land use scheme applicable to both formal/urban areas and traditional areas?

Response: Currently that's what's happening, although I think we have a challenge, because obviously you cannot expect ama customary lands or tribal areas to follow the same procedures as urban areas because there's an issue of affordability and knowledge and the type of developments taking place in a formalized area and an unformalized area is two different things. So currently we even has a issue, err, if ownership because most of the tribal land areas in terms of the title deed, is owned by the national government. Then we are faced with a situation whereby a person will try to apply for a certain type of land use but without any consent from the owner which is the state. So obvious the scheme, whenever they drafted it they never thought about how to accommodate or best differentiate the different contexts that exist in municipalities. So hence now with our by-law we've already introduced that thing of incremental introduction of land use, so we specify certain land uses, to say this one must constitute a full application. So I think our thinking in choosing the type of land use was on based two factors. The first one was, uhm, the impact of development, and the second one was the financial affordability of the particular developer. Infact we have three, three factors. The other one is any development that will trigger the environmental assessment or authorization, must go through a full EIA. But in a nutshell, they took a blanket approach when they were drafting the land use scheme. It doesn't matter whether its tribal or formal, it just go through the same procedure, there's no exception or special treatment.

- 4.1 Ehh, ehat was interesting, ehh Johan ne, kule, in your criteria just as a build up in what you were saying, I just wana clarify something. So where, where you've prioritized areas kutsi you want simplified procedures, the main criteria becomes the impact of the proposed development ne?

Response: Ya.

- 4.2 And then there was a second issue that I missed, from that what..

Response: We check kutsi, obvious as much as we go for impact, but the financial or affordability of the person who will be doing that land use. For example we assume that the person who is doing a funeral parlour doesn't have much impact but that person must aff..can afford a full application. A person who's doing a huge supermarket will afford, so somewhere somehow its not about the impact, but these people can afford. For example your cell mast, these companies of Vodacom they do afford, but cell mast doesn't have any high impact on the community, so, that's why I'm saying we used different criterias.

- 4.3 Okay, very interesting.

5. Alright, eh, what measures has the municipality put in place to ensure that the land use scheme is enforced and complied with within the entire municipal space? So in terms of, eh, maybe I know from a district level obviously, eh, nina niku oversight. Okay the functions do vest upon you, but in terms of ensuring kuthi, eh, through I monitoring and evaluation maybe, and assessing kutsi, eh, how is planning actually happening on the ground. Ehh, what measures are there nje in terms of ensuring kutsi iya enforce-wa le land use scheme, and people are complying, like detection of contraventions and all of that, yabona?

Response: No, to be honest currently, there's none..there's no system in place. We..all the municipalities in the district, we are so reactive. We depend on people maybe complaining or submitting any complaints. So, there's no, like your land use inspectors or any formal form to be proactive so basically there's nothing, there's no system in place.

- 5.1 To..ensure that proactive response, siyalindza, and react? Okay.

Response: Nakhona we depend to the community, if someone say, uhh, this land use is not inline with the scheme whatever.

6. Does the municipality have a land use management by-law?

Response: No, not yet. We are in the process of, ya.

- 6.1 As part of SPLUMA implementation.

Response: Mm.

7. If yes, are there any contraventions that committed against the by-law or the land use scheme? Okay, its just a build-up from that question, leya kuthi, eh. Okay, I think le question lena ne is just sort of linked to the one yama contraventions that I've previously asked. Kuthi fine you have a land use scheme, eh, and you've explained kuthi macontraventions are only detected through complaints. So it means ukuthi, eh, there are those complaints and there are contraventions, ne, that eventually come to the attention of the municipality.

Response: Ya, but they are few. They are few because I think it's obvious and a matter kutsi the community bona themselves are not even aware of the land use system, hoe it works. So if you have to scale like one (1) out of ten (10), infact one (1) out of twenty (20) that we get a complaint. So its not something that its happening like, some will happen just once in six months.

- 7.1 So in other words, ehh Supa, just to understand. Ehm, would you the say, detecting from what you're saying, there's a culture of, ehm, mhlaw'mpe the community, ehm, you know embracing just, ngingathini.. more of an organic, eh, I don't know how to put it. But you see if things have been happening in a certain way for a very long time, before I introduction of this systems, they don't see anything wrong with someone nje just putting up a, what should I say? Uhm, mhlaw'mpe a tavern or whatever use basically, if there's any sense of development, there's less interest from the community on that particular development. They see that as normal but they do not look at that in the context of the procedures that must be followed eventually, so there's less questioning if they see I development.

Response: They don't have any knowledge about land use systems, in such a way even the community bona as a members, they don't see any need kutsi if I want to change my house into a church I must apply. Its only few individual who are aware kutsi okay there's a process that you need to go through it. So hence you'll never find a person object an application on the basis of the merit of the application unless its an issue of ownership, or any other matter, but infact they don't have any knowledge. I think probably it was not done properly the introduction of a land use system in tribal areas, and especially taking into account kutsi with the apartheid system people were..the rural areas were excluded from the system, so they were not catered from the system, so as things are now, they're not aware kutsi, eh, if there's a development, these are the procedures to go. You never find a person object that no, there was never enough public participation or it was not advertised within 21 days and all those things. So basically they don't have any knowledge.

- 7.2 The knowledge of basically that, kuthi, maybe looking at a new development and questioning it in the context of, did that person follow procedure ABC kwa Masipala, whatever. They don't go deeper into analysing as far as that?

Response: Its not like they don't analyse at all. The only time if there's a development for example a shopping complex, their main concern is job creation than whether this went through the whole normal procedure, they don't care about those processes of town planning. So, for me in terms of town planning, the communities in these areas they still need to be educated or informed atleast that as a neighbour if there is such a development, or as an affected party, you have 123 rights. They're not even aware that they have rights to object or to be consulted, all those things.

8. Alright, uhm, its clear kutsi vele, uhm, what one might from a professional point of view, ne, easily detect nawuli planner, kutsi no, certain developments are not happening in terms of iland use scheme 'cause we have knowledge of it, uhm, you'd have less contraventions being detected by the municipality, right? So now, where does that leave the planner, eh, in terms of maybe the responsibility of dealing with, with with with with with with certain contraventions, eh, based on the knowledge kutsi fine kona ngiyabona kunje, but eh, do you feel kutsi the, the the the role of that planner ubona kutsi hayi ngcono ngiyiyeke vele this thing because umphakatsi awuyi boni irelevance yayo kutsi why should I detect kutsi yicontravention le and actually do something about it. So in other words, the question basically is saying, eh, what measures are there to deal, how are..how does the municipality deal with these contraventions yabona. Its sort of controversial in a sense but it sjust trying to get kutsi, ehm, should we even define them as contraventions for example, yabona, in that context, given the background long'paintela yona?

Response: It's. it's actually difficult because we are in a situation whereby we're dealing with people who are not even aware that there's a contravention. Uhm, not used to that system. Have never been informed. They don't know anything about that system, yet also the, your, probably your management inside planning within the municipality, they don't even understand. So my personal view is that probably the point of departure should be how do you make sure that now you inform the community about what suppose to be done, and how do you allow the existing land uses to continue as they are and able to formalize them. So I think for me there's a lot that still needs to be done, even with the introduction of the by-law, for me it mean nothing if the information sharing sessions are not done enough, because how do you fault a person who doesn't know? Who was never informed that, uhm, as much as you own your property, you just own the right to do anything within your property but within the applicable legislation and procedures. Because people are currently of the opinion kutsi, I have a ownership of this stand, so I can do as I wish. So you still need to win the community, and also probably it's an issue of explaining to the community what are the benefits and disadvantages of either following the right procedure, or doing it informally. Because for now I think the community they view it as a waste of money, a waste of time, and why do we have to apply, its my stand. So, you need a buy-in from first of all your traditional leaders, they must first understand the whole point or purpose behind the land use system. So as a town planner it leaves you in a situation whereby, infact you have, as much as you wish you can change the situation, but when you strike the ground obvious its impossible. Its something that won't be done over a year, its something that need long term planning.

8.1 An incremental approach?

Response: Ya, I think the incremental approach it's the right approach, as tsine what we did currently, we said funeral parlours, cell masts, your schools and clinics 'cause that was developed by government, your shopping complex, your scrap yards. And then we said, the other spaza shop, no, for now no. But obvious when you start with those businesses, I think the, one of the issue from my personal opinion is still outstanding on the by-law, is to say the other land uses, how many years grace period do they have before they start to follow the full application because to me it doesn't make sense if all of a sudden you just switch after ten years, you never inform these people, you're saying now you going full application. People must be aware. For now, we are exempted for this period, after this period, we'll be expected to do the full application, ya.

9. Based on the status of all the pending less formal applications submitted, those letters of intent, uhm, none of them seem to be approved, yabona. What is the reason for this? Because, just to clarify that Supa ne, you know the less formal applications that I'm talking about angithi? Its those eh, recommendations from the councillor, and the traditional authority with a one page letter saying, maybe I want a stand, or I want to use my stand as a business or a church or otherwise yabona. Ehm, why isn't there any movement there, mhlawumbe in terms of assessing those applications and deciding on them? Maybe getting them approved is another aspect, but I think atleast attending to them and having a decision on them.

Response: I think as a districtwe took a decision to say those letters, number one, they are illegal, we cannot entertain them. The second thing, the local municipality, they are aware that they don't have the planning functions, they don't have the jurisdiction to take a decision on land use applications. So as a district we not entertaining any of those letters, in such a way, I remember we received one last month, we just informed the applicant that we need a full application. We, we we just took a decision that we, according to our land use scheme, we are not allowed, according to any town planning legislation, not allowed to just do a letter, so hence now the situation is that the municipalities, they did approve those applications, which is illegal to issue the letter saying that the municipality approve the application, and yet as a district with the planning function we are saying, for us a letter doesn't mean anything. A letter can be a letter just to inform you that you intend to do something, but you still need to submit a full application. So in all those letters we just respond that we need a full application.

- 9.1 So just to check Supa, in other words, ehm, that letter would come to district with a letter from the municipality?

Johan's Response: In fact we never, the only letter that I received was one letter, but all the other letters we just hear rumours. We don't have the letters, we never even get hold of those letters, we just being informed that's what the local municipality is doing, but they never forwarded that letter to us.

- 9.2 'Cause I think, eh, maybe just as a build-on, eh, I wana revert back to the assessment criteria ne. But in terms of that assessment criteria ne Johan, maybe out of interest, there was this assessment criteria for land use applications which looked at that form of those forms of applications to say kuthi vele as you've painted a picture of a lack of understanding of the public to compile a formal application, a complete application, technically, eh, financially yabona. Eh, given those factors vele, and the context, people cannot afford, they don't have that technical know-how , ehm, kuthi maybe the municipality actually attending to those applications although most of them are not approved yabona. Ehm, maybe I might be placing you in the context of, iThembisile Hani, but what I gathered from the town planner, fine the assessment criteria was there and the municipality has been doing that for years, receiving these applications but not being able to move. So, what's the relevance of that assessment criteria basically because eh it was developed by the Nkangala District as the function holders, yabona. Would you say it was probably a status-quo report to paint that this is the situation, as opposed to saying this is something you can move forward with, and actually apply, yabona?

Johan's Response: Yho, to be honest with you, number one, I never saw the assessment criteria. Number two, I don't see why would the district do that if you have the functions. Its like giving someone the authority to arrest someone...(audio problem). So as a district I don't know, I don't know what, what informed the district to take the decision. But since I joined Nkangala, its been a year now, I never heard of anything like that, or even from the town planners of those local municipalities. All of the three local municipalities...(audio problem)..because my understanding is that when the local municipality get someone who want to apply, you refer that person to the district, to say there are planning functions with the district, so you can consult with district, that's my own understanding

- 9.3 So, based on that Supa, and from the responses of the town planner, eh, its safe to conclude to say it was just a status-quo report because nakhona I didn't get an impression from the town planner kuthi, eh, that's the bible that they used to

assess the applications and actually have a determination on them. There's just no mandate, and, eh, it seems to be a document nje which seeks to serve mhlawumbe informing future processes moving forward, or informing new legislation yabona.

Johan's Response: I think maybe for me it was for the purpose of to say, obvious this local municipality they have their town planners, they, if the situation come in a situation where you have to advise a developer which process to follow. To say this is how we gona view your application in case you submit to Nkangala, but not to take a decision. Maybe, and also maybe to provide the town planners from the local municipality to have knowledge when they attend a land use committee so that they understand what informs the decision.

10. So basically from what you're saying Supa, eh, it means ukuthi, I'm getting a sense ukuthi ke officially, there aren't any applications of this nature that have ever been approved, because it wouldn't be informed by any formal process or piece of legislation. So we can safely say that, even if it was happening...(interjected by Johan).

Johan's Interjection: It might happen there are but not the one that is approved by the district or the one that the district is aware of them. The one that maybe they are there, is the one that we don't know as district. Ya, so I cannot speak on behalf of the local municipality

11. So meaning kuthi ke none of these applications have ever come to your attention, and there's no way kuthi they've ever been acknowledged or ilokhunja, okay fine, the one that came..got to your attention, the only one. You advised the applicant to submit a fully...(interjected by Johan).

Johan's Interjection: Ya, which they did.

- 11.1 Oh, which they did. So meaning kuthi in a situation where you get such an application, there is some form of acknowledgement and guidance to say that no, this is not the proper procedure. Submit in terms of this and this is how you must compile it?

Johan's Response: Ya, that's what we do as a district.

12. So just as a general, from, it's linked to, uhm, the questions, eh, relating to these less formal applications ne. If there are none that have never been approved nor acknowledged, in this case there is, so this might, is partly not, eh, relevant. In this case

there is. What would be the main reason for the none attendance of these applications, maybe if given the background, we now understand the background, ah, there's no movement in most of these applications 'cause there's no mandate basically, legislatively or otherwise, yabona. Unless you'd be in a position to say, as you are currently doing, no, this application does not comply, do this and this and that yabona. Ehm, but you find a situation where from the information that I have, there's a whole list there, but, eh, there isn't such maybe proactiveness from the local municipality. So they get stuck with these applications and they cannot move, and it's further frustrating them because whenever applicants come, yabona, ehm, obviously they need progress on those applications. Muntu naseka submittile assumes kutsi no, atleast I'll get feedback on my application, ehm, but there seems to be just no movement, maybe to say..they are all parked, they are all registered and all of that, and they are parked. Maybe from the background that you've painted, ehm, would you care to share ukuthi what might be the problem attributed to that, from the problems that you've already detected as possible reason for these applications nama frustrations nje, yabona.

Response: Shoo, that's my own speculation, is that if there are such applications that the municipality they are receiving, probably now they are sitting in a situation where as a municipality they are aware that we don't have any right to take a decision on applications, yet they already received the applications, now they are scared to take a decision because they now the consequences of taking a decision. So in a situation whereby they are undecided, they've started something that they cannot able to finish, and probably they made certain promises to the developers, so now they are sitting with a situation whereby you have all these applications and they cannot able to process them. Probably wish to return them back but for whatever reason, they cannot. Ya for me that's my only assumption that's what probably happening if they receive an application, because they never approach the district formally, or informed us of those applications. We just being told and the district responded on a letter without any proof to say we just been informed that you guys you are approving applications and you don't have any jurisdiction to do so. But don't have any proof. We just responding based on allegations, just to say if those allegations are true, this is the way to follow.

13. With regards to all applications submitted ne, in terms of the assessment criteria, the less formal applications njengoba besikhuluma ngawo, and looking at the minutes yema land use committee meetings ne, you've addressed it but I just want more of a direct response. It can be a simple response, ehm, Its clear la kuthi they do not form part of the agenda of none of those meetings. Just a final reflection nje, eh revisiting your previous responses, just as a recollection, kuthi what would be the reason for that?

Response: I think its basically because the land use committee when they sit, the agenda is informed by the district. It means we only consider those that are submitted to the district, so that's the reason.

14. So in fact obviously, the applications that form part of the agenda are submitted by the municipalities, and they, or is it a direct submission by the developer?

Response: It's a direct submission by the developer, ya. So we don't receive any application from municipalities.

- 14.1 Even these less formal applications, you never receive anything?

Johan's Response: Mm.

- 14.2 Okay.

15. Between the Nkangala District Municipality and the Thembisile Hani Local Municipality, who is responsible for the assessment of land use and land development applications?

Response: It's the district. It's according to the adjustment of the powers that was done in 2003 by the minister of housing.

- 15.1 Oh by the MEC?

Johan's Response: Ya.

16. So as a continuation to the above-question, between the district and Thembisile Hani, who is responsible for the formulation of recommendations for determination?

Response: It's the district

17. How often do you provide monitoring, evaluation and support to the Thembisile Hani Local Municipality on planning matters?

Response: We do it daily. Anything that has to do with town planning, infact it's being done by the district and not by Thembisile. So all the matters related to planning, they are directed to the district.

18. Based on the minutes of the meetings of the Nkangala District Land Use Committee, I have observed that there has been a 100% approval rate of all the applications received from the Thembisile Hani Local Municipality. And that's your rezonings, of farm areas,

maybe for a big development as well as your township establishments, eh, one two three subdivisions and consolidations yabona. What has been the main reason for this, basically? Maybe can you reflect nje based on maybe the context and, yabona. Kina its clear kuthi, 'cause this was between 2011 and 2014, and overall there's been 21 applications. Its less than average for most municipalities obviously yabona, and all been approved, yabona. Eh, I think one can easily have a reason that maybe it can be due to the need for expansion of those areas or to formalize or whatever, because some of these township establishment applications are formalization, yabona. How can you reflect on that? (Assess the applications and query specific aspects in the content thereof, and in the context of a 100% approval rate).

Response: I think it's a matter of number one, to say, uhm, all the applications that we receive were in line with the SDF. Secondly, there's a need for development in these areas, so its become too difficult to disapprove an application that bring development to the community. And then third, its that as I said the community are not informed about the town planning things. They are not in a position to object to an application, so now it become a situation whereby it's the developer against the town planner of the district. The community they have most say infact, although theoretically they have a say, but practically they don't have any say because they are not even informed with whats happening on these areas. And I think lastly its that, uhm, the land uses within the area, the communities they are not diverse, so most of the land uses that we receive for application, to us we view them as an application that are trying to diversify the land uses and also the economic activities of the areas. So obvious as town planners we encourage diversity in terms of economic activities as long as they don't have a negative impact to the surrounding land uses. And I think there's also an issue of uhm, availability of land, it make it so easy for a person to pick the right land for that particular development, unlike Gauteng where there's limited land available. Obvious there's that too much competition over the land, and when you make a decision you become too consciously and too careful as compared to Thembisile where land is available at the cheapest less price, and there's still lots of Alternative land that's available for any kind of development.

19. We are practically done Johan, but as a final reflection from you in understanding the direction of this research, maybe from your own planning point of view, ehmm, where do you see, do you see this situation changing, ehm, in terms of, you know uhm, you know, in most cases as planners and through iformal legislation. There's a desired outcome that we want to see things happening by ne, in former homeland areas. Now, looking at this parallel land use application procedures because of many factors that you've alluded to, ehm, you know affordability, ehmm, you know awareness of these procedures you see. Do you see those problems nje, ehm, not becoming an issue in future and things happening the way they supposed to be happening, eh, in terms of what legislation

prescribes and as, you know in terms of the standard form of application procedures? People actually embracing that and complying with that in a context such as iThembisile Hani, do you see the situation nje normalizing? You've proposed some recommendations as to how things must happen, which is very useful for the research. Ehm, in light of that, those recommendations and proposals, do you see things changing?

Response: Its possible to change things, but you need a serious effort number one. I think the issue of eh district having the functions is also a contributing factor, because we are in a situation whereby the local municipality, they not take ownership of being able to detect or monitor any contravention because in their mind is that the district having our functions, and in my view they are not happy with that situation, so 'let the district deal with whatever problem, we not gonna assist the district, they thinking like they are smart or clever while they have our functions'. So I think the first point of departure is reversing the adjustment of power back to the local municipality and then second thing is to capacitate the local municipality to have people who will able to inform the community, and also get the buy-in from the community, especially politically from the Mayor, MMC. And the other thing its obvious to understand the context of Thembisile that It's a rural area, you cannot be too strictly about land use systems as compared to bo Tshwane and City of Cape Town, because we are desperate in need of development. So we cannot treat idevelopment as Joburg, from application fees, turnaround time for an application. In my view, ehm, municipalities like Thembisile must have shorter turnaround time. And then the other thing for the community, for them to get the buy-in, they must able to clearly understand what is it in for them if they to follow the right procedure, what is the benefit for the community. So, we must able to win by involving the community, political and also the traditional leaders, because this is an area that lot of, eh, places under traditional leaders and people there they value and respect the traditional leaders. So if something's coming from them, if we can start with the traditional leaders, then they understand everything with regard to land use management system, then now they able to cascade that to the community with the traditional leaders. It should not be a situation whereby we come as a local municipality to educate people that are in the centre of authority without the blessing of the tribal authority. So it need, its possible but it need effort, it need time, it need energy, it need proper strategy and proper plan. And it not something that can be done in one, overnight. It something that need to be slowly introduction it.

19.1 An incremental approach as you said.

Johan's Response: You need some sort of incentives infact, it can also work, to say all people who decide to go for this change in land use application or follow the right way, there's this incentive. Its either water or electricity or whatever just to encourage the community to do right thing.

**APPENDIX D: INTERVIEW TRANSCRIPTION – ‘NDABEZITHA’ MABENA S.J
[CHIEF, MANALA-MAKERANA TRIBAL COUNCIL,
KWAMHLANGA, THEMBISILE HANI LOCAL MUNICIPALITY]**

Telephonic Communication 1:

Participant: 'Ndabezitha' S.J Mabena

**Designation: Chief, Manala-Makerana Tribal Council, KwaMhlanga, Thembisile Hani
Local Municipality – 078 129 6694**

Date: 26 October 2015

Time: 13:29 pm

Venue: Ermelo

[Questions posed in IsiZulu. Responses in IsiNdebele. Entire interview translated into English]

1. How does the Tribal Council manage the process of allocation of land to the community, and what mechanisms are used to determine if the land is suitable for allocation (for residential or any other purpose)?

Response: When the community approaches us with the intention to apply to be allocated land, we assist them by checking as to whether or not the land is occupied by other household. If we find that it is not occupied by anyone. We allocate them the land.

2. How does the Tribal Council assist the community if they want to apply for alternative land use rights on their allocated land? For example if they want to open a Spaza Shop, Tavern or any other land use rights.

Response: There are business sites, and we do grant the people the permission to operate any business on their allocated land and then we refer them to the municipality for further assistance. We always support the people because it is their way of making a living and because they are trying.

3. What criteria does the Tribal Council apply when considering these land use requests from the community?

Response: We do not have any criteria as a Tribal Council. The municipality deals with the applications from the community.

**APPENDIX E: INTERVIEW TRANSCRIPTION – ‘NDLOVUKAZI’ MABENA
[QUEEN, MANALA-MGIBE TRIBAL COUNCIL,
EMPUMALANGA, THEMBISILE HANI LOCAL
MUNICIPALITY]**

Telephonic Communication 2:

Participant: ‘Ndlovukazi’ Mam Mabena

Designation: Queen, Manala-Mgibe Tribal Council, Empumalanga, Thembisile Hani Local Municipality – 082 681 8373

Date: 26 October 2015

Time: 13:47 pm

Venue: Ermelo

[Questions posed in IsiZulu. Responses in IsiNdebele. Entire interview translated into English]

1. How does the Tribal Council manage the process of allocation of land to the community, and what mechanisms are used to determine if the land is suitable for allocation (for residential or any other purpose)?

Response: When we get requests for the allocation of land, we identify land that we deem will be suitable, and then we engage the municipality to check if it is indeed suitable for settlement, and also to determine if the municipality will provide the necessary infrastructure.

2. How does the Tribal Council assist the community if they want to apply for alternative land use rights on their allocated land? For example if they want to open a Spaza Shop, Tavern or any other land use rights.

Response: Normally when we get such requests from the community, we refer the applicants to the municipality and we engage the municipality throughout the entire process. For example, there was a proposal for the development of a shopping mall and we involved the municipality and the municipality explained the whole process in terms of what is required from the developers and criteria. I was also personally part of those engagements.

3. What criteria does the Tribal Council apply when considering these land use requests from the community?

Response: We do not have any criteria, so we rely on the criteria of the municipality.

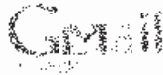
4. So I see that you have established a close relationship with the municipality and that you work together.

Response: Yes we do try to work with the municipality. We have the land, but it is the municipality that must provide the infrastructure at the end of the day. When we support, recommend and refer people to the municipality, the municipality always turns people back with a reason that the Tribal Council does not have the authority to allocate land. We don't have a problem with the municipality but we get frustrated at times because of the attitude of the municipality towards us. As much as we know we have the power to do as we want, but we don't want to resort to that, hence we always work hand in hand with the municipality.

APPENDIX F: EMAIL RESPONSES – MR HERMAN STRYDOM [TOWN PLANNER, PLAN ASSOCIATES URBAN & REGIONAL PLANNERS]

Cmail - RE: Assessment Criteria for Land Use Applications in Thembisile Hani

Page 1 of 4



Lerato Motloung <lerato.motloung2@gmail.com>

RE: Assessment Criteria for Land Use Applications in Thembisile Hani

3 messages

Lerato Motloung <lerato.motloung2@gmail.com>

Thu, Oct 22, 2015 at 4:18 PM

To: Herman Strydom <hstrman@planassociates.co.za>

Good day Herman,

As discussed previously over the phone with regards to the above-subject matter, and in the context of my academic research on the 'Parallel Land Use and Land Development Application Procedures in a Semi-Urban Context: A Case Study of the Thembisile Hani Local Municipality' kindly assist me with some responses to the following questions:

1. What was the intended purpose and rationale behind the development of the Assessment Criteria?
2. Was the criteria based on any piece of legislation applicable at the time?
3. Was the criteria fully developed to completion and adopted by the Councils of both the Thembisile Hani Local as well as the Nkangala District Municipalities respectively?

Your assistance with the above will aid me with the analysis of my research findings and will be much appreciated Herman.

I hope you find all in order sir.

Kind regards,
Thazo

Herman Strydom <hstrman@planassociates.co.za>
To: Lerato Motloung <lerato.motloung2@gmail.com>

Fri, Oct 23, 2015 at 2:38 PM

Good afternoon Sir,

With reference to the question below, please see the response with my own text:

From: Lerato Motloung [mailto:lerato.motloung2@gmail.com]
Sent: Thursday, October 22, 2015 4:18 PM
To: Herman Strydom <hstrman@planassociates.co.za>
Subject: RE: Assessment Criteria for Land Use Applications in Thembisile Hani

Good day Herman,

As discussed previously over the phone with regards to the above subject matter, and in the context of my academic research on the 'Parallel Land Use and Land Development Application Procedures in a Semi-Urban Context: A Case Study of the Thembisile Hani Local Municipality' kindly assist me with some responses to the following questions:

https://mail.google.com/mail/u/0/?ui=2&ik_e510f122db&view=pt&search=cont&th=... 2015/10/28

I hope you find all in order etc.

Kind regards,

Thabo

📎 Pages from Thembaile LMOB - First Flyover Jan 2016.pdf
19 KB

Lerato Motloung (mailto:lerato.motloung@qgma.co.za) Thu, Oct 23, 2015 at 3:16 PM
To: Herman Stycor <herman@qgis.associates.co.za>

Thank you very much Herman! Your needs are very much appreciated and will be of great assistance in completing my assessment report. I will be sure to provide you with a soft copy for interest reading as soon as complete.

Enjoy the rest of your weekend's!

Kind Regards,

On Fri, Oct 23, 2015 at 2:38 PM, Herman Stycor <herman@qgis.associates.co.za> wrote:

Good afternoon Sir,
:
:
:
With reference to the question below, please see the response within your test:

From: Lerato Motloung (mailto:lerato.motloung@qgma.co.za)
Sent: Thursday, October 22, 2015 4:28 PM
To: Herman Stycor <herman@qgis.associates.co.za>
Subject: RE: Assessment Criteria for Land Use Applications in Thembaile Hlab

Good day Herman

As discussed previously over the phone with regards to the above-subject matter, and in the context of my academic research on the Thembaile Hlab Municipality, and the Land Development Application Procedures in a Semi-Urban Context: A Case Study of the Thembaile Hlab Local Municipality kindly assist me with the responses to the following questions:

1. What was the intended purpose and subordinated to the development of the Assessment Criteria?

Given the historical background of Thembaile Hlab Municipality and the level of capacity of the community at large the assessment criteria was developed. The rationale was based on two aspects:

1. The first being that most of the land within the municipal area is viewed with the National Government of South Africa and is further under Traditional Authority.
2. Secondly, the people within the municipality has limited resources and capacity, therefore making the application for change in land use difficult.

The purpose of the assessment criteria was therefore to allow a person to apply for a change in land use without having to go through the entire state land release process. This would allow the person to exercise a land use and provide the municipality with a mechanism to exercise land use control.

2. Was the criteria based on any piece of legislation applicable at the time?

The criteria was based on best practices emerging from the Town Planning and Townships Ordinance 15 of 1926 and the Informal Protection of Informal Land Rights Act and the Thembisile Hani Land Use Management Scheme. The land uses that could be released was determined by analysing the existing applications at the municipality and also holding workshops with planning officers, COGTA, Rural Development and Land Reform.

3. Was the criteria fully developed to completion and adopted by the Councils of both the Thembisile Hani Local as well as the Mkgosi District Municipality respectively?

The criteria was unfortunately not completed. The reason for this is that in order for the criteria to be adopted, the registered land owner (Department of Land Development and Land Reform) needed to approve the principle of the criteria. The Department further had to authorise the municipality to deal with the applications and any criticism of the approach. The Department at the time could not work on the project and was unable to delegate someone to deal with the criteria.

COGTA at the time then consulted with the development of the law for Thembisile Hani Municipality and U-B-Mkosi. The by-laws would at the time contain a section that would recognise informal land ownership verified through various means of verification. It would allow a person to apply for the change in land use rights.

Please find attached hereto some maps outlining the ownership and areas of the traditional authorities.

Your assistance with the above will aid me with the analysis of my research findings and will be much appreciated. Thank you.

I hope you find all in order sir.

Kind regards,

Thabo

APPENDIX G: LETTER FROM MPUMALANGA CoGTA ON INTERIM SPLUMA MEASURES [SEE APPENDIX CD AT THE BACK COVER OF THE THESIS]

**APPENDIX H: LESS FORMAL LAND USE AND LAND DEVELOPMENT
APPLICATION REGISTER OF THE THEMBISILE HANI LOCAL
MUNICIPALITY [SEE APPENDIX CD AT THE BACK COVER OF
THE THESIS]**

**APPENDIX I: MINUTES OF LAND USE COMMITTEE MEETINGS [2011 – 2014]
[SEE APPENDIX CD AT THE BACK COVER OF THE THESIS]**

APPENDIX J: THEMBISILE HANI RESIDENTS/APPLICANTS SURVEY RESPONSES

University of the Witwatersrand, Johannesburg Mail - Quantitative Survey Questionnaire Page 1 of 1



Lerato Motloung <0703645j@students.wits.ac.za>

Quantitative Survey Questionnaire

2 messages

Lerato Motloung <0703645j@students.wits.ac.za>
To: sibusiso chili25@gmail.com

5 October 2015 at 08:35

Morning Sbuda,

As discussed on Friday, please find attached the list of questions I would like you to assist me with. The criteria and approach has also been outlined on the questionnaire

Your willingness to help has been much appreciated bru wam!

Regards,
Thabo

Quantitative Survey Questionnaires.docx
21K

sibusiso Chili <sibusiso chili25@gmail.com>
To: Lerato Motloung <0703645j@students.wits.ac.za>

26 October 2015 at 15:08

SHO Skhoskho find the attached hereto questionnaires

please check them and get back to me

On Mon, Oct 5, 2015 at 8:35 AM, Lerato Motloung <0703645j@students.wits.ac.za> wrote:
Morning Sbuda,

As discussed on Friday, please find attached the list of questions I would like you to assist me with. The criteria and approach has also been outlined on the questionnaire

Your willingness to help has been much appreciated bru wam!

Regards,
Thabo

2 attachments

Approved general plans.pdf
3805K

proclaimed townships.pdf
3412K

<https://mail.google.com/mail/u/0/?ui=2&ik=679583fda2&view=pt&search=inbox&th...> 2015/10/26

Cenola Masango
Kwaggafontein E.

Residents of the Thembisile Hani Local Municipality (Quantitative Survey) – 20
Participants: 10 from traditional areas and 10 from formal/urban areas (Yes/No/Do not understand Responses)

1. Have you ever heard of the Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). *no*
2. Have you ever heard of the new Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). *no*
3. Have you ever heard of the Thembisile Hani Land Use Scheme of 2010? *no*
4. Do you know what a land use or land development application is? *no*
5. Do you know what is the procedure that you need to follow in order to apply at the municipality for land use or development rights on your property? *no*
6. Have you ever applied for any land use or development rights on your property at the municipality? *no*
7. Do you know what the format for a standard land use and development application should be like? *no*
8. If not, based on the above, would you appoint a professional practitioner to compile such an application on your behalf? *yes*
9. Would you be willing to pay the professional practitioner the professional fees charged for services rendered on an application between (R 20 000.00 – R 30 000.00)? *no*
10. Do you know what type of zoning or land use rights are applicable on your property? *no*

The first 10 participants to be interviewed must be from any of the below-tabled townships:

No	Townships
1.	KwaMhlanga "A", "B", "BA" & "MA"
2.	Tweefontein K
3.	Moloto extension 11 Township
4.	Tweefontein Township
5.	Vleklaagte Ridge (Buhlebesizwe (RDP)
6.	Langkloof
7.	Boekenhouthoek
8.	Goederede

Sophies Mahlangu
Entbedoomogg A.

Residents of the Thembisile Hani Local Municipality (Quantitative Survey) – 20
Participants: 10 from traditional areas and 10 from formal/urban areas (Yes/No/Do not understand Responses)

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2. Have you ever heard of the new Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). *no*
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4.	Tweefontein Township
5.	Vlaklaagte Ridge (Buhlebesizwa (RDP)
6.	Langkloof
7.	Boekenhouthoek
8.	Goederede

Sello Mkhonzo Phola Park

Residents of the Thembisile Hani Local Municipality (Quantitative Survey) – 20

Participants: 10 from traditional areas and 10 from formal/urban areas (Yes/No/Do not understand Responses)

1. Have you ever heard of the Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). *no*
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8. If not, based on the above, would you appoint a professional practitioner to compile such an application on your behalf? *yes*
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The first 10 participants to be interviewed must be from any of the below-tabled townships:

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2.	Tweefontein K
3.	Moloto extension 11 Township
4.	Tweefontein Township
5.	Vlaklaagte Ridge (Buhlebesizwe {RDP})
6.	Langkloof
7.	Boekenhoutnek
8.	Goederede

Muzi nkosi
Kunggafontein E

Residents of the Thembisile Hani Local Municipality (Quantitative Survey) – 20
Participants: 10 from traditional areas and 10 from formal/urban areas (Yes/No/Do not
understand Responses)

1. Have you ever heard of the Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). *yes*
2. Have you ever heard of the new Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). *yes*
3. Have you ever heard of the Thembisile Hani Land Use Scheme of 2010? *yes*
4. Do you know what a land use or land development application is? *yes*
5. Do you know what is the procedure that you need to follow in order to apply at the municipality for land use or development rights on your property? *no yes*
6. Have you ever applied for any land use or development rights on your property at the municipality? *yes*
7. Do you know what the format for a standard land use and development application should be like? *no*
8. If not, based on the above, would you appoint a professional practitioner to compile such an application on your behalf? *yes*
9. Would you be willing to pay the professional practitioner the professional fees charged for services rendered on an application between (R 20 000.00 – R 30 000.00)? *yes*
10. Do you know what type of zoning or land use rights are applicable on your property? *yes*

The first 10 participants to be interviewed must be from any of the below-tabled townships:

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4.	Tweefontein Township
5.	Vlasklaagte Ridge (Buhlebesizwe (RDP)
6.	Langkloof
7.	Boekenhouthoek
8.	Goederede

Phisohe Sthosang
Somphele

Residents of the Thembisile Hani Local Municipality (Quantitative Survey) – 20
Participants: 10 from traditional areas and 10 from formal/urban areas (Yes/No/Do not understand Responses)

1. Have you ever heard of the Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). **No**
2. Have you ever heard of the new Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). **No**
3. Have you ever heard of the Thembisile Hani Land Use Scheme of 2010? **No**
4. Do you know what a land use or land development application is? **No**
5. Do you know what is the procedure that you need to follow in order to apply at the municipality for land use or development rights on your property? **Yes**
6. Have you ever applied for any land use or development rights on your property at the municipality? **No**
7. Do you know what the format for a standard land use and development application should be like? **No**
8. If not, based on the above, would you appoint a professional practitioner to compile such an application on your behalf? **Yes**
9. Would you be willing to pay the professional practitioner the professional fees charged for services rendered on an application between (R 20 000.00 – R 30 000.00)? **No**
10. Do you know what type of zoning or land use rights are applicable on your property? **No**

The first 10 participants to be interviewed must be from any of the below-tabled townships:

No	Townships
1.	KwaMhlanga "A", "B", "BA" & "MA"
2.	Tweefontein K
3.	Moloto extension 11 Township
4.	Tweefontein Township
5.	Vlaklaagte Ridge (Buhlebesizwe (RDP)
6.	Langkloof
7.	Boekenhouthoek
8.	Gaederede

Winnie Khoza
Phumula B

Residents of the Thembisile Hani Local Municipality (Quantitative Survey) – 20
Participants: 10 from traditional areas and 10 from formal/urban areas (Yes/No/Do not
understand Responses)

1. Have you ever heard of the Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). **No**
2. Have you ever heard of the new Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). **No**
3. Have you ever heard of the Thembisile Hani Land Use Scheme of 2010? **No**
4. Do you know what a land use or land development application is? **No**
5. Do you know what is the procedure that you need to follow in order to apply at the municipality for land use or development rights on your property? **No**
6. Have you ever applied for any land use or development rights on your property at the municipality? **No**
7. Do you know what the format for a standard land use and development application should be like? **No**
8. If not, based on the above, would you appoint a professional practitioner to compile such an application on your behalf? **Yes**
9. Would you be willing to pay the professional practitioner the professional fees charged for services rendered on an application between (R 20 000.00 – R 30 000.00)? **No**
10. Do you know what type of zoning or land use rights are applicable on your property? **No**

The first 10 participants to be interviewed must be from any of the below-tabled townships:

No	Townships
1.	KwaMhlanga "A", "B", "BA" & "MA"
2.	Tweefontein K
3.	Moloto extension 11 Township
4.	Tweefontein Township
5.	Vlaklaagte Ridge (Buhlebesizwe (RDP)
6.	Langkloof
7.	Boekenhouthoek
8.	Goederede

Pastile Mthimungu
Entkeldloornog A

Residents of the Thembisile Hani Local Municipality (Quantitative Survey) – 20
Participants: 10 from traditional areas and 10 from formal/urban areas (Yes/No/Do not understand Responses)

1. Have you ever heard of the Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). *Yes*
2. Have you ever heard of the new Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). *Yes*
3. Have you ever heard of the Thembisile Hani Land Use Scheme of 2010? *No*
4. Do you know what a land use or land development application is? *No*
5. Do you know what is the procedure that you need to follow in order to apply at the municipality for land use or development rights on your property? *Yes*
6. Have you ever applied for any land use or development rights on your property at the municipality? *No*
7. Do you know what the format for a standard land use and development application should be like? *No*
8. If not, based on the above, would you appoint a professional practitioner to compile such an application on your behalf? *Yes*
9. Would you be willing to pay the professional practitioner the professional fees charged for services rendered on an application between (R 20 000.00 – R 30 000.00)? *Yes*
10. Do you know what type of zoning or land use rights are applicable on your property? *No*

The first 10 participants to be interviewed must be from any of the below-tabled townships:

No	Townships
1.	KwaMhlanga "A", "B", "BA" & "MA"
2.	Tweefontein K
3.	Moloto extension
4.	11 Township Tweefontein
5.	Township Vlaklaagte Ridge (Ruhlebesizwe (RDP)
6.	Langkloof
7.	Boekenhouthoek
8.	Goederede

Mfungelwa Mabona
Kwaggafontein A

Residents of the Thembisile Hani Local Municipality (Quantitative Survey) – 20
Participants: 10 from traditional areas and 10 from formal/urban areas (Yes/No/Do not understand Responses)

1. Have you ever heard of the Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). *No*
2. Have you ever heard of the new Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). *No*
3. Have you ever heard of the Thembisile Hani Land Use Scheme of 2010? *No*
4. Do you know what a land use or land development application is? *No*
5. Do you know what is the procedure that you need to follow in order to apply at the municipality for land use or development rights on your property? *Yes*
6. Have you ever applied for any land use or development rights on your property at the municipality? *No*
7. Do you know what the format for a standard land use and development application should be like? *No*
8. If not, based on the above, would you appoint a professional practitioner to compile such an application on your behalf? *Yes*
9. Would you be willing to pay the professional practitioner the professional fees charged for services rendered on an application between (R 20 000.00 – R 30 000.00)? *No*
10. Do you know what type of zoning or land use rights are applicable on your property? *No*

The first 10 participants to be interviewed must be from any of the below-tabled townships:

No	Townships
1.	KwaMhlanga "A", "B", "BA" & "MA"
2.	Twefontein K
3.	Moloto extension 11 Township
4.	Twefontein Township
5.	Vlaklaagte Ridge (Buhlebezwe RDP)
6.	Langkloof
7.	Boekenhouthoek
8.	Goederede

Naskhosana Mbonani
Verema A

Residents of the Thembisile Hani Local Municipality (Quantitative Survey) – 20
Participants: 10 from traditional areas and 10 from formal/urban areas (Yes/No/Do not
understand Responses)

1. Have you ever heard of the Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). **No**
2. Have you ever heard of the new Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). **Yes**
3. Have you ever heard of the Thembisile Hani Land Use Scheme of 2010? **No**
4. Do you know what a land use or land development application is? **No**
5. Do you know what is the procedure that you need to follow in order to apply at the municipality for land use or development rights on your property? **No**
6. Have you ever applied for any land use or development rights on your property at the municipality? **No**
7. Do you know what the format for a standard land use and development application should be like? **No**
8. If not, based on the above, would you appoint a professional practitioner to compile such an application on your behalf? **Yes**
9. Would you be willing to pay the professional practitioner the professional fees charged for services rendered on an application between (R 20 000.00 – R 30 000.00)? **No**
10. Do you know what type of zoning or land use rights are applicable on your property? **No**

The first 10 participants to be interviewed must be from any of the below-tabled townships:

No	Townships
1.	KwaMhlanga "A", "B", "BA" & "MA"
2.	Tweefontein K
3.	Moloto extension 11 Township
4.	Tweefontein Township
5.	Vlaklaagte Ridge (Buhlebesizwe (RDP)
6.	Langkloof
7.	Boekenhouthoek
8.	Goederede

Nomhlekhabo Mabheni
Vlaklagte BB

Residents of the Thembisile Hani Local Municipality (Quantitative Survey) – 20

Participants: 10 from traditional areas and 10 from formal/urban areas (Yes/No/Do not understand Responses)

1. Have you ever heard of the Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). **No**
2. Have you ever heard of the new Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). **No**
3. Have you ever heard of the Thembisile Hani Land Use Scheme of 2010? **No**
4. Do you know what a land use or land development application is? **No**
5. Do you know what is the procedure that you need to follow in order to apply at the municipality for land use or development rights on your property? **Yes**
6. Have you ever applied for any land use or development rights on your property at the municipality? **No**
7. Do you know what the format for a standard land use and development application should be like? **No**
8. If not, based on the above, would you appoint a professional practitioner to compile such an application on your behalf? **Yes**
9. Would you be willing to pay the professional practitioner the professional fees charged for services rendered on an application between (R 20 000.00 – R 30 000.00)? **No**
10. Do you know what type of zoning or land use rights are applicable on your property? **No**

The first 10 participants to be interviewed must be from any of the below-tabled townships:

No	Townships
1.	KwaMhlanga "A", "B", "BA" & "MA"
2.	Tweefontein K
3.	Moloto extension 11 Township
4.	Tweefontein Township
5.	Vlaklagte Ridge (Buhlebesizwe (RDP)
6.	Langkloof
7.	Bockenhouthoek
8.	Goederede

Mfungelwa Mabona
Kwaggafontein A

Residents of the Thembisile Hani Local Municipality (Quantitative Survey) – 20
Participants: 10 from traditional areas and 10 from formal/urban areas (Yes/No/Do not understand Responses)

1. Have you ever heard of the Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). *No*
2. Have you ever heard of the new Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). *No*
3. Have you ever heard of the Thembisile Hani Land Use Scheme of 2010? *No*
4. Do you know what a land use or land development application is? *No*
5. Do you know what is the procedure that you need to follow in order to apply at the municipality for land use or development rights on your property? *Yes*
6. Have you ever applied for any land use or development rights on your property at the municipality? *No*
7. Do you know what the format for a standard land use and development application should be like? *No*
8. If not, based on the above, would you appoint a professional practitioner to compile such an application on your behalf? *Yes*
9. Would you be willing to pay the professional practitioner the professional fees charged for services rendered on an application between (R 20 000.00 – R 30 000.00)? *No*
10. Do you know what type of zoning or land use rights are applicable on your property? *No*

The first 10 participants to be interviewed must be from any of the below-tabled townships:

No	Townships
1.	KwaMhlanga "A", "B", "BA" & "MA"
2.	Twefontein K
3.	Moloto extension 11 Township
4.	Twefontein Township
5.	Vlaklaagte Ridge (Buhlebesizwe (RDP)
6.	Langkloof
7.	Boekenhouthoek
8.	Goederede

Zanele Nkosi

Residents of the Thembisile Hani Local Municipality (Quantitative Survey) – 20

Participants: 10 from traditional areas and 10 from formal/urban areas (Yes/No/Do not understand Responses)

1. Have you ever heard of the Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). *No*
2. Have you ever heard of the new Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). *No*
3. Have you ever heard of the Thembisile Hani Land Use Scheme of 2010? *No*
4. Do you know what a land use or land development application is? *No*
5. Do you know what is the procedure that you need to follow in order to apply at the municipality for land use or development rights on your property? *No*
6. Have you ever applied for any land use or development rights on your property at the municipality? *No*
7. Do you know what the format for a standard land use and development application should be like? *No*
8. If not, based on the above, would you appoint a professional practitioner to compile such an application on your behalf? *Yes*
9. Would you be willing to pay the professional practitioner the professional fees charged for services rendered on an application between (R 20 000.00 – R 30 000.00)? *No*
10. Do you know what type of zoning or land use rights are applicable on your property? *No*

The first 10 participants to be interviewed must be from any of the below-tabled townships:

No	Townships
1.	KwaMhlanga "A", "B", "BA" & "MA"
2.	Tweefontein K
3.	Moloto extension 11 Township
4.	Tweefontein Township
5.	Vlukkagte Ridge (Buhlebesizwe (RDP)
6.	Langkloof
7.	Boekenhouthoek
8.	Goederede

Sarah Kabin

Residents of the Thembisile Hani Local Municipality (Quantitative Survey) – 20
Participants: 10 from traditional areas and 10 from formal/urban areas (Yes/No/Do not
understand Responses)

1. Have you ever heard of the Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). *Yes*
2. Have you ever heard of the new Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). *Yes*
3. Have you ever heard of the Thembisile Hani Land Use Scheme of 2010? *Yes*
4. Do you know what a land use or land development application is? *No*
5. Do you know what is the procedure that you need to follow in order to apply at the municipality for land use or development rights on your property? *No*
6. Have you ever applied for any land use or development rights on your property at the municipality? *No*
7. Do you know what the format for a standard land use and development application should be like? *No*
8. If not, based on the above, would you appoint a professional practitioner to compile such an application on your behalf? *Yes*
9. Would you be willing to pay the professional practitioner the professional fees charged for services rendered on an application between (R 20 000.00 – R 30 000.00)? *No*
10. Do you know what type of zoning or land use rights are applicable on your property? *No*

The first 10 participants to be interviewed must be from any of the below-tabled townships:

No	Townships
1.	KwaMhlanga "A", "B", "BA" & "MA"
2.	Tweefontein K
3.	Moloto extension 11 Township
4.	Tweefontein Township
5.	Vlaklaagte Ridge ✓ (Buhlebesizwe (RDP)
6.	Langkloof
7.	Boekenhouthoek
8.	Goederede

Thembisa Mahlangu

Residents of the Thembisile Hani Local Municipality (Quantitative Survey) – 20

Participants: 10 from traditional areas and 10 from formal/urban areas (Yes/No/Do not understand Responses)

1. Have you ever heard of the Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). **No**
2. Have you ever heard of the new Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). **Yes**
3. Have you ever heard of the Thembisile Hani Land Use Scheme of 2010? **Yes**
4. Do you know what a land use or land development application is? **Yes**
5. Do you know what is the procedure that you need to follow in order to apply at the municipality for land use or development rights on your property? **No**
6. Have you ever applied for any land use or development rights on your property at the municipality? **No**
7. Do you know what the format for a standard land use and development application should be like? **No**
8. If not, based on the above, would you appoint a professional practitioner to compile such an application on your behalf? **Yes**
9. Would you be willing to pay the professional practitioner the professional fees charged for services rendered on an application between (R 20 000.00 – R 30 000.00)? **No**
10. Do you know what type of zoning or land use rights are applicable on your property? **No**

The first 10 participants to be interviewed must be from any of the below-tabled townships:

No	Townships
1.	KwaMhlanga "A", "B", "B/A" & "MA"
2.	Tweefontein K
3.	Moloto extension 11 Township
4.	Tweefontein Township
5.	Vlaklaagte Ridge (Buhlebesizwe (RDP)
6.	Langkloof
7.	Boekenhouthoek
8.	Goederede

Velly Makhele

Residents of the Thembisile Hani Local Municipality (Quantitative Survey) – 20

Participants: 10 from traditional areas and 10 from formal/urban areas (Yes/No/Do not understand Responses)

1. Have you ever heard of the Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). **No**
2. Have you ever heard of the new Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). **yes**
3. Have you ever heard of the Thembisile Hani Land Use Scheme of 2010? **No**
4. Do you know what a land use or land development application is? **No**
5. Do you know what is the procedure that you need to follow in order to apply at the municipality for land use or development rights on your property? **yes**
6. Have you ever applied for any land use or development rights on your property at the municipality? **No**
7. Do you know what the format for a standard land use and development application should be like? **No**
8. If not, based on the above, would you appoint a professional practitioner to compile such an application on your behalf? **yes**
9. Would you be willing to pay the professional practitioner the professional fees charged for services rendered on an application between (R 20 000.00 – R 30 000.00)? **No**
10. Do you know what type of zoning or land use rights are applicable on your property? **No**

The first 10 participants to be interviewed must be from any of the below-tabled townships:

No	Townships
1.	KwaMhlanga "A", "B", "BA" & "MA"
2.	Tweefontein K
3.	Maloto extension ✓
4.	11 Township Tweefontein Township
5.	Vukleagte Ridge (Buhlebesizwe (RDP)
6.	Langkloof
7.	Boekenhouthoek
8.	Goederede

Bongwe Mhlangu

Residents of the Thembisile Hani Local Municipality (Quantitative Survey) – 20

Participants: 10 from traditional areas and 10 from formal/urban areas (Yes/No/Do not understand Responses)

1. Have you ever heard of the Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). **No**
2. Have you ever heard of the new Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). **No**
3. Have you ever heard of the Thembisile Hani Land Use Scheme of 2010? **No**
4. Do you know what a land use or land development application is? **No**
5. Do you know what is the procedure that you need to follow in order to apply at the municipality for land use or development rights on your property? **No**
6. Have you ever applied for any land use or development rights on your property at the municipality? **No**
7. Do you know what the format for a standard land use and development application should be like? **No**
8. If not, based on the above, would you appoint a professional practitioner to compile such an application on your behalf? **Yes**
9. Would you be willing to pay the professional practitioner the professional fees charged for services rendered on an application between (R 20 000.00 – R 30 000.00)? **No**
10. Do you know what type of zoning or land use rights are applicable on your property? **No**

The first 10 participants to be interviewed must be from any of the below-tabled townships:

No	Townships
1.	KwaMhlanga "A", "B", "BA" & "MA"
2.	Tweefontein K
3.	Moloto extension
4.	11 Township Tweefontein Township
5.	Vlaklaagte Ridge (Buhlebesizwe (RDP)
6.	Langkloof
7.	Boekenhouthoek
8.	Goederede

Mamabon Shosang

Residents of the Thembelesile Hani Local Municipality (Quantitative Survey) – 20
Participants: 10 from traditional areas and 10 from formal/urban areas (Yes/No/Do not
understand Responses)

1. Have you ever heard of the Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). *yes*
2. Have you ever heard of the new Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). *yes*
3. Have you ever heard of the Thembelesile Hani Land Use Scheme of 2010? *yes*
4. Do you know what a land use or land development application is? *yes*
5. Do you know what is the procedure that you need to follow in order to apply at the municipality for land use or development rights on your property? *yes*
6. Have you ever applied for any land use or development rights on your property at the municipality? *NO*
7. Do you know what the format for a standard land use and development application should be like? *NO*
8. If not, based on the above, would you appoint a professional practitioner to compile such an application on your behalf? *yes*
9. Would you be willing to pay the professional practitioner the professional fees charged for services rendered on an application between (R 20 000.00 – R 30 000.00)? *No*
10. Do you know what type of zoning or land use rights are applicable on your property? *yes*

The first 10 participants to be interviewed must be from any of the below-tabled townships:

No	Townships
1.	KwaMhlanga ✓ "A", "B", "BA" & "MA"
2.	Tweefontein K
3.	Moloto extension
4.	11 Township Tweefontein
5.	Township Vlaklaagte Ridge (Buhlebesizwe (RDP)
6.	Langkloof
7.	Boekenhouthoek
8.	Goederede

Jabulani Thulani Mkhlangu

Residents of the Thembisile Hani Local Municipality (Quantitative Survey) – 20

Participants: 10 from traditional areas and 10 from formal/urban areas (Yes/No/Do not understand Responses)

1. Have you ever heard of the Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). **No**
2. Have you ever heard of the new Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). **Yes**
3. Have you ever heard of the Thembisile Hani Land Use Scheme of 2010? **Yes**
4. Do you know what a land use or land development application is? **No**
5. Do you know what is the procedure that you need to follow in order to apply at the municipality for land use or development rights on your property? **Yes**
6. Have you ever applied for any land use or development rights on your property at the municipality? **No**
7. Do you know what the format for a standard land use and development application should be like? **No**
8. If not, based on the above, would you appoint a professional practitioner to compile such an application on your behalf? **No**
9. Would you be willing to pay the professional practitioner the professional fees charged for services rendered on an application between (R 20 000.00 – R 30 000.00)? **No**
10. Do you know what type of zoning or land use rights are applicable on your property? **No**

The first 10 participants to be interviewed must be from any of the below-tabled townships:

No	Townships
1.	KwaMhlanga "A", "B", "B/A" & "MA"
2.	Tweefontein K
3.	Maloto extension 11 Township
4.	Tweefontein Township
5.	Vloklaagte Ridge (Buhlebesizwe (RDP)
6.	Langkloof
7.	Boekenhouthoek
8.	Goederede

Moses Khumalo

Residents of the Thembisile Hani Local Municipality (Quantitative Survey) – 20

Participants: 10 from traditional areas and 10 from formal/urban areas (Yes/No/Do not understand Responses)

1. Have you ever heard of the Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). **No**
2. Have you ever heard of the new Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). **No**
3. Have you ever heard of the Thembisile Hani Land Use Scheme of 2010? **No**
4. Do you know what a land use or land development application is? **No**
5. Do you know what is the procedure that you need to follow in order to apply at the municipality for land use or development rights on your property? **Yes**
6. Have you ever applied for any land use or development rights on your property at the municipality? **No**
7. Do you know what the format for a standard land use and development application should be like? **No**
8. If not, based on the above, would you appoint a professional practitioner to compile such an application on your behalf? **Yes**
9. Would you be willing to pay the professional practitioner the professional fees charged for services rendered on an application between (R 20 000.00 – R 30 000.00)? **No**
10. Do you know what type of zoning or land use rights are applicable on your property? **No**

The first 10 participants to be interviewed must be from any of the below-tabled townships:

No	Townships
1.	KwaMhlanga "A", "B", "BA" & "MA"
2.	Tweefontein K
3.	Moloto extension
4.	11 Township Tweefontein Township
5.	Vlaklaagte Ridge (Buhlebesizwe (RDP)
6.	Langkloof
7.	Boekenhouthoek
8.	Goederede ✓

Charles Mtshali Langkloof

Residents of the Thembisile Hani Local Municipality (Quantitative Survey) – 20
Participants: 10 from traditional areas and 10 from formal/urban areas (Yes/No/Do not understand Responses)

1. Have you ever heard of the Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). **No**
2. Have you ever heard of the new Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). **No**
3. Have you ever heard of the Thembisile Hani Land Use Scheme of 2010? **Yes**
4. Do you know what a land use or land development application is? **No**
5. Do you know what is the procedure that you need to follow in order to apply at the municipality for land use or development rights on your property? **Yes**
6. Have you ever applied for any land use or development rights on your property at the municipality? **No**
7. Do you know what the format for a standard land use and development application should be like? **No**
8. If not, based on the above, would you appoint a professional practitioner to compile such an application on your behalf? **Yes**
9. Would you be willing to pay the professional practitioner the professional fees charged for services rendered on an application between (R 20 000.00 – R 30 000.00)? **No**
10. Do you know what type of zoning or land use rights are applicable on your property? **Yes**

The first 10 participants to be interviewed must be from any of the below-tabled townships:

No	Townships
1.	KwaMhlanga "A", "B", "B/A" & "MA"
2.	Tweefontein K
3.	Moloto extension 11 Township
4.	Tweefontein Township
5.	Vlakloof Ridge (Buhlebesizwe (RDP)
6.	Langkloof ✓
7.	Boekenhouthoek
8.	Goederede

Nhlankhla Jiyane

Residents of the Thembisile Hani Local Municipality (Quantitative Survey) – 20

Participants: 10 from traditional areas and 10 from formal/urban areas (Yes/No/Do not understand Responses)

1. Have you ever heard of the Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). **No**
2. Have you ever heard of the new Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)? (To gain an understanding of the participant's knowledge or understanding of the laws governing land use and development management). **Yes**
3. Have you ever heard of the Thembisile Hani Land Use Scheme of 2010? **Yes**
4. Do you know what a land use or land development application is? **No**
5. Do you know what is the procedure that you need to follow in order to apply at the municipality for land use or development rights on your property? **No**
6. Have you ever applied for any land use or development rights on your property at the municipality? **No**
7. Do you know what the format for a standard land use and development application should be like? **No**
8. If not, based on the above, would you appoint a professional practitioner to compile such an application on your behalf? **Yes**
9. Would you be willing to pay the professional practitioner the professional fees charged for services rendered on an application between (R 20 000.00 – R 30 000.00)? **No**
10. Do you know what type of zoning or land use rights are applicable on your property? **No**

The first 10 participants to be interviewed must be from any of the below-tabled townships:

No	Townships
1.	KwaMhlanga "A", "B", "BA" & "MA"
2.	Tweefontein K
3.	Moloto extension 11 Township
4.	Tweefontein Township
5.	Vlaklaagte Ridge (Buhlebesizwe (RDP)
6.	Langkloof
7.	Boekenhouthoek
8.	Goederede