

**LOCAL GOVERNMENT RESTRUCTURING
AND TRANSFORMATION:
A CASE STUDY OF THE
MSUNDUZI MUNICIPALITY**

BY

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1. CHAPTER ONE

INTRODUCTION

1.1 OBJECTIVES OF AND NEED FOR THE STUDY

Pietermaritzburg-Msunduzi Transitional Local Council was established after the 1996 local government elections. The election was an historic event, evolving as a milestone, unfolding a new era in local governance in South Africa. The establishment of this council as a transitional local council, as was the case with all local authorities, was an interim arrangement enabling councils to introduce democratic changes as a build-up to fully fledged democratized local government in South Africa. This, therefore, was a phased-in arrangement allowing for the eradication of the imbalances of the apartheid era in an endeavour to fulfil the obligations vested in councils by relevant pieces of legislation which gave effect to the constitutional provisions as contained in chapter 7 of the Constitution.

The caretaker legislation that guided councils through the transitional phase was the Local Government Transition Act 209 of 1993. This piece of legislation was designed to comply with the Constitution, whilst superseding any previous legislation in local government.

As such, restructuring and transformation of local government is not viewed as unique to this Council and is not a one-off event, but rather an ongoing process that started on attainment of democracy in 1994. The transition phase stretching from 1996 to 2000 was a capacity-building and reconciliatory phase allowing all stakeholders to work together towards a common objective. Whatever changes were put in place were not radical; this was in line with the reconciliatory spirit promoted by the Government of National Unity.

Undoubtedly, after the transition phase, the honeymoon was over and what followed were sweeping transformational changes that saw the implementation of radical programmes that gave effect to full blown democratized local government as envisaged by the whole wide range of new local government legislation.

Given the above summary, the aims and objectives of this study are:

- ❖ To carry out a comprehensive review of restructuring and transformation of local government, with particular reference to Msunduzi Municipality;
- ❖ To analyse all the steps taken by Council in dealing with transformational obligations;
- ❖ To evaluate the process towards the 2000 Local Government elections and the implications of the new local government legislation;
- ❖ To review processes undertaken beyond the 2000 Local Government Elections and the challenges produced by these processes; and
- ❖ To submit proposals and recommendations on how to deal with all the identified challenges in restructuring and transforming the Msunduzi Municipality.

1.2 RESEARCH METHODOLOGY

This case study shows the rapid pace at which transformation is unfolding. I have tried to give the study diversity and depth by bringing a variety of data sources.

The research method selected for this study is the case study approach. Yin (1933:31) defines the case-study approach as an empirical inquiry that investigates a contemporary phenomenon within its real life context, when the boundaries between phenomenon and context are not clearly defined, and in which multiple sources of evidence are used.

The study entailed a critical evaluation of local government restructuring and transformation with particular emphasis on Pietermaritzburg-Msunduzi Transitional Local Council and subsequently Msunduzi Municipality. It encompasses the examination of written documents in the form of minutes and agendas of various standing committees and all the relevant legislation governing local government management and development.

Relevant legislation governing local government was consulted and interviews with Council officials were carried out, in order to extract as much information as possible to assist in determining the nature of the transformation of Msunduzi Municipality.

Various methods of data collection were employed in obtaining both secondary and primary data.

The Information and Records Section of the City Administration Department, which keeps records of all agendas and minutes, including all local government legislation, was the key source of primary data. In verifying some of the primary data, interviews were held with relevant councillors and officials.

Resolutions of Council which form part of Council's minutes are legal

documents, containing information which is considered legally binding, and thus this study carries the strength of such authentic information.

Because the process of transformation was not unique to Pietermaritzburg-Msunduzi Transitional Local Council, information about other municipalities had to be obtained from secondary sources such as periodicals and the relevant legislation on local government and other literature.

1.3 **STUDY PLAN**

The study plan endeavors to give a framework within which to do this study, and focuses on key issues to be dealt with in each chapter, while the introductory chapter gives an insight into what this case study aims to achieve.

This study is designed to focus on the processes that Msunduzi Municipality has gone through, and the impact of such changes on Council and on the local community.

Chapter 2 will offer a review of the local government restructuring and transformation process and the unfolding of the new legislation for local government. Once all the applicable legislation has been unpacked and contextualized, its impact will be analysed.

This process will assist in identifying service delivery problem areas which require urgent attention in order to comply with legislation, more particularly the Bill of Rights as enshrined in the Constitution.

Chapter 3 will be an extension of chapter 2, covering specific issues on restructuring and transformation in the area of jurisdiction for the newly established council superseding the transitional council.

A critical examination will be made of the process leading to transformation, the end of the transition period up to the time when the new council (after the 2000 local government elections) was established.

Chapter 4 will cover developments beyond the December 2000 local government elections, and consider whether the desired objectives are achieved and what lessons, if any, have been learnt from the mistakes of the past.

The controversial issue, among other things, of the Amakhosi will be looked into in trying to identify the reasons for it remaining unresolved amid commitments made by all concerned in this regard.

In chapter 5, all the observations made about the attainment of democracy and any inadequacies that negate developmental local government that have been identified will be used as conclusions and recommendations for future sound governance.

1.4 TERMINOLOGY

1.4.1 Executive Committee

An executive committee established, in terms of Section 43 of the Municipal Structures Act, 117 of 1998.

1.4.2 Integrated Development Plan

A plan aimed at the integrated development and management of a municipal area.

1.4.3 Local Authorities

Local authorities are statutory bodies which are constituent parts of local government, which derive their power from a higher source and are bound by the terms and conditions upon which they are created (Speed 1971:1).

Local authorities have the following characteristics:

- ❖ they are legally independent structures;
- ❖ they have councils elected by the citizens and are responsible for the local government of a particular locality;
- ❖ they have the power to raise funds to execute certain functions from inhabitants residing within their defined local areas; and
- ❖ they are at liberty, but within the regulations prescribed by the provincial and central government, to decide on the administration of the areas within their jurisdiction.

1.4.4 Local Community

In relation to the Municipality, local community means that body of persons, comprising;

- ❖ the residents of the municipality;
- ❖ the ratepayers of the municipality;

- ❖ any civic organisations and non-governmental, private sector or labour organisations or bodies which are involved in local affairs within the municipality: and
- ❖ visitors and other people residing outside the municipality who, because of their presence in the municipality, make use of services or facilities provided by the municipality. This includes more specifically the poor and other disadvantaged sections of such body of persons.

1.4.5 Local Government

Meyer (1978:10) defines local government as local democratic units within the unitary democratic system. The units form the third sphere of government and are vested with limited powers and sources of income by the central government. Their primary function is to deliver specific local services and to develop, control and regulate the geographic, social and economic development of defined local areas.

1.4.6 Local Municipality

Means a category B municipality envisaged in Section 155 (1)(b) of the Constitution of South Africa.

1.4.7 Municipal Manager

A municipal manager is a person appointed, in terms of Section 82 of the Municipal Structures Act, 117 of 1998.

1.4.8 Restructuring

This term refers to a new structure, rearranging or reorganizing. In local government this term pertains to changes like departmental consolidation or office/structural extension, reforms in budget and personnel management.

1.4.9 Transformation

Transformation is about bringing about radical and profound fundamental changes in thought and action, which create an irreversible discontinuity in the experience of a system. This change generally encompasses movement from one position to another, and it is the result of the emergence of radically new belief systems.

2. CHAPTER TWO

REVIEW OF LOCAL GOVERNMENT RESTRUCTURING AND TRANSFORMATION PROCESS

2.1 INTRODUCTION

The local government restructuring and transformation process is an all embracing process starting from the time the first local elections were held, up to the second elections and beyond. The process, however, manifests itself as a two pronged process, featuring the transition period (1996 to 1999) and the transformation period (2000 and beyond).

It is therefore of significance to make a critical review of the relevant legislation applicable to both phases.

2.2 THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA ACT 108 OF 1996.

The Constitution is the supreme law of the Republic. Although it came into effect after many pieces of legislation governing the transition phase were in place, it nullified any legislation that was in conflict with it. It is an ingenious piece of work that was designed to redress the anomalies and injustices of the past without any retribution of any kind and without being radical in its character. It goes to the extent of even protecting the rights of the authors of apartheid laws through its non-discriminatory principles as enshrined mainly in the Bill of Rights. Its founding provisions give an overview of the values it was founded on and its status in relation to other legislation, and is summarized as follows :

The Republic is a sovereign, democratic state, founded on the following values :

- ❖ Human dignity, the achievement of equality and the advancement of human rights and freedoms;
- ❖ Non racialism and non-racial;
- ❖ The supremacy of the Constitution and the rule of law; and
- ❖ Universal adult suffrage, a national common voters role, regular elections and a multiparty system of democratic government, to ensure accountability, responsiveness and openness.

With regard to the supremacy of the Constitution, it is emphasised that any law or activity which is inconsistent with it is invalid and that any obligation imposed by such law or activity must be nullified.

Furthermore all law that was in force when the Constitution took effect continues in force subject to any amendment or repeal or it being consistent with the Constitution.

Previously, local government was viewed as a third tier of government that was subordinate to the provincial and national governments. The Constitution has however elevated the status of local government which it recognises as one of the three spheres of government which are distinctive, interdependent and interrelated. This is contained in Chapter 3 of the Constitution - Co-operative Government, which also emphasizes the need for the three spheres to work together through the promotion of intergovernmental relations.

In regard to the sphere of local government, on which this study is focused, specific constitutional provisions will be analysed which are a requirement and an obligation in ensuring the effectiveness of the Constitution in local government matters.

2.2.1 Local Government (Chapter 7 of The Constitution)

The chapter on local government in the Constitution is the most relevant of all in relation to this study and deals with the following aspects:

- ❖ Status of municipalities;
- ❖ Objectives of local government;
- ❖ Developmental duties of municipalities;
- ❖ Municipalities in co-operative government;
- ❖ Establishment of municipalities;
- ❖ Powers and functions of municipalities;
- ❖ Composition and election of Municipal Councils;
- ❖ Membership of Municipal Councils;
- ❖ Terms of Municipal Councils;
- ❖ Internal procedures;
- ❖ Privilege;
- ❖ Publication of municipal by-laws;
- ❖ Organised local Government; and
- ❖ Other matters.

All the abovementioned aspects are dealt with in detail by the Constitution. For the purpose of this study not all these aspects will be analysed, although admittedly they are all equally important, complementary to each other and do overlap to a certain extent.

2.2.2 Objectives of Local Government

The objectives of local government according to Section 152 of the Constitution are :

- ❖ Democratic and accountable government for local communities;
- ❖ Ensure the provision of services to communities in a sustainable manner;
- ❖ Promote social and economic development; and
- ❖ Encourage the involvement of communities and community organisations in matters of local government.

Furthermore the municipality is required to “strive, within its financial and administrative capacity, to achieve the objectives”, mentioned above.

It is also quite clear from the above objectives that service delivery is not the only objective of councils but also social and economic development, public participation and transparency. Although these objectives are mentioned in the Constitution, new legislation is specific on how these are to be achieved through the implementation process, aspects of which will be dealt with in depth in the following chapters.

2.2.3 Powers and Functions of Municipalities

According to Section 156 of the Constitution, municipalities have a wide range of powers and functions as enshrined in the Constitution. Unlike in the pre-democratic era where powers and functions of municipalities were in the form of a directive from provincial and national governments, the current dispensation gives municipalities executive authority in respect of, the right to administer local government matters listed in Part B of Schedules 4 and 5 and any other matter assigned to it by national and provincial legislation. This assignment should however not be viewed in a negative light as it is done in the spirit of co-operative governance.

While provincial and national governments may assign functions to municipalities, they should be mindful that in making those assignments they should not impede a municipality's ability or right to exercise its powers or perform its function. Matters that are a direct responsibility of national and provincial governments as listed in Schedule 4A and 5A can also be assigned to a municipality by agreement and subject to any conditions, if such matters would most effectively be administered by the municipality, provided that the municipality has the capacity.

The Constitution gives two sources of legislative power to local government namely:

- ❖ that a municipality can make by-laws on the matters listed in Schedule 4B and 5B of the Constitution; and
- ❖ that a municipality can also make laws on any matter that has been assigned to it by national or provincial government.

According to Stytler et al (2000:4) the matters on which the municipality can exercise any powers include the power to make bylaws if that is necessary for or directly related to the effective performance of a local government function.

The following are the powers and functions of municipalities as listed in Schedule 4B and 5B of the Constitution:

Schedule 4B

- ❖ air pollution;
- ❖ building regulations;
- ❖ child care facilities;
- ❖ electricity and gas reticulation;
- ❖ fire fighting services;
- ❖ local tourism;
- ❖ municipal airports;
- ❖ municipal planning;
- ❖ municipal health services;
- ❖ municipal public transport;
- ❖ municipal public works;
- ❖ municipal public works, only in respect of the needs of municipalities in the discharge of their responsibilities to administer functions specifically assigned to them under this Constitution, or any other law;
- ❖ storm water management systems in built-up areas;
- ❖ trading regulations;
- ❖ water and sanitation services limited to portable water supply systems; and
- ❖ domestic wastewater and sewage disposal systems.

Schedule 5B

- ❖ beaches and amusement facilities;
- ❖ billboards and the display of advertisements in public places;
- ❖ cemeteries, funeral parlours and crematoria;
- ❖ cleansing;
- ❖ control of public nuisances;
- ❖ control of undertakings that sell liquor to the public;
- ❖ facilities for the accommodation, care and burial of animals;
- ❖ fencing and fences;
- ❖ licencing of dogs;
- ❖ licencing and control of undertakings that sell food to the public;
- ❖ local amenities;
- ❖ local sport facilities;
- ❖ markets;
- ❖ municipal abattoirs;
- ❖ municipal parks and recreation;
- ❖ municipal roads;
- ❖ noise pollution;
- ❖ public places;
- ❖ refuse removal, refuse dumps and solid waste disposal;
- ❖ street trading;
- ❖ street lighting; and
- ❖ traffic and parking.

However the provisions of the Constitution on the powers and functions of municipalities are broad in the sense that they do not specify the category or the type of municipality which performs a given function from the list provided.

In making a further analysis it becomes clear that the reasoning behind the Constitution's intention was to broadly satisfy both the transitional and the transformational arrangements. The new legislation on local government is in fact very specific on which category of municipality does what, whether district, metropolitan or local municipality.

2.3 LOCAL GOVERNMENT TRANSITION ACT 209 OF 1993

2.3.1 The Object of the Act

The object of the Act was to provide for revised interim measures with a view to promoting the restructuring of local government, and for that purpose to provide for the establishment of Provincial Committees for local government in respect of the various provinces. Within the objectives of the Act a wide range of issues are covered in regard to the creation of a platform for the preparation and establishment of transitional councils in the pre-interim phase and also to prepare those councils for the challenges ahead such as the local government demarcation process, the repealing of certain bylaws and the issuing of proclamations by the MECs of the various provinces.

2.3.2 Application of the Act

The application of the Act is very broad yet specific on how each aspect as covered in each section should be handled in regard to its implementation.

The Act was applicable throughout the Republic. In the event of conflict between the Act and any other law in force in a territory in which the Act did not apply before April 27 1994, the provisions of the Act prevailed.

The following aspects are deemed to be particularly relevant to this study and are analysed as follows:

2.3.3 Powers and Duties of District Councils, Local Councils, Rural Councils and Representative Councils.

These councils had powers and duties conferred or imposed upon or delegated or assigned to them provided that no power or duty was to be delegated or assigned to them without providing sufficient resources for the exercise of such power or the performance of such duty and that such delegation or assignment was to be agreed upon by all parties involved.

Furthermore the delegation and assignment was to be made on a basis which ensured the sustainability and practicability of the exercise of such power or the performance of such duty.

The Act further gave discretion to councils to exercise any power or perform any duty concerning a matter which was reasonably necessary or which was incidental to the effective exercise of its powers and performance of its duties.

The delegation of powers and duties as indicated above refers specifically to district councils, local councils and rural councils. Although these councils were not the same, their objectives and principles of operation did not differ on the basis of the targeted communities. However, it will be noted later on that the new legislation has dealt with these councils as unique entities whose powers and functions, though overlapping, are not the same. The Metropolitan Councils, however, are dealt with separately by the Local Government Transition Act, the Municipal Structures Act and the Municipal Systems Act.

Regarding the provision of sufficient resources for the exercise of powers or the performance of duties, such powers emphasise the fact that unfunded mandates are always doomed to fail.

On the contrary, although this Act states that no power shall be delegated or assigned without providing sufficient resources, nothing suggests that there are any mechanisms which were put in place to evaluate the capacities of councils before conferring such powers. In fact the application of the Act in this regard has been inconsistent, thereby further incapacitating some councils, particularly those that were previously more disadvantaged. Some councils (particularly those like Butterworth, for example, which collapsed) were negatively affected by some of the implications of the Act.

2.3.4 The Impact of the Powers and Duties of Councils on Pietermaritzburg-Msunduzi Transitional Local Council

The impact of the Act in respect of powers and duties was felt in many areas by the then Pietermaritzburg-Msunduzi Transitional Local Council. From a background of a segregated system which furthered the interest of privileged communities, the challenges of redressing such imbalances by the Local Government Transition Act were immense. What the new dispensation translated to, was that the resources which were enjoyed by the few privileged communities were to be shared equally amongst all the communities of the city which had further been expanded by the incorporation of previously disadvantaged areas such as Greater Edendale and Sobantu. No additional funding was provided for these areas, thereby causing the Council's resources to be severely overstretched. What further exacerbated the situation was that both community groups (privileged and under-privileged) had contrasting expectations.

Those that previously enjoyed the discriminated service threatened to boycott payment of rates as a result of what they alleged were dwindling standards of service. What they overlooked was that as much as the service standards had declined some communities had been neglected from time immemorial and were expecting to be provided with the same or better services.

On the side of the previously disadvantaged, high expectations had been raised by the attainment of democracy. To some, it meant that services were to be free as they had been discriminated against for a long time.

Whilst Council took reasonable measures to move as swiftly as possible towards the provision of equal services to its communities the problem of limited resources versus unlimited demands loomed, mainly because Council did not put any mechanisms in place to ensure that all communities paid for the services that they enjoyed. Though a Masakhane Programme which was designed to educate communities about the importance of payment of services was put in place, it did not yield any immediate results as communities continued to get services that they did not pay for.

In essence, all the above was nothing less than unfunded mandates and should not have been all left to the Council to rectify. Admittedly a few years after the 1996 local government elections, National Government came to the rescue in a small way by providing equitable share funding which was intended to assist in the upliftment of poverty stricken communities. That amount varied according to the size and needs of councils; with needs increasing every year it was anticipated that funding would be increased systematically, but on the contrary it was reduced every year.

2.3.5 Financial Matters

Of importance is subsections 2 and 5 of Section 10G of the Act which deals with measures that ensure sound financial management by Council and also with what action is to be taken in the event of contraventions that may cause loss or damage to Council.

The Act also deals with collection of revenue and proper accounting procedures, including the way of dealing with misappropriations. Overall the management of financial procedure was laid squarely on the shoulders of the Chief Executive Officer, who as in any line organisation was responsible for the actions of his/her subordinates.

Subsection 5 deals specifically with contracts. It states that a municipality shall award contracts for goods and services in accordance with a system which is fair, equitable, transparent, competitive and cost effective.

Notwithstanding the above, a municipality may, in accordance with a framework prescribed by national legislation, in awarding contracts, give preference to the protection and advancement of persons or categories of persons disadvantaged by unfair discrimination and shall make the granting of such preferences public in a manner determined by the Council.

2.3.5.1 Policy Implementation in Relation to Contracts/Procurement

During the transition phase Pietermaritzburg-Msunduzi Transitional Local Council was found wanting in many respects in regard to procurement in the absence of a clearly defined procurement policy.

Sub Section 5(b) of the Act under "Financial Matters" makes mention of a framework prescribed by national legislation in regard to procurement, but such framework was not in place until towards the end of the transition phase.

Although this Council has a procedure which requires that the tenderer provides its company profile, indicating the names of company directors and the percentage of shareholding so as to determine which companies are owned by people from a disadvantaged background, the procedure has a lot of flaws in it, both on the side of the tenderer and that of Council. Tenderers are known to devise methods necessary to beat the system such as the use of fake African names as company names to attract Councillors. In many instances they use black people as fronts who they purport to be company directors, yet they do not have a say in the running of the company.

On the side of Council, there did not seem to be any empowerment programmes aimed at developing emerging business-people, most of whom have difficulties in accessing capital funding from the banks. This made it difficult for them to compete with established companies. The entire system left Councillors vulnerable to corruption. In the awarding of contracts there were allegations that some Councillors received golden handshakes in order for them to award contracts to unscrupulous companies.

It was a cause for concern that some recommendations to standing committees from departments had been overturned by the committees in favour of companies that were not the lowest tenderers without any valid reason. In most instances such companies failed to complete the contract awarded to them, resulting in the re-advertisement of such tender and thereby causing serious financial loss to Council.

2.4 OVERVIEW OF THE LOCAL AUTHORITIES ORDINANCE N° 259/1974

The Local Authorities Ordinance is one of the many pieces of legislation applied in the running of local government affairs. This legislation however is specific to local government in the Province of KwaZulu-Natal.

The object of this Act was to consolidate and amend the law relating to authorities for the purpose of local government. In the case of Pietermaritzburg-Msunduzi Transitional Council this Act played a very important role in guiding Council and its Committees in the decision-making process. Though it was a bit outdated in certain respects, where it did not conflict with the Local Government Transition Act or where the Local Government Transition Act was silent it was applied as long as it was not in conflict with the Constitution.

Most of the aspects that have been dealt with under the Local Government Transition Act are also covered by the Local Authorities Ordinance. However the chapter on powers and duties in the Local Authorities Ordinance is much broader and more detailed than is provided for in the Local Government Transition Act.

Using the Act on powers and duties as a guideline, Pietermaritzburg-Msunduzi Transitional Local Council drew up its own rules, functions and delegations relating to its standing committees (izindaba).

2.4.1 **The Rules, Functions and Delegations Relating to the Standing Committees (Izindaba)**

In order to give effect to the provisions of the Constitution and subordinate legislation on local government, Council devised a framework within which to operate in the form of rules, functions and delegations.

2.4.1.1 **The Committee Structure**

In considering any proposals made to Council, so that resolutions are made, a committee system made up of six standing committees was established.

The six committees included the Executive Committee which had executive authority vested in it and delegated some of its powers to the five standing committees.

The five standing committees were :

- ❖ Economic Development and Planning;
- ❖ Engineering Services;
- ❖ Human Resources;
- ❖ Social Development and Protection Services; and
- ❖ Urbanisation and Housing.

2.4.1.2 Membership of committees

Membership of the Executive Committee was regulated by the provisions of the Local Government Transition Act. It was made up of seventeen Councillors including the Mayor as ex-officio.

Every other standing committee was composed of eleven Councillors, elected by Council, except the Engineering Services Committee which was made up of thirteen Councillors. The Mayor as in the Executive Committee was ex-officio for all standing committees.

In the absence of the Mayor, he/she could select a Councillor to take his/her place as ex-officio member of any standing committee. Such a Councillor would be entitled to take part in the proceedings of that standing committee and vote as if he/she was the Mayor.

2.4.1.3 Chairpersons

The Executive Committee would elect a chairperson and a vice-chairperson. Every other standing committee was required to elect two co-chairpersons.

In the absence of both co-chairpersons those members of the committee present would elect an acting chairperson from amongst their members, provided that, should the Mayor be present and so wish, he/she would take the chair.

Furthermore, the Mayor would chair every joint meeting of standing committees provided that the Mayor, if present, could delegate his/her right to chair the meeting to any of the chairpersons of the standing committee concerned, and provided secondly, that in the absence of the Mayor, one or other of the chairpersons of the standing committees should chair the meeting. In the absence of agreement as to which of two or more such chairpersons should take the chair, the matter would be decided by the majority of the members of the relevant committees present.

2.4.1.4 **Quorum**

The quorum of every standing committee was a majority of members, i.e. more than half the members of the committee. Without a quorum, no standing committee could transact any business.

In the case of joint meetings of standing committees the quorum would be a majority (more than half) of the total number of members of the standing committees in question.

In the event that no quorum was present at the starting time of meeting of a standing committee, or of a joint meeting of standing committees, those members of the committee present would wait for ten minutes, thereafter if no quorum was present the meeting would be abandoned, unless it was decided with the unanimous consent of the members present, to allow further time in order to enable a quorum to be present.

Should the meeting be abandoned due to the lack of a quorum, the Chief Executive Officer's representative for that meeting would submit a report to the next meeting of the full Transitional Local Council.

In the event that no quorum was present at any meeting of a standing committee or of a joint meeting, co-option of other councillors was not allowed.

2.4.1.5 **Plenary Powers**

Except in the case of the Executive Committee, delegated plenary powers did not include the right to make a decision binding the Council to any new policy, and the chairperson of the Executive Committee would require that any matters on the agenda of any standing committee which in his/her opinion anticipated a new policy, would not be the subject of a final decision by that committee and would need to be referred to the Executive Committee with a report and a recommendation from the standing committee in question.

Every decision made by standing committees in terms of the delegated plenary powers would be made in the name of Council and would be binding upon the Council.

Other than those powers expressly reserved to the Council such as approval of estimates, fixing of rates, expropriation of property, approval of tariffs, rules and by-laws, the Executive Committee had delegated plenary powers to exercise every right, duty and function of the Council and no other standing committee had authority to exercise any right, duty or functions of the Council except upon express delegation to it by Council.

The Executive Committee was not allowed to delegate to any standing committee or its sub-committees any duty or function delegated to it by Council except where such delegation was for the purpose of considering and making a report and recommendation to it, and it alone would delegate to officials.

The plenary powers given to the Executive Committee did not bind it to make final decisions in matters within its powers or in respect of recommendations made to it by the standing committees; instead it could make a report and recommendations on such matters to Council.

Its plenary powers did not give it authority to make decisions which would have the result of incurring any expenditure in any matter which is not expressly provided for in Council's approved budget, or which exceeded that provided for in the budget. However it had authority to approve reallocation of funds from one approved vote to another or to a new vote provided the total amount in those votes was not exceeded. Equally so, the standing committees' plenary powers did not allow them to incur any expenditure in matters not provided for in Council's approved budget or which exceeded the sum provided for in any vote.

A standing committee in respect of any matter on which it had plenary powers was not allowed to refer such matter for a final decision to any other standing committee unless agreement had been reached between the co-chairs of two or more standing committees that the matter would be best resolved by a joint committees especially if the matter involved different terms of reference.

If a standing committee considered it necessary to appoint a sub-committee the standing committee would make necessary recommendations to the Executive Committee which would then decide whether such a sub-committee would be appointed. The Executive Committee before appointing such a sub-committee would ensure that there was no other sub-committee with similar terms of reference. Decisions to appoint a sub-committee took into account Council policy on transparency and accountability and also the impact such a decision would have in terms of the work load of the administration department.

In making delegations, standing committees were to be made aware that sub-committees could not be delegated powers already delegated to the standing committees.

In respect of the Executive Committee before appointing, or in the case of other standing committees before recommending to the Executive Committee the appointment of a sub-committee, the standing committee concerned had to define the terms of reference, the members together with the convener, the quorum and the time period by which such sub-committee would report with recommendations to the committee concerned.

The chairperson of the sub-committee was nominated by the Executive Committee from amongst the members of the sub-committee. The chairperson of the standing committee to which the appointed sub-committee reported would be an ex-officio member of that sub-committee. Such a sub-committee would cease to be in office on the same day that the standing committee ceased to be in office.

In the event that a standing committee failed to make a final decision in respect of any matters within its terms of reference, or unreasonably delayed in making such a final decision, the committee upon the recommendation of the Chief Executive Officer's representative would in the first instance refer such matter to the Executive Committee which would then make a final decision on the matter. Alternatively that committee reserved the right to refer such matters to the next meeting of the Transitional Local Council.

In any case where he/she was doubtful as to whether a matter before the standing committee was properly within its terms of reference, the Chief Executive Officer's representative had the right to refer such matter to the Executive Committee for direction as to which committee would deal with it either before or after the committee had made a decision. If the referral was made after the standing committee had made a decision, such decision would not take effect unless and until it was approved by the Executive Committee.

The Executive Committee would decline approval of a decision and remit the matter for a final decision to the standing committee if it considered that it had jurisdiction under its terms of reference.

Finally any councillor attending meetings of any standing committee had the right to require that a decision of any committee involving the exercise or the refusal to exercise any of its plenary powers be referred to the full Transitional Local Council, it being noted that where such action was taken, the decision on the matter could not be resolved upon by the committee but became a recommendation to the Transitional Local Council.

2.4.1.6 Delegation to Officials

Standing Committees could delegate powers to an official and every such delegation falling generally within the terms of reference of any standing committee would continue to be exercised by such official unless resolved or varied by the Executive Committee. In the case of any appeal against a decision of an official made under such delegated powers, or in the event of any official declining to exercise such delegated power, such standing committee could itself make a final decision.

2.4.2 Special Provision relating to the Executive Committee and to the Economic Development and Planning Committee in respect of Town Planning matters

In regard to town planning matters, the Executive Committee was required to endeavor to exercise its powers and to perform its duties on the basis of consensus. If consensus on any matter could not be achieved such matter could be decided by the Executive Committee by a resolution of at least two-thirds of its whole membership, or the committee could, if the majority of the committee so decided, submit a report and recommendations on the matter to the full Transitional Local Council for a decision.

The above provisions applied to the Economic Development and Planning Committee in respect of town planning matters only.

2.4.3 The Emergency Sub-Committee

The emergency sub-committee was a sub-committee of council made up of the Mayor, or Deputy Mayor in the absence of the Mayor, and five other councillors who were co-chairpersons of standing committees, preference being given first to the chairperson of the Executive Committee and thereafter other chairpersons.

The Chief Executive Officer was the convener of the Emergency Sub-Committee and could convene it in cases where any emergency or other urgent matter arose if he/she considered that it could be prejudicial to the Council's interests to await the following scheduled meeting of the relevant standing committee.

The Emergency Sub-Committee had plenary powers to do any of the following:

- ❖ institute or defend any legal proceeding in any court and to initiate or respond to arbitration proceedings including those relating to labour disputes;
- ❖ authorise legal opinion to be sought and practitioners of whatever sort, to be retained, instructed or briefed to protect the interest of the council in any legal or arbitration proceedings;
- ❖ give instructions to any practitioners representing the council in any legal or arbitration proceedings including instructions to compromise, or to settle or withdraw any such proceedings or to make admissions or concessions in such proceedings;
- ❖ authorise expenditure and the use of council assets and staff to alleviate conditions consequent upon any civil protection disaster or other event of like character occurring in its area of jurisdiction;
- ❖ authorise expenditure and the use of council assets and staff in the circumstances envisaged above where these occur outside its area of jurisdiction provided a request for such assistance had been made by the Chief Executive Officer of the relevant local authority or by a head of department of the provincial or national government;

- ❖ authorise expenditure and the use of council assets and staff to prevent or minimise the effects of any anticipated civil protection disaster, or other events of like character which it is considered likely to occur in its area of jurisdiction;
- ❖ take such steps as it might deem necessary for the protection of council assets and staff against any existing or anticipated unlawful activity;
- ❖ take any steps within its powers, as it may deem necessary for the protection of the public or any sector thereof against any condition dangerous to life or property, existing or anticipated within its area of jurisdiction; and
- ❖ authorise the issue and service of any notice required by any law, by-law, rule, regulation or town planning provision and prescribe the time compliance with the requirements of any such notice.

All the above was not to be construed as permitting the expenditure of funds of council in any amount as would result in the budget of Council being overspent or exceeded.

2.4.4 Council Business pending appointment of Committees whilst the Council is in recess

The powers provided for in this part only applied in extra-ordinary circumstances when either the council failed to appoint committees or when the Council was in recess, and these powers could only be exercised in conformity with the existing applicable policies of Council and could not be exercised in any way which could bind the Council to any new policy.

2.4.5 Conclusion

Having completed a critical evaluation of the relevant legislation and regulations that were used during the transition phase, an assessment of the spin-offs from their application has to be made particularly in regard to the impact in improving the lives of all the people within the Council's jurisdiction. The legislation and regulations are categorically clear on the objectives. The primary aim remains that of transforming local authorities so that they could not only be seen to be democratic but also empowered to implement such transformational changes. Although this legislation was transitional and cleared the way for full transformational requirements as envisaged in the new local government legislation, it really made an impact considering the history of the apartheid system under which local government functioned previously. Admittedly, though many developmental concerns still remain unresolved years after the attainment of democracy, they are testimony to the deep-seatedness of poverty inflicted by the apartheid system. Developmental bottlenecks are prevalent mainly in the previously underprivileged areas, contributory factors to which, among other things, are limited resources, resistance to change by some service providers, weaknesses and loopholes that made the system vulnerable to corruption and the inability by Council to achieve a balance between provision of services and payment of services.

Pietermaritzburg-Msunduzi Transitional Local Council in its desire to redress the imbalances and to overcome all the negative aspects that impede development, did not only implement legislation but also devised some methods and frameworks to assist in transforming the legislation into a tangible and practical entity.

The framework was done in the form of rules, functions and delegations relating to the standing committees which were the engine room for development and service delivery. This was a way of achieving synergy between the decision making body (councillors) and the implementing structures (council officials) with the members of the public taken care of at developmental committee level where both councillors and officials participated.

However it should be noted that the level of participation was not what had been envisaged at the political level, hence the serious emphasis on public participation in the new local government legislation.

Generally, the overall assessment of the transition period reveals that all the systems that were employed to do the ground work for transformation by the new legislation were a success, save for a few areas and aspects mentioned above. Judging from the success attained, it is correct to say this Council is geared for the challenges ahead of it.

3. CHAPTER THREE

LOCAL GOVERNMENT RESTRUCTURING AND TRANSFORMATION IN THE GREATER PIETERMARITZBURG MUNICIPAL AREA

3.1 INTRODUCTION

Transformation of local government has been done in phases, since the attainment of democracy, and remains an ongoing process even after the second democratic elections. The first phase of transformation has been covered in the analysis of the transitional phase in chapter two. The transition period, as indicated in that analysis, was a preliminary process leading to major transformation as envisaged by the new local government legislation.

From the perspective of this Council, and what is expected of it, the learning phase is over and now is the time to implement changes aimed at achieving the desired goals and objectives of the new legislation on local government. Restructuring and transformation will not be about unnecessary changes, but will be about a complete revamp of the old municipality on a highly rationalised basis, from staff and infrastructure to the complete changing of mindsets.

The demarcation process prior to the 2000 local government elections, which set new boundaries for councils, was one of the key enabling factors for transformation to be realised.

The Municipal Structures Act and the Municipal Systems Act, like the Demarcation Act, are pivotal pieces of legislation governing newly established municipalities.

In summary, a critical analysis will be made of the process which led up to the second municipal elections, the establishment of the new council and the adoption and application of the abovementioned legislation. As a result of this exercise it should be clear that there is a link between all the transformational processes of the transition era and the new process towards accelerated restructuring and transformation. The rhythm of the systematic and synchronized flow of events from one phase to the other should come across as something that is lively and tangible which could almost be felt physically or else crucial aspects might be lost along the process. In fact every aspect that contributes to realising the much needed change for the betterment of local communities needs to be captured in order for it to form part of the new vehicle for development and service delivery.

3.2 TOWARDS THE 2000 LOCAL GOVERNMENT ELECTIONS

The changes that were brought about by the demarcation process in the case of this Council were the incorporation of Vulindlela tribal area, Ashburton and other small areas like Bishopstowe, a predominantly farming area, and part of Thornville.

The reasoning behind the Demarcation Board's decision to incorporate these areas was, like in all parts of the country, to create wall-to-wall municipalities in every province of the country and to ensure uniformity in the application of legislation and to make sure that no community in South Africa remained without local government representation. This was a noble idea guaranteeing every South African his or her rights at this level.

The transition period, as could be appreciated, could not impose such drastic change through legislation. In a well-calculated procedure, over time, local government was completely liberated from the bondage of the unjust systems of the previous regime.

The first democratically elected councillors' term of office ended on 8 December 2000 when the results of the second elections were announced. The coming into office of the newly elected councillors saw the opening of a new and eagerly awaited chapter in transformed local government and the ending of the transition chapter.

In comparison, as a matter of interest, the transitional council had a total of 60 councillors, made up as follows:

40 ANC;
9 DP;
10 NP; and
1 IFP.

whereas the new Council has 73 councillors, made up as follows:

43 ANC;
17 DA;
11 IFP;
1 ACDP; and
1 MF.

All the above included proportional representative councillors.

The outcome of the 2000 elections suggested that there were some strong inroads made by opposition parties particularly in the predominantly Indian area resulting in an increased number of seats for the opposition, compared to the transition period. However these improvements on the side of the opposition did not alter the majority status of the ANC, although it did not achieve a two thirds majority.

Judging from the way different political parties worked together in the transition phase where there was harmony and unity of purpose, there is hope that only the best can be expected from the new council.

3.3 THE IMPLICATIONS OF THE NEW LOCAL GOVERNMENT LEGISLATION

There are many pieces of legislation that govern local government in South Africa. Some of the legislation has already been dealt with extensively, such as those sections that were applied in the transition phase, including the Constitution which is supreme.

The coming into being of the new Council after the 2000 elections did not diminish the role and application of the old legislation mentioned above, but gave it the subordinate status (unless repealed) in complementing the new legislation.

For the purpose of this chapter, focus will be placed on the Municipal Structures Act, 1998 (Act 117 of 1998), the Municipal Systems Act, 2000 and the Local Government Municipal Demarcation Act 27 of 1998.

3.4 MUNICIPAL STRUCTURES ACT 117 of 1998

The Municipal Structures Act is one of the new pieces of local government legislation whose aim is to transform councils and to make progress towards improving the lives of all South African communities, irrespective of their geographical location and the category of municipality they reside in.

The Act sets out structures that are used as a vehicle for community development and service delivery. It is subdivided into six chapters and addresses virtually every facet of Council business. It is however not the aim of this exercise to duplicate the contents of the Act, but to make a critical review of aspects relevant to restructuring and transformation, without losing sight of the objectives of the Act.

3.4.1 Categories And Types of Municipalities

3.4.1.1 Categories

Municipalities are divided into three categories, namely category A (Metropolitan Council), Category B (Local Council), and Category C (District Council).

The Act states an "area must have a single category A municipality if that area can reasonably be regarded as a conurbation featuring areas of high population density, an intense movement of people goods and services, extensive development and multiple business districts and industrial areas" (Section 2).

Also falling within this category would be:

- ❖ a centre of economic activity with a complex and diverse economy;
- ❖ a single area for which integrated development planning is desirable; and
- ❖ having strong interdependent social and economic linkages between its constituent units.

If an area does not comply with the requirement for a category A municipality it should have both category B and C. This is so because these two categories are not independent from each other. However in declaring an area as a metropolitan area the outer boundaries of those municipalities that are not a category B municipality are called district management areas.

In the case of Msunduzi Municipality, it is a category B municipality in a category C municipality. As a local council within uMgungundlovu District Council (DC 22) it is the largest of all the local councils in that District Council. Although the uMgungundlovu District Council by law has more authority in terms of powers and functions it has less capacity than Msunduzi Municipality, both in terms of resources and infrastructure. How these powers and functions are to be exercised will be discussed in the relevant sections to follow.

Furthermore the boundaries of Msunduzi Municipality were designed in such a way as to incorporate as much of the previously disadvantaged areas as possible and excluded more affluent areas such as Hilton and part of the Worldsvie suburb. From the developmental point of view it seems that this was deliberate in order to balance the distribution of resources, and to allow previously neglected communities to benefit from and to be part of viable structures to which they have contributed either directly or indirectly over the years.

3.4.1.2 Types of Municipalities

Within each category of municipality, different types of municipalities may be established. A municipality according to Section 7 of the Municipal Structures Act, can be any one of the following types:

- ❖ Collective executive system which allows for the exercise of executive authority through an executive committee in which the executive leadership of the municipality is collectively vested;
- ❖ Mayoral executive system which allows for the exercise of executive authority through an Executive Mayor in whom the executive leadership is vested and assisted by the Mayoral committee;
- ❖ Plenary executive system which limits the exercise of executive authority to the municipal council itself;
- ❖ Sub-council participatory system which allows for delegated powers to be exercised by sub-councils established for parts of the municipality; and
- ❖ Ward participatory system which allows for matters of local concern to be dealt with by committees established for wards.

Msunduzi Municipality being a category B municipality chose the collective executive system which means that the exercise of executive authority is through the executive committee which is made up of ten councillors led by the Mayor. To allow for participation by other councillors, the collective executive system delegated some of its powers to portfolio committees.

3.4.2 Establishment of Municipalities

The MEC for local government in a province is vested with the powers to establish a municipality in each municipal area as demarcated by the Demarcation Board. The Act clearly spells out the procedures to be followed in the establishment of municipalities.

Since municipalities vary in size, the Act allows for the MEC to specify the number of councillors, the name of the municipality and the category. However the decision on the type of the municipality rests with the municipality concerned as long as it complies with the specifications for arriving at such a decision.

In line with the Act the transitional name had to be disestablished, and a new name established, hence the disestablishment of Pietermaritzburg-Msunduzi Transitional Local Council, and the establishment of Msunduzi Municipality.

3.5 THE MUNICIPAL SYSTEMS ACT 32 OF 2000

3.5.1 Introduction

The focus of the Act is mainly on the internal systems and administration of the municipality, and it establishes the basic principles and mechanisms to give effect to the vision of developmental local government as contained in the Local Government White Paper. The provisions of the Act are rightly described as being "broadly enabling" as it establishes a regulatory framework wherein municipalities have to perform their functions and exercise their executive authority. However, there are certain mandatory provisions of the Act where it relates to the extent that the fundamental elements of public sector reform, socio-economic development, delivery of basic services, and public reporting and accountability need to be uniformly applied on a country-wide basis.

The Act contains processes and elements that provide the foundation for a developmental system of local government as envisaged by the White Paper. The following broad provisions are contained in the Act:

- ❖ the legal nature of the new municipalities;
- ❖ community participation;
- ❖ powers and functions of the municipality;
- ❖ integrated development planning;
- ❖ performance management;
- ❖ public administration and human resources;
- ❖ municipal services;
- ❖ credit control and debt collection;
- ❖ provincial and national supervision;
- ❖ legal matters; and
- ❖ miscellaneous.

The overview that follows discusses briefly the abovementioned chapters of the Act.

3.5.2 The legal nature of the new municipality

The legal nature of a municipality is established by determining that it is a juristic entity with separate legal personality. A municipality shall consist of its governing structures and administration and the residents and communities within its boundaries. This is intended to lay the foundation for the affairs of the municipality to be run in partnership between councillors and officials, on the one hand, and the community, on the other.

The Act also sets out, in broad terms, the rights and duties of the partners in local governance, but in the light of the general nature provides that the specifics may be spelt out later in the same Act or in other legislation.

3.5.3 Powers and Functions of the Municipality

In addition to the strong emphasis on the constitutional powers concerning the functions of municipalities, the Act manages the process of decentralising the functions to municipalities to ensure proper co-ordination of the decentralisation process and the prevention of unfunded mandates. The Act clarifies the nature of the executive authority of municipalities and includes the approval of budgets, the imposition of rates, taxes, levies, duties and fees, and setting policies on tariffs, rates and taxes. These particular aspects however, fall under the exercise of a municipality's legislative authority rather than its executive authority. There are extensive provisions on legislative procedures including the publication of proposed by-laws in a manner that allows the public to comment on them. Provision is made for the drafting of standard by-laws by either the Minister or the MEC that a municipality may adopt. All by-laws that are passed must be published in the Provincial Gazette. A municipality must compile and maintain all its by-laws, regulations and other legislative instruments, and this compilation, known as the "municipal code", must be kept at its head office.

3.5.4 Community participation

Although the theme of participatory governance runs through the entire Act, there is a chapter formally devoted to the topic. It is broadly enabling in character and establishes certain basic requirements for public accountability and participation that are considered essential for the long-term sustainability of the municipality.

Not only must a municipality create formal structures and processes through which the public may participate, it must also facilitate such participation by simplifying the manner in which it does business, by making its rules and laws accessible to the public, and by keeping its constituency informed about its main activities. A further dimension of accessibility is the extent to which the special needs of illiterate persons, disabled persons and other disabled groups are taken into account by the municipality. In general, the public is entitled to attend council and committee meetings unless the meeting, or a particular item on the agenda, has for good reasons been closed to the public.

There has to be an ongoing process of debate, dialogue and communication between the local government authority and the community. This process must be valued and nurtured in order to ensure trust and agreement on decisions.

According to the Guide to Municipal Councils, it is very easy to talk about participatory governance and community participation without understanding their meaning:

A one-off meeting where municipalities inform communities about their plans does not result in participatory governance. Receiving input from those with "expertise", "knowledge" or power does not represent true participation either. Poor or marginalised people are often excluded from these processes. This kind of input is usually dominated by groups with a lot of resources.

Community participation should also not be seen as a process whereby every decision and action has to be sanctioned and approved by the community. This often causes confusion about who is responsible for what.

A culture of participation by communities in local government affairs needs to be developed. If communities are not aware of how local government works, who is in charge, what are the issues and what are the means available to them to participate, they will not be able to participate.

The questions that need to be asked when considering a by-law are:

- a) Does the by-law provide for mechanisms and systems that involve communities in decision making around the aspects dealt with in the by-law?
- b) Does the by-law provide for the communication of information about municipal services – price, service delivery options, and general local governance issues to enable the community to participate meaningfully?

Since South Africa is a global player, it is interesting to see what the global trends are in regard to community participation.

On a global level, democracy can only be permanently established and entrenched if political participation is seen to be functioning at the local level-where it is generally accepted that democracy begins. In this context participation would, therefore, mean that the people organise themselves, accept responsibilities and become involved in local decision-making. It is only when maximum participation is ensured that self-help can become a reality, be effective and have a desired impact (Reddy 1999:13).

3.5.5 Integrated Development Planning

The system of municipal planning is rationalised into a single comprehensive five-year cycle, subject to annual monitoring and review, in which Integrated Development Plans (IDPs) are adopted by municipal councils as their core planning and management instrument. IDPs must be aligned with, and complement, the development plans and strategies of adjacent municipalities, the province within which it is located, and national organs of state. According to Section 25 of the Municipal Systems Act, each municipal council must, within a prescribed period after the start of the elected term, adopt a single inclusive and strategic plan for the development of the municipality which:

- ❖ links, integrates and co-ordinates plans for the development of the municipality;
- ❖ aligns the resources and capacity of the municipality with the implementation of the plan;
- ❖ forms the policy framework and general basis on which annual budgets must be based;
- ❖ compatible with national and provincial development planning requirements binding on the municipality; and
- ❖ complies with the provisions of the Act.

The IDP must have certain core components and, in that regard, must reflect:

- ❖ the council's vision for the long term development of the municipality; an assessment;
- ❖ of the existing level of development in the municipality;
- ❖ its development priorities and objectives;
- ❖ its development strategies;
- ❖ a spatial development framework for the municipality;
- ❖ its operational strategies; and
- ❖ a financial plan.

Each municipal council must, within the first two months of its elected term, adopt a process to guide the planning, drafting, adoption and review of its IDP. Among other things, the process must determine methods and procedures to consult communities, residents and other stake-holders on their development needs and priorities, providing for their participation in the drafting process and in the review of the IDP. No municipal planning and development can take place outside of the IDP and the plan is binding on all persons within the municipality.

3.5.6 Performance Management

Each municipality must establish a performance management system in order to give effect to its IDP and with the purpose of administering its affairs in an economical, effective, efficient and accountable manner.

The system must be monitored in an ongoing manner and must be reviewed when necessary. The system must oblige the municipal council to:

- ❖ set appropriate performance indicators in the areas of responsibility of the functionaries identified as key role players;
- ❖ set performance targets in those areas of responsibility;
- ❖ measure performance in those areas against the indicators and targets;
- ❖ evaluate performance in those areas of responsibility;
- ❖ take steps to improve performance; and
- ❖ establish a process of regular internal reporting to the council and external reporting to the public and appropriate national and provincial organs of state.

According to the Departmental of Provincial and Local Government Participant Handbook, the mechanisms, systems and processes of a performance management system must at least identify the strengths, weaknesses, opportunities and threats of the municipality in meeting the key performance indicators and performance targets set by it. This means that the review or assessment process must be conducted through what is termed a SWOT analysis. For each indicator the municipality must identify why performance was not better by carrying out a SWOT analysis as follows:

- ❖ Threats: what external environmental or contextual dangers or obstacles limited the municipality's capacity to meet its objective? For example, if the municipality set as an objective "to ensure that all citizens are sheltered in a formal structure by 2015" put forward as an indicator "percentage of population housed in formal dwellings", and showed poor performance in meeting its targets in this indicator, the municipality may assess as a threat "the large number of new residents migrating into the municipal area from surrounding more rural municipal areas".

- ❖ Opportunities: what positive external factors could the municipality have taken advantage of in trying to improve performance, but did not? For example, if there was poor performance shown by the indicator "percentage of population housed in formal dwellings", and an opportunity that could have contributed to better performance, but was not taken advantage of, there might have been "an increasing proportion of the population which is able to afford rentals on good quality social housing". For the indicator "number of units built through the municipality's own housing programme" an opportunity might have been "excellent private sector project management capacity was available that could have been contracted in".

- ❖ Weaknesses: what internal organisational faults and failings contributed to poor performance? For example, if there was worse performance than last year on the indicator "number of building plans for residential accommodation approved during the year", this could well have been due to "lack of skilled staff in the planning department".

- ❖ **Strengths:** what internal capacities were available that should have contributed to good performances, but were not used to optimal effect? For example, for the indicator “percentage of own budget (discounting portion of housing subsidies) spent on housing”, the municipality may conclude that not sufficient advantage was taken of the fact that “housing is a budget priority, and ample resources are being made available in the annual budget” (perhaps because poor management meant that available funds were not used effectively to train staff, develop systems, etc).

3.5.7 Public Administration and Human Resources

The Act sets out the basic values and principles governing local public administration and sets out in some detail the values that must underlie the interaction of municipal staff with residents. The administration of a municipality must be organised in such a manner that it, among other things, is responsive to the needs of residents, facilitates a culture of public service among staff, and creates a collective sense of responsibility for performance. Further, it must delegate and devolve responsibility to the most effective level within the administration, allow managers and staff to clearly relate their roles and responsibilities to the priorities and objectives of the IDP, and enable the municipal manager to be held accountable for the overall performance of the administration.

The role and function of the Municipal Manager is set out in some detail and includes, among other things, the management of the administration in accordance with the Act, the implementation and monitoring of the IDP, the management of the provision of services to communities, the control and management of all staff matters, advising the council and structures, implementing national and provincial legislation applicable to the municipality and acting as accounting officer of the municipality.

Employment contracts for municipal managers and managers directly responsible to the municipal manager must be for a fixed period with the option of renewal and must include performance objectives and targets, evaluation, and consequences of substandard performance. A municipal council must adopt a staff code providing for efficient, effective and transparent staff administration which must provide for matters such as recruitment, selection and appointment, service benefits and obligations of staff, the monitoring, measuring and evaluation of staff performance, promotion and demotion, transfer, grievance procedures, investigations of misconduct and complaints, dismissal and retrenchment and other prescribed matters. A municipality must develop and implement programmes for the education, training and development of its staff to enable them to perform their functions efficiently and effectively. The code of conduct applies to all staff members and the municipal manager must ensure that every staff member receives a copy of it.

3.5.8 Services

A municipality must give priority to the basic needs of the community, promote the development of the community, and ensure that all communities, residents and ratepayers in the municipality have access to at least the minimum of basic municipal services (Section 73).

The Act provides a regulatory framework for municipal service partnerships, particularly processes such as competitive bidding, dealing with unsolicited proposals, and contract monitoring and compliance. It makes provision for municipal service districts, including multi-jurisdictional service districts in which municipalities combine their regulatory powers in order to manage service provision on a more functional basis.

The Act further sets forth a set of principles and guidelines to guide the setting of tariffs for municipal services. The tariffs must ensure the long-term sustainability of service delivery and must be implemented in such a manner that it assists indigent households to gain access to at least the basic services. A municipal council must adopt by-laws to give effect to its tariff policy, its implementation and enforcement. Such by-laws may differentiate between different categories of users, customers, debtors, services, service standards and other matters.

3.5.9 Credit Control and Debt Collection

Municipalities are empowered to implement effective credit control and debt collection strategies, in order to deal with non-payment of services, while making sure that the truly indigent receive targeted relief. Consequently, a credit control and debt collection policy may differentiate between different categories of taxpayers, customers, debtors, taxes, services, service standards and other matters. A municipal council must adopt by-laws to give effect to its credit control and debt collection policy, its implementation and enforcement. Unsatisfactory levels within a particular ward may be brought to the attention of the relevant councillor who may convene a public meeting for discussion and advice.

3.5.10 Provincial and National Supervision

The Act provides a framework to guide provincial monitoring and capacity building in terms of the Constitution, which avoids duplication of existing monitoring systems and aims to build an effective integrated performance orientated service delivery system.

3.6 MUNICIPAL DEMARCATION ACT 29 OF 2000

3.6.1 Introduction

Without scrutinising each and every detail of the Act, it would suffice to have an overview covering the objectives and the factors to be taken into account by the Act. Annexures on the new boundaries will be attached.

3.6.2 Demarcation Objectives

The demarcation process is one of the major components of local government transformation. When the Board determined a municipal boundary its objectives were to establish an area that would:

- ❖ enable the municipality for that area to fulfil its constitutional obligations, including:
 - xxix) the provision of democratic and accountable government for the local communities;
 - xxx) the provision of services to the communities in an equitable and sustainable manner;
 - xxxi) the promotion of social and economic development; and
 - xxxii) the promotion of a safe and healthy environment.

- ❖ enable effective local governance;
- ❖ enable integrated development; and
- ❖ have a tax base as inclusive as possible of users of municipal services in the municipality.

3.6.3 Factors to be taken into account

In order to attain the objectives set out in section 24 of the Act, the Board had, when determining a municipal boundary, take into account:-

- ❖ the interdependence of people, communities and economics as indicated by:
 - i) existing and expected patterns of human settlement and migration;
 - ii) employment;
 - iii) commuting and dominant transport movements;
 - iv) spending;
 - v) the use of amenities, recreational facilities and infrastructure; and
 - vi) commercial and individual linkages.
- ❖ the need for cohesive, integrated and unfragmented areas, including metropolitan areas;

- ❖ the financial viability and administrative capacity of the municipality to perform municipal functions efficiently and effectively;
- ❖ the need to share and redistribute financial and administrative resources;
- ❖ provincial and municipal boundaries;
- ❖ areas of traditional rural communities;
- ❖ existing and proposed functional boundaries, including magisterial districts, voting districts, health, transport, police and census enumerator boundaries;
- ❖ existing and expected land use, social economic and transport planning;
- ❖ the need for co-ordinated municipal, provincial and national programmes and services, including the needs for the administration of justice and health care;
- ❖ topographical, environmental and physical characteristics of the area;
- ❖ the administrative consequences of its boundary determination on:
 - i) municipal creditworthiness;
 - ii) existing municipalities, their council members and staff; and
 - iii) any other relevant matter; and
- ❖ the need to rationalise the total number of municipalities within different categories and of different types to achieve the objectives of effective and sustainable service delivery, financial viability and macro-economic stability.

3.6.4 Demarcation Procedure

TABLE 3.

(1)

**Public notification of determination
of municipal boundaries**

(2)

**Municipalities to submit views within
a specified period**

(3)

**Representation and views submitted
by municipalities are considered by
the Board**

(4)

**The Board may convene a public
meeting and/or conduct a formal
investigation**

(5)

**Board must publish its
determination in the relevant
Provincial Gazette**

(6)

**Objections to the determination
must be submitted in writing within
30 days**

(7)

**Particulars of the boundary
determination must be forwarded**

(8)

**Within 30 days, the electoral
Commission must make its views
known by notice in the Provincial
Gazette**

3.7 Conclusion

The three pieces of legislation namely, the Municipal Demarcation Act, the Municipal Structures Act and the Municipal Systems Act are in harmony and complement each other very effectively.

In summary the Municipal Demarcation Act, establishes criteria and procedures for the determination of municipal boundaries as required by the Constitution. The Municipal Structures Act regulates the political and institutional arrangements for local government including the determination and the definition of categories and types, the election and composition of municipal councils, arrangements for committees of council, a code of conduct for councillors and the establishment of councils.

While such structures have been put into place, a system defined in the Municipal Systems Act regulates the core systems relating to the governance and management of municipal administration.

Clearly there is a systematic flow in the implementation of the above three pieces of legislation. In light of the above, a process of restructuring and transformation of the Greater Pietermaritzburg area has been eagerly awaited by those who want to see the eradication of the legacy of the imbalances of the past.

The smooth transition from the apartheid era to the new democratic order is owed to all the peace loving people of Pietermaritzburg who chose to bury their past political intolerances and committed themselves to the development of their communities.

The new local government legislation has been pivotal in changing and improving the lives of all the communities. Transformation like revolution is not static, but dynamic and can be used to break the barriers caused by the discriminatory practices of the past.

4. CHAPTER FOUR

BEYOND 2000 LOCAL GOVERNMENT ELECTIONS: ESTABLISHMENT OF MSUNDUZI MUNICIPALITY

4.1 INTRODUCTION

Following the successful local government elections of 2000, a daunting task lay ahead of councils in regard to addressing the needs and expectations of the community. The biggest challenge was that of transforming plans, promises and legislative requirements into action and to achieve tangible outcomes. To achieve the desired objectives and outcomes, there was a need for councils to be clearly focused and to ensure that decisions that are taken are implemented timeously.

The importance of synergy between councillors and council officials in terms of understanding the needs of the community and working together to attain results cannot be over-emphasised. What still remains uncertain is whether the vehicle for service delivery is capable of delivering the expected services without being overhauled. The vehicle for service delivery that is referred to are the council's human resources, most of whom served in the apartheid era which promoted apartheid objectives. Although not all of them have resisted change, there is evidence that some are no longer productive and are simply waiting to retire. Transformation therefore is much broader than what most people might think; it goes as far up and down the spectrum of local government as possible.

The challenges mentioned above are not unique to Msunduzi Municipality. Generally the majority of employees are committed to transformation. However it is the racial composition of the top structures of all departments that pose a serious concern as most of the incumbents are white, male and old.

However with the appointment of a Municipal Manager whose functions have been clearly spelt out in the Municipal Systems Act, it is hoped that some mechanisms will be put in place to give effect to the transformational expectations.

For the purpose of this exercise it is important to look into those processes that this Council has implemented or is in the process of implementing as envisaged by the legislation and also to make an assessment of the impact of the challenges in the implementation thereof.

4.2 MSUNDUZI MUNICIPALITY'S INTEGRATED DEVELOPMENT PLANNING IN PERSPECTIVE:

The Municipal Systems Act 2000 requires that Municipalities must undertake developmentally-oriented planning so as to ensure that it strives to achieve the objectives of local government as set out in Section 152 of the Constitution.

The guidelines and requirements as enshrined in the Municipal Systems Act have been dealt with in 3.5.5 above. In line with the legislative requirements, Msunduzi Municipality embarked on a comprehensive Integrated Development Planning process and analysed every aspect of the Municipality in terms of how service delivery could be improved.

The main purpose of the analysis was:

- ❖ to understand the critical problems and needs as perceived by all stakeholders of the municipality and supported by facts and figures;
- ❖ to gain understanding of real causes rather than manifestations of problems. This includes indications on the importance and urgency of problems as seen by those directly affected; and
- ❖ to gather information on available resources both internally and externally.

4.2.1 OVERVIEW OF THE ECONOMY

An analysis of the three (3) indices as they relate to the city's economy, viz. number of firms, sectorial turnover and wages and salaries, indicate that the city's growth rate has slowed down quite significantly in recent years.

During the seven year period from 1994 to date the average real growth rate in turnover was 3% and salaries and wages 2.6% which is in line with the average growth rate in real GDP for the country. Notwithstanding the slowing down, Pietermaritzburg continues to be the key regional economic centre in the Kwazulu Natal Midlands, accounting for more than 80% of the total turnover (Msunduzi Municipality's IDP document)

The sectors that contribute significantly to the city's economy are manufacturing, agriculture, wholesale/retail, business and real estate. Manufacturing continues to be the most important sector accounting for 35% of turnover, despite the decline in the footwear sector, which has been a key sector for the city for many years. An interesting trend however has been the number of applications for concessions for expansion in this sector.

The following trends impacting on the city's economy are noted:

- ❖ There have been significant job losses in the footwear industry over the last four years with many factories closing down. This has resulted in the emergence of a number of small footwear manufacturers.
- ❖ The rapidly increasing unemployment rate has resulted in a burgeoning informal sector which is seen as a threat to especially retailers in the formal sector in terms of the problems that are associated with informal trade.
- ❖ Key financial institutes and businesses which have traditionally operated in the Central Business District (CBD) have moved to suburban locations creating a whole range of problems for the CBD.

4.2.1.1. **CHALLENGES AFFECTING ECONOMIC DEVELOPMENT**

There are many constraints that manifest themselves as challenges to the economic development of the city. The effects of South Africa being an active global player are felt particularly where cities are not only competing against each other but are also expected to comply with international standards.

The pressure on the national economy, especially the falling value of the rand, reflects itself in local economic development. This requires the city to be very aggressive in its market drive and strategy in order to have a competitive edge over other cities and to attract both local and international investors.

In economic terms, whilst the city acknowledges that it is part of local government and bound by local government legislation, there is nothing that prevents it from being innovative and pursuing alternative means of boosting the local economy and improving the quality of services.

Undoubtedly obstacles such as the lack of a proper and regularly updated data base of information pertinent to economic development have to be overcome.

4.2.2. **LAND REFORM AND HOUSING**

The Msunduzi Municipality area is made up of a number of identifiable components, viz. the original Pietermaritzburg/Municipality area which became the enlarged Pietermaritzburg -Msunduzi Transitional Local Council area (the original municipal area, together with Greater Edendale, including Imbali, Shenstone, Ambleton and Foxhill) to which now has been added the Vulindlela Tribal Authority area, the Ashburton Transitional Local Council and the intervening land, as well as the land up to the Camperdown interchange, the Bishopstowe area and the Claridge area.

The area of the original Pietermaritzburg Local Authority is covered by an existing Town Planning Scheme.

In August 2001, a team of consultants was appointed to prepare a business plan for the Greater Edendale area. An analysis has been carried out which identifies in detail the technical and social information which highlights the infrastructural and community facilities needs in various functional areas. The purpose of the business plan was to identify processes and complex issues associated with the development of privately owned land in the Edendale sub-region.

In Vulindlela, the land is vested in the Ingonyama Trust. Planning is undertaken in consultation with the Province and the District Council which over the years have commissioned various reports which have provided an analytical framework for the area.

Housing delivery in the jurisdiction of Msunduzi Municipality must be undertaken in terms of the national vision for housing in South Africa which states that:

“All people are to have access to a permanent residential structure with ownership of the site on which their house is built. The house must have clean water and adequate sanitary facilities as well as waste disposal and electricity services”.

The national housing policy is based on the government's belief that everyone is entitled to decent shelter in a reasonable environment but within the government's financial capacity to provide (Housing Act 107 of 1977).

In terms of the Act, the municipality is obliged to take reasonable steps to ensure that its residents have access to appropriate and adequate housing.

The IDP will ensure that housing development is based on integrated planning and will allow for national and provincial governments to align development with the performance of local government.

According to the statistics obtained from the Msunduzi Municipality's IDP document, the estimate of the backlog of housing in the Greater Pietermaritzburg area, excluding Vulindlela, is 17 000 units where families are living in informal settlements. It is estimated that approximately 14 000 of these are located in the Greater Edendale Area.

A number of informal settlement areas are to be incorporated within the areas identified for low income housing projects. The municipality has currently identified 49 areas for housing projects. Of these 38 have approved housing subsidy funding totalling almost R400 million. The 49 housing projects will accommodate approximately 35,000 sites.

4.3 TOWARDS RESTRUCTURING OF MSUNDUZI MUNICIPALITY

Restructuring is a much talked about issue in local government circles and like transformation it entails an overhaul of the existing system or structure. The new local government legislation is not prescriptive on how restructuring should be done. It commits councils to re-establish themselves and sets new demands which would not be realised without making radical organisational changes. It requires councils to make an introspection of themselves in order to realise that the process is not about cosmetic changes but most importantly that they should acknowledge that the current needs and demands differ from those of the past

In order to satisfy those new needs and demands it is necessary to employ new mechanisms and systems that are compatible with new societal dynamics.

The process of restructuring has not been done uniformly across all local authorities. Some councils have been very pro-active, thereby starting the process even prior to the 2000 local government elections. Most councils, however, were reluctant to initiate changes before elections as that might have undermined the desires of the new councils, thereby making it difficult to implement the new legislative requirements.

As for Msunduzi Municipality, a premature decision was taken prior to the 2000 elections in an endeavor to transform and realign itself, a decision which yielded no positive results as it got embroiled in controversy whilst trying to implement what it called "transformation and realignment" by deciding that the council shall introduce a new directorate system which would have seen the appointment of six directors.

The controversy was as a result of a lack of clarity on when implementation would be effected, as concerns were raised by unions on why existing heads of departments and divisions were already being given a raise before the restructuring had taken place.

This system was approved by the Executive Committee of the Transitional Local Council and funds were set aside for that purpose, and all that remained was for the positions to be advertised. The confusion that the system caused was that of allowing for the upgrading of those heads of departments and divisions on the pretext that it was in line with the remuneration levels for the newly approved directorate structure which in fact had not yet been implemented. This realignment process was not wholly inclusive and only catered for senior management levels.

This caused an uproar amongst the unions who demanded that the process be immediately stopped or else every employee be awarded the same percentage increment, which was in the range of between 20% and 30%. The unions declared a dispute and the matter ended up in the High Court, and subsequently an out of court settlement was reached. Even though a settlement was reached, it is those senior officials who benefitted in the end as the entire increment could not be withdrawn, though they agreed to pay back a certain amount.

This was contrary to the expectations of transformation and realignment in the true sense as in the end no change was going to be made other than just the increase in salaries of the heads of departments and divisions who would still remain in their positions with different designations.

In the true sense of restructuring, the above is not what the new council envisaged, considering that the beneficiaries of the abortive restructuring process were 90% white males, most of whom were about to retire. In the eyes of the unions and a majority of previously disadvantaged workers, this move was perceived as a golden handshake for the former white masters.

When the new Council took office after the December 2000 elections, the matter was still being dealt with by the High Court, and it is the new Mayor and his team who negotiated with senior officials resulting in the settlement of the matter. The new Council therefore did not adopt the resolution of the previous Council which meant that it had to start its own process of restructuring. A number of workshops and meetings were held and it came out loud and clear that before any restructuring was done it was important to do a staff audit for the entire Council in order to get rid of dead wood, reposition, and employ new staff accordingly. The biggest step however that was taken was that of employing the new Municipal Manager.

His responsibility among other things would be to employ staff and to restructure the organisation in consultation with Council, thereby enabling him to fulfil his contractual obligations, through the establishment of such support structures and mechanisms.

Restructuring has therefore just started and it is envisaged that the process will gain momentum in due course. These are anxious and exciting moments for Msunduzi Municipality: these changes are long overdue.

4.4 THE NEW COMMITTEE SYSTEM

In establishing the committee system, the Council had to be guided by the provisions of the Municipal Structures Act, in particular sections 32 and 33 of the Act.

Section 32 states under "Delegation to Committees and other internal functionaries" that "a municipal council must develop a system of delegation that will maximise administrative and operational efficiency and provide for adequate checks and balances".

The section goes further to explain to whom or to which bodies such delegation may be done, excluding powers mentioned in section 160(2) of the Constitution and the power to approve its integrated development plan.

Section 33 deals with the criteria for the establishment of committees and states that a municipality may establish a committee provided for in the Act if the municipality is of a type that is empowered in terms of the Act to establish a committee of the desired kind and if the establishment of the committee is necessary, taking into account:

- ❖ the extent of the functions and powers of the municipality;
- ❖ the need for the delegation of these functions and powers in order to ensure efficiency and effectiveness in their performance; and
- ❖ the financial and administrative resources of the municipality available to support the proposed committee.

Msunduzi Municipality having a collective executive system is required to comply with the provisions of these sections of the Act. Its executive committee is made up of ten councillors who are full-time and vested with the executive authority to make decisions in the running of the municipality. It has four portfolio committees which have delegated powers on certain issues and also makes recommendations to the executive committee on issues where they have no delegated authority. The executive committee, in dealing with those recommendations from portfolio committees, does not simply rubber-stamp them, but thoroughly applies its mind in ensuring that decisions taken are correct and legally binding.

4.5 CHALLENGES

There are many challenges facing Msunduzi Municipality. In order to overcome them, this Council has to be focused whilst devising methods and mechanisms to address them.

These challenges may be summarized as follows:

4.5.1 Staff audit : A Human Resource Challenge for Msunduzi Municipality

The quality of an organisation is, to a large degree, determined by the quality of the people it employs. Success for most organisations depends on finding the employees with the skills to successfully perform the tasks required to attain the company's strategic goals. Staffing and human resources management decisions and methods are critical to ensuring that the organisation hires and keeps the right personnel (Robbins, SP. and Decenzo, DA. 2001:184)

Staff audit and workforce planning can be used interchangeably and both play a central role in strategic human resources management. The exercise would fit in well into the Integrated Development Plan process as it allows the organisation to take an introspection of itself and seizes the opportunity to re-engineer itself to fulfill transformational obligations. The organisational changes that have taken place over the years, particularly the transitional and the transformational changes, undoubtedly present the best opportunity for council to do a staff audit to satisfy current human resources / staffing requirements. The much talked-about organisational structure can only come about as a product of a staff audit / work place planning. The current organisational structure which is used as a basis for staffing requirements has been overtaken by many events and is thus obsolete and irrational. It would therefore be unreasonable to expect such an obsolete human resources structure to fulfill current service delivery needs and demands without an overhaul of such a system.

The purpose of a staff audit is to find possible or probable future scenarios and attempt to provide definitive forecast. The process however cannot eliminate risks but it offers the chance to understand the risks faced by the organisation- those for instance which could be caused by the filling of positions without a clear direction of where the organisation is going.

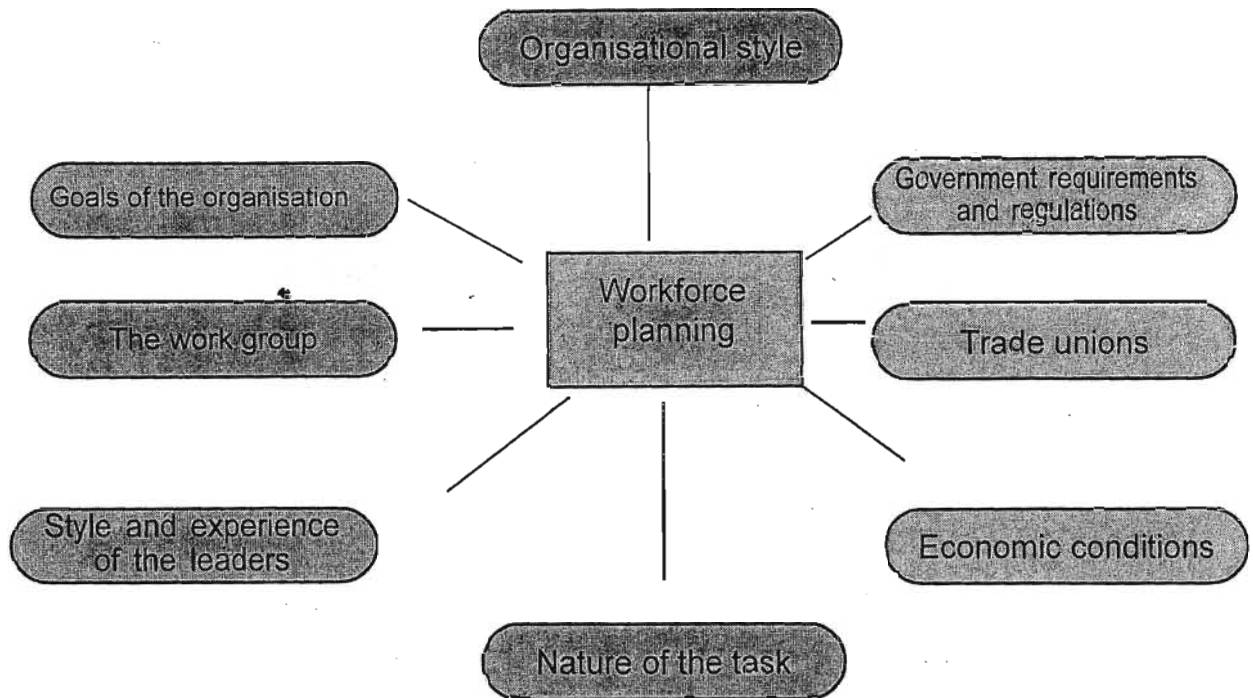
However this does not mean that Council should not fill those positions it deems a priority in terms of the criteria used at arriving at such criteria i.e. prevention of the collapse of services and the generation of income.

A staff audit does not take place in isolation; it is a purpose-driven exercise. The size of the organisation's workforce depends upon its business plan. The mere fact that Council has drawn up its Integrated Development Plan, which in fact is its business plan, requires a review of human resources to match or give effect to its business plan. The outcomes of the staff audit will definitely help to establish comprehensive data on staffing requirements.

The factors that influence a staff audit may be internal or external and the objective is to enable the organisation to react quickly to change. In the case of Msunduzi Municipality change is inevitable thus justifying the need for a staff audit.

The old organisational structure and the proposed macro structure, which is based on the competency-based management concept, are attached for comparison as **ANNEXURE E & F**.

TABLE 4.1: The external and internal influences on staff audit are shown schematically as follows (Gerber 2001:270):



The following statistical information, from the Council's Human Resources Division, is a window of workforce distribution for the Msunduzi Municipality.

TABLE 4.2: NUMBER OF EMPLOYEES IN EACH GRADE FROM A TO F BAND (AS AT END OF FEBRUARY 2002)

GRADE	No. OF EMPLOYEES
A Band	1 561
B Band	1 143
C Band	459
D Band	110
E to F Band	25
TOTAL	3 298

TABLE 4.3: RACIAL DISTRIBUTION PER GRADE

A BAND		
RACE (TOTAL)	MALE	FEMALE
14 White	10	4
92 Indian	74	18
17 Coloured	12	5
1 438 Africans	1 237	201

B BAND		
RACE (TOTAL)	MALE	FEMALE
112 White	55	57
264 Indian	192	72

84 Coloured	69	15
683 Africans	576	107

C BAND		
RACE (TOTAL)	MALE	FEMALE
132 White	102	30
157 Indian	127	30
60 Coloured	54	6
110 Africans	77	33
D BAND		
RACE (TOTAL)	MALE	FEMALE
60 White	51	9
29 Indian	27	2
2 Coloured	1	1
19 Africans	8	11

E - F BAND		
RACE (TOTAL)	MALE	FEMALE
18 White	17	1
4 Indian	4	0
0 Coloured	0	0
3 Africans	3	0

TABLE 4.4: TOTAL WORKFORCE BY RACE AND GENDER

RACE (TOTAL)	MALE	FEMALE
336 White	235	101
546 Indian	424	122
163 Coloured	136	27
2 253 African	1 901	352
3 298 TOTAL		

NOTE: There is a total of 57 physically challenged employees

TABLE 4.5: WORKFORCE DISTRIBUTION PER DEPARTMENT

DEPARTMENT	FILLED POSTS	VACANT POSTS	TOTAL POSTS
City Admin	126	81	207
* City Services	1 094	295	1 389
Corporate Services	54	23	77
City Treasury	224	103	327
City Planning	58	40	98
City Engineer	1 372	607	1 979
City Estates	192	79	271
City Electrical Engineer	347	257	604

* City Services includes Tatham Art Gallery, and the 295 vacant posts indicated above include 43 posts that were created but remained unfunded for the Traffic and Security Division.

The above statistics clearly reflect a serious anomaly in relation to the demographics of the city and the country as a whole. Furthermore females of all races are not adequately represented at all levels.

There are also legislative obligations to be fulfilled in the area of human resources, particularly the Employment Equity Act No. 1323 of 1998 and the Skills Development Act including other complimentary legislation.

It is for this reason that a comprehensive study, precisely a staff audit, has to be undertaken as a matter of urgency to help to redress the anomalies indicated above in order that council can realise its desired objective.

4.5.2 Budgetary Constraints

A lot has been said about transformation around the issues of service delivery and development. The new changes have brought with them added responsibilities on the already overburdened financial resources of municipalities. In addition to the servicing of the newly incorporated areas, councils are faced with unfunded mandates which include a directive on the provisions of free basic services.

When Vulindlela and other areas were incorporated to form the new council, Msunduzi Municipality's budget was already overstretched. The implications are that Council will have no alternative but to survive on loans whilst it makes every endeavor to increase income.

The situation, as it stands, is quite alarming, given the level of responsibility that the new council has to take on with limited resources at its disposal. Owing to a lack of adequate capital funding, the Transitional Local Council found itself almost incapacitated to undertake any new projects, particularly for the previously disadvantaged areas. In order to be within the provisions of the budget, Council was left with no alternative but to service the old order, through maintenance of existing infrastructure.

Overall, the budget was not developmental and year after year fell short of meeting the developmental expectations of the communities. It became a matter of over prioritisation and choosing between complete neglect of existing infrastructure and implementation of new projects.

The operating budget has not been healthy either. In order to survive, departments had to juggle around with votes, reallocating where savings had been realized. Some of these savings came from vacant posts which remain unfilled until now. As a result, the human resources situation is in very dire straits and will cost millions of rands to redress, thereby impacting negatively on service delivery.

The above bleak background is what has been inherited by Msunduzi Municipality after the 2000 local government elections. The new Council, however, has adopted a hands-on approach in dealing with the budget as departments no longer plan on their own as was the case previously.

A budget task team was established under the chairmanship of the Mayor, made up of Executive Committee members from the 3 main political parties. The Municipal Manager and the City Treasurer play key roles in directing and advising the task team when departments present their budgets to the task team. Each budget vote is scrutinized thoroughly and justification and motivation made by departments on the reasons for any requests. The exercise has proved highly effective as it eliminates any unnecessary, inflated, or duplicated estimates.

What is encouraging, however, is that this Council is not rubber stamping the approval of the budget but rather, thoroughly applies its mind before decisions are made.

Though this is a very positive beginning for Msunduzi Municipality in terms of control, the issue of a lack of adequate financial resources required to fulfill the obligations of transformation still remains. What raises hope, however, is that the Mayor was optimistic as he summed up, in his budget speech, by saying “this is an old city with a new beginning”. But it still remains to be seen what financial support will be made available to realise that dream.

4.5.3 The Impact of HIV/Aids

From statistical information obtained from the Municipality's health division the following is revealed:

- ❖ there are approximately 100 000 residents who are HIV positive and of these, 250 die per month, and judging from 1999 and 2000 data, the figure will increase by approximately 40% in 2003;
- ❖ in 2001, 36% of the sexually active age group (as measured by ante-natal clinic attendance survey) or approximately 18% of the total population in Kwazulu Natal were HIV positive compared to 1.6% ten years ago;
- ❖ an estimated 55-56% of patients in medical wards in Pietermaritzburg public hospitals are HIV positive; and
- ❖ the approximate number of deaths from aids and related diseases as taken from death certificates during 2000 was 1,874, or 288 per 100 000 population within the Pietermaritzburg district.

Deaths are mainly in the 20-39 age group for males and females. The incidence of the associated disease of tuberculosis has also increased dramatically, with an increase in notified cases from 1 438 in 1996 to 3 424 for the year 2000 in the Pietermaritzburg-Edendale area. Deaths have increased by over 50% from 1999 to 2000.

As evidenced by the above statistical information, the Aids epidemic is one of the major challenges to transformation. Dealing with Aids from the organisational point of view is one thing everyone has to come to terms with. The impact is felt across the board and virtually every department is affected, with staff levels dwindling by the day. A general observation is that society and municipal employees in particular are not very open about it and usually keep it to themselves, thereby obstructing any form of social and emotional support from fellow employees.

While this trend persists, what worries most is that council's human resources strategy does not in any way attempt to take any contingency measures to counter the negative impact Aids is inflicting on the council's human resources.

In fact it is worse than any form of brain-drain that any organisation can experience, in that it not only is a brain-drain but a physical drain as it affects the entire human resource spectrum.

4.5.4 Concerns of Traditional Leaders (Amakhosi)

The concerns of Amakhosi, as they are commonly known in KwaZulu-Natal, have been a bone of contention and still remain unresolved long after the 2000 local government elections.

During the transition period, Amakhosi were not part of the local or metropolitan councils. Most of their areas fell within the area of the then Regional Councils and lacked a clearly defined operational framework in terms of service provisions.

Before the 2000 elections were held, the Demarcation Board was tasked with the responsibility of demarcating new boundaries for municipal councils which were to be wall-to-wall, leaving no area outside of a municipal council, be it local, district, metropolitan or district management area.

This is precisely what triggered the concerns of Amakhosi (amid tension that already existed): they felt that they were being forced to abandon their traditional ways of governance and to subscribe to ideologies that relegated their status, stripping them of their power.

This problem had a direct negative impact on the newly established Msunduzi Municipality as the vast tribal area of Vulindlela was incorporated into the new Council. It will be recalled that several threats were made by Amakhosi to disrupt the election in their areas if their concerns were not addressed. This led to the delay in the announcement of the election date, which was finally set for 5 December 2000 after a series of marathon meetings between Amakhosi and the Minister for Provincial and Local Government and the President of the country.

Though they co-operated and did not interfere with the elections in which councillors in their wards were elected, their concerns are far from being over.

5 CHAPTER FIVE

GENERAL CONCLUSIONS AND RECOMMENDATIONS

5.1 INTRODUCTION

This exercise has tried to capture the entire sequence of events from the time democracy was attained to the present moment. Both cosmetic and radical changes have taken place in an endeavor to improve the quality of life of Pietermaritzburg communities, particularly those at grassroots level. What has given local authorities a stronger muscle in dealing with issues that affect its communities is the elevation of its status from being subordinate to both provincial and national government to being a sphere of government which is supposed to be recognised as being on an equal footing with the other two spheres of government. However, though all the three spheres are distinct, interdependent and interrelated, the “big brother” attitude in the provincial and national spheres, still lingers and needs to undergo its own transformation process to realise the intended objectives.

5.2 GENERAL CONCLUSION

Certainly this conclusion does not suggest in any way that the process of restructuring and transformation has been concluded. The process, like any strategic exercise, is dynamic in character, and for as long as people are exposed to the ever changing environment, which is influenced by many factors including the global trends, it is a never ending process.

The pieces of legislation on local government have been a pillar of strength in ensuring that municipalities become masters of their own destiny. Credit has to be given to the drafters of all the various pieces of local government legislation from transitional to transformational and developmental legislation and the role they have played in streamlining and democratising local government affairs.

There has been clear evidence of synergy between one piece of legislation and the other, all falling within the provision of the Constitution which has assumed the supreme role and status over all other legislation.

The people of Pietermaritzburg and the surrounding areas forming the Msunduzi Municipality have to be commended for burying their past political intolerances in the interest of achieving harmony and peace in local government affairs in order to improve their quality of life. The level of debate amongst the different political parties bears testimony to the fact that the Council has achieved political maturity against all odds. It goes without saying that the councillors have led by example through their transformed thinking, which in fact is the finest example of democracy.

Transformation being a dynamic process means that whatever has been identified as a weakness or strength has to be exposed further and juxtaposed in an endeavor to come up with a new developmental configuration which is pertinent to the contemporary needs and expectations of the communities. As such, aspects that have been identified are further regenerated as recommendations highlighted in Section 5.3.

5.3 RECOMMENDATIONS

5.3.1 Recommendation One : Equitable Share Funding

The equitable share allocation from national government has decreased from R57,7 million when first established to R27 million in 2001/02 financial year and will apparently decrease further. This funding falls far too short of what the Council expects. This Council has very limited sources of funding and to be precise, it is unable to sustain itself given the unlimited demands and expectations it is faced with.

The attainment of democracy has raised the expectations of many people, particularly those from previously disadvantaged communities. The democratic government has removed all the barriers and created a non-discriminatory and wholly inclusive system, but has failed to support the process with adequate funding.

The demands and needs have never stopped coming in since the first democratic elections. On the other hand, the financial resources at Council's disposal have not expanded, but shrunk due to under-subscription. It is only proper that national government in its bid to improve the quality of life of the people of South Africa, while it imposes new mandates on councils, should make sure that such mandates are funded or else Council's limited resources will be severely eroded, leading to the collapse of councils.

It is therefore recommended that a strong delegation from organised local government i.e. the South African Local Government Association (SALGA), seek an audience with national government to discuss the issue of equitable share funding, and to make national government understand that a collective and fair effort has to be made by all stakeholders in addressing poverty at grass-root level.

5.3.2 Recommendation Two : Improve revenue collection

One of the main priorities of this council should be to improve and maximise methods of revenue collection. Without adequate funding, the intentions of the council will never be achieved. Aside from grant funding and loans that the council receives from financial houses, it is important that Council collects every item of revenue owed to it and also ensures that it adheres to the generally acceptable accounting principles (GAAP). Most importantly it should create a strong income base in order to be as far as possible self sustainable (no revenue no expenditure).

It is, however, unfortunate that seven years after the attainment of democracy the culture of non-payment still lingers, coupled with Council's inability to collect what is owed to it for services provided and for rates. The council's billing system leaves a lot to be desired. The accounts more often than not do not reach consumers, particularly those residing in previously disadvantaged areas.

A Masakhane Programme was implemented for a long time in an effort to educate communities about the importance of paying for services. This exercise did not yield any meaningful results as the number of people owing the Council money continues to increase dramatically, as evidenced by the statistics, as at 31 August 2001.

Service	Amount Owed
Electricity, Water, Sewerage	R150 Million
Traffic Fines (Over three year period up to 2001)	R16 Million
Rates	R80 Million

The above statistics are frightening and need to be addressed as a matter of urgency, lest the Msunduzi Municipality becomes bankrupt. There is no excuse for failure by a municipality to provide sustainable service and where such is the case nothing prevents the Council from finding alternative means of providing such services.

5.3.3 Recommendation Three : Strike a balance between provision of new services and asset renewal

In the face of limited resources versus unlimited demands, there is need for this Council to distinguish between provision of new services and maintenance of old services. The budgetary constraints are however very restrictive in that year after year the budget is trimmed to an extent that it does not accommodate the funding of new projects. As a result the budget process has been criticized as lacking in vision and not being developmental in character. It is quite understandable that the existing infra-structure requires maintenance and should not be neglected. However, equally important are new developments in areas that were previously neglected.

There is need for an aggressive focus on the improvement of infra-structure and services in previously disadvantaged areas. For this to be achieved it is necessary that council officials tasked with such responsibilities should know that it is their responsibility to redress the ills of the past. This should not be viewed as discrimination, but rather as a process of trying to correct the imbalances of the past.

The Council has, in many respects, been a victim of very negligent and irresponsible conduct by some senior officials who resist any effort to develop those areas that were discriminated against in the past. A good example of this are instances where a budget is approved for a project to be undertaken in those areas, such as a road, only to realise that a few months before the end of the financial year such work has not been done and the money is then reallocated to other projects which, in most cases are in the developed areas.

The supply of electricity is not uniform, and as a result people from previously

disadvantaged areas are serviced and supplied by Eskom, yet this Council has no direct control over the activities of Eskom, thereby making it very difficult for their problems to be dealt with promptly.

Service delivery is a core function of Council. With very limited resources at Council's disposal, service delivery will remain the biggest challenge to the outcome, let alone the equitability, of the provision of such services.

5.3.4 Recommendation Four: Managing Municipal assets as a business

The general thinking amongst most municipal employees is that their jobs are secure regardless of whether their municipality operates at a loss or not. There is need for a change of mind-set so that municipal employees realise that their job security depends on the sustainability of their organisation, and for them to start thinking competitively.

Municipalities, like other government institutions, have had a history of a lack of accountability to the extent that, if they were private companies, such institutions would have long been bankrupt.

It is advisable that a new paradigm-shift should emerge whereby costs should only be incurred if they add value to the organisation. The value of council assets should be defined and appropriately managed on behalf of the public. Each manager should be aware of assets under him/her and to what extent they contribute in facilitating effective service delivery to the communities. Council should have an asset management and renewal system in place to prevent unnecessary damage and loss to public property.

A large portion of the budget should include provision for replacement and maintenance. Assets purchased should be clearly reflected as capital expenditure and not hidden amongst operating costs.

All the above enables council to corporatise its business and should leave a clearer picture of the taxes it needs on the basis of cash flows and redemption requirements. Taxes should be allocated according to priorities that are set, but most importantly it should be noted that Council is simply a custodian of the communities' assets.

Asset returns should vary for each department, but the sum of the whole must be zero plus the costs of assets replacement. Where council has no capacity to manage assets, it has to look beyond its structure with an option of engaging the private sector to manage such assets on its behalf through municipal service partnerships.

Finally, it should be remembered that the most important tool for management in the private sector is knowledge of how the assets are performing, and without such knowledge nothing constructive can be achieved. Such tools can also be applied in the public sector.

5.3.5 Recommendation Five: Municipality and the Investor

One of the key responsibilities of municipalities is to create an atmosphere conducive to investment. Investment is not only about international investment, but also about local investment. The trend, however, has been the marginalisation of local investors yet, like their international counterparts, they have a lot to offer.

What should be borne in mind is that an investor is simply interested in a return on his/her money. Investors will invest where they are comfortable and secure. Council should also have information systems and structures on issues of economic development so that investors can access such information.

The only way to attract investors is by being open, transparent and proactive, whilst being mindful of the fact that other municipalities are also competing for investors and only those councils with meaningful investment incentives will attract investors to their cities.

The spin-off for investment is that there will be job creation and an improved quality of life for the local communities.

5.3.6 Recommendation Six : Msunduzi Municipality should be optimistic about the future

For the Msunduzi Municipality to survive the turbulent local government conditions, as a result of an ever increasing demand for services, there is need for innovative thinking which will bring about new ideas in dealing with such needs and demands.

The Council should know what it wants, and this should be encompassed in its business plan in the form of an Integrated Development Plan, which should be carefully blended with the Local Development Plan.

To achieve its objectives, it should do everything in its power to increase its income base and reduce expenditure. It should then be able to identify its core business and relegate any functions that do not form its core function and learn from other progressive companies -i.e. South African Breweries makes beer, Toyota makes cars. This Municipality should generate a healthy rates base. Msunduzi Municipality should strive to be the best municipality in South Africa through provision of quality services and meeting all the needs of its communities, and give meaning to its motto "The city of choice".

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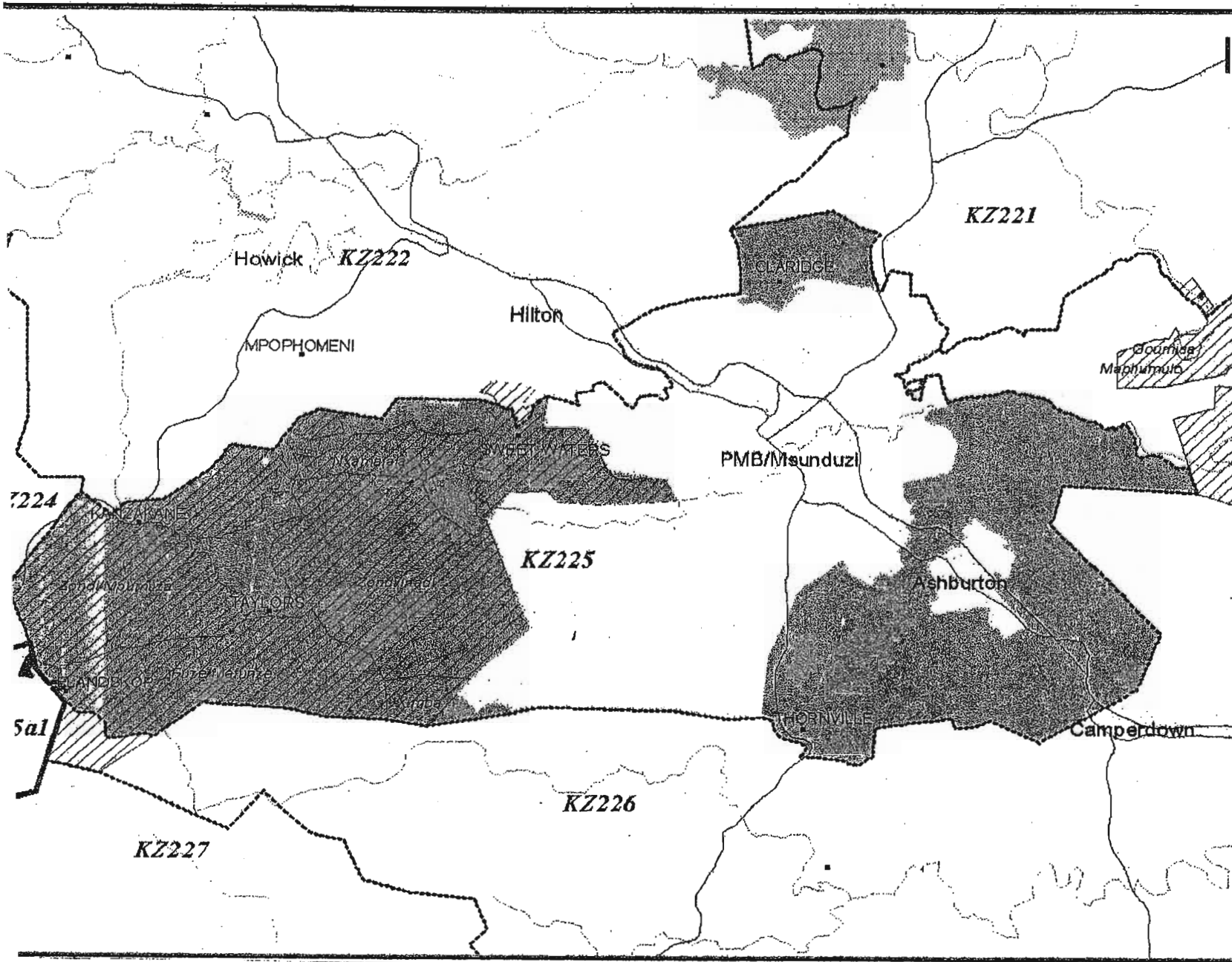
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LEGEND

02.22	District
	New Boundary
	Towns
	Roads
	Rivers
	TLC's
	Traditional Areas
	DMA Area

DRAFT

**PROPOSED
CATEGORY B
MUNICIPALITIES**

District: DC22

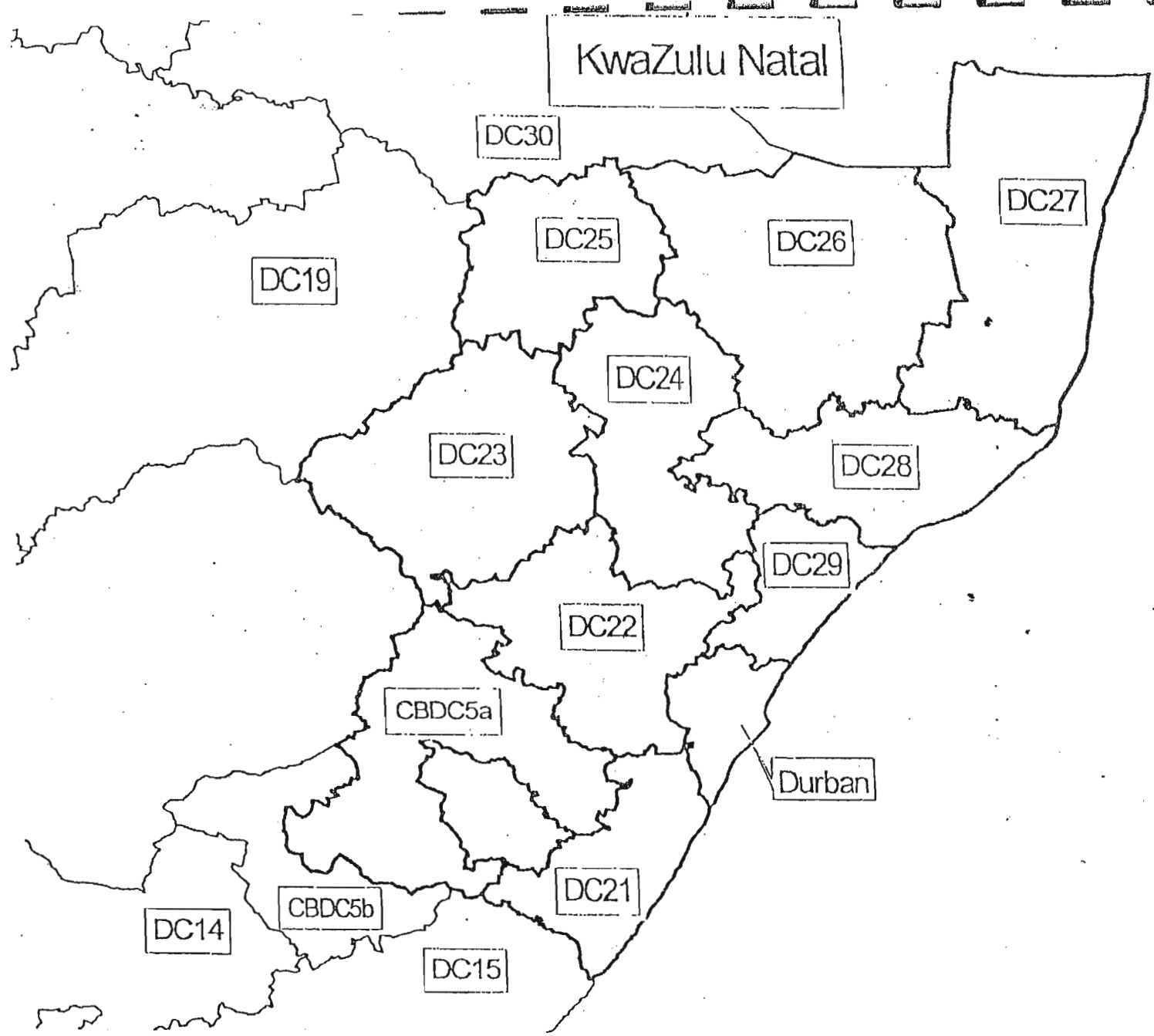
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DATE: 23-11-99



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 e-mail: info@mda.gov.za
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ANNEXURE A



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ANNEXURE B



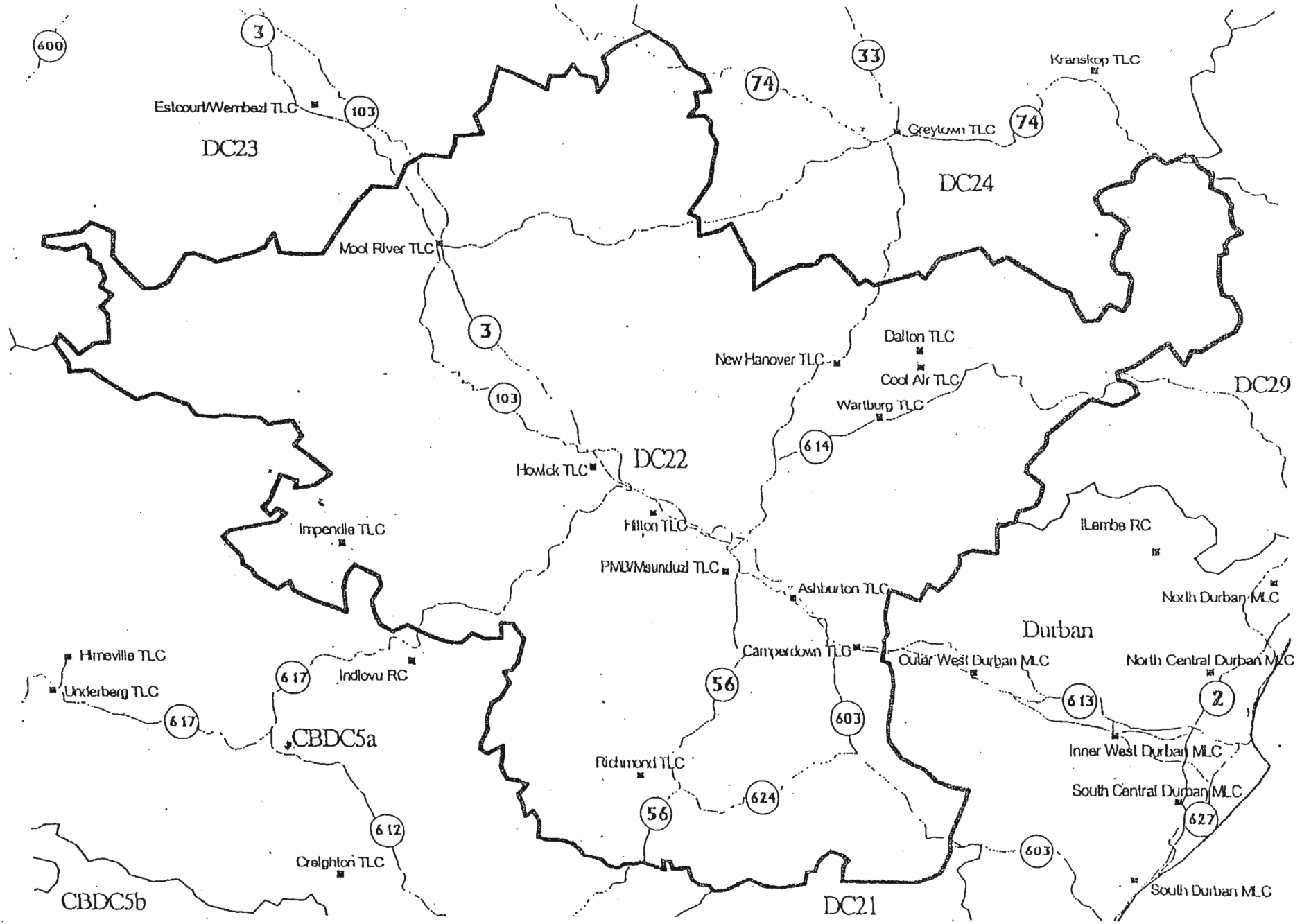
DETERMINATION OF THE OUTER BOUNDARIES OF METROPOLITAN AND DISTRICT MUNICIPALITIES IN TERMS OF SECTION 21 OF THE LOCAL GOVERNMENT : MUNICIPAL DEMARCATION ACT, No 27 OF 1998.

Date : October 1999

Map No. 2
Kaart Nr.

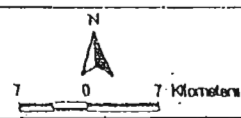
Additional information relating to this map can be obtained by contacting the Municipal Demarcation Board at:
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Toll-free : 0800-111-008 email: mdb@dbsaworld.co.za
Internet: www.demarcation.org.za
Postal : Private Bag X28, Hatfield, 0028





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Legend
 Existing TLCs/MLCs
 Main Roads
 New Boundary

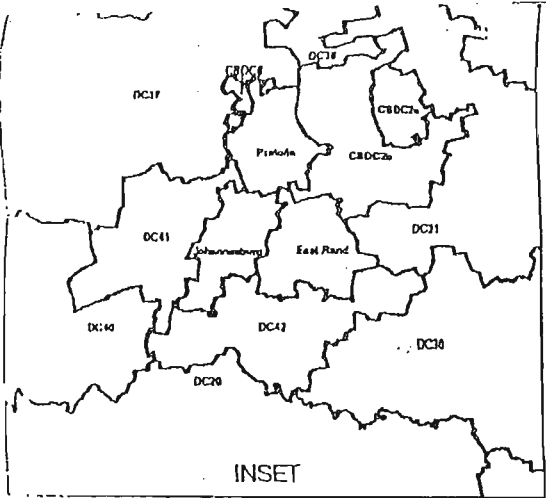


DETERMINATION OF THE OUTER BOUNDARY OF DISTRICT MUNICIPALITY DC22
 IN TERMS OF SECTION 21 OF THE LOCAL GOVERNMENT :
 MUNICIPAL DEMARCATION ACT, No 27 OF 1998.

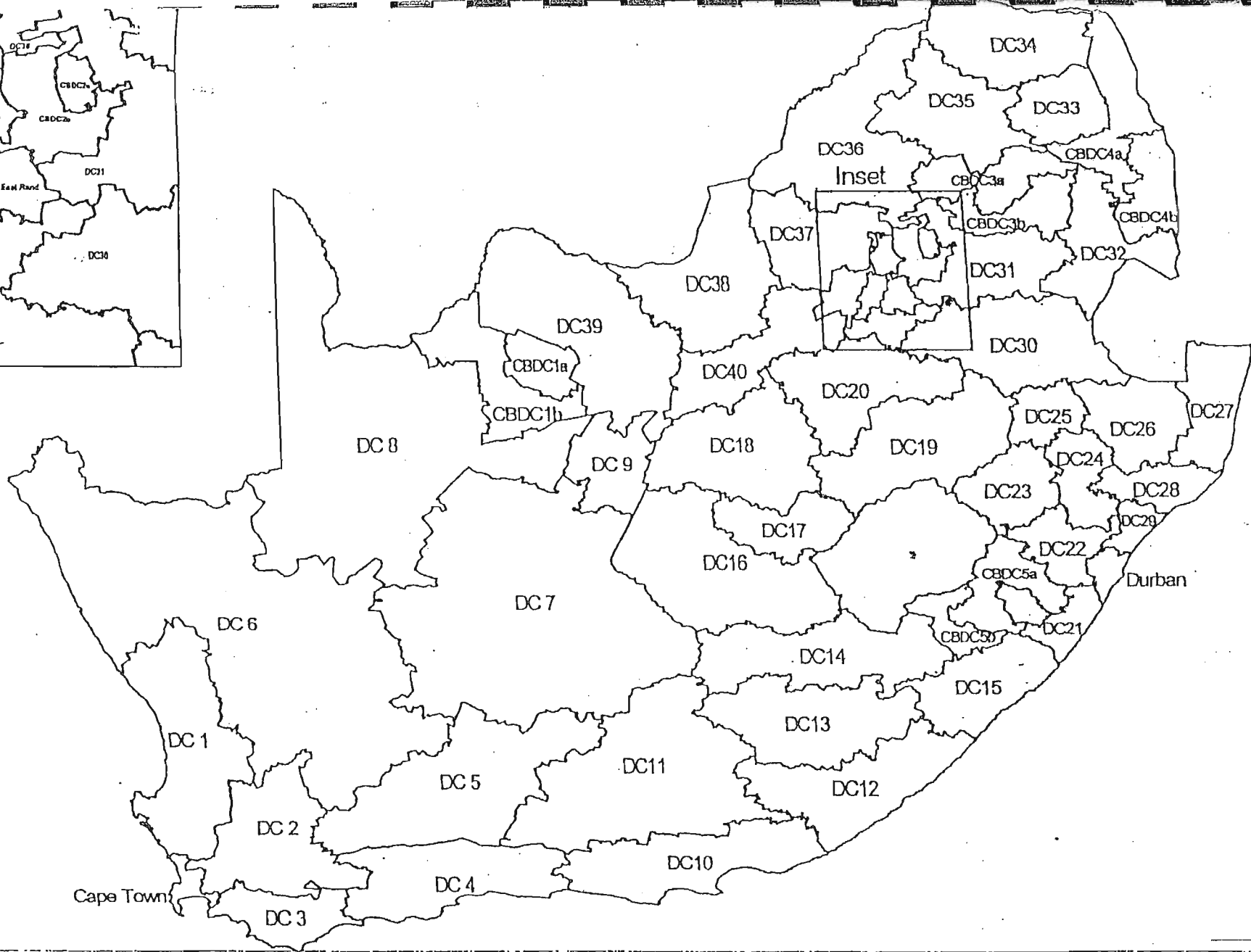
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 Sheet No. 5

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INSET



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ANNEXURE D



0 50 Kilometers

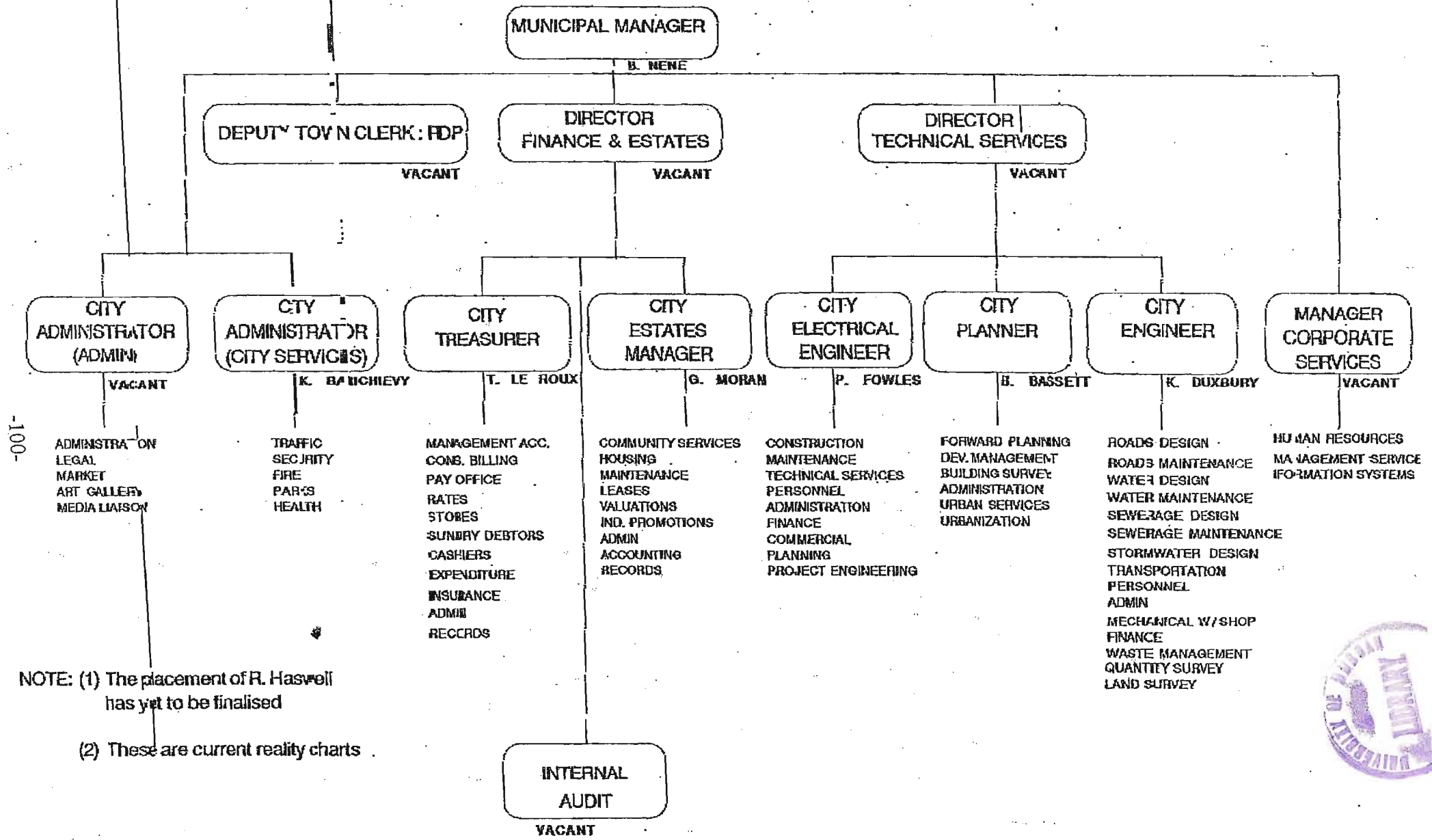
DETERMINATION OF THE OUTER BOUNDARIES OF METROPOLITAN AND DISTRICT MUNICIPALITIES IN TERMS OF SECTION 21 OF THE LOCAL GOVERNMENT: MUNICIPAL DEMARCATION ACT, No 27 OF 1998.

Date: October 1999
Map No. 1
Keat No. 1

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THE MSUNDUZI MUNICIPALITY



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NOTE: (1) The placement of R. Haswell has yet to be finalised
 (2) These are current reality charts



PROPOSED MACRO STRUCTURE

STRATEGIC EXECUTIVE MANAGEMENT MODEL

With broad areas of responsibility

MUNICIPAL
MANAGER

ECONOMIC
DEVELOPMENT
AND GROWTH

- Commerce and Industry
- SME's and Black Empowerment
- Tourism and Heritage
- Land and Agriculture
- Events
- Marketing and Corp relations
- One stop business centre
- Economic Dev management
- Airport, market and taxi ranks
- Informal trading
- Business licensing
- IDP Implementation

SOUND GOVERNANCE
AND HUMAN
RESOURCES

- HR Dev. and management
- Legal, constitutional and human rights
- Labour relations and Trade Unions
- Indiv. and Org performance management
- Admin, secretarial and support
- Education and training
- Management services
- IDP Implementation

INFRASTRUCTURE
FACILITIES AND
SERVICES

- Water, sanitation, waste water, solid waste and refuse removal
- Electricity (FEDS)
- Housing and slums clearance
- Environ. and Area Based Management and maintenance
- Roads, pavement, storm water and drainage
- Asset main and upgrading
- IDP Implementation

FINANCE

- Revenue
- Expenditure
- Invest, insurance, accessing funds
- project evaluation
- Budgets accounting and budget performance
- Special funds and services
- Fund raising
- IDP Implementation

COMMUNITY
SERVICES AND
SOCIAL EQUITY

- Community safety
- Community health
- Community centres
- Sport and recreation
- Libraries, art galleries and community halls
- Community welfare and indigency
- IDP Implementation

AUDIT, INVESTIG. AND
ANTI CORRUPTION

- Service delivery audit
- Financial audit (Outsourced)
- Contract and Black Empowerment management
- Investigations and prosecutions
- Anti corruption
- IDP Implementation

CORPORATE
PLANNING AND IDP

- Mayor and speakers office
- Corporate planning
- Forward planning and Develop. management
- IDP
- Information Systems and Information Technology
- Land valuations
- Audio visual and communications
- Town and Regional planning
- IDP Implementation