

CASE STUDIES ON THE ACQUISITION OF URBAN LAND BY
MUNICIPALITIES FROM STATE OWNED COMPANIES AND OTHER
ORGANS OF STATE

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EXECUTIVE SUMMARY

Introduction

A national approach is needed to ensure “more efficient and effective management of the country’s urban areas” to bring about inclusive and integrated cities¹. This needs to include all of government, and should not just be left to municipalities to deal with on their own. The reconfiguration and transformation of urban areas to achieve these goals will depend to a large extent on effective management of the land within our urban areas. There are often large areas of state owned land (owned by national, provincial or local government, or a State-owned Entity, SoE) in municipal areas. Problems in acquiring such land have been raised in several cities.

This research provides an overview of the legislative and policy framework informing the acquisition of land from state owned companies and other organs of state by municipalities and/or the HDA, and reflects on the experience of four metros (eThekweni, Buffalo City, Mangaung and Ekurhuleni) in their quest to acquire state land for developmental purposes.

Legislative and policy framework

The legislative and policy framework for the disposal of state land includes reference to the Constitution of the Republic of South Africa, 1996 (Act no. 106 of 1996), the Public Finance Management Act – No 1 of 1999, Treasury Regulations Issued in terms of the Public Finance Management Act, the State Land Disposal Act No 48 of 1961, the Expropriation Act, 63 of 1975, the Government Immoveable Asset Management Act No 19 of 2007, the Companies Act, 2008 (Act no. 71 of 2008), and State Owned Entities’ own policies regarding the disposal of non-core land. There is some debate as to what legislation must be complied with when disposing of state and non-core land. While there must in all instances be compliance with the Constitution, it appears that the primary focus is on the PFMA and regulations and the Company Act. However, the application of the GIAMA should also be relevant as SoEs are included in the definition of an “organ of state”. It appears that this Act is disregarded by SoEs.

On the one hand, PFMA regulations indicate that immovable assets must be disposed of at market related prices while on the other hand, the Immoveable Assets Management Act states that “best value for money” should be achieved. The latter Act takes cognizance of a number of factors including functional, financial, economic and social return. The disposal of land for the “best value for money” certainly appears to be more in line with the State’s own developmental agenda.

The Spatial Land Use Management Act (SPLUMA) now requires that a municipality considers SoE land in the preparation of their SDF. While it may now be necessary to consider the land in the planning process, it does not take the municipality any closer toward acquiring the land. However, it may assist in holding the SoE to account in relation to their development intentions and or practices if for example it makes development proposal out of step with the SDF.

Municipalities have not sufficiently explored the option of expropriation. This may partially be related to the promotion of the concepts of co-operative governance as outlined in the Constitution. However, if no solution can be found to the cost of the land, this may indeed need to be seriously considered.

The problem statement

As indicated earlier, land is key to the development of spatially transformed and inclusive urban areas as envisioned in the NDP. To do this, land needs to be identified through effective planning and land acquisition and management, which takes time, money and resources, and requires co-operation across all spheres of government.

¹ Ibid

Several factors hinder the identification and acquisition of such land and in turn, impact the ability to transform our urban spaces. These include the legal and policy framework, market-related pricing, the identification and management of land by municipalities, the identification of state and non-core SoE land, difficulties around negotiating the disposal of land by SoEs, and weak IGR structures. The aim of this research conducted in case studies of the four metropolitan municipalities (eThekweni, Buffalo City, Mangaung and Ekurhuleni), was to unpack how this was experienced by municipalities. This looked particularly at land owned by SoEs but also at land owned by other spheres of government and by the municipality itself. What was found was that the acquisition of state land (from SoEs and national and provincial government) was extremely time-consuming (often taking over 10 years), expensive, and frustrating.

Municipal Planning and Land Management

In order to identify what land it needs for development and transformation purposes, a municipality must engage in robust spatial strategic planning, specifically through the Integrated Development Plans (IDP) and Spatial Development Frameworks (SDFs). Linked to strategic planning is the way it manages land. This includes developing a land asset management strategy, and management of municipal land including managing invasions. Key issues relating to municipal planning and land management include the complexity of the municipal spaces, with all four metros having more than one urban centre and significant rural populations. It is therefore difficult to determine what is well located land.

Of the four case study municipalities, only eThekweni and Mangaung have approved Land Asset Management Strategies with Ekurhuleni in the process of developing one. Buffalo City is currently compiling an Asset Register and is yet to commence the preparation of a Land Asset Management Strategy. In eThekweni and Mangaung, the Land Asset Management Strategies address aspects relating to the acquisition and disposal of municipal land in compliance with Section 14 of the Municipal Finance Management Act. Examples were found in all four cases where municipal land had been used for development purposes. However, this is undertaken on a project by project basis rather than an overall assessment of municipal land and how it can best be used to support spatial transformation. There is also evidence that municipalities pay insufficient attention to optimizing the development potential of their own land.

Participation of SOEs in the IDP and SDF structures and processes, and related IGR processes, is not significant. In addition, municipalities did not indicate that the Province played a strong role in IGR forums, and, in the case of Ekurhuleni, it appeared that provincial actions were sometimes at odds with those of the municipality.

A key aspect of the management of all land is to prevent illegal occupation of the land and land invasions. Municipalities generally have limited capacity to inspect land that might be vulnerable to potential land invasions.

Some municipalities such as Buffalo City and Mangaung have limited strategic capacity for considering the importance of land and land acquisition in planning. The importance of land as a tool or mechanism for transforming the city appears to be addressed post the adoption of the IDP and the SDF. While in the case of Buffalo City, a strategic manager has been appointed within the Municipal Manager's office, more capacity is required if the metro is to truly drive a spatial transformation agenda.

Land Acquisition

The acquisition of state land by municipalities involves SoEs, national and provincial government, and usually requires high level negotiations by municipalities within a complex legislative and policy framework.

The municipalities find it difficult to negotiate with SOEs and government departments around the acquisition of non-core land. This is related to weak participation in IGR structures and processes, and the fact that municipalities often battle to access the right department and official with whom to negotiate. SOEs do not generally provide guidelines to municipalities on how to engage them on land acquisition, and it is usually left to the municipality to do this on its own initiative.

SOEs also do not always offer government first option on well-located land e.g. Signal Hill, in Buffalo City. Lack of transparency on the part of SOEs can hinder municipality's ability to negotiate to acquire their land.

The case studies demonstrated that securing the release of provincial and national government land can be worse than having to deal with the SoEs. Not only is the process of releasing state land extremely slow and complicated, but is has proved to be very frustrating for all municipalities interviewed. This relates to a

capacity problem and lack of focus on the part of the provincial or national departments towards the release of land to support an urban transformation agenda.

Lack of internal coordination within municipalities can also cause delays and prevent successful negotiations around land acquisition, as was noted in BCM. Some municipalities have relatively low levels of capacity to devote to complicated and lengthy negotiations with SOEs or government departments. SOEs and even government departments often take a long time to respond to municipalities' requests for land disposal, as is very clear in Ekurhuleni and Mangaung. Land transactions involving SOEs are also lengthy with several examples taking close to 10 years or more.

The research found that municipal officials' knowledge and understanding of the policy framework for the disposal of non-core land varied significantly across the municipalities. Officials in larger more resourced metros appeared to have some knowledge of the policy content such as the need for the SOEs to offer the non-core land as first right of refusal to the National Departments. However, one municipality indicated that SOEs may well comply with this requirement but that the National Departments themselves failed to consult municipalities when they are made aware of the SOEs' intention to dispose of land. The risk of municipalities not having sufficient knowledge of the SoE policy content is that they are not able to address non-compliance. Municipalities need to be aware of the DPE and SoEs' policies on the disposal of non-core land to ensure that they are not only able to hold the state to account but to contribute to the overall national, provincial and local developmental agenda.

All four case study municipalities were resigned to having to pay market related prices for SoE land. While Mangaung indicated that if a SoE demanded a value in excess of the market related price, it would consider expropriation, it paid R10 million to a tenant for a potential loss of income and then still paid a market related price of R10.5 million for the land from Transnet. The case studies demonstrate that the SoE demand for market related prices at the local level is now mainstream. A single municipality does not have sufficient clout to effect a change in the DPE or SoE approach to the disposal of non-core land.

While no spatial data was available which indicated both the core and non-core land of the SOEs, it was clear that not all non-core land has been disclosed, e.g. Signal Hill, an area for which Transnet have recently called for development proposals, is not included in the HDA shapefile. This points to a lack of transparency on the part of the SOEs and to their potential selective release of non-core land. In relation to State land, the owner attribute data had many variations or descriptions of the land owner with some misspelt, often making it difficult to determine ownership.

Concluding Remarks

In trying to pursue a transformation agenda municipalities find that state land is difficult to access, while SOE land is not only also difficult to access, but land prices are usually very high. Very few successful transactions have taken place in the case studies. Moreover, the delays in relation to State Land were sometimes worse than with SOEs. While municipalities are required to drive spatial change and transformation, the current practices in relation to the disposal of land are unresponsive. Significant effort and political will at national level is necessary to ensure that appropriate policy shifts are made toward improving the management and release of non-core land in South Africa². It is clear that something more needs to be done to hold SOEs and State Departments accountable for how they contribute to the national transformation of urban land. This is difficult in the case of SOEs, given their need to show a profit and to operate in many respects in a similar manner to a private sector organisation. At the same time, highly skilled capacity is required at a municipal level for driving the land acquisition process. Internal mechanisms are required within the municipality to ensure a coherent approach to the acquisition of land. Municipalities also need to be supported more effectively by national and provincial government in this regard.

² Ovens, 2013 The role and significance of SOEs, public entities and other public bodies in the promotion of urban growth and development in South Africa, report prepared for the IUDF

The recommendations outlined below emerge from the case study findings and are intended to support the ongoing discourse towards the improved management and release of state owned and SoE land.

Priority 1: Addressing the Legal Framework

The legal framework for the disposal of state owned and SoE land is extensive, some of which, such as the State Land Disposal Act and the Expropriation Act, remain old order legislation. The fragmentation contributes to the current practices of the selective application of the legislation by SoEs in the disposing of land, such as disregarding GIAMA. SoEs are wholly owned by the state and as such should be compelled to not only comply with the developmental objectives of government but also to the legal framework for the disposal of state land.

The legal framework which requires all provincial and national departments to indicate that they do not require the land prior to its transfer to a municipality undermines government's developmental obligations. The timeframes, roles and responsibilities of each stakeholder in the disposal of land do not appear to be adequate. Currently, there are no mechanisms compelling a state department to not only operationalize the request for disposal but to do so within a reasonable timeframe. Municipalities' concerns and the current delays must be addressed in the revision and consolidation of the legislation.

Advocating for change

Organisations	Actions
<ul style="list-style-type: none"> • SALGA • HDA • SACN 	Advocate for the review of the legislation within public and political forums
<ul style="list-style-type: none"> • National Treasury • National Department of Public Works • DRDLR 	Reach an agreement on a consolidated legal framework for the disposal of all state land including that owned by State Owned Enterprises

Priority 2: Empowering Municipalities

Municipal officials need to be made aware of the legal framework and policy initiatives for the disposal of SoE land. This will assist in holding certain SoEs to account for the actions undertaken within municipal areas and facilitate the negotiations for the possible release of the land.

Moreover, municipalities need to be provided with a guide as to the process, including the departments and key persons to be contacted in each of the SoEs, for acquiring land. Capacity building initiatives by both Department of Human Settlements and DCoG may be useful in strengthening the ability of the municipalities to engage on land matters and empower them in managing their negotiations with SoEs.

Several allegations of irregular sale or development of SoE or state land were made. This seems to involve political connections and interventions which run counter to the developmental agenda. Tighter mechanisms need to be implemented to support municipalities against this type of practice, and to monitor municipalities to prevent this from occurring.

The potential for partnerships around the development of strategic land needs to be investigated further, and municipalities need to be supported to make informed decisions around partnering with SoEs or other spheres of government to develop such land.

Should a SoE be unwilling to either release the land at an affordable rate, dragging the sale and/or is reluctant to establish a partnership with a municipality for its development, the municipality should consider using the Expropriation Act as a means of last resort.

Advocating for change

Organisations	Actions
<ul style="list-style-type: none"> • SALGA • HDA • SACN 	<ul style="list-style-type: none"> • Preparation of a guideline for municipalities outlining the legal framework and the DPE and SoE policies on the disposal of non-core land • A manual needs to be developed to support and capacitate municipalities to develop and implement stakeholder engagement strategies. These need to include a range of stakeholders as critical land could also be owned by the private sector. A stakeholder strategy based on a well-informed stakeholder mapping exercise could help municipalities. The preparation of a step by step guide to facilitate this, including municipal engagement with SoEs, is recommended. • The preparation of a guide to partnering with SoEs or other spheres of government around the development of strategic land • Preparation of a guide in relation to the expropriation of land, subject to the provision of the Expropriation Bill
<ul style="list-style-type: none"> • National Treasury • DCoG • Department of Human Settlements 	<ul style="list-style-type: none"> • Improved mechanisms to deal with corruption and political interventions need to be developed and implemented, and tighter monitoring of municipal performance in this regard need to be developed and enforced • Capacity building initiative to support municipalities in this engagement with SoEs

Priority 3: The identification of land and addressing the delays in the disposal of State and SoE Land

Urgent attention is needed to resolving the current challenges in relation to release of State land. The lengthy delays, lack of capacity and commitment to facilitating municipalities to obtain land must be addressed. A key question is to what extent SOEs and their policies around the disposal and development of land support the development objectives of government. This should be extended to consider all spheres of government, including national, provincial, and even the municipality itself.

Confusion with respect to ownership needs to be resolved along with many other process issues if the state's immovable assets are to be a lever for unlocking the development potential in municipalities.

Even where municipalities have clearly identified their spatial intentions with regard to land, the research shows that it is not possible for individual municipalities to advocate for changes to speed up the release of land and to hold provincial and national departments accountable for their contribution to ward the transformation of municipal spaces. Rather organisations such as SALGA, with the support of SACN and the HDA, will need to undertake this responsibility.

Metro officials indicated that they have been requested by National Treasury to indicate how much state and SOE land is in their area, and to identify key land parcels they need released. It is important that municipalities do this in line with their IDP's and SDF's. HDA's database only addresses land for housing, although not all developments which would promote the government's developmental agenda are necessarily housing. In some cases, key commercial land could be released to promote transformed urban areas.

Advocating for change

Organisations	Actions
<ul style="list-style-type: none"> • SALGA • HDA • SACN 	<ul style="list-style-type: none"> • Preparation of detailed case studies to provide a body of evidence to highlight the struggles municipalities are facing in obtaining provincial and national government land will strengthen the case for change • Specification of SOE or state land that metros have clearly identified that they need for development and submission of this to National Treasury's City Support unit for further investigation and mediation. This could start with the four case study municipalities in this report. • Development of a complete database of SOE and State land
<ul style="list-style-type: none"> • DRDLR 	<ul style="list-style-type: none"> • Advocate that the Department of Rural Development and Land Reform give urgent attention to ensuring that the owner of each state land parcel is clearly reflected in the Deeds Office

Priority 4: Rethinking Municipal Planning and improving IGR

More emphasis needs to be placed on the SDF in terms of quality, the implementation framework and its reflection in the IDP. An effort needs to be made to ensure that the two plans are aligned. In the absence of long-term plans, a longer time frame SDF could serve a good purpose of showing long-term development imperatives.

More effort needs to be made to ensure the participation of key land owners which includes national and provincial government and the SoEs in the preparation of the structuring elements of the SDF.

Generally, there is a need to improve the intergovernmental relations in the preparation and implementation of SDFs and IDPs. IGR mechanisms which facilitate improved access to information become essential. These should include forums for improving joint and collaborative planning. It is critical that the needs of the municipality in terms of its transformation agenda are effectively communicated to other spheres of government.

Advocating for change

Organisations	Actions
<ul style="list-style-type: none"> • SALGA • HDA • SACN 	<ul style="list-style-type: none"> • Preparation of a guideline for municipalities re the consultation and participation of landowners and other critical stakeholders in the SDF/IDP preparatory phases • Preparation of a guideline on the integration and alignment of plans. In this regard, CoGTA has, as part of the revised IDP framework, developed an integration model that deals with the sequencing of plans and the interrelationships thereof. Municipalities need to be made aware of this initiative. • Reviewing of member cities' IDPs and SDFs to ensure a better articulation of the use of well-located State, SoE and municipal land for supporting urban transformation
<ul style="list-style-type: none"> • DRDLR 	<ul style="list-style-type: none"> • DRDLR and CoGTA to reconsider the preparation and sequencing of plans • Preparation of a report which examines and proposes a amendment to the IGR structures for more effective and efficient structures for preparing and implementing the IDP and SDF. This needs to include the existing and potential role for provinces in promoting and monitoring IGR around land disposal, acquisition and development • In the immediate term, National Treasury has indicated its willingness, through the City Support Programme, to sit with individual municipalities and the relevant stakeholders to address issues around specific land parcels and/or SOEs or state departments.

1. INTRODUCTION

The National Development Plan (NDP) envisages an urban South Africa in 2030 that is one of functionally integrated, balanced and vibrant urban settlements. Despite considerable government investment in urban areas of the country over the last 20 years, many urban residents are still extremely poor, have inadequate access to basic services and job opportunities, and face lengthy, expensive trips to work as a result of poorly located housing and poorly integrated and inaccessible public transport. Apartheid patterns still persist with most cities and towns characterised by profound spatial, economic and social divides and inequalities³. A national approach is needed to ensure “more efficient and effective management of the country’s urban areas” to bring about inclusive and integrated cities⁴. As a national problem, this needs to include all of government, and should not just be left to municipalities to deal with on their own.

New approaches are needed which “complement planning for service delivery and equip municipalities with the right intelligence on private and public investment priorities and decisions, as well as the appropriateness of these for liveable and productive cities. Pro-poor, as well as investment-focused, land-use decisions regarding residential, commercial and property-related planning modalities are central to effective spatial reforms⁵. Policies and interventions are therefore needed involving all spheres of government and all components of the state which “contribute to the progressive integration of urban development investments in order to realise the urban dividend⁶”.

The reconfiguration and transformation of urban areas to achieve these goals will depend to a large extent on effective management of the land within our urban areas. There are often large areas of state owned land (owned by national, provincial or local government, or a State-owned Entity, SOE) in municipal areas. Problems in acquiring such land have been raised in several cities. This relates to the difficulty of accessing such land, and the time and costs associated with acquiring it.

This was illustrated in research conducted on land use management in five large urban centres which noted the following:

“In addition to the complexities of urban land use management competencies falling across the departments and spheres of government as mentioned above, every city pointed to the frustration of not having informed access to the land asset base of other spheres of government, particularly in addressing the needs of the poor. In many cases competition and conflict between government was identified as the single biggest barrier to finding affordable well located land for the poor. The highest levels of frustration occurred with respect to state owned enterprise land (SOE), as not only were there issues of non-cooperation but also the SOE are driven by imperatives of market costing that mitigate against the effective transformative use of their land for the poor.”⁷

State-owned enterprises (or public entities/ state-owned companies, SoEs) are independent bodies partially or wholly owned by government. They are important stakeholders and contributors to ward supporting and promoting urban growth and development. As major owners of large tracts of well-located land, SoEs have significant power in shaping the urban landscape for example the Cape Town Waterfront and Durban port area. The National Development Plan (NDP) notes that, “while considerable attention has been given to the transformation of SoEs (in post-apartheid South Africa⁸), less attention has been given to the transformative or developmental role that SoEs can play” (NPC, 2013, 438). At the same time, the NDP also comments that

³ IUDF, 2013

⁴ Ibid

⁵ Ibid

⁶ Ibid

⁷ Parnell, S; Kitchin, F; Ovens W; Williamson, A “Land Management and Democratic Governance in Five South African Major Urban Centres” Report prepared for CUBES 2007

⁸ Own insert

“different spheres of government have not cooperated effectively around built-environment functions relating to housing, state-owned land and transport infrastructure” (NDP, 2013, 434).⁹

The Integrated Urban Development Framework notes that there needs to be a reconceptualization of public land in relation to supporting and promoting the public interest, the cornerstone of which is the pricing of land for release. This would promote transparency in the land valuing process and ensure standardization in the approaches being used for determining value.

Within this context, the SACN, in partnership with the HDA, commissioned this research to address the following:

- Provide an overview of the legislative and policy framework informing the acquisition of land from state owned companies and other organs of state by municipalities and/or the HDA
- Conduct research in four cities, of which at least two must be SACN members, on the following:
 - The context of land ownership by the state owned companies and other spheres of government within the selected cities
 - Case studies of the processes municipalities have followed with regard to land acquisition in the selected cities

This report provides an overview of the process followed, synthesizes the lessons learnt from the case studies, and highlights the legislative processes followed and the concomitant challenges, giving consideration to those relating to the institutional, financial and other related aspects.

The report consists of seven sections. Following this introduction, Section 2 outlines the legislative framework for the disposal of state land, particularly non-core SoE land. Section 3 provides a more detailed discussion of the problem statement, based on existing research and experience. Section 4 then discusses the methodology followed for conducting the four case studies. Sections 5 and 6 provide an overview of the case study findings, with Section 5 focusing on municipal planning and land management and Section 6 on land acquisition by municipalities. Section 7 concludes the report, with a set of clear recommendations emerging from the case studies.

⁹ Ovens, IUDF Expert Panel Report on SOEs August 2013

2. LEGAL FRAMEWORK FOR THE DISPOSAL OF STATE LAND

This section of the report is drawn from work previously undertaken by Wendy Ovens and Associates for the HDA and the IU DF process. It provides an overview of the legislative and policy environment for the acquisition of SoE and state land that has been available to municipalities to date. The concluding comments reflect on the possible role that the implementation of SPLUMA may have on the acquisition of land by municipalities.

2.1 Constitution of the Republic of South Africa, 1996 (Act no. 106 of 1996)

Chapter 2 of the Bill of Rights outlines the provision in relation to Property Rights. Section 25 notes that “no-one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property”. It also states that property may only be expropriated for public purposes or the public interest and must be subject to compensation. Section 25(3) then provides the guidelines for determining compensation by stating that the following aspects must be considered when determining compensation:

- a) The current use of the property
- b) The history of acquisition and use of the property
- c) The market value of the property
- d) The extent of the direct state investment and subsidy in the acquisition and beneficial capital improvement of the property
- e) The purpose of the acquisition

Market value is only one of several considerations when determining compensation which would include that applicable to non-core land owned by SoEs and other State Land. Importantly, the Constitution does not rank the aspects to be considered. As such each one is of equal importance with the weighting changing in response to the specificity of the property being acquired.

2.2 Public Finance Management Act – No 1 of 1999

The purpose of the Public Finance Management Act is to “...secure accountability, and sound management of the revenue, expenditure, assets and liabilities...”¹⁰ of national and provincial government departments, constitutional institutions, major and other public Entities.

The PFMA sets the broad framework or parameters for the sale of state assets. Section 6 which outlines the powers and functions for National Treasury states that the department must “...promote and enforce transparency and effective management in respect of revenue, expenditure, assets and liabilities of departments, public entities and constitutional institutions.”¹¹ Similarly, Section 18(1) (c) determines the same requirements for the provincial treasuries supporting provincial departments and public entities.

Section 49 states that all organisations regarded as a schedule 2 and 3 public entity must have a financial authority which is then accountable in terms of the PFMA. Section 50 then outlines the fiduciary duties of an entity’s accounting authority by stating that it must “exercise the duty of utmost care to ensure reasonable protection of the assets and records of the public entity”. In addition, Section 54(2) states that an entity is required to report to the relevant Treasury and/or the Auditor General before it concludes any transaction in

¹⁰ Republic of South Africa “Public Finance Management Act” No 1 of 1999

¹¹ Ibid

relation to the acquisition or disposal of any significant asset which then includes the disposal of entity owned non-core land.

The PFMA also states that the National Treasury must make regulations or issue instructions applicable to departments concerning inter alia “the alienation, letting or disposal of state assets”¹². Regulations are also required for the “improvement and maintenance of immovable state assets”.

In summary, the PFMA makes reference to the need to establish frameworks and regulations for the management of immovable assets which includes the disposal of non-core land. No mention is made of the process or criteria for the determination of the land or property value and/or compensation methods.

2.3 Treasury Regulations Issued in terms of the Public Finance Management Act

Schedule 10 of the Treasury Regulations addresses the asset management aspects of the PFMA. The earlier versions of the draft regulations contained the following two clauses:

- Disposal of moveable assets must be at (book) market value or by tender or auction, whichever is most advantageous to the State, unless determined otherwise by the relevant treasury.
- Any sale of immovable state property must be at market value, unless the relevant treasury approves otherwise.

In the March 2005 promulgation of the regulations, the above clauses were removed without any replacements. Therefore, there is no requirement in terms of this section of the regulations to sell public owned land at market (or book) value.

Section 16A of the Treasury Regulations addresses the regulations pertaining to Supply Chain Management which are applicable to all national and provincial departments, constitutional institutions and the public entities listed in Schedule 3A and 3C of the PFMA. It would appear that these regulations are not applicable to the Schedule 2 Public Entities. Under section 16A7.3, the regulations require that any sale of immovable state property must be at market-related value, unless the relevant Treasury approves otherwise.

Section 26 of the 2012 Draft Treasury Regulations addresses the disposal management for assets by stating that “the accounting officer or accounting authority must establish an efficient and effective system of disposal management which is fair, equitable, transparent, cost effective and competitive”.¹³ Subsection 26.1.2 then notes that the accounting officer must ensure that “the supply chain management system sets the mechanism for determining the market value for different types of assets” and further in the same subsection that “consideration be given to the fair market value of the asset and to the economic and community value to be received in exchange for the asset”¹⁴. No guidance is provided on the meaning and/or how the concepts of “economic and community value” should be interpreted. The very next clause states that the accounting officer or accounting authority must ensure that “reasonable efforts are made to ensure that an appropriately competitive process for disposal is adopted”¹⁵.

The disposal management system of SOEs as well as State Departments is required to provide for various disposal options which may include inter alia:

- Public auction
- Public tender
- Transfer to another institution

¹² See section 76 of the PFMA

¹³ Public Finance Management Act, 1999, Draft Treasury Regulations Government Notice 1005 of 2012

¹⁴ Ibid Page141

¹⁵ Ibid

- Sale to another institution

Subsection 26.3.1 notes that the preference point systems outlined in the Preferential Procurement Policy Framework Act, 5 of 2000 and the associated regulations are not applicable to the sale and letting of assets. Rather the award must be made to the bidder with the highest price.

Section 34, which addresses aspects pertaining to trading entities, requires that when an entity is disposing of an asset that is outside of the ordinary business of the organisation (i.e. its core functions such as Eskom electricity, Transnet, rail and freight services), it must obtain Treasury approval for the transaction. It is assumed that this clause would apply to the disposal of non-core land, i.e. land that cannot be deemed as necessary for the ordinary business of the organisation.

Based on the information provided on the Treasury website, the 2012 draft regulations are yet to be formally adopted. Therefore the 2005 regulations remain in place.

2.4 State Land Disposal Act No 48 of 1961

The State Land Disposal Act No 48 of 1961, as amended, is a piece of legislation, the purpose of which is to provide for the disposal of certain State land and to prohibit the acquisition of State Land by prescription. Section 2(1) indicates that the State President may, subject to conditions, sell, exchange, donate or lease any State land on behalf of the State. Section 2(2) states that the land governed by a provincial ordinance may not be disposed of by the State President but again with a list of exceptions. The Act also allows for the State President to delegate his or her authority to a Province or any other officer of the State.

The State Land Disposal Act No 48 of 1961 defines state land as being “any land over which the right of disposal by virtue of the provisions of section 3 (4) of the Agricultural Holdings (Transvaal) Registration Act, 1919 (Act 22 of 1919), and section 78 (3) and (4) of the Town Planning and Townships Ordinance, 1965 (Ordinance 25 of 1965) (Transvaal), vests in the State President, and any right in respect of State land”¹⁶. While the Act is short, with two sections having been repealed and amended on five occasions, it remains a powerful piece of legislation for the following reasons:

- “Firstly, the Act allows the disposal of national state land to take place on a centralised basis;
- Secondly, in practice, the disposal of national state land takes place primarily in terms of this Act;
- Thirdly, the Act confers on the President the power to amend or cancel any condition registered against any land conferring any right on the State; and
- Fourthly, the Act prohibits the acquisition of both national state land and provincial state land by means of acquisitive prescription”¹⁷.

Certain provisions within the Act are currently under review as they are now obsolete and do not reflect the current system of National and Provincial Government and/or the imperatives of a developmental state. In addition, the definition of “state land” needs to be amended to bring it in line with post 1994 legislation. Notwithstanding, this Act remains definitive in the disposal of State owned land.

2.5 Expropriation Act, 63 of 1975

The Expropriation Act provides guidance in relation to possible forms of compensation with “market value” deemed as being the method. Section 12 allows for a maximum compensation of market value plus actual financial losses caused by expropriation, plus the solatium. *This usually means a value much higher than market value.* The Act also provides that either the Minister or the land owner may apply to the High Court for a determination of compensation if no agreement can be reached between the parties.

¹⁶ Republic of South Africa, State Land Disposal Act, No 48 of 1961

¹⁷ South African Law Reform Commission “Statutory Law Revision” Discussion Paper 121, May 2011

Berrisford notes that “(T)his legislation is long overdue for an amendment. The most important requirement is that it has to be brought in line with the provisions of the 1996 Constitution (Act 108 of 1996), especially those dealing with the calculation of compensation in cases of expropriation¹⁸.”

While the Expropriation Act is currently not being used to gain access to SoE land, there are no clauses within the Act preventing this from occurring. Moreover, none of the case study municipalities mentioned using expropriation as a means of acquiring SoE or state land. This could be examined as an option for the future.

2.6 Government Immoveable Asset Management Act No 19 of 2007

The omission of the clauses in the Treasury Regulations appears to have been remedied by the Government Immoveable Asset Management Act No 19 of 2007. Berrisford comments that this Act fills many gaps left by the PFMA in relation to public land. It also elaborates on the long-established principles set out in the State Land Disposal Act, 1961¹⁹. This Act has three core functions. The first is to provide a uniform framework for the management of the immovable assets held or used by national and provincial departments. The second is to ensure that there is coordination of the use of the immovable assets with the service delivery objectives of a national or provincial department. The third provides guidelines and minimum standards in respect of the management of immovable assets. The Act applies to organs of State including all national and provincial government departments, public entities and constitutional institutions but excludes local government.

The Act's principles (Section 5) clearly state that when an immovable asset is acquired or disposed of, best value for money must be realized. Best value for money has been defined as “the optimization of the return on investment in respect of an immovable asset in relation to functional, financial, economic and social return, wherever possible” and as such is not restricted to a “money related” definition only. Moreover, the Act does not mention the need to transact an immovable asset at a “market related value”. Rather, a more comprehensive or multi-dimensional approach has been adopted in the legislation which is thus more suitable for the acquisition of land for the purposes of sustainable settlements.

In the same section, there is an interesting clause which indicates the following:

“An immovable asset must be used efficiently and becomes surplus to a user if it does not support its service delivery objective at an efficient level and if it cannot be upgraded to that level”

This is possibly the clause which provides the impetus for determining core and non-core land, a process already undertaken by many of the Schedule 2 Entities.

Other principles in section 5 include the requirement that when disposing of land, the owner must consider whether it can be used:

- by another department or jointly by different departments;
- for social development initiatives of government, and
- in relation to government's socio-economic objectives, including:
 - land reform,
 - black economic empowerment
 - alleviation of poverty
 - job creation and,
 - the redistribution of wealth.

¹⁸ Berrisford, 2013

¹⁹ Ibid

Each department is required to prepare an immovable asset management plan which must adhere to the principles as outlined in section 5 of the Act. The plan must, inter alia, include a portfolio and management plan, a management plan for each immovable asset throughout its life cycle, and a disposal strategy and associated management plan. Decisions taken by the department in relation to immovable assets must then be in line with the management plan. This requirement is given expression in section 11 of the Act which indicates that a department must give effect to the plan and manage its immovable assets in a manner which is consistent with the Act.

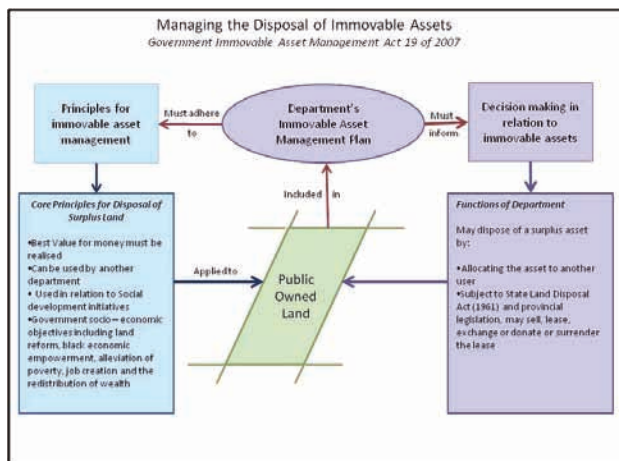
Section 13(3) of the Act, which outlines the functions of the department,²⁰ states that it may dispose of surplus assets:

- (a) by the allocation of that immovable asset to another user; or
- (b) by the sale, lease, exchange or donation of that immovable asset or the surrender of a lease but subject to the State Land Disposal Act, No 48 of 1961 and any other provincial land administration law.

Therefore, it would be possible for land currently owned by a department or entity to be donated to another department or entity as long as the transaction was in accordance with the immovable management plan and in compliance with the legislation generally. While it is unlikely that prime land would be donated from one department to another, other land, such as that requiring rehabilitation, necessary for the alleviation of poverty and/or redistribution could be donated. *The critical point is that it is possible to move publically owned land from one department to another without an onerous or indeed, any financial transaction taking place.*

There is no legal specification that the best value for money must be realized at the point of transaction. Rather, it could occur before, during, immediately after or over the longer term. The application of the principles with regards to the use of land for social development initiatives, government's socio-economic objectives, poverty alleviation, redistribution of wealth and the principle of best value for money, requires a more critical examination. In so doing, both the direct and the indirect consequences must be applied.

Figure 1: Managing the disposal of immovable assets



²⁰ Referred to in the Act as the "custodian" which is in turn defined as "a national or provincial department referred to in section 4 represented by the Minister of such national department, Premier of a province or MEC of such provincial department, so designated by the Premier of that province".

It appears that SoEs are not being held to account in terms of GIAMA. Berrisford comments that “Strictly speaking one could construe the definition of organ of state in GIAMA to include state-owned companies, but the view of both the Department of Public Enterprises and the SoEs is that they are excluded from that definition”²¹. However, it may well be worth applying for a judgment to gain legal clarity in this regard. Should it be found that GIAMA did apply to SoEs, it would strengthen the argument that the disposal of non-core land could indeed be released to municipalities at a rate other than market related prices.

2.7 Companies Act, 2008 (Act no. 71 of 2008)

In addition to the Constitution as the overarching legislation, the PFMA providing guidance in relation to financial management, and the SoE specific legislation, SoEs are also required to comply with the Companies Act. This Act is not applicable to State Departments.

Chapter 5 Section 112 addresses aspects pertaining to proposals to dispose of assets. It requires that any such transactions must be approved by a special resolution of all the shareholders with the precise terms of the disposal clearly indicated. Importantly, the disposal must be given its fair market value as at the date of the proposal.

It is possible then that the SoEs are indeed using this provision in the Companies Act to drive their persistence on receiving market related prices for all and any land disposed of including to municipalities and other state departments or entities.

2.8 Policies Guiding the SoE Disposal of Non-Core Land

It would appear that only the National Department of Public Enterprises and Transnet have prepared policies toward the sale of non-core properties.

National Department of Public Enterprises – “State Owned Enterprises Non-Core Property Disposal Policy and Broad-based Black Economic Empowerment Guidelines” June 2008

The National Department of Public Enterprises acknowledges in its policy that “property is a strategic and productive asset, a vehicle for economic development, service delivery and transformation”²². In order to improve efficiencies within the different entities, National Government has taken the decision to dispose of non-core land which has been defined as being property that is no longer considered core to operations.

Non-core properties are categorised in the policy as “property for sale”; “disposal to the state”; “property for housing” and “property for development”.

The disposal of non-core properties is also viewed as an important opportunity for supporting B-BBEE with such companies being targeted for the sale of any property on the open market.

In addition to supporting B-BBEE, the policy outlines the core reasons for disposal as contributing to the land reform process and rural development and urban renewal. In the latter case, the policy notes that where a municipality has identified an immovable asset “for socio-economic purposes in terms of the Integrated Development Plan (IDP) and Spatial Development Framework (SDF) of a municipality, the SoE should consider the transfer of such asset to the municipality, subject to Board and, where relevant, Treasury approval”. It is important to note, however, that *this land would have to have been identified by the SoE concerned as non-core land*. In addition, SoEs are required to consider transferring immovable assets to the Department of Human Settlements if such assets have been identified for affordable or social housing projects or programmes.

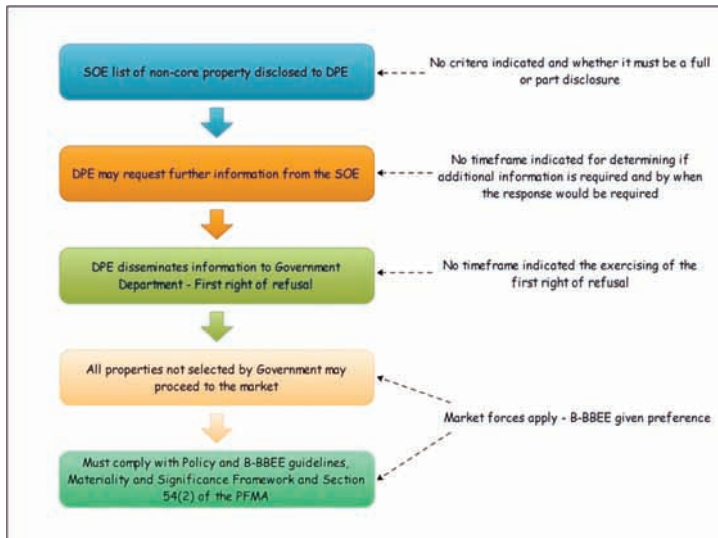
²¹ Berrisford, 2013

²² National Department of Public Enterprises – “State Owned Enterprises Non-Core Property Disposal Policy and Broad-based Black Economic Empowerment Guidelines” June 2008 Pg3

Forms of disposal may include sale on open tender, sale without competition, donation “Gratis” transfer, exchange, public-private and public-public partnerships, and unsolicited bids.

The National Department of Public Enterprises policy notes that “A State Owned Enterprise or a wholly owned subsidiary of a SoE may not dispose of any property unless it has first offered that property for sale to the State and other SoE via the Department of Public Enterprises under the same terms and conditions it is otherwise prepared to dispose of that property”.²³ It is evident in this approach that while the SoE must offer the property to other government institutions, first, it sets the conditions which would include the price. Moreover, as outlined in the diagram below, the disposal process is a lengthy one with a number of opportunities for delays in the process.

Figure 2: Transnet Group: Immovable Property Disposal Policy, February 2010²⁴



The purpose of the Transnet policy is to provide guidelines for “the disposal of all Transnet non-core immovable property and improvements”²⁵ which comprises residential, retail, office and industrial property.

The Transnet policy is based on the policy of the National Department of Public Enterprises regarding the disposal of non-core property with some additional caveats. For example, should an organ of State require a particular property, “Transnet is to negotiate the sale of the property – at a market related price”.²⁶ This point is further emphasised later in the policy document when addressing aspects relating to the transfer between the spheres of government by stating that “where Transnet holds immovable property that is identified as essential for the furtherance of socio-economic objectives of Government, transfer of such property for this purpose shall, as far as possible, take precedence over any other proposed disposal purpose for which that

²³ Ibid, page 6

²⁴ Ovens for the IUDF input on SoEs

²⁵ Transnet Group: Immovable Property Disposal Policy, February 2010

²⁶ Ibid, page 6

asset may have been earmarked. Wherever possible, the immovable property shall be transferred at fair market values and all costs related to the transfer shall be borne by the receiving custodian²⁷.

Both the Department of Public Enterprises and the Transnet policies on the disposal of non-core property allows for the identification of non-core land which can be transferred to other government departments, sold on the open market, or for development by the SoE itself. Government departments would include provincial government and local government.

While both policies require the disposal of non-core properties at “market related prices”, there is no single approach in determining what is regarded as “market related”. Market value is defined by the South African Valuers Profession and by the International Valuation Standards Committee as being “*the most probable price that a willing and informed buyer would pay to a willing informed seller for a property on the date of valuation if the property was sold on the open market.*” This tends to imply that market value is a fixed price. Determining the willingness to pay may take a number of forms. For example, the highest and best use principle may be applied which is based on the assumption that a willing buyer and seller would negotiate and settle on a land price linked to the highest and best use of the property, which is the usable potential of a property. This includes considering the physical possibility, economic feasibility and legal viability of the potential.

In South African courts the market approach is accepted as the most accurate approach, and the concept of an open, perfect market is assumed. Many court cases support the principles of market value and willing buyer, willing seller, and have generally laid the basis for compensation. While full market value is expected to be paid for land under the willing-buyer, willing-seller approach, what this means is not clear. For example, the asking price may be determined by the seller or an estimate of market value by an independent valuer. Neither the DPE nor the Transnet policies set guidelines for the process to be followed in the determination of the market related value. This means that it is possible for the SoE to overinflate the price of the land based on the perceived need or urgency for a department to obtain the land for development purposes.

The willing buyer, willing seller approach has meant that land acquisition has been spatially fragmented, support services to beneficiaries have not been clearly developed, there has sometimes been collusion between land owners and officials to purchase at higher prices, inexperienced officials have sometimes approved the purchase of poor quality land, and bureaucratic delays have sometimes led to sellers finding alternative buyers²⁸.

2.9 Summary Comments

There is some debate as to what legislation SoEs must comply with when disposing of non-core land. While there must in all instances be compliance with the Constitution, certainly, it would appear that the primary focus is on the PFMA and regulations and the Company Act. However, the application of the GIAMA should also be relevant as SoEs are included in the definition of an “organ of state”. When examining the SoE policies, it would appear that this Act is disregarded.

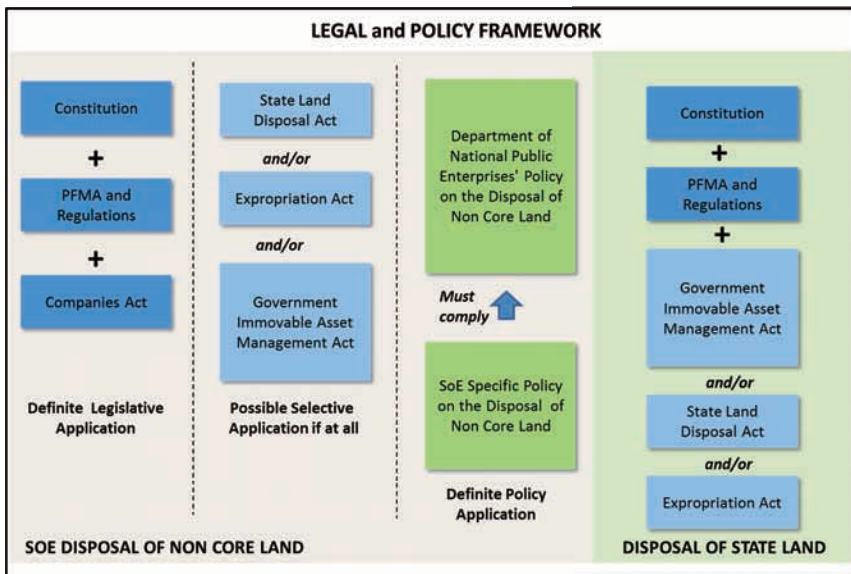
On the other hand, State Departments are required to comply with at least GIAMA, the PFMA and the State Land Disposal Act. Certainly within GIAMA, there is wider scope for the disposal of land other than at market related prices. Rather the emphasis is placed on the intended purpose of the acquisition as opposed to the possibility of extracting maximum financial return.

The examination of the legislation shows that it is in some instances, contradictory, as indicated in the diagram below.

²⁷ Ibid, Pg8

²⁸ Cousins, 2012

Figure 3: Legal and Policy Framework for the disposal of SOE non-core land and State Land



On the one hand, PFMA regulations indicate that immovable assets must be disposed of at market related prices while on the other hand, the Immovable Assets Management Act states that “best value for money” should be achieved. The latter Act takes cognizance of a number of factors including functional, financial, economic and social return. The disposal of land for the “best value for money” certainly appears to be more in line with the State’s own developmental agenda.

SPLUMA now requires that a municipality considers SoE land in the preparation of their SDF. While it may now be necessary to consider this land in the planning process, it does not take the municipality any closer towards acquiring the land. However, it may assist in holding the SoE to account in relation to their development intentions and/or practices if for example it makes development proposals out of step with the SDF.

Municipalities have not sufficiently explored the option of expropriation. This may partially be related to the promotion of the concepts of co-operative governance as outlined in the Constitution. However, if no solution can be found to the cost of the land, this may indeed need to be seriously considered.

Given the legislative framework outlined in this section, municipalities are struggling to acquire state land for the purposes of developing and transforming their urban spaces. The following section outlines this confusion from the municipal perspective in more detail.

3. THE PROBLEM STATEMENT

3.1 Introduction

This section outlines the overall problem relating to the acquisition of state land by municipalities, based on existing research and experiences of organisations such as the HDA of the c challenges municipalities experience with the identification and acquisition of SoE land.

As indicated earlier, land is key to the development of spatially transformed and inclusive urban areas as envisioned in the NDP. In order to use such land, the following key activities are required:

1. *Identification of land* for developmental purposes, through effective planning and land management
2. *Acquisition of this land*, which takes time, money and resources, and requires co-operation across all spheres of government

3.2 Factors hindering identification and acquisition of land

There are, however, a number of factors which hinder the identification and acquisition of such land which therefore, in turn, impact the ability to transform our urban spaces. These include the following:

i. Legal and Policy Framework

The legal framework around land disposal within which SoEs and the state operate, consists of number of elements with legal uncertainties which appear to allow for a selective application of legislation:

- the Companies Act, 71 of 2008
- the individual statutes that create each SoE
- the Public Finance Management Act (PFMA)²⁹ and related Practice Notes – the custodian department is National Treasury
- the Government Immovable Asset Management Act (GIAMA) – the custodian is the National Department of Public Works³⁰

The PFMA sets the parameters in which the SoEs are required to operate with the regulations and/or the Practice Notes outlining the process and procedures for the disposal of immovable assets. GIAMA applies to organs of State including all national and provincial government departments, public entities and constitutional institutions, but excludes local government. It has the following core functions:

- To provide a uniform framework for the management of the immovable assets held or used by national and provincial departments
- To ensure that there is coordination of the use of the immovable assets with the service delivery objectives of a national or provincial department
- The provision of guidelines and minimum standards in respect of the management of immovable assets.

While it would appear that GIAMA is applicable to SoEs given that they are public entities, the common practice is to rather make use of the PFMA and the regulations related to the disposal of

²⁹ No. 1 of 1999

³⁰ No 19 of 2007

immovable assets. It is suggested that in practice, the perceived “legal uncertainty” has created an opportunity for the SoEs to select the legislation that better suits their interests.

The Department of Public Enterprises sets the broad policy for the disposal of non-core land. Individual SoEs are then able to prepare their own policies as long as they reflect the overall intentions of the DPE policy. While Transnet as a large land owner makes use of its own policy, it is not clear which other SoEs have followed suit. The key challenge for municipalities is that they may not be aware of the different SoE policies and how to engage with them effectively.

State Departments are clearly required to comply with at least the Constitutional provisions, the PFMA, GIAMA and the State Land Disposal Act. Certainly, the legal provisions for state land are clearer than that for SoEs.

ii. Market related pricing

GIAMA’s principles and provisions clearly state that when an immovable asset is acquired or disposed of, best value for money must be realised. Best value for money has been defined in the Act as “the optimization of the return on investment in respect of an immovable asset in relation to functional, financial, economic and social return, wherever possible”. Further, Section 5 (1) (f) of the Act requires that when disposing of land, the owner must consider whether it can be used:

- by another department or jointly by different departments;
- for social development initiatives of government, and
- in relation to government’s socio-economic objectives, including:
 - land reform,
 - black economic empowerment
 - alleviation of poverty
 - job creation and,
 - the redistribution of wealth.

Section 13(3) specifically empowers a department to ‘dispose of a surplus immovable asset - ... by the allocation of that immovable asset to another user [i.e. another national or provincial department]’. The Act does not mention the need to transact an immovable asset at “market related value”. It is important that a more developmentally sensitive approach is adopted in interpreting this legislation, based on these other objectives mentioned in the Act³¹.

One potential loophole is that the transfer of the land allowed under these needs to happen to a user that is “another department”. This strictly speaking excludes both local government and the HDA.

The PFMA likewise does not specifically state that the disposal of land must be at market value. It instead provides requirements regarding the fiduciary duty of an Entity’s accounting authority, stating that it must “exercise the duty of utmost care to ensure reasonable protection of the assets and records of the public Entity”.³² Section 26 of the 2012 Draft Treasury Regulations for the PFMA³³ (the Regulations) addresses the process for disposal of assets. It requires that the accounting officer or accounting authority must establish an efficient and effective system of disposal management which is fair, equitable, transparent, cost effective and competitive”. The same section provides that the accounting officer must ensure that “the supply chain management system sets the mechanism for determining the market value for different types of assets” and that “consideration be given to the fair market value of the asset and to the economic and community value to be received in exchange for the asset”³⁴ (*our emphasis*). No guidance is provided on how the meaning of “economic and

³¹ Ovens, 2013

³² This is also the position with the Companies Act also governing the SoEs

³³ Public Finance Management Act, 1999, Draft Treasury Regulations Government Notice 1005 of 2012, Government Gazette 35939

³⁴ Ibid Page 141

community value" should be interpreted. However, it does point to balance, beyond financial and monetary considerations, in relation to determining the value of an asset for disposal.

In the case of the Companies Act there is a fiduciary duty on the directors of each SoE to protect the assets of the company and to realize the maximum possible financial return when an asset is sold or transferred. In the case of the individual SoEs' own laws there is some variation, but the principle: assets must be used for the purposes for which the SoE was established and not for other purposes (such as, for example, housing). The effect of this legal framework is that it is not easy for a SoE to transfer land without providing a market-related financial compensation for the land.

These provisions clearly show that nothing requires market related prices to be paid with regard to public custodians of land, although in the case of SoEs' own legal frameworks this may be so. Notwithstanding, SoEs insist on the disposal of land at market related prices which is in most instances beyond the financial resources of some municipalities. Market prices may be appropriate when disposing of land to the private sector. It is however difficult to justify this position when doing the same to local government or the HDA which intends to use this land for developmental purposes, including housing and urban restructuring, often to benefit the poor.

iii. Identification and management of land by municipalities

Municipalities are required to prepare both IDPs and SDFs which takes into account land required for development within a transformation agenda. More recently, section 12(1)(h) of SPLUMA requires that "National and Provincial spheres of government and each municipality must prepare spatial development frameworks that include previously disadvantaged areas, areas under traditional leadership, slums and land holdings of state owned enterprises and government agencies and address the inclusion and integration into the spatial, economic and social and environmental objectives of the relevant sphere"³⁵

Municipalities need to have a clear idea, reflected in their IDP and SDF, of what land they need for developmental purposes. This needs to include reflecting on the development potential of their own land, through the preparation of land asset management strategies.

While municipalities are required to consult a range of stakeholders during the preparation and adoption of their IDPs and SDFs, the relationship with SoEs appears to be weak. As a result, commonly, SoE land may be identified in an SDF for a particular type of development which does not reflect the SoE's intention and timeframes for the same portion of land.

iv. Identification of non-core land

While SoEs need to identify their own surplus or non-core land, there is no legal imperative stipulating that such information should be made known to local government and other state entities needing such information, nor any requirement that this land should be released. In deed, entities are not required to expose their complete portfolio of non-core land at any one time. This can incentivise speculative behaviour as they may choose to retain the land for its projected high development potential.

Further, while there are broad criteria for determining core and non-core land, there is no independent audit undertaken to confirm the legitimacy of the categorisation attached to the land. This means that there may be non-core land sitting on the SoE's books that is in fact not identified as such. HDA has reflected on experiences it had with TRANSNET in which land previously identified as non-core has subsequently been reclassified as core. The introduction of SPLUMA requires municipalities to take

³⁵ SPLUMA, Section 12(1)(h)

account of SoE land in their SDFs, but this does not compel SoEs to then regard that land as either core or non-core, or to release it to the municipality.

The DPE policy indicates that “a State Owned Enterprise or a wholly owned subsidiary of a SOE may not dispose of any property unless it has first offered that property for sale to the State and other SOEs via the Department of Public Enterprises under the same terms and conditions it is otherwise prepared to dispose of that property”.³⁶ This gives any National Department the first right of refusal. What is not clear is if this right extends to provincial and local government. The SoE, for instance, is not required to notify the affected municipality which means the property may slip through the net allowing the SoE to potentially sell the land to the private sector.

Currently, there appears to be no mechanism in place which requires State Departments to consider how their land and property holdings can contribute toward the developmental objectives of government. Moreover, the ownership of some state land is unclear, making it difficult to initiate a process toward acquisition or transfer.

v. *Negotiating the disposal of land by SoEs*

Municipalities are required, with limited resources and capacity, to negotiate with well-seasoned and experienced SoEs who have a fixed agenda, which is to extract the maximum value from the disposal of non-core land. Essentially, municipalities and SoEs are driven by different agendas – the municipalities by the imperative to transform urban spaces and the SoE by the need to obtain maximum profit from the disposal of their immovable assets. These two agendas appear to be in juxtaposition to each other and as such do not create the conditions for meaningful negotiations.

vi. *Weak IGR Structures*

The NDP comments that “different spheres of government have not cooperated effectively around built-environment functions relating to housing, state-owned land and transport infrastructure”³⁷ while a recent Presidential SOE Review Committee Report notes that the “IGR Forums have not yet effectively cascaded collaboration to other levels in government and state-owned entities.....Collaboration and cooperation therefore still needs to improve across spheres of government and among SOEs to leverage state resources to the effective and efficient delivery of services”³⁸.

It is within this weak system of intergovernmental relations, fragmentation of functions and roles and responsibilities that municipalities are required to identify land, negotiate with other spheres of government and State Owned Enterprises for its release, and to hold and develop the land.

3.3 Summary comments

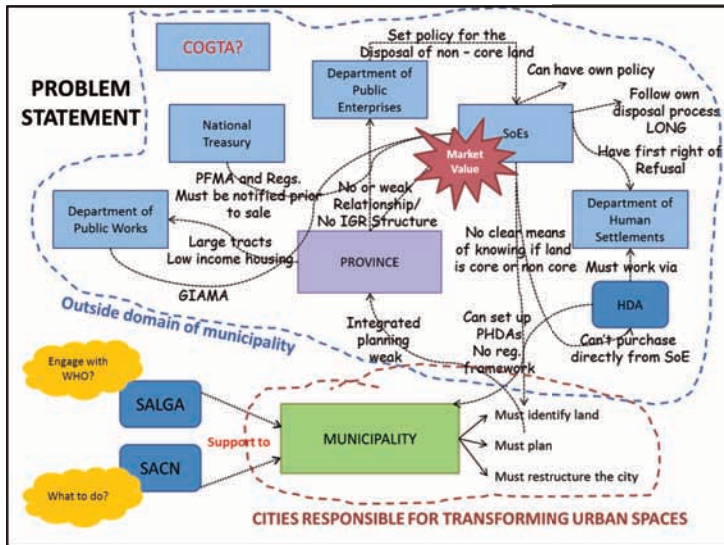
The diagram below summarises many of the challenges experienced with the acquisition and the disposal of state land for developmental purposes. What is evident is that municipalities, with the exception of planning for and including state land within their SDFs, have little to no control outside of this domain and struggle to gain access to land they need for development and transformation.

³⁶ Transnet, 2010

³⁷ Republic of South Africa, “National Development Plan” 2013

³⁸ Ibid

Figure 4: The problem statement: the challenges facing municipalities in acquiring land and transforming their urban spaces



The aim of the research conducted in the *four case study municipalities* was to *unpack how this was experienced by municipalities* in their quest to access well-located land for the development of efficient, effective and inclusive urban areas. This looked particularly at land owned by SoEs but also at land owned by other spheres of government and by the municipality itself.

4. RESEARCH METHODOLOGY

The research included desk-top reviews, interviews and compilation of case study reports for four municipalities. Based on the inception meeting attended by SACN and HDA, the following were agreed as the broad criteria for the selection of municipalities as case studies:

- The municipality should demonstrate least three or more of the following characteristics:
 - A member of the SACN
 - Large SoE land holdings or property assets in close proximity to central business districts (CBDs)
 - Must have had some experience with engaging SoEs for the release of the land
 - A municipality in which HDA currently has or has had a project which has included the purchase of SoE non-core assets
 - Transformative agenda (Broad and specific)
- In addition, *at least one municipality* selected should be:
 - A port city
 - An inland city
 - A large metro (JHB, Cape Town or eThekweni)
 - A minor metro (Buffalo City, Mangaung, Nelson Mandela Bay)
- The following municipalities were proposed as possibilities:

Proposed City	Characteristics
Buffalo City	<ul style="list-style-type: none"> • Port city • Small metro • Member of SACN • Large Portnet land holding adjacent to the East London CBD • Has demonstrated a transformative agenda through its construction and commitment to a number of well-located social housing projects • Has struggled for a number of years with Portnet to secure the release of the non-core land
Ekurhuleni	<ul style="list-style-type: none"> • Inland city • Midsize metro • A member of SACN • Has a project attempting to revitalise Germiston – this includes needing to gain access to Transnet non-core land
Durban	<ul style="list-style-type: none"> • Port city • Large metro • Member of SACN • Has purchased land from Transnet • Has an ongoing struggle with Portnet re the release of land for development and lack of cooperation around the IDP • Has issues around SANDF land in the central business district
Johannesburg	<ul style="list-style-type: none"> • Inland city • Largest metro nationally • Member of SACN • HDA/CoJ have purchased buildings from Transnet • Large non-core land parcels south of Johannesburg • Has demonstrated a transformative agenda through its commitment to social housing projects in the inner city and more recently, the strategy towards the “Corridors of Freedom”.

Mangaung	<ul style="list-style-type: none"> • Inland city • Small metro • Member of SACN • Transnet land holdings in close proximity to the CBD • Transformation and interaction experience with SoEs unknown.
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It was agreed that the following four municipalities would serve as case studies: eThekweni metropolitan municipality, Ekurhuleni metropolitan municipality, Buffalo City metropolitan municipality and Mangaung municipality.

A standard interview questionnaire (See Appendix 1) was developed prior to engaging with each municipality to address the following broad areas:

- Municipal Planning Processes
- Management of municipal land assets
- Acquiring land from SoEs

Interviews were held with a number of officials from each Municipality representing the following departments:

Ekurhuleni:

- Human Settlements
- City Planning and Development
- Real estate

Buffalo City:

- Development Planning
- Chief Operating Office
- Land Administration
- Engineering

eThekweni:

- Land Assembly Department
- Real Estate Department
- Development Planning Department
- Corporate Policy Unit – IDP Office

Mangaung:

- Human Settlements Unit
- Spatial Planning Department
- Geographic Information Department

The broad structure of the interview questionnaire was followed in discussion of the key issues. Maps were prepared to assist in the spatial analysis of the municipality as well as an examination of the municipality's IDP, the SDF, LSDFs and any related development frameworks. The case study reports were then developed through the integration of the mapping, information obtained through the municipal interview, and the assessment of municipal documents.

The following two sections provides a broad overview of the key findings emerging from the case studies relating to the identification of, and thinking around, strategic state land by municipalities and their experiences in acquiring such land to transform their urban spaces, as reflected in the IDP, SDF and interviews.

5. MUNICIPAL PLANNING AND LAND MANAGEMENT

5.1 Introduction

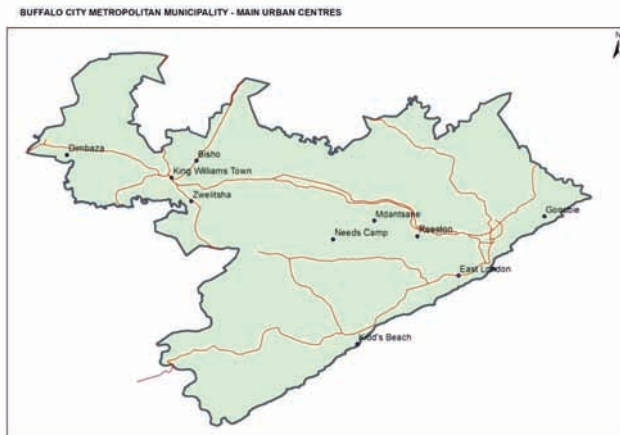
As indicated earlier, in order to use land as a means of transforming urban areas, municipalities need to identify and manage the land they need through their planning processes, and then go about acquiring the land from existing landowners where necessary. To identify what land it needs for development and transformation purposes, a municipality must engage in robust spatial strategic planning, specifically through their Integrated Development Plans (IDP) and Spatial Development Frameworks (SDFs). Linked to the municipality's strategic planning is the way in which it goes about management of land. This includes developing a land asset management strategy, and management of municipal land, including managing invasions. This section of the report addresses municipal planning and land management in each of the four case study municipalities, while the following section focuses on the municipalities' experiences in acquiring the land they need for developmental purposes.

5.2 Buffalo City

5.2.1 The IDP and SDF

Buffalo City Metropolitan Municipality (BCM) is a port city with a coastline stretching some 68 km. The geographic extent of the municipality is approximately 2515 km² and contains the urban areas of East London, King Williams Town, Bhisho, Mdantsane and Dimbaza. East London is the main economic centre while Bhisho and King Williams Town are the Eastern Cape's legislative and administrative centres respectively. Mdantsane, which is located approximately halfway between East London and King Williams Town, and Dimbaza found in the far west of the municipality, were both R293 towns in the former Bantustan area of the Ciskei. The municipality also contains some 230 rural villages which fall outside of the existing urban edge.

Figure 5: Buffalo City Metropolitan Municipality showing main urban centres



The IDP acknowledges that in the past the municipality focused on addressing the housing and basic needs backlogs. However, it is now placing the emphasis on the creation of sustainable human settlements. Implicit in this approach are the principles of spatial transformation and inclusive urban spaces. No definition of "well located land" is provided in the IDP or in the summary SDF contained in the IDP. Housing is listed as a priority area under the strategic focal area, the "creation of integrated and sustainable human settlements" and has three related sub objectives which include:

- Upgrading informal settlements and providing services with land and security of tenure with a target of estimated target of approximately 26700 top structures over the 5 year period
- Increasing the rate of affordable rental housing delivery with approximately 3600 new rental units provided between 2011/12 and 2013/14 financial periods
- Creation of access to land for development of sustainable human settlements and other related projects within the metro with a target of 2 portions per year over the 5 year period.

Implied in the housing sub-objectives and targets is the separation of the need to upgrade informal settlements and the rollout of mass housing, and the creation of access to land for the development of sustainable human settlements. If there is a link between the two, this is not clear within the IDP. Rather, the IDP makes reference to the need to implement the BCM Land Acquisition Strategy with no further explanation as to what is contained in the strategy itself.

The IDP provides the city's broad intentions with the real content and spatial restructuring elements contained in the various city strategies such as the Sustainable Human Settlements Strategy and the Land Acquisition Strategy. This was confirmed in interviews - that the IDP focuses on macro issues and the need for economic development and growth, while the supporting strategies and plans address the transformation matters. Certainly, the need for gaining access to SoE land or to strategically engage the entities for supporting the transformation of the municipal space is not explored in the IDP.

The SDF contained in the latest IDP review for the municipality has subsequently been replaced by a more recent framework adopted by Council in November 2013. In the SDF as contained in the 2012/13 IDP review, the strategic objective of the SDF is recorded as being the need "To generate an enabling environment for an economy that is growing, diversifying, generating increasing number of sustainable employment opportunities and contributing to increased incomes and equality".³⁹ The supporting objectives and related broad strategies include the need to plan for integrated sustainable human settlements by preparing township establishment plans and to guide an integrated spatial development and growth in BCMM through the generation of local spatial development frameworks.

The BCM has adopted three spatial development programmes, namely the Urban and Rural Forward Planning, the Settlement Planning Programme and Land Use Management. Between 2012/13 and 2014/15 the Urban and Rural Forward Planning intends focusing on the review and/or development of a number of local SDFs. The areas selected for planning purposes are suburbs within the primary nodal point of East London, the primary nodal point of King Williams Town/Bhisho and a local nodal point of Gonubie Main Road. Given the emphasis placed on the primary nodes as a structuring element of the BCM SDF, it is important to determine what local plans are in place for guiding local development. It would appear that no or little local area planning has been undertaken for the port beachfront area for approximately 15 years. The last plan for the Quigney area, strategic municipal land adjacent to the city centre, was undertaken in 1991, predating democratic government in South Africa. Interestingly, a specific plan was developed in 1998 for the development of the Sleeper Site (discussed in more detail in section 6) but prepared by Propnet, a division of Transnet, and not by the then East London Local Transitional Council.

The Settlement Planning Programme for the period 2012/13 to 2014/15 largely focuses on informal settlement upgrading and/or programmes within the former township areas. Initiatives such as the Sleeper site are not included within this programme. The Land Use Management Programme is focused on the development of a new, integrated and unitary Land Use Management Scheme.

When examining the Buffalo City Metropolitan Municipality SDF as contained in the 2012/13 IDP review, it is apparent that the standard structuring elements are included in the plan such as the use of nodes and activity corridors. However, it appears to lack strategic focus with no clear vision as to how the spatial transformation of the city would be achieved. Insufficient focus for example is given to the development of the primary nodes and/or the need or availability of land or existing infrastructure for achieving growth and development. No mention is made of the Sleeper Site or of any other strategic land parcels within the city. No reference is made to the role of private land owners and SoEs in contributing to the restructuring of the city and/or any

³⁹ BCM "IDP Review 2012/13"

land acquisition strategy. No emphasis is placed on promoting and supporting the growth of the economic hub of the municipality in an integrated manner, East London. Rather, neighbourhoods within East London have been identified for the LSDF preparation. The East London CBD is not included in that list.

The most recent SDF was completed in December 2013 with the preparation process being supported by external service providers. The 2013 SDF outlines the broad spatial development strategies to include inter alia:

- The use of the urban edge and Land Use Management System as spatial management and investment guidance tools
- Consolidate and integrate spatial development by developing land in proximity to public transport facilities and existing services
- Proactively manage land use and set appropriate levels of services to achieve sustainability in urban, peri-urban and rural areas

The 2013 SDF also proposes “three areas of strategic priority where, if focused attention is placed on implementing key catalytic projects, enormous developmental benefits can be attained.”⁴⁰ Priority 1 is the investment and growth of the Central Urban Renewal Areas which includes “East London and Mdantsane and the areas in between them”. The second priority is the West Bank area which is in close proximity to the city centre and has been viewed as having significant development potential with the third focusing on the investment in the land in Quenera area and the upgrading of infrastructure to support the KWT Bhisho Master Plan implementation.

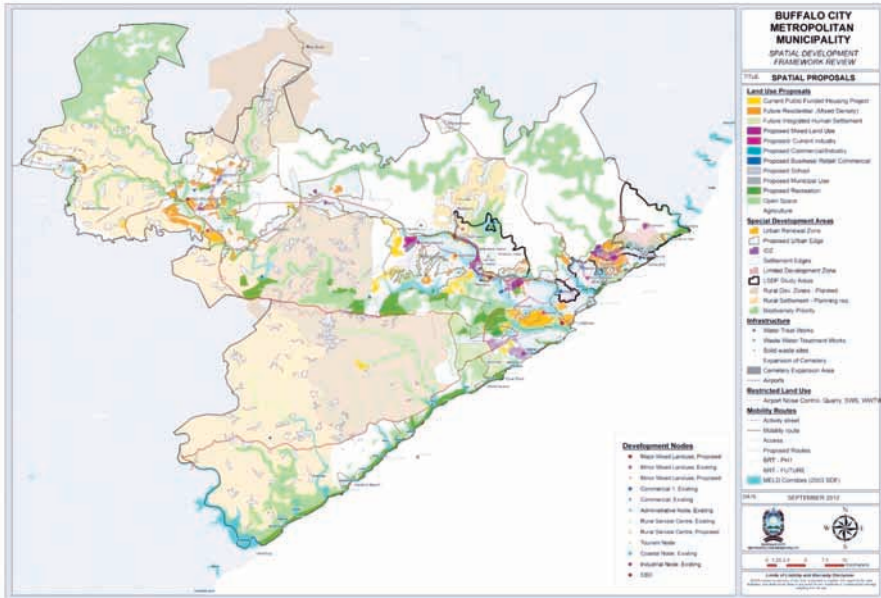
The current SDF makes use of similar structuring elements to those used previously, of nodes, primary and local, activity corridors, use of urban edges, metropolitan open space systems, densification and residential intensification and promoting mixed use development. The densification framework for the 2013 SDF places the emphasis on so called “Integration Zones” with proposed residential densities increasing depending on levels of access to public transport and ease of access to public facilities. Nine integration areas are outlined in the SDF. Special development areas have also been identified and include:

- The four CBDs of East London, King Williams Town, Mdantsane and Dimbaza
- Six urban renewal zones to include Mdantsane, Duncan Village, Southernwood, Quigney, Reeston, Zwelitsha and East London CBD
- Provisional restructuring zones
- The West Bank area
- King Williams Town/Berlin
- Urban Development Zones which include Quigney/Beach area, Southernwood, King Williams Town CBD and the East London CBD

The Land Framework contained in the SDF focuses on the management of the property portfolio, contributing towards the revenue generation for the municipality by selling and leasing of municipal properties and land administration which includes the acquisition of land for municipal related activities for human settlement development. This section of the SDF makes reference to broad maps reflecting land ownership and key land parcels of land. No specific detail is provided such as that the municipality requires this land for this purpose and this is who the current owner is, nor is there a discussion on the need for developing a strategy for engaging SoEs and/or State Departments for the release or acquisition of land. Transnet is referred to twice in the SDF, once in relation to the need to extend the port and the second acknowledging that it owns some land in the beachfront area.

⁴⁰ BCM SDF November 2013 pg. 38

Figure 6: Buffalo City Metropolitan Municipality Spatial Development Framework Review, 2012



The 2013 SDF pays more attention to the need to develop and redevelop key strategic areas within the municipality such as the four CBDs. Special attention is given to areas which are better located such as the West Bank etc. If implemented correctly, the broad intentions of the plan will support and encourage spatial transformation.

With regard to their engagement in the strategic planning of the municipality, SoEs are invited, and sporadically attend, the IDP stakeholder engagements. Eskom attends more frequently than other SoEs such as Transnet and PRASA. However, the motivation for their participation largely relates to the core business of the SoE as opposed to issues relating to the disposal and/or joint development of non-core SoE land. Meetings tend to be attended by middle management who have little influence over decision making or policy development. More senior SoE officials tend to attend the “breakfast” briefing session which takes place post the municipal approval of the IDP.

5.2.2 Land management

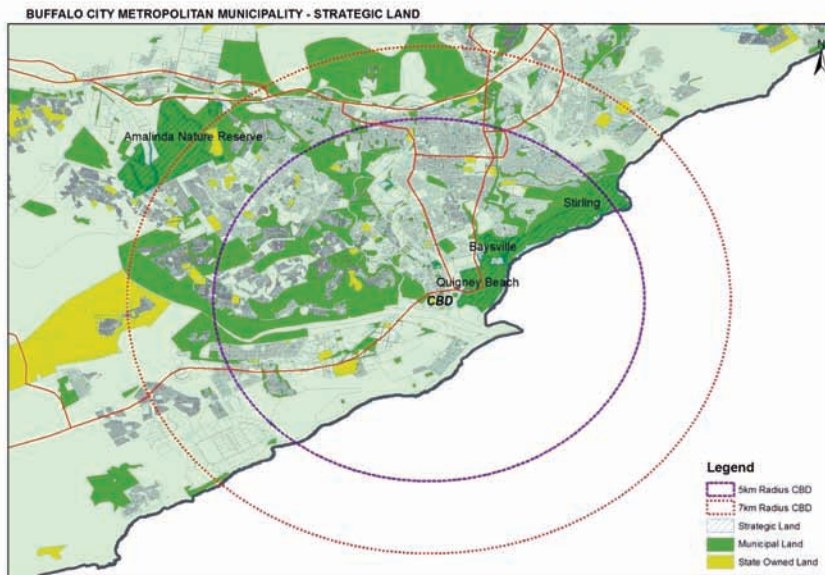
The Buffalo City Metropolitan Municipality is yet to develop a Land Asset Management Strategy. More recently and with the assistance of the SACN, the municipality has prepared an asset register which includes all municipal land assets. The BCM has all municipal land captured within their GIS system with the necessary attributes such as the Surveyor General’s description, extent and location. While there is the intention to prepare a land asset management strategy, no timeframe has been set nor have resources been allocated.

The municipality does manage a number of lease agreements related to their land. However, the main challenge with respect to vacant municipal land and indeed other state land is the risk of land invasions. The municipality has limited inspectorate capacity and as such relies on communities and ward councillors for the reporting of incidences. In terms of the legal framework, the municipality only has 48 hours to respond, otherwise it is required to obtain court orders, find alternative land for the land invaders etc.

The municipality has made use of its land for development initiatives. Examples include Reeston, Haven Hills and Cambridge. More projects are planned for the Gilmore Taxi Rank which largely focuses on local economic development opportunities. Municipal land is also to be released in Berlin for a green energy project. The municipality has supported the implementation of a number of successful social housing projects some of which have been located on municipal land. Many of these projects are well located in terms of access to transport facilities and economic opportunities but tend to serve the “gap” market as opposed to the urban poor.

The BCM has recently identified approximately 50 portions of strategic land for development, some of which are municipal owned land. A number of these portions are within the 7 km radius of the East London CBD located in Amalinda, Quigney Beach, Baysville and Stirling. While land within the 7 km radius of the East London CBD has been identified, there is yet to be any detailed planning undertaken for its further development.

Figure 7: Location of strategic land, Buffalo City Metro



A presentation prepared for the 2014 Land Summit outlines the municipality's broad intent in relation to land management, acquisition and development. It addresses the key challenges and constraints as being rapid urbanisation and the municipality's inability to keep up with capacity, infrastructure and maintenance requirements. Spatial fragmentation, urban sprawl, access to land and poverty and low skill levels were also noted. The strategies then for addressing the challenges included:

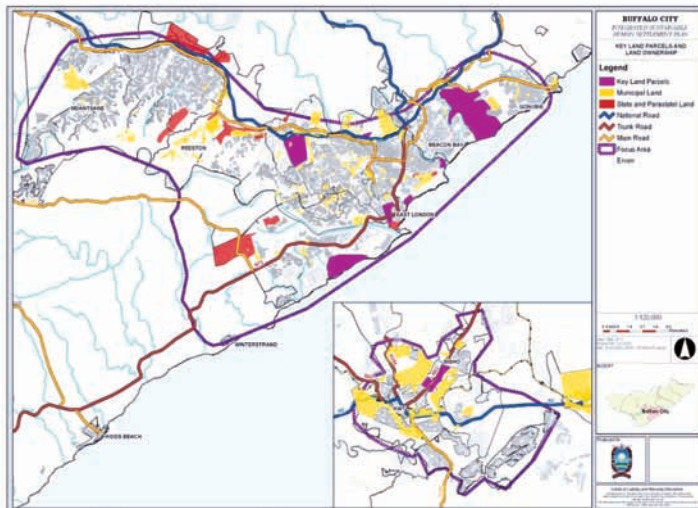
- The improvement and development of infrastructure to meet the demand for housing and economic growth
- The management of the urbanisation process which includes planned and serviced land to accommodate newcomers to the city at higher densities to avoid urban sprawl
- The consolidation and integration of spatial development by developing land in proximity to public transport facilities and existing services.
- The pro-active management of land use and the setting of appropriate service levels for achieving sustainability in urban, peri-urban and rural areas
- Growing the economy

- The development of human capital including the improvement in skills levels

The presentation maps the topography, Open Space System, nodes, corridors and urban edge, the SDF Proposals, Special Development Areas and the informal settlements. It then sets out the infrastructure constraints and housing projects. It outlines the key land parcels within the municipality of which approximately 26% is located within a 7km radius of the East London CBD, as indicated in the table and map below.

Key Land Parcel	Total Area (±)
Amalinda Junction	275 ha
Nahoon Mouth	7.5 ha
Bhisho – KWT	64 ha
East London Beachfront	23 ha
Westbank Racetrack	194 ha
Sleeper site	16 ha
Quenera	240 ha
Mr Ruth	74 ha
Total	893.5ha

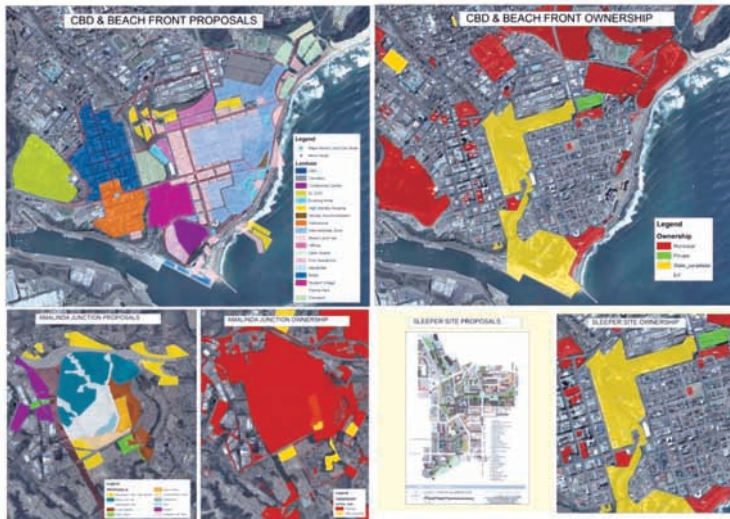
Figure 8: Integrated sustainable human settlements plan, Buffalo City Metro



Broad land use planning has been undertaken by the municipality for each of these land parcels with some in a fairly advanced planning for areas such as the Westbank racetrack where a local SDF has been completed.

In relation to the East London CBD and immediate surrounds, ownership patterns of key land parcels have been identified along with the current land use patterns. However, with the exception of the Sleeper Site, no further detailed planning appears to have taken place.

Figure 9: CBD planning and land ownership, Buffalo City



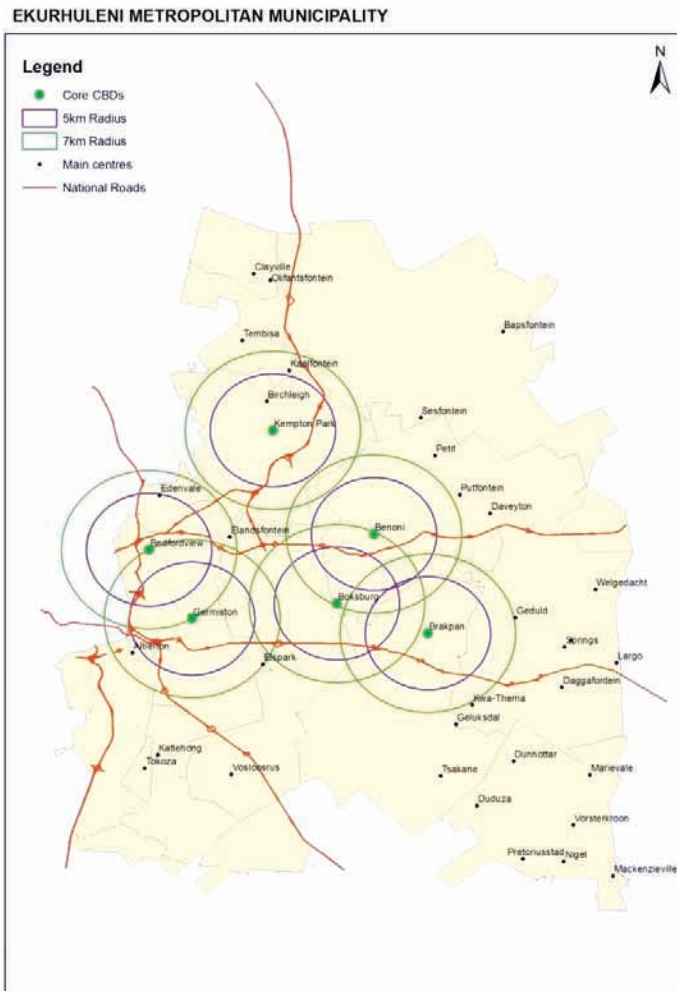
5.3 Ekurhuleni

5.3.1 The IDP and SDF

Located in the East Rand, Gauteng, the Ekurhuleni Metropolitan Municipality is approximately 2,000 km² in extent, stretching from Germiston in the west to Springs and Nigel in the east. It includes 11 former local administrations, Alberton, Benoni, Boksburg, Brakpan, Edenvale/Lethabong, Germiston, Kempton Park/Tembisa, Nigel, Springs, Khayalami Metropolitan Council and the Eastern Gauteng Services Council. This means that Ekurhuleni has developed around several centres rather than a primary core.

The map below shows the main urban centres of Ekurhuleni metropolitan municipality, and its outer boundaries.

Figure 10: Urban centres of Ekurhuleni municipality



A key focus of strategic planning is to integrate the various CBDs and develop a common metro identity. Immediately post 1994, development in EMM was housing-led but this has shifted to a focus on economic development priorities, followed by transport.

The IDP review highlights the importance of prioritising Region A which includes the core development triangle of Kempton Park, Rhodesfield, Tembisa, Germiston and Edenvale, the areas closest to the OR Tambo International Airport. The SDF reflects this, concentrating on transport and economic hubs. The city is divided into six regions, with Region A, the area around OR Tambo Airport, including Kempton Park, Germiston, Boksburg and Benoni, forming the core economic development triangle. A Regional Spatial

Development Framework for this region has been developed. Infill development is also encouraged, to promote densification and a more effective public transport system.

The IDP discusses two metropolitan level corridors the Tembisa - Kathorus Corridor and the Germiston - Daveyton Corridor. Primary activity nodes are the former towns that make up Ekurhuleni. The IDP notes that urban renewal initiatives identified in the Urban Renewal Strategy should be implemented as a matter of priority, specifically the CBDs of Brakpan, Springs, Germiston and Boksburg. As Germiston is the busiest station, it is recommended in the ITP that densification projects be developed and implemented in this area. The municipality is currently busy with the Urban Renewal Programme for the Germiston area and densification is one of the objectives. Around Germiston and other busy stations, higher density residential developments may also be incorporated into mixed-use developments. The recommendation is that residential units on the ground floor be designed as live-work units to assist in economic upliftment in these areas.

The SDF emphasizes the development and growth of the city in the identified core economic development triangle as defined by the towns of Kempton Park (with the OR Tambo International Airport as the core of the Aerotropolis leveraged on the airport itself), Germiston, Boksburg and Benoni. EMM is a flat city and there is potential for increased densities and development intensification that will culminate with people residing closer to work opportunities in the core economic development area. This includes the development of the mining belt land, taking cognisance of prevailing challenges like shallow undermining.

Linked to the core economic development is the notion of nodes and corridors within the developed area. The nodes and corridors strategies are linked to the identification for development of those areas that were used in the past to spatially separate communities. For example, for an effective public transport system, gaps between communities as a result of buffer zones that were deliberately created to separate race groups have to be developed optimally, such as the Leeuwpoot land and Ramaphosa informal settlements, now called Reiger Park extensions.

One of the flagship projects identified in the IDP is Urban Regeneration. This involves the Germiston Urban Renewal Business Plan and Project Plan and the Germiston Urban Renewal Strategy, and urban renewal in Kempton Park.

EMM's IDP review is based on the revised Growth and Development Strategy (GDS 2025), now called GDS 2055. The GDS 2055 is seen as a high level strategic framework which needs to be translated into a 2030 Strategic Implementation Programme to provide a direct link to the IDPs over the next 20 years. Within the municipality, plans are aligned horizontally and vertically in the IDP. However, according to officials interviewed, national and provincial government departments do not take the IDP into account.

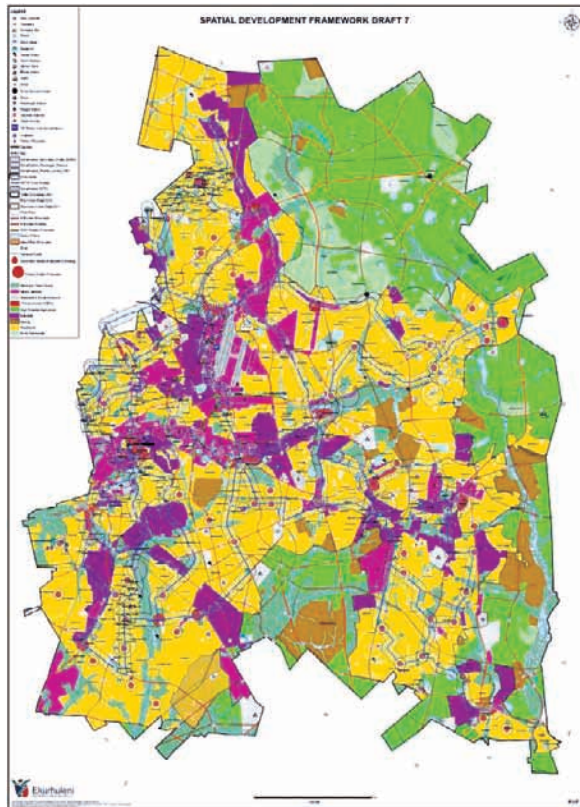
The municipality views SoEs as part of the transformation agenda. These include ACSA and the various properties owned by PRASA (previously Intersite) close to railway stations. It is therefore important to EMM's development to access SOE land and to work with SOEs to develop it appropriately. Well located land is seen by municipal officials as the land within the core development triangle as well as land along identified nodes and in corridors, in particular at railway stations. There is well located SOE land in the core economic triangle and close to railway stations. There is also land along identified corridors that may no longer be needed by provincial departments.

The Ekurhuleni approach is based on a Metropolitan SDF, supported by Regional SDFs and, where required, Precinct Plans. A more simplified hierarchy of planning is envisaged than was the case in the past. Following the MSDF, Regional SDFs are prepared for each of the six areas to replace the three 2007 Regional SDFs. These will identify areas of strategic importance where area specific frameworks such as precinct plans and urban design frameworks are needed.

The MSDF was produced internally and approved as part of the IDP in April 2011. It is currently being implemented as approved while the SDF review is being developed by consultants. The City Planning department facilitates engagements with stakeholders and affected parties. The key land owners who engaged with the process were Airports Company of South Africa (ACSA) because of the introduction of the Aerotropolis concept in the MSDF, and those land owners who are affected by the urban edge line, in particular those excluded from the urban edge. Other land owners who participated effectively are those who own the land on which the Tambo Springs Inland Port west of the N3 and south of Vosloorus is situated. Gauteng province was invited to participate and was also engaged during the formulation of the Gauteng Spatial development framework since the two processes ran parallel.

The final MSDF is represented in the map below, showing proposed land uses.

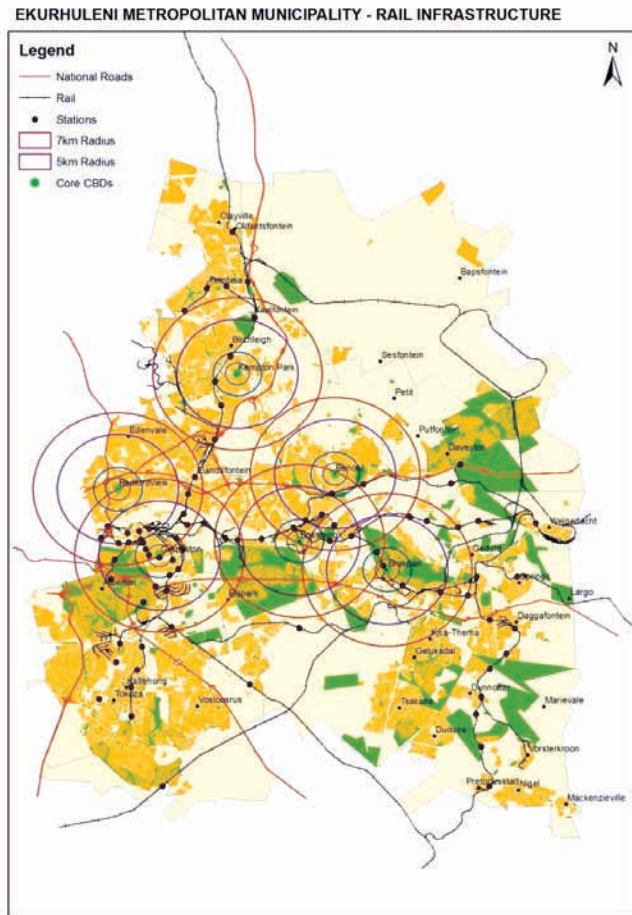
Figure 11: Metropolitan Spatial Development Framework, Ekurhuleni Metropolitan Municipality



Spatial objectives include developing a single uniform identity for the Ekurhuleni Metro, developing a well-defined set of nodes, promoting the development of a sustainable compact urban structure, supported by densification proposals around the system of nodes and transport links, as well as advocating infill development close to the core node, integrating disadvantaged communities into the urban fabric, which involves providing social housing on developable vacant land close to the CBDs of Germiston, Boksburg, Brakpan and Springs, and promoting sustainable public transport. Identified stations are therefore a priority for the development of medium to high density residential development. Additional to high density residential development, land uses supportive of the rail pedestrian function should be encouraged at stations. A tighter urban edge should be enforced to increase development pressure on land within the edge, speeding the process of infill development and optimal utilisation of resources.

The map below shows the rail infrastructure in the municipality.

Figure 12: Ekurhuleni metropolitan municipality: Rail infrastructure



With regard to residential land use, Ekurhuleni has identified densification as a priority. Transit Orientated Development (TOD) is to be promoted around railway stations in existing and proposed future residential areas. This has implications on the residential densities and mix of land uses proposed around stations. It applies to development around stations within the mining belt. The MSDP provides a list of railway stations earmarked for densification. The busiest station is Germiston Station and the ITPR recommends that densification projects be developed and implemented in the Germiston area in line with the developing Urban Renewal Programme.

SoEs are engaged in the SDF process as far as their plans and planning is concerned. However, with regard to SOE participation in the IDP and SDF, each line department has inputs into its function, e.g. transport SOEs work with the transport department. Therefore they link vertically with national, but cross connections are absent and engagement is on a project by project basis. However, there is a public transport forum which officials from the municipal department of Human Settlements attend, where they indicate and align their

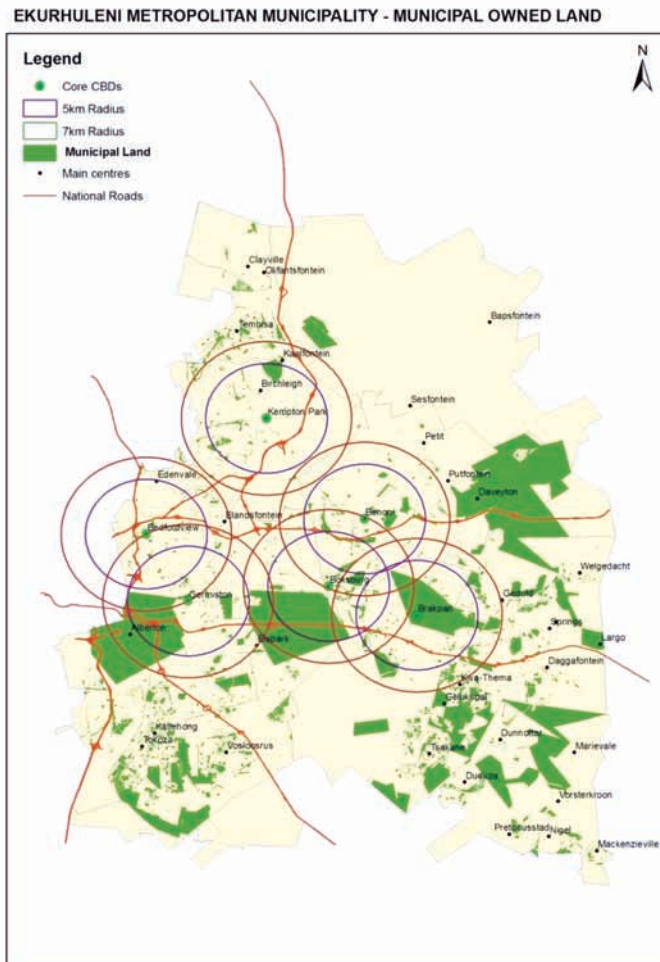
plans. Others who attend are SOEs such as Gautrain, PRASA, the Transport department, and Transnet, to ensure coordination of public transport. There is apparently no equivalent for other sectors.

5.3.2 Land management

The municipality owns land worth R12 billion, 55,000 parcels of land. Until now, management of this land has been a loose arrangement. The newly formed Property management division will be responsible for the acquisition, disposal, and lease of land. The municipality is in the process of segmentalising its property portfolio and developing strategies for each sector, e.g. religious community.

The map below indicates municipal owned land in Ekurhuleni metro.

Figure 13: Municipal owned land, Ekurhuleni metro



In February 2014 Council approved the framework on the development of Strategic Land Parcels. These are all well located land and seen as potentially catalytic. In all, 40 land parcels have been identified for feasibility studies to be developed in partnership with the private sector based on the highest and best uses. The project is led by the Real Estate Department with support from City Planning. The Asset register is under the control of Finance department. They have done a lot of work and compliance, including a Condition assessment of all properties and Backlog assessment which addresses infrastructure and maintenance.

Land related issues include confrontations over illegal occupancy of land, and the fact that it is estimated that land for about 37,000 even needs to be identified to accommodate the housing backlog which is difficult given shallow undermined land, dolomite zones, radiation and differentiation in land ownership. A problem noted in the MSDF is that the municipality has disposed of its own land without considering the need for land redistribution and the need to promote a compact city. The MSDF notes that:

“In terms of the provisions of the MFMA and the Asset Transfer Regulations (ATR) the Council may only dispose of its land to the highest bidder. However, the President alluded to the need to lease government (Council /State) land so as to achieve equity. In terms of the MFMA and ATR land may only be retained by the Council if it is intended for the purposes of providing the minimum level of service. Housing provision by the state is considered to be such a basic minimum level of service and is a basic human right”.

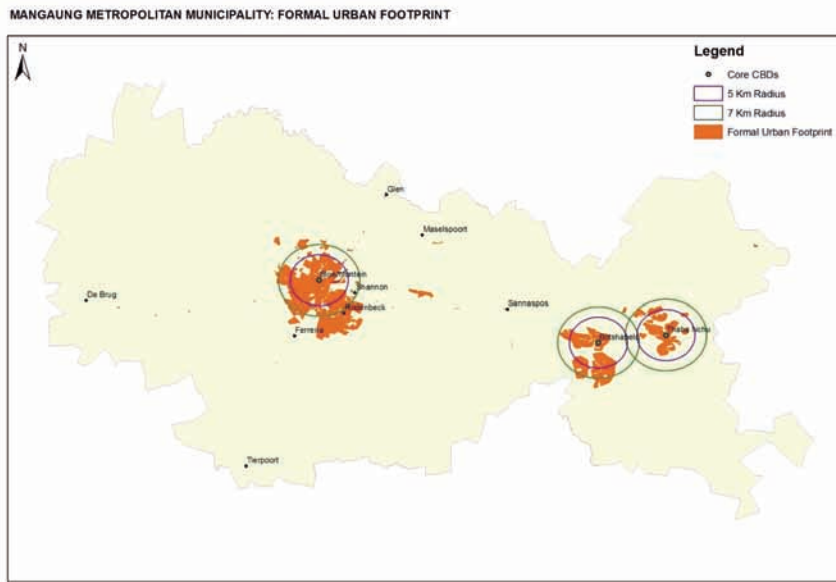
EMM has an Inclusive Housing Policy which indicates that municipal owned land closer to job opportunity areas can be used to achieve the inclusionary housing policy objectives. This could include entering into public-private partnerships or other options which would mean the Council would not have to alienate or dispose of the land outright. Municipal owned land with existing residential rights should be used to achieve the objectives of the inclusive housing policy, particularly for people in the housing “gap market”.

5.4 Mangaung

5.4.1 The IDP and SDF

Mangaung consists of three urban centres namely, Bloemfontein, the main urban centre in the Free State, Thaba Nchu, characterised by rural settlements on former trust land, and Botshabelo, predominantly township development. The figure below shows that the majority of the formal urban households are settled in close proximity i.e. within a radius of 7km to the CBDs of Bloemfontein, Botshabelo and Thaba Nchu. The southern suburbs of Bloemfontein have extended beyond this radius.

Figure 14: Mangaung: CBDs in relation to Formal Urban Areas



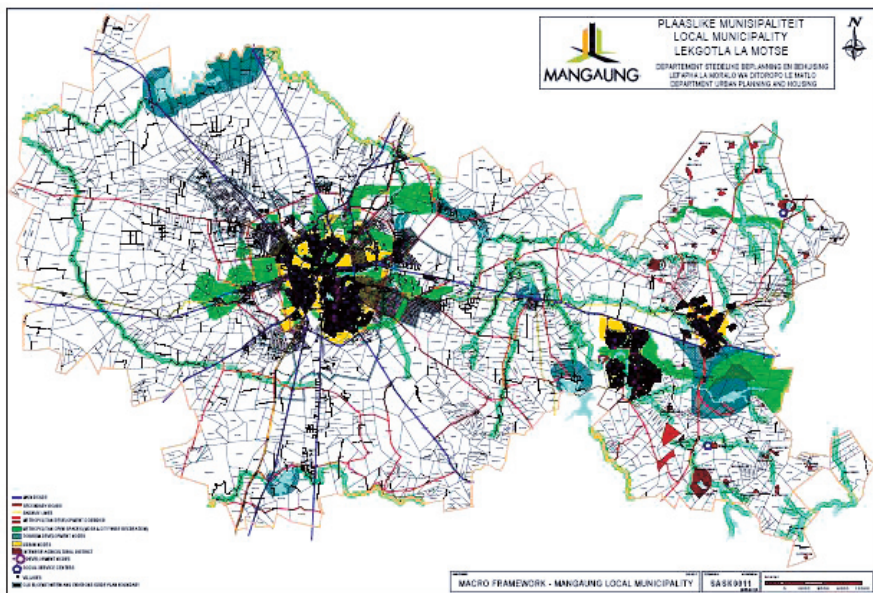
The objectives of the 2013/14 IDP Review relate to economic development by developing the economy of the municipality and exploiting the full potential of the economy, addressing spatial distortions in the municipality resulting from apartheid, addressing issues relating to rural development, the provision of effective and reliable services, revenue enhancement, and integrated waste management.

The Municipality has sufficient capacity to prepare its SDF in house and does not make use of external service providers. The objective for the 2013/14 SDF relates to diminishing the spatial distortions in Mangaung by ensuring that growth occurs in a sustainable and integrated manner. The SDF strategies to achieve the objectives are:

- To improve urban intensification, densification and infill to contain sprawl in Bloemfontein
- To improve urban integration to redress spatial imbalances of the past
- To strengthen links between urban, town and rural livelihoods
- To consolidate, contain and maintain Botshabelo
- To reinforce Thaba Nchu as a rural market town supportive of rural development
- To establish accountable and proactive management of change in land use and to the development patterns

Mangaung Municipality's SDF is expressed at two different levels. The first is at the macro framework level, which deals with the relationship between the various geographical areas and the urban-rural linkages, and the second is at the micro framework level with the provision of greater detail on strategic focus areas of development and related strategies identified in the IDP/SDF review process. The Macro Framework provides details of the spatial structuring elements (urban nodes, development nodes, corridors, metropolitan open space system and districts), defines these, and indicates what key areas they refer to.

Figure 15: Mangaung Metropolitan Macro Framework



Micro Frameworks of the respective urban centres identify areas for future development for a mix of compatible uses. Land for new neighbourhood districts has been identified, positioned so as to promote compaction of the urban centre. It is proposed that future development should focus on integrating Bothabelo and Thabo Nchu.

The figures below show the location of the peri-urban areas of Mangaung, and the more detailed micro-framework.

Figure 16: Peri-urban areas of Mangaung

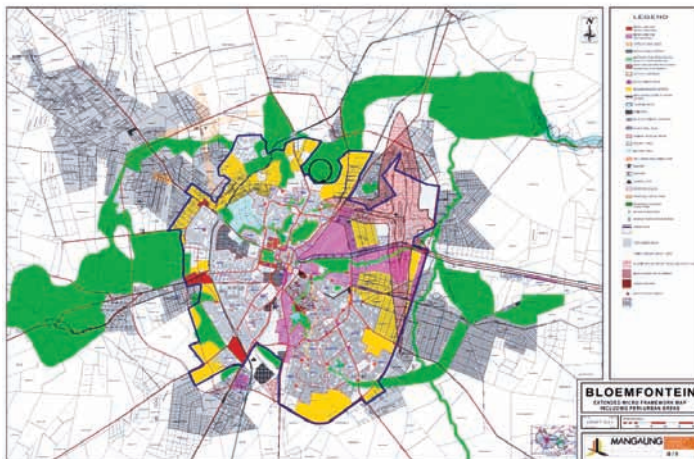
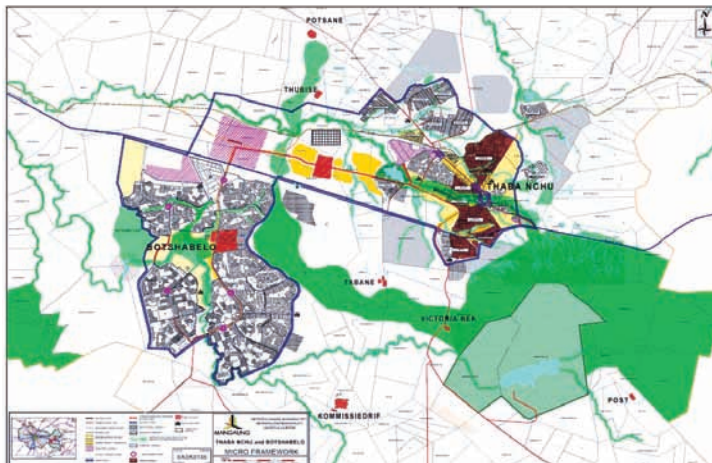


Figure 17: Mangaung Metropolitan Micro Framework



Although the SDF does not deal with individual land parcels, it can be confirmed that there are SoE and state land parcels that are affected by SDF proposals. This includes Transnet properties that are required for heavy industry development and Department of Rural Development and Land Reform (DRDLR) that are affected by a total of nine informal settlements. There are also current industrial sites in Hamilton which belong to Telkom and Department of Public Works (DPW).

The engagement of SOEs in the SDF process is reportedly very limited. The capacity of SOE representatives in these engagements is problematic, as in many instances these officials do not have the mandate to make decisions on behalf of their respective organizations. The SDF proposals cover a number of land parcels belonging to various land owners including those which belong to SoEs. Often, engagement with SoEs occurs on a project by project basis. SoEs are usually requested to make available their development programmes and

details of land use implications. In addition, SoEs are requested to provide details of the social impact of their initiatives. The trend over the years has been that town planning consultants normally represent the SoEs and business community during these engagements. While engagement with town planning consultants has been very effective, this has resulted in other problems for the City. Town planning consultants involved in the planning process of the SDF have the advantage of understanding Council's plans for future growth of the City. In this way, the business community is able to push their land values beyond reasonable market values. An example of this is land which Council required for development in terms of its SDF where the owner's asking price for such land was R42 million; however, after intense negotiations Council paid R5 million which was the reasonable market value. This is also one of the reasons that the HDA introduced the land pipeline exercise to Council in order to proactively acquire land. This includes land acquired by Council for cemetery development purposes.

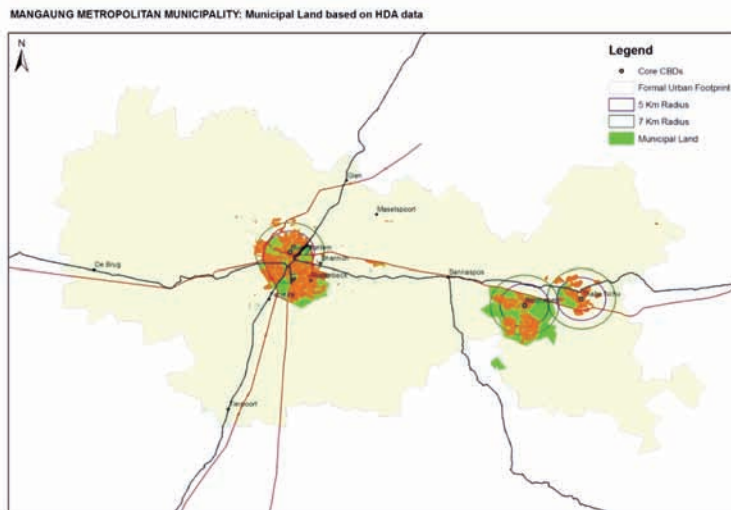
The Municipality has also been in discussions with the Department of Rural Development and Land Reform for a number of years regarding State Land that is invaded by some 9 informal settlements.

5.4.2 Land management

The Mangaung Municipality has a land asset management strategy in place that addresses matters relating to land acquisition and disposal of land. The disposal aspect of the Land Asset Management Strategy is a requirement of Section 14 of the Municipal Finance Management Act. The act requires that the procedure for disposal of municipal land be aligned to the municipal supply chain process. Thus, municipal land is disposed at market value by means of a tender system. This has resulted in a lengthy disposal process and has impacted on the successful disposal of land. The municipality mainly releases land for social, worship and residential purposes and often members of the public are not able to afford this land that is released at market value. The municipality also releases land for development purposes, with the Mangaung Airport Node as reference in this regard.

The Land Development and Property Management Department is responsible for the management of Council land. The Municipality has made an attempt to update its register of Municipal owned land. However this has been proven to be a challenge for the municipality given the high number of unregistered sub-divisions and servitudes over the Farm B loemfontein 654. As such, the Municipality does not have a specific land management system in which its land can be categorized in terms of its Line Departments.

Figure 18: Municipally owned Land, Mangaung municipality



The Municipality has released its own land for the development of the Airport Mixed Use Development Node, a R100 billion investment project upon completion. This comprises 700ha of prime Mixed Use Development including; an International Conference Centre, an urban square, a mall, light industrial, mixed residential, and a rail station.

The Municipality has also released land to three private developers for the development of housing. The land disposal transaction was processed through a Land Availability Agreement to enable Council to keep ownership of the land. The Agreement entitles Council to 30% from proceeds of all land sales to cover the land price and another 30% of the total land area is set aside for GAP Housing and subsidy housing. The Municipality has also made three attempts to dispose of land for industrial development purposes through the tender process. However, none of the respondents submitted responsive tenders.

The municipality has recently appointed two Land Invasion officers to provide security by monitoring and preventing illegal occupation on municipal land. Previously, municipal land was not managed and maintained. As a result, the municipality reported that there are approximately 886 illegal churches occupying municipal land. This is due to the red tape associated with the tender process of the disposal system. The municipality is then faced with a situation whereby it is not gaining any income from its assets. This has major implications on the municipal budget as the municipality is not optimally utilizing its resources.

5.5 eThekweni

5.5.1 The IDP and SDF

eThekweni Metropolitan Municipality is a port city on the east coast of KwaZulu-Natal (KZN) extending from Tongaat in the North to Umkomaas in the South, and Cato Ridge in the West. The municipality is divided into four municipal planning regions, namely: the North, Central, South and Outer West planning regions.

In 2013/14, the Municipality prepared its IDP for the period 2012/13-2016/17 internally. The municipality has developed an eight point plan with the aim of addressing the challenges it faces. This is a delivery plan which is interrelated and integrated with all its plans, programmes and projects aligned and supportive of each other to ensure greater impact in delivery. Plan 1, Develop and sustain our spatial, natural and built environment, and Plan 3, Creating a Quality Living Environment, are regarded as those which deal with the issues of transformation of the city's Urban Space.

Besides the SDF which falls under Plan 1, there are other policies that assist with the transformation of the urban space. These are the eThekweni Densification Policy, and Environmental Management Policy and the Durban Environmental Services Management Plan. The Housing Sector Plan is part of Plan 3 and is integrated with Transport, Service Provision and the Extended Public Works Programme.

The Municipal IDP's perspective of well-located land in the urban context is understood to be land located within the urban development line boundaries as defined in the SDF, in close proximity to public transport routes that would ensure that residents have easy access to goods and services provided by the Municipality.

Plan 8 of the Municipal IDP has programs that address the issue of access and land management. These include:

- Programme 8.2: Budget according to IDP Priorities: This programme ensures budget resources are prioritized in terms of stated IDP outcomes.
- Programme 8.6: Secure property and property rights necessary for capital projects: This deals specifically with the securing of property and property rights that are necessary for capital projects. Property is also acquired to implement the Municipality's densification policy. No actual examples of capital projects impacted upon by this programme are given in the IDP.
- Programme 8.9 : Seek alternative sources of funding: Alternative sources of income include government grant funding, partnerships with international agencies and partnerships with the private sector on key projects.

Twenty five Strategic Projects for 2013/14 and beyond are identified in the IDP. These illustrate a transformation agenda. In terms of urban transformation, the Cornubia Project is an example of a Mixed Use

area presently being developed. It includes a Business and Industrial Estate with construction of the first factories and warehouses underway, as well as residential units and a proposed Retail Park. This is a partnership between Tongaat Huile Developments, eThekweni Municipality and National Department of Human Settlements. Cornubia forms part of the "Northern Urban Development Corridor" and other projects include Town Centre Renewals in Tongaat and Verulam and Greenfields development.

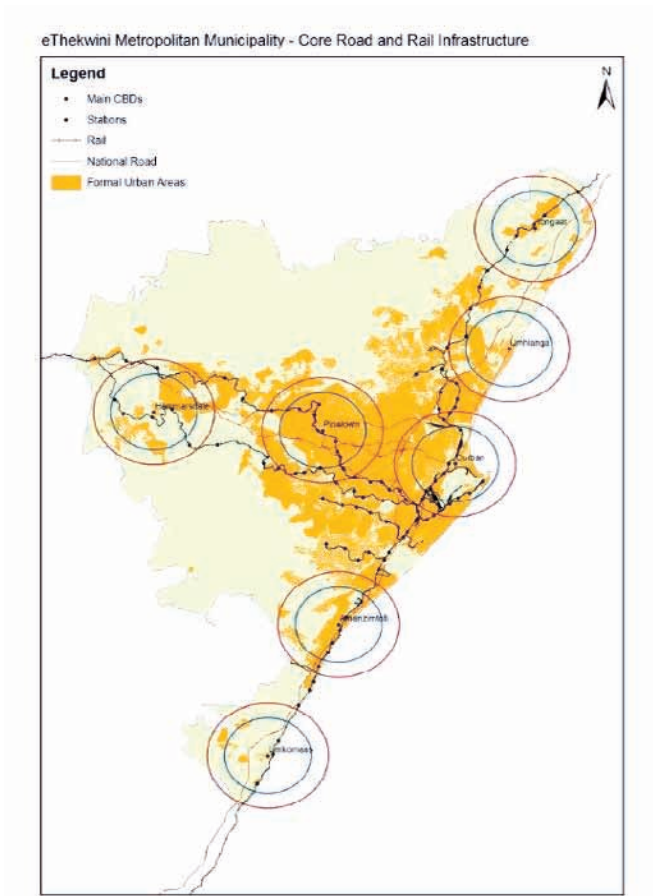
From a quality of life perspective the municipality aims to rapidly up-scale the delivery of interim services to informal settlements. Key issues relating to Housing as identified in the IDP are lack of well-located land and projects being stalled due to delay in land acquisition.

The SDF is developed internally in accordance with the municipal package of plans and municipal sector plans. It incorporates the municipal economic strategy, environmental strategy, social strategy and corporate strategy. Upon preparation, the municipality has to ensure horizontal and vertical alignment of the SDF to ensure alignment with national and provincial plans as well as the plans of the neighbouring municipalities. The current SDF is dated March 2014 and has recently been reviewed. This is the 4th review of the 5 year plan, with the major review being in 2015. The 2014/2015 SDF Review Process Plan was developed in conjunction with the IDP Process Plan. The SDF is driven by the Strategic Spatial Planning Department within the Development, Planning and Climate Protection Unit.

eThekweni municipality has a package of plans that are classified and range from municipal wide strategic plans to detailed local area plans and land use schemes. Municipal wide strategic plans include the Long Term Development Framework (LTDF), Integrated Development Plan (IDP) and Spatial Development Framework (SDF). The SDF is informed by the LTDF and IDP.

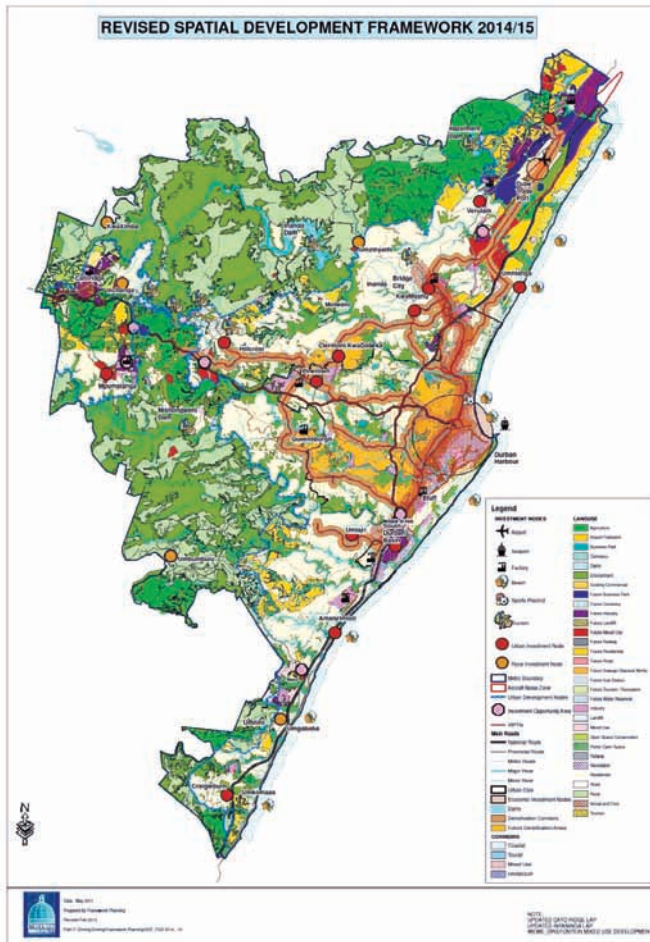
eThekweni municipality has a well-developed road system, with the N2 and N3 traversing the municipal area in a north southern and north western direction respectively. The N2 is of significance both provincially and on a national scale as it runs across Richards Bay, Mpangeni and Mozambique. In addition, the N2 provides access to the CBD and regional transport hubs including the Port of Durban, Isipingo, Amanzimtoti and linking to Port Shepstone and the Eastern Cape. The N3 plays an important role in providing access to the metropolitan CBD, Pinetown and Pietermaritzburg and then links with Gauteng. In terms of the National Development Plan (NDP) the corridor between eThekweni and Gauteng is known as the Competitiveness Corridor. eThekweni is recognised in terms of the NDP as a Node of Competitiveness. The road network is complemented by a well-established rail network.

Figure 19: Core Road and Rail Infrastructure Network



The four planning regions of the eThekweni municipality are spatial structuring mechanisms that serve different functions, with desired uses that are in line with the objectives of the SDF promoted in these areas.

Figure 20: Revised Spatial Development Framework 2014/15



The key structuring element of the SDF is the “Urban Development Line” (UDL) being the outer limit to which urban development will be permitted in the long term. Within the UDL densification is advocated along transport routes known as “Densification Corridors” and defined “Future Densification Areas”. The “Urban Core” is the key opportunity for densification. Environmental service assets are defined within and without the UDL, and controlled in terms of the Durban Environmental Services Management Plan. A “Cost Service Model” is used to locate housing and other projects where services with available capacity are present.

Land ownership is not a key factor to the formulation of the SDF. The SDF identifies strategic areas for investment and development but does not necessarily engage in land acquisition. Spatial Planning advises and directs the Real Estate and Land Assembly Department on strategic land that should be land banked. The municipality reports that there are parcels of land that are well located in the municipality. However the planning and development horizons for these land parcels do not align with that of the municipal strategy. Therefore it is critical that SOEs and municipalities align their development plans. It may be possible, with the

more recent provision of SPLUMA, to consider SOE land in the SDF so that this problem could be circumvented.

The only time the Municipality experiences the attendance of its IDP meetings by SOEs which includes representatives from Eskom, Umgeni Water and Telkom, is during the provincial and national government assessments and information sessions. The municipality also works with other SOEs but these would be on a project by project basis, for example Passenger Rail Agency of South Africa (PRASA) and Transnet on the integrated public transport network and port development projects respectively. In such instances, the municipality usually engages with Senior or Chief Planners but there have been instances where the heads of organizations are engaged depending on the nature of the project. It is a common occurrence that officials who attend such meetings escalate matters to senior management who further escalate matters to Board level for a decision to be made. This prolongs the process of reaching a decision.

Overall, engagement of SOEs is largely project based and therefore limited in terms of strategic planning for the municipality. It is possible that the SOEs do not see benefit in attending IDP meetings as they have their own Strategic Plans and direction which may not necessarily align with that of the municipality. However the municipality believes that SOEs play an important part in city development, that joint planning will ensure that duplication of services is avoided and that services can be delivered effectively and efficiently. The municipality also believes that municipalities and SOEs have to plan together to ensure service delivery. In municipalities such as eThekweni where land availability is limited, partnerships with SOEs to release land that can be used for human settlement development would be a positive step forward to achieving the outcomes of Chapter 8 of the NDP.

The IDP process in general has very little engagement with individual landowners. However, from a n interaction perspective, the interest of landowners may be represented through organized community forums such as the Ratepayers Association.

During the preparation of the SDF the municipality engages with various stakeholders such as Tongaat Hulett, Ingonyama Trust Board, Transnet, Passenger Rail Agency of South Africa, Department of Water Affairs, Umgeni Water, Eskom, Department of Transport, Dube Tradeport, the Chamber of Commerce, Illovo and Crookes Brothers. Engagement with the various entities varies in frequency, where the municipality engages with some on a monthly basis, such as Tongaat Hulett and the Chamber of Commerce and on a project basis with the Ingonyama Trust Board and Crookes Brothers. Engagement with SOEs and the public occurs through ward and regional workshops, sector specific workshops, request for written comments from the public and advertising the SDF on the website, libraries, regional centres and offices.

5.5.2 Land management

In the eThekweni Municipality, land acquisition functions are assigned to the Real Estate Unit and Land Assembly department within the Human Settlement Unit. The Real Estate Unit is the custodian of all municipal land and responsible for the disposal of municipal land and acquisition of land for development purposes excluding housing. The Real Estate Unit comprises of four units which are believed to be adequately staffed. These include the following:

- Valuations and acquisitions
- Land Transactions
- Property Transactions
- Leasehold

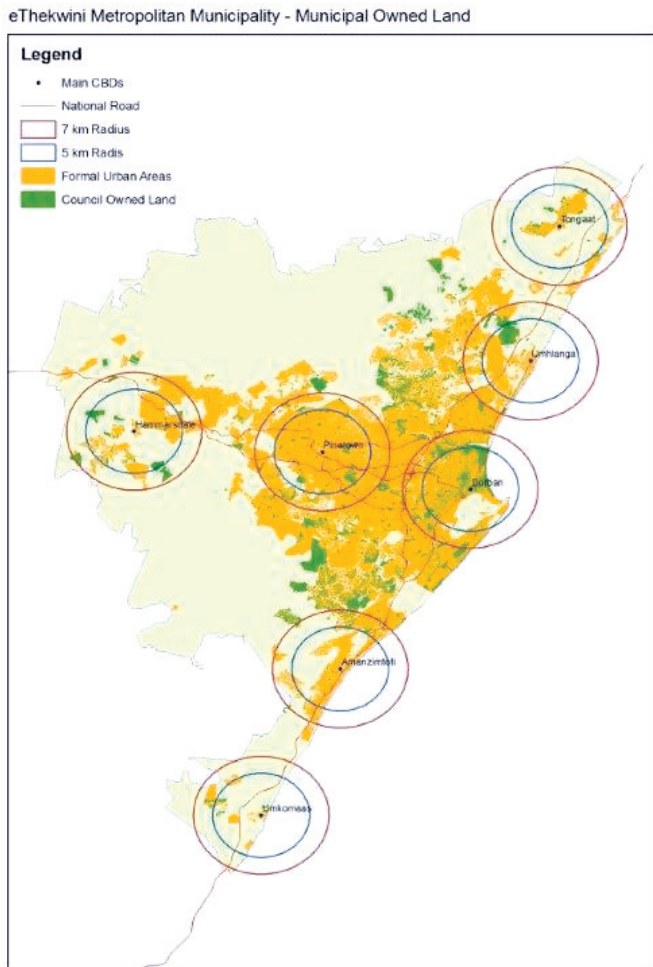
The Land Assembly Department is responsible for the acquisition of land for human settlement development. This Department of Land Assembly has developed specific criteria to identify well located land.

eThekweni municipality has a land asset management strategy in place, that includes aspects relating to land acquisition and disposal of land. The Disposal and Land Acquisition policy is a 3- 5 year plan that is approved by Council. The plan is based on a budget and provides financial and strategic inputs regarding acquisition. The process of disposing municipal land is based on a tender system as required in the Municipal Finance Management Act. Thus, all land being disposed by the municipality is released at market value. The municipality has an updated register of all municipal land in the form of a valuation roll. However some properties that are vested with the municipality have not been transferred to Council. These properties therefore do not reflect on the municipal valuation roll. The municipality is in the process of rectifying this

problem although the process is happening at a slow pace resulting in major financial implications. Municipal owned land is vested with the various Municipal Units, with larger parcels being used for infrastructure and Durban Metropolitan Open Space System (DMOSS).

The municipality releases land for development purposes, with the Land Assembly department mainly focusing on the release of land for gap housing and social housing, for example Woodglaze Housing Development in Phoenix. The Real Estate Unit has released land for private development, with the major release being for the Suncoast Casino Development (Erf 12519 Durban). This was the biggest land sale in the inner city as the site was released for approximately R 100 million. The extent of the land released is approximately 21,8ha. In addition, the Unit releases sites for housing and worship purposes in order to fulfil community needs.

Figure 21: Municipal Owned Land, eThekweni Metro municipality



The municipality manages its own land in two ways, namely through a land register which reflects the municipal department the land is held or utilised by, and through the provision of security to prevent the illegal occupation on municipal land. The duties of monitoring and preventing illegal occupation on municipal land are assigned to the Land Invasion department.

5.4 Overview of key issues relating to municipal planning and land management

This section reflects on the key issues relating to municipal spatial planning and land management arising from the case study research.

The Possible Impact of the Spatial Complexities

When examining the BCM geographic space, it is evident that the area is a diverse and complex one. Firstly, it is characterised by a number of urban centres such as East London, Mdantsane, King Williams Town/Bhisho and Dimbaza, with each of these demonstrating different characteristics. For example, East London is the second most important economic centre within the province while King Williams Town/Bhisho is the administrative hub for the Eastern Cape. Mdantsane and Dimbaza were established during the apartheid period as “closer settlements”. Secondly, the municipality has large rural areas which contain a number of traditional villages. Approximately half of the metro’s households are found in these areas and as such fall outside of the urban edge. The 2013 SDF notes that of the 121,000 backlog in housing units, 46,000 units are required in the rural areas. Thirdly, the municipality has 154 informal settlements with a total 40,365 shacks with an estimated population of 155,000 persons. The 2013 SDF indicates that at 60 dwelling units per hectare, approximately 2,000 hectares of land is required to address the housing need.

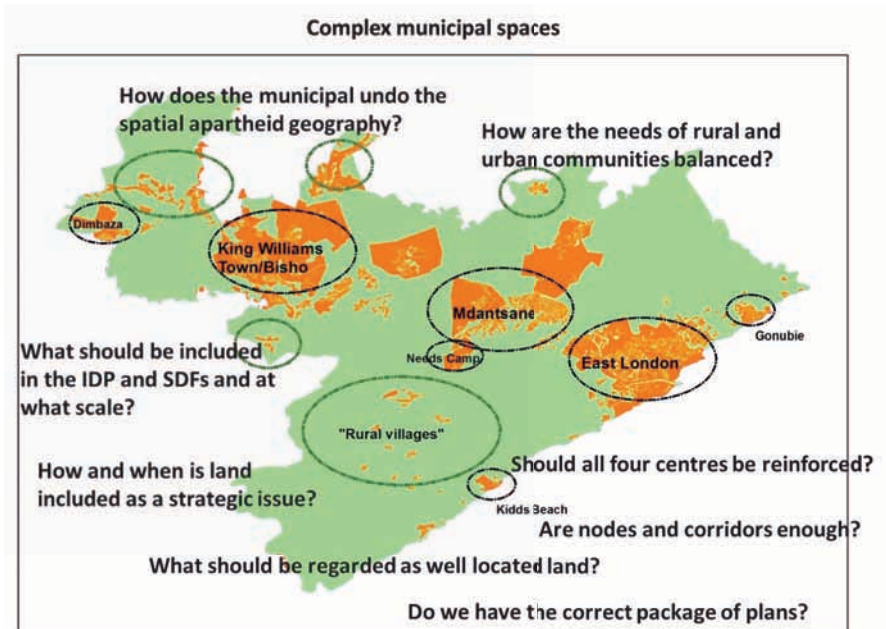
As with Buffalo City, the spatial fabric of the Mangaung municipality is highly distorted, in that all three urban centres of the city demonstrate different characteristics with varied challenges requiring a multi-dimensional approach in tackling them. The three urban centres are disconnected, with the focus of development mainly being placed in Bloemfontein.

The demarcation of Ekurhuleni as a metro involved incorporating nine distinct towns, a factor which has inhibited the development of a new, distinct and coherent metro identity. This is one of the key objectives of the municipality’s strategic planning – to support existing centres, at the same time promoting densification and infill development and promoting a coherent and cohesive urban space.

The existing municipal boundaries of both Mangaung and Buffalo City have created municipal areas with significant rural communities along with urban centres separated by large tracts of undeveloped land. Ekurhuleni, on the other hand, has a more urbanized environment but one which now comprises nine disestablished municipal areas which require integration and consolidation. Preparing IDPs and SDFs which address the spatial complexities and realistically balance the needs of all communities in each of the case study sites is challenging. None of the case study municipalities for example explored or provided a definition of well-located land within the IDP. It is therefore not surprising then that there has been a tendency toward addressing development issues in the IDPs in broad generalities. Moreover, it is suggested then that specific mention in the IDP toward using SoE non-core land for supporting spatial integration and transformation is possibly too detailed at this stage within the municipal planning process. It is also understandable that the dominant engagement with the SoEs in most case study areas tended to be focused on the core service provided by that SoE and not on the identification and release of non-core land.

The diagram below highlights the complexities with which municipalities need to grapple with respect to the development of credible and comprehensive IDPs and SDFs.

Figure 22: Complexity of municipal spaces as evident in Buffalo City



There may be merit in examining the eThekweni approach toward preparing an IDP which includes an 8 point plan. This appears to allow for greater sector integration and a more refined approach towards addressing development imperatives within the municipality. For example, Plan 8 deals the issue of access and land management which includes securing property and property rights necessary for capital projects. However, no mention is made of the need to access SoE non-core land or any indication of specific strategic land parcels.

It would appear that the level of participation and consideration of state owned and SoE non-core land in strategic planning in municipalities is patchy across the four case study areas. This may be partially attributed to the specificity of each municipal area but may reflect the capacity of the municipality to engage SoEs and the state strategically and adequately incorporate the potential of the non-core land for addressing spatial transformation.

Given the nature and the broad objectives of the SDF, it is reasonable to expect some mention of the need to identify strategic land and the role of the different land owners. This would include the n the active engagement of land owner groups during the preparation of the SDF.

In accordance with SPLUMA, greater consideration will need to be given to the SoE land in the SDF with section 12(1)(h) stating that the framework must "include previously disadvantaged areas, areas under traditional leadership, rural areas, informal settlements, slums and land holdings of state-owned enterprises

and government agencies and address their inclusion and integration into the spatial, economic, social and environmental objectives of the relevant sphere⁴¹.

Managing Municipal Land

Of the four case study municipalities, it would appear that only eThekweni and Mangaung have approved Land Asset Management Strategies with Ekurhuleni in the process of developing one. Buffalo City is currently compiling an Asset Register and is yet to commence the preparation of a Land Asset Management Strategy. In the case of both eThekweni and Mangaung, the Land Asset Management Strategies address aspects relating to the acquisition and disposal of municipal land in compliance with Section 14 of the Municipal Finance Management Act.

Examples were found in all four case studies where municipal land had been used for development purposes. However, this appears to be undertaken on a project by project basis rather than an overall assessment of municipal land within the municipality and how it can best be used to support spatial transformation.

In addition, the HDA's assertion that municipalities pay insufficient attention to optimizing the development potential of their own land appears to have validity. Buffalo City for example has large tracks of well-located land adjacent to the East London CBD and the recently acquired Sleeper site which remains significantly underdeveloped.

Managing IGR

In none of the case study municipalities was participation of SoEs in the IDP and SDF structures and processes, and related IGR processes, significant. Often, if participation does occur, this is usually done by the attendance of officials who do not have much influence of are not effective, as noted in eThekweni. Certainly in the case of the Buffalo City SDF, the participation of the SoEs appears to have been weak in relation to land identification and release whereas in eThekweni engagements are held with specific land owners such as Tongaat Hulett (private) and Transnet and PRASA (SoEs). In the case of Mangaung, it was noted that the participation of the SoEs in the SDF planning process was difficult as the officials representing the SoEs do not have the necessary mandate to take decisions.

SoEs appear to play no significant role in IGR forums or structures in any of the municipalities considered, and therefore tend not to be involved in strategic planning. In addition, municipalities did not indicate that the Province played a strong role in IGR forums, and, in the case of Ekurhuleni, it appeared that provincial actions were sometimes at odds with those of the municipality.

Poor Management of Land

A key aspect of the management of all land, including that owned by SoEs and government departments, including municipalities, is to prevent illegal occupation of the land and land invasions. Municipalities generally have limited capacity to inspect land that might be vulnerable to potential land invasions. They tend to rely on people such as ward councilors reporting invasions, and then, by law, only have 48 hours in which they can respond and evict people.

Examples include Mangaung and eThekweni. In Mangaung, the lack of capacity to manage municipal land effectively led to the illegal occupation of such land by approximately 8 86 churches. This means the municipality is losing out on possible income from that land. In the case of Mangaung, the municipality has employed two land invasion officials who are responsible for monitoring and preventing land invasions. Given the size of most municipalities, this is not a high level of capacity to do the job required.

⁴¹ SPLUMA, Section 12(1)(a)

eThekweni has a land register which indicates which municipal department is responsible for all municipal land. It is therefore able to respond relatively quickly when necessary. The monitoring of land and the prevention of illegal occupation is the responsibility of the Land Invasion department.

Limited Municipal Capacity

It would appear from both the Buffalo City and the Manguang case studies that the municipalities have limited strategic capacity for considering the importance of land and land acquisition in the planning processes. The importance of land as a tool or mechanism for transforming the city appears to be addressed post the adoption of the IDP and the SDF. While in the case of Buffalo City, a strategic manager has been appointed within the Municipal Managers office, more capacity is required if the metro is to truly drive a transformation agenda. Moreover, the recent Implementation Protocol (IP) with the HDA is an indication of the support required by the municipality in the identification and acquisition of land.

6. LAND ACQUISITION

6.1 Introduction

The acquisition of state land by municipalities involves SoEs, national and provincial government, and usually requires high level negotiations by municipalities, within the fairly complex legislative and policy framework outlined earlier. This section of the report focuses on the experience of municipalities in acquiring state land for developmental purposes. For each of the four metros it considers the location of strategic land, then municipality's experience in acquiring land from SOEs, and their experiences in this regard when dealing with government departments.

6.2 Buffalo City

6.2.1 Introduction

Since its establishment in 2000, Buffalo City metro has been struggling with the acquisition of land from both SoEs and State Departments. To date it has made one acquisition of land from Transnet, a state owned entity, namely the Sleeper Site located on the periphery of the East London CBD. The municipality has also attempted to acquire state land from the Department of Public Works and/or the Department of Rural Development and Land Reform with limited success. All initiatives for the acquisition of either State or SoE land are driven by the Municipal Manager's office. This decision appears to have emerged from the municipality's experience in relation to the acquisition of the Sleeper Site (discussed below) which emphasised the need for senior officials to be active in the process. The use of the Municipal Manager's office has thus removed any internal bureaucracy while also ensuring that any proposed acquisition is given the highest level of support within the municipality itself.

There appears to be little internal knowledge in the municipality of the existence of either the National Department of Public Enterprises and/or any entity-specific policy on the disposal of non-core land. Some BCM municipal officials became aware of the existence of the policies but not the content at a National Land Summit held in 2013. The lack of knowledge of the requirements on the part of the SoE in relation to the disposal of non-core land is reflected in the municipality's approach to the development of Signal Hill, a portion of land immediately adjacent to the CBD and the continuation of the Quigney beachfront area. More recently, Transnet has issued a call for proposals for the development of the land indicating that any development within that area will be developer led.

The municipality has identified a vast number of land parcels, State, SoE and privately owned land necessary for supporting their development efforts. The areas identified fall both within the urban edge, some well located in relation to primary nodes, and others outside the urban edge. Given the challenges experienced in acquiring land and the capacity limitations within the municipality, the BCM has recently prepared an IP with the Housing Development Agency (HDA) to assist with the acquisition of State and SoE land. It is anticipated that the municipality will benefit from the resources and knowledge of the HDA in fast tracking the acquisition process. As was noted in the interviews, "the HDA knows which doors to knock on". Based on the current provisions of the IP, the HDA will purchase the land on behalf of the municipality and as such the land will become the asset of the municipality. Moreover, the proposed relationship extends beyond land acquisition to include at least the following support functions:

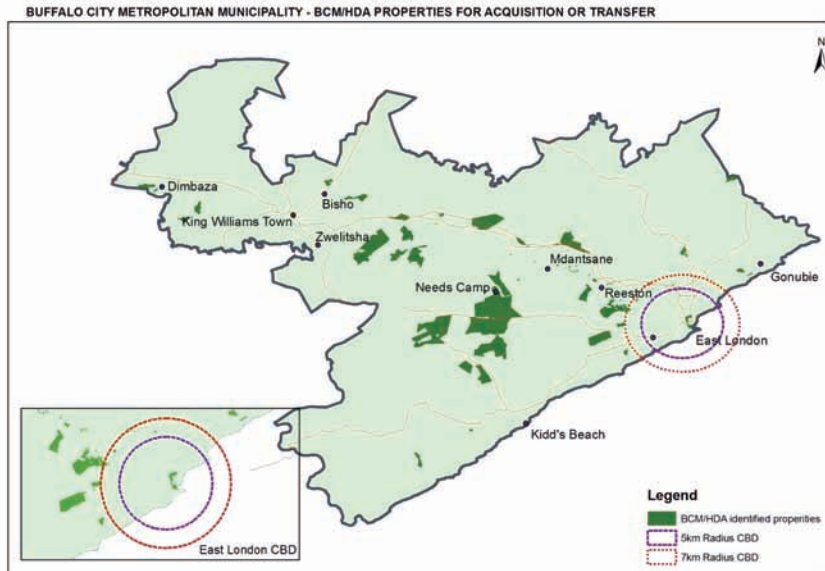
- Transfer of housing projects from the Eastern Cape Human Settlements and the Amathole District Municipality
- Facilitating and unblocking blocked housing projects
- Facilitation and rectification of housing projects from Provincial Human Settlements and the Amathole District Municipality
- Facilitate tenure where the development has taken place without tenure

It would appear that the Medium Term Operational Plan (MTO) in support of the IP is yet to be finalised with some clauses in the contract still under negotiation. A report was presented to the Council at the end of

February 2014 in which the role of the HDA was explained and the benefits of the relationship to the municipality outlined.

Approximately 141 sites have been identified for acquisition or transfer by the HDA within the Buffalo City Municipality's jurisdiction from either state departments or SoEs. As is evident in the map below, the properties are found in locations across the metro with only a small number of sites within the 7km radius around the East London CBD.

Figure 23: Municipal or HDA properties for acquisition or transfer, Buffalo City



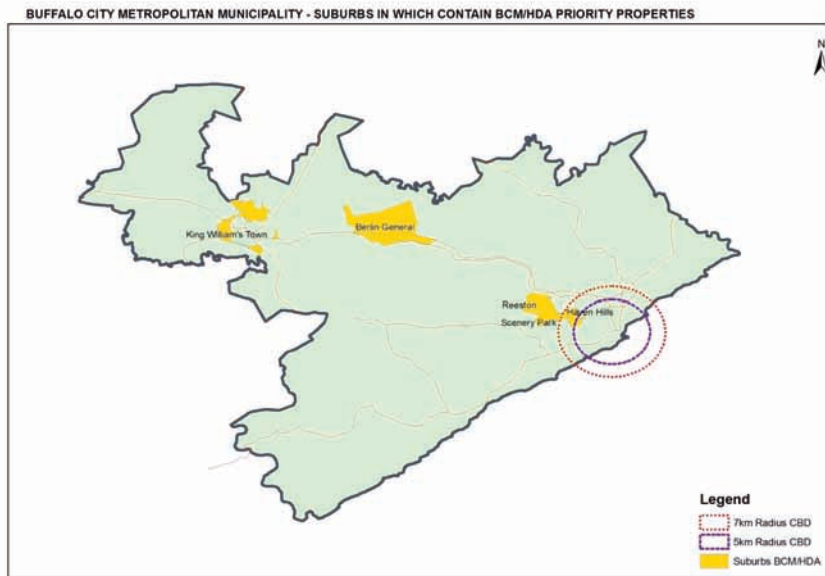
When examining the location of the land identified, it is evident that parcels fall both inside and outside of the urban edge. Some are in line with the SDF objectives with respect to the strengthening of nodes and optimising land along movement corridors while other portions appear to be necessary for addressing historical legacy issues. The land identified by BCM/HDA reflects to some extent the tension between driving a transformation agenda and the need to address backlogs and the provision of basic services where households are currently located thus reinforcing apartheid spatial patterns.

Extracting from the agreed BCM/HDA database, land parcels have then been prioritised for immediate or short term acquisition or transfer. The land portions located in Reeston and Haven Hills are currently owned by Transnet while the other sites are either unregistered falling under the Department of Rural Development and Land Reform or the National Government of the Republic of South Africa, possibly the responsibility of the Department of Public Works. Haven Hills and parts of Scenery Park fall within the 7 km radius of the East London CBD with Reeston located between East London and Mdantsane.

Area	Current owner/s
Reeston	Transnet/ Republic of Ciskei
Ndacama	Amathole District Municipality/ National Government of the Republic of South Africa
Berlin	Unregistered - Department of Rural Development and Land Reform

Area	Current owner/s
Haven Hills	Transnet
King Williams Town	Unregistered - Department of Rural Development and Land Reform
Scenery Park	National Government of the Republic of South Africa
Regional waste disposal site	South African Development Trust/ Republic of Ciskei – it would appear that the land was purchased in 1999 but the transfer did not take place

Figure 24: Suburbs of Buffalo City metro which contain BCM/HDA properties



It would appear that the BCM/HDA have set themselves an ambitious task with respect to the transfer and/or the acquisition of land especially since the current record for the BCM has been a single acquisition from Transnet within a 13 year period and no land transfers from any national or provincial department. Only time will tell if the HDA will indeed be able to unlock and fast track both the state and SoE land disposal processes.

6.2.2 Acquiring land from SOEs

The only successful transaction of an immovable asset transaction with an SoE in Buffalo City metro is that of the Sleeper site, discussed in more detail below.

Sleeper site example

A process driven by Propnet, a division of Transnet, was reflected in the 1998 Sleeper Site Development Framework. The primary proposal for the area was the development of an “education precinct” largely serving Rhodes University, the Border Technikon and the Eastern Cape Technikon. The initiative appeared to fade until the BCM once again revived the need to acquire the land for promoting development within the city in

approximately 2004. A number of proposals were prepared by Buffalo City largely premised on a mixed development approach.

As is evident in the map below, the Sleeper site is extremely well located in relation to the City centre. It comprises of 13.66 hectares which was finally purchased by the municipality for R16 million.



In the Sleeper Site Development Framework prepared by Propnet in 1998, a steering committee was established comprising representatives from Propnet, City Councillors and City Officials. The municipal representatives would have been from the disestablished transitional local council. It is possible that the activities broke down with the establishment of the Buffalo City Local Municipality in 2000 and the appointment of new senior officials and councillors. In the process that led to the final acquisition of the Sleeper Site, no task team was established for the purpose of planning and/or facilitating the land acquisition. Based on the interview, it would appear that the municipality prepared a number of proposals for the Sleeper Site which were presented not only to Council but also to Transnet as part of the negotiations process. Historically, the University of Fort Hare expressed an interest in the land for the development of a satellite campus. This was included as one of the options by the BCM for the development of the land.

The Sleeper site is extremely well located in relation to the City centre. It comprises of 13.66 hectares which was finally purchased by the municipality for R16 million. As already indicated, a process driven by Propnet, a division of Transnet, was reflected in the 1998 Sleeper Site Development Framework. The primary proposal for the area was the development of an "education precinct" largely serving Rhodes University, the Border Technikon and the Eastern Cape Technikon. The initiative appeared to fade until the BCM once again revived the need to acquire the land for promoting development within the city in approximately 2004. A number of proposals were prepared by Buffalo City largely premised on a mixed development approach.

The key challenge experienced by the municipality was finding the right people to engage with in Transnet to negotiate and finalise the transaction. In approximately 2004, the process was reinitiated via the Local Transnet office in East London. The process to be followed was the escalation of the municipal request for acquisition to Regional Transnet office in Port Elizabeth and thereafter to the National Transnet office in Johannesburg. It would appear that the municipal submission was never sent from the Local office notwithstanding ongoing promises from Transnet that action was being taken. It was only on the appointment of the current Municipal Manager and his interactions at with the CEO's office in Transnet that the

breakthrough was finally made. This was some 11 or 12 years after the initial submission to Transnet back in 2004.

There appeared to be a common understanding amongst officials that when acquiring land from SoEs, the municipality would be required to pay market related prices and that any other option for accessing the land is non-negotiable. Based on the feedback from the officials, the payment of a market related price for the Sleeper Site was a fait accompli. A number of valuations of the site were undertaken based on current use and, on the basis of these, a price for the land agreed. Municipal officials were under the impression that in the final stages of the acquisition of the Sleeper Site the negotiations were being undertaken in good faith. However, it would appear that without the knowledge of the municipality, Fort Hare University was included in some of the meetings and a clause was inserted in the sale agreement that Fort Hare must be able to make use of the site for a satellite campus. This was notwithstanding that the municipality was the purchaser and would become the owner of the land.

The municipality appears to be resigned to the fact that SoEs such as Transnet will initiate and drive the development of the area with little or no municipal input except for the provision of the necessary town planning approvals. This fuels the perception that Transnet is motivated by its intention to extract maximum value from the development of the area rather than working collaboratively with the city to ensure that any development is not only in keeping with the IDP and SDF but reflects the overall transformation imperatives of the metro. It is suggested that Transnet is thus viewed by the municipality as any other private land owner in that they have the right to develop their land in a manner that serves their purpose as long as it conforms to the planning controls.

6.2.3 Experience with government departments

According to officials interviewed, the National Department of Human Settlements has not notified the BCM of any non-core land being disposed of by SoEs. Moreover, no national department or provincial department has assisted the municipality in any process toward the acquisition or transfer of land.

As indicated earlier, based on the interview and through an examination of the IDP and SDF, it would appear that the IGR structures for the management of land assets are weak. An example was cited of the management of the Public Works land adjacent to the East London International Airport which also falls within the noise zones. Over the past few years, the land has been invaded by people that have not only constructed large homes but have also taken responsibility for the provision of their own services with the exception of electricity which is provided by Eskom. Notwithstanding numerous attempts on behalf of the municipality to engage the Department of Public Works to better manage its land and to facilitate evictions, the Department has taken no action and is now insisting that the land be transferred to the municipality.

The rate and extent of development is demonstrated in the two maps below, one image taken in 2011 and the Google Earth image in September 2013.

Figure 25: Public works site, Buffalo City Municipality



As already mentioned, the BCM has received limited transfer of land from either the National Department of Rural Development and Land Reform or the National or Provincial Department of Public Works. The process toward gaining access to land does not appear to support the municipality's need to develop and transform its urban spaces. As was outlined in the interview, the municipality makes the necessary application to the relevant national department and if the department has no need for the land, it circulates its intent to dispose of it to all other national departments to determine if any of them may have a need for the land. If no national departments show an interest, the intent is once again circulated but this time to all the provincial departments. The process is extremely slow and one filled with "red tape".

6.3 Ekurhuleni

6.3.1 Introduction

In Ekurhuleni, all initiatives for the acquisition of either State or SoE land are driven by the Real Estate department once a department has identified a need in line with the proposals in the MSDF. All land acquisition is handled by EMM. Once land has been identified, the Real Estate department negotiates to acquire. HDA has apparently not assisted in this process to date. There are several overlapping processes. For housing, once the process with Real Estate starts, Human Settlements also communicates with SOEs in parallel, and oversees the process. They also communicate directly with the affected SOE e.g. Transnet, PRASA, Spoornet.

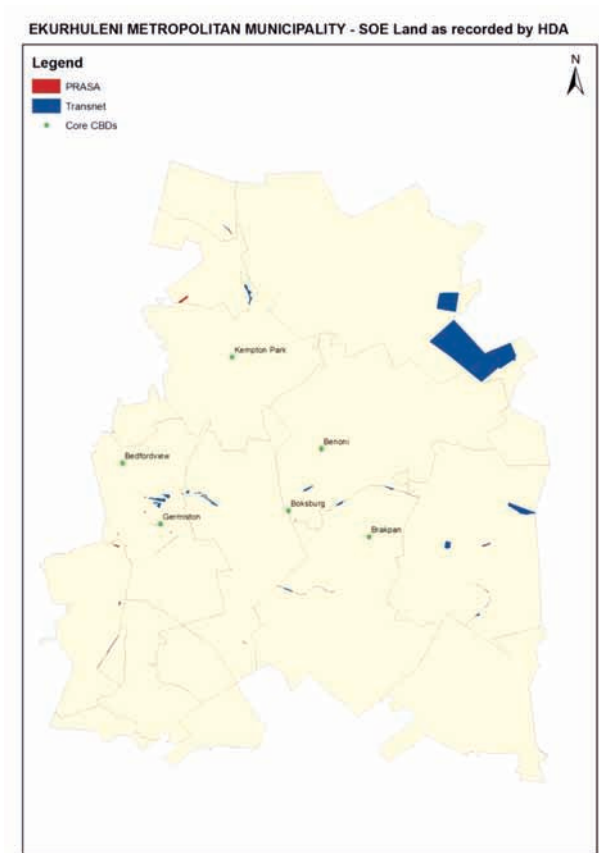
Once land has been identified and ownership established, the municipal division responsible for feasibilities, functional planning indicates if it is suitable. The municipal process includes feasibility, draft layout, desk-top, EIA, geotechnics, and services availability assessment. After approved to pre-planning, the layout is submitted, and on approval of the EIA, the valuation is done. The municipality therefore conducts very detailed planning and the necessary development processes.

Officials are generally aware of parastatal policy on non-core land although they made the point that there is lack of communication at HDA and national departments with regard to delivery agreement (outcome 8), and the outcomes established for SOEs. "SOEs might be doing their work, but the responsible department isn't". Officials understand that if an SOE is disposing of land in the municipality's area, the national department should inform HDA and HDA should acquire this land. Transnet has identified non-core property (from Propnet); they approached EMM directly. However, Transnet has indicated to the municipality that they can't offer the municipality any land, as they must first offer it to the national department of Human Settlements.

6.3.2 Acquiring land from SOEs

The map below shows HDA's records of land owned by SOEs in Ekurhuleni metro.

Figure 26: SOE land in Ekurhuleni, as per HDA records



To date the only acquisition of SOE land appears to be in Pirowville, Germiston station, which has taken over 16 years, and started in 1998. In 2004 they decided they would sell the land. The deal with Transnet was concluded in 2008, and transfer took place in 2010. The length of time to identify, acquire, transfer land depends on the nature of the acquisition. In Pirowville there was little information e.g. servitudes were not registered, and the municipality needed to do subdivisions. Acquisition was subject to this being done. Also, in most cases land is occupied. When asked why the delays in the Pirowville case, an official responded that Transnet and SOEs “don’t have a handle on the strategic value of these things so they bumble along. EMM made it a focus but it was always a no-brainer, Germiston station will be developed after Park. There is no leadership re land or asset management in SOEs.”

The following comments were made by municipal officials reflecting on experiences with interacting with SOEs and, in some cases, also provincial government departments. These have not been verified, but reflect the perceptions and experiences of municipal officials.

- There is no central point or person with whom the municipality can deal around land. In many cases it is not possible to determine who owns the land (which department within the SOE or provincial government), or to identify the individual with whom they need to negotiate. Consulting the Deeds

office does not help as it just indicates RSA Public Works and the municipality is unable to find the person to deal with.

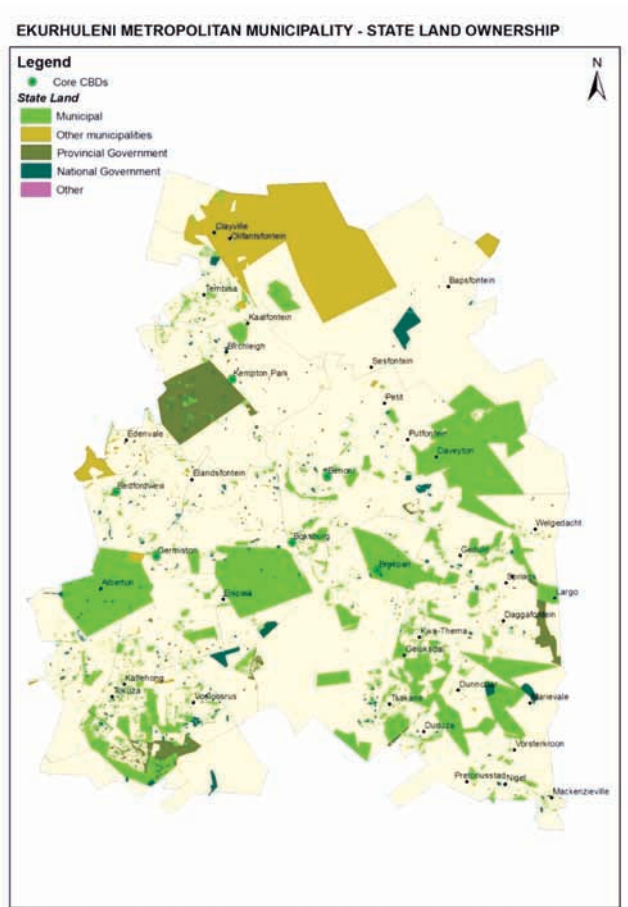
- There are constant changes in terms of the people with whom they are negotiating and no continuity; different individuals are sent to the meetings, consultants are changed, meaning that negotiations are slowed down, have to back track, or cease.
- SOEs are often not aware of their own plans, or change their plans and their identification of what is, or is not, strategic land
- There appears to be no asset management or list of ownership of land in SOEs.
- SOEs tend to compete with the private sector (e.g. Intersite)
- SOEs are not capable of developing their land themselves, and often indicate they want to do this in partnership with the municipality.
- SOEs have “an obsession with extracting economic development potential. They do a disservice by not understanding transit oriented benefits. SOEs do not look at integration”. Developers do not utilise land very well e.g. they put in a standard Spar, Cambridge which is bad utilisation of high value land. SOEs allow developers to dictate to them. “They have too many high end developers who look down on the poor, and no vision. They are developer-led. So you find that there is external influence over the SOE rather than their own vision”. For example, in the development of stations the commercial side pays for the operational side. “Germiston is the only case where it’s profitable. The type of tenants doesn’t suit our vision, and leave us with nothing for our land”.
- Linked to this, SOEs tend to have an obsession with “cleaning up” the station. EMM has many stations – Springs, Brakpan, Oakmore etc. In Springs, the station is a priority space with PRASA but nothing has yet been developed.
- Problems have been exacerbated in this term of office with the appointment of parastatals to lead SIPs. SIP 6 and 7 are managed by PRASA. “PRASA is not geared to be a land developer”.

There are instances of a number of stands and hostels in townships which have not been taken to full development. Negotiations were started but the SoE apparently then withdrew and started different processes. They wanted to sell them at market value. Municipal officials thought it would be at no value but now they are following the normal processes associated with land acquisition.

6.3.3 Experience with government departments

The map below indicates state land in the Ekurhuleni metro municipality.

Figure 27: State land ownership, Ekurhuleni



Officials indicated that to date the municipality has not had to engage with national departments around land acquisition but has some in the pipeline. As indicated earlier, Transnet has indicated that it cannot offer the municipality any land, as they must first offer it to the national department of Human Settlements. In the 2014 State of the City address it was noted that EMM has in recent years partnered with national and provincial government to purchase privately owned land, which the municipality has used to develop integrated human settlements. Some of the land purchased is in Winnie Mandela Park, Tsakane Extensions and Langaville Projects (the latter two being located in the previous Brakpan CC).

Several examples of frustrations with accessing state owned land were provided by municipal officials. Detailed examples include the Robert Strachan hostel which belongs to province and Marievale, previously a military base which belonged to the Department of Defence (see text box below). In both cases, the municipality has been trying for years to access the land for human settlement purposes, but has been frustrated by the inability to pinpoint which provincial department is responsible for the land in the case of Robert Strachan, and which national government department is responsible for the Marievale land, and what its future plans for this land are.

Marievale military base⁴²

The example of Marievale highlights the toing and froing between departments, and the reluctance of national departments to give up control of their land to municipalities for human settlement purposes, even if they are unable to manage their land and assets effectively.

Marievale was established as a military base, with houses, sports facilities etc. In 2005 EMM first indicated that they needed the land for the development of human settlements. In the same year, an article appeared in the Springs and Brakpan Advertiser (13/5/2005) indicating that Marievale military base would be closed and handed back to the Department of Public Works (DPW). In 2006, EMM sent a letter to the Gauteng Education Department asking for the school bus, which had been suspended, to be reinstated as people were living there. The letter provided background to the area, indicating that the military base had been closed, all assets had been handed back to DPW, and that EMM was negotiating to obtain the property to upgrade infrastructure and accommodate more families. However, in 2008, in response to a Parliamentary question, the Minister of DPW indicated that the Department of Defence still required the property and it therefore could not be handed to DPW, despite the fact that DPW's site visit had shown evidence of cable theft and vandalism, and that DOD was not fully utilising the site. DOD still maintained they needed the site.

In 2009 it was noted that "in the hands of the Department of Defence the area is deteriorating, and it cannot be business as usual."⁴³ⁿ In 2009 and 2010 it was reported that it was not clear if residents of the area were paying rent, and if so, to whom. Further, the lack of services and deterioration of infrastructure was made clear:

"The problem with Marievale is that there are communities who are staying there, and they've been renting the houses from the Department of Defence. There is absolutely no service delivery there. The municipality is unable to help because their area belongs to the national government. The community members are always stranded whenever they encounter problems because they don't know whom to report to.

The rampant looting that has plagued the area is continuing. Rented houses are falling apart because no one is repairing them. Cable boxes are left open exposing children to danger. Without adequate drainage, the roads run like swimming pools and all over the place the grass grows high. Nothing is happening there except the development of a golf course. How this will benefit the local community, is unclear"⁴⁴.

In 2010, as asked in parliament whether he intends disposing of this base to the Department of Human Settlements or the private sector for housing development, the Minister of Public Works replied no, as "the Department of Defence and Military Veterans intends to use the property to accommodate their Engineering Regiment section".

In 2011, the Minister of Defence and Military Veterans replied to questions put to her, indicating the SANDF is responsible for the management and administration of the area and that the area has illegal residents who were to be moved as soon as alternative accommodation could be found, and legitimate SANDF personnel. Yet in 2012, it was reported that residents of the area, sometimes referred to as a "white squatter camp" are no longer paying rent. In August 2013 the Portfolio Committee on Defence and Military Veterans reported that illegal occupation of buildings was taking place by both civilians and military personnel. The committee requested that within a month a status report on how to address this be delivered, including measures to ensure illegal occupation does not occur again.

Robert Strachan hostel⁴⁵

The Robert Strachan hostel falls in region A, near Kutalo station, which has been earmarked in the Regional SDF for Transport Orientated Development and as a housing priority area. A string of e-mails between EMM and various provincial departments, primarily GPG DLH and DID, illustrate the difficulties in obtaining clear

⁴² See Appendix 2 for more details

⁴³ Statement by J Masango, 2009

⁴⁴ Statement by J Masango, 2010

⁴⁵ See Appendix 3 for details

and accurate information about which department owns and manages the land, and what its plans for this land are.

In April 2012 the EMM sent a request to the Gauteng Province asking for urgent assistance in obtaining permission from province to proceed with the project: "We need to spend the budget allocation of Good hope and it was agreed to refer to the budget as the Kutalo precinct. The first phase will entail infill development of the Robert Strachan hostel site. Beneficiaries from Good hope and if possible Dukathole will be relocated to these units. This will make it possible to address the redevelopment/upgrading of Good hope".

In one of the replies to the issue (May 2012), GPG DID indicates that there is **conflicting** information regarding the GPG User-Department, under whose jurisdiction the 'Remainder of Ptn 161 Farm Driefontein 87 IR', falls

- The **Provincial** GPG Asset Register indicates the User-Department as Provincial "Education".

- In conflict with the above, the NDPW "**Provincial**" data-base indicates the User-Department as GPG Provincial "Transport and Public Works".

Further, in December 2012, GPG DID indicated that there may be more than one asset or land register in departments:

"Over-and-above the "GPG 9,804 Asset Register" which is administrated by 'DID', it is so that 'DLGH' further has the 'GPG Land Register' administrated by DLGH, and that it is worth a try to see if this property is possibly reflected in the DLGH 'Land Register'".

DID notes that "although there are similarities / overlaps between DID's "GPG 9,804 Asset Register", and the DLGH "GPG Land Register", the two data-bases are however not the same data-base / data-source, and hence it would be worth a try to see if this property is reflected in the DLGH Land Register."

In July 2013, EMM sent an e-mail to several departments and officials informing recipients that the municipality is in the process of finalizing feasibility studies for an infill development in Kutalo and Robert Strachan. Their consultants have indicated that there is a building that is being revamped for a butchery on that site. Such development cannot be supported due to the planned housing project and whoever is undertaking the revamp must be advised accordingly. The e-mail reminded GPG DID that they have made several inquiries to them requesting them to confirm the department responsible for the Robert Strachan property so that Ekurhuleni can finalise the process of transfer to EMM or obtaining a POA so they can proceed with the planned interventions. They also asked if permission was granted for the revamp currently underway on site.

6.4 Mangaung

6.4.1 Introduction

In Mangaung, the Land Development and Property Development Department is responsible for acquiring land for human settlement development. A land acquisition section has recently been developed under the Land Development and Property Development Department, the section is limited in terms of staff and is unable to perform certain functions. Officials that negotiate with SOEs vary based on the project, the General Manager of the Land Development and Property Development Department is often involved in major projects. The Housing Development Agency has assisted the municipality with acquiring land parcels that are of importance. This relates to the 9 informal settlements in Thaba Ncuhu that the municipality intended to upgrade. The role of the HDA here included facilitation and fast tracking the transfer of the properties from the DRDLR to the municipality. The HDA also assisted the municipality with the acquisition of 49 blocks/flats in Estoire Settlement, which were converted into a township. The development had been initiated by a private company which later got liquidated. The HDA negotiated for the sale of these flats to the municipality, thus conversion into a township. The flats were released at 47 million.

Officials interviewed indicated that they are not aware of any policies pertaining to the disposal of SOE non-core land. The municipality has struggled to identify non-core SoE land as SoEs tend to identify all their land as core once they are approached. The municipality has also not been notified by a State Department that a SoE is releasing their non-core land. Thus, land is released at market value or the SOE refuses to release the land. The municipality has observed an inconsistency on the part of SoEs and State Departments in that they

demand market value for their land but are quick to donate all land which appears to be a liability for them. This is viewed by the municipality as unfair and dishonest if they fail to disclose the real reasons that motivate the donation. This situation has negatively impacted on the relations between Council, State Departments and SoEs.

6.4.2 Acquiring land from SOEs

The Mangaung Municipality has extensive experience relating to dealing with SoEs on land acquisition matters. The main SOE that the municipality often deals with is Transnet. Most of the land owned by Transnet has been earmarked for industrial use by the municipality. The municipality stated that the approach of engaging land owners is critical when it comes to acquiring land. This is because land owners often have the idea that the municipality has ample financial resources and would be willing to pay any amount for land it requires. The municipality appears to not have a problem with acquiring land at market value but is not willing to pay beyond the market value. In the event of there being further disputes regarding the value of the land and/or transfer of the land in favor of Council, Council does not shy away from activating the expropriation process.

Figure 28: Transnet Non-Core Land, Mangaung

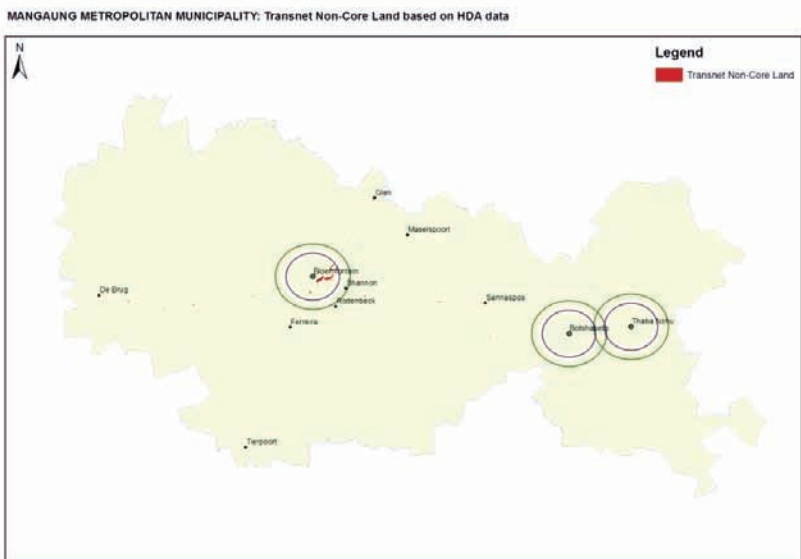
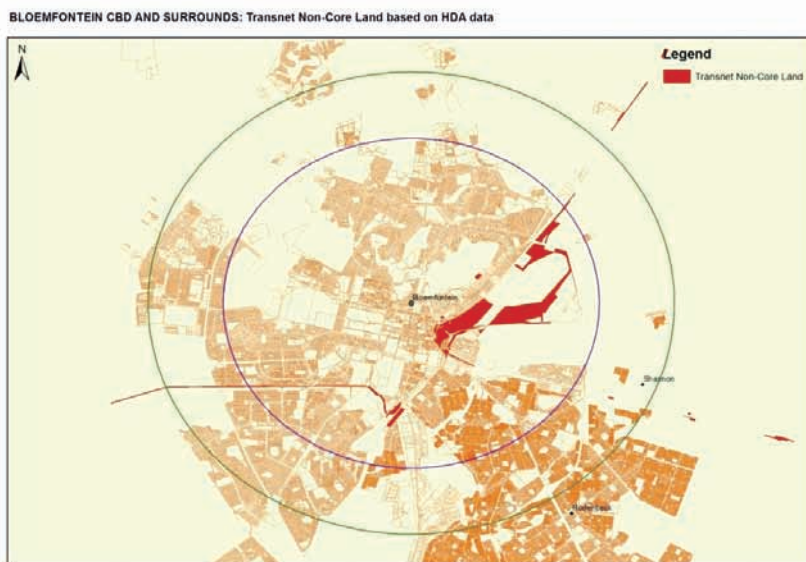


Figure 29: Bloemfontein CBD and Surrounds: Transnet Non-core Land



The Council views SoE land as part of the urban transformation agenda which needs to be demonstrated as such in Council's plans such as the SDF. The planning processes of preparing such plans are used to engage

relevant stakeholders whose limited participation has already been discussed in an earlier section of this report.

Several pieces of SoE land that have been identified as crucial to the municipality's urban transformation agenda. An example is pieces of land along the N8 which belong to Transnet. These are pieces of land earmarked for infrastructure development purposes.

The Municipal Council also holds the view that SoEs have little regard for the National Development Plan (NDP). Council also believes that even the Department of Human Settlements does not fully appreciate the concept of sustainable human settlement in that it does not consider crucial support infrastructure as part of sustainable human settlement. This includes setting aside suitable land for cemetery development and waste disposal site.

The municipality has concluded a number of immovable asset transactions with varying levels of complexity. One of the examples involved the municipality, Transnet as the property owners and a Transnet tenant. The municipality required the property for the development of an Inter-modal taxi facility and thus initiated discussions with Transnet to acquire the property. However there was an active long term lease with conditions that favoured the lessee. Even though the municipality had no intention of keeping the tenant, it was unable to withdraw the lease due to the conditions imposed therein. The first condition was that the tenant had the First Right of Refusal to acquire the property in the event that the property was to be disposed. The second condition was that the tenant would be compensated for loss of income in the event that the property could not be used to conduct business operations due to renovations. The third condition was that the tenant would be accommodated by the new owner for as long as the lease was active. Firstly, the municipality paid out the tenant R3 million for the First Right of Refusal Rights. Secondly, the municipality had to pay out the tenant for the remaining period of the lease if it intended to withdraw the lease and in this regard the tenant demanded a payout of R10 million. Given this demand, the municipality opted to accommodate the tenant within the new development which meant the tenant would be compensated for the loss of income during the construction period. Once the construction was completed, the municipality had paid R10 million, an equivalent lease outright buy out initially demanded by the tenant. Despite all of this, Transnet also demanded R10.5 million for the property which effectively means that the municipality paid a total of R23.5 million excluding construction costs. Despite all of this, the municipality has a dispute with the tenant who refuses to pay a rental reflective of the newly renovated property citing the conditions contained in the original lease. In all of this, the municipality holds the view that Transnet did very little to facilitate a smoother land transfer transaction.

Another example also involves Transnet and relates to an illegally occupied piece of land around a Station. It understood from discussions, that a community was settled illegally by a local Chief over Transnet land. The nature of the settlement and quality of the houses built was consistent with those built in a formal township. The Municipal Council approached Transnet about acquiring this land for In-Situ upgrading purposes. However Council's request was rejected citing different plans for the land. Instead Transnet requested the municipality to find an alternative site for the illegal occupants. This meant Council had to bear the costs of buying out the illegal structures at market value, demolition costs and all costs associated with the establishment of a new township for this community.

A further case involving Transnet relates to a building in Hilton which is required by Council for Social Housing as part of the CBD Rejuvenation project. Transnet was approached by Council some twelve months ago, however Transnet has not committed on any firm response citing uncertainty of future plans of the Executive.

6.4.3 Experience with government departments

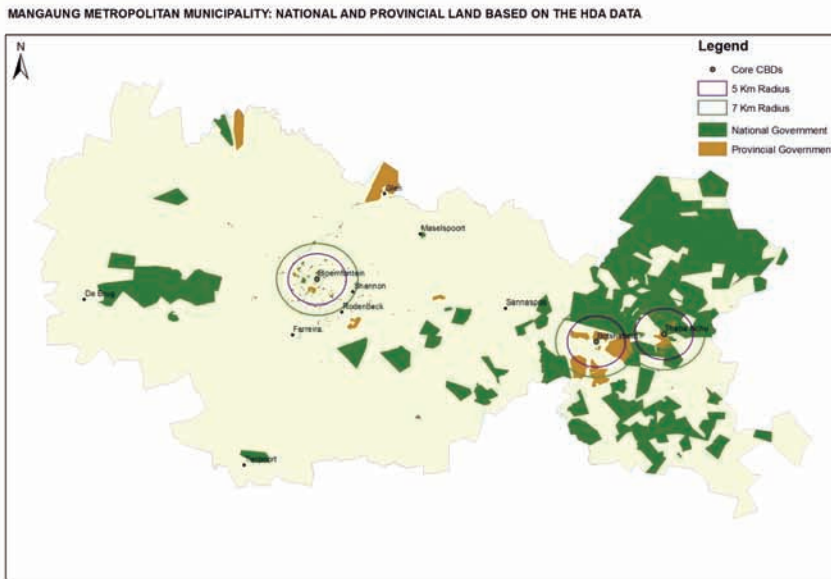
The Mangaung municipality has faced difficulties when engaging with the National Department of Human Settlements on issues relating to human settlements and land. This particularly relates to the definition and understanding of the concept of sustainable human settlement. However the HDA has been instrumental in assisting Council with initiating the land pipeline process. Municipal spending is questioned and municipal officials expressed the view that there seems to be a lack of understanding and commitment to Chapter 8: Human Settlements of the National Development Plan. This is problematic and raises some serious concerns.

The municipality predominantly engages with the Department of Rural Development and Land Reform and the Department of Public Works regarding accessing state land. The municipality stated that dealing with organs of state is equally frustrating and tedious as with State Owned Companies. The municipality provided the example of a transaction with the Department of Rural Development and Land Reform that has been ongoing since 2001 when a formal submission requesting land was forwarded to the department. The municipality made an attempt to set up a land acquisition Task Team with the DRDLR; however this collapsed as it lacked active participation of DRDLR representatives.

As an example, in 2000, the municipality approached DRDLR about the nine informal settlements in Thaba Nchu which Council intends to upgrade. DRDLR requested that Council provides a written submission which Council has on record as having done in 2001. In addition, Council followed all the prescribed processes required to open the Township Register. However Council only received approval from DRDLR in 2013, 12 years later. DRDLR has since offered to also transfer an additional twelve properties to the municipality. However these are properties which have become a liability for DRDLR. These buildings are occupied but DRDLR is not receiving any income from them.

It appears that engagements with the state take lengthy periods of time and there is no sense of urgency.

Figure 30: State Land Ownership



6.5 eThekweni

6.5.1 Introduction

In eThekweni metro, municipal structures have been put in place to allow for dialogue on issues relating to land. The municipality's Real Estates and Land Assembly departments engage with SoEs on matters relating to land acquisition. The Real Estate Unit engages with SoEs through joint municipal/ SOE task teams. The

municipality is currently part of two task teams, one with Transnet and another with Dube Trade Port (DTP) and Airports Company of South Africa (ACSA). The latter was initiated by the provincial government and is led by DTP. The municipality is currently pursuing a relationship with the Ingonyama Trust regarding rates and land acquisition issues.

Land Assembly engages with SoEs and other organs of state on an as and when need basis. The department is not part of any joint task team and has expressed that it would be useful to establish one as it would allow for coordinated development.

The municipality is aware of the South African National Roads Agency Limited (SANRAL) policy for the identification of core and non-core land. In this municipality, this only affects areas that are adjacent to the N2 and the N3 which are not always easy to dispose. An example of non-core land along major transport routes is along Argyle Road, a metropolitan road in the Durban city centre where there are numerous pockets of land which are non-core. However, the disposal of such pockets becomes a challenge to dispose because of their irregular shape unless these are disposed to adjoining neighbors who are wishing to expand their properties.

Given the challenges relating to the acquisition of SoE and/or State Land, the Municipality through its Human Settlement Unit has partnered with the HDA. The HDA will assist the Municipality with acquiring land from SoEs on behalf of the municipality for human settlement development projects.

In realizing the difficulties associated with securing land rights from SoEs and/or State Departments, the municipality has also explored and adopted other innovative approaches to land rights acquisition such as the registration of 3Dimensional servitudes.

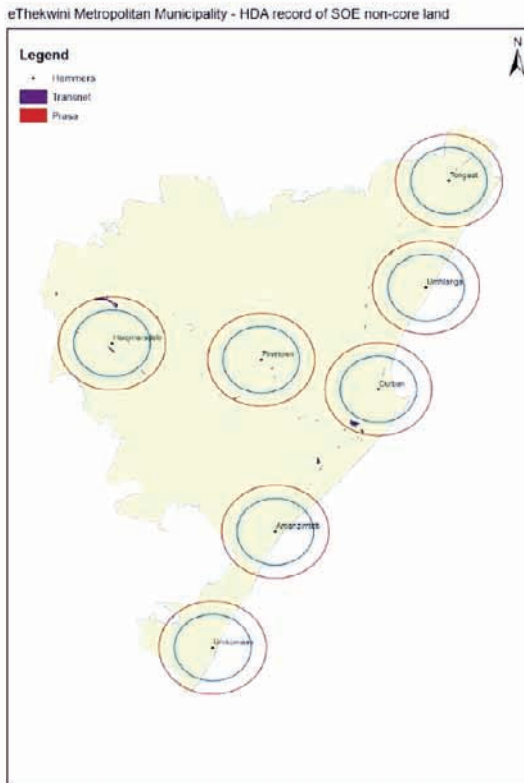
6.5.2 Acquiring land from SOEs

The municipality has engaged with SoEs extensively on land acquisition matters. These SoEs include Transnet, Ingonyama Trust and the Department of Transport. The eThekweni municipality holds the view that the relations between the City, SoEs and State Departments have been strained for far too long to point where trust between the entities has been severely affected. An example of this relates to the donation of unsolicited land by the SoEs to the Municipality. Like Mangaung, the municipality is not always convinced of the real motives of such donations as on many occasions, the land and/or property donated to Council are those which are problematic to the entities.

The municipality is also concerned about what it terms "extortion prices" asked by the SoEs when negotiating about disposing their land. The municipality holds the view that SoEs should be in a position to negotiate their prices to a fair value when disposing to the municipality, given the legal mandate of municipalities to deliver services to communities. The current prices being paid by the municipality for SoE land causes serious dents to Council Budget resulting in an inability by Council to deliver other essential services.

Again, as in the case of Mangaung, another frustration the municipality experiences is that SoEs are not willing to disclose to them what is Core and Non-core land. The figure below depicts what the Municipality understands to be SoE Non-Core land as per HDA records.

Figure 31: HDA record of SoE non-core land in eThekweni Metropolitan



The municipality has a long history of deadlocks and court cases regarding disputes related to the disposal and/or acquisition of non-core SoE land. These disputes have strained relations between the municipality and the SoEs. Such strains not only affect the initiatives in question but also tend to spill over to affect other unrelated initiatives. An example of such disputes involves a dispute between the municipality and PRASA over a property along Umgeni Road in the vicinity of Durban Station. The municipality initially donated the piece of land to PRASA for expansion of its operations around Durban Station. The understanding between the parties was that any land not used for the expansion of PRASA operations would be returned to the municipality. Indeed, a portion of the donated land was not utilized for the expansion and many years down the line, the municipality requested that this land be returned for service delivery purposes. However, PRASA was not prepared to do so. In the mean-time, the municipality initiated the Inanda-Ntuzuma-KwaMashu (INK), an Urban Renewal and Integration Initiative. Part of the initiative involves the establishment of a new railway station within INK where land is owned by the municipality. PRASA approached the municipality to release the required piece of land, however the City was not prepared to release such land until such time that the Umgeni Road land is returned to the municipality.

The Real Estate Unit reported that it was in discussions with several SoEs over a number of properties which are required. These discussions are at various levels and are being driven by the specific tasks teams made up of municipal and SoE representatives. The Real Estate Unit requires SoE land for the infrastructure and

economic development projects. The Unit has also considered implementing a land banking process similar to the one being driven by the Human Settlement Unit. This approach will be driven primarily on the basis of Urban Renewal and Industrial Development projects. The main focus of the Human Settlement Unit is to secure land for human settlement development to fulfill its urban transformation agenda through densification and township transformation by improving accessibility, linkages and integration.

Even though the municipality has been able to acquire several pieces of land from SoEs over the years the process has predominantly been one that is infested with hurdles. This results in projects being delayed, project costs escalations or funds being withdrawn due to non-expenditure. Examples of completed transactions are outlined below:

- Land transaction between the municipality and Transnet over Erf 797 Kloof which was required for a substation. The land was released by Transnet for R950,000.
- Land transaction between the Municipality and Ingonyama Trust Board over Portion 117 and 118 of the farm Umlazi Mission Reserve. The Municipality required this land for the Redevelopment of KwaMnyandu Node. The land was released for R120,000.

For the purpose of this report reference will be made to one example of a concluded transaction between the municipality and Transnet SOC Ltd. This is the SAPREF substation. SAPREF is a National Key Point, the largest crude oil refinery in Southern Africa and is responsible for the distribution of petroleum throughout the country. SAPREF's current electrical infrastructure is considered unstable due to the movement of joints of the 132kv cables and deterioration of the insulation within the 132/33 kv transformers. If this problem is not attended to immediately, then a single fault will result in stress on the substation remaining in service, which will have widespread consequences for the local environment and the national economy.

To address this issue, eThekweni Electricity is required to provide two 132kv feeds (which are referred to as the Northern Feed and Southern Feed) to the SAPREF substation to address the imminent threat to SAPREF's electricity needs. These electricity feeds will ensure sufficient provision of electricity to the SAPREF substation. eThekweni Electricity has therefore identified servitude requirements which traverse privately owned properties. These properties are located within the old Durban International Airport site. Details of the properties are provided on the table below and the corresponding figure which spatially depicts the servitude route.

Table: Properties required for the Northern Feed

MUNICIPALITY'S REQUIREMENT	THE AFFECTED PROPERTIES	APPROX.
Proposed 5m Electric Cable Servitude	Remainder of the farm Durban Airport No. 14263	3211m ²
Proposed 5m Electric Cable Servitude	Remainder of the farm Durban Airport No. 14263	5058m ²
Proposed 8m Electric Cable Servitude	Remainder of the farm Durban Airport No. 14263	222m ²
Proposed Electric Cable Servitude	Erf 5329 Isipingo	22m ²

Table: Properties required for the Southern Feed

MUNICIPALITY'S REQUIREMENT	THE AFFECTED PROPERTIES	APPROX.
Proposed 5m Electric Cable Servitude	Remainder of the farm Durban Airport No. 14263	3211m ²
Proposed 5m Electric Cable Servitude	Remainder of the farm Durban Airport No. 14263	5058m ²
Proposed 8m Electric Cable Servitude	Remainder of the farm Durban Airport No. 14263	222m ²
Proposed Electric Cable Servitude	Erf 5329 Isipingo	22m ²

Figure 32: Spatial depiction of Sapref Electrical Servitude Route



Negotiations to secure the servitudes rights commenced in or around 2008 with the property owner, Airports Company South Africa Limited (ACSA). Initially, ACSA had no objections to the granting of the servitude rights however they were reluctant to proceed with the registration of the servitudes as they had already been approached by Transnet with regards to the proposed sale of the old Durban International Airport site. Thus, despite numerous attempts to negotiate with ACSA, the Municipality was unable to secure the servitude rights it required. In November 2011, the municipality was formally advised that there was an impending sale of the affected properties and that the Municipality was to deal with the new owner, Transnet SOC Ltd. The Municipality now had to initiate fresh negotiations with Transnet as the new owner of the land meaning that previous negotiations between the Municipality and ACSA had been futile.

The transfer of the old Durban International Airport site to Transnet was registered on 23 March 2012. Transnet advised the municipality that the area over which the proposed electrical feeds traversed could likely be affected by the construction of the Dug Out Port. Initially, Transnet was not willing to grant the servitude rights to the municipality resulting in an impasse in negotiations. The matter was then elevated to the Municipal Manager's office for intervention and mediation. Subsequent to prolonged negotiations between Transnet and eThekweni municipality an agreement was reached.

The agreement contains the following conditions:

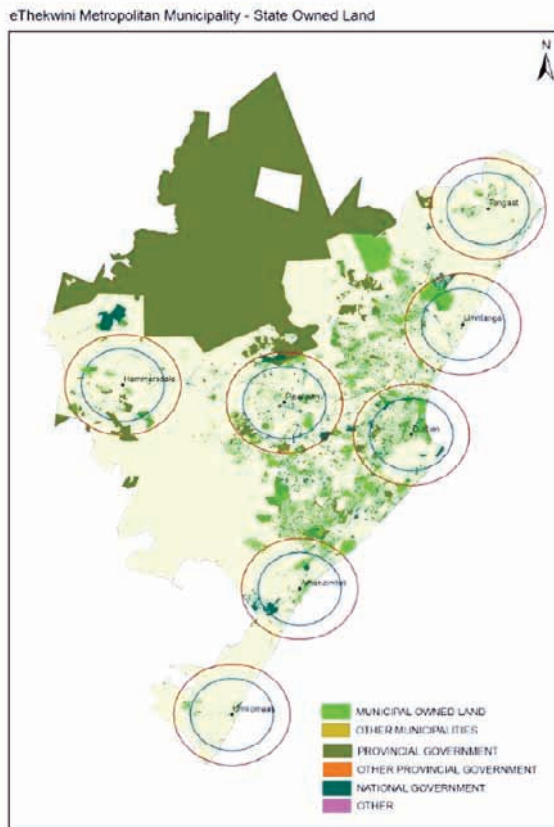
- Transnet shall grant a Wayleave as an interim measure in respect of the Southern Feed as this feed will be affected by the proposed Dug Out Port. In addition it was agreed that at the commencement of construction of the Dug Out Port a service tunnel or services ring will be constructed to accommodate the southern feed. This agreement is currently being negotiated between the two parties.
- The Real Estate Unit initially requested that the servitude rights be donated in respect of the Northern Feed however Transnet was not prepared to do this and advised that in terms of the Public Finance Management Act they had to dispose the servitude rights at market value.

- The market value of the servitude rights in respect of the Northern Feed was assessed departmentally by a registered Professional Valuer at R1 700,000. Upon assessing the value of servitude rights, the existing zoning of the site was considered. The site is currently zoned Noxious Industrial, the servitude rights will have limited impact on this.
- Following prolonged negotiations with Transnet's appointed valuers, an agreement has been reached at R1 700,000.

6.5.3 Experience with government departments

The eThekweni municipality acknowledges that some land has been made available by National and Provincial Departments. A list of properties that the respective Department wishes to dispose is usually circulated by the MEC to municipalities to give them a first right of refusal. However, this does not always happen. An example of this involves a matter between the municipality and the Department of Transport over Portion 1 of Erf 347 Verulam and Portion 56 (of 36) of Erf 348 Verulam in which Council first made an offer in 2009 in order to use the site for the development of a Fire Station. The municipality made an offer of R1,200,000 in 2009 to purchase the land and this offer was rejected by the Department. Department of Transport had initially agreed to dispose of the affected portions to Durban Metropolitan Council for the sum offered by the municipality. However, in 2011, a private individual (Wicks Realty CC) made an offer of R846,000 for the same piece of land and the offer was accepted and the land was transferred to its new owner. The municipality was not formally informed of any intended disposal of the portions by the Department of Transport except for a notice appearing in the Provincial gazette on 17 July 2008. In 2013 before the owner made any improvements to the land purchased in 2011, the Municipality approached the new owner with an offer to purchase the land for R900,000 and the owner demanded R12,000,000 which is the market value of the land. The municipality has confirmed that this is the correct market value for the land. However the municipality is not content with this transaction purely on the basis of principle having made a higher offer 2 years prior the disposal of such land at a lower value. A feasibility study undertaken by Council for Scientific and Industrial Research (CSIR) confirmed that there is a need for a Regional Fire Station. In view of the above, a Notice of Intention to expropriate dated 10 December 2012 was served by the municipality to the land owner and an objection dated 11 February 2013 relating to the expropriation was received. Currently, the municipality is awaiting consent from the Minister of Cooperative Governance and Traditional Affairs in order to proceed with the expropriation. In the event consent is granted by the Minister, compensation will be determined in terms of the Expropriation Act and Section 25 of the Constitution.

Figure 33: State Owned Land, eThekweni



The Real Estate Unit and Land Assembly department provided various examples whereby the municipality was involved in currently the process of acquiring land from a SoE or Organ of State. For example, in Lacey Road there is illegal occupation on land belonging to the Department of Public Works. Approximately 107 informal households occupy this land, thus living conditions are appalling and it is for this reason the municipality decided to acquire the land to provide in-situ upgrading through the provision of basic services. Negotiations with the Department of Public Works have been in progress for over 8 years. There have been delays and impasse in negotiations. Delays are mainly as a result of non-response by the department. The living conditions of the inhabitants of this informal settlement remain unchanged and at risk of hazards such as fire and disease outbreaks.

6.6 Reflection on municipal experiences around acquiring state land

The experience of the four case study municipalities around acquiring land owned by SOEs and/or government departments highlights a number of key issues.

SOEs and the release of land

The case study municipalities find it difficult to negotiate with SoEs around the acquisition of non-core land, and, indeed, this difficulty is also experienced with regard to similar negotiations with government departments at provincial and national level. This is partly due to the fact that the minimal participation of SoEs in IGR structures and processes means that often no clear communication channels have been developed between the municipality and the SoE. It is also due, in large part, to the fact that for both SoEs and government departments, municipalities often battle to access the right department and right official in that department with whom to negotiate. For example, in BCM that chain of command for interacting on land and land acquisition in SoEs is not clear. In eThekweni it was clear that SoEs have little if any ability to delegate and regional offices do not have a clear mandate resulting in lengthy processes whereby every land acquisition matter has to be approved by the Chief Executive. There appears to be lack of open channels of communicating with SoEs and the municipality does not know the relevant people to contact in relation to land acquisition. Even officials of SoEs themselves often are not able to provide guidance in this regard.

SoEs do not generally provide guidelines or a handbook to municipalities on how to engage them on land acquisition, and it is usually left to the municipality to do this on its own initiative, through a trial and error, ad-hoc process.

SoEs also do not always offer government first option on well-located land e.g. in terms of its own policies. Transnet should have offered BCM first right of refusal which it did not do in cases such as Signal Hill. Lack of transparency on the part of SoEs can hinder municipality's ability to negotiate to acquire their land. In eThekweni, for example, SoEs were reported not to be transparent on land acquisition matters. Officials indicated that when the municipality shows an interest on the SoE's non-core land the land is made out to be core.

Lack of internal coordination within municipalities themselves can also cause delays and prevent successful negotiations with SoEs and government departments around land acquisition, as was noted in BCM. Some municipalities have relatively low levels of capacity to devote to complicated and lengthy negotiations with SoEs or government departments. However, in Ekurhuleni this is overcome to a certain extent by the fact that all negotiations with the SoEs are done by the Real Estate department, in response to directives from the relevant line department. This centralization seems to help in terms of building and consolidating experience and institutional memory within the municipality in terms of being able to deal with the high-level negotiations that are necessary.

SoEs, and even government departments, often take a long time to respond to municipalities' requests for land disposal, as is very clear in Ekurhuleni and Mangaung.

Land transactions involving SoEs are also lengthy with several examples in the case study municipalities taking close to 10 years or more. This is sometimes related to the fact that local offices do not have the authority to conclude land transactions. Because municipal projects are not core to the activity of the SoEs, they are not prioritized, as was found in both Ekurhuleni and Mangaung. Similarly, in eThekweni officials expressed the fact that dealing with state owned companies and other organs is extremely frustrating and is often a never ending process. The major concerns highlighted include centralised decision making and limited engagement on forward planning and projects.

National and Provincial Government and the Release of Land

The case studies demonstrated that a key challenge faced by municipalities is securing SoE's land is long and costly but that the release of provincial and national government land in most cases is worse than having to deal with the SoEs. Not only is the process of releasing state land extremely slow and complicated, but it has proved to be very frustrating for all municipalities interviewed.

Mangaung cited examples in which it had been negotiating since 2001 with the Department of Rural Development and Land Reform for the release of land. Task teams were established but collapsed due to the lack of participation by the Department. Ekurhuleni outlined the example of Marievale, a previous military base belonging to the Department of Defense, which is now lying in waste as the municipality struggles to simply identify the State Department currently responsible for the land, and ascertain its plans for the area. Buffalo City noted the case of the Department of Public Works land adjacent to the East London International Airport where uncontrolled illegal development is taking place. Prior to the invasion, the municipality

approached the department for the land. At that point they refused to consider releasing the land. Buffalo City also indicated that since its establishment in 2000, the municipality has not been able to secure a single transfer of land from either a provincial or a national department. eThekweni outlined the example of Lacey Road where the municipality has been in negotiations with the Department of Public Works for some 8 years for the release of the land to facilitate the upgrading of the informal settlement. Again, the reason for the delay was the non-response of the department.

Not only does there appear to be a capacity problem and lack of focus on the part of the Provincial or National Departments towards the release of land, but the process itself does not support an urban transformation agenda. As was outlined in the Buffalo City interview, prior to the transferring the land, it must be offered to other National and Provincial Departments with the municipality requested being considered as the "last resort". It is simply not possible for a municipality to drive development with these kinds of capacity and legislative constraints.

Legal and Policy framework

The municipal officials' knowledge and understanding of the policy framework for the disposal of non-core land varied significantly across the four case study municipalities. Those interviewed in both Buffalo City and Mangaung were either not aware of the policies and or had failed to access or read the document.

The officials in the larger and more resourced metros appeared to have some knowledge of the policy content such as the need for the SoEs to offer the non-core land as first right of refusal to the National Departments. The comment made by one municipality was that SoEs may well comply with this requirement but that the National Departments themselves failed to inform or consult municipalities when they are made aware of the SoEs' intention to dispose of land.

When examining the Transnet Group's "Immovable Property Disposal Policy" adopted in 2010, it is very clear that non-core land must be offered to other organs of state prior to calling for proposals and/or putting the land out to tender. The policy clearly states the following:

"This document (the policy) lays down that Transnet shall, having first received approval in terms of the PFMA, offer the properties to be disposed of to Organs of State, through the offices of DPE. Should an Organ of State advise that it requires a particular property, Transnet is to negotiate the sale of the property – at a market related price.

Should no Organ of State express an interest in exercising its right of first refusal, Transnet may dispose of the property to the private sector, using the most appropriate method of disposal ... the objective being to obtain the best value from the disposal of the immovable property asset".

Municipalities are organs of state and therefore municipalities should be given first right of refusal for any Transnet non-core land to be disposed of within its area of jurisdiction.

The risk associated with municipalities not having sufficient knowledge of the SoE policy content is that they are not able to address non-compliance when it may occur within their municipal areas. An example may be the recent Transnet-led call for development proposals for the Signal Hill site in Buffalo City. It would appear that the municipality accepted this initiative as a *fait accompli* with no administrative or political intervention questioning the validity of the Transnet actions.

It is critical that municipalities are aware of the DPE and SoEs' policies on the disposal of non-core land to ensure that they are not only able to hold the entities to account but to also ensure that as a state entity, the SoEs contribute to the overall national, provincial and local developmental agenda as opposed to serving their own self-interest.

Considering Market Related Prices

All four case study municipalities were resigned to having to pay market related prices for SoE land. While in some instances there were attempts to negotiate a more reasonable settlement, none appeared to have been successful. Interestingly, Mangaung indicated that if a SoE demanded a value in excess of the market related price, it would not hesitate to consider expropriation. Yet, the same municipality paid R10 million to a tenant

for a potential loss of income and then still paid a market related price of some R10.5 million for the land from Transnet.

Despite the fact that municipalities indicated that they paid market prices, this was not done easily, and at least eThekweni noted that the fact that they needed to do this meant that there was less money available to address urgent service delivery issues.

The case studies demonstrate that the SoE demand for market related prices at the local level is now mainstream with the discourse for reconsidering this requirement taking place at predominately the national level in forums such as the IUDF and or within organisations such as the HDA. A single municipality simply does not have sufficient clout to effect a change in the DPE or SoE approach to the disposal of non-core land. Rather, organisations such as SACN, SALGA and the HDA will need to continue the lobbying process.

Difficulties associated with the identification of State-owned and SoE non-core Land

It was evident when examining the spatial data available for not only State Owned Land but also the so called SoE non-core land that a number of challenges exist.

No spatial data was available which indicated both the core and non-core land of the SoEs. Rather, the only information available was that provided to the HDA. Moreover, it was clear that not all non-core land has been disclosed. For example, Signal Hill, an area for which Transnet have recently called for development proposals, is not included in the HDA shapefile. This certainly not only points to a lack of transparency on the part of the SoEs but also to their potential selective release of non-core land.

In relation to State land, the owner attribute data was interesting with many variations or descriptions of the land owner provided – some historic and some current but misspelt.

- Amathole District Municipality
- Amatola Coastal Local Council
- Amatola District Council
- Amatola Regional Services Council
- Amatole District Municipality

This situation is even more complicated when searching for provincial or national land. The list below describes the provincial land owners within the Ekurhuleni Metro:

- Administrateur Van Transvaal
- Department Of Public Transport Roads & Works
- Gauteng Department Of Housing
- Gauteng Provincial Government
- Gauteng Provincial Government Department Of Education
- Gauteng Provincial Housing Advisory Board
- Province Of Gauteng
- Provincial Government Of Gauteng
- Provincial Government Of Province Of Gauteng
- Provincial Government Of The Gauteng Province
- Provincial Government Of The Province Gauteng

The above is further complicated by which Department within the Gauteng Province is the actual owner of the land. It is not possible to simply assume that it Department of Public Works.

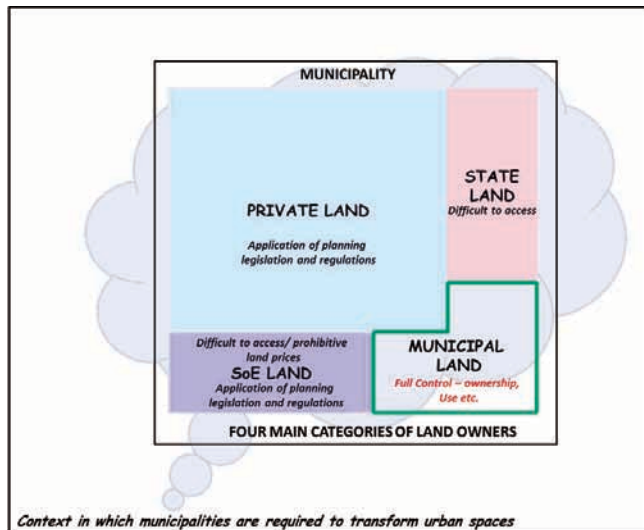
7. CONCLUSION AND RECOMMENDATIONS

7.1 Concluding Remarks

Earlier research has noted that for a variety of reasons, many municipalities do not have full control over the management of land within their area of jurisdiction.⁴⁶ These relate to several factors, including land owned by SoEs and other government departments. This was found to be true of all sizes of municipalities from Johannesburg to Ulundi. The research noted that “this has serious long term implications for the spatial logic, efficiency and financial sustainability of municipalities and their towns. In addition, it often prevents cities from using well located land to provide residential and other opportunities to the poor”⁴⁷. Despite the fact that municipalities develop town planning schemes that permit certain land uses, for example increased densities, these instruments cannot compel a landowner to optimize these provisions.

As indicated in the diagram below, municipalities only have full control over their own land, as one of the four main categories of land owners. State land is difficult to access, while SoE land is not only also difficult to access, but land prices are usually very high. For both private land and SoE land, municipalities have some control in the form of the application of planning legislation and regulations. However, overall, while municipalities are held responsible for the transformation of their urban spaces, they are often unable to do so due to the difficulties they experience in accessing the necessary, well-located land.

Figure 34: Context in which municipalities are required to transform urban spaces



A strong message emerging from the case studies were the frustrations experienced by municipalities in acquiring both state owned and SoE land. In the four cities interviewed, very few successful transactions had taken place. Moreover, the delays in relation to State Land were in some instances worse than was the case

⁴⁶ Kitchin and Ovens, 2008 Developing integrated towns, research conducted for Urban LandMark

⁴⁷ Ibid

with the SoEs. It is clear that while municipalities are required to be the drivers of spatial change and transformation, the current practices in relation to the disposal of land are unsupportive. In addition to the endless delays in accessing land, two other core issues emerged in the case studies relating to the financial aspects and capacity requirements, the latter not limited to municipalities.

Prior to 1994, land allocation and markets were dictated and manipulated by the apartheid government to ensure racial segregation and economic dominance. Access to well-located land was the preserve of white South Africans with black South Africans having little or no locational choice. The Apartheid government's state utilities such as the South African Railways purchased land cheaply or were allocated vast tracts of land for the delivery of services predominantly to drive the racially based economy but also for the spatial management and enforcement of the apartheid city structure.

In post-apartheid South Africa, the SoEs are now in the hands of the democratic government and are transforming with a view to extending services more rapidly to previously disadvantaged communities. However, the disposal of land has been left to market forces which, by the very nature of the market, precludes the majority of South Africans. Significant effort and political will is necessary to ensure that appropriate policy shifts are made toward improving the management and release of non-core land in South Africa⁴⁸. It is clear that something more needs to be done to hold SoEs and State Departments accountable for how they contribute to the national transformation of urban land. This is difficult in the case of SoEs, given their need to show a profit and to operate in many respects in a similar manner to a private sector organisation. In this context, operating from a profit motive rather than in the national interest is, to a certain extent, understandable.

However, the SoE land must be seen as an opportunity for facilitating the reversal of the Apartheid city. While other initiatives such as upgrading transportation systems, and decentralizing commercial facilities to some of the larger previously disadvantaged townships have gone some way to addressing the Apartheid city shortfalls, access to well-located land for the urban poor remains a central aspect of an integrated approach for the dismantling of the current spatial realities. "In the South African situation, with the history of urban segregation, these arguments for social and spatial integration have even higher priority as a socio political project."⁴⁹ It is within this context that the insistence on market related prices by SoEs must be challenged in order to find a balance between the financial imperatives of the SoEs and the developmental agenda at the local level.

At the same time, highly skilled capacity is required at a municipal level for driving the land acquisition process which would at least include the following skills: Strategic land use planning, land management, project management to drive and manage the process, legal, and financial and valuations. Internal mechanisms are required within the municipality to ensure not only a coherent approach to the acquisition of land but more importantly that internal structures are able to operate efficiently and effectively. Certainly, the two large metros of eThekweni and Ekurhuleni were able to demonstrate sufficient capacity levels, whereas this was not necessarily the case with Buffalo City and Manguang. However, in all cases, municipalities need to be supported more effectively by national and provincial government.

⁴⁸ Ovens, 2013 The role and significance of SOEs, public entities, strategic public bodies in the promotion of urban growth and development in South Africa, report prepared for the IUDF

⁴⁹ Napier, M "Competing for urban land: improving the bidding power of the poor" Discussion paper prepared for DIFD London and UN Habitat, June 2008

7.2 Recommendations

The recommendations outlined below emerge from the case study findings and are intended to support the ongoing discourse towards the improved management and release of state owned and SoE land.

Priority 1: Addressing the Legal Framework

The legal framework for the disposal of state owned and SoE land is extensive, some of which, such as the State Land Disposal Act and the Expropriation Act, remain old order legislation. Not only is it necessary to review this legislation to be in line with the current government's development imperatives but also to create an environment of legal certainty. The existing fragmentation contributes in part to the current practices of the selective application of the legislation by the SoEs in the disposing of land, such as disregarding GIAMA. State owned enterprises are wholly owned by the state and as such should be compelled to not only comply with the developmental objectives of government but also to the legal framework for the disposal of state land.

The legal framework, specifically the Government Immovable Asset Management Act No. 19 2007, which requires all provincial and national departments to indicate that they do not require the land prior to its transfer to a municipality⁵⁰, is fundamentally undermining of government's developmental obligations. The timeframes and the roles and responsibilities of each of the stakeholders in the disposal of land do not appear to be adequate. Currently, there are no mechanisms compelling a state department to not only operationalize the request for disposal but to do so within a reasonable timeframe. The concerns of municipalities and the current delays must be addressed in the revision and consolidation of the legislation.

Legal clarity must be provided in relation to land valuation and acceptable practices for achieving the developmental objects of not only local government but for the country as a whole. This might be addressed by the current moves towards the establishment of the office of the Valuer General, although when or if this is to take place has not yet been announced. Options other than market related pricing must be explored. Within this context, options for the formation of partnership arrangements between for example SoEs and municipalities should be strengthened and or made more explicit in the legislation.

Advocating for change

Organisations	Actions
<ul style="list-style-type: none"> • SALGA • HDA • SACN 	Advocate for the review of the legislation within public and political forums
<ul style="list-style-type: none"> • National Treasury • National Department of Public Works • Department Rural and Land Development and Land Reform 	<p>Reach an agreement on a consolidated legal framework for the disposal of all state land including that owned by State Owned Enterprises</p> <p>Establishment of the Office of the Valuer General</p>

⁵⁰ "User" means a national or provincial department that uses or intends to use an immovable asset in support of its service delivery objectives and includes a custodian in relation to an immovable asset that it occupies or intends to occupy, represented by the Minister of such national department, Premier of a province or MEC of such provincial department, so designated by the Premier of that province.

5. (1) The following are principles of immovable asset management:
 (f) in relation to a disposal, the custodian must consider whether the immovable asset concerned can be used—
 (i) by another user or jointly by different users

Priority 2: Empowering Municipalities

Municipal officials need to be made aware not only of the legal framework around the disposal of SoE and government land, but also the varying policy initiatives for the disposal of SoE land. The information will not only assist in holding certain SoEs to account for the actions undertaken within municipal areas but will also facilitate the negotiations for the possible release of the land.

Moreover, municipalities need to be provided with a guide as to the process, including the departments and key persons to be contacted in each of the SoEs for the purpose of acquiring land. This would circumvent problems such as the local SoE office failing to escalate the request and/or the need for high level political and administrative intervention to secure the release of land as was the case with the Sleeper Site in Buffalo City. All municipalities should know what “doors to knock on” and not just a few individuals or organisations.

Capacity building initiatives driven by both Department of Human Settlements and DCoG may be useful in strengthening the ability of the municipalities not only to engage on land matters, but also to empower them in managing their negotiations with SoEs.

Several instances of irregular sales or development of SOE or state land were identified in the four case studies. This seems to involve interventions which run counter to the developmental agenda. Tighter mechanisms need to be implemented to support municipalities against this type of practice, and to monitor municipalities to prevent this from occurring.

The potential for partnerships around the development of strategic land needs to be investigated further, and municipalities need to be supported to make informed decisions around partnering with SOEs or other spheres of government to develop such land, and how to go about this to promote rather than subvert, the developmental agenda.

Should a SoE be unwilling to either release the land at an affordable rate, is dragging the sale and/or is reluctant to establish a partnership with a municipality for its development, the municipality should consider using the Expropriation Act as a means of last resort.

Advocating for change

Organisations	Actions
<ul style="list-style-type: none"> • SALGA • HDA • SACN 	<ul style="list-style-type: none"> • Preparation of a guideline for municipalities outlining the legal framework and the DPE and SoE policies on the disposal of non-core land • A manual needs to be developed to support and capacitate municipalities to develop and implement stakeholder engagement strategies. These need to include a range of stakeholders as critical land could also be owned by the private sector. A stakeholder strategy based on a well-informed stakeholder mapping exercise could help municipalities. The preparation of a step by step guide to facilitate this, including municipal engagement with SoEs, is recommended. • The preparation of a guide to partnering with SOEs or other spheres of government around the development of strategic land • Preparation of a guide in relation to the expropriation of land
<ul style="list-style-type: none"> • National Treasury • DCoG • Department of Human Settlements 	<ul style="list-style-type: none"> • Improved mechanisms to deal with irregularities and political interventions need to be developed and implemented, and tighter monitoring of municipal performance in this regard need to be developed and enforced • Capacity building initiative to support municipalities in this engagement with SoEs

Priority 3: The identification of land and addressing the delays in the disposal of State and SoE Land

While aspects pertaining to the delays in the disposal of state land should be addressed in the review of the legal framework, the case studies clearly demonstrate the need to give urgent attention to resolving the current challenges in relation to release of state land. The lengthy delays, the lack of capacity and commitment to facilitating municipalities to obtain land must be addressed. A key question to be considered is

to what extent are SOEs and their policies around the disposal and development of lands supporting the development objectives of government. This should be extended to consider all spheres of government, including national, provincial, and even the municipality itself.

The confusion with respect to ownership needs to be resolved along with many other process issues if the state's immovable assets are to be a lever for unlocking the development potential in municipalities.

Even in cases where municipalities have clearly identified their spatial intentions with regard to land, the case study research shows that it is not possible for individual municipalities to advocate for the changes required to speed up the release of land and to hold the provincial and national departments accountable for their contribution toward the transformation of municipal spaces. Rather organisations such as SALGA, with the support of SACN and the HDA, will need to undertake this responsibility.

Metro officials indicated that they have been requested by National Treasury to indicate how much state and SOE land is in the metros, and to identify the key land parcels that they need released. It is important that municipalities do this in line with their IDP and SDF. HDA's database only addresses land for housing, while not all developments which would promote the government's developmental agenda are necessarily housing. In some cases, key commercial land could be released to promote transformed urban areas.

Advocating for change

Organisations	Actions
<ul style="list-style-type: none"> • SALGA • HDA • SACN 	<ul style="list-style-type: none"> • Preparation of detailed case studies to provide a body of evidence to highlight the struggles municipalities are facing in obtaining provincial and national government land will strengthen the case for change • Specification of SOE or state land that metros have clearly identified that they need for development and submission of this to National Treasury's City Support unit for further investigation and mediation. This could start with the four case study municipalities in this report. • Development of a complete database of SOE and State land
<ul style="list-style-type: none"> • Department of Rural Development and Land Reform 	<ul style="list-style-type: none"> • Advocate that the Department of Rural Development and Land Reform give urgent attention to ensuring that the owner of each state land parcel is clearly reflected in the Deeds Office

Priority 4: Rethinking Municipal Planning and improving IGR

The expectation that "everything" should be included in the municipality's IDP is somewhat unrealistic. This document should provide the macro and integrated overview of the municipality's intentions over the 5 year timeframe. More emphasis however needs to be placed on the SDF, both in terms of the quality of the plan, the implementation framework and its reflection in the IDP. Certainly this study has raised the debate with respect to the sequencing of plans – which should come first, the IDP or the SDF. It is suggested that an effort needs to be made to ensure that the two plans are prepared in parallel as part of an iterative process. Both plans should then remain in place for the 5 year period subject to an annual review. SDFs prepared some 2 or 3 years post the adoption of the IDP cannot adequately reflect the intentions of the plan due to ever-changing development needs as well as those which may have occurred in national and provincial legislation and or policy. Not only does this run the risk of "dating" the IDP but also contributes to the non-alignment of plans. Others argue that an SDF should be long-term as opposed to 5 years but can be reviewed yearly or so. In the absence of long-term plans, in some instances, a longer time frame SDF could serve a good purpose of showing long-term development imperatives.

More effort needs to be made to ensure the participation of key land owners which includes national and provincial government and the SOEs in the preparation of the structuring elements of the SDF. Certainly, most municipalities interviewed struggled to know when to engage strategic landowners, some doing so during the SDF or LSDF preparatory processes while others engaged SOEs for example when the need to acquire the land had arisen.

Moreover, there appears to be an ever-increasing demand for municipalities to prepare plans – the IDP, SDF, LSDFs, Land Asset Management Strategies, Growth and Development Strategies etc. but generally, little attention is given to how these plans should be integrated and/or aligned. It is possible that the non-alignment

of plans (evident in most case studies) contributes to the lack of emphasis on optimizing the use of well-located land for facilitating and supporting the spatial transformation of our cities.

The deracialisation of many CBDs including those in the case study municipalities has been driven by citizen choices rather than through municipal interventions. Until there is better planning and utilisation of well-located land and buildings belonging to the State, SoEs and municipalities, the ad hoc transformation of our urban areas will continue along with the challenges that this presents.

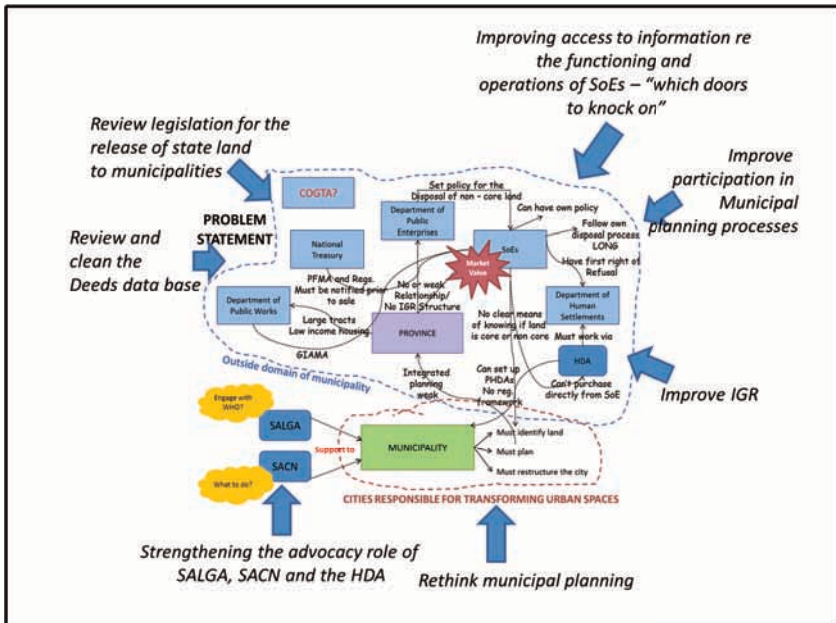
Generally, there is a need to improve the intergovernmental relations in the preparation and implementation of SDFs and IDPs. IGR mechanisms which facilitate improved access to information become essential. However, such mechanisms need to move beyond just the provision of information but should also include forums for improving joint and collaborative planning which as far as possible, serve the interests of both the municipality and SoE or State department. It is critical that the needs of the municipality in terms of its transformation agenda are effectively communicated to other spheres of government. This needs to include institutional reforms which include a stronger role for provincial and national government in this regard.

Advocating for change

Organisations	Actions
<ul style="list-style-type: none"> • SALGA • HDA • SACN 	<ul style="list-style-type: none"> • Preparation of a guideline for municipalities re the consultation and participation of landowners and other critical stakeholders in the SDF/IDP preparatory phases • Preparation of a guideline on the integration and alignment of plans. In this regard, CoGTA has, as part of the revised IDP framework, developed an integration model that deals with the sequencing of plans and the interrelationships thereof. Municipalities need to be made aware of this initiative. • Reviewing of member cities' IDPs and SDFs to ensure a better articulation of the use of well-located State, SoE and municipal land for supporting urban transformation
<ul style="list-style-type: none"> • Department of Rural Development and Land Reform 	<ul style="list-style-type: none"> • Department of Rural Development and Land Reform and CoGTA to reconsider the preparation and sequencing of plans • Preparation of a report which examines and proposes amendment to the IGR structures for more effective and efficient structures for preparing and implementing the IDP and SDF. This needs to include the existing and potential role for provinces in promoting and monitoring IGR around land disposal, acquisition and development • In the immediate term, National Treasury has indicated its willingness, through City Support, to sit with individual municipalities and the relevant stakeholders to address issues around specific land parcels and/or SOEs or state departments.

Should these recommendations be implemented the complexity of the situation is likely to be reduced, and the overall confusion identified earlier in this report should become clearer, allowing municipalities to acquire and develop the land they need for developmental purposes more easily, as illustrated in the diagram below.

Figure 35: The problem statement addressed: addressing the challenges facing municipalities in acquiring land and transforming their urban spaces



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Republic of South Africa, State Land Disposal Act, No 48 of 1961

South African Law Reform Commission “Statutory Law Revision” Discussion Paper 121, May 2011

SPLUMA, Section 12(1)(h)

Transnet Group: Immovable Property Disposal Policy, February 2010

APPENDIX 1: Municipal Interview Questionnaire



CASE STUDIES ON THE ACQUISITION OF URBAN LAND BY MUNICIPALITIES FROM STATE OWNED COMPANIES AND OTHER ORGANS OF STATE

INTERVIEW QUESTIONNAIRE: MUNICIPALITIES

Background

State owned enterprises (SOEs) are important stakeholders and contributors to wards supporting and promoting urban growth and development, particularly as they often own large tracts of well-located land. They can therefore play a transformative or developmental role with regard to our cities. This project has been commissioned by SACN and HDA to assess the context of land ownership by the state owned companies and other spheres of government within four selected cities, focusing on the processes of land acquisition in these cities. It aims to produce clear recommendations for informing areas of legislative reform regarding the frameworks for land acquisition, possible institutional, financial and processes changes for current practice and useful and practical intergovernmental interventions by cities in relation to the same. In order to do this interviews are being held with both SOEs and officials from four case study municipalities. Municipal interviews focus on municipal planning, land management, experiences related to the acquisition of SoE land, and Inter-Governmental Relations (IGR) and capacity issues. In addition, a mapping process will be undertaken to outline as far as possible the SoE and public land holdings within the selected cities. We greatly appreciate your assistance with this project.

General Information

Municipality Name

Name of Department Interviewed

Core contact person for the purpose of the Acquisition of Urban Land Project

Email address

Landline number

Cell phone

Fax number

Interview Questionnaire

Section A – Municipal Planning Processes

1. Describe the process followed by your municipality toward the preparation of the IDP.

2. Do you make use of external service providers for any aspect of the IDP preparation? If yes, for what purpose?

3. Describe the structures used for stakeholder engagement.

4. Describe the method/process used for stakeholder identification

5. Do any State Owned Enterprises attend any of the stakeholder engagements? If yes, which SoEs participate and why?

6. If the SoEs do participate in stakeholder processes, at what employment level are the officials who attend the stakeholder meetings?

7. Are the officials able to make decisions and/or make recommendations directly to decision makers?

8. If SoEs do not attend stakeholder engagements, what are the reasons for this?

9. Describe the process followed towards the preparation of your municipality's Spatial Development Framework.

10. Do you make use of external service providers for the preparation of the SDF? If yes, for what purpose?

11. Have you identified SoE land for development purposes within your SDF? If yes, do you engage the relevant SoE during the planning phases? If SoEs were included in the planning phases, describe their level and effectiveness of participation.

12. If SoEs were not included in the planning, explain why not?

13. Besides SoEs, are there other land owners you are engaging with, to acquire their land for development purposes? Who are they? How have those processes worked out?

14. Did you engage other land owners during the planning phases of the IDP and the SDF? If other land owners were included in the planning phases, describe their level and effectiveness of participation.

15. How does your municipality understand and articulate transformation of urban spaces within the IDP?

16. How does your municipality understand and articulate transformation of urban spaces within the SDF?

17. Does your municipality view the SoE land as part of the transformation agenda? If yes describe how.

18. What is the municipality's view of the SoEs attitude and commitment to Chapter 8: Human Settlements of the National Development Plan?

19. How does your municipality understand and describe "well located land"?

20. Based on your definition, is there well located SoE land within your city?

21. Do you have specific plans in your IDP for accessing and managing well located land? If yes, describe. If no, why not?

22. Do you have specific plans in your SDF for accessing and managing well located land? If yes, describe. If no, why not?

SECTION B – LAND MANAGEMENT

1. Does your municipality have an approved Land Asset Management Strategy in place? If yes, please make a copy available. If no, why not?

2. If no, does the municipality intend developing a Land Asset Management Strategy? If yes, when and why?

3. If yes, does the Land Asset Management Strategy include aspects relating to the acquisition and disposal land? If no, why not?

4. Does the municipality have an updated register of all municipal owned land?

5. Describe how municipal owned land is managed within your municipality.

6. Has your municipality released any of your municipal owned land for development purposes? If yes, indicate the location and type of development undertaken.

7. Do you currently have any municipal land earmarked for future development? If yes, indicate the location and type of development anticipated.

SECTION C – ACQUIRING LAND FROM SOES

1. Which department within your municipality is tasked with engaging SoEs?

2. Why was this Department selected?

3. Is your municipality aware of the National Department of Public Enterprises policy on the disposal of non-core land?

4. If aware of the policy, what are their perceptions of the policy and the possible impact on the municipality?

5. Is your municipality aware of any SoE policy on the disposal of non-core land? If yes, which SoEs and does your municipality have a copy of the policy/ies?

6. Has the municipality approached SoEs in order to acquire land? If yes, which SoE/s, when and why?

7. Provide the property descriptions for all SOE land that the municipality has attempted to acquire or has acquired.

8. Describe how this land supports the municipality's transformation agenda.

9. Has the municipality prepared plans for the land? If yes, was this done in conjunction with the SoE?

10. Has your municipality established or attempted to establish a joint Municipal/SoE task team?

11. Has the municipality requested support from either the Provincial Department of Local Government and Housing and/or the National Department of Human Settlements when engaging SoEs? If no, why not, if yes, why?

12. Has the municipality completed a land transaction with a SoE? If yes, please describe the process followed; if no, why not?

13. Describe the key challenges your municipality has experienced with SoEs.

14. Has the municipality considered an alternative or innovative approach toward the acquisition of land? If yes, provide a description of the proposed approach. If no, why not?

15. How has your municipality attempted to address the issue of market related prices?

16. Does your municipality consider the engagements with the SoEs to be transparent and fair? If yes, please explain? If no, why not?

SECTION D – IGR AND CAPACITY

1. Has the municipality ever been notified by the National Department of Human Settlements that a SoE is in the process of disposing non-core land within their area of jurisdiction? If yes, when? Please provide the description of the property/ies.

2. If no, do you know the reason why not?

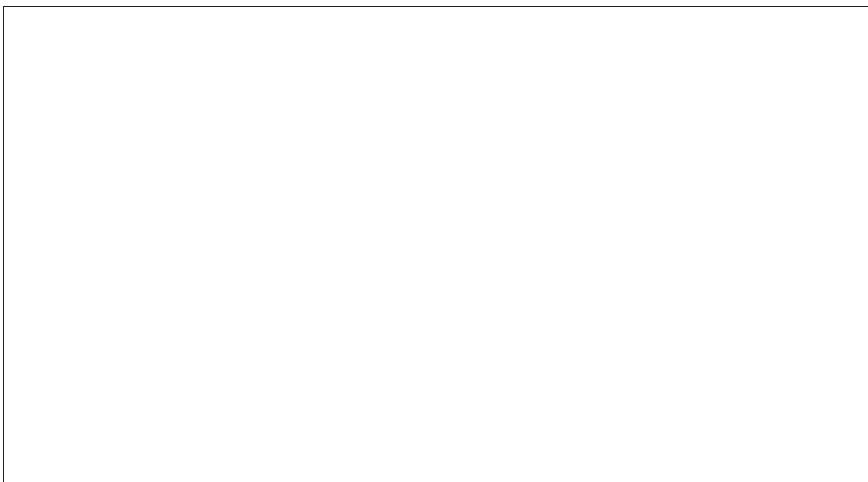
3. Does the municipality establish a negotiating team for engaging with SoEs? If yes, outline who and what functions they perform within the team. If no, why not?

4. Does your municipality have sufficient capacity for negotiating with SoEs for the release of land? If no, why not and what functions/services are missing?

5. Describe the level of seniority for each member of the municipality who participates in the negotiations with SoE.

SECTION E: GENERAL COMMENT

1. Please provide any other information that you think would be useful in the drafting of the case study.



THANK YOU

APPENDIX 2: The story of Marievale military base, Springs

2005

The Springs and Brakpan Advertiser, Friday 13th May, 2005

DPW announced that, as living conditions at the Marievale military base have become so poor, it will be closed down at the end of the financial year (2004/5). The area is characterised by lack of maintenance and increasing vandalism. It was found that the base falls under the Department of Defence, although maintenance of certain facilities is the responsibility of the Department of Public Works (DPW). Defence staff would be transferred elsewhere, and Marievale then handed back to DPW. However, no repairs would take place as there was no budget allocation for planned maintenance of military bases for Johannesburg. The Department of Defence is responsible for gardening services and upkeep of recreational facilities. DPW is responsible for maintenance of buildings and roads. Residents are responsible for maintaining gutters, sewage and water pipes, keeping things clean etc.

2006

1st June, 2006, letter from the Executive Director, Human Settlements, Ekurhuleni municipality to the Gauteng Education Department, following its termination of the bus service for school children, to reinstate the service as children otherwise did not have any transport to schools. This was the background provided:

1. Marievale is situated on: Ptn of Ptn 9 of the farm Vlakfontein 281 IR and Ptn of the Remainder and Ptn 2 of the farm Draaikraal 166 IR
2. This was originally a mining town and as such developed in terms of the mining act. Therefore it is proclaimed mining land and a surface right permit issued. In terms of the relevant act houses and related social infrastructure could be developed. However no school was provided.
3. Later on it became a military base which is closed down and all the assets have been handed back to the National Department of Works.
4. Ekurhuleni MM is currently negotiating with the Department in question to obtain the property. The intention is to formalise the area and rehabilitate and upgrade the infrastructure in order to accommodate more families.
5. There is currently no municipal bus service running in the area.
6. Most of the families have been residing there for a long time. Most are unemployed and their income is limited.

2008

Parliamentary monitoring group, Question & Replies No 1901 to 1950

QUESTION 1 944, WRITTEN REPLY 24 NOVEMBER 20 08, MR JP I BLANCHE (DA) TO A SK THE MINISTER OF PUBLIC WORKS

1. What steps is his department taking to turn around the decay of military bases and state assets such as (a) Marievale in Gauteng (b) Arton Villa in Limpopo, (c) SAWCOL in George and (d) any other such assets;
2. Whether his department has received any proposals to upgrade state villages like Marievale and utilise them as training colleges; if not, what is the position in this regard; if so, what are the relevant details?

REPLY:

The Department (DPW) conducted a site inspection to Marievale Military Base in August 2006 and found out that the facility was partially utilised and in a poor condition. This was brought to the attention of Department of Defence (DOD) and a request was made to revert the property back to DPW. In response to DPW's request, DOD indicated that the property is still required as a result; it cannot be handed back to DPW.

The Department visited the military base on 21st October 2008 at the request of Itireleng Marievale Consortium that found out about the cable theft and vandalism of some unoccupied buildings in the military

base. After visiting the base, the department contacted Department of Defence (DOD) requesting handing back of the asset as the facility is not fully utilised by DOD and the DOD responded as follows:

- DOD has identified the Marievale military base for use by the Engineering Formation as part of DOD Vision 2020 Strategy of providing peace keeping services in the African Continent. After DOD visited the Marievale Military Base on 21/10/2008, DOD indicated that the matter will be presented to the Defence Council for decision making and the outcome will be communicated immediately to DPW. The response from the Defence is still awaited.
- Several proposals were received by the Department regarding utilisation of the base for training and tourism purposes; however, the challenge is that DOD maintains that they need the property to deliver services to their clients. The first proposal was received from Ekurhuleni Metro Municipality in 2005; recently the Itireleng Marievale Consortium presented their proposal to DPW.

2009

PROCEEDINGS OF EXTENDED PUBLIC COMMITTEE (Wednesday, 17 June 2009), Statement by J Masango

Minister, the problem at Marievale Military Base has been there for a long time now. I am not sure why the Department of Defence left the place like that, never mind not maintaining the place like any other government property. It is now going to cost the department millions of rand to bring it to normality.

There are people who have been residing at that military base since 1978, and now they are being abused by some members of the military. It must be made clear whether they are renting or not; it cannot be correct that someone will come and tell them they must start renting and after a few months no one collects the rental. Are we sure that the money collected is paid over to government, or is someone putting the money into his or her pocket? I suspect corruption here.

Last time they were served with eviction letters and at the last minute they were told to ignore the eviction letters, as they were not legal. Who is fooling whom here? Minister, something must be done about Marievale Military Base. These are government assets and they belong to your department. You are the one to take the necessary steps.

Gauteng has a huge housing backlog and land availability is a problem. This is an opportunity, Minister. My suggestions are as follows. Firstly, the military base is situated between Springs and Nigel. We want to see people staying next to their places of employment. Therefore, it would be crucial to give the land to the Department of Human Settlements to develop the area for housing allocation. There are already people staying in the area, so it will not take long.

Secondly, the Department of Public Works can sell the golf estate to companies who are prepared and willing to develop the area into a business. This would be another opportunity for business. **What is crucial is that the land must add value to government rather than being a liability. Currently it is dead land⁵¹.** In the hands of the Department of Defence the area is deteriorating, and it cannot be business as usual.

Friday, 19 June 2009, [No 3 – 2009] First Session, Fourth Parliament: INTERNAL QUESTION PAPER: NATIONAL ASSEMBLY NO 3 – 2009, 45, NATIONAL ASSEMBLY

206. Mr S J Masango (DA) to ask the Minister of Public Works:

- (1) Whether all the houses at the Marievale military base are occupied; if not, why not; if so, how many houses are occupied by (a) military and (b) non-military personnel;
- (2) whether the current tenants have rental contracts; if not, why not; if so, what are the relevant details of these contracts;

INTERNAL QUESTION PAPER: NATIONAL ASSEMBLY NO 3 – 2009, 56

⁵¹ Emphasis added by author

- (3) whether the tenants are adhering to the contracts; if not, what is the position in this regard;
- (4) what is the state of the maintenance of the (a) roads, (b) buildings and (c) (i) water, (ii) power and (iii) sewerage infrastructure?

2010

NATIONAL ASSEMBLY QUESTION 1272 (WRITTEN REPLY) 12 APRIL 2010 1272. Mr S. J Masango (DA) to ask the Minister of Public Works:

1. Whether his department has budgeted for the repair and maintenance of the Marievale military base in the 2010-11 financial year; if not, why not; if so, what are the relevant details;
2. whether he intends disposing of this base to the Department of Human Settlements or the private sector for housing development; if not, why not; if so, what are the relevant details?

REPLY:

1. No
2. No, the Department of Defense and Military Veterans intends to use the property to accommodate their Engineering Regiment section.

Monday, 26 April 2010, INTERNAL QUESTION PAPER: NATIONAL ASSEMBLY NO 11–2010, [No 11–2010] SECOND SESSION, FOURTH PARLIAMENT

1271 Mr S J Masango (DA) to ask the Minister of Defence and Military Veterans:

- (1) Whether the community members of Marievale are paying any rent; if not, why not; if so, (a) what is the rental amount and (b) who collects the rent from the community members;
- (2) whether the SA National Defence Force is responsible for ensuring that the community of Marievale receive service delivery; if not, (a) why not and (b) who is responsible for it; if so, what are the relevant details;
- (3) whether any decision has been made to move the community out of Marievale; if not, why not; if so, (a) when are they going to be moved and (b) to where will they be relocated?

1272 Mr S J Masango (DA) to ask the Minister of Public Works:

- (1) Whether his department has budgeted for the repair and maintenance of the Marievale military base in the 2010-11 financial year; if not, why not; if so, what are the relevant details;
- (2) whether he intends disposing of this base to the Department of Human Settlements or the private sector for housing development; if not, why not; if so, what are the relevant details?

Appropriation Bill: Debate on Budget Vote No 6 – Public Works, 4 May 2010,

WEDNESDAY, 5 MAY 2010: PROCEEDINGS OF EXTENDED PUBLIC COMMITTEE

Mr S J MASANGO: Last year, Chairperson, I mentioned that the Marievale Military Base, a government-owned property was in a state of disrepair. And, until today, nothing has been done there and the situation is getting worse.

The problem with Marievale is that there are communities who are staying there, and they've been renting the houses from the Department of Defence. There is absolutely no service delivery there. The municipality is unable to help because their area belongs to the national government. The community members are always stranded whenever they encounter problems because they don't know whom to report to.

The rampant looting that has plagued the area is continuing. Rented houses are falling apart because no one is repairing them. Cable boxes are left open exposing children to danger. Without adequate drainage, the roads run like swimming pools and all over the place the grass grows high. Nothing is happening there except the development of a golf course. How this will benefit the local community, is unclear.

Minister, I urge you to give due consideration to the situation at Marievale and implement the suggestion I made to you last year.

2011

July 29, 2011, www.parliament.gov.za a live common repositorydoc

NATIONAL ASSEMBLY, FOR ORAL REPLY, QUESTION No. 3

Mr P J Groenewald (FF Plus) to ask the Minister of Defence and Military Veterans:

- (1) Whether the SA National Defence Force (SANDF) is responsible for the management and administration of Marievale; if not, who is responsible for it; if so,
- (2) whether residents are allowed to stay on in the houses; if so, for how long; if not, why not;
- (3) whether alternative housing will be provided; if not, why not; if so, what are the relevant details;
- (4) whether she has been informed about the safety concerns and illegal occupation of some of the houses; if so, what steps are being taken in this regard;
- (5) whether the SANDF provides daily transport to its members from Marievale; if not, why not; if so, (a) to which bases and (b) what do the monthly costs amount to? NO827E

REPLY

1. Yes, the SANDF is responsible for management and administration of Marievale.
2. There are two types of residents, those that are staying there illegally and those that are staying there legally or officially (SANDF personnel). The official residents are allowed to stay there as long as they are working in that environment. The illegal residents are to vacate the houses as soon as alternative accommodation has been identified.
3. The DoD and DPW in conjunction with the Ekurhuleni municipality are in the process of seeking alternative accommodation for these occupants. An inter Departmental Task Team has been established to address the situation.
4. Yes, I have been informed about the total overview of the situation at Marievale Military Base.
5. No military transport is provided due to the fact that the majority of members work at Dunnottar Military Base (1 Construction Regiment and 35 Engineering Regiment), which is a walking distance from Marievale Military Base.

2012

<http://www.looklocal.co.za/looklocal/content/en/springs/springs-news-general?oid=6671523&sn=Detail&pid=490317&Old-military-base-still-in-limbo>

Old military base still in limbo, 20 December 2012, Amanda van den Barg

Years after being decommissioned as a military base, there are some who still call Marievale Military Base home. Aceo Azavedo, a resident of the military base, moved to Marievale shortly after retiring in 1990. The base has in the past, been referred to as a 'white squatter camp', but according to Azavedo, people of all races now live in the empty houses, many of them unemployed. According to him, he was told five years ago that he would no longer need to travel through to Johannesburg to pay his rent, and that it would be collected from him. "But no one has ever come, so I don't pay any more," he says.

According to him, the base is owned by the Department of Public Works, but the Department of Defence is in negotiations to purchase the base from the m. The Advertiser received comment from the Department of Defence earlier this year, confirming that they were in negotiations with public works. Meanwhile, the old military base continues to deteriorate, with roads littered with potholes and no working streetlights.

"Crime is also bad here, and the moment you leave your house, somebody breaks in and steals your things," Azavedo says, claiming that his house has been broken into three times. Marievale Military Base residents do,

however, still receive free electricity and water. Both departments have been contacted for comment regarding the future of the camp.

2013

Report of the Portfolio Committee on Defence and military veterans on its oversight visits to selected South African Army bases in the Northwest Province and Gauteng; 1 Military hospital in Thaba Tshwane; selected education and training facilities in the Western Cape and North West province as well as the Armscor Dockyard in the Western Cape (30 July – 13 August 2013)

Marievale illegal occupations

The illegal occupation of Marievale buildings by both civilians and military personnel is a cause of great concern. Effortless accessibility and illegal occupation of defence facilities illustrate that security breaches could occur at defence facilities with ease and that defence facilities or state property are not well secured. During its interaction with base management, the Committee was dismayed such illegal occupation of state property could have been allowed to occur. The Department should, within one month of the adoption of this report, submit to Parliament, a status report on how this matter had been addressed, and measures put in place to ensure that such illegal occupation does not occur again.

The roads within the base require urgent repair, as harsh conditions impacted on the lifespan of an already aging vehicle fleet. Forty-seven of the ninety-three vehicles assigned to the base were unserviceable and obsolete. The base was also in desperate need of passenger vehicles, including duty buses.

The daily upkeep and maintenance of facilities was a challenge, owing to the shortage of cleaning personnel as well as groundsman. Although the Committee notes that this is due to persistent difficulties in the finalisation of appointments of public service personnel, it also indicates a level of discipline and pride of members within the Defence Force.

Owing to budgetary constraints, a vast stretch of land previously used for disposal purposes, cannot be decontaminated.

APPENDIX 3: The story of Robert Strachan Hostel: Driefontein, next to Dukathole

The Robert Strachan hostel falls in region A, near Kutalo station, which has been earmarked in the Regional SDF for Transport Orientated Development and as a housing priority area.

E-mail correspondence

From Ekurhuleni municipality, 4th July, 2013

Informing recipients that the municipality is in the process of finalizing feasibility studies for an infill development in Kutalo and Robert Strachan. Their consultants have indicated that there is a building that is being revamped for a butchery on site. Such development cannot be supported due to the planned housing project and whoever is undertaking the revamp must be advised accordingly.

The province (DID) was reminded that they have made several inquiries to them requesting them to confirm the department responsible for the Robert Strachan property so that Ekurhuleni can finalise the process of transfer to EMM or obtaining a POA so they can proceed with the planned interventions. They also asked if permission was granted for the revamp currently underway on site.

From GPG Department of Infrastructure Development (DID) to GPG DLGH, 5th February, 2013

Request to clarify if DID's understanding that all hostel premises fall under the jurisdiction of GPG DLGH and indicating that the relevant files for Robert Strachan Hostel, beer hall and shopping complex (W-File numbers provided) are archived and managed by GPG DLGH and would probably contain much of the data needed for this enquiry.

From GPG DID to GPG DLGH, 1st February, 2013

Following up on correspondence received in December 2012, in which DKGH indicated that they do not *have all the Driefontein properties on your DLGH Land Register*⁵², asking if they could advise if the DLGH Gauteng Land Register has specifically "Remainder Portion 161, Farm Driefontein 87 IR", reflected in the DLGH Land Register, and whether DLGH has managed to have a site inspection, proposed on 12th December, 2012.

In the same e-mail it is pointed out that EMM's Spatial Information department advises that the reason as to why "portion 175" cannot be traced in search-efforts, is due thereto that "Portion 175", is indeed **not registered** at the Deeds-Office - for purposes of this enquiry, it regarded as 'part of Ptn 161'.

From DLGH on 12th April, 2012

Indicates that there are 6 hostels managed by the Chief Directorate: Property Management within the DLGH, none of which is Robert Strachan hostel.

From DLGH, 4th April, 2012

Asking Ekurhuleni to resubmit requests under the name "Kutalo Precinct", as the Robert Strachan hostel forms part of GPG's "Kutalo Precinct".

From Ekurhuleni Spatial Information, 20th January, 2013

Portion 175 is not registered with Deeds and are therefore carried on the **SG Approved Parcels** layer.

Portions 161 and 166 are registered with Deeds and are therefore carried on the **Active Parcels** layer.

Portion 161 is now a Remaining portion.

From Human Settlements (Ekurhuleni municipality) 28th November, 2012

⁵² Properties are registered under the name of Administrateur van Transvaal.

Request to DLGH to see if the property are assets registered in the Land/Property Asset Register indicating that Ekurhuleni municipality is interested to develop these properties which are located in Germiston (Ekurhuleni) for housing purposes, however, the land owner has to be contacted to negotiate access to the properties in question.

From GPDID, 7th December, 2012

Compilation of all correspondence around research GPG DID did into this matter:

Over-and-above the "GPG 9,804 Asset Register" which is administrated by 'DID', it is so that 'DLGH' further has the 'GPG Land Register' administrated by DLGH, and that it is worth a try to see if this property is possibly reflected in the DLGH 'Land Register'.

(Although there are similarities / overlaps between DID's "GPG 9,804 Asset Register", and the DLGH "GPG Land Register", the two data-bases are however not the same data-base / data-source, and hence it would be worth a try to see if this property is reflected in the DLGH Land Register.

From GPG DID, 3rd May, 2012

1. Please note that the property description "**Ptn 1 61**" (of Driefontein 87) does **not** appear on the two Provincial Asset Registers consulted (as per the 'Results' e-mail below). On these two Provincial Asset Registers, only a property description of "**Remainder** of Ptn 161" appears. (It is not certain if this "Remainder" may be the property that you are enquiring about - please refer to the attached Aerial Photographic Reports so as to determine if it is in fact the supposed property).

2. If it is this '**Remainder**' (of Ptn 161), then please note that the 'GPG Asset Register' indicates that this "Remainder of Ptn 161" is the Robert Hicks Primary School. (*The property description of 'Remainder of Ptn 161 was previously known as Ptn 51*). It is unknown if the Robert Hicks School is still in operation, or whether it is now possibly the Robert Strachan Hostel? GPG GDE (Education) can be contacted in this regard.

3. As you will see from the research results below, there is **conflicting** information regarding the GPG User-Department, under whose jurisdiction the '*Remainder of Ptn 161 Farm Driefontein 87 IR*', falls :

- The **Provincial** GPG Asset Register indicates the User-Department as Provincial "Education".
-
- In conflict with the above, the NDPW "**Provincial**" data-base indicates the User-Department as GPG Provincial "Transport and Public Works".

Internal E-mail from GPGDID, 26th April, 2012 asking to check the asset register to see who should be responsible for Robert Strachan Hostel.

From Human Settlements (Ekurhuleni municipality), 24th April, 2012 to GPG DLH asking for assistance in finding the responsible person for the Robert Strachan Hostel in Germiston next to Dukathole and indicating that Ekurhuleni municipality was managing the hostel at the time but the ownership according to the records of the Deeds Office is Gauteng Province.

From Human Settlements (Ekurhuleni municipality), 4th April, 2012 to GPG DLGH saying that they need to identify the responsible person for the hostel properly, and that they "cannot delay the process for two years to find someone to provide an answer."

From official, Ekurhuleni municipality, 2nd April, 2012 indicating that when the hostel was still under his control, he spent about three weeks just to get somebody to provide an invoice in order to effect the annual payment for the rental of the hostel. The amount budgeted for this purpose remained unspent, as they could not get anybody to assist or at least willing to refer them to the correct person.

From Human Settlements (Ekurhuleni municipality), 2nd April, 2012 asking for urgent assistance in obtaining permission from province to proceed with the project: "We need to spend the budget allocation of Good hope and it was agreed to refer to the budget as the Kutalo precinct. The first phase will entail infill development of the Robert Strachan hostel site. Beneficiaries from Good hope and if possible Dukathole will be relocated to these units. This will make it possible to address the redevelopment/upgrading of Good hope".

