

AN EVALUATION OF THE APPLICABILITY OF CONDITIONS  
GRANTED FOR APPROVALS OF SPECIAL CONSENT  
APPLICATIONS FOR VARIOUS LAND USES WITHIN THE  
ETHEKWINI MUNICIPALITY

By

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## ABSTRACT

Land use management and development control play an important role in achieving integration and sustainability in developing societies such as South Africa today. Town Planning Schemes are generally used as a tool for achieving this by making provision for land uses that are freely permitted, permitted by special consent or prohibited, thereby ensuring that incompatible land uses are not allowed. However, these town planning schemes are interpreted by different officials, with different levels of planning experience and qualification, as well as different opinions in the interpretation, which can result in inconsistency in decision-making and subsequent development patterns. The aim of this dissertation is therefore to investigate a range of special consent applications, the decision-making process applied to them and the applicability of any conditions attached thereto. The spatial focus of this dissertation is the South Municipal Planning Region of the Ethekwini Municipality which was established during the 2000 demarcation process. Inherent in this amalgamation is the fact that there are now thirty eight different town planning schemes in the Municipal area, with nine of them found in the South Municipal Planning Region.

## DECLARATION

The work described in this dissertation was carried out in the School of Architecture, Planning and Housing, University of KwaZulu Natal under the supervision of Ms. Nancy Odendaal.

The dissertation represents the original work by the author and has not been submitted in any form to another university. Where use was made of the work of others, it has been duly acknowledged.

A handwritten signature in black ink, appearing to be 'B Parker', with a long horizontal line extending to the right.

**BARBARA PARKER**

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<b>LIST OF ABBREVIATIONS</b>
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IDP	Integrated Development Plan
LUMS	Land Use Management Schemes
MPR	Municipal Planning Region



## CHAPTER ONE

### INTRODUCTION

#### 1. INTRODUCTION

Land use management and development control play a significant role in developing societies such as those found in South Africa today. When the first democratically – elected government came into power in South Africa in 1994 it inherited a planning system that was inequitable, incoherent and fragmented – a legacy of the apartheid era.

Since then the National government has enacted some important pieces of legislation that has had a significant impact on planning in South Africa. The first of these was the Development Facilitation Act No. 67 of 1995, (DFA) which provided the basis for a coherent framework for land development according to a set of binding principles and for the overhaul of the existing planning framework.

The Municipal Structures Act No.117 of 1998 further echoed the need for a single land use management system, and subsequently the Municipal Demarcation process in 2000, saw the amalgamation of six former sub-structure Councils into one city administration known as the Ethekwini Municipality.

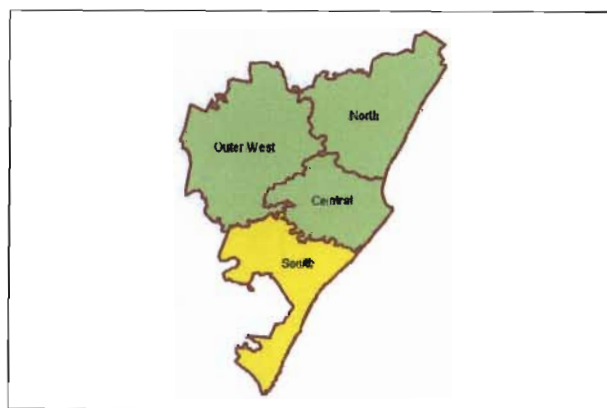


Figure 1: Ethekwini Municipality: South Municipal Planning Region

The South Municipal Planning Region (MPR) comprises the urban areas of Isipingo, Athlone Park, Umbogintwini, Amanzimtoti, Kingsburgh, Lower Illovo, Umkomaas, Widenham, Clansthal, Craigieburn and peri-urban areas of Folweni and KwaMakhuta, and rural areas of Umnini, Umgababa and Umbumbulu. The South MPR is to be used as the spatial focus of this dissertation.

As indicated above, the Ethekewini Municipality was established during the 2000 demarcation process. Inherent with this establishment is the fact that there are now thirty eight different Town Planning schemes within the Ethekewini municipal area, with nine of them found in the South MPR. Over the years, these schemes have been interpreted by different officials, and the amalgamation into one city administration, has also resulted in an amalgamation of officials, with different levels of planning experience and qualification, as well as different opinions in the interpretation of the different town planning schemes.

Generally, the Ethekewini Municipality uses town planning schemes as a tool for land use management and development control within its areas of jurisdiction, although not all areas are covered by these schemes. In the South Municipal Planning Region, the areas of Isipingo, Umbogintwini, Amanzimtoti, Kingsburgh, Lower Illovo, Umkomaas, Craigieburn, Clansthal and Widenham are covered by Town Planning schemes.

These town planning schemes have been implemented and refined over the years, in terms of the KwaZulu – Natal Town Planning Ordinance No. 27 of 1949, as amended from time to time. In terms of town planning schemes, a Zoning Map which has its base as a cadastral map, depicts the location of land use zones for each property and this map is then read in conjunction with a set of town planning scheme clauses.

For many special consent applications there are objections and concerns raised, ranging inter alia from noise impact, traffic impact, visual amenity, and property values being affected. Conditions are sometimes attached when approval is granted for a particular land use, to address such objections but we do not know if these conditions were sufficient or correct as they are never assessed or evaluated. As a result these conditions become entrenched as a standard policy based condition, without the merits or applicability thereof, having been assessed or verified.

Consequently, the aim of this research is to investigate and assess whether or not conditions of approval attached to special consent applications in the South MPR of the eThekweni Municipality, are relevant and applicable, and to develop guidelines that will assist officials in the decision-making process and in the formulation of conditions of approval for special consent applications that really do address impacts and objections.

#### **1.4. RESEARCH QUESTION**

Do the standard policy based conditions of approval granted in respect of special consent applications for various land uses within the South Municipal Planning Region of the eThekweni Municipality, mitigate against objections or concerns raised against said applications?

##### **1.4.1 SUBSIDIARY QUESTIONS**

- 1) What are the common objections / concerns raised against special consent applications for various land uses within the eThekweni Municipality? What are the various types of land use categories for which special consent is applied for?
- 2) What are the standard conditions attached to the approval of the different land uses in the South MPR of the eThekweni Municipality?
- 3) What assessment criteria are applied in assessing said applications?

- 4) What are the strengths and weaknesses in the above assessment, as they relate to Institutional arrangements and capacity within the Municipality?
- 5) What evaluation and enforcement is applicable in respect of said conditions?

## **1.5. HYPOTHESIS**

Standard policy based conditions of approval granted by the Ethekewini Municipality, since its inception in 2000, in respect of special consent applications for various land uses in the South Municipal Planning Region, do not always mitigate against objections or concerns raised against said applications.

## **1.6 CHAPTER OUTLINE**

### **Chapter One: Introduction**

Contextualizes the study and provides the overall aim of the study by defining the research problem, research question and hypothesis. It ends with a synopsis of the chapters contained within the report.

### **Chapter Two: Literature Review / Theoretical Framework**

Provides a literature review / theoretical framework that identifies the theoretical basis of the research and elaborates on various key concepts that will inform the study. It further provides the legislative framework that underpins the basis of the research and elaborates on various key concepts that will inform the study.

### **Chapter Three: Research Methodology**

Provides an overview of the research design and methodology used in respect of the undertaking of surveys and interviews and the collection of both primary and

secondary data used to inform the research. It provides an indication of the limitations of the research.

#### **Chapter Four: Findings and Analysis**

Documents the findings and analysis. This includes a discussion of the sample and its characteristics, and a description and summary of the main results obtained from the questionnaires and interviews. This is followed by a discussion of the main trends and patterns in the data with reference to the hypothesis or research question. Finally, the concluding interpretations will be provided.

#### **Chapter Five: Conclusions and Recommendations**

Provides conclusions and recommendations, by indicating how the results and conclusions relate to literature and theory in this domain. A discussion of any anomalies is provided as well guidelines to that may assist municipal officials in the approval of special consent applications in the future.

## **CHAPTER TWO**

### **LITERATURE REVIEW / THEORETICAL FRAMEWORK**

#### **2. INTRODUCTION**

Several bodies of literature were consulted in order to determine current debates on land use management and control, to develop an understanding of key concepts, procedural approaches, theories and legal framework through which land use management is undertaken, so as to assist in developing an understanding of the issues relating to the research problem. The first part of this chapter deals with some key concepts, followed by a discussion of theoretical debates that examine processes that lead to spatial planning decision – making and the role players involved, as many current debates focus on the administrative underpinnings of land use control decisions: time taken, the impact of delays, and most importantly – the criteria and consistency of decision-making.

#### **2.1. LAND USE MANAGEMENT**

The growth of the environmental movement since the early 1990's has seen a renewed interest in development control as a means of protecting the environment and which in turn has focused a renewed emphasis on local governments' role in undertaking this function.

In this regard Van Wyk refers to "land use" as the different activities (for example residential or educational), which owners and occupiers of land conduct on their individual lots, and to "Land Use Management" as government activity which seeks to influence or control change in the ways in which individuals use their land including maximizing benefits and minimizing negative impacts. (1999:4)

The Development Facilitation Act defines “land development” as “any procedure aimed at changing the use of land for the purpose of using the land for residential, industrial, business, small scale farming, community or similar purposes”, while the National Land Use Management Bill, 2001, describes “land use management” as establishing or implementing any statutory or non-statutory mechanism in terms of which the unencumbered use of land is or may be restricted or in any other way regulated.

The National Development and Planning Commission Green Paper on Development and Planning, 1999, states that managing land development is generally the responsibility of public authorities. It starts with the South African law that grants no one the absolute right to develop and use land, and any person who wants to develop or use land can only do so subject to the law’s restrictions. Preferably the law should only regulate those aspects of land development and use necessary either to achieve particular strategic objectives or to minimize the negative impacts of land development and use changes on neighbours and the public in general. This has particular relevance in respect of assessing special consent applications and the conditions that are then attached to approval of said applications and the role of decision-making in planning will be examined further, under Section 2.2.

It can therefore be seen that land use management has two main aims, namely:

- that it must provide effective protection to both the natural environment and members of the public from negative impacts of land development and land use change, and
- that it must provide a reliable degree of certainty to developers, members of the public and all spheres of government so as to ensure that there is a common understanding of the extent, intensity and nature of land development that would be permitted within a specified time period.

The way in which a land use management system achieves these aims is through the determination, allocation and restriction of use rights to land development. These rights provide an important basis for the public sector to negotiate with developers as well as individuals to achieve land use and development outcomes that will promote social, economic or environmental benefits. However if the local authority fails in "managing" the land use system, both in terms of procedure in processing an application and by imposing conditions that do not address potential impacts on the adjoining properties, then they may be seen to have failed in terms of the aforementioned.

This leads us to consider an important component of land use management systems, namely zoning.

#### 2.1.2. ZONING

Land use control through zoning regulations has its origins in the planning system of the United States of America. Zoning can be described as the creation of districts within a city where different building regulations, that affect, for example, the bulk, coverage and height of buildings, are applied and within which different use activities are freely permitted, permitted by special consent, or prohibited. (Van Wyk, 1999). The reason for establishing use zones is to prevent the mixing of incompatible buildings and land-uses and to restrict and limit the use of land.

UNHabitat suggests that zoning may be used as a means to achieve more substantive goals such as the creation of homogeneous urban forms and patterns, providing for the organized layout of scarce and valuable land, and preventing land banking and speculation of land in urban areas. Furthermore, zoning can be used to achieve specific needs for environmental, social and economic requirements, including the protection the urban and natural environment, to facilitate infrastructure investments along with development, to maintain and enhance property values and to enhance accessibility of land to all citizens especially the poor. (The Planning Initiative Team, 2004)



### 2.1.2.1 Land Use Controls

Land use zones, which determine the primary purpose for which land is to be used (e.g. residential, commercial or educational), are linked to a set of land-use controls used to manage development within each zone. These controls, that specify the land-uses permitted within each zone, are normally divided into three categories, namely:

- **Freely permitted uses** - uses that may be established in terms of the development controls for the zone without any additional permission required from the Local Authority.
  
- **Consent uses** - uses permitted with the consent of the Local Authority subject to specific conditions. These are uses belonging to a particular use zone that are not primary uses, but which are needed in a specific area in that they provide certain services. For example, in a residential use zone these uses could be places of worship, crèche's and so on. Since these uses, if allowed to continue unrestricted, would cause inconvenience, loss of amenity and economic damage, special consent is required from the local authority (Van Wyk, 1999)
  
- **Prohibited uses** - uses that are not permitted to be established in the zone because they are in conflict with the proposals contained in the Scheme or are incompatible with the surrounding areas.

A Zoning Map which has its base on a cadastral map depicts the location of land use zones for each property. For example, if a certain property is zoned for Special Residential purposes, the zone may permit a "Crèche" to be established by special consent. An application would need to be lodged, normally by the landowner or their appointed agent, which is then considered by the Local Authority. A site assessment is undertaken taking into account the size of the proposed facility, its location in respect of surrounding land uses and zoning, its traffic generating capability, environmental impacts and impacts on surrounding properties or the neighbourhood. It is in considering the abovementioned factors, and the social and economic

benefits, and having cognizance of the principles and requirements of the relevant planning legislation, that the local authority, may or may not err, and this then becomes an important element of this study. The officials' ability to apply his knowledge and opinion in an unbiased true fashion becomes important.

#### **2.1.2.2 Development Control**

The first endeavors at regulating land use were in the form of restrictive covenants that were used by private individuals who were involved in the development of land in London. These covenants were designed to preserve the value of land and to protect attractiveness and exclusivity. However, it was during the Industrial Revolution when the full effect of the vast expansion in industrial and building activities was being felt, that the modern doctrine of restrictive covenants was introduced through a court decision. According to Van Wyk, this was the first English decision in which a negative covenant was enforced as a right over some other person's land rather than as a contract, and this doctrine soon spread to the United States of America, Australia and South Africa. (1999:85)

Initially, statutory controls were introduced to regulate health issues by means of the Public Health Acts, and this was followed with the framework of the modern English planning law, that was implemented by promulgation of the Town and Country Planning Act of 1947. This legislation marked a new beginning for planning control over land development and further established the need to seek permission for all development.

Similarly, in South Africa the practice of inserting restrictive covenants into title deeds of land developed over time. In the first towns, where life was simple and growth was slow, an informal natural segregation of land uses occurred, with surveying and registration of erven providing the necessary order. The advent of the discovery of diamonds near Kimberly in 1867, and the resultant chaotic development in mining towns, saw restrictive covenants, controlling land use and densities, being inserted into title deeds. However, these soon became inadequate as their rigidity could not accommodate the problems that resulted from the greater variety of land uses that began impacting on each other. This led to legislative enactments to control town

planning, such as the enactment of the Natal Town Planning Ordinance No 27 of 1949 which is still in force today.

It is in terms of this legislation that Town Planning Schemes are implemented and development controls, in the form of Town Planning Scheme Clauses, are used to control, limit and guide development in respect of land uses and buildings. The following development control mechanisms are used:

- **Building lines:** provides for the minimum distances one could build from property boundaries;
- **Coverage & Floor Area Ratios:** provide for the maximum ground area and floor area that buildings can cover on a property;
- **Height:** provide for the maximum height of a building;
- **Density:** provides for the minimum erf sizes that a property can be subdivided or the maximum number of units that may be permitted on a single erf; and
- **Parking requirements:** provides for the minimum number of parking bays to be provided depending on the land use type.

The Natal Town Planning Ordinance No. 27 of 1949 provides for the procedure by means of which a special consent application may be made, and thus is pertinent in terms of this study.

### 2.1.3. LAND USE MANAGEMENT PLANS

According to Van Wyk, a multiplicity of land use management plans exist in the form of policy plans containing statements of policy and are applicable as higher order plans, structure plans, integrated development plans, land development objectives, town planning scheme clauses, and zoning maps. (1999:21) Furthermore, a

distinction needs to be made between plans which facilitate forward and strategic planning, and plans that just comprise management tools.

Until recently South Africa saw very little forward planning, however, recent developments in the form of Integrated Development Plans and Land Development Objectives do now constitute policy based plans which contain a vision and a *modes operandi* for the future. The role of Town Planning Schemes (such as the Amanzimtoti Town Planning Scheme for example) is to provide the mechanisms that indicate specific land uses and development regulations. (Van Wyk, 1999)

The South African town planning scheme system, which was imported from the United Kingdom, has been shaped to correspond with a wide international acceptance of modernism. Many of the current norms and standards associated with spatial planning have been derived to entrench these ideas. The ideals promoted and fostered by the modernist movement can be evidenced in this planning, including the concept of the free-standing buildings within large private green spaces as the basic building block of settlements, the separation of land uses, the concept of the inwardly-orientated neighbourhood unit focusing on embedded social facilities, and the dominance of the private motor car. A prevailing belief underpinning this system was that it was possible and desirable to plan comprehensively – to pre-determine the use of all land parcels in settlements. These concepts underpinned the mainstream practices of scheme preparations and spatial planning in South Africa prior to 1994.

When the first democratically elected government came into power in South Africa, in 1994, it inherited a planning system that was imbalanced and disjointed, having developed under the apartheid regime. During the course of the next few years the National parliament enacted some important laws that have dramatic effect on planning across the country. The first of these was the Development Facilitation Act No. 67 of 1995 (DFA), which was passed to provide the basis for a coherent framework for land development according to a set of binding principles and to provide for the overhaul of the existing planning framework.

This was followed at a provincial level with the publication of the KwaZulu-Natal Planning and Development Act No.5 of 1998 (PDA) and its draft regulations on 10 December 1998. The intention of this legislation was for the Regulations to provide the legislative framework in terms of which a new approach to land use management (including zoning, land-use types, and building controls) would be introduced. However because of its limited practicality and the fact that it focused mainly on the change of some approaches to procedures, the Regulations were not implemented, and thus provided only an indirect influence into the new land use management system.

Since 1994, planning legislation in South Africa, such as that indicated above, has seen a shift away from being control-orientated towards being normatively based. This means that the law introduces substantive principles (norms) that must guide land development and decision-making. In addition to principles, the Development Facilitation Act, for example, introduces the concept of Land Development Objectives (LDO's), which set objectives and targets for development and which inform the spatial and developmental imperatives of a Municipal area. These policy based plans, also known as Integrated Development Plans (IDP's), are also normative in that they set out desired aims. Normative legislation calls for a proactive planning system which places the emphasis on prudent judgments and the discretion of decision makers, as apposed to the application of standardized rules and regulations. There is a need to provide a balance between certainty and flexibility so as to ensue that the interests of the property owners are protected and reduce uncertainty, while at the same time accommodating change and making provision for unforeseen circumstances.

In 1997, the former Town and Regional Planning Commission (now the Provincial Planning & Development Commission) commenced a research project to evaluate alternative Land Use Control approaches and advise on an appropriate system for the KwaZulu-Natal. This research project titled: "KZN Appropriate Planning and Land Use Controls Project" had to be located within the emerging legal and regulatory system that was emerging in the province at that time, as well as being sensitive to the fact that many new local authorities were experiencing institutional capacity constraints. Due to the latter constraints to implement an entirely new

system, the research project focused mainly on producing a modified system of the existing Town Planning Ordinance scheme system. Thus, the modified system incorporated the strengths of the existing system and drew on the advantages of some other procedural and regulatory systems currently used in the province and abroad.

The new Land Use Management System (LUMS) has been devised "to bridge the gap between Integrated Development Plans and the detailed requirements of land use management applied at municipal level" (Kahn et al, 2001). A primary aim of the LUMS was to provide municipalities with a commonly applicable land use management system that can be used throughout the Province and that can be applied over the entire municipal area, which is done in response to the new demarcation of wall-to-wall municipal boundaries. In effect, the LUMS responds to a paradigm shift from merely controlling and regulating to managing and facilitating development and land use. The intention is that it would eventually replace the current conventional Town Planning Schemes that have become outdated, consist of narrowly defined development parameters, lack flexibility, and are too prescriptive and control-orientated and which have thus failed to address the challenges facing developing countries.

## **2.2. DECISION- MAKING IN PLANNING**

There has been a shift towards collaborative approaches to land use decision-making over the past years that may largely be contributed to the British literature on Communicative Planning approaches based on the work of Jurgen Habermas, a social theorist (The Planning Initiative Team; 2004:9). This has resulted in an emphasis on participation in Scheme preparation, with greater consideration being given to the views of all stakeholder groups as opposed to a purely technical assessment being undertaken. Criteria for effective development control are seen to include the recognition of its importance by all parties, comprehensive local plan coverage, participation by all citizens, consistency and efficiency in decision – making and minimization of costs and delays. (The Planning Initiative Team; 2004:9)

International literature reveals that the relationship between strategic planning and land use control is central to ensuring consistent and considerate decision-making with respect to land use change (Lai & Yu, 2001; Tang *et al*, 2000). Whilst strategic planning objectives relate to the future direction of a city, the process of land use management is intended to corroborate the strategic direction taken, rather than contradict it. It is evident that the Town Planning Schemes within the South MPR, that have been formulated prior to 1994 and prior to the preparation of the IDP for the eThekweni Municipality, do not always address the strategic planning objectives of the Municipality. And the linkages between these town planning schemes and the eThekweni Municipality's strategic plans is weak, which may influence some of the decision – making that happens in respect of special consent applications.

However, it is submitted that decision – making can still be influenced by policy in an indirect fashion through the institutional arrangements that can be prejudiced by political parties, which results in decision – making becoming inconsistent.

In the context of the research question the role of decision-making is important, not only at the finalization of the process but right from the start. The administrative underpinnings influence the decision-making process. An officials' knowledge of the IDP and forward planning within the local authority, their professional responsibility and accountability can all impact on the final decision. However, an individuals particular knowledge and opinion of a particular area, may not be the same as another's and this can also result in inconsistency in decision – making.

A further issue that has been identified as a problem in respect of decision –making is that land use decisions are frequently seen as strategically weak and unresponsive to market forces, and as evidenced in Cape Town, decisions tend to be anti-development in a lot of contexts with people and politicians often resistant to change. (The Planning Initiative Team: 2004)

Similarly, the length of time taken to make the decision can also influence the outcome – too quick and perhaps the wrong conclusion is drawn, but similarly if the process takes too long a judgment can become clouded. It is therefore important for timeframes to be put in place that are flexible enough to ensure professional accountability and protect the rights of the applicant. Having said this, it is necessary to ensure that there is adequate institutional capacity within the organization to achieve these timeframes. The Planning Initiative Team indicated that Cape Town experienced delay problems in decision – making due to institutional capacity and the fact that the trend in the Cape Town planning system is towards approval processes that are sequential as opposed parallel. (2004:16)

Issues that have been raised by Tewdr-Jones and Allmendinger (1995) relate to the necessity for there to be a clear set of criteria on which decision-making can be based. In this regard Tewdr-Jones refers to the use of "framing" as a decision-making tool and suggests that the following issues should be considered in the development control process as part of a Decision Reflective Programme, -

- Policy applicability
- Professional responsibility
- Agency interaction
- Decision boundaries
- Opinion identification
- Political accountability
- Decision-dilemmas
- Framing reconciliation
- Quality in presentation
- Monitoring necessity (Tewdr-Jones, 1995)

Allmendinger contends that the Decision Reflective Programme has potential but needs to be within a locally agreed purpose for planning and recommends that points in the process where discretion is possible, need to be identified. (Town Planning Review: 67(2): 1996)



The abovementioned arguments bode well for the proposed research as it is indicative of the need for a criteria database to be developed to assist in the process of assessing special consent applications and applying appropriate conditions.

According to Mabogunje the pace of urbanization in African countries has been so rapid in the last half century so as to overwhelm any attempt to control or direct it through the use of urban planning. (UNHabitat: 10(4):2004). He argues that in order to improve this situation there must be a decisive shift of emphasis towards devolution of power to the local governments and greater inclusiveness and participation of communities in decision making processes. This, he contends, would result in wide-ranging environmental problems being addressed as well as cause citizens to be more willing to pay their rates and taxes, and ensure greater accountability of municipalities to all residents of the area. There needs to be a paradigm shift towards more adaptive planning based on a "deeper knowledge of the people and of the physical, economic, social and political systems of the city." (Mabogunje; AL: UNHabitat 10(4):2004) According to Mabogunje, the type of knowledge that the urban planner will require in meeting the challenges in developing countries will entail the urban planner going beyond just land use or physical planning to a concern with collecting and analyzing social data as well. This requires that the planner has the type of knowledge adapted from what Aristotle defines as *phronesis* or the "knowledge of what to do in particular circumstances" (UNHabitat 10(4):2004)

It can thus be said that in approving a special consent application, the planner, is required to do more than just assess the physical environment, but have knowledge of the social and political influences as well.

### **2.3 LEGAL FRAMEWORK**

National and Provincial legislation, as it applies to land use management issues in general will be examined, as the scope of the research question falls within the broader ambit of land use management. Furthermore, the procedure and process for the granting of approval and conditions with respect to special consent applications

has their founding within Provincial legislation, and the process as it was performed in the South MPR will be discussed at the end of this chapter.

### 2.3.1 CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA

The Constitution has a bearing on the research problem in that constitutional requirements, for example, procedural and participatory rights to ensure accountability for decision-making, the promotion of social and economic rights, and the protection of the environment, establish imperatives that affect planning to a great extent. This all encompassing legislation should have an overarching influence on decision making and approvals granted by the Municipality.

### 2.3.2 DEVELOPMENT FACILITATION ACT NO 67 OF 1995 (DFA)

The purpose of this legislation is to provide general principles for land development and general principles for decision-making and conflict resolution, and as such should underpin the decision making process relative to the approval of special consent applications. The DFA principles must be applied in assessing applications and giving consideration to change of land use.

### 2.3.3. MUNICIPAL SYSTEMS ACT 32 OF 2000

This legislation provides for municipalities to prepare Integrated Development Plans, which must reflect a Spatial Development Framework, which includes the provision of basic guidelines for a Land Use Management System for a municipality. Chapter 4 of the Municipal Systems Act 32 of 2000, states that "a municipality must develop a culture of municipal governance that complements formal representative government with a system of participatory governance, and must for this purpose – encourage, and create conditions for the local community to participate in the affairs of the municipality..." By extension the eThekweni Municipality must ensure that decisions made, such as those relating to special consents, address concerns of the community or objectors.

#### 2.3.4. KWAZULU NATAL PLANNING AND DEVELOPMENT ACT 5 OF 1998 (PDA)

This Act makes provision for the preparation of Metropolitan Development Plans, which should comprise a co-coordinated policy framework, implementation framework, monitoring, evaluation and review framework, prescribed environmental management component and prescribed planning controls. The prescribed draft Regulations emanating from the PDA deal with procedures for facilitating development and the use of buildings and land.

This Act also makes provision for a responsible authority to inter alia grant development consent with or without conditions; impose conditions requiring the applicant to provide periodic reports inter alia verifying impact prediction, reporting on the success or failure of mitigatory measures and monitoring adherence to conditions of approval, in respect of environmental applications. Although the Regulations pertaining to this Act were never implemented, because they only really provided for changes to procedure, this Act has had an indirect influence on planning policy within South Africa.

#### 2.3.5 KWAZULU-NATAL LAND USE MANAGEMENT BILL, 2007

The purpose of the Bill is to establish principles that would guide spatial planning, land use management and land development in the country; to regulate land use management uniformly; the adoption of municipal spatial development frameworks and Land Use Schemes; to establish provincial land use tribunals to consider applications for change of land use; and to provide for land use appeal tribunals. This Bill further provides for criteria for decision making in planning applications. According to Stephen Berrisford (January 2005), municipalities must consider the following criteria when considering the development of land—

- a) the written motivation for the development;
- b) the physical and natural qualities of the site;
- c) the layout of the development;
- d) existing developments, development rights, mineral rights, local customs and local knowledge;

- e) economic, social, and environmental concerns;
- f) access to engineering services, public facilities and the historical effects of racially discriminatory and segregatory legislation on land ownership
- g) and access to engineering services and public facilities;
- h) the protection of natural resources, including agricultural resources, unique areas or features and cultural resources;
- i) the efficient use of land and the integration of development;
- j) conformity with the provisions of the development scheme applicable to the land;
- k) compatibility with the provisions of the integrated development plan of the municipality;
- l) development policies enacted by the Minister in terms of section 152 (2);
- m) any representations for or against the proposed development; and
- n) any other relevant consideration.

These lists or guidelines indicate the importance of local knowledge in the assessment of special consent applications, as well as the need to ascertain that the proposed land use would comply with the IDP and Town Planning Schemes pertaining to the area, and further that consideration needs to be taken of any representation or objections lodged. Local knowledge would require that the persons involved in the decision-making process to have an understanding of the dynamics that operate within a particular community, such as a suburb in the South MPR, and would need to be open minded in their thought processes.

The latest version of this Bill provides for all applications that are submitted to Municipalities to comply with the strategic objectives and other policies of the Municipality and further that these applications are to be certified as such by a registered Professional Planner. This could bode well for the institutional arrangements within the eThekweni Municipality.

#### 2.3.6. NATAL TOWN PLANNING ORDINANCE NO 27 OF 1949

In terms of the research question and due to the legal status of the South MPR Town Planning Schemes, that are all based on the Natal Town Planning Ordinance No. 27 of 1949, this legislation is pertinent to the study. While the Ordinance provides for

the establishment of town planning schemes, Section 67bis sets out the procedure to be followed for special consent applications, and processes within the South MPR in the consideration of special consent applications should be underpinned by this section of the Ordinance. Section 67bis makes provision for the notification of the applicant's intentions and requires that persons be given an opportunity to lodge representations and or objections within a specified time period. Similarly, it specifies timeframes within which the local authority must come to a decision on an application, as well as providing an opportunity for the local authority and applicant to come to an agreement on an extended time period in which to come to a decision under Section 67bis(4)(a).

The Town Planning Ordinance further makes provision for record keeping within the local authority under Section 67quin. This is important in terms of ensuring adherence to specified timeframes as part of the decision-making process, as timeframes can also influence a decision. For instance if the commenting process within the local authority is delayed for what ever reason, and the applicant who has made for example an application to establish a guesthouse on a property, a condition of sale of the property, and the local authority then does not make a decision timorously, the sale of the property my collapse with financial implications for the applicant.

### 2.3.7 WHITE PAPER ON SPATIAL PLANNING AND LAND USE MANAGEMENT; JULY 2001

The White Paper on Spatial Planning and Land Use Management seeks to introduce new legislation to Parliament that will provide for an efficient, effective and uniform framework for spatial planning and land use management on all spheres of government, as an attempt to redress the imbalances and inequities in legislation from the apartheid era. This White Paper informs that Land Use Management Bill referred to under Section 2.3.5 above. The essential elements proposed by the White Paper are inter alia principles and norms aimed at achieving sustainability, equality, efficiency, fairness and good governance in spatial planning and land use management, as well as a uniform set of procedures for land development

approvals. It acknowledges the current situation of lengthy approval times, too much control and not enough facilitation and weak enforcement.

The principle of fair and good governance requires that spatial planning; land use management and land development must be democratic, lawful and participatory. In this regard the White Paper notes that land use planning is an important government function, which directly affects the lives of all people. It is consequently very important that it is characterised by fairness and transparency and that people are afforded a meaningful right to have a say in decisions.

For there to be good governance it is submitted that it is necessary that there is effective coordination between the different sectors and spheres involved in land use and development. At a local authority level this would relate to effective management and cooperation between planners and service providers, alike. The White Paper further suggests that with better management, teamwork and transparency of the planning process within the local authority and government, the better the chances of the public being able to engage with the decision making in a constructive manner.

The White Paper on Spatial Planning and Land Use Management (2001) states that the spatial planning, land use management and land development norms based on the abovementioned principle are:

- Affected parties have a right to access information pertinent to land use and development plans that are being considered by land use regulators;
- Capacities of affected communities should be enhanced to enable them to comprehend and participate meaningfully in development and planning processes affecting them;
- Decisions must be made in the public domain, with written reasons available to any interested party on request and no planning decisions taken behind closed doors;
- The names and contact details of officials with whom the public should communicate in relation to spatial planning, land use management and land development matters must be publicised;
- Land use and development decisions must be taken within statutorily specified time frames; and

- Accessible participatory structures should be created to allow interested and affected parties to express their concerns or support for any land use or land development decision at sufficiently early stage in the decision-making process.

Consequently is suggested that the eThekweni Municipality should be take cognizance of the principles and norms in the consideration and processing of special consent applications.

The literature review has revealed that there are numerous factors that influence how decisions are made in respect of land use planning and management and that these factors will affect how special consent applications are assessed and judged and the consequent conditions, if any, are applied. These factors include inter alia:-

- the type of land use management tools that are applied, such as the town planning schemes; and
- the relevance of these schemes to current day circumstances,
- the linkages between these town planning schemes and strategic plans, such as the IDP, and
- the officials own knowledge of the IDP and town planning schemes,
- their local knowledge of the area where the particular application is made, including the social and economic factors, and
- the official's political agenda.

As experienced in Cape Town Municipality other factors that may influence the decision-making and applicability of conditions attached to special consent approval may include the eThekweni Municipality's institutional capacity and processes.

## CHAPTER THREE

### RESEARCH METHODOLOGY

### 3. INTRODUCTION

A document review of all special consent applications that were submitted to the eThekweni Municipality South entity for the period January 2000 to December 2005 was undertaken. These applications were categorized in terms of the different land uses applied for and the number and nature of objections lodged in respect of each category was recorded. Following on from this, where an approval was granted in respect of a special consent application to which objections had been lodged, and the land use had been proceeded with, attempts were made to interview the objectors, to establish what, if any, impact that had experienced by the implementation of the particular land use, and further how they perceived the Council's conditions as dealing with their concerns. In depth interviews were conducted with officials and decision – makers in the Municipality to gain an understanding of how special consent applications were assessed and approved, and what criteria, if any, are used in assessing the applications and setting down conditions.

#### 3.1 METHODS

This study used a qualitative non-probability research design because impacts, whether positive or negative, are perceived differently in terms of a person's life experiences.

##### 3.1.1 DOCUMENT REVIEW

Research began with a document review of all special consent applications submitted to and approved within the South Municipal Planning Region of the eThekweni Municipality for the period January 2000 to December 2005. The raw data was collected by means of an examination of the Special Consent registers held in the South Municipal Planning Region Town planning offices. Permission was sought



from and granted by the Head: Development Planning and Management of the eThekweni Municipality, to access the relevant special consent files and Lot files to obtain further information in respect of these applications. An excel spreadsheet was then created to record the relevant information. (Appendix 1)

The applications were categorized into the various land uses applied for and the number of applications that had objections or representations lodged against them, in each category, was established. More details of this are provided under Chapter Four. Copies were made of all applications that had objections or representations lodged against them.

Once all the applications had been examined they were then categorized in terms of the number of applications that were:-

- Lodged;
- Approved;
- Refused; and
- Not finalized.

Two additional categories were added when it became apparent that although the Special Consent Registers indicated that an application had been lodged, namely by an applicant's name having been entered in the register and sometimes a fee and receipt number recorded as well, there were no further record of the application. That is, the entry in the register was incomplete with no record of what the application was for or whether it had been approved or not. Furthermore, no special consent file could be found for the respective application, nor was there any record in the Lot files. These applications were thus classified as "No Records".

A final category was that of when an applicant had submitted a special consent application for a particular land use that did not require special consent to be sought, and this application was then recorded as having been converted to a different process.

The number of objections lodged against each application was noted and if the application had received the approval of the Ethekwini Municipality, the details of the objector's and the nature of the objection/s was recorded along with the Council's decision and any conditions attached to the approval.

### 3.1.2 STRUCTURED INTERVIEWS WITH OBJECTORS

In order to develop an understanding of how the people who objected to these special consent applications perceive the approval thereof to impact on them, an attempt was then made to interview all the objectors. No sampling technique was employed due to the limited number of cases to investigate, namely seventeen (17) different application types with a total of twenty (20) different objectors. This was due to the fact that thirty five percent (35%) of the special consent applications lodged had not been finalized by Council, or were deemed file closed or refused, or had no records. For more information see Chapter 4. These interviews were conducted by means of a Questionnaire (Appendix 2) that contained both open and closed-ended questions. Close-ended questions were used to guide the respondents to consider how or what impacts the land use has or is having on them. The questions posed sought to identify traffic, noise and visual impacts, while open-ended questions provide an opportunity for the respondent to provide more detail as to the exact nature of the impact, thus, providing the researcher with more insight into the problem. Some interviews were conducted telephonically where contact could be established, and some questionnaires were posted to the objectors together with a self-addressed and stamped envelope for return post. One objector completed the Questionnaire via e-mail.

### 3.1.3 IN-DEPTH INTERVIEWS

A further aspect of the research was to investigate how officials at the Municipality assess special consent applications, particularly when objections and or representations have been lodged in respect of an application, and to understand how they develop or apply conditions. In order to do this, in-depth interviews were carried out using a snowball sampling technique, aided by a Questionnaire guideline (Appendix 3). Eleven officials, including the Town Planning Technicians in the South

MPR offices, the Deputy Executive Director, Physical Environment (South), the Executive Director, Physical Environment (South), Executive Director: Planning (Inner West), Executive Director, Planning (Outer West), Town Planners (Centrals), the Manager, Land Use Management and Deputy Head, Development Planning were interviewed using this technique while two additional officials were interviewed early in 2008 by means of answering a questionnaire based on the Questionnaire guidelines used during the other in depth interviews. The reason for this was due to the lapse in time between the start of the research and the completion of the report there has been a change in authority in the South Municipal Planning Region. These officials were interviewed as they were all involved to some extent in the decision making process relating to the assessment of special consent applications in the South MPR.

## **3.2 ANALYSIS**

Analysis of the raw data and data obtained utilizing the questionnaires and in-depth interviews used a combination of qualitative and statistical methods. The results of this analysis are provided in Chapter Five below.

### **3.2.1 QUESTIONNAIRES**

Data analysis was done by analyzing each question individually in terms of validity, content and the frequency of responses. This enabled the researcher to develop an understanding of the common themes or impacts perceived by objectors and also to rank the typical causes of negative impacts.

### **3.2.2 IN-DEPTH INTERVIEWS:**

Analysis of the data sets obtained during in-depth interviews was undertaken by means of scanning transcripts and developing an understanding of common themes.

### **3.3 LIMITATIONS TO RESEARCH**

In respect of limitations to this research it is important to note that the researcher was employed by the Ethekewini Municipality in the Development Planning and Management Unit, at the time that the majority of research was undertaken, and although the researcher undertakes to apply objectivity, it is recorded that there may be some bias in this research. The Researcher is now self-employed in the Planning industry.

## **CHAPTER FOUR**

### **FINDINGS AND ANALYSIS**

#### **4. INTRODUCTION**

This chapter seeks to provide the findings and analysis of the study and includes a discussion of the sample and its characteristics, as well as a description and summary of the main results obtained from the structured interviews with objectors and in depth interviews with officials of the eThekweni Municipality Development Planning & Management Department. This is followed by a discussion of the main trends and patterns in the data with reference to the hypothesis or research question. Finally, the concluding interpretations will be provided.

#### **4.1. SPECIAL CONSENT PROCEDURE WITHIN THE SOUTH MUNICIPAL PLANNING REGION**

##### **4.1.1. APPLICANTS REQUIREMENTS**

The South MPR of the eThekweni Municipality provides persons who are desirous of submitting special consent applications for non-conforming land uses, with a document that sets out the requirements for submission and the process to be followed, which is based on the requirements of Section 67bis of the Natal Town Planning Ordinance No. 27 of 1949.

This document provides an applicant with information on how the procedure is meant to happen in respect of timeframes and advises them how to proceed with the application. In essence an applicant is required to complete an application form, which requires:

- The name and address of the applicant;
- The date of the application;
- The name and address of registered owner of the property, if not the applicant;
- The postal address and cadastral description of the property; and

- A description of development,
- The estimated cost of the proposed development and area of development.

An applicant is further required to submit a motivation for the application, including details and reasons, and a site plan of the property affected, together with a floor plan of the building. All of the above must be in duplicate. They are also asked to submit a copy of the Title Deeds of the property and to ensure that there are no restrictive conditions of title contained therein that may affect the development as envisaged.

There was a prescribed fee that had to be paid on submission of the application to Council that varied according to the use being applied for. For example, if one wished to apply for special consent for a Place of Worship in a Special Residential zone within the Amanzimtoti Town Planning Scheme in course of preparation, one would of paid a fee of R500.00, while if one wanted to build Cluster Units on the same site, one would have to pay R50-00 per unit. These fees are amended annually in terms of the Council's Tariff of Charges.

The applicant was also required to advertise, in the format prescribed in the document, the proposal in an English and Zulu newspaper circulating in the area and it is noted that the Council only considered the Daily News or Mercury; UmAfrika or Illanga newspapers as acceptable newspapers. It is noted that during the study period the South Coast Sun newspaper was distributed freely throughout most of the urban areas of the South MPR, but was not considered a suitable newspaper. This advertisement set out details of the proposal and called for persons to lodge objections or representations within a twenty-one (21) day period.

The applicant was further required to send registered letters to all adjoining property owners and any other property owners the local authority may direct, again giving them the opportunity to object to the proposal within a prescribed twenty-one (21) day period.

Finally, the applicant was directed to erect a notice board, setting out the proposal, and calling for persons to lodge objections or representations within a twenty-one (21) day period, in a prominent position on road frontage of the property concerned.

At the completion of the aforementioned twenty one (21) day objection period, the applicant was required to submit an affidavit sworn in front of a Commissioner of Oaths, to the effect that the necessary advertisements had been published, registered letters posted and the notice board erect on site for the duration of the twenty one day period. They were further required to provide proof of the advertisement in the form of tear sheets, provide copies of the letters to adjoining neighbours and proof of posting.

#### 4.1.2 MUNICIPAL PROCESS

On receipt of the special consent application the application was meant to be entered into the Special Consent Register. These registers had columns with provision for the following information:

- Application Number;
- Erf Number and Name and Address of applicant;
- Section of the Town Planning Ordinance under which the application was made;
- Fee paid, receipt number and date paid;
- Columns were headed with the various services departments and the date the application was sent to a particular department was meant to be entered under the respective column.
- A final column was headed result under which the outcome of the application was usually noted, that is, approved / refused, date of decision, whether it was by delegated powers or Council resolution and the nature of the application.

The official responsible for circulation of the application then made covering Comment Sheets and attached these to one copy of the application, which was then circulated to the respective section or service department for comment. Once comments were received back from a service department the application was sent to the next service department for comment and so the process continued until each department had commented on the application. The officials / service departments listed in the register as those required to make comments on an application, were:

- Town Planning Technician;
- Senior Town Planning Technician;
- Health Department;
- Engineering Technologist;
- Principal Building Inspector;
- Fire Department;
- Coastal Drainage department;
- Environment Branch;
- Ethekewini Traffic Authority
- Director: Physical Environment.

It is noted that at the start of the five year study period the Director Physical Environment had delegated authority to approve and refuse special consent applications, but this authority was later transferred to the Deputy Head: Development Planning with the advent of the new amalgamated Metropolitan Council, albeit a few years after 2000.

Once the circulation process is completed a referral letter is sent to the applicant requesting any outstanding information that may be required by any department. Similarly, if objections and or representations had been submitted against the application, the applicant was requested to respond to these as well.

On receipt of the abovementioned reply from the applicant, the application was reviewed by the Director: Physical Environment who the made the final decision and set any conditions.

The official responsible for the circulation of the application would then draft and approval or refusal letter and also advise any objector of the decision as well. It is noted that in the years at the beginning of the study period, that is, 2000 to 2003, objectors were not advised of their right of appeal in terms of Section 67ter of the Natal Town Planning Ordinance No. 27 of 1949, and this was only implemented during 2003.



#### 4.2.FINDINGS RELATING TO RAW DATA

YEAR	NUMBER OF APPLICATIONS RECORDED	NUMBER OF OBJECTIONS RECORDED
2000	50	17
2001	38	7
2002	41	2
2003	15	0
2004	57	1
2005	57	6
<b>TOTALS</b>	<b>258</b>	<b>33</b>

TABLE 1: SOUTH MPR: SPECIAL CONSENT APPLICATIONS LODGED AND OBJECTIONS RECEIVED: JANUARY 2000 TO DECEMBER 2005

Two hundred and fifty eight (258) special consent applications were lodged with the South MPR of the Ethekwini Municipality during the period January 2000 to December 2005. Thirty three (33) of these applications attracted objections.

In terms of the data collection phase it is noted that in the year 2003 there appears to be a gap in the data in that only fifteen (15) applications were recorded as having been lodged. This is twenty three (23) applications less than the thirty eight (38) applications lodged in 2001, which is the second lowest recorded number of applications lodged during the research period. Furthermore, it was confirmed in discussion with Council officials during the collection of raw data, that in 2003 two people were responsible for processing special consent applications, but only one special consent register could be found for that period.

Of the two hundred and fifty eight (258) applications lodged, only one hundred and sixty seven (167) or sixty four percent (64%) of the applications had been approved at the time that the raw data was collected. Seventeen (17) of these applications had attracted objections. Seven (7) of the applications that had been lodged, of which two (2) had attracted objections, were refused by Council. Thus, a total of one hundred and seventy four (174) of the initial two hundred and fifty eight (258) applications had completed the special consent process within the Council, when the raw data was collected.

It was noted that thirty eight (38) special consent applications, of which eleven (11) had attracted objections, were recorded as being "file closed". These applications were for cell masts and base stations. According to Council officials, an application is deemed "file closed" when the applicant does not provide all the requisite information required by the eThekweni Municipality to enable Council to complete its assessment of the application.

Twenty one (21) of the special consent applications that were recorded in the Special Consent Registers held in the South Municipal Region offices have been classified as having "no records". This is because even though the an application is recorded, there is no physical evidence of the application to be found in the Registry Department or Lot files held by the Municipality. In most instances no details of what the application is for or whether it has been approved or refused could be ascertained. This shall be elaborated on under Section 4.7.4.1 below.

Of the two hundred and fifty eight (258) special consent application lodged, three (3) applications were converted to a different process. Again it is noted that an applicant may have applied for special consent and paid the relevant submission fees, but it was then found that either the applications could be dealt with as a "relaxation" application or that no special consent was in fact required to be sought, in other words the particular land uses sought was a "free entry" use in terms of the particular town planning scheme.

Furthermore, when the final raw data was collected, namely September 2006, twenty two (22) applications had not been finalized by the Council. One application was outstanding since 2004 and the remaining twenty one (21) were for the year 2005.

Table 2 below provides an overview of the above mentioned discussion.

APPLICATION TYPE	NUMBER	NUMBER OF OBJECTIONS
APPROVED	167	17
REFUSED	7	2
FILE CLOSED	38	11
NO RECORDS	21	-
NOT FINALIZED	22	3
CONVERTED TO DIFFERENT PROCESS	3	-
<b>TOTALS</b>	<b>258</b>	<b>33</b>

TABLE 2: SOUTH MPR: SPECIAL CONSENT APPLICATIONS: JANUARY 2000 TO DECEMBER 2005

#### 4.2.1. CLASSIFICATION OF LAND USES

To aid in the analysis of the various types of land use categories for which special consent was applied for during the five year study period, the various special consent applications that could be examined further (all excluding those deemed "file closed" and "no records") were categorized into twelve broad categories as listed below:

1. Cell masts – included Cell masts, Base Stations and Roof top antennae.
2. Conference Centre – included conference facilities.
3. Education – included Crèche, Day care Centre and Edu-Care Centre.
4. Industrial – included Service Warehouse, Distillery process, Gas Filling process and Trade in Livestock.
5. Institutional – included Church and Community Care Centre.
6. Medical – included Doctor's rooms, Physiotherapists and Veterinary practices.
7. Mixed Use – included Church, Crèche, Training Centre and Dwelling units (one application)
8. Motor Vehicle – included Auto Valet facility, Motor Vehicle Workshop, Motor vehicle showroom and Service Station.

9. Office – included Accounting Firms and Travel Agents.

10. Recreational – includes Horse Riding School and Dancing Studio.

11. Residential – included Self Contained Residential Units (SCRU) commonly referred to as “granny flats”, Medium Density Housing, Bed & Breakfast Establishments and Guesthouses.

12. Retail – included Restaurant, Tavern, bar, Place of Public Entertainment and Garden Nursery.

Table 3<sup>1</sup> below indicates the number of applications in each category as well as the number of objections lodged in respect of each category:

<b>CATEGORY</b>	<b>NUMBER OF APPLICATIONS LODGED</b>	<b>NUMBER OF OBJECTIONS LODGED</b>
Cell masts	43	14
Conference Centre	1	0
Educational	10	2
Industrial	19	2
Institutional	5	2
Medical	6	0
Mixed Use	1	1
Motor Vehicle	11	2
Office	12	0
Recreational	2	1
Residential	109	9
Retail	18	0
<b>TOTALS</b>	<b>237</b>	<b>33</b>

TABLE 3: SOUTH MPR: SPECIAL CONSENT APPLICATIONS LODGED AND OBJECTIONS RECEIVED PER LAND USE CATEGORY: JANUARY 2000 TO DECEMBER 2005

<sup>1</sup> Note: the discrepancy between the total number of special consent applications lodged and those indicated in the above table is due to the applications recorded as “file closed” and “no records”.

From the above it is apparent that there are many different types of land uses for which special consent is applied for within the South MPR of the eThekweni Municipality, and that in particular residential land uses make up the main category for which special consent applications are made. In respect of the study period 46% of the total number of applications, excluding those deemed “file closed” and “no records” were for residential land uses, while the cell mast and base station category came in second at 18%. Industrial and retail land uses followed suit, in the region of 8%, while all other land use categories were lower than 4%.

The reasons for this appear to be the fact that in the Special Residential zones, within many of the Town Planning Schemes in the South MPR, only a single dwelling house is permitted, with a crèche or medium density housing permitted by special consent only. This is particularly evident in the Amanzimtoti suburb of the South MPR, where one finds large tracts of land zoned for Special Residential purposes to the west of the N2 freeway, in what is known as the “Garden Lots” area. Due to the economic boom over the past few years there has been a trend towards development of these sites, hence the special consent applications for medium density housing.

Of interest is that the cell mast and base station category attracted the highest percentage of objections (42%), although they were not the highest category, and most of these applications were deemed “file closed” due to lack of information.

As some of the special consent applications had been refused, had the file closed or where no decision had been made by Council at the time of the data collection phase, only applications that had been approved by Council and which had attracted objections, could be investigated further.

#### **4.3. OBJECTIONS, CONDITIONS OF APPROVAL AND RESPONDENTS COMMENTS**

With reference to the research question and subsidiary questions and in order to gain an understanding of the common objections / concerns raised against the special consent applications for the various land use categories that were approved by the eThekweni Municipal Council, the objections are indicated per category below.

A brief description is then provided of the conditions of approval, if any, that were attached to any approval, per land use category, to gain an understanding of how Council perceived the objections in relation to the respective application. This is followed by an outline of what the respondent's had to say in respect of each land use category, where applicable, in response to the questionnaires.

#### 4.3.1 CELL MASTS: OBJECTIONS

Objectors wanted:

- Conclusive proof that cell masts are not hazardous to people's health and the environment; and
- The implementation of a standard policy within the eThekweni Municipal area with regards the erection of cell masts that takes into account the number of masts in an area as well as the aesthetics and health issues.

##### **4.3.1.1. Cell Masts: Council Conditions**

The eThekweni Municipality imposed no conditions on the approval of the cell mast and base stations.

##### **4.3.1.2. Cell Masts: Respondents Comments**

One respondent was interviewed and he was of the opinion that because Council had introduced the Cell mast Policy, which he had wanted, he was of the opinion that the Cell mast that had been approved did not cause him a particular problem. However, he felt that the Council should have actually imposed provisions from the Cell mast policy as conditions of approval so that the Council would be able to take legal action against the applicant if the applicant failed to comply with Council's Cell mast policy requirements. He also believed that officials do not always apply their minds sufficiently when assessing applications and that in certain instances Cell masts disguised as "trees" were actually more unsightly the if the Cell mast was a monopole on the skyline.

#### **4.3.3.2. Institutional: Respondents Comments**

In terms the Community Care Centre the respondent acknowledged that their perception that the Community Care Centre would lead to an increase in traffic and crime in the area was unfounded, and that the land use had not negatively impacted on them as originally feared.

They were satisfied that the conditions imposed by Council, that a specific road be used to access the institution, which was not the road which they use to access their own property, had effectively addressed their concerns.

#### **4.3.4. RECREATIONAL: OBJECTIONS**

In respect of the Horse Riding School, the objectors were concerned with:

- Health issues relating to increase in flies and dust; and
- Increase in traffic to the residential area and parking along a narrow road; and
- Increased noise pollution; and
- The disposal of horse manure from the property.

#### **4.3.4.1. Recreational: Council Conditions**

In respect of the horse riding school, the following conditions were imposed:

- All bylaws pertaining to this type of business being adhered to;
- A 6m S&D <sup>2</sup>servitude being defined and no building being erected thereon;
- The restrictive Condition of Title being removed prior to approval of building plans;
- Suitable vehicular access being provided so that riders are collected and dropped off on site. The horse riding school operators to advise parents accordingly,
- No stopping signs being erected on the northern side of X<sup>3</sup> Road;

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<sup>2</sup> S&D servitude is a Sewer and Drainage Servitude used to accommodate Council services

<sup>3</sup> Road name deleted to protect privacy.



- Stables being constructed in the area of temporary stables – well away from residential properties;
- The wooden structures / Gemini Huts not being used for habitable purposes;
- The objectors being advised of their right of appeal in terms of Section 67ter of the Town Planning Ordinance No. 27 of 1949.

#### **4.3.4.2 Recreational: Respondents Comments**

One respondent answered the questionnaire while the second did not.

The respondent resides across the road from the application property and indicated that they had bought the property some 25 years ago because of the “quiet, residential nature of the area”. The riding school had been operating illegally for some years prior to the special consent application being made, with the riding arena being established directly opposite the respondent’s house, which resulted in dust, flies and noise. The riding school land was unsightly and not maintained thus lowering the standard in the area and affecting property values. Increased traffic and people parking along the road caused the respondent inconvenience when they tried to access their property. These problems were still being encountered by the objector at the time of the interview in 2006, although the application had been approved in 2000.

The respondent indicated that the Council had not addressed their concerns in approving the application with conditions because they felt that Council had not taken into account that it was the people across the road, rather than adjacent the application property, that would be more affected in the granting of the application. In terms of ideas as to how the granting of special consent approvals could be improved upon, the respondent suggested that officials who assess applications should actually inspect properties and consider persons who may be affected by the proposed land use, other than only adjoining property owners.



#### 4.3.5. RESIDENTIAL: OBJECTIONS

Three (3) different objections were submitted in respect of five (5) residential applications that were approved, with the objections including:

- The request for a pre-cast concrete fence between the applicant's and objectors property,
- Invasion of privacy by and trespassing of applicants (developers) employees; adequate screening between applicants and objectors properties,
- The adequate disposal of stormwater,
- The allegation that an applicants property was not large enough to accommodate a particular development was made with reference to the potential impact on perceived park like surroundings and insufficient parking,
- The aesthetics of the building in respect of down – pipes was raised,
- In one instance the objector alleged the applicants retaining wall encroached into their property.

##### **4.3.5.1. Residential: Council Conditions**

In respect of one of the residential applications the eThekweni Municipality imposed the following conditions:

An application for medium density housing (when objector's wanted a pre-cast concrete fence erected along the common boundary) drew the following conditions, namely:

- Removal of Condition of Title prior to approval of building plans,
- Pre-cast fence not less than 1.8m on boundaries of erven X<sup>4</sup> and XX<sup>5</sup>,
- All work within servitudes and across sewers to be to Durban Metro specifications and satisfaction,

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<sup>4</sup> Road name deleted to protect privacy.

<sup>5</sup> Road name deleted to protect privacy.

- All sewer manholes within roadways to have heavy duty cover slabs and cast iron manhole lids and frames (type2A or similar).

The four (4) other applications in the residential category were approved without any conditions being attached to them

#### **4.3.5.2. Residential: Respondents Comments**

Two respondents in this category, both adjoining property owners, had had previous disputes with their neighbours. In both instances the objections had related to boundary and retaining walls, as well as stormwater control. Both felt that the Council had not addressed their concerns in the granting of the special consents because in their opinion their concerns relating to the construction of the respective walls and storm water control had not been addressed, with one respondent indicating that they were still experiencing storm water problems due to increased run off from the new medium density housing development. The second respondent indicated that their concerns were not adequately addressed because the new wall constructed between the two properties had not been plastered and painted on side of the wall to his satisfaction.

Another respondent felt that the Council had not considered his objection about the loss of the park like surroundings and felt that as a bare minimum Council should have required that some of the large trees were retained and that a landscaping plan, to replant with indigenous vegetation, should have been a condition of approval and enforced by Council.

#### **4.3.6 RETAIL: OBJECTIONS**

In this instance the objectors were concerned with potential noise impacts, alleged adult entertainment in the form of striptease acts and the attraction of an undesirable element into the area.

#### **4.3.6.1 Retail: Council Conditions**

In this category the Place of Public Amusement was approved with the following conditions, namely:

- Owner shall comply with all Health requirements in respect of Food and Tobacco Regulations,
- The noise level shall not exceed SABS maximum equivalent sound level of the area type and time, measured along the boundary of the erf,
- No adult amusement in the form of striptease acts shall be permitted,
- Should any complaint be received in respect of 2 and 3 above, this approval shall be subject to review.

#### **4.3.6.2 Retail: Respondents Comments**

Both objectors responded to the questionnaire and both indicated that the new Place of Entertainment has not had a detrimental impact on them in terms of noise or an unsavory element being attracted to the area by the business. They indicated that the business was up-market and that the only impact that the business had brought to the area was that of a full parking area particularly late afternoons, when it appeared that people stopped off at the business on the way home from work. The one respondent indicated that he felt that Council had sufficiently addressed the potential problems while the second respondent had no comment in this regard.

#### **4.3.7. COUNCILS' GENERIC CONDITIONS OF APPROVAL**

It was observed that until 2004 the South MPR of the eThekweni Municipality did not impose any standard or generic conditions of approval, but that during 2004 it implemented the following as standard conditions of approval on all special consent applications, namely:

1. PLANS - The development shall be substantially in accordance with the plan submitted with your application.

2. SCHEME CONTROLS – The development shall be in accordance with the requirements of the XXXX<sup>6</sup> Town Planning Scheme in course of preparation to the satisfaction of the Head: Development Planning & Management.
3. SUBMISSION OF PLANS – Prior to commencement of any development related to this approval, building plans of the proposed development shall be submitted to, and approved by, the Head: Development Planning & Management.
4. AMENITY – The amenities of the area shall not be disturbed. The Head Development Planning & Management shall be responsible for the interpretation of this condition.
5. SITE MAINTENANCE – the site shall be maintained in a neat and tidy condition at all times, to the satisfaction of the Head: Development Planning & Management.
6. NOISE –All noise generated shall be contained on site and shall not cause a disamenity or nuisance as defined in the Environmental Conservation Act 1989 (Act 73 of 1989) to the surrounding area.

#### **4.4. ANALYSIS OF OBJECTIONS AND CONDITIONS OF APPROVAL**

##### **4.4.1 OBJECTIONS**

An objective of this research was to analyze common types of objections or concerns raised in respect of the various categories of special consent applications and to analyze standard conditions attached to approvals relating to these objections and or concerns. In respect of the Cell mast category, it appears that people were concerned with health and environmental issues perceived to be related to cell phone use, and this study period coincided with the advent of a third cellular network provider, Cell C, into the country, together with the race to erect cell phone mast and base station infrastructure to accommodate the third network. The eThekweni Municipality actually imposed a moratorium during the study period, in order to formulate and adopt a Cell Phone and Base Station Policy in an attempt to address these issues. Once this policy was in place all applicants were required to comply with the content of the policy, prior to special consent being granted. This may explain why thirty eight (38) of these special consent applications were deemed to be

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<sup>6</sup> The applicable town planning scheme name, for example, Amanzimtoti, was inserted here.

“file closed”, and account for the fact that no conditions were attached to the approval of the Cell mast & Base Stations.

From the findings above, it can be deduced that the majority of objections are from neighbouring property owners or property owners across the road, and that it was only in respect of the Cell mast category, that objectors were not direct neighbours. Each category in Section 4.3 above identifies the nature of the common type of objections, which are indicative of a persons’ need to protect their present environment and their aversion to change, particularly within residential areas, and particularly when they identify the change as one for the worse.

Furthermore, it is suggested that the crime situation in South Africa, also influences peoples desire to object, to ensure that their privacy and security is protected, as it is a perception that when building operations occur in the area, there is an increase in crime in the area.

Some of the issues relating health, such as flies and dust from the riding school, can definitely be considered as detrimental to the surrounding amenity and it is necessary to examine the conditions attached to this approval further. Similarly, issues of traffic impact, particularly as it relates to increase of traffic volumes on narrow residential roads, may be considered to be valid reasons for objections. However, it is submitted that because people have not experienced significant development pressure in the South MPR, as in the North MPR, in the past ten to fifteen years, people are accustomed to not waiting at intersections or having frequent traffic movement along residential roads. This is not to say that the roads were not designed to accommodate higher traffic volumes as they should have been designed with the future potential growth in mind, thus, its is suggested that objections to increase traffic volume is often based on perception and a status quo attitude.

#### 4.4.2. CONDITIONS OF APPROVAL

In respect of the subsidiary question which enquires what the **standard conditions** attached to the approval of the different land uses in the South MPR of the eThekweni

Municipality are, it is interesting to note that until 2004, there were no standard conditions of approval attached to these special consent applications and that only on occasion were conditions attached when an application had received objections against it. Details of the standard conditions of approval that were attached to special consent applications during 2004 and thereafter are provided under Section 4.3.7 above, and the applicability thereof, in particular in relation to applications with objections, will be discussed under Section 4.6.1 below.

However, in respect of the conditions attached to the special consent applications investigated above, it is noted that in most instances when Council did impose conditions, relating to development of a residential nature and a recreational nature, the objectors interviewed did not feel that the conditions addressed their concerns.

Council called for retaining walls and boundary walls to be erected between neighbouring properties but there does not appear to have been any enforcement to ascertain that drainage and storm water issues were addressed effectively. This could be indicative of a break down in communication between the service departments, and the need to entrench Batho Pele<sup>7</sup> principles more soundly amongst officials. Similarly, it is suggested that the residential conditions that "All sewer manholes within roadways to have heavy duty cover slabs and cast iron manhole lids and frames (type2A or similar)" a condition of the special consent approval should rather have formed part of the building plan.

With regards the conditions attached to the Riding School, it is noted that while the intentions appeared good, the actual enforcement of these conditions, fell in the main out of the hands of the Town Planning officials, and as there was no system of communicating these conditions to other service departments, nor of enforcement from those departments, these conditions are not seen to be very applicable. This is further evidenced by the fact that at the time of the interview in 2006 the riding school was still operating under the same circumstances as when the application had been made in 2000. For example, one of the conditions was that "No Stopping" signs were

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<sup>7</sup> Batho Pele refers to a government initiative to improve on service delivery as gazetted in the White Paper on Batho Pele on 1 October 1997.

to be erected on the northern side of the road, but this has not happened and there has been no follow up by Council.

While the research question seeks to identify whether or not standard policy based conditions of approval mitigate against negative impacts with respect to objections lodged, it is suggested that the non-standardized conditions of approval, attached to special consent approvals prior to 2004, did not adequately address these impacts.

#### **4.5. IN-DEPTH INTERVIEWS**

In depth interviews of Council officials were conducted using questionnaire guidelines, a copy of which is attached at Appendix 3.

As indicated in the introduction, the South MPR arose out of the amalgamation of six former sub structure Councils in 2000, which was also the beginning of the period that this study was undertaken. This amalgamation saw a period of change in the way business was undertaken in the Council and therefore it is necessary to note that the officials involved in the decision making process, were not necessarily part of the decision-making process of those applications that were submitted in the first couple of years of the study period. During the latter part of the study period, the Development Planning and Management Department of the eThekweni Municipality sought to ensure that there was consistency in decision making, and in an attempt to share knowledge amongst officials whom had formally only considered applications within their respective “entities<sup>8</sup>”, by forming a Joint Decision Making Committee to which all special consent applications are referred by the respective municipal planning regions, for final consideration and approval. These interviews were thus conducted in a period of uncertainty and change in respect of the administrative capacity within the Council, with so called “old school” and “new school” officials, which is reflected in the way officials responded when asked what they perceived as major problems in assessment of special consent applications.

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<sup>8</sup> “entities” are former sub-structure Councils that the officials would have worked in prior to the formation of the eThekweni Council., that is, Outer West, Inner West, North, South, North-Central & South-Central Councils.

#### 4.5.1. PROBLEMS WITH ASSESSMENT

An analysis of the responses received in respect of the in-depth interviews, reveals that the problems with assessment can be divided into five broad themes, that is, institutional arrangements, quality of the application submission, consideration of the application by service departments, and existing legislation.

##### **4.5.1.1. Institutional Arrangements**

It was the opinion of the majority of interviewees that there is sufficient capacity in the Development Planning and Management Department to consider special consent applications. However, many felt that although there was this institutional capacity that many of these employees were inexperienced in the assessment of special consent applications, and did not understand the broader planning principles including the vision of the City in respect of its IDP and Spatial Development Framework Plan. If these officials have this understanding they do not know how to articulate it in the assessment. One of the perceived reasons for this lack of experience and ability is that tertiary education facilities do not train students in processes followed by Council's and while students receive a lot of theory at tertiary education institutions the education is not geared towards practical implementation of that theory. A second reason given is the lack of mentorship within the Council.

Similarly, it is felt that officials do not always consider the surrounding vicinity of the application site or how the proposed land use could impact on the surrounding properties, or even properties along the route to the application site. A reason given for this lack of holistic approach to the assessment of the application was given as a person's attempt to process an application too quickly, either because of excessive work load or lack of supervision. It was the opinion of some that there is limited accountability placed on officials.

An overarching issue relating to the institutional arrangements as they relate to consistency of assessment and decision making on special consent applications, related to working conditions and the attitude of complacency of staff. It was generally felt that the amalgamation process that was in progress during this study,



was not resolving issues of disparity in pay and workload of officials. These differed significantly between the officials in the South MPR and officials performing the same duties in, for example, the former Centrals entity. This led to staff feeling unworthy and being less proactive in performing their duties.

#### **4.5.1.2. The application submission**

Another problem that was identified by officials was that many of the applications are not lodged by qualified persons and often lack sufficient information to arrive at an informed decision. This in turn can lead to time delays in assessing an application because the applicant often needs more than one request for additional information, and in many cases the additional information is not forthcoming or is insufficient.

#### **4.5.1.3. Objections based on emotion**

It was suggested that in many instances objections are based on emotions and inherent beliefs as opposed to town planning factors. Officials were of the opinion that in some instances objections are lodged purely as “grudge” objections to stop the applicant from pursuing his or her objectives and as a means of delaying the applicant’s progress. In this connection it was observed that during the structured interview phase of the study in a few instances the objectors had had previous disagreements with the applicant.

#### **4.5.1.4 Services Departments**

Respondents identified the fact that applications are forwarded to the various service departments, such as, Environmental Management Branch, Sanitation and Waste Water, Coastal Drainage and Ethekwini Roads Authority, as a stumbling block in the assessment of the applications because:

- Rather than assessing and considering an application properly from a town planning perspective, officials become reliant on the comments provided by the services departments; and

- When a more senior official was interviewed he stated that no specific criteria are applied. The validity of what is presented to the Joint Decision Making Committee is the basis on which the decision is made and if any conditions are applied they should be in line with the decision. Often conditions are “dreamt up” having no foundation or basis in law such as the Town Planning Ordinance No. 27 of 1949.
- Is there specific hardship to the site in respect of size and shape and can you mitigate against any concerns? Council does not consider a person’s view of, for instance the sea, as a town planning issue.
- “Thumb suck” that is, it depends on existing land uses and the location of the proposal in relation to these land uses. The impact on the surrounding amenity is considered, that is, is the proposal visually pleasing, will it create a noise problem? How does it blend into the environment?
- Is there adequate service infrastructure to accommodate the proposal?
- Traffic congestion and proposed hours of operation. Can surrounding land users live with the use in the area?

#### 4.5.3. IMPROVEMENTS TO ASSESSMENT / CRITERIA

When asked how the assessment process or criteria could be improved upon, the responses included inter alia:

- A checklist could stimulate a deeper evaluation of the applications from a technical perspective and the communication between the Planning Department and other service units could be improved upon. By building a better understanding between departments in respect of the challenges that they experience would facilitate better and quicker assessment of applicants.
- It was suggested that assessment should include an assessment of the need and desirability of the application and that a common set of standards throughout the Municipality should be formulated.

- It was further submitted that officials need to go back to the first principles of planning, taking a look at how analysis should be done which would include observing the micro climate issues, topography, size and shape of the property, and sensory perceptions amongst others. Kevin Lynch was quoted as an example.

#### 4.5.4. CONSISTENCY OF DECISIONS

The general consensus of officials was that decisions are not made consistently and they were of the opinion that the following issues affected this:

There was a lack of remembering what decision had been taken in the past and different principles are applied to different areas and sites. It's almost as if the legacy of apartheid affects the decision making process. As alluded to earlier in this chapter because of the amalgamation of officials as part of the amalgamation of the former Councils into one body there is now a variety of officials, all with different local knowledge, inputting into the decision. You have "old school" thinkers who were educated during the apartheid era and who subconsciously may not want to change their thought processes. As indicated by William Samuelson most real decisions have a status quo alternative—that is, doing nothing or maintaining one's current or previous decision. A series of decision-making experiments shows that individuals disproportionately stick with the status quo. (Samuelson, W. March: 1988)

Another consideration was that the "mood" of officials at the time of making the decision also affects the decision made. With the tangible mood of discontent amongst officials during the study period - due to the amalgamation there was uncertainty of job security, disparity in pay and work conditions, new generation 'bosses' - it was bound to happen that there would be inconsistencies in decisions.

The advent of the Joint Decision Making Committee was considered to be the first step towards ensuring consistent decisions. Staff from all former "entities" input into the decision, sharing a wealth of experience and new ideas and considering the "big picture" for the City. The drawback is the officials from one "entity" do not have

- The service departments do not have the capacity to consider applications timorously, and as this assessment is not considered to be part of the core function of the services departments, they do not comment timorously.

#### **4.5.1.5. Existing Legislation**

Another perceived problem in the assessment of special consent applications is that existing legislation, such as the Town Planning Ordinance No. 27 of 1949, as amended, is considered to be obsolete and has not kept abreast with current development trends, is inflexible and outdated.

#### **4.5.2 CRITERIA FOR ASSESSING SPECIAL CONSENT APPLICATIONS**

When questioned about the criteria used in assessing special consent applications, it was observed that the responses from officials with many years of town planning experience and who had qualifications within the field, related more to theoretical or abstract considerations, while more junior officials or officials with limited qualifications, responded on a more practical level. Perhaps, this "mix" of assessment can be seen as having a positive impact on the approval process, providing the senior officials are open to opinion and debate.

Some common responses are the type of questions posed by officials when considering the special consent applications, which included inter alia:

- Does the proposed land use comply with the Council's strategic planning is a question often posed particularly in respect of those applications perceived to have a greater impact.
- The need and desirability of the proposal. Is it in the interests of the neighbourhood and City as whole?
- What is the intention of the zone? Does the proposal "fit" with this intention?

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- What is the intention of the zone? Does the proposal “fit” with this intention?

- When a more senior official was interviewed he stated that no specific criteria are applied. The validity of what is presented to the Joint Decision Making Committee is the basis on which the decision is made and if any conditions are applied they should be in line with the decision. Often conditions are “dreamt up” having no foundation or basis in law such as the Town Planning Ordinance No. 27 of 1949.
- Is there specific hardship to the site in respect of size and shape and can you mitigate against any concerns? Council does not consider a person’s view of, for instance the sea, as a town planning issue.
- “Thumb suck” that is, it depends on existing land uses and the location of the proposal in relation to these land uses. The impact on the surrounding amenity is considered, that is, is the proposal visually pleasing, will it create a noise problem? How does it blend into the environment?
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- It was suggested that assessment should include an assessment of the need and desirability of the application and that a common set of standards throughout the Municipality should be formulated.

- It was further submitted that officials need to go back to the first principles of planning, taking a look at how analysis should be done which would include observing the micro climate issues, topography, size and shape of the property, and sensory perceptions amongst others. Kevin Lynch was quoted as an example.

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The general consensus of officials was that decisions are not made consistently and they were of the opinion that the following issues affected this:

There was a lack of remembering what decision had been taken in the past and different principles are applied to different areas and sites. It's almost as if the legacy of apartheid affects the decision making process. As alluded to earlier in this chapter because of the amalgamation of officials as part of the amalgamation of the former Councils into one body there is now a variety of officials, all with different local knowledge, inputting into the decision. You have "old school" thinkers who were educated during the apartheid era and who subconsciously may not want to change their thought processes. As indicated by William Samuelson most real decisions have a status quo alternative—that is, doing nothing or maintaining one's current or previous decision. A series of decision-making experiments shows that individuals disproportionately stick with the status quo. (Samuelson, W. March: 1988)

Another consideration was that the "mood" of officials at the time of making the decision also affects the decision made. With the tangible mood of discontent amongst officials during the study period - due to the amalgamation there was uncertainty of job security, disparity in pay and work conditions, new generation 'bosses' - it was bound to happen that there would be inconsistencies in decisions.

The advent of the Joint Decision Making Committee was considered to be the first step towards ensuring consistent decisions. Staff from all former "entities" input into the decision, sharing a wealth of experience and new ideas and considering the "big picture" for the City. The drawback is the officials from one "entity" do not have

intimate or local knowledge of another area or its particular town planning scheme nuances.

#### 4.5.5. PROCESS OF EVALUATION

Again a variety of responses were received when interviewees were asked to elaborate how the existing process of evaluation special consent applications could be improved upon.

It has been suggested that the Council needs to employ more experienced town planning officials, but the concomitant cost of this makes this option fairly difficult. However, another way of improving the quality of assessment is by holding technical discussions in order for officials to develop an understanding of the time and cost negativities of an insufficient evaluation process. In this regard it was also suggested that regular information sharing workshops should be held under the auspices of the Provincial Planning & Development Commission.

The administrative process relating to the circulation and assessment of special consent applications was raised as an issue that needs to be addressed as a means to improving the quality of assessments. It was noted that this process currently takes far too long, with no adherence to legislated timeframes, and a reason given for this is that there is limited accountability amongst the officials for this. In order to improve this situation it was suggested that the eThekweni Municipality should grant incentive bonuses to employees to encourage them to become more professional and accountable.

Another suggestion towards the improvement of the assessment of special consent applications were that a set of criteria should be developed that would be used in the evaluation / decision-making process. Furthermore, it was suggested that there is a need for a greater understanding of the direct impacts of a particular land use within the different areas of the Municipality. For example a Place of Public Amusement within the Central Business District would have different impacts than if the same Place of Amusement were established in a predominantly residential area.



One official suggested that Community / Development Forums should play a role in the assessment of special consent applications. Being a Community / Development forum, they have a much better understanding of the social interactions within the particular neighbourhood or community and are technically in a better position to “pass judgment” on a particular land use in terms of its need and desirability of that community. On the flip side they are also susceptible to abuse by particular members of those communities who could use this method as a platform to prevent competition or further their own needs.

On the administrative side it was recognized that there is a need within the Municipality to have a dedicated courier system to transport documentation, including special consent applications, from the outer Municipal Planning regions, to the various service departments, whose input and comment is required to determine infrastructural requirements as they relate to the application. A dedicated courier system could ensure that applications are transferred timorously.

Alternatively, the process could become more technologically advanced, with applications being scanned and forwarded electronically interdepartmentally. The problem with this approach is that modern technology is susceptible to power outages, and attack from hackers.

It was also suggested that planning staff need to be given more training in respect of service provision. The motivation for this is that because officials have become so reliant on the input from the various service departments they lose the ability to exercise their own judgment and are complacent in respect of improving their own knowledge of service delivery constraints.

This has become evident when one considers the conditions attached to one conditions attached to the one special consent application for medium density housing referred to under Section 4.3.5.1.above; when one of the conditions of approval was “All sewer manholes within roadways to have heavy duty cover slabs and cast iron manhole lids and frames (type2A or similar).” This clearly shows deference to the service department and it is suggested that this type of condition

would have formed part of the subsequent building plan approval in terms of the National Building Regulations Act 103 of 1977.

#### 4.5.6. PROCESS OF EVALUATION OF OBJECTIONS

In the instance of special consent applications that had objections lodged against them all interviewees appeared to be in agreement that these applications were then subject to more detailed scrutiny by officials. The objections act as a “trigger” for the officials to go back to the principles of planning and to consider these applications more carefully.

Accordingly to one interviewee a process of elimination is carried out. That is, the application is considered in relation to its compliance with the relevant Town Planning Scheme. The official must try and fully understand what the objector is meaning in respect of their objection, bearing in mind that most objections are lodged by persons with no town planning background and in many instances based on emotive issues. The official needs to place themselves in the shoes of the objector to gain a better understanding of the issue and work out if there is a compromise at hand.

#### 4.5.7. EFFECT OF EXISTING TOWN PLANNING SCHEMES ON SPECIAL CONSENT PROCESS

Officials generally agreed that the current Town Planning Schemes hamper the process of decision-making on special consent application because they are outdated and lack flexibility. For example, one type of restaurant may not be the same as another (Lords & Legends Restaurant, with sports fields, big screen televisions and bar in Amanzimtoti, as opposed an intimate formal restaurant like Memories Restaurant in Athlone Park), each one having different potential impacts, but the South MPR town planning schemes do not differentiate in terms of the definition of a restaurant.

It was further suggested that there is a lot of ambiguity within the South MPR town planning schemes and for this reason there is a lot of debate around the interpretation of definitions, which leads to difficulty in making consistent decisions.

However, it was also noted that the current town planning schemes have got some elements of public participation and this was thought to be a positive aspect in respect of getting the community to comment and input in the application. The current process calls for registered letters to be sent to the adjoining property owners and property owners across the road from the application site, as well as for a notice board to be displayed for twenty one (21) days and a notice to be published in the Natal Mercury of Daily News newspapers.

#### 4.5.8. LAND USE MANAGEMENT SCHEMES AND DECISION-MAKING

As part of the interview, officials were asked how they believed the new facilitatory approach to local government and similarly the new LUMS approach to town planning, impacts on how they make decisions on special consent applications. As with previous questions, it was noted that those officials who were more involved in the actual “change process” happening with the Development Planning and Management Department, had different responses to those who did not.

One respondent indicated that cultures play a role and indicated that the development approach is open to abuse and may be applied along racial lines. That is, because of the history of the country, where planning was applied differently in areas of different race, and now the new dispensation means that you have people who have different approaches to development assessing applications. A person may utilize an “old approach” in their assessment in an area where such an approach may not be appropriate. He was of the opinion that the new LUMS approach may create more problems in assessment of special consent applications because the boundaries of what is allowed by special consent and free entry may become blurred because of the widening of the range of land uses and the interpretation of definitions which have to be “spot on” if they are so open and wide.

Another official responded to the effect that the new LUMS approach was in between the correct route because we need to end up with a livable city and have to consider the human side of development. Development is not just about buildings but about people too. This official was of the opinion that the new LUMS approach is clouded and vague and that his concerns in respect of the new LUMS scheme was that it was part of a system and that all issues within the system need to be considered in order to arrive at a composite answer. This would suggest that there is a need for a very good processing system and that the time taken to go through all the steps would take too long and that the Council is creating a "rod for its back".

A different official suggested that development is inherently good because it grows the economy and enhances lives, but that to achieve the good things, development needs to happen in a responsible manner and that regulation is about this. They further indicated that because the LUMS approach was more policy based and interpretive one needs good quality decision makers because there has to be synergy between facilitation and regulation. If this is done well then the benefit to the community will be greater. He was of the opinion that the new LUMS approach will be beneficial in the evaluation and assessment of special consent applications because officials would be working from one common base.

There would be clearer development objectives and a more open process, with the "nuts and bolts" of the scheme being very different to that of the current town planning schemes and more user friendly.

One more respondent stated that he thought that the developmental approach to local government has had an impact on the assessment of special consent applications in the sense that in the past people said "here's the regulation, here's the application, this is what we must do", but now, notwithstanding what the regulation says, they look at the entire circumstances, for example, economic benefit, and question "what can we do".

The officials were of the opinion that the new LUMS approach could have a positive impact on the assessment of special consent applications if it is structured in the correct way. They suggested that there is a need for templates to guide one how the

particular area should look in terms of the City's vision, and should include land uses, development density controls, and have any environmental issues detailed on the template. This would ensure that officials know what the City wants and do not just "pull ideas out of the sky."

One more official indicated that they felt that the new facilitatory approach to government had resulted in bring a freer control particularly in terms of politicians and that the local authority had become much more liberal in granting special consents. They further suggested that the "Table C: Land Uses" within the town planning schemes need to be adjusted to accommodate this new approach, that is, have more free entry uses and less land uses permitted only with special consent. They further indicated that they were not certain what the new LUMS approach is but that if it included Tax Incentives and Concessions, assessment of special consent applications would be balanced by other incentives granted.

#### 4.5.9. SUSTAINABILITY

Interviewees where asked whether they believed that issues of sustainability were adequately addressed in respect of the assessment and approval of special consent applications. The general consensus was that sustainability issues were not considered adequately as part of the decision making process. For instance it was suggested that because officials do not check whether a person's proposal is economically viable they are not necessarily sustainable. It was then suggested that the Economic Development unit should become a commenting body in respect of special consent applications, but acknowledged that this could further delay the assessment process. Another respondent felt that there was too much emphasis being placed on the natural environment in respect of assessments but not enough consideration given to the built environment. Furthermore, not enough consideration is given to servicing costs in respect of developments and that the City needs to confine urban sprawl to reduce costs. In the apartheid era eighty percent (80%) of finance was spent of ten (10%) of the population and now with the formation of the eThekweni Municipality the financial "pot" is not large enough to address issues of sustainability adequately.

One more interviewee considered the issue of sustainability in respect of the special consent process and suggested that there is gap between management and management styles in the local authority, and this led to imbalance in sustainability in respect of the special consent process. He alluded to the fact that the Batho Pele<sup>9</sup> principles in the Council are fundamental in addressing sustainability.

#### 4.5.10 ONGOING LEARNING

Interviewees were requested to provide their ideas and suggestions for setting up a system whereby practitioners can continue to learn and share their learning and as well as for the establishment of a criteria and conditions data base to facilitate the assessment of special consent applications.

One official suggested that establishment of continuing professional development workshops whereby a certain number of hours is set aside to learn from other colleagues experience and other professionals from outside Council. He was further of the opinion that a data base would become problematic because officials would not apply their minds sufficiently.

Some respondents suggested that the local authority should establish a website with relevant information and where officials could swop ideas, but also noted the limitations to this was that people would not always make time to use the system. Also the system was only as good as the information that was inputted into it. They were further of the opinion that workshops should be held to share information and that these workshops should included representation from the South African Planning Institute (SAPI) or alternatively be helped by SAPI. They were further of the opinion that regular staff meetings should be held to share information to all staff, including planning technicians, so that all role-players in the special consent process would have a better understanding of the Council's vision and goals, as well as the developmental constraints in respect of service delivery. With regards the proposed database they were of the opinion that there should be a manual of conditions for

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<sup>9</sup> Batho Pele refers to a government initiative to improve on service delivery as gazetted in the White Paper on Batho Pele on 1 October 1997.

each particular land use but that this manual should only be used as a guide as each application has its own set of peculiarities’.

Some respondents advised that the Council was attempting to put a new system in place, but it was only being implemented within the Central office of the local authority. This system is an attempt to provide a formal structured approach to the monitoring, evaluation and review of special consent applications. They were of the opinion that a criteria and conditions database for the assessment of special consent application would assist in giving officials a starting point for the assessment of applications. They further suggested that such database should have generic sectors, such as environment, traffic, housing, social and infrastructure, so that it could grow over time and further that the database should also have a regional connotation taking into account the various planning regions in the eThekweni Municipality, which all have their own idiosyncrasies.

#### **4.6. CONCLUDING INTERPRETATIONS**

The concluding interpretations will attempt to provide a synopsis of the main trends and patterns relating to the foregoing analysis and findings, as they relate to the research question and hypotheses.

The subsidiary question which relates to the type of land uses that special consent is applied for, as well as the type of objections and conditions attached thereto was analyzed under Section 4.2 above.

However, the research questions asks if standard policy based conditions of approval granted in respect of special consent applications for various land uses within the South Municipal Planning Region of the eThekweni Municipality, mitigate against objections or concerns raised against said applications?

#### 4.6.1. APPLICABILITY OF STANDARD CONDITIONS:

In considering the **standard conditions** of approval, it is reiterated that these were only implemented in the latter half of the research period, that is, during 2004. The applicability of each of these conditions is reviewed below:

##### **4.6.1.1 Condition 1**

PLANS - The development shall be substantially in accordance with the plan submitted with your application.

It is submitted that this condition would be relevant and applicable to many of the special consent land uses that are applied for. For example, cell masts and base stations, self contained residential units, medium density housing would all require construction in terms of the National Building Regulations Act and as such it is necessary to ensure that any building plan submitted is a true reflection of what was advertised and applied for.

##### **4.6.1.2 Condition 2**

SCHEME CONTROLS – The development shall be in accordance with the requirements of the XXXX<sup>10</sup> Town Planning Scheme in course of preparation to the satisfaction of the Head: Development Planning & Management.

Similarly it is considered that this condition is relevant and applicable and provides a “backstop” for any errors in the assessment and approval of the special consent application. For example, a person may apply to build a Church by Special Consent on a property zoned for Special Residential with an area of 900 m<sup>2</sup>. This may be permitted by Special Consent in terms of the town planning scheme tables, but there may be an additional requirement under Minimum Lot Size, contained within the Town Planning Scheme clauses that require that the minimum erf size for a Place of Worship is 3600m<sup>2</sup>. If the Council had approved the special consent erroneously the

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<sup>10</sup> The applicable town planning scheme name, for example, Amánzimtoti, was inserted here.



abovementioned condition would potentially give them an opportunity to remedy the situation.

However, when consideration is given to the principles of good governance and professional accountability as contained within the IDP and the White Paper on Spatial Planning and Land Use Management, referred to in Chapter Three, this type of error should not occur within the realm of special consent approvals or any form of land development approval.

#### **4.6.1.3 Condition 3**

**SUBMISSION OF PLANS** – Prior to commencement of any development related to this approval, building plans of the proposed development shall be submitted to, and approved by, the Head: Development Planning & Management.

This condition is also considered to be applicable to the approval of special consent application. Again this is for similar reasons as quoted above, namely to ensure that a person does not take the special consent approval as a right to commence building in the case of an application that requires construction. Furthermore, it seeks to ensure that the development, such as medium density housing, is actually built in the same fashion as was advertised for objections.

#### **4.6.1.4 Condition 4**

**AMENITY** – The amenities of the area shall not be disturbed. The Head Development Planning & Management shall be responsible for the interpretation of this condition.

While this condition may be commendable when one considers that principles contained within the existing land use management legislation, such as that referred to in Chapter Two, it is questioned as to how the Head: Development Planning & Management would interpret the amenities of a particular area. In this regard consideration must be taken of that person's own particular life experiences, levels of qualification and ability to accurately assess the need and desirability of the land use.

As indicated previously, often a person will fall back on the “status quo” in terms of decision making, that is, past experience and decisions will influence the current experience and research (Samuelson, W: 1988). With the advent of the amalgamation of the different sub structure Council’s into one Municipality, you now have many different cultures and societies living as “one” and what is considered amenity for one person or area, may not be the same in another.

Similarly, it is suggested that if officials apply their minds to the assessment of the proposal, as they indicated they do in Section 4.5. above, then they should have addressed the issue of amenity by determining that the proposal “fits” with the amenity of the particular area where it spatially sits.

#### **4.6.1.5 Condition 5**

**SITE MAINTENANCE** – the site shall be maintained in a neat and tidy condition at all times, to the satisfaction of the Head: Development Planning & Management.

It is submitted that this a would be relevant and applicable to many of the special consent land uses that are applied for, although the enforcement of this condition would not necessarily be a function of the Development Planning section of the Development Planning & Management Department, and it is debatable that it would be enforced by the Building Inspectors. Who determines what is “neat and tidy?” While most people experience a sense of pride in their development projects, in many instances the applicant will engage the services of builders and subcontractors, who are mostly interested in getting the job done in the quickest possible time and not necessarily concerned with what the site looks like.

#### **4.6.1.6 Condition 6**

**NOISE** –All noise generated shall be contained on site and shall not cause a disamenity or nuisance as defined in the Environmental Conservation Act 1989 (Act 73of 1989) the surrounding area.

The Environmental Conservation Act 1989 provides for the Minister to make regulations relating to the control of noise, including the definition thereof and further provides powers to the local authority to control noise. However, it is noted that noise is a very difficult aspect to monitor and control and the Planning & Development Department does not monitor noise within the Council, but this is an issue dealt with by the Health Department in the South MPR.

#### 4.7.1 ASSESSMENT: STRENGTHS AND WEAKNESSES

##### **4.7.1.1 Inconsistency in decision making**

Scrutiny of the conditions applied to the special consent applications that were approved by the South MPR prior to 2004, show definite inconsistency in respect of the approvals granted. For instance, in one residential application the objector had requested a pre-cast boundary fence to be erected along the common boundary to protect privacy and security, but this application was granted without any conditions. Whereas a similar application and request in the same area, six months later, saw the conditions that a pre-cast boundary fence be erected imposed. However, in fairness it could be argued that officials at the time assessed each application on its own merits and came to different conclusions.

It was acknowledged by officials during the in depth interviews that they are inconsistent in applying decisions. One of the reasons cited for this was that they were unable to remember what had been approved or refused in the past. This is where accurate record keeping could facilitate consistent decision making.

As indicated in Chapter Two planning legislation in South Africa has seen a shift away from being control-orientated towards being normatively based. This means that the law introduces substantive principles (norms) that must guide land development and decision-making. Policy based plans, also known as Integrated Development Plans (IDP's), are also normative in that they set out desired aims and this normative legislation calls for a proactive planning system which places the emphasis on prudent judgments and the discretion of decision makers, as apposed to the application of standardized rules and regulations.

Officials indicated that there are two sides to normative based decision making, with some believing that the freer system opens the way for abuse by persons in control, while others believe that it enhances the decision making process, by providing for more flexibility and giving the assessor the opportunity to consider the holistic picture or strategic plan for the area to ensure that the proposal is in line with it.

As alluded to earlier in this chapter, the Development Planning & Management Department introduced the Joint Decision Making Committee in attempt to reach consistent decisions, and it is submitted that this is a worthy attempt by management to re-address discrimination of the past. It is further noted that this committee was not responsible for special consent applications in the South MPR until 2004, when it was formed.

As may be seen under Section 4.5.2 above, most officials within the eThekweni Municipality have a grasp of the overarching principles of planning and it is noted that although they may not all articulate this into "planning speak" they have a general knowledge of what questions they need to ask when considering an application at a practical / technical level, and in cases of officials with a more theoretical and experienced background, the underpinning questions that relate to the principles contained in the IDP and SDF of the City. This is considered a strength on the assessment criteria because a variety of experience and opinion can stimulate debate and thought processes.

However, it can also be a weakness in respect of the assessment process because each official has their own views on how the application of criteria should be applied and these views are based on personal experience, years of experience, theoretical knowledge and even their "mood" at the time of the assessment. For example, one respondent indicated that when people got tired at the Joint Decision Making Committee meetings, decisions were made much faster and that there was less debate on the presentation of the application and recommendation.

Most officials acknowledged that the process is flawed in terms of the time taken to assess application and this aspect is dealt with further under Section 4.7.1.2 below.

#### 4.7.1.2. Legislative Process and Timeframes

In respect of the analysis of raw data it is noted that during the period January 2000 to December 2005 there appears to have been a disregard of the requirements of the Town Planning Ordinance No. 27 of 1949. In this regard it is noted that the department did not maintain an accurate register of all special consent applications lodged and attention is drawn to Section 67*quin* of the Town Planning Ordinance No. 27 of 1949 which states inter alia:

**“67*quin*. Register to be kept by local authority of joint committee.**-(1) In the case of an application for authority made to a local authority in terms of section 67, the local authority concerned shall record in a register the following information in respect of each such application, namely:-

- (a) the name and address of the applicant;
- (b) the date of the application, and the name and address of the registered owner of the land concerned as at the date of the application;
- (c) the registered description of the land concerned in the office of the Registrar of Deeds;
- (d) the decision of the local authority in respect of the application in terms of section 67 or section 67*bis*, as the case may be, and the date of such decision;
- (e) the conditions (if any) imposed by the local authority in terms of sections aforesaid in approving the application;
- (f) in the event of an appeal against the decision of the local authority in terms of section 67*ter*, the decision of the appeals board including the conditions (if any) imposed by it, together with the decision of the Administrator on review under the provisions of section 73*sex*, and
- (g) such other information as the local authority may deem necessary.

(2) Every such register shall include a suitable index which may be in the form of a map.

(3) The information which the local authority is required to record in the register in terms of paragraphs (a), (b), (c), (d) and (e) of sub-section (1) shall be entered in

such register within fourteen days of the date of the decision of the local authority referred to in the said paragraph (d).

- (4) The register referred to in this section shall be kept at the office of the local authority and, in the case of a local authority which is not a joint committee, at such office as may be designated by such committee and such register shall be open for inspection free of charge by any person during office hours.” (1949:60)

During the data collection phase that at the South Municipal Planning Region Town planning offices it was noted that the special consent registers did not contain the relevant information as described above and in twenty instances were so deficient that no further investigation could be undertaken of these applications. One of the registers for 2003 had been mislaid.

As indicated under Chapter 2, Section 67 *bis* of the Town Planning Ordinance No. 27 of 1949, details the process to be followed in respect of special consent applications, including the relevant timeframes that should to be adhered to.

Section 67*bis* (4) (a) of the Ordinance states inter alia that:

“(4)(a) Subject to the provisions of subsection (5), the local authority shall take into consideration all written objections lodged with it before the date fixed in the notice and shall come to a decision upon the application, as published, within a period of two months of the receipt of the period agreed on by the local authority or its duly authorized representative and the applicant, and upon failure to agree on such further period, the application shall be deemed to have been refused at the expiry of the said period of two months” (1949: 58)

It was noted that in respect of the thirty eight (38) cell mast and base station applications, officials at the South MPR Town Planning Department made no attempt to reach an agreement on an extension of the two month time limit in which to consider the application, that is imposed in terms of Section 67*bis* 4(a) of the Ordinance, with the applicant's. Furthermore, the eThekweni Municipality deemed these applications to be “file closed” instead of refused.

Similarly, the twenty two applications that had not been finalized by the eThekweni Municipality as at September 2006, were also “out of time” in terms of the abovementioned legislation and as such should have been deemed refused.

The above examples are indicative of the institutional situation within the South MPR during the investigation and the years of the study, that is, 2000 to 2005. The reasons for this appear to be that:

- There was a lack of institutional capacity in respect of mentorship and training of staff by management in respect of the legislated requirements in respect of special consent applications and processes. This is evidenced by the fact that there was limited record keeping, or adherence to legislated process and timelines.
- An apparent disregard of the legislative requirements by decision makers in respect of advising objectors of their right of appeal in terms of Section 67*ter* of the Town Planning Ordinance No. 27 of 1949, until 2004, perhaps because the existing legislation was considered outdated by officials. However, this attitude would fly in the face of the principles of good governance, fairness and transparency.
- Officials suffered from a level of complacency, brought on by the change in administration, the amalgamation process; disparity in pay and working conditions between different “entities”

It was noted during the interviews with officials that one problem with the decision making process was that the information provided by the applicants was sometimes insufficient to enable the officials to make an informed decision, and that more than one request was made to the applicant to provide additional information. In this regard it is suggested that if the officials adhered to the abovementioned requirements of the Town Planning Ordinance No. 27 of 1949, and advised applicants that if Council had not received the requisite information within a specified

time, that the two month assessment period would lapse and the application would be deemed refused, then officials would get a quicker response from applicants.

Furthermore, if the applicant then came back to Council with a valid reason (perhaps the proposal needed to follow the Environmental Basic Assessment process) as to why he could not meet the laid down deadline they could reach an agreement on the extension of time in terms of Section 67*bis* (4) (a).

While it is acknowledged that most practitioners agree that this legislation is outdated, and that it does not meet the requirements of the current policy within the country in respect of creating a more livable society, it is the legislation that was in force and affect during the study period and is still in force and affect today. Furthermore, it is entrenched in the South MPR town planning schemes and until such times that this legislation is repealed the Council should abide by it. This is therefore considered to be a weakness in the process of assessment and approval of special consent applications in the South MPR.

One of the main weaknesses sited in the assessment process, and consequently the assessment criteria, is the reliance of the Development Planning section on comment and input from service departments. While it is acknowledged that this input is vital, as the City's infrastructure can only sustain so much development, it was felt that the service department were not always committed team-players in the process, and further that the service department often lacked the capacity to comment on special consent applications timorously.

#### **4.7.1.3 Enforcement**

From the responses received from the objectors in respect of certain of the special consent approvals, such as the Riding School and some of Residential land use applications, it would appear that during the period of the research enforcement by the Council was inefficient. This may have been due to the fact that there was not designated Enforcement officer within the South MPR during the five year period under investigation, and further that the Town Planning Technicians, who were responsible for enforcement of planning decisions in terms of the their job



descriptions, were not trained as Peace Officers, and therefore could not legally service notice on offenders.

From the abovementioned concluding interpretations it is submitted that the standard policy based conditions of approval granted by the Ethekewini Municipality, since its inception in 2000, in respect of special consent applications for various land uses in the South Municipal Planning Region, do not **always** mitigate against objections or concerns raised against said applications.

## CHAPTER FIVE

### CONCLUSION AND RECOMMENDATIONS

The aim of this research was to evaluate whether or not the **standard policy based conditions of approval** granted in respect of special consent applications for various land uses within the South MPR of the eThekweni Municipality, mitigate against objections or concerns raised against said applications. The study period chosen was between January 2000 to December 2005, the commencement of the period coinciding with the amalgamation of six former substructure Council into one Council, in terms of the Municipal Structures Act No.117 of 1998. What has become apparent during the investigation is that this was a time fraught with change both in legislation and with the institutional arrangements within the Council, with both impacting on the outcome of this research.

Until 2004, decisions on special consent applications within the South MPR were made in the main unilaterally in terms of delegated authority, and there were no apparent assessment criteria or standard conditions applied to the approval of special consent applications. However, from 2004 onwards standard conditions of approval were introduced which were applied to all special consent approvals whether there were objections or not. These conditions were examined under Section 4.6.1. and it is concluded that while these conditions have merit, the conditions relating to Amenity , Site Maintenance and Noise, while applicable in certain instances, add little value if they are not enforced. This leads us to the question of enforcement and the institutional arrangements within the municipality.

It is evident from the investigations undertaken that enforcement was lacking in the South MPR during the study period due to the institutional arrangements. For example, the Town Planning Technicians who were tasked with enforcement of planning matters could not serve legal notices as they were not trained as Peace Officers. This issue does not appear to be one that has received much attention within Council during the study period.

As alluded in Section 4.7.1.2. it became evident that legislated processes and timeframes within the South MPR were inefficient and ineffective, which had a significant impact on both the assessment process and approval process. The mere fact that thirty eight (38) applications were deemed file closed, as opposed to refused, contrary to the legislative requirements of the Natal Town Planning Ordinance No 27 of 1949, severely disadvantaged those applicants, and contravenes the principles of the Constitution of the Republic of South Africa, whereby procedural and participatory rights to ensure accountability for decision-making, are entrenched, as well as the principles of the Development Facilitation Act that promote transparency, fairness and good governance.

It is apparent that there are different levels of knowledge within the Council, and further that there is a mix of practitioners and decision makers who come from the apartheid era, who bring a wealth of experience to the table at a practical level, and practitioners who have gleaned their theoretical knowledge more recently and who do not have as much practical experience. This “pot” of knowledge, combined with the concomitant efforts by management to achieve consistent decision making, can provide the means for achieving integrated and sustainable development throughout the city, in line with the requirements of the IDP.

However, in order to achieve this it is recommended that the following issues need to be addressed:

- There needs to be resolution on the institutional matters such as the employment conditions and pay parity amongst officials doing the same type of work in the different “entities” or planning regions, as a means to redress imbalances of the past and promote a feeling of harmony amongst officials, thereby reducing the attitude of complacency.

- Management needs to seek ways of providing ongoing training on the current and proposed legislation. The reason for this recommendation is that it was obvious during the interview of officials that many of them felt that they were being bypassed in the transformation process and were skeptical about the proposed new LUMS that is being promoted within the Development Planning & Management Department.
- Similarly, talk sessions and workshops, which are combined with in loco inspections of the different areas within the Council, will help staff to broaden their knowledge of the area, enhance their awareness of different cultural expectations and promote a sense of ownership in the process which will facilitate a better understanding when assessing applications and applying conditions thereto. This would also include sessions with service delivery units so that officials in the town planning department glean an understanding of the constraints faced by these units.
- Management needs to seek ways of instilling the Batho Pele principles in all staff in order that there is co-operation and commitment to teamwork, both within the Development Planning and Management Department, and between that department and other service delivery units, to ensure quick turn around times for assessment of special consent applications.
- A system needs to be put in place that ensures that all service delivery units are made aware of conditions attached to special consent approvals, so as to ensure that these conditions come into force and effect. For example, when a condition states that a boundary fence is to be erected between two properties, this needs to be relayed to the Building Inspectorate who facilitate the approval of both building plans and developments.

- The record keeping system in terms of the requirements of legislation needs to be improved to ensure effective and efficient processing and assessment of applications. Staff need to be educated on the importance of this and a working record system will also facilitate consistent decision making, with persons having the ability to examine a register to remind themselves of previous decisions in similar matters. These registers should be reviewed regularly to ascertain that applications are being processed timorously and regular inspections should be undertaken of all properties which have conditions of approval attached to them particularly in the case of where objections were lodged, in order to ascertain compliance therewith.
  
- In terms of the problems being experienced with insufficient information being provided, Council could consider implementing a policy that clearly sets out the full requirements of the application submission and also the time period, say twenty one days, in which additional information must be provided. It could further state that only one referral notice will be sent out and should the applicant fail to respond timorously the application will be considered and could be refused due to lack of information. Furthermore the new Land Use Management Bill (2007) provides for practitioners to be registered with the South African Council for Planners, as has been done in the architectural sector, which should alleviate some of the problems identified.

In conclusion it is submitted that the hypothesis that standard policy based conditions of approval granted by the Ethekwini Municipality, since its inception in 2000, in respect of special consent applications for various land uses in the South Municipal Planning Region, do not always mitigate against objections or concerns raised against said applications, is not valid, for two reasons. Firstly, standard policy based conditions were not applied for the first three years of the study period and since 2004 the ones that have, could mitigate against impacts if they are enforced correctly.

Secondly the research has shown that institutional issues within the eThekweni Municipality are the cause of the perception that the conditions attached to special consent approvals do not mitigate against impacts due to lack of enforcement, poor record keeping and a feeling of complacency amongst officials who have been disheartened by the transformation / amalgamation process.

While the research has shown that institutional arrangements within the eThekweni Municipality are amiss, and that there is an urgent need for management to resolve these institutional problems, it is suggested that the implementation of the Land Use Management Bill, 2007, which requires that all persons involved in the submission and processing of planning applications must be suitably qualified and registered with the South African Council for Planners, will assist management in resolving these issues.

Furthermore, the Municipality needs to align the current South MPR town planning schemes with its IDP, and make them more up-to-date and flexible enough to allow for special consent applications to be assessed more effectively and timorously and officials will need to develop a greater local knowledge of their particular areas of control, having cognizance of political, social, economic and environmental factors as well as the physical domain.

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Development Facilitation Act No.67 of 1995

KwaZulu-Natal Planning & Development Act No.5 of 1998

KwaZulu-Natal Land Use Management Bill, 2001 and 2003

KwaZulu-Natal Town Planning Ordinance No. 27 of 1949

Local Government Municipal Systems Act No.32 of 2000

National Development and Planning Commission Green Paper on Development and Planning (1999)

National Environmental Management Act No.107 of 1998

The South African Constitution

White Paper of Spatial Planning and Land Use Management, July 2001



## APPENDIX 1

Special Consent Register

South Municipal Planning Region  
Ethekewini Municipality

January 2000 to December 2005

APPLICATION NO	DATE	PROPOSED USE	OBJECTIONS	RESULT	DATE
C1/00	7/2/00	Auto Valet Services	Yes	Approved	27/3/00
C2/00	7/2/00	SCRU on 1 m building line		Approved	9/3/00
C3/00	7/2/00	Fast food & Postnet outlet		Approved	6/4/00
C4/00	14/2/00	Cellmast & Base Station	Yes	File Closed	27/06/01
C5/00	3/3/00	Gas Filling & Cylinder Validation Repair Facility	Yes	Refused	29/5/00
C6/00	28/2/00	SCRU on 1 m building line		Approved	18/4/00
C7/00	28/2/00	Community Care centre	Yes	Approved	9/5/00
C8/00	3/3/00	Cellmast & Base Station		Approved	18/09/00
C9/00	3/3/00	Cellmast & Base Station		Approved	13/9/00
C10/00	5/4/00	Horse riding School	Yes	Approved	10/8/00
C11/00	4/4/00	Service Station	Yes	Approved	13/6/00
C12/00	6/4/00	Garages / SCRUs		Approved	10/05/00
C13/00	17/4/00	3 dwelling units	Yes	Approved	29/8/00
C14/00	12/5/00	Motor car Workshop		Approved	26/7/00
C15/00	12/5/00	Motor car showroom		Approved	26/7/00
C16/00	18/5/00	Cellmast & base Station		File Closed	27/06/01
C17/00	8/6/00	Cellmast & Base Station		Approved	19/06/02
C18/00	8/6/00	Cellmast & Base Station		File Closed	25/06/02
C19/00	00/02/06	Service Warehouse	Yes	Approved	12/09/00
C20/00	9/6/00	Cellmast & Base Station		Approved	13/09/01
C21/00	28/6/00	Garage/SCRUs		Approved	14/08/00
C22/00	14/7/00	Cellmast & Base Station		File Closed	27/06/01
C23/00	14/7/00	Cellmast & Base Station		File Closed	27/06/01
C24/00	14/7/00	Cellmast & Base Station		File Closed	27/06/01
C25/00	14/7/00	Cellmast & Base Station		File Closed	27/06/01
C26/00	14/7/00	Cellmast & Base Station		File Closed	27/06/01
C27/00	18/7/00	Cellmast & Base Station		File Closed	8/09/00
C28/00	18/7/00	Cellmast & Base Station		File Closed	8/09/00
C29/00	30/08/00	Conversion of outbuilding to office		File Closed	05/06/01
C30/00	23/8/00	Church	Yes	Approved	24/11/00
C31/00	28/8/00	Sales showroom		File Closed	5/10/00
C32/00	30/8/00	Motor car Workshop		File Closed	5/10/00
C33/00	8/9/00	Cellmast & Base Station	Yes	File Closed	07/03/02
C34/00	8/9/00	Cellmast & Base Station	Yes	File Closed	07/03/02
C35/00	8/9/00	Cellmast & Base Station	Yes	File Closed	07/03/02
C36/00	8/9/00	Cellmast & Base Station	Yes	File Closed	07/03/02
C37/00	8/9/00	Cellmast & Base Station	Yes	File Closed	13/12/00
C38/00	8/9/00	2nd dwelling		Approved	18/10/00

APPLICATION NO	DATE	PROPOSED USE	OBJECTIONS	RESULT	DATE
C39/00	8/9/00	SCRU#		Approved	24/10/00
C40/00	8/9/00	Dwelling with 2 flats below		Approved	22/11/00
C41/00	20/9/00	4 additional dwelling units		Approved	22/11/00
C42/00	29/9/00	3 dwelling units		Approved	7/12/00
C43/00	2/10/00	Drs rooms		Approved	21/11/00
C44/00	18/10/00	Cellmast & Base Station		Approved	28/06/01
C45/00	3/11/00	Cellmast & Base Station	Yes	File Closed	07/03/02
C46/00	3/11/00	Cellmast & Base Station	Yes	File Closed	07/03/02
C47/00	3/11/00	Cellmast & Base Station	Yes	File Closed	07/03/02
C48/00	13/11/00	Sulphuric Acid Plant		File Closed	16/01/02
C49/00	24/11/00	Institutional purposes		NO RECORDS	
C50/00	31/12/00	Montessori Pre-primary School		Approved	06/03/01
		2001			
C1/01	26/01/01	Cellmast & Base Station		File Closed	07/03/02
C2/01		NO RECORDS		NO RECORDS	
C3/01	01/01/02	Cellmast & Base Station	Yes	Approved	29/08/01
C4/01	13/02/01	Cellmast & Base Station	Yes	File Closed	06/03/02
C5/01	09/03/01	Day Care Centre		Approved	19/06/01
C6/01	22/03/01	Re-distillation process		Approved	13/03/02
C7/01	23/03/01	Cellmast & Base Station	Yes	File Closed	06/03/02
C8/01	23/03/01	Cellmast & Base Station	Yes	File Closed	06/03/02
C9/01		NO RECORDS		NO RECORDS	
C10/01	30/03/01	Cellmast & Base Station		file closed	07/03/02
C11/01	30/03/01	5 dwelling units		Approved	24/05/01
C12/01	20/04/01	Consulting Rooms		file closed	23/08/01
C13/01	20/04/01	Additional dwelling		Approved	15/06/01
C14/01	01/03/05	Double garage		Approved	01/05/07
C15/01		NO RECORDS		NO RECORDS	
C16/01	18/05/01	Warehouse on relaxed building line		File Closed	16/01/92
C17/01	25/05/01	Coffee Shop		Refused	04/07/01
C18/01	26/11/01	Conversion of flats to offices		Approved	26/11/01
C19/01	25/05/01	Conversion of flat to office		Approved	26/11/01
C20/01	22/06/01	9 dwelling units		Approved	23/07/01
C21/01	22/06/01	SCRU ohm relaxed building line		Approved	23/07/01
C22/01	27/06/01	Additional dwelling		Approved	09/10/01
C23/01	27/07/01	9 dwelling units	Yes	Approved	19/10/01
C24/01		NO RECORDS		NO RECORDS	
C25/01		NO RECORDS		NO RECORDS	



APPLICATION NO	DATE	PROPOSED USE	OBJECTIONS	RESULT	DATE
C26/01		NO RECORDS		NO RECORDS	
C27/01	21/09/01	Day Care Centre	Yes	Approved	13/02/02
C28/01	21/09/01	Day Care Centre		Approved	06/11/01
C29/01	27/09/01	Cellmast & Base Station		Approved	06/02/02
C30/01	05/10/01	New mill tower at SAB		Approved	26/11/01
C31/01	12/10/01	Dancing Studio		Approved	07/11/01
C32/01	12/10/01	4 dwelling units	Yes	Approved	14/02/02
C33/01	16/11/01	Garden Nursery		Approved	18/06/02
C33/01	08/11/01	Cellmast & Base Station		Approved	18/01/02
C34/01		NO RECORDS		NO RECORDS	
C35/01	16/11/01	SCRU ohm relaxed building line		Approved	19/12/01
C36/01	26/11/01	SCRU ohm relaxed building line		Approved	19/12/01
C37/01	26/11/01	5 dwelling units		Approved	27/12/01
C38/01	26/11/01	Church		Approved	27/12/01
		<b>2002</b>			
C1/02	15/01/02	Day Care Centre		Approved	07/03/02
C2/02	01/02/02	Cellmast & Base Station		Approved	23/05/02
C3/02	07/02/02	Cellmast & Base Station		Approved	22/08/02
C4/02	12/02/02	Car Wash Facility		NO RECORDS	
C5/02	08/02/02	Cellmast & Base Station		File Closed	16/07/02
C6/02	15/02/02	Trade in Livestock		Refused	09/09/02
C7/02	15/02/02	Petrol Service Station		Approved	21/11/02
C8/02	22/02/02	Bar / Place of Pub Entertainment		Approved	16/04/02
C9/02	05/03/02	Cellmast & Base Station		Approved	16/04/02
C10/02	15/03/02	Church, creche, comm. Hall, Training Centre,	Yes	Approved	09/09/02
C11/02	15/03/02	Cellmast & Base Station		Approved	08/04/02
C12/02	05/04/02	Relaxation for garages/ boundary walls		Approved	22/10/02
C13/02	15/04/02	Offices		Approved	06/08/02
C14/02	15/04/02	Church		Approved	06/06/02
C15/02	16/04/02	Relaxation of side spaces		Approved	06/06/02
C16/02	29/04/02	Relaxation of side space for roof room		Approved	22/05/02
C17/02	29/04/02	Relaxation for electrical substation		Approved	22/05/02
C18/02	20/05/02	Relaxation of side space & building line "as		Approved	20/06/02
C19/02	20/05/02	Relaxation of side spaces & building line "as		Approved	20/06/02
C20/02	12/06/02	Garden Nursery		Approved	07/11/02
C21/02		Relaxation of building line for roof		Approved	01/08/02
C22/02	28/06/02	Tavern		Approved	26/08/02
C23/02	02/07/02	Day Care Centre	Yes	Refused	04/04/03

APPLICATION NO	DATE	PROPOSED USE	OBJECTIONS	RESULT	DATE
C24/02	07/02/02	Relaxation for log cabins		Approved	06/09/02
C25/02	09/07/02	Conference Centre		Approved	20/11/02
C26/02	20/08/02	Cellmast & Base Station		File Closed	23/05/03
C27/02	20/08/02	Cellmast & Base Station		File Closed	23/05/02
C28/02	26/08/02	Car Wash Facility		Approved	23/10/02
C29/02	06/09/02	Conversion of outbuilding to granny flat		Approved	9/10/02
C30/02	06/09/02	Place of Public Entertainment		Approved	17/02/03
C31/02	06/09/02	2 units on relaxed building line		Approved	08/11/02
C32/02	13/09/02	SCRU on relaxed building line		Approved	09/10/02
C33/02	30/09/02	Tavern		Approved	10/02/02
C34/02	04/10/02	Warehouse on relaxed building line		Approved	14/11/02
C35/02	18/10/02	SCRU on relaxed building line		Approved	11/08/03
C36/02	21/10/02	Additional unit		Approved	23/12/02
C37/02	28/10/02	Shops on relaxed building line		Approved	23/10/02
C38/02		Workshop		Approved	29/09/03
C39/02	15/11/02	SCRU		Approved	23/12/02
C40/02	22/11/02	Parking on relaxed side space		Approved	09/12/02
C41/02	22/11/02	Parking on relaxed side space		Approved	09/12/02
		<b>2003</b>			
C1/03	17/01/03	Convert outbuilding into office		Approved	
C2/03		Operate restaurant & place of Public		Approved	12/03/03
C3/03	17/01/03	Relaxation for garages		Approved	11/03/03
C4/03	21/01/03	67 dwelling units		Approved	10/03/03
C5/03	22/01/03	Cell mast		Approved	
C6/03	23/01/03	Relaxation of building line for factory extensions		Approved	
C7/03	11/02/03	Additional unit on relaxed building line		Approved	28/03/03
C8/03		<b>NO APPLICATION</b>			
C9/03	17/02/03	SCRU on relaxed building line		Approved	
C10/03	17/02/03	SCRU		Approved	
C11/03	17/02/03	Relaxation for offices		Approved	
C12/03	17/02/03	Relaxation for factory extensions		Approved	14/04/03
C13/03	18/02/03	SCRU on relaxed building line		NO RECORDS	
C14/03	19/02/03	Retaining wall exceeding 2m in height		Approved	09/06/05
C15/03		<b>NO APPLICATION</b>			
C16/03	06/03/03	SCRU on relaxed building line		Approved	10/03/03
C17/03	07/03/03	Cellmast & Base Station		Approved	11/07/03
C1/04	09/01/04	Garage with living area above on relaxed		Approved	03/04/03
C2/04	04/09/01	10 Dwelling units		Approved	08/01/04



APPLICATION NO	DATE	PROPOSED USE	OBJECTIONS	RESULT	DATE
C3/04	04/06/02	Creche		Not finalised	
C4/04	17/02/04	4 dwelling units on relaxed building line		Approved	02/06/04
C5/04	20/02/04	Creche & Pre-school		Refused	12/03/04
C6/04	04/01/03	SCRU & Garage		Approved	03/05/07
C7/04	04/04/03	Physiotherapy practice		Approved	05/04/04
C8/04	04/05/03	Refuse Bin room on relaxed building line		Approved	05/04/04
C9/04	29/03/04	Conversion 1st floor flat to office		Approved	15/07/04
C10/04	29/03/04	16 Dwelling Units		Approved	05/05/05
C11/04	29/03/04	Guest house		Approved	06/05/04
C12/04	29/03/04	NO RECORDS		NO RECORDS	
C13/04	23/04/04	SCRU		Approved	07/04/15
C14/04	05/04/05	10 Dwelling units		Approved	12/04/15
C15/04	04/10/05	NO RECORDS		NO RECORDS	
C16/04	04/10/05	Vetinary Practice		NO RECORDS	
C17/04	27/05/04	Cellmast & base station		Approved	03/08/04
C18/04	27/05/04	Cellmast & base station		Approved	03/08/04
C19/04	28/05/04	NO RECORDS		NO RECORDS	
C20/04	04/04/06	Educate Centre		File Closed	12/04/07
C21/04	04/08/06	SCRU		Approved	01/05/18
C22/04	04/09/06	Dwelling units on relaxed building line		Approved	29/09/04
C23/04	14/06/04	6 dwelling units		Approved	20/08/04
C24/04	18/06/04	Factory on relaxed building line		File Closed	15/12/04
C25/04	18/06/04	13 dwelling units		Approved	05/08/03
C26/04	18/06/04	Offices on relaxed building line		File Closed	07/12/04
C27/04	18/06/04	Additions to shopping centre		Approved	04/01/10
C28/04	30/06/04	NO RECORDS		NO RECORDS	
C29/04	04/12/07	Garages on relaxed building line		File Closed	07/12/04
C30/04	04/12/07	NO RECORDS		NO RECORDS	
C31/04	13/07/04	Guest house		Approved	21/09/04
C32/04	16/07/04	Dwelling units on relaxed building line		Approved	04/10/09
C33/04	16/07/04	Guest house		Approved	31/08/04
C34/04		APPLICATION CHANGED TO RELAXATION			
C35/04	04/05/08	Guest house	yes	Approved	31/08/04
C36/04	20/08/04	Dwelling units		Approved	
C37/04	20/08/04	Additional dwelling unit		Approved	04/01/10
C38/04	25/08/04	Medical Practice on SR site		Approved	22/10/04
C39/04	26/08/04	SCRU		Approved	15/10/04
C40/04	04/01/09	NO RECORDS		NO RECORDS	

APPLICATION NO	DATE	PROPOSED USE	OBJECTIONS	RESULT	DATE
C41/04	04/01/09	Conversion outbuilding into dwelling unit		Approved	04/01/11
C42/04	04/02/09	Cellmast & base station		Approved	22/02/05
C43/04	04/06/09	Carports on relaxed building line		Approved	14/10/04
C44/04	04/09/09	Guest house		Approved	03/05/05
C45/04	04/09/09	110 dwelling units		Approved	
C46/04		SCRU		Approved	29/10/04
C47/04		Additional floor to dwelling unit on relaxed		Approved	01/11/04
C48/04	21/9/04	Guest house		Approved	03/08/04
C49/04	04/01/10	Compressor building		Approved	11/01/05
C50/04	04/04/10	Extension to factory on relaxed building line		Approved	09/11/04
C51/04	21/10/04	Dive Charter Business		File Closed	12/04/06
C52/04	21/10/04	SCRU		Approved	01/05/12
C53/04	22/10/04	47 Dwelling Units		Approved	04/06/04
C54/04	03/11/04	Travel Agency from dwelling		Approved	12/04/15
C55/04	04/09/11	Bed & Breakfast Establishment		Approved	07/12/04
C56/04	16/11/04	Tavern		Approved	07/05/13
C57/04	17/11/04	28 Dwelling Units		Approved	28/07/05
		<b>2005</b>			
C1/05	05/06/01	SCRU		Approved	24/02/05
C2/05	05/07/01	10 dwelling units		Not finalised	
C3/05	05/11/01	11 Dwelling Units	Yes	Not finalised	
C4/05	13/01/05	New Paint plan Toyota		Approved	08/03/05
C5/05	26/01/05	21 Dwelling Units		Approved	14/03/05
C6/05	26/01/05	SCRU on relaxed side space		Approved	08/03/06
C7/05	05/12/02	Home based business		Refused	16/3/04
C8/05	14/02/05	244 dwelling units		Not finalised	
C9/05	15/2/05	Service Station & Convenience Shop		Approved	22/03/05
C10/05	16/2/05	Conversion of outbuilding to offices		Not finalised	
C11/05	16/02/05	Day care Centre		File Closed	25/05/06
C12/05	24/02/05	Storeroom on relaxed side space	yes	Approved	31/05/05
C13/05	03/03/05	SCRU		Approved	24/05/05
C14/05	18/03/05	Cellmast with base station	Yes	Not finalised	
C15/05	18/3/05	NO RECORDS		NO RECORDS	
C16/05	05/06/04	SCRU on relaxed side space		Not finalised	
C17/05	05/08/04	Guest House		Refused	10/08/06
C18/05	05/08/04	SCRU		Approved	14/06/05
C19/05	05/08/04	SCRU		Approved	05/09/05
C20/05	18/4/05	Treatment Rooms		Not finalised	
C21/05	18/04/05	2 dwelling s on relaxed side space		Approved	04/10/05



APPLICATION NO	DATE	PROPOSED USE	OBJECTIONS	RESULT	DATE
C22/05	25/04/05	3 dwelling units		Not finalised	
C23/05	25/05/05	Guest House		Not finalised	
C24/05	05/05/05	22 dwelling units		Not finalised	
C25/05	25/05/05	SCRU		Approved	28/06/05
C26/05	05/06/05	Dwelling on relaxed side space		Approved	02/08/05
C27/05	05/10/05	Backpackers Lodge		Approved	20/09/05
C28/05	13/05/05	Warehouse on relaxed building line		Not finalised	
C29/05	18/05/05	SCRU		Approved	16/08/05
C30/05	23/5/05	Offices		Approved	12/08/05
C31/05	20/5/05	4 dwelling units		Not finalised	
C32/05	20/05/05	Dwelling Units		Approved	04/10/05
C33/05	25/05/05	SCRU		Not finalised	
C34/05	05/06/06	5 dwelling units		Not finalised	
C35/05		SCRU		Approved	12/08/05
C36/05	05/09/06	42 dwelling units	Yes	Not finalised	
C37/05	20/06/05	SCRU		Approved	06/09/05
C38/05	30/06/05	SCRU		Not finalised	
C39/05	14/07/05	NO RECORDS		NO RECORDS	
C40/05	13/07/05	Garage on relaxed building line	Yes	Not finalised	
C41/05	14/07/05	NO RECORDS		NO RECORDS	
C42/05	21/07/05	Paper Store		Approved	31/05/05
C43/05	05/02/08	Tavern		Not finalised	
C44/05	05/05/08	Accounting Buisness @ home		Approved	08/12/05
C45/05	05/12/08	CONVERTED TO TPDA 05/05			
C46/05	18/08/05	Gazebo on relaxed side space		Approved	19/10/05
C47/05	25/08/05	26 dwelling units	Yes	Approved	07/03/06
C48/05	29/08/05	6 dwelling units		Not finalised	
C49/05		CONVERTED TO TPDA 06/05			
C50/05	05/08/09	Shop on relaxed building line & side space		Approved	05/05/06
C51/05	13/09/05	SCRU on relaxed side space		Approved	02/11/05
C52/05	29/05/05	Substation & carport on relaxed building line		approved	06/12/06
C53/05	28/10/05	Guardhouse on relaxed building line		Approved	08/03/06
C54/05	05/04/11	15 dwelling units		Not finalised	
C55/05	16/11/05	Garages & Storerooms		Approved	12/07/06
C56/05	18/11/05	NO RECORDS		NO RECORDS	
C57/05	18/11/05	5 dwelling units		Not finalised	

#SCRU = Self Contained Residential Unit



## APPENDIX 2

### Structured Interviews Questionnaire

**QUESTIONNAIRE**  
**PERONS WHO LODGED OBJECTIONS AND / OR REPRESENTATIONS**  
**AGAINST SPECIAL CONSENT APPLICATIONS FOR VARIOUS LAND USES**  
**WITHIN THE SOUTH ENTITY OF THE ETHEKWINI MUNICIPLITY**

(Ethics Reference Number: HSS/06439A )

**Conditions of approval for special consents – do they really work?**

Study to investigate whether or not the standard policy based conditions of approval granted in respect of special consent applications for various land uses within the South entity of the eThekwini Municipality, mitigate against objections or concerns raised against said applications? A further aim is to develop a set of criteria and a database to assist in the assessment and approval of future special consent applications so as to limit negative impacts.

**Introduction:**

I am a Masters student from University of KwaZulu-Natal and am doing research on the applicability of the conditions attached to the approval of special consent applications for various land uses within the South entity of the eThekwini Municipality. Research is just the process to learn the answer to a question. In this study I want to learn about how various conditions attached to the approval of various land uses have actually prevented or minimized any negative impacts on surrounding properties.

I am requesting that you participate in this research study so that I can find out more about how the approval of a land use, by special consent, has, or has not affected you, as you have been identified as having lodged and objection / or representation to a specific special consent application.

What is involved in the study – I have a questionnaire that I would like you to complete and return to me by way of the self addressed; stamped envelope, enclosed herewith.

There are no risks to being involved but no one is forced to take part and there will be no negative consequences either if you decide not to take part. If you agree to take part I hope that the information that I obtain will be used to develop a set of criteria and a database to assist in the assessment and approval of future special consent applications so as to limit negative impacts. If you do not want to answer any question, you do not have to and you are free to withdraw at any stage.

**Confidentiality:** Efforts will be made to keep personal information confidential. Absolute confidentiality cannot be guaranteed. Personal information may be disclosed if required by law.

**Contact details of researcher** – for further information please contact:

Barbara Parker  
13 Harcombe Road, Warner Beach, 4126  
Telephone: 031 – 913 4382  
Cellphone: 083 2844915  
e-mail: [parkerbarbara@durban.gov.za](mailto:parkerbarbara@durban.gov.za)

**Supervisor's name and details:**

Ms Nancy Odendaal  
Univeristy of KwaZulu-Natal  
School of Architecture, Planning & Housing  
Telephone: 031 – 2601200  
e-mail: [Odendaaln1@ukzn.ac](mailto:Odendaaln1@ukzn.ac)

**QUESTIONNAIRE**

Kindly complete all relevant questions and delete that which is not applicable.

- 1. SURNAME:..... 2. Mr/Mrs/Ms/Dr/Prof/other
- 3. FIRST NAMES:.....
- 4. STREET ADDRESS:.....
- 5. CADASTRAL DESCRIPTION / ERF NUMBER (If known).....

**You lodged an objection and/or representation against a special consent application.**

6. What was the nature of land use being applied for to which you objected?  
.....

7. Was the proposed land use situated on a property adjoining your property / across the road from your property / or situated in the vicinity of your property?  
.....

8. What was the nature of your objection / representation?  
.....

9. Why did you object to the application?  
.....

10. Had you had previous disputes or disagreements with the applicant? **YES/NO**

**The local authority subsequently approved the special consent application, allowing the applicant to proceed with the proposed land use.**

11. Were your concerns or objections addressed by the local authority in granting the application. **YES/NO**

12. **Please elaborate further:**.....

13. How has this land use affected you?.....  
.....
14. Has there been an increase in traffic in your area? **YES/NO**
15. Has this increase, if any, caused time delays for you? **YES/NO**
16. Does traffic inconvenience you in any way now? .....
- .....
17. Has the land use had a negative effect on the visual appearance of the environment? That is, does the land use detract from the area, in your opinion?  
**YES/NO**
18. **If YES, please explain:**.....  
.....
19. Does the land use create a problem for you with regards to noise? **YES/NO**
20. **If YES,** is it during **DAYTIME** hours or **NIGHTTIME** hours?
21. What is the nature of the noise impact? What causes it?  
.....  
.....
22. Do you believe that the permitted land use has had the effect of devaluing your property? **YES / NO**
23. **If YES, please explain:**.....  
.....
24. Do you have any suggestions or ideas as to how the granting of special consent approvals could be approved upon?  
.....  
.....
25. Do you have any other comments?  
.....  
.....

**Thank you for taking the time to complete this questionnaire.**

Yours faithfully

**Barbara Parker**

**Student No. 203517297**

## APPENDIX 3

### In-Depth Interview Questionnaire Guidelines

## **INTERVIEW DISCUSSION GUIDE**

### **PRACTITIONERS WHO HAVE BEEN OR ARE INVOLVED IN DECISION-MAKING PROCESSES WITH REGARDS SPECIAL CONSENT APPLICATIONS WITHIN THE ETHEKWINI MUNICIPALITY**

**Background:** I am currently a Masters student at the University of KwaZulu-Natal, and undertaking this research in fulfillment of the requirements for the Master Degree in Town & Regional Planning. The aim of my research is to establish whether or not the standard policy based conditions of approval granted in respect of special consent applications for various land uses within the South entity of the eThekwini Municipality, mitigate against objections or concerns raised against said applications?

In addition to desk-top research and consideration of other national and international examples the research methodology includes interviewing those who have experience in the decision-making process within the eThekwini Municipality, in order to capture the lessons learnt that need to be incorporated into a criteria and guideline database for evaluation of special consent applications that really address impacts, and to identify issues that various practitioners are grappling with.

#### **General**

Name,  
Date,  
Venue,  
Time of interview,  
Persons present.

- What has your role been in the assessment of special consent applications within the South entity of the eThekwini Municipality?

#### **Conceptualization of the research problem**

Within the framework of Land Use Management, zoning provides for certain land uses within specific areas, while allowing for uses that are not the primary use, but may be

necessary in the specific area as they provide a convenience, to be permitted by special consent. Many current debates focus on the administrative underpinnings of land use control decisions, including the criteria and consistency of decision-making. For many special consent applications there are objections and concerns raised, ranging from noise impact, traffic, visual amenity, property values affected, et cetera. Approval conditions are then granted to mitigate against such objections but we do not know if these conditions were sufficient or correct as they are never assessed or evaluated.

- What do you think were (are), if any, the major problems with the process of assessing special consent applications?
- What criteria are used in assessing special consent applications?
- Do you believe these criteria could be improved upon? How?
- Do you believe that decisions are applied with consistency? How? Or why not?
- What do you think can be done to improve on the existing process of evaluating special consent applications?
- And more specifically, when objections and /or representation have been lodged?
- Does the current system of Town Planning Schemes facilitate this process or hamper it?
- How?

LUMS responds to a paradigm shift from merely controlling and regulating to managing and facilitating development and land use.

- How do you think the issue of local government being required to adopt a developmental approach i.e. facilitating and encouraging development versus developmental control, impacts on the decision-making process for special consent applications?



- Do you think the move towards a new LUMS approach will be beneficial in evaluating and assessing special consent applications? How?
- Do you have any ideas on an alternative approach?
- Do you believe there is the institutional capacity within the organization to apply criteria for evaluation in a consistent manner?
- Are issues of sustainability adequately addressed? What ideas / suggestions do you have in this regard?

### **Ongoing Learning**

- What suggestions do you have for setting up a system whereby practitioners can continue to learn and share their learning on this issue?
- What suggestions do you have for establishing a system to provide a criteria and conditions database to facilitate the assessment of special consent applications?

### **Recommendations for Research**

- Can you recommend any particular international or national examples that I should investigate in relation to this work?
- Of the projects you have been associated with, are there any that I should investigate further to identify lessons that would impact on the assessment and approval of special consent applications?
- Do you have any further comments to add?