Spatial Planning Interventions in Ingonyama Trust Board Areas-

A Case Study of the uMnini Trust Traditional Authority Area, located in eThekwini Metropolitan Municipality in KwaZulu-Natal

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A short dissertation submitted in partial fulfilment of the requirements for degree of

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ABSTRACT

Municipal planning, particularly spatial planning at municipal level is the requirement prescribed in terms of various legislation which inter alia includes: the Constitution of the Republic South Africa (Act No. 108 of 1996); the Local Government : Municipal Systems Act 32 of 2000 (MSA), the Spatial and Land Use Management Act (SPLUMA) 16 of 2013. Spatial Planning is supposed to assist in guiding, regulating and management of land for the benefit of the society in general. However, spatial planning or interventions in KwaZulu-Natal have not been easy to implement in areas that fall under the jurisdiction of Ingonyama Trust (ITB) and Traditional Councils (TC's) because in effect a two tier system of land governance exists in these areas. It is also equally important to examine aspects which include: the role played by key stakeholders during preparation and implementation of the LADP; the extent to which such stakeholders may have been consulted and the institutional capacity of these stakeholders to implement the LADP.

The main aim of the dissertation is to examine the extent to which spatial planning interventions in the form Local Area Development Plan (LADP) has been able to guide development in Traditional Authority or councils areas situated within the eThekwini Municipality in KwaZulu-Natal Province by using the case study of uMnini Trust.

The theoretical/conceptual framework used to guide the study took the form of interrogation of the collaborative planning or Communicative, Power and Discourse Theories as well the 'Ladder of Participation' as a lens through which to evaluate current spatial interventions in ITB areas. Both the theories and approaches were used purposefully to guide the research, to frame the questions, to critically evaluate the readings, to analyse contemporary practice and to review the research findings. Furthermore, the international, African and South African s precedents and well as local case study of uMnini were interrogated to guide the study and compare contemporary South African practice with examples from other countries.

The study used a qualitative research methodology which included inter alia face to face interviews, observations, photographic techniques, voice recording and documentation and textual analysis.

The study revealed that the spatial planning was unable to guide development in traditional areas and these being attributable to among other things such as: the roles and responsibilities of Traditional Councils were not clearly defined; a lack of capacity among some key role players particularly the Traditional Councils who lacked skills to comprehend spatial plans and weak participation or proper consultation with key stakeholders during formulation of such plans, resulting in failure to take ownership of the plans.

The study also revealed that should the aforementioned challenges be overcome there could have be great prospect the Traditional Council and the municipality could work collaboratively in addressing future spatial plans, particularly with potential future legislation defining the roles and responsibilities. It is anticipated that this research will add to the knowledge of planning and development challenges that need to be confronted when implementing land use management tools in ITB areas located in metropolitan municipalities and other areas.

DECLARATION

COLLEGE OF HUMANITIES

DECLARATION – PLAGIARISM

I, Johannes, Sibusiso Ndebele, declare that:

1. The research reported in this thesis, except where otherwise indicated, and is my original research.

2. This thesis has not been submitted for any degree or examination at any other university.

3. This thesis does not contain other persons' data, pictures, graphs or other information, unless specifically acknowledged as being sourced from other persons.

4. This thesis does not contain other persons' writing, unless specifically acknowledged as being sourced from other researchers. Where other written sources have been quoted, then:

a. Their words have been re-written but the general information attributed to them has been referenced.

b. Where their exact words have been used, then their writing has been placed in italics and inside quotation marks, and referenced.

5.   This thesis does not contain text, graphics or tables copied and pasted from the Internet, unless specifically acknowledged, and the source being detailed in the thesis and in the References section.

6.   This dissertation titled *"Spatial Planning Interventions in iNgonyama Trust Board (ITB): A Case Study of uMnini Trust Traditional Authority Area, eThekwini Municipality, KwaZulu-Natal"*, is my own work. The work has not been submitted before for any degree or examination at any other University.

Student: **Mr Johannes Sibusiso Ndebele**   **Supervisor:**   **Ms. A. J. von Riesen**

Signature: _____   **Signature:_____**

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CoGTA: Provincial Department of Cooperative Governance and Traditional Affairs

DPEMU: Development Planning Environment and Management Unit

IDP: Integrated Development Plan

ITB: Ingonyama Trust Board

LADP: Local Area Development Plan

LC: Local Councillor

LUMS: Land Use Management System

MEC: Member of Executive Council

MSA 1998:   Local Government: Municipal Structures Act (No. 117 or 1998)

MSA 2000:   Local Government: Municipal Systems Act (No. 32 of 2000)

MPT: Municipal Planning Tribunal

NEMA: National Environmental Management Act (No. 107 of 1998)

PDA: KwaZulu-Natal Planning and Development Act (No. 6 of 2008)

PLUMB: eThekwini Municipality: Planning and Land Use Management By-law, (2015)

PTO: Permission to Occupy

RABM: Rural Area Based Management

SDF: Spatial Development Framework

SP: Spatial Plan

SPLUMA: Spatial and Land Use Management Act (No. 16 of 2013)

TA: Traditional Authority

TC: Traditional Council

TOR: Terms of Reference

WC: Ward Councillor

CHAPTER ONE: INTRODUCTION AND BACKGROUND

1.0   INTRODUCTION

Prior to 1994, land use planning and management in South Africa was undertaken on a fragmented basis by various authorities. According to van Wyk (1999), this was due to the fact that land was planned and allocated on a racial basis. Berrisford (2011) notes that White urban areas were regulated using comprehensive planning laws, which preserved land or property values, promoting a high level of amenities and infrastructural standards. On the other hand, land earmarked for black occupation was controlled using very basic planning such as the Group Areas Act 41 of 1950.

Mabin and Smit (1997) state that town planning schemes or zoning in South Africa have their origins in Britain. They add that zoning serves the purpose of controlling land uses, density, building size and position. Van Wyk (1999) concurs with Mabin and Smit (1999) that South African planning law was inherited from British law. The adoption of British zoning law resulted in orderly development in white urban areas, while development in black areas took place organically on *an ad* hoc basis.

Post-1994, the legislative framework in South Africa has been rapidly transformed in an attempt to address past spatial imbalances. Shabangu and Khalo (2008) point out that in terms of the Constitution of the Republic of South Africa (1996) municipalities were demarcated that cover the entire country, including rural areas. The authors argue that this arrangement brought about two leadership institutions in rural communities, namely, traditional leaders and municipal councils.

The South African Constitution (1996) created three spheres of government (national, provincial, and local/municipal), which provide frameworks for spatial planning at these three levels. While the Constitution recognises the existence and importance of traditional leadership and indigenous law, it is not clear as to how these institutions should apply spatial arrangement interventions in the areas under their jurisdiction. Ntsebenza (2003) argues that land administration and management by Traditional Authorities (TA) during and immediately post-apartheid was undertaken in terms of a framework that allowed limited

tenure forms e.g. Permission to Occupy (PTO) certificates[1]. He adds that Traditional Authorities have since been incorporated into the structures of government as extensions of governance at local level. Alternatively, Shabangu and Khalo (2008) point out that these Traditional Authorities, also known as Traditional Councils in terms of the Constitution do not enjoy the same powers as municipal councils regarding planning matters as their role has been confined to participation rather than decision making.

Municipalities confront a number of challenges, particularly the issue of land administration using conventional schemes, which are foreign to most Traditional Authorities that have been administrating land using indigenous law. Land administration and management become complicated when indigenous law and custom clash with spatial planning instruments that have their origins in western legal systems.

A number of pieces of legislation have been promulgated in relation to how municipalities should manage the land under their jurisdiction. These include, *inter alia*, the Local Government: Municipal Structures Act (No. 117 of 1998), the Local Government: Municipal Systems Act (No. 32 of 2000), the National Environmental Management Act (No. 107 of 1998, the Subdivision of Agricultural Land Act (No. 70 of 1970), the KwaZulu-Natal Planning and Development Act (No. 6 of 2008) and the recent Spatial and Land Use Management Act (SPLUMA) (No. 16 of 2013). In terms of the Local Government: Municipal Systems Act 32 of 2000, all municipalities are obliged to adopt Integrated Development Plans (IDPs) and Spatial Development Frameworks (SDFs) to guide development in their areas. The IDPs and SDFs also guide lower order plans such as town planning schemes. As prescribed in the Local Government: Municipal Systems Act of 2000, public participation or consultation with all key stakeholders is an integral part of all planning processes.

In contrast, in areas that fall under Traditional Authorities in KwaZulu-Natal such as the Ingonyama Trust Board (ITB), Traditional Authorities continue to allocate land using indigenous law without necessarily taking cognizance of the spatial plans adopted by municipalities. There is growing concern with regard to these spatial plans as they are

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[1]   The use of Permission to Occupy Certificates has been replaced by short and long term leases issued by the Ingonyama Trust Board along with a specification of what land uses are permitted on the lot.

perceived as failing to address and effectively cater for the needs of rural communities (KwaZulu-Natal Planning Commission, 2010). In 2013, the former Premier of KwaZulu-Natal advised all structures and spheres of government to work together to ensure that spatial plans earmarked for rural areas are not duplicated and are effective in order to attract and channel investment in such areas (*The New Age*, 2013). The new SPLUMA of 2013 came into effect in July 2015. This national Act seeks to prescribe and confer powers on municipalities in processing land use applications.

Shabangu and Khalo (2008) state that, prior to colonization most African countries were ruled by traditional leaders who catered for the needs of the different communities they led. Their powers diminished during colonialism and were partially restored once countries gained independence. Similar systems exist in Namibia, Botswana and Zimbabwe (Shabangu and Khalo, 2008).

1.1   PROBLEM STATEMENT

In 2000, eThekwini Municipality formulated and adopted the Rural Development Framework policy document (RDF, 2000). This was informed by the municipality's IDP and SDF and was intended to provide guidance on how development should be undertaken in traditional areas.

Between 2004 and 2006, the municipality appointed a consulting agency to assist in the preparation of the first Spatial Plan or Local Area Development Plan (LADP) for the Ingonyama Trust Board (ITB) at the uMnini Trust area, which is located south of Durban in the province of KwaZulu-Natal.   Key stakeholders identified in the SDF and Rural Development Framework participated in the formulation of the LADP (uMnini LADP, 2006). They included the uMnini traditional authority, comprised of the local Chief (*iNkosi*), Headsmen (*iziNduna*) and local Development Committees, the Department of Cooperative Governance and Traditional Affairs (CoGTA) and the ITB (uMnini LADP, 2006).

The spatial plan or LADP designated the land for various uses such as residential and associated amenities like infrastructure, servitudes, environmental, and areas identified as being unstable in terms of a geotechnical analysis. However, the researcher's observation is

that the traditional authority may be continuing to allocate land using indigenous or customary law, without necessarily adhering to the LADP introduced by eThekwini Municipality. This is supported by the KwaZulu-Natal Planning Commission (2010), which found that spatial plans are failing to address and effectively cater for the needs of rural communities.

According to the researcher's observations, this practice may be contributing to major encroachments such as the construction of houses or homesteads on floodplains or river corridors and other environmentally sensitive areas like primary dunes in areas close to the sea, as well as within servitudes and over services such as roads, railway lines, water, electricity and telecommunications infrastructure and pipelines, among others.

Thus this study sought to establish if key stakeholders are playing an effective role in the preparation and implementation of the LADP in the ITB area within eThekwini Municipality in KwaZulu-Natal.

1.2 MAIN RESEARCH OBJECTIVE

To examine the extent to which the LADP has been able to guide development in uMnini Traditional Authority Area.

1.3 SUB-OBJECTIVES

The sub- objectives of the research are:-

i. To assess the extent to which stakeholder participation may have affected the effectiveness of the LADP;

ii. To examine the role of the key stakeholders during the preparation and implementation of the LADP; and.

iii. To examine the institutional capacity of the key stakeholders in the implementation of the LADP.

1.4 MAIN RESEARCH QUESTION

The main research question being posed is - to what extent has the LADP been able to guide development within uMnini Traditional Area?

1.5 SECONDARY QUESTIONS

From the main question, three key sub questions have been developed namely:

1. What are the factors that may have contributed to effective participation during the preparation of the LADP?

2. What role can key stakeholders play in order to ensure that the LADP is prepared and implemented successfully?

3. Which institutions are involved in the implementation of the LADP and to what extent have these institutions been able to implement the LADP?

Table 1 below provides a summary of the aforementioned objectives in relation to the associated questions.

Table 1: Summary of Research Objectives

THEME	RESEARCH OBJECTIVE	RESEARCH QUESTION
The impact of participation in the planning process.	To assess the extent to which participation has affected the effectiveness of the LADP.	What are the factors that may have contributed to effective participation during the planning or preparation of the LADP?
Role of key stakeholders in the planning and implementation of the LADP.	To examine the role of the key stakeholders during the planning and implementation of the LADP.	What role can key stakeholders play in order to ensure that the LADP is planned and implemented successfully?
The institutional capacity that exists during the implementation of the LADP	To examine the institutional capacity of key stakeholders in the implementation of the LADP.	Which institutions are involved in the implementation of the LADP and to what extent have these institutions been able to implement the LADP?

Source: Ndebele, 2015

1.6　HYPOTHESIS

The hypothesis to be tested in this research is that *"Key stakeholders are not playing an effective role in the planning, preparation and implementation of the LADP in the ITB area within eThekwini Municipality in KwaZulu-Natal."*

1.7　DISSERTATION/CHAPTER OUTLINE

The dissertation consists of seven chapters which are each outlined in more detail below.

Chapter 1 identifies and outlines the purpose of the research and presents the research background, the research problem, primary and secondary objectives, primary and secondary questions and the study's hypothesis.

Chapter 2 presents the conceptual and theoretical frameworks that underpinned this study. While the conceptual framework focuses on key concepts pertaining to aspects of the topic, the theoretical framework explores the keys theories associated with study. This chapter further also provides and discusses critiques of theories or approaches which guide the research.

Chapter 3 examines international and local precedents by exploring the literature on spatial planning, the role of key stakeholders, and participatory mechanisms. The chapter also assesses the legislative and policy framework associated with spatial planning interventions and participation in South Africa. The legislation explored is of national, provincial and local in nature and its relevance to the main and sub-objectives of the research.

Chapter 4 discusses the research methodology used to collect and analyse the data and discusses the study's limitations.

Chapter 5 presents the Case Study of uMnini Traditional Authority and discusses the rationale for choosing the case study. This chapter further examines and analyses the extent, location, background, demographics, and status of the LADP in the case study.

Chapter 6 presents the findings, analysis and results from the empirical study.

Chapter 7 presents a synthesis of the dissertation, undertakes a level of review of the research in terms of the intended research outcomes and addresses the final conclusion and recommendations.

1.8   CONCLUSION

This first chapter has outlined the context of this research study, stated the research problem, highlighted the rationale for the study, the aim and objectives, and presented a hypothesis, the main research questions and sub-questions which will assist in providing answers to the main questions that underpins the dissertation in order to prove the assumed hypothesis.   It is important to commence the research process with the establishment of the theoretical framework or lens through which the research has been examined. This framework is outlined in chapter two which follows.

CHAPTER TWO: CONCEPTUAL AND THEORETICAL FRAMEWORK

2.0   INTRODUCTION

This chapter defines some of the key concepts relating to this study and discusses the theoretical framework within which the study was framed. The conceptual framework identifies and examines the keys concepts that were relevant in contextualising the study, while the theoretical framework examines and reviews theories relevant to the role played by stakeholders in spatial planning.

2.1   CONCEPTUAL FRAMEWORK

2.1.1   Planning

Planning can be defined as *"ordinary forethought encompassing the innate forces of evolution, the instinctive anticipation of biological life forms and animals, and the deliberate actions of human beings''* (Alexander, 1992: 13). Van Wyk (1999) describes planning as the process that leads to the controlled design of buildings and development of land or the regulation and management of the physical environment or use of land for the benefit of society. This definition is relevant as different people may ascribe different meanings to planning and will thus have different interpretations of this term. For example, a traditional leader would have a different understanding of planning from a government official, resulting in different expectations of the outcomes associated with planning.

2.1.2   Municipal Planning

As envisaged in Chapter 5 of the Local Government: Municipal Systems Act (No. 32 of 2000), municipal planning should be development oriented, conform to the prescriptions of section 152(1) and (2) of the Constitution, and be aligned with or complement the development plans and strategies of other affected municipalities.

2.1.3   Land Use Management System (LUMS)

In broad terms, the Land Use Management System (LUMS) refers to all activities or actions required by the municipality to manage the land under its jurisdiction (Briginshaw et al, 2011).

The LUMS include the SDF, various suites of spatial plans, frameworks and schemes; the valuation and rating system; property registration, ownership and tenure; infrastructure and services provision; health and environmental requirements; and road and transportation requirements.

The suite of plans that eThekwini Municipality formulated and adopted include the SDF, Spatial Development Plan (SDP), Local Area Plan (LAP) or LADP applicable to uMnini, Precinct Plan, Land Use Management Plans, Schemes, Precinct Plans or Urban Design Plans and Implementation Plans (Concept, Indicative and Detail Layout Plans) (Briginshaw et al, 2011).

- In terms of Chapter 5 of the Municipal Systems Act 32 of 2000, the SDF is the core spatial component of the IDP which should guide development activities within municipalities.

- The **LAP** or **LADP** is the layer below the SDF and serves a similar purpose but at a more local level (uMnini LADP, 2006). Together with the LADP, land use management plans can be regarded as the precursor plans for the preparation of a scheme for the local area.

- This research focused on the LADP in uMnini Trust Traditional Area (refer to Appendix 1 (locality) and Appendix 2 (LADP)).

2.1.4   Spatial Planning Interventions or the Suite of Plans

Spatial planning interventions refer to the suite of plans that eThekwini Municipality formulates and adopts which include, *inter alia*: the SDF, SDP, LAP or LADP applicable to uMnini, the Precinct Plan, Land Use Management Plans, Schemes, Precinct Plans or Urban Design Plans and Implementation Plans (Concept, Indicative and Detail Layout Plans) (Briginshaw et al, 2011).

As noted earlier, in terms of Chapter 5 of the Municipal System Act (No. 32 of 2000), the SDF is the core spatial component of the IDP which should guide development activities within municipalities. The SDF includes basic guidelines for land use management. Its purpose is to guide all municipal decisions on the following (Briginshaw et al, 2011):

- Direction of growth; major movement routes;

- Conservation of built and natural areas; development to redress past imbalances;

- Areas where land uses should either be encouraged or discouraged;

- Areas where the intensity of development should be increased or decreased; and

- Guide or inform infrastructure informed by Strategic Environmental Management Assessments (SEAs).

This study focused on **local area development** in uMnini Trust Traditional Area. The preparation of the LADP includes the conceptualisation and detailed formulation and implementation of the plan as well as monitoring mechanisms.

2.1.5   Schemes

A scheme is statutory or legal document that divides a municipality into zones (Briginshaw et al, 2011) that are regulated and include the following:

- The use of land and buildings, for example, residential, commercial, industrial, conservation and other purposes.

- The height and bulk or Floor Area Ratio (F.A.R) of the buildings and other structures.

- The coverage or the area of the lot that may be occupied and sometimes the size of the open space that may be required, etc.

2.1.6   Participation

Participation refers to the inclusion of all key stakeholders in the development process (CATAD, 1997). Van Wyk (1999) views public participation as an iterative, continuous form of communication between the relevant informed public stakeholders and the professional team regarding the conceptualisation, development and assessment and decision making on alternative proposals that affects the environment and the public.

Community participation and involvement in planning processes is a requirement laid down in various pieces of legislation. The relevant legislation includes, *inter alia*: Chapter 7, section

152(1) (e) of the Constitution, the Local Government: Municipal Structures Act (No. 117 of 1998), Chapter 4 of the Local Government: Municipal Systems Act (No. 32 of 2000) and various chapters of the SPLUMA of 2013.

2.1.7 Traditional Authority Areas

A traditional authority area refers to land under the jurisdiction of a Traditional Authority and the ITB within eThekwini Municipality.

2.1.8 Land Administration or Allocation and Management

In their report on "*KwaZulu-Natal Land Use Management System: Guidelines for the preparation of Schemes for municipalities"* Briginshaw et al. (2011) provide a breakdown of land administration, allocation and management in traditional authority areas. The report emphasises the extensive role that the traditional authority plays in land administration and management using indigenous law.

2.2 KEY STAKEHOLDERS OR INSTITUTIONAL ARRANGEMENTS

Key stakeholders are an integral part of the formulation of a spatial plan and the participatory process which is required in terms of the aforementioned legislation. Briginshaw et al. (2011) provide a schedule of key stakeholders that should be approached during the preparation of schemes which is normally preceded by the preparation of spatial plans. These include the ITB, the traditional authority or council comprising of the local chief also known as *iNkosi*, headsmen also referred to as *iziNduna*; development or Ward Committees (WC), CoGTA, relevant units or departments within eThekwini Municipality and consultants appointed by the municipality.

The institutional arrangements for the planning and management of traditional areas include, *inter alia*, national and provincial CoGTA, the National Council of Traditional Leaders, the ITB (in the context of KwaZulu-Natal), and Traditional Councils (comprising of *iziNkosi* and *Izinduna* and representatives of women and the youth).

i. *INkosi* means a person contemplated in terms of section 13 of the KwaZulu-Natal Traditional Leadership and Governance Bill, 2013.

ii. *INduna* (plural, *iziNduna*) means a person recognised as an *iNduna* for a specific *isiGodi or tribal ward or traditional boundary* as contemplated in terms of section 15 of the KwaZulu-Natal Traditional Leadership and Governance Bill, 2013.

2.2.1 Ingonyama Trust Board (ITB)

Shortly before the advent of democracy in 1994, the then KwaZulu government brokered a deal with the outgoing Nationalist Government for the establishment of an independent trust for the land that was administered by the Self Governing State. The Ingonyama Trust Act (No. 3 of 1994) placed approximately 2.4 million hectares of urban and rural land in the trust which was to be administered by the King. The implementation of the Act resulted in a two tier approval process where an audience with the King formed part of the legal requirements. It was intended to *"hold ownership of land in trust for the benefit, welfare and social well-being of the tribes and communities residing on the land"*. The Act proved to be an unworkable approach and caused major problems slowing down land development applications, and freezing development in urban townships. Subsequently, the Act was amended in 1997 and the Ingonyama Trust Board (ITB) was established to assist with the application process and administrative duties of managing the land portfolio. Although empowered to grant both Permission to Occupy (PTO) Certificates and Leasehold Agreements, the Board has increasing moved away from the PTO approach and favours agreements on a leasehold basis.

2.2.2 Traditional Authority/Council/Leadership

Traditional Authority, traditional leadership or Traditional Council refers to traditional leadership recognized in terms of both the National Traditional Leadership Governance Framework Act (No. 41 of 2003) and the KwaZulu-Natal Leadership and Governance Act (No. 5 of 2005). Traditional leadership comprises of *Inkosi* (singular) *Amakhosi* (plural) and Induna (singular) *Izunduna* (plural), respectively recognised in terms of the National Traditional Leadership and Governance Act (No. 41 of 2003) and defined in terms of section 19 and 27 of the KwaZulu-Natal Leadership and Governance Act (No. 5 of 2005), as well as representatives of women and the youth.

2.2.3 Provincial Department of Cooperative Governance and Traditional Affairs (CoGTA)

The South African Constitution of (Act No. 108 of 1996) prescribes three spheres of governance (national, provincial and local) that are distinctive, interdependent and interrelated. In terms of Chapter three of the Constitution, the three spheres of governance must work together in a consultative and supportive manner while adhering to all legal processes and procedures. CoGTA is therefore required to support and monitor spatial planning in municipalities.

2.2.4 eThekwini Municipality

In terms of the Local Government: Municipal Structures Act (No. 117 of 1998), eThekwini Municipality is classified as a category A municipality, also known as a Metro. This municipality has the executive mayor and Executive Council (EXCO).

2.2.5 The Development Agency or Planning Practitioner or Consultant/s

Like most municipalities, eThekwini Municipality appoints consultants to conduct studies and prepare the LADP. The municipality generally sets the terms of reference which give guidance on what the study will entail and the budget allocated to a particular study.

2.3 THEORETICAL FRAMEWORKS

The theories considered relevant for this study are **collaborative planning** and **power and discourse**. The **ladder of participation** was also used not as a theory but an approach universally acceptable and applicable. The rationale for using these theories is the fact that key stakeholders, the participation process and its power dynamics are at the core of spatial planning formulation and implementation. An interaction between these stakeholders is determined on whether spatial plans have failed or succeeded at implementation level as in the case of uMnini Traditional Area.

2.3.1 COLLABORATIVE PLANNING/COMMUNICATIVE THEORY

One of *the theories that form the foundation of this study is the collaborative planning theory. "Collaborative planning involves the interaction in the form of a partnership*

throughout consensus building, plan development and implementation and collaborative decision- making requires a process of shared decision making usually through a group of stakeholders prepared to share information and build consensus" (Murtach, 2004:455).

According to Tewdwr-Jones and Allmendinger (1998), communicative or collaborative planning is based on Habermas' communicative theory. This theory characterizes planning as an interactive and interpretive process. Furthermore, planning in this instance is undertaken among diverse and fluid communities. The characteristics include public discussion which involves the identification and evaluation of problems, strategies, and tactics and mediating conflict. Participants are able to collaborate and change existing conditions as well as come up with practical planning solutions, among other issues. The analysis of the uMnini case sought to reveal whether or not the participants collaborated and came up with practical or pragmatic solutions.

2.3.2 A Critique of Collaborative Planning

While Beauregard (2005) argues that network cities provide an environment that is conducive for collaborative planning, Booher and Innes (2000) maintain that collaborative planning is critical in producing network power. Booher and Innes (2002: 225) describe *"network **power** as a shared ability of linked agents to alter their environment in ways advantageous to these individually and collectively."* The authors support their argument by citing planners who use a communicative approach to engage planning commissioners, citizens, developers and other stakeholders to discuss and reach consensus on development related matters. They regard this as collaborative planning which gives rise to network power.

However, Tewdwr-Jones and Allmendinger (1998) express reservations in relation to the success of collaborative planning, particularly because it overemphasises the process rather than the outcome. The authors (Tewdwr-Jones and Allmendinger, 1998) cite the South African empowerment policy as a typical scenario where the process failed to achieve the desired outcome, which is Black Economic Empowerment (BEE). They add that communicative rationality assumes that communities can be included in a collaborative planning process but does not specify how they would be involved.

Tewdwr-Jones and Allmendinger (1998) further argue that that collaborative planning might have some relevance in that it enables stakeholders to discuss local issues with local authorities. However, such engagements are often conducted on the pretence that they are bottom-up when in reality they are conducted on a top-down basis in the institutional, political and legal context.

In his study of collaborate planning in Belfast, Murtach (2000) found that it lacked the capacity to deal with power relations and access to decision-making. In addition, it failed to inform policy identification, formulation and implementation relating to land use issues.

2.3.3   POWER AND DISCOURSE

This section focuses on the key concepts of power and forms of systems of power in relation to planning processes and discourse and its influence in planning policies, the relationship between power and knowledge or discourse and the relevance of these theories or concepts in South Africa.

 "Foucault regards power as a relationship between individuals where one agent acts in a manner which affects another's action. Power can be distinguished from relationships based on consent or on violence which acts upon a body or upon things" (Philp 1985:74). The author argues that power operates to prohibit or direct action in areas where a number of possible courses of action are available to an agent. On the other hand, Albrechts (2003: 907) states that *"Power represents control over one's life and control over one's environment. Power may be used to emancipate, to enable, as well to oppress, to dominate, and to exclude. Power is not monolithic but is distributed among numerous actors. Power should be regarded in terms of having power over the action of others"*. In the context of uMnini, it is important to understand that minority stakeholders or the Traditional Council operate in a highly contested municipal area within the jurisdiction of the Traditional Authority and under the ownership of the ITB.

Albrechts (2003) argues that systems of power can be used in various forms in procedural planning processes to promote goal formulation, policy formulation and implementation. He identified the systems of power used during any of the stages of the procedural planning

process or other forms of consultation, including what he calls the plan-making dimension. According to the author, the systems of power take the form of intimidation, manipulation, persuasion and authority. The uMnini case study assisted in analysing how these systems of power may have manifested during the planning and implementation of spatial planning interventions.

Based on Albrechts' understanding, intimidation includes the use of jargon, pressure groups, experts, and scientific arguments. Manipulation entails distortion and disclosure of information, information overload, meaningless forms of public consultation, and changing content in favour of specific interests. Persuasion includes the use of appealing concepts, the use of experts or opinion leaders, lobbying, and bargaining. Authority entails the authority held by planners, powerful pressure groups, elites, politicians, and scientists. The researcher sought to establish how stakeholders used their authority to render these plans effective or ineffective.

On the other hand, discourse refers to multiple and competing sets of ideas and concepts which are produced, reproduced and transformed in everyday practices and through which the material and social world is given meaning (Richardson, 2002: 354).

Flyvbjerg's (1998) analysis of the Aalborg project demonstrated the importance of understanding power in all engagements. The author showed how the plans designed to restructure and improve the environment in Aalborg were converted by those in power into degraded environmental and social fragmentation. Flyvbjerg's (1998) main arguments were based on ten propositions that he formulated about rationality and power, namely:

a) Power defines reality;

b) Rationality is context-dependant, the context of rationality is power, and power blurs the dividing line between rationality and rationalisation;

c) Rationalization presented as reality is a principal strategy in the exercise of power;

d) The greater the power, the lesser the rationality; (e) stable power relations are more typical of politics, administration, and planning than antagonistic confrontations;

e) The rationality of power has deeper historical roots than the power of rationality;

f) Power relations are constantly being produced and reproduced;

g) In open confrontation, rationality yields to power;

h) Rationality-powers are more characteristic of stable power relations than of confrontation; and

i) The power of rationality is embedded in stable power relations rather than in confrontations.

2.3.4 A CRITIQUE OF POWER AND DISCOURSE

Philip (1985) cites Foucault who describes power as an integral part of the production of truth. He further argues that truth is at the core of power and is produced by what he calls multiple constraints.

Hajer (1995) argues that Foucault's analysis of the discourse theory is intermingled with historical arguments. Foucault's insistence on the discipline as the dominant theme of modernisation is matched by an emphasis on the constraining workings of discourse but is weak on the enabling aspect (Hajer, 1995). Hajer (1995) adds that Foucault's work was concerned with the development of social discourses during the modern epoch. In the process, the significance of interpersonal discursive action was reduced.

Hajer (1995) further argues that contrary to sociologists' view of knowledge as the relationship between agency and structure, Foucault did not acknowledge important individual action in the production, reproduction and transformation of discourse. Thus, the researcher sought to establish if the behaviour of recipient stakeholders which include *iNkosi*, *iNduna* and Traditional Council members in uMnini was determined and directed by eThekwini Municipality.

2.3.5 LADDER OF PARTICIPATION

Arnstein (1969) regards citizen participation as a term for citizen power where the marginalized are included in future political and economic processes. The author argues

that the citizen participation process takes the form of participation and non-participation arranged in eight levels or types. An eight rung ladder is used to illustrate participation or non-participation with each rung corresponding to what the author regards as the extent of citizen power in determining the end product (refer to figure 1).

The bottom rungs, 1 and 2, respectively represent manipulation and therapy. The author regards these two rungs as levels of non-participation where the main objective of the power holder is to educate the participants not to participate.

Rung 3 (informing) and rung 4 (consultation) represent low levels of token participation in that citizens are allowed to air their views but have no guarantee that such views will be considered. Rung 5 (placation) is a high level of tokenism with the power holders continuing to hold on to decision making.

Rung 6 (partnership) is the level that creates an environment to negotiate and engage and reach consensus as well as share trade-offs with the power holders.

Finally, rungs 7 (delegated power) and 8 (citizen control) are the highest level of participation where the marginalized are also decision makers or take full managerial power.

Figure 1:   The Eight Rungs on a Ladder of Citizen Participation

8	Citizen control	Degree of citizen control
7	Delegated power	
6	Partnership	
5	Placation	Degree of tokenism
4	Consultation	
3	Informing	
2	Therapy	Non-participation
1	Manipulation	

Source: Arnstein 1969

It was important to analyse and understand what type and level of participation was employed by eThekwini Municipality during the formulation of the LADP as a formal spatial planning intervention in uMnini traditional area.

2.3.6   CRITIQUE OF THE LADDER OF PARTICIPATION

Gershman's (2013) study of policy makers and citizens in the city of Portland identified the weaknesses of Arnstein's ladder of participation approach which include, *inter alia*:

a) Arnstein's focus on the power dynamics lack depth in terms of participation at conceptual stages or at the level of practice;

b) There is a general assumption that participation takes the form of a hierarchy and that citizen control is elevated as a goal of participation which sometimes does not align with participants' rationale for engaging in decision making processes; and

c) That this ladder or participation has limitations in instances where a problem or decision is unique and therefore requires different levels or particular types of approaches which may not be identified in the ladder of participation.

This critique enabled an understanding of whether or not participation in uMnini area during spatial planning took a linear hierarchical form and reached a different form of decision or outcome.

2.4   CONCLUSION

This chapter defined the key concepts relating to this study. It discussed how these concepts are related to the context of spatial planning formulation and implementation.   The concepts are further explored in the following chapter that discusses international and local precedents, and the legislative and policy environment in South Africa. Within the chapter the concept of collaborative planning is explored, to provide an understanding of how communication and stakeholder involvement should be undertaken. Arnstein's ladder of participation offers a clear picture of real participation and non-participation, while power and discourse theory provides an understanding of power dynamics and the role that key stakeholders can play in spatial planning and implementation in ITB areas based on their understanding of the discourse.

CHAPTER THREE – INTERNATIONAL AND SOUTH AFRICAN PRECEDENTS

3.0   INTRODUCTION

This chapter discusses spatial planning from the perspectives and experiences of both international and African countries. The South African perspective includes particular focus on the country's legislative and policy frameworks. In this section, the relevant legislation and policies include, *inter alia,* the national Constitution of the Republic of South Africa (No. 108 of 1996), the Local Government: Municipal Structures Act (No. 117 of 1998), the Local Government: Municipal Systems Act (No. 32 of 2000), the National Environmental Management Act (No. 107 of 1998), and the recent Spatial Planning and Land Use Management Act (No. 16 of 2013). At the provincial level, the KwaZulu-Natal Planning and Development Act (No. 6 of 2008) is considered. Another category of law is classified as customary or indigenous law and was recognised in terms of Chapter 12 of the national Constitution. An overview of the Ingonyama Trust Act (No. 3 of 1994) and the Ingonyama Trust Amendment Act (No. 9 of 1997) which established the Board, and the Amakhosi and Iziphakanyiswa Act (No. 9 of 1990.) are presented. At the municipal level, the eThekwini Rural Development Strategy is examined. The chapter also explores the role of key participants or stakeholders, and participation during the preparation of plans and implementation of spatial planning in areas falling under the Ingonyama Trust and held in communal ownership.

3.1   INTERNATIONAL PRECEDENTS

3.1.1   United Nations Perspective

There are different perspectives on spatial planning. In 2008, the United Nations Economic Commission for Europe (UNECE) introduced guidelines for spatial planning for countries in transition (UNECE, 2008). These include democratic, subsidiary, participation, integration, proportionality and precautionary principles. Participation in the spatial planning process is also a feature of European countries in transition. UNECE (2008) further advises that consultation with key stakeholders must be undertaken on a collaborative basis during the formulation of spatial plans.

Amdam (2004 citing Healey et al. (1999) emphasises the need for good governance, partnerships, confidence and trust building and communicative planning as key to the

formulation of spatial planning and rural development. The researcher is of the view that the challenges identified by UNECE are not unique to Europe but are universal. To illustrate this point the following international precedents are presented and revaluated to demonstrate the relevance of other case studies to this research topic.

3.1.2   Tanzanian Perspective

In 1998, the National Land Use Planning Commission (NLPUC) of Tanzania was mandated by the Ministry of Land and Human Settlements Development to formulate guidelines on how to engage key stakeholders in the planning and management of resources at village level. The NLPUC (1998) referred to these guidelines as Participatory Village Land Use Management (PVLUM) which was premised on the following principles: efficiency (use of limited land resources to produce maximum benefits); equity (provide benefits to all socio-economic categories including women and the youth); sustainability (not resulting in the degradation of the limited resource base) and an improved local decision making process. Central to the formulation of these guidelines was facilitation of the involvement of key stakeholders and promoting the idea of participatory processes in resource management. These guidelines were so successful that they that later applied in a case study of Dodoma village in a rural part of Tanzania. The study can be used to inform planners about the importance of including all stakeholders including beneficiaries of development plans. It can also educate South African spatial planners and others in the developing world on the guidelines that can be used to formulate rural development plans.

3.1.3   Cambodian Perspective

In 1999 the Cambodian State Department introduced Participatory Land Use Planning (PLUP) as a pilot tool for sustainable resource management in predominantly rural areas (Christ, 1999). According to Christ (1999), PLUP was a bottom-up planning approach that was used to address the following issues in rural areas: degradation of existing resources due to overexploitation; inadequate land resources due to population expansion; land use conflicts due to competing claims to available limited resources; resettlement of population groups and land allocation or re-allocation.

The key characteristics of the PLUP approach include, *inter alia*: a bottom-up planning approach where local land use plans are incorporated with and inform the regional or national planning framework; consulting with all key stakeholders, i.e. local users, government agencies, non-governmental organisations (NGOs) and the private sector; roles and responsibilities to be clearly defined and respected; planning decisions to be based on true agreements; planning processes and decisions to be transparent to all parties involved; an iterative, lengthy process which requires implementation, monitoring and evaluation and regular revision (Christ, 1999).

Christ (1999) further identifies the challenges in implementing PLUP:

- The institutional challenge arose as a result of a lack of communication and coordination within ministries and between different levels. This was also attributed to insufficient delegation of authority at lower staff levels. It was further compounded by the failure to define the roles and responsibilities of different government agencies.

- The legal challenge was attributed to the incomplete legal framework due to the lack of regulations pertaining to customary land tenure and land use rights. Unofficial land titles were apparently not recognised at departmental level.

- A lack of resources in the form of insufficient funding and a shortage of qualified staff to provide support for the programme.

- A lack of experience and awareness of the use of PLUP could lead to resistance and therefore require behavioural change.

- The lack of technical aspects such as reliable socioeconomic data and indigenous knowledge, and proper techniques to assess and map information with the active participation of local villagers.

3.2   SOUTH AFRICAN PRECEDENTS

3.2.1   The Key Role of Stakeholders in Spatial Planning

The South African Planning and Development Commission (PPDC) (2010) identified three key institutions, namely municipalities, Traditional Authorities or councils and the ITB, which are

involved in planning and land management in traditional authority or council areas. The PPDC (2010) argues that while municipalities are taking the lead in planning matters, land administration or allocation is driven by Traditional Councils with the assistance of the ITB in issuing leases. The PPDC (2010) adds that, in allocating land, Traditional Councils rely heavily on indigenous knowledge of the area with minimal reliance on national and provincial legislation or guidelines.

Sithole and Mbele (2008) were commissioned by the Office of the Presidency to assess whether or not the traditional leadership has been incorporated into the local government system in South Africa. They concluded that: the government accepts and tolerates traditional leadership although it is not clear whether the government regards itself as being superior and traditional leadership as subservient to the state; South African intellectuals are not of the same view regarding the relevance of traditional leadership in the current political system; traditional leaders feel that their role and contribution is crucial at the local level but national and provincial government is grappling with their status and powers rather than operational matters; participatory mechanisms need to reviewed given perceptions that communities and civil society are not fully consulted during policy making processes; and municipalities need to formulate institutional arrangements to work with traditional leadership on LUMS, IDPs and other service delivery issues.

However, Todes (2008) argues that there have been challenges in attempts to link spatial planning with infrastructure planning in developing countries, including South Africa. Todes (2008) notes that, spatial planning in such countries is state driven, while infrastructure provision is driven by the private sector or agencies that generally work in silos and simply ignore or bypass spatial plans. Thus, Todes (2008) adds that spatial plans are fragmented and that spatial development is more an outcome of infrastructure planning such as for transportation or water. In conclusion, the researcher observes that broad spatial planning has limitations in understating the spatial set-up of cities and their complexities, which includes, *inter alia*, socio-demographic patterns, economic activities, movement and settlements.

3.2.2   The Participatory Role of Key Stakeholders in Spatial Planning

Key stakeholders' participation in planning is vital. A 2013 publication by the South African Local Government Association (SALGA) defined the role and place of traditional leadership. However, this definition is mired in suspicion, confusion and contradictions (www.salga.org.za.). SALGA (2013) maintained that the lack of participation of traditional leaders in municipal councils is due to a failure to encourage active engagements on the part of the provincial Members of the Executive Council (MECs). SALGA (2013) maintains that MEC's have been unable to advise on role traditional leaders could play if they were to engage in municipal councils. SALGA (2013) further noted that various pieces of legislation such as the Traditional Leadership and Governance Act (No. 41 of 2003) and the Local Government: Municipal Structures Act (No. 117 of 1998), allow traditional leaders to participate in municipal councils, including attending meetings.   Thus SALGA (2103) emphasises that MECs should issue a formal directive that traditional leadership should participate in municipal affairs (www.salga.org.za).

3.3   THE SOUTH AFRICAN LEGISLATIVE FRAMEWORK

3.3.1   The Constitution of the Republic of South Africa (Act No. 108 of 1996)

As the supreme law of the land, the Constitution prescribes in Chapter 7 that municipalities should be established. It also defines their powers, functions and developmental duties. A municipality's developmental duties include, *inter alia*: the duty to structure and manage its administration, budgeting and **planning processes** in order to provide basic services to communities, and to promote the social and economic development of the community. Furthermore, the Constitution outlines the role that Traditional Authorities and communities should play at municipal level in order to ensure speedy delivery of services.

3.3.2   The Local Government: Municipal Structures Act (No. 117 of 1998)

The Local Government: Municipal Structures Act (No. 117 of 1998) prescribes the mechanism for the establishment of municipalities as the third sphere of governance and determines their powers and functions. eThekwini Municipality is defined as a category A metropolitan municipality with exclusive executive and legislative authority to run its own affairs. Section 81 of this Act prescribes that before a municipality takes a decision that

affects a traditional area, it must allow the traditional leader to articulate his or her views on the matters.

3.3.3 The Local Government: Municipal Systems Act (No. 32 of 2000)

The key aspects of the Municipal Systems Act (MSA) (Act No. 32 of 2000) include: providing for the core principles, mechanisms and processes that are essential to enable municipalities to progress towards the social and economic upliftment of communities; defining the legal framework of the municipality as the local community, working in partnership with the municipality's political and administrative structures; providing for the manner in which municipal powers and functions are exercised and performed; providing for community participation; establishing a simplified enabling framework for the core processes of planning, performance management, and resource mobilisation; providing the framework for service delivery to local communities; and acting as a development agency in order to integrate the activities of all spheres of government.

Chapter 5 sections 25, 26, 28, and 29 of the Act prescribe that each municipality must prepare and adopt an inclusive and strategic plan, an IDP, in conjunction with a SDF. In terms of section 26, the SDF must incorporate the basic guidelines for a LUMS which is applicable to the entire municipality. It is left to municipalities to decide what these guidelines should encompass.

Section 28 of the Municipal Systems Act 2000 prescribes that the process to guide the planning, drafting and adoption of the IDP must be undertaken in **consultation with local communities**. The consultation process is not clearly defined and is perhaps left to municipalities to decide.

3.3.4 The Spatial and Land Use Management Act (No.16 of 2013) (SPLUMA)

The SPLUMA 16 of 2013 stipulates that a uniform, effective and comprehensive spatial planning and land use management system should be prepared and adopted for the whole country at national, provincial and municipal spheres of government. The key components of the spatial planning system include the following:

- SDFs are to be prepared and adopted by all spheres of governance (in terms of Chapter 4, section 21 of the Act).

- The development principles, norms and standards set out in Chapter 2, sections 6, 7 and 8 must guide spatial planning, land use management and land development.

- The management of and facilitation of land use contemplated in Chapter 5 through the mechanism of a land use scheme.

National support and monitoring is required in terms of Chapter 3, section 9(b) (iii) for the quality and effectiveness of municipal SDFs and spatial planning and land use management tools and instruments. Chapter 4 of the Act calls for the preparation and adoption of the municipal SDF following a public consultation process.

The relevance of the Traditional Council can be seen in Chapter 5 which gives the executive authority of the municipality the power to prepare, adopt and amend a land use scheme as part of land use management. Section 23 (2) states that, guided by the Local Government: Municipal Structures Act (No. 117 of 1998) and the Traditional Leadership and Governance Act (No. 41 of 2003), the municipality must allow for the participation of the Traditional Council in the preparation and adoption of such land use schemes.

Chapter 6, Part B also calls for the establishment of Municipal Planning Tribunals (MPT) to approve certain land development applications within the municipality's jurisdiction. In terms of Section 36 of the SPLUMA, the MPT will consist of five or more members who are full time officials in the employ of the municipality and persons not in the employ of the municipal council who have knowledge and experience of spatial planning, land use management and land development or the law relating thereto. However, the SPLUMA is silent on the role that can be played by Traditional Authorities or councils in areas that fall under a municipality but are located within the jurisdiction of a traditional area.

3.3.5 The National Environmental Management: Integrated Coastal Management Act (No. 24 of 2008)

The National Environmental Management: Integrated Coastal Management Act (No 24 of 2008) provides for the identification of coastal areas in the entire country, and allows for the coordinated and integrated management of these areas by all spheres of government. All municipal land and land falling under the jurisdiction of the ITB that is located along the coast has particular attributes that include, *inter alia*, close proximity to the sea and dunes, which need to be treated with special care. This is even more important due to flooding and the heavy seas swells that took place in October 2015 and associated with global warming and climate change.

3.3.6 The National Environmental Management Act (No. of 1998) (NEMA)

The main aim of this legislation is to provide for co-operative governance by establishing principles for decision-making on matters affecting the environment and identifying the institutions that will promote co-operative governance, as well as procedures for coordinating the environmental functions exercised by organs of state. The Act also provides for certain aspects of administration and enforcement of other environmental management laws.

Chapter 1 of the NEMA sets out the guiding principles. The researcher has identified and listed those considered relevant to Traditional Authorities including uMnini. These are: environmental management must place people and their needs at the forefront of its concerns, and serve their physical, psychological, developmental, cultural and social interests equitably; development must be socially, environmentally and economically sustainable; the promotion of sustainable development should take all relevant factors into account; the participation of all interested and affected parties in environmental governance must be promoted and people, including the vulnerable and disadvantaged, must be given an opportunity to develop the understanding, skills and capacity required to ensure equitable and effective participation; decisions must be taken in an open and transparent manner, and access to information must be provided in accordance with the law; and actual or potential conflicts of interest between organs of state should be resolved through conflict resolution.

The significance of this legislation is that in terms of Chapter 7, section 28(1), every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring. This is particularly significant where Traditional Councils allow illegal sand mining in areas in close proximity to rivers, resulting in serious environmental degradation

3.4   PROVINCIAL LAWS

3.4.1   The KwaZulu-Natal Planning and Development Act (No. 6 of 2008) (PDA)

Chapter 2 of the KwaZulu-Natal Planning and Development Act (No. 6 of 2008) stipulates that a wall to wall scheme should be prepared and adopted for the entire province but it is not clear how this is to be undertaken in rural areas, particularly those that fall under Traditional Authorities. The Act also allows for consolidation and preparation of layout plans, and processing and approval of such plans in terms of schedule 1. However, Chapter 4 of the PDA excludes planning in traditional areas

3.5   CUSTOMARY OR INDIGENOUS LAW

van Wyk (1999) defines customary or indigenous law as unwritten law that has been passed from generation to generation since time immemorial. Customary or indigenous law is recognized in the South African Constitution and also enjoys formal recognition in provinces such as KwaZulu-Natal.

3.5.1   The KwaZulu Amakhosi and Iziphakanyiswa Act of (No. 9 of 1990)

This Act provides for the establishment of tribal authorities and communal authorities, and sets out the powers, functions, and duties of these Traditional Authorities in the allocation, settlement and development of land within their jurisdiction.

3.5.2   Ingonyama Trust Amendment Act (No. 9 of 1997)

This Act allowed for the establishment of the ITB, the transfer of the land under the former KwaZulu-Natal homeland and the administration of such land. Since this Act was passed before the promulgation of the legislation that governs the preparation and adoption of

spatial plans, it is therefore silent on how administration should be undertaken in the context of these plans.

3.5.3   Traditional Leadership and Governance Framework Act (No. 41 of 2003)

This Act requires that traditional communities should be recognised and that Traditional Councils should be established and recognised. It also sets out the functions of Traditional Authorities. The Act calls for the establishment of a working relationship or partnership between municipalities and Traditional Councils but is not clear how this should be undertaken in the context of spatial planning driven by municipalities.

3.5.4   The KwaZulu-Natal Traditional Leadership and Governance Bill, 2013

Following lengthy discussions on how and what role Traditional Authorities or councils could play in development or planning-related issues within municipalities, the KwaZulu-Natal Provincial Legislature formulated a new Bill that seeks to define what these roles and functions would entail in greater detail.

The KwaZulu-Natal Traditional Leadership and Governance Bill was published for public comment in the provincial gazette, volume 9 no. 1308 dated 13th February 2013. Once promulgated, it will apply throughout the province. Amongst other things, it provides for:-

- Recognition of the *Isizwe* or traditional community, traditional leadership and traditional institutions;

- A regulatory framework for the recognition of and vesting of roles, powers and functions in, as well as the allocation of functions to, Traditional Councils, traditional leaders and other traditional leadership structures; and,

- A framework for the development of capacity building and support for Traditional Councils, traditional leaders and other traditional leadership structures.

The role, powers, and functions of the *iNkosi*, *iziNduna*, and Traditional Councils are defined in terms of Chapter 5, sections 29, 32 and 33 of the Bill and those that relate to this study

are discussed. These sections state that *iNkosi*, *iziNduna* and Traditional Councils must: Protect and promote customary law and customs; promote indigenous knowledge; promote indigenous knowledge systems for sustainable development; participate in municipal councils as contemplated in section of 81 of the Local Government: Municipal Structures Act, 1998; promote the ideals of co-operative governance, integrated development planning, sustainable development and service delivery; meet at least once every six months with the *isiSiwe* concerned to provide information on the content and implications of new laws and government programmes; support municipalities in the identification of community needs; facilitate the involvement of the *isiZwe* concerned in the amendment of the local municipality's IDP; participate in the development of policy and legislation at local government level as well as in municipalities and provincial and national spheres of government's development programmes; promote and co-operate with all municipal ward committees within its area of jurisdiction and carry out, execute and perform any other role. The powers or functions of a Traditional Council are those contemplated in this Bill and any other applicable legislation.

The provincial organ of state is also expected to play a pivotal role in assisting traditional leadership in the execution of their roles, powers or functions stated above. In terms of sections 29, 32 and 33 of the Bill, the provincial organ of state may through legislative and administrative measures provide for roles, powers or functions for *iNkosi*, *iziNduna* and Traditional Councils in addressing matters such as agriculture; health; education; housing; economic development; the environment; tourism; disaster management and the management of resources and the dissemination of information relating to government policies and programmes.

The Bill provides opportunities for contractual agreements that the *iNkosi*, *iziNduna* and Traditional Councils can utilise. In terms of section 33(4) of the Bill, whenever an organ of state considers allocating such roles, powers and functions to *iNkosi*, *iziNduna* and Traditional Councils, it may do so through delegation, agency agreements or power of attorney. It also recognises the importance of ensuring facilitation and delivery of services not only by the state but through the Traditional Council. In terms of section 33(5) of the Bill, a Traditional Council may enter into service delivery agreements with a municipality in

accordance with the Local Government: Municipal Systems Act No.32 of 2000 and any other applicable legislation.

Section 33 (6) also gives power to the responsible MEC to not only to monitor the carrying out of the aforementioned roles, powers or functions but to intervene to ensure compliance.

The Bill further recognises the role that municipalities and stakeholders play in co-operative governance and therefore encourages partnerships. In terms of section 34 (a) and (b) of the Bill, partnerships must be:

- Based on the principle of mutual respect and recognition of the status and roles of the respective parties; and,

- Guided by and based on the constitutional principle of co-operative governance of public administration.

The reason for the lengthy discussion of this Bill is that, if promulgated, it will not only clearly prescribe the roles and responsibilities of Traditional Authorities, but hold them to account for their actions.

3.6   MUNICIPAL BY LAWS

3.6.1   eThekwini Municipality: Planning and Land Use Management By-law, 2015 (PLUMB)

In terms of the SPLUMA, municipalities, particularly Metros with capacity and resources, are encouraged to introduce their own planning by-laws rather than wait for national government to promulgate regulations. As one of the largest metropolitan areas, eThekwini Municipality has recently introduced a new Planning and Land Use Management By-law, 2015 (PLUMB).

The objectives of this bylaw are to provide for: a package of plans to inform social, economic, environmental, and infrastructural development in the municipality; a uniform,

effective, comprehensive, and interrelated framework for spatial planning and land use management; inclusive, developmental, equitable and efficient planning in the spirit of co-operative governance; a framework for co-operative and cross-border relationships with all spheres of government and integrated planning between the municipality and neighbouring municipalities; a framework for policies, principles, norms and standards for spatial development planning and land use management; a framework for the monitoring, coordination and review of the spatial planning and land use management system; mechanisms to regulate land development applications and decision-making procedures; the establishment, functions and operations of the Municipal Planning Tribunal; facilitation and enforcement of land use and development measures; an appeal authority; and penalties for breach of the by-law's provisions.

The bylaw will also encourage the participation of Traditional Councils in areas under the jurisdiction of the ITB.

3.7   MUNICIPAL OR LOCAL POLICY FRAMEWORK

eThekwini Municipality has also introduced policy documents to guide development within ITB areas. These include the Rural Development Framework (RDF), 2000 and the Strategic Environment and Agriculture Assessment for uMnini Trust Traditional Area.

3.7.1   Strategic Environment and Agriculture Assessment (SEA) Report

The Strategic Environment and Agriculture Assessment report sets the following guiding principles for Traditional Authorities (Diederichs, 2005):-

- No housing or settlement upgrades should take place within any wetland, or within a 100-year flood-line.

- No housing or settlement upgrades should take place within the coastal strip between the railway line and the beach.

- No green fields or settlement development should take place within any area identified as an environmental asset zone or falling within the DMOSS.

- Cognisance must be taken of the needs and desires of people within traditional areas to engage in subsistence agriculture and livestock grazing in demarcated areas.

- Cognisance must be taken of the fact that all coastal zones, estuaries, and the uMgababa Dam are strategy opportunity zones for future recreational, tourism and economic development. Residential upgrades and infill / green field development must be considered in this light to ensure that these opportunities are not lost.

- Development that results in substantial densification (>1 unit per 2000m^2) must consider the need for waterborne sanitation, particularly in the coastal zone, to ensure that receiving natural environments are not degraded and human health risks are not created.

- Development upstream of key assets such as the uMgababa Dam and all estuaries must pose minimum risk to these assets from a soil erosion perspective. Steep slopes and potentially erodible soil areas should be excluded from the development footprint in these catchment areas.

- The entire project area has been identified as an area with high agricultural potential – particularly for extensive dry land cropping. This must be considered when planning any form of green-field development in the area.

3.7.2 Integrated Development Plan (IDP) and Spatial Development Framework (SDF)

In terms of the Municipal Systems Act No. 32 of 200, the IDP is a five-year strategic document or business plan for the municipality. It assists the municipality to facilitate and manage development within its area. The IDP accommodates either budgetary and spatial components or SDFs that were discussed in detail in 2.2.4. The budgetary or financial component of the IDP is guided by the Municipal Finance Management Act (No. 56 of 2003) (MFMA). The MFMA provides guidance on the sound and sustainable management of eThekwini Municipality's financial affairs. The aforementioned strategic and spatial components are translated into the LADP.

3.8   CONCLUSION

In terms of the international precedents, this research study sought to establish if the success or failure of land use planning is dependent on adhering to the principles of PLUP. It further aimed to determine whether the success or failure of land use planning depends on the commitment of all stakeholders to address, among other things, the factors associated with institutional, resource, technical, and legal matters as maintained by Christ (1999). The legal and policy framework discussed under the local precedents highlighted challenges, particularly in defining the roles and responsibilities of Traditional Councils in spatial planning.

CHAPTER FOUR: RESEARCH METHODOLOGY

4.0   INTRODUCTION

This chapter defines a research methodology and discusses the research methodology used to collect and analyse the data for this study. It also discusses the challenges encountered during the data collection and collation stages.

4.1   RESEARCH METHODOLOGY

"Research Methodology is defined as a scientific and systematic search for pertinent information on a specific topic" (Kothari, 2004: 1). A qualitative research approach was considered appropriate for this study based on Berg's (2001: 3) statement that *"Qualitative research refers to the meanings, concepts, characteristics, metaphors, symbols and descriptions of things"*. Berg adds that this approach addresses the questions of where, when, what, how and why things are happening or people are behaving in a particular manner. It includes methods such as interviews, observations, photographic techniques, videotaping and voice recording, and document and textual analysis.

Merriam (2009) states that qualitative research methods enable researchers to understand the meanings that people construct, that is, how people make sense of their world and their experiences in the world. A qualitative research approach was therefore considered appropriate and relevant for this study.

4.2   SOURCES OF DATA

4.2.1   Secondary Sources

The secondary data were obtained from articles, journals, periodicals, books, newspapers, published and unpublished reports, policies, relevant legislation and government publications. They were sourced from libraries, the Internet and some state institutions. This information complemented that obtained from interviews. Secondary sources included, *inter alia*, the South African Constitution, legislation, and policy documents.

4.2.2   Primary Sources

The primary data was obtained through interviews. In simple terms, interviews are described as a conversation or discussion with the purpose of gathering information (Berg, 2001). The different types of interviews include face-to-face interviews, focus groups and telephonic interviews (Bhattacherjee, 2012). The researcher used face-to-face and group interviews.

4.3   SAMPLING PROCEDURE

Purposive sampling was used to select participants to interview for this study. According to Mouton (1996: 113), in purposive sampling the researcher focuses on certain characteristics of the subjects that will yield the required knowledge and information. Strydom (in Devos, 2002: 334) notes that purposive sampling is non-random method of sampling where participants are selected because they have knowledge that will assist in the research. The researcher thought critically about the parameters of the population in choosing the sample case. Clear identification and formulation of criteria for the selection of the respondents were therefore of cardinal importance. Hence, the researcher purposely selected key stakeholders who were suitable and relevant to the study.

The primary source of data was obtained from seven respondents. These seven participants were purposefully and specifically selected due to either the knowledge they had with they had on the uMnini case study or their involvement in the planning or formulation of the uMnini LADP.

The respondents included a senior manager of CoGTA responsible for spatial planning; the head of the ITB; a traditional authority or council which comprises of *iNkosi* (chief), *izinduna* (headmen), youth and women; the Ward Councillor/s; a Senior official at the eThekwini Municipality Development Planning Environment and Management (DPEM) Unit, a key unit in the formulation of spatial planning initiatives; a senior official from eThekwini Municipality: the former rural area-based manager and a planning consultant appointed by the municipality to undertake the formulation of the uMnini LADP or SPF.[2]

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[2]   The names of the respondents have not been included due to issues of confidentiality.

4.4   INSTRUMENTS OR TOOLS FOR DATA COLLECTION

The researcher used face-to-face interviews and made use of pre-formulated, open-ended prompt questions. The interview process is the commonly and universally accepted qualitative tool for data collection. Use of open-ended questions allows the researcher to observe and experience the feelings and free expression by the respondents.

4.5   DATA COLLECTION PROCESS

"Data collection in a case study research is typically in-depth and makes use of multiple sources of information such as documents, interviews, direct observation, reports among others" (Creswell, 2007: 75). According to Creswell (2000: 72), *"data collection is information obtained either formally or informally and involves verbal or non-verbal acts or response which is designed for qualitative analysis"*.

For this study, the researcher used face-to-face interviews and participant observation to gather data. Face-to-face interviews were conducted with individual participants. Specific questions were used that are attached as appendix 3. According to Tutty (1996: 52), an interview is a conversation with a purpose of allowing the participants to speak at length and gaining an in-depth understanding of the perspective of the person interviewed. The researcher used semi-structured interviews. A semi-structured interview is a method of research used in the social sciences. It is flexible and allows new questions to be introduced during the interview as a result of what the interviewee says. The interviewer generally has a framework of themes to explore. The semi-structured interviews were conducted with the aid of an interview guide. Contact was made with potential respondents telephonically or via e-mail to set up appointments. A tape recorder was used with prior consent from the respondents. The interview process was not only recorded but also captured by taking notes.

4.6   DATA ANALYSIS

Patton (2002:432 in De Vos et al., 2005:333) states *that "qualitative analysis transforms data into findings"*. This involves reducing the volume of raw information, sifting significance from trivia, identifying significant patterns and constructing a framework for communicating the essence of what the data reveals. Nieuwehuis (2007: 99) notes that data analysis

involves a *"range of approaches, processes and procedures whereby researchers extract some form of explanation, understanding or interpretation from information collected of the people and situations under investigation"*. Mouton (1996: 161) states that *"data analysis means the degree of a complex whole into parts"*.

The data collected was analysed in the following manner:-

- Firstly, the recorded conversations or interviews were transcribed. Secondly, the transcribed data were sorted into the themes identified which included the factors influencing the impact of plans, the role of participation, and the stakeholders' roles. In sorting the data, the researcher took into account amongst other things the attitudes, understanding, knowledge, values, feelings and experiences of the respondents; and,

- Secondly, the researcher then linked the data obtained from the respondents to the international and local precedents which form part of the literature review to come up with conclusions and recommendations.

4.7   LIMITATIONS OF THE STUDY

The limitation of the study was that the interviews were very time consuming. Some key officials were not easily accessible due to unforeseen circumstances despite appointments being made. Heavy reliance on some officials who did not have the key information readily available proved to be a challenge. Traditional Authorities were also not accessible and a compounding issue was that a particular protocol has to be observed if the *iNkosi* is to be interviewed. This included approaching the *iNkosi* and getting permission to interview his Traditional Council members. The council members then had to be contacted to confirm their availability. Translation of the interviews from isiZulu to English was also a time-consuming exercise and had to be carefully undertaken to ensure that the essence of the interview was accurately captured. Furthermore, the interviews took place during a very busy period of budget preparation and the development of the IDP and SDF for council adoption in May 2015.

4.8   CONCLUSION

Notwithstanding the above-mentioned challenges, the researcher made every effort to include all key stakeholders considered relevant to the research with the intention of gathering as much data as possible.

CHAPTER FIVE - CASE STUDY: UMNINI TRADITIONAL AUTHORITY

5.0   INTRODUCTION

This chapter presents the uMnini Traditional Council as the case study which is administered by the ITB within eThekwini Municipality. The chapter also presents the rationale for selecting the uMnini Traditional Council as the case study as well as its physical location, background, and the 2006 LAPD development, residential and amenity guidelines.

5.1   THE RATIONALE FOR CHOOSING UMNINI TRADITIONAL AUTHORITY AS THE CASE STUDY AREA

The uMnini Trust area was identified as the case study since uMnini was one of the first areas under the ITB in which a LADP and rural schemes were introduced. The researcher is familiar with the area (refer to locality plan 01). In 2004, eThekwini Municipality appointed a team of consultants to prepare a LADP for the uMnini area following the establishment of and completion of the IDP, SDF and Rural Development Framework (RDF) (uMnini LADP, 2006).

After completing a series of strategic documents which included the IDP and SDF, the Municipality embarked on the process of introducing the RDF. The purpose of the framework was to guide future development in all rural areas within eThekwini Municipality under the jurisdiction of the ITB (uMnini LADP, 2006).

In 2006, eThekwini Municipality introduced the uMnini LADP as a pilot plan for areas falling under the ITB. The uMnini traditional area was given preference due to certain characteristics that include, *inter alia*, rapid uncontrolled urbanisation taking place in close proximity to major infrastructure such the N2, railway lines, and industrial areas and its prime location along the coast resulting in a range of environmental as well ecological challenges.

The LAPD was designed to guide future development in the following areas: Movement, circulation, and transportation; location, and distribution of facilities; infrastructural services; residential development including housing and associated densities, economic

factors, tourism, and related aspects; agricultural development; protection and conservation or preservation of natural resources; and addressing social and institutional issues such as schools, and crèches.

The LADP also acted as the basis for the Land Use Management Plan, which would be incorporated into the municipality's future LUMS and schemes in so far as the development of rural areas including areas under the ITB is concerned. The LADP formed the basis of the current research study that aimed to identify the key factors that affected the effective implementation of these spatial planning interventions.

5.2 THE EXTENT OF THE SITE AND WARDS' AREA

The extent of the site is approximately 400 ha and the study area constitutes the bulk of Ward 98 under Councillor Magubane and Ward 99 under Councillor Bayeni. The uMnini traditional area falls under the uMnini Traditional Council, which is led by *iNkosi* Luthuli. It comprises four traditional local regions also known as *izigodi,* namely, aMagcina under *iNduna* (Headman) Nala, iDanganya under *iNduna* Mthembu, emaGabheni under *iNduna* Khomo,iHlanze under *iNduna* Ndlovu and Emgobhozini under iNduna Ngidi.

5.3 THE PHYSICAL LOCATION OF uMNINI TRADITIONAL AREA

uMnini is located some 40 kilometres south-west of the Durban CBD within Ward 98 under Cllr Magubane and Ward 99 under Councillor Bayeni (refer to Plan 1 or Appendix 1). It is bordered by the Indian Ocean in the east, Mfume Mission and privately owned land in the west, the Umsimbazi River in the north, and the Umkomasi River in the south (uMnini LADP, 2006). The area is situated on the remainder of the uMnini Farm No. 1788 within eThekwini Municipality.

The area is traversed by and enjoys ample infrastructural services such as a national road (N2), provincial roads (P197 and P578), railway line, and electricity power transmission lines, all of which run in a north-south direction.

Map 1:   Map showing the Locality of the uMnini Trust Traditional Area
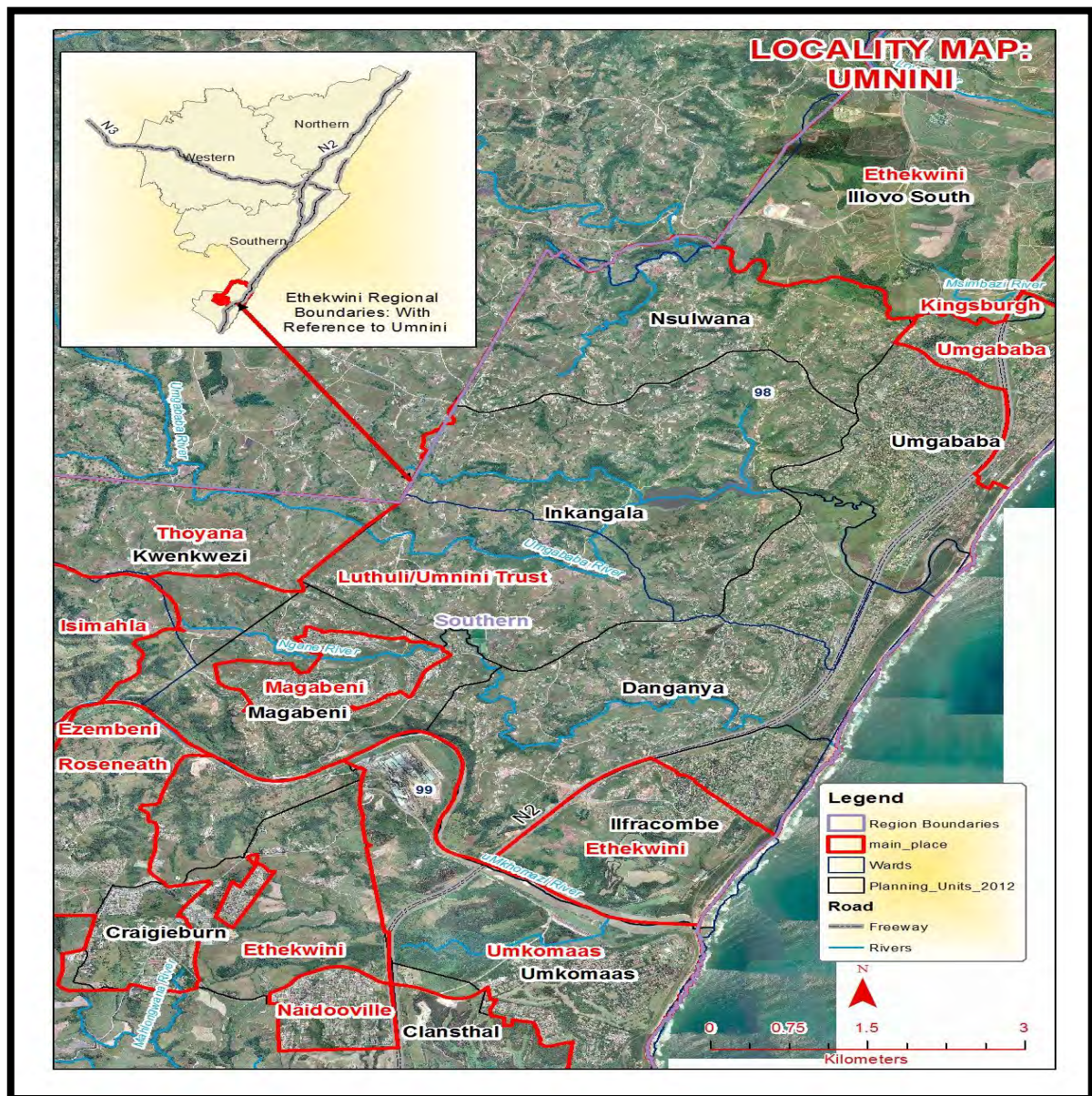
Source: uMnini Local Area Development Plan (LADP) (2006)

5.4   BRIEF HISTORICAL BACKGROUND OF UMNINI TRADITIONAL AUTHORITY AREA

UMnini mainly consists of tribal or traditional land, which constitutes the main uMnini Trust. The land is said to have been granted by the British Empire on 27th May 1858 in exchange for confiscated ancestral land next to the Durban port. The Amathuli tribe is said to have been *'rewarded'* for the supportive role it played in Durban during colonisation (uMnini LADP, 2006).

4.9   5.5   DEMOGRAPHICS OF THE STUDY AREA (BASED ON STATSSA OR CENSUS 2011)

5.5.1   Population of uMnini Area

According to the 2011 Census, uMnini's total population was 84 083 persons.

5.51.1   Population by Gender

Males made up approximately 48% of uMnini's population, with females comprising 52%.

5.5.2.1   Population density

With a total population of 84 083 and a total area of 400ha, in 2011 the population density was 210 persons/ha.

5.5.2.2   Dwelling Type

Based on available statistics, an average household size of 4.8 people is assumed. Approximately 75% of the population resides in formal dwellings, 12% live in traditional dwellings and 11% live in informal dwellings.

5.5.1   Education Levels

5.5.2.3   Literacy Rate

Approximately 60% of the population in uMnini area have completed Standard 5/Grade 7 and above.

5.5.3   Socio-economic Characteristics

5.5.3.1   Employment Status

Approximately 60% of population was not economically active, 17% was unemployed and approximately 26%was employed.

Figure 2:   Employment Status

26%

57%

17%

- economically active
- unemployed
- employed
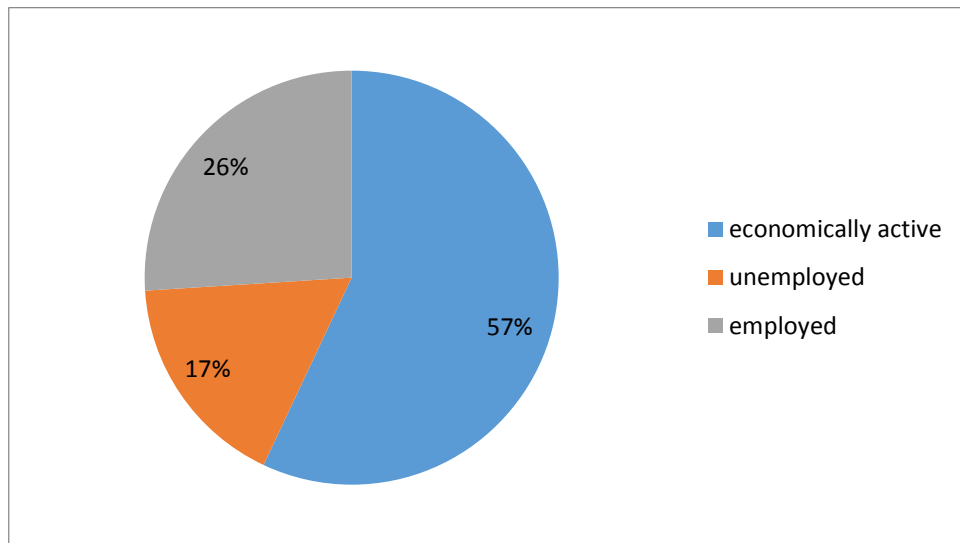
Source: Stats SA, 2011

5.5.3.2   Income Levels

Approximately 16% of the uMnini population does not earn an income. This category includes children and housewives. Furthermore, approximately 17% of the employed earn between R9 601 and R19 600 per annum with approximately 15% earning below R1 600 which is the poverty line (Stats SA, 2011).

Figure 3: Income Levels

Pie chart with three segments: No income 16%, Income (R9601-R19600) 17%, Below R1600 15%
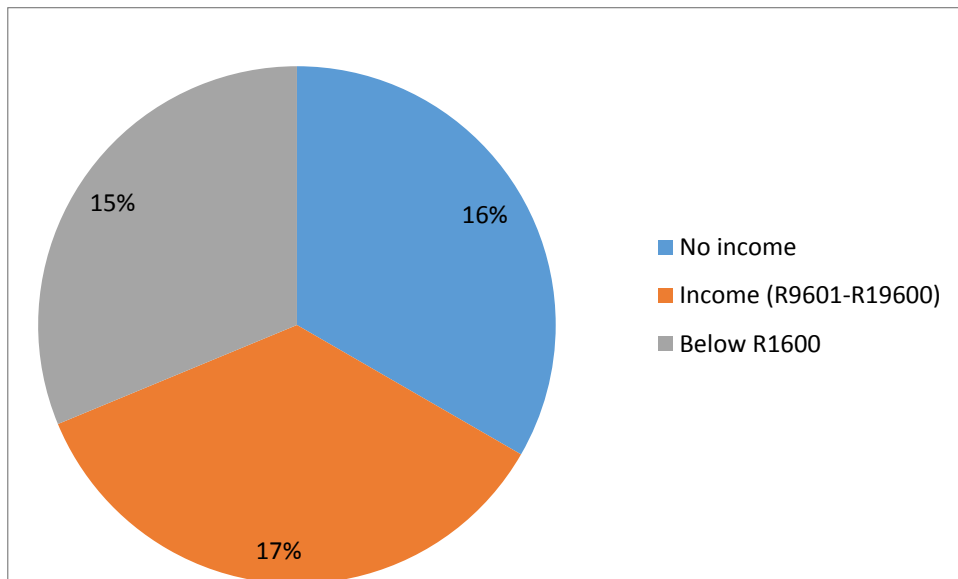
Source: Stats SA, 2011

5.6   LOCAL AREA DEVELOPMENT PLAN RECOMMENDATIONS OF 2006

When the LADP was adopted by eThekwini Municipality, the following recommendations were set for the inhabitants of the uMnini traditional area (uMnini LADP, 2006). The LADP identified the infrastructural elements or services with recommended servitudes, reserves and building lines or restrictions, including, *inter alia*, railway line reserves with a 3m building line or restriction; the national road (N2) comprising a 60m road reserve, and a 20 m building line or restriction; provincial roads (P7) comprising of 30m road reserves with a 15m building line or restriction; and all district roads comprising a 20m road reserve with a 10m building line or restriction(uMnini LADP, 2006).

5.7   RESIDENTIAL/HOUSING DEVELOPMENT GUIDELINES AND ASSOCIATED DENSITIES PROPOSED IN 2006

In terms of the uMnini LADP (2006), residential density was classified into three categories, namely, peri-urban, semi-rural, and rural. Peri-urban residential areas comprised of settlements situated predominantly along the coastal strips on either side of the N2, and it was recommended that future development remain at approximately 10 units/ha with an

indicative erf size of 500m^2. Semi-rural residential development comprised of settlements situated along arterial routes or major provincial roads and it was recommended that development remain at approximately 5 units/ha with an indicative erf size of 1500m^2. Rural residential areas were made up of the remaining sparsely settled areas and it was recommended that development remain at approximately 2 units/ha with an indicative erf size of 5000m^2 (uMnini LADP, 2006).

4.10   5.8   AMENITY SITES

The LADP identified areas with existing facilities and those earmarked for social, economic, educational, recreational, agricultural, and environmental facilities. It was recommended that no development take place in such areas and the Traditional Authority or council was encouraged to take cognizance of these areas in allocating land.

5.9   STATUS OF THE LADP SINCE ITS ADOPTION

It is clear from the above that eThekwini Municipality had good intentions of using the LADP to guide development in the absence of town planning schemes. However there is no tangible evidence that the plan was monitored together with key stakeholders such as the ITB and the Traditional Council. It was also established that the LADP was used as basis for the preparation of the uMnini scheme in terms of the PDA, 2008 but has not yet been adopted.

5.10   CONCLUSION

The aim of this case study was to provide an understanding of why spatial planning in the form of the LADP was critical in guiding land allocation by the Traditional Council. The chapter also highlighted that the LADP identified key issues that were adopted and formed the basis for future rural schemes, which are required in terms of the Local Government: Municipal Systems Act (No. 32 of 2000), and the SPLUMA (No. 16 of 2013).

CHAPTER SIX – FINDINGS, ANALYSIS AND RESULTS FROM THE UMNINI EMPIRICAL STUDY

6.0   INTRODUCTION

This chapter presents the findings and analysis of the case study. It provides answers to the questions raised in the introductory section. The findings are linked to the study's hypothesis, primary objectives, and main research questions.

The findings were primarily based on the interviews conducted with key stakeholders, including Traditional Council comprising the local chief/ *iNkosi*, Headmen/ *iziNduna*, representatives of women, the youth, and the disabled; representatives of the ITB; an official from the Provincial Department of Cooperative Governance and Traditional Affairs (CoGTA); eThekwini municipal officials; eThekwini Councillors representing the wards in the case study area; and the consultant previously appointed by the municipality to facilitate the conceptualisation and finalisation of the LADP. These key stakeholders were generally involved in the formulation of SDFs for the municipality. The findings were guided by the themes introduced at the beginning of this dissertation. The first part of this chapter explores the factors that explain the extent to which the LADP has been able to guide development in uMnini Traditional Authority Area. Part two assesses the extent to which a lack of participation may have affected the effectiveness of the LADP. The third part examines the role of the key stakeholders during the preparation and implementation of the LADP. Finally, part four part examines institutional capacity in the implementation of the LADP.

6.1   THE EXTENT TO WHICH THE LOCAL AREA DEVELOPMENT PLAN (LADP) HAS BEEN ABLE TO GUIDE DEVELOPMENT IN UMNINI TRADITIONAL AUTHORITY AREA

The South African Constitution prescribes that among the developmental duties of municipalities are to manage planning processes in order to provide basic services to communities, and to promote the social and economic development of the community. This planning aspect takes the form of a high level SDF, which in terms of section 26 of the Local Government: Municipal Systems Act (MSA) (No. 32 of 2000) must incorporate basic guidelines for a LUMS. All municipalities have a responsibility to formulate a LUMS with the assistance of provincial departments. However, the Act is silent on when such LUMS should

be formulated and adopted. Chapter 2 of the PDA further prescribes that schemes (wall to wall schemes) should be prepared and adopted for the entire province, including rural and traditional authority areas. As noted in chapter two, while the LUMS are meant to be used as a guide to manage land under the jurisdiction of municipalities including ITB areas, to a large extent, their effectiveness is dependent on whether key stakeholders fulfil their expected roles and responsibilities.

The first interview conducted with aMathuli Traditional Council comprising of *iNkosi* Luthuli, *iziNduna*, and representatives of the youth and women revealed the following:-

- According to the Traditional Council, the formulation of the LADP was not a community -based planning process because the community felt that they were not fully consulted and were not familiar with the process.

- They further reiterated that eThekwini Municipality has a tendency to pick and choose a few selected people in an area in the name of consultation in order to implement its pre-determined or pre-designed projects. A project that was cited as an example was the recently-built Thusong Centre or multipurpose building, which according to *iNkosi* was regarded as "a white elephant" as it was not yet operational. The *iNkosi* said that while there are two municipal Ward Councillors, for Wards 98 and 99, only the Ward 99 Councillor would occasionally approach the Traditional Council if projects were taking place in the area.

- Members of the Traditional Council said that due to the municipality's reluctance to fully consult with them, they relied on their indigenous knowledge for land allocation and management and did not make use of the so-called municipal spatial planning interventions that they did not understand.

On the other hand, the Ward 99 Councillor and eThekwini Municipality official maintained that while the LADP is good on paper, it has not been able to guide development in uMnini. The senior municipal official attributed the failure of the LADP to officials or planning practitioners who did not fully consult Traditional Councils during the planning and implementation stages. From personal observation it would appear the Traditional Council was suspicious that the LADP was used by eThekwini Municipality to urbanise the uMnini

area and later justify the collection of rates. This study also found that the Traditional Council appreciated access to modern infrastructural services brought about by the municipality while still enjoying a rural or traditional lifestyle.

The senior CoGTA official reported that although spatial planning interventions were good and intended to guide development and assist communities in the allocation and management of land, such plans were yielding unintended results. She believed that these plans have not been effective in Traditional Authorities or rural areas. The data analysis suggests that the reason for the failure or ineffectiveness of these plans was a lack of ownership of planning interventions on the part of the Traditional Council, which was allegedly *"parachuted"* by the municipality. The council therefore did not see the need to use such plans in the allocation and management of land.

The eThekwini Municipality's executive official (Deputy Head of Development Planning Department) highlighted that after the establishment of eThekwini Metro in 2000, service delivery to the rural areas was a major challenge as these areas were not understood and no planning existed. The preparation of the Rural Development Framework and other initiatives from 2002 onwards went a long way in guiding investment and service delivery generally, for example, the upgrading of roads, provision of health facilities, agricultural projects, water and electricity supply, and economic opportunities. Spatial planning interventions were effective in achieving the primary objective of facilitating service delivery to improve the quality of life. He further stated that the birth of the PDA in 2008 introduced the requirement for wall to wall schemes which further elevated the need for a response and the uMnini LADP was a good starting point for the introduction of some form of LUMS.

This study also found that management/regulation of development in these areas was not a priority within eThekwini Municipality until 2006. The challenge was that no land use management tools were in place as the spatial plans did not translate into a LUMS. Thus, while the plan is good on paper, the lack of implementation rendered it ineffective.

The former project manager of Rural Area Based Management, who was the champion that was responsible for facilitation of the LADP, reported that, from the municipality's point of

view, the LADPs were only effective with respect to guiding and assessing development applications. Further data analysis revealed that while the LADPs were aligned with the broader municipal SDFs and SDPs, they were only used in cases of non-residential developments. In addition, the study found that the municipality had no control of residential development in terms of location and densities, despite the guidance offered in the LADP. The former project manager suspected that this was mainly due to land allocations through the Traditional Authority system without the plans or development applications required for these developments.

It was also evident from the interview with the project manager that the LADPs have been less effective because the Traditional Council did not make use of the spatial plans to assist them in land allocations. The Traditional Council felt that the plans interfered with their traditional rights to allocate land.

The Head of the ITB explained that uMnini traditional area was regarded as a future economic hub; thus the ITB supports proper planning to enhance the development of the area. However, he acknowledged that while both the municipality and the ITB had plans at their disposal, such plans were formulated separately and were not integrated. He also noted that the ITB's plans were developed without or with minimal consultation with the Traditional Council. These plans had not been fully implemented with the exception of using them for the identification of business or commercial sites. He further stressed that these plans were not effective despite the KwaZulu-Natal Planning Commission having previously introduced a manual on how to conduct land allocation, which could have easily complemented the use these plans to guide and manage the land.

The planning practitioner or consultant appointed by eThekwini Municipality via Rural Area Based Management (RABM) stated that these plans were not effective given the mushrooming of substantial houses in areas earmarked for the community or commercial development, as well as in environmentally sensitive areas. He attributed the failure of such plans to the fact that traditional areas did not want the subdivisions illustrated in the LADP or the indicative layout that had been prepared for the area. The study revealed that the Traditional Council viewed the indicative layout plan as a way of creating a township and suspected that eThekwini Municipality would eventually expect people to pay rates. In

addition, the lack of success was attributed to the failure to comply with spatial planning interventions. Some of the reasons highlighted by the ward councillor were that the Traditional Council wanted to continue to enjoy a traditional lifestyle, allocating land using indigenous law, while enjoying infrastructural services installed by the municipality. According to the Ward Councillor, Traditional Councils did not want to be seen to have abandoned cultural practices by relying on spatial plans or town planning schemes based on British colonial planning.

The researcher made use of physical evidence or demonstrations to test if such plans have been successful in guiding development in the area. Two areas from the main LADP of 2006 were identified and excised. The first was an area earmarked for tourism around uMgababa dam which in terms of the LADP was earmarked for mixed use sites for tourism-related activities, and not for residential purposes. In 2006, the area earmarked for mixed use was undeveloped as illustrated in the layout of the LADP below (extract of LADP) in Plan 2.

Map 2: Existing Structures in the uMnini Trust Area
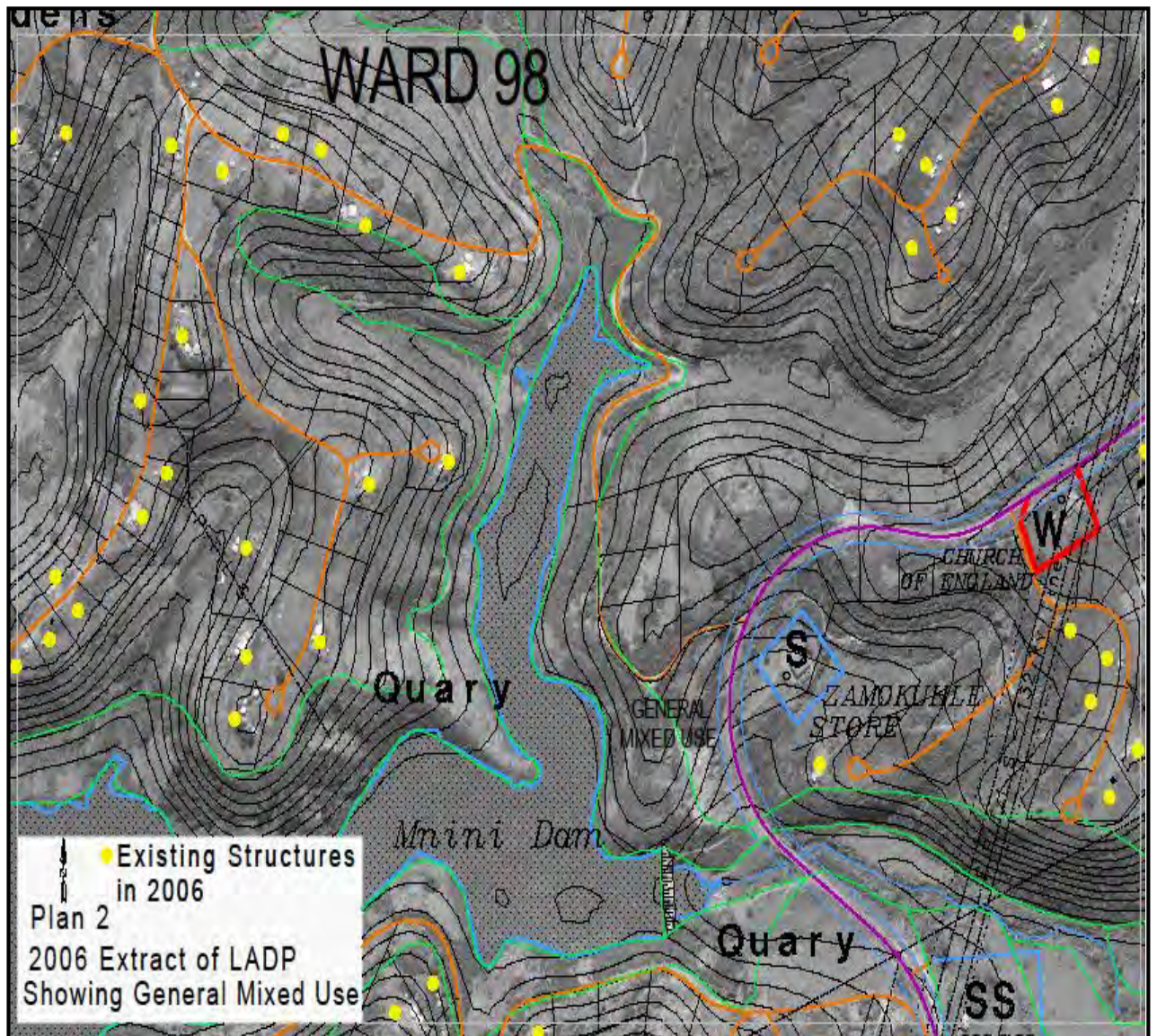
Source: The uMnini Local Area Development Plan (2006 LADP)

Secondly, the researcher identified and excised an area along the coast. In terms of the LADP and Strategic Environment and Agriculture Assessment (SEA) report, no housing or settlement upgrades should take place within the coastal strip between the railway line and the beach. In terms of the National Environmental Management: Integrated Coastal Management Act (No. 24 of 2008), all coastal management zone areas should be

coordinated and integrated management of coastal areas should be undertaken by all spheres of government.

In 2006, the extract indicative layout or Plan 3 shows that the area was pristine with little housing or settlement taking place within the Coastal Management Zone. The yellow dots denote the few houses or settlements that were in existence in 2006.

Map 3:   Coastal Management Zone in uMnini Trust Area
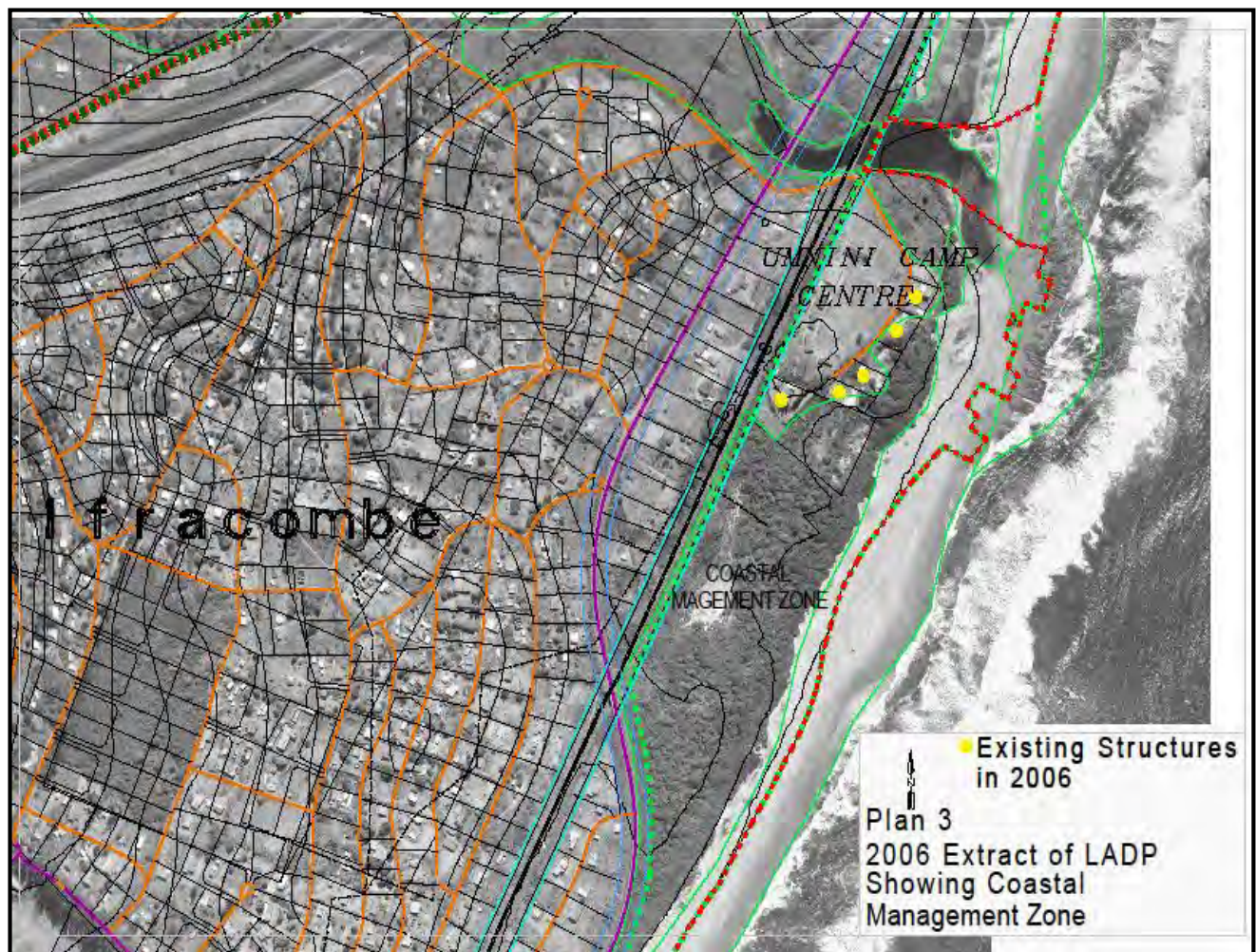
Source: The uMnini Local Area Development Plan (2006 LADP): Structures represent houses

The researcher superimposed the same indicative layouts on the latest aerial or orthographic photo of 2013, seven years after spatial planning was introduced. The results illustrated in Plans 2A and 3A below clearly show significant housing or settlement development, contrary to what the LADP and other policy documents had prescribed. This may be a small area but it epitomises the fact that the LAPD or spatial planning intervention failed to guide development across the entire uMnini traditional area. This corroborates the views of most of the key respondents who indicated that planning interventions had not been able to guide development not only in uMnini but generally across most traditional areas in KwaZulu-Natal.

Plan 2A below shows housing settlements in 2013 (denoted by red dots) that do not conform to the proposed mixed use area prescribed by the LADP and as amenity areas described in the case study.

Map 4: The uMnini Local Area Development Plan superimposed over 2013 GIS photo: Structures represent houses
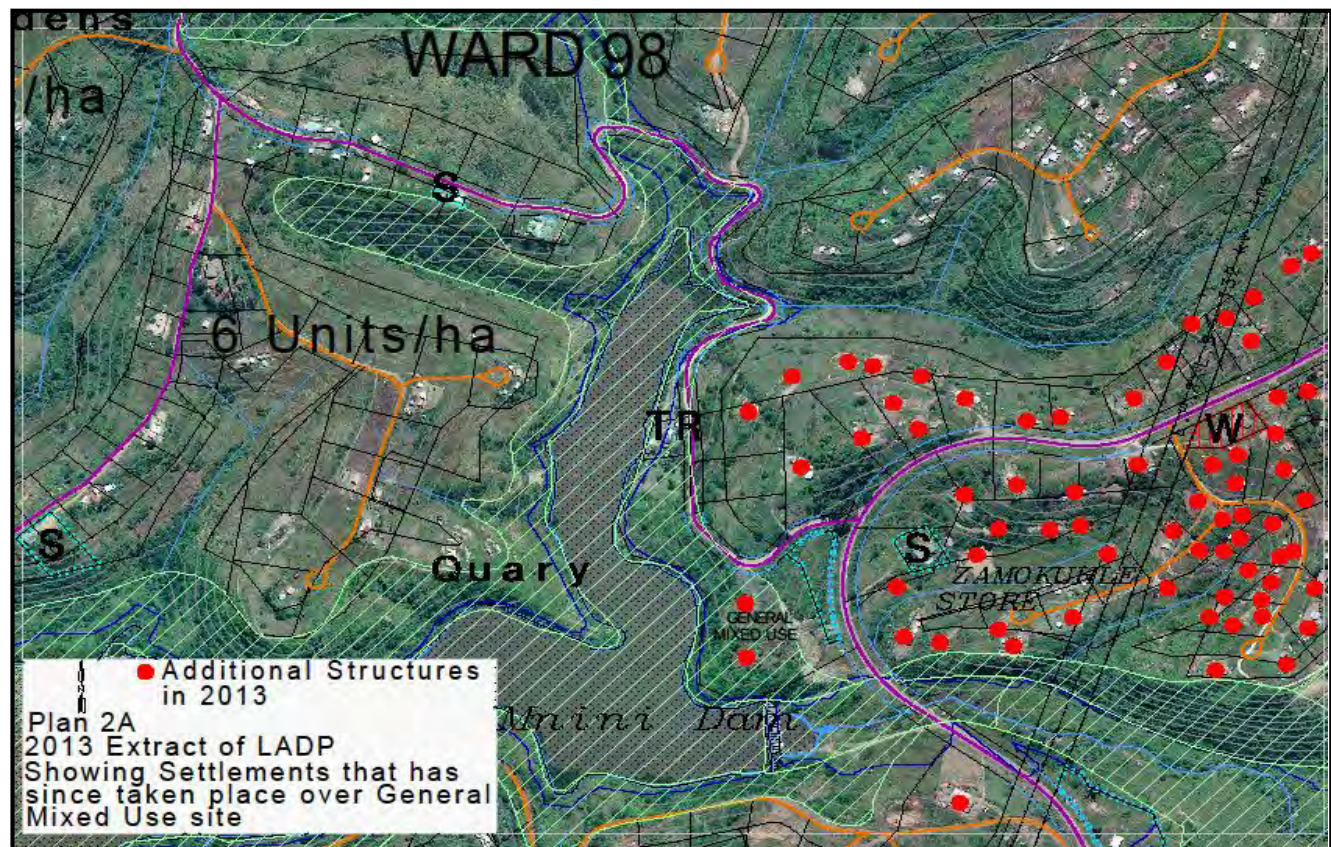
Source: The uMnini Local Area Development Plan (2006 LADP)

Plan 3A below shows structures representing housing settlement or houses in 2013 (denoted by red dots) contrary to the prescriptions of the National Environmental Management: Integrated Coastal Management Act (No. 24 of 2008), the National Environmental Management Act (No. 107 of 1998) and the Coastal Management Zone, which prohibits housing development within and in close proximity to a dune zone or area.

Map 5:   The uMnini Local Area Development Plan form 2006 superimposed over 2013 GIS photo: - Structures represent houses

Source: The uMnini Local Area Development Plan (2006 LADP)

The researcher also observed that people were occupying beautiful areas with vistas and views of water features such as dams, estuaries and the sea and did not take cognisance of any planning guidelines introduced by the municipality.

From the above analysis, it is clear that key role-players or stakeholders did not engage in the collaborative planning described in 2.3.1.

6.2 THE EXTENT TO WHICH PARTICIPATION OR A LACK THEREOF MAY HAVE COMPROMISED THE EFFECTIVENESS OF THE LADP

There is general consensus among scholars (see 3.2.6) that participation refers to stakeholders' involvement in the development process. Participation is prescribed by Chapter 7, section 152(1) (e) of the South African Constitution, the Local Government: Municipal Structures Act (No. 117 of 1998), Chapter 4 of the Local Government: Municipal Systems Act (No. 32 of 2000) and various chapters of the SPLUMA (No. 16 of 2013). Whilst the legislation calls for participation during planning and implementation, it does not clearly define what constitutes full and effective participation. The interpretation of participation is therefore left to those in power to define and implement according to their understanding. The researcher thus sought to determine the nature of participation during the preparation and implementation of the uMnini LADP using the ladder of participation formulated by Arnstein (1969) (see figure 1 on page 18). This concept has been defined and discussed in full in sections 2.3.5 and 2.3.5 on page previously.

The purpose of the ladder of participation formulated by Arnstein (1969) was to show the type and level of community participation required in the development of plans or projects. The conceptualisation or formulation of the LADP and the extent of stakeholder involvement were assessed using this ladder of participation.

The interviews revealed that Traditional Council members' participation in the formulation of the LADP for uMnini took the form of *ad hoc* consultation by the municipality. The ITB representative claimed that the municipality had a tendency to pick and choose like-minded people in the name of consultation on a pre-planned map or plan without authority from the Traditional Council. In contrast, the Traditional Council stated that since there was neither consultation nor plans provided by the municipality, they simply relied on their indigenous knowledge to allocate and manage the land under their jurisdiction.

The senior CoGTA official reported that the municipality used a top-down approach to participation. Communities were not committed and did not respect such plans during adoption and implementation because their involvement was minimal and they usually participated in the later stages. She also stated that, generally, municipalities come with preconceived ideas, or engage in selective consultation where community views are not fully accommodated.

The Head of the ITB stated that, in terms of the legislation all affected communities should participate when a plan is formulated and implemented. He added that generally, the drivers of planning did not consult communities. He further stated that, where consultation took place, it was merely done to comply with the legislation, which he referred to as *"ticking a box of items to be addressed"*. The consultation undertaken by the municipality was generally selective and that there was a tendency to target individuals that would assist in providing the anticipated and desired output.

The Deputy Head of eThekwini Development Planning was not sure of the extent to which the traditional authority participated in the preparation of the plan as he was no longer with the Rural ABM that facilitated the plan. If there was participation, he was not sure of the extent to which the plan was understood in as far as its purpose and value/importance was concerned. The study also revealed that, while there was some participation in spatial planning interventions, this was not the sole reason for the success or failure of these interventions. The success of any spatial planning intervention depends on its relevance/appropriateness, stakeholder involvement/ownership, and monitoring. In all these aspects, the roles and responsibilities of all role players must be clearly defined.

The former rural area-based manager reported that, as the main stakeholder, the Traditional Council was consulted. Consultation commenced with a brief training workshop to ensure that all stakeholders understood the relevance of spatial planning and the benefits thereof. This allowed him as the manager to engage the Traditional Council to provide meaningful input and comments into the planning process and at the same time allowed the municipality to tap into local indigenous knowledge of customs with respect to land allocations and their local areas.

The planning consultant reported that during his entire involvement in the project he held three to four meetings with the Traditional Council and that his spatial plan was used during those meetings which, *inter alia*, included a pre-arranged conceptual plan depicting the status quo and analysis of all existing structures, facilities and services; a settlement layout or indicative plan that he had previously prepared for the provincial Department of Human Settlements to be used to build houses through the rural housing scheme - this incorporated all specialist studies or input on the coastal management plan exercise undertaken by other environmental consultants and relevant departments; and all input or compliance with various legislation. According to the planning consultant it was evident that there was tension between the Traditional Council and the eThekwini Municipality which obviously compromised his participation. He added that the Traditional Council regarded him as an agent of the municipality that was pushing its *"agenda"*.

The researcher probed further about the complex and technical nature of the plan that he presented, and whether he believed that the plan was understood in the four meetings considering the low level of education amongst the majority (refer to section 5.5.2) of the population of uMnini, including members of the Traditional Council. He conceded that it was highly unlikely that the Council members would have comprehended the complex plan to the level that they would be able to use it as part of future land use management and land allocation. The researcher also observed that the Traditional Council did not appear to have been given sufficient time to raise issues and come up with suggestions. Thus the researcher is of the view that consultation by the municipality was one-sided and that it was only conducted to influence the Traditional Council to agree to what had already been pre-determined by the consultant. It is also noted that the municipality appeared to have

abdicated its role of planning; it appointed the planning practitioner and simply assumed that the consultant would work in the interests of the municipality.

After careful analysis of the responses from all informants, the researcher interrogated their inputs on participation using Arnstein's ladder of participation in order to deduce the level of participation that the municipality, via the appointed planning consultant used during the planning of spatial planning interventions. In terms of Arnstein's framework, the study revealed that participation amounted to tokenism and non-participation. Participation was never undertaken with any clear objective of forming partnerships or delegating power to enhance citizen control, which is the highest and peak level of participation. These spatial plan interventions (LADP) failed dismally during implementation as a result of the lack of proper consultation. The lack of participation during spatial planning was also highlighted by Sithole and Mbhele (2008) who recommended that participatory mechanisms should be reviewed, given perceptions that communities and civil society are not fully consulted during policy making processes.

Unlike the Cambodian case study (in section 3.1.3 on page on page 22) whose success Christ (1999) attributes to commitment on the part of all stakeholders to address, among other things, institutional, resources, technical, and legal matters, the uMnini LADP was not conducted on such a basis. Therefore, spatial planning interventions were highly unlikely to be effective during implementation to guide developments as the Traditional Council as the recipient stakeholder was not consulted using a bottom-up approach.

6.3 THE ROLE OF THE KEY STAKEHOLDERS DURING THE PLANNING AND IMPLEMENTATION OF THE LADP

According to Briginshaw et al. (2011), institutional arrangements and key stakeholders are an integral part of spatial plan formulation and the participatory process, which is a requirement in terms of the relevant legislation. This section discusses the role of various stakeholders as defined in the relevant legislation.

6.3.1   The Role of the Ingonyama Trust Board (ITB)

The ITB's role and responsibilities are defined by, amongst other legislation, the Ingonyama Trust Board Act 3 of 1994. As stated in section 3.5.2, the legislation only talks to the administration of Ingonyama Trust land by the ITB and is silent on how this is to be achieved in the context of spatial planning or a LADP.

The Head of the ITB indicated that their own plans were unilaterally developed and were neither aligned with the municipality's high order SDF nor the LADP for uMnini. This was despite him stating that uMnini was regarded as high priority or economic hub of the traditional area due to its location along the coast. He also conceded that the ITB's role was predominantly the issuing of leasehold rights to investors looking for land for commercial or business establishments since the ITB is the legal owner of the land.

It can thus be deduced that the ITB as the land owner and the dominant or key role player did not play its part in ensuring that the spatial planning interventions initiated by eThekwini Municipality were effective. Instead, it introduced its own plan which was not aligned with the SDF and did not consult other stakeholders including the uMnini Traditional Council. This approach where key stakeholders do not interact to forge a common vision and goal in spatial planning is contrary to the principles of collaborative planning articulated in section 2.3.1 and 2.3.2.

6.3.2   The Role of the Traditional Authority or Council

While some roles and responsibilities are defined in legislation such as the KwaZulu Amakhosi and Iziphakanyiswa Act (No. 9 of 1990) and the Traditional Leadership and Governance Framework Act (No. 41 of 2003), they do not relate to the planning and implementation of spatial planning or specifically the LADP. However the new KwaZulu-Natal Traditional Leadership and Governance Bill, 2013 (see 3.5.3.for details) clearly defines the roles and responsibilities of the Traditional Council in so far as spatial planning is concerned. Once the Bill is promulgated, it would ensure that Traditional Councils are not passive participants in planning but are actively involved from the planning to the implementation stage while at the same time partnering with other key stakeholders.

Whilst the existence of Traditional Authorities is recognised in terms of the Constitution and relevant provincial and municipal legislation, it is argued that they do not enjoy the same executive authority as elected municipal councils. Their voices are only heard during consultative processes designed by municipalities; yet indigenous law grants them the right to allocate land as part of the land administration process (SAFM, 2014). Since the municipality dictates the rules of engagement during the municipal planning process, the municipality is able manipulate and dominate participatory process and influence its discourse and power.

It is clear that the traditional authority was not fully involved in the planning process and that it did not apply the LADP or any spatial plans in land use management. Instead, it relies on customary or indigenous law to allocate and manage land. The Traditional Council reported that the municipality never gave them an LADP or any spatial plans to utilise as part of land use management. The Deputy Head of eThekwini Development Planning did not know whether any spatial plans or LADPs were ever disseminated to the traditional area.

The researcher established that the behaviour of recipient stakeholders which include *iNkosi*, *iNduna* and Traditional Council members in uMnini was not determined and directed by eThekwini Municipality as the dominant stakeholder. This corroborates Hajer's view (1995) that Foucault's Power and Discourse theory failed to acknowledge the importance of individual action in discourse production, reproduction and transformation. The study found that individuals within the Traditional Council felt neglected, resulting in them not recognising the plans initiated by eThekwini Municipality as the dominant stakeholder.

6.3.3   The Role of the Department of Cooperative Governance and Traditional Affairs (CoGTA)

CoGTA's role in so far as spatial planning is concerned is clearly defined in the Local Government: Municipal Systems Act (No. 32 of 2000), KwaZulu-Natal Planning and Development Act (No. 6 of 2008); and the SPLUMA (No. 16 of 2013). CoGTA becomes an active participant, particularly during the planning and monitoring stages. This was corroborated by the senior manager of CoGTA who reported that eThekwini Municipality and the department set up a steering committee to address spatial planning. The provincial

department contributed to the draft rural town planning scheme for uMnini but was not involved in the implementation of such plans as this was the municipality and the ITB's mandate. The CoGTA manager also confirmed that these spatial plans were not implemented and followed through.

The researcher can deduce that, as the provincial stakeholder, CoGTA does not have a quality control or monitoring mechanism to gauge how municipalities implement spatial planning interventions.

6.3.4 The Role of eThekwini Metropolitan Municipality

The municipality's role and responsibilities in spatial planning during plan formulation, implementation, and monitoring are defined in various legislation (refer to 3.3 for a detailed description) which, *inter alia*, includes the Constitution of the Republic of South Africa 1996, KwaZulu-Natal Planning and Development Act (No. 6 of 2008), Municipal Systems Act (No. 32 of 2000) and the SPLUMA (No. 16 of 2013). Municipal planning should be conducted by the municipality as defined in the Constitution (see section 3.3.1).

In terms of Chapter 5 of the Local Government: Municipal Systems Act (No. 32 of 2000), eThekwini Municipality's role is essentially to introduce, and formulate the SDF and suite plans as defined in 2.2. The SDFs are supposed to be reviewed annually. In terms of the KwaZulu-Natal Planning Act 6 of 2008, the municipality is also supposed to draft and finalise wall to wall town planning schemes (defined in detail in section 3.4, 1). Thus, eThekwini Municipality should formulate municipal policies and bylaws that address a wide range of issues, including spatial planning matters.

This study revealed that eThekwini Municipality relied heavily on the services of the service provider or planning practitioner or consultant to prepare or plan the uMnini LADP. This could have skewed the outcome of the planning process as the consultant may not necessarily share the municipality's goals or objectives. Furthermore, the extent to which the consultant would commit to and produce a particular product would be directly linked to the available budget and his or her share of the budget.

The study also revealed that while eThekwini Municipality was involved via the planning practitioner in the planning stage of the LADP, the municipality did not put mechanisms in place to ensure that it was implemented. Municipal officials could neither provide proof nor confirm that the completed LADP or spatial plans were disseminated to the Traditional Council to guide development and land allocation in uMnini traditional area.

6.3.5   The Role of Development Agencies or Consultants

Generally, development agencies or planning practitioners play an important role in spatial planning, particularly in small municipalities which may lack capacity. Some of the legislation does not preclude the use of planning practitioners by municipalities.

In the case of uMnini, eThekwini Municipality appointed a service provider to prepare the LADP. The Terms of Reference (ToRs) on the duties or scope of work to be undertaken were prepared by the municipality. The planning consultant produced the LADP in line with the ToR. However, the study found that the methodology to be used for consultation was lacking if not non-existent in the ToR; therefore participation was left to the discretion of the planning consultant. The planning consultant claimed to have consulted with the Traditional Council and other stakeholders during the planning stage of the LADP. Nonetheless, there is no evidence and it is highly unlikely that the planning consultant conducted participation in a bottom up approach as defined in Arnstein's approach of ladder of citizen participation, since the duration of his involvement was also dependent on the available budget.

It is hoped that with the introduction of the SPLUMA , key stakeholders will ensure that an inclusive and integrated approach is adopted for spatial planning. Chapter 4, section 21 of the Act calls for establishment of spatial frameworks that are aligned at national, provincial and municipal levels.

6.4   THE NATURE OF INSTITUTIONAL CAPACITY IN THE IMPLEMENTATION OF THE LADP

This section examines whether the key stakeholders identified in the previous section had the capacity to implement the spatial plans formulated during the planning stages.

6.4.1 The Ingonyama Trust Board (ITB)

The study found that the ITB has a staff compliment of 11 officials that are expected to cover the entire province of KwaZulu-Natal. The ITB's inadequacy in assisting with the implementation of the LADP was attributed to the small budget allocated for human resources. In addition, the ITB was unable to fill all vacant posts in terms of their approved organogram due to budgetary constraints. It was reported by the head of the ITB that their officials worked jointly with CoGTA officials in situations that required urgent attention but this collaboration did not have positive results in so far as the implementation of the LADP was concerned.

6.4.2 The Traditional Authority/ Traditional Councils

The KwaZulu-Natal Traditional Leadership and Governance Bill, 2013 advocates for the establishment of a development framework, capacity building and support for Traditional Councils, traditional leaders, and other traditional leadership structures. This does not mean that there always has been recognition that Traditional Councils lack capacity to handle issues including development planning in their respective areas. The researcher observed that the Traditional Council was still predominantly made up of older people. During the interview, these members did not appear to have the technical and legal expertise required to fully comprehend the intricacies associated with the LADP. This was echoed by CoGTA and ITB officials who reported that despite the Town Planning Commission having produced a manual on land allocation, the Traditional Council was unable to utilise it adequately. These senior officials concurred that the failure to use spatial planning interventions could also be linked to capacity in terms of resources, and legal and technical understanding among members of the Traditional Council. This view was corroborated by the head of the ITB who explained that Traditional Councils in uMnini did not have someone with legal and technical expertise to read and understand the plans and legal documents.

It was noted that environmental coastal management legislation prescribes that no development should take place within 100 metres of the high watermark. However, it was highly unlikely that the Traditional Council would be able to interpret this critical information when they allocated land without the assistance of a professional. The study also revealed that Traditional Councils and local *iziNduna* in particular lacked the technical knowhow to interpret and use the spatial planning interventions or the LADP. It was clear that the

Traditional Councils were not resourced and capacitated and had no skilled advisors to guide them to make use of spatial plans or to include such plans in their decision making processes.

The findings of this study show that Traditional Authorities did not receive the attention they deserve and were therefore left to make their own decisions based on limited knowledge.

6.4.3 The Department of Cooperative Governance and Traditional Affairs (CoGTA)

CoGTA is among the departments that are generally well resourced, with highly paid personnel. In the past few years it has embarked on a major recruitment drive, particularly of registered professional planners. When the senior CoGTA official was asked whether the department had the capacity to assist less capacitated municipalities, she admitted that CoGTA generally supported municipalities and Traditional Councils during planning but did not get involved in the adoption of municipal spatial plans and instead played an oversight or monitoring role.

6.4.4 The eThekwini Metropolitan Municipality

eThekwini Municipality is one of the well-resourced metros in South Africa. The municipality is vigorously filling all funded vacant posts with suitably qualified candidates across the board including the planning unit, which is one of the biggest units with both professional and technical planners. In terms of the Planning Profession Act (No. 36 of 2002), these officials are expected to be registered with South African Council of Planners.

However, the study found that although eThekwini Municipality is highly resourced in terms of trained personnel, there are still some minor capacity challenges in the implementation of spatial plans in traditional authority areas. It also revealed that officials were reluctant to work in ITB areas for fear of being chastised by Traditional Councils who believe they want to urbanise these areas so that people would be expected to pay rates. While eThekwini Municipality is well resourced, the study found that the municipality did not have proper empowerment institutions or structures that are community-driven in order to ensure long term compliance with spatial planning interventions.

However, it was found that eThekwini Municipality is a forerunner in incorporating the *amaKhosi* (chiefs) in council in 2015 to be part of decision making with the assistance of CoGTA. It is understood that this will be extended to incorporate them in portfolio committees for inclusive decision making processes that will improve the municipality's relationships with its partners.

6.5 CONCLUSION

This study's main objective was to explore the factors that may account for the extent to which the LADP has been able to guide development in uMnini Traditional Authority Area. The researcher interrogated and identified the gaps in different legislation (such as the Constitution of the Republic of South Africa that calls for strong participation by key stakeholders, the KwaZulu Amakhosi and Iziphakanyiswa Act of (No. 9 of 1990, the Traditional Leadership and Governance Framework Act (No. 41 of 2003), the Municipal Systems Act, (No. 32 of 2000), the SPLUMA, (No. 16 of 2013), and the KZN Planning and Development Act, 6 of 2008) in terms of the roles and responsibilities, participation and capacity of key stakeholders during the planning and implementation of the LADP. The study found that:

- Unlike other key stakeholders, i.e., the ITB, CoGTA, and the municipality, the role and functions of the Traditional Council were not clearly defined in so far as spatial planning was concerned. This was despite the fact that Traditional Councils, particularly traditional leaders (*iNkosi* and *iziNduna*), play a pivotal role in land allocation and administration using indigenous or customary law.

- Participation was very weak or non-existent in the uMnini traditional area during the planning and implementation of spatial planning. This resulted in the traditional authority or council not taking ownership of the LADP.

- Both the Traditional Council and the ITB lacked capacity. The Traditional Council lacked the legal and technical knowledge required to fully appreciate the importance of spatial planning interventions, while the ITB lacked human resource capacity and sufficient financial resources.

- The traditional leaders or council did not enjoy the same authority or decision-making powers as the elected municipal councillors, even though they held

positions of authority in terms of allocating land in the rural areas. This was found to be an issue that revolved around the power dynamics referred to in the discussion on power and discourse in the literature review.

- Key stakeholders did not fully play their roles in the planning, preparation and implementation of the LADP in the ITB area within eThekwini Municipality in KwaZulu-Natal.

- The LADP was not able to guide development in uMnini traditional areas.

CHAPTER SEVEN – FINAL CONCLUSION AND RECOMMENDATIONS

7.0   INTRODUCTION

South Africa has made huge strides in the democratisation of our country since 1994. These include, *inter alia*, the abolition of the oppressive apartheid laws that previously allocated and shaped South Africa according to race and economic class, and created the so-called Bantustans and reserves for black people in predominantly rural areas as well as townships where black people lived as sojourners. The state has promulgated myriad laws in an attempt to reshape South African space not only in urban areas but in rural and traditional areas. Compounding the problem is that spatial planning is not taking place in a vacuum; there are key stakeholders with different goals and expectations in land use planning and management. This chapter presents the final conclusions and recommendations that could assist key stakeholders to ensure that future spatial planning interventions are effective and are able to guide development not only during planning, but in implementation.

7.1   THE EXTENT TO WHICH THE LOCAL AREA DEVELOPMENT PLAN (LADP) HAS BEEN ABLE TO GUIDE DEVELOPMENT IN uMNINI TRADITIONAL AUTHORITY AREA

The research revealed that spatial planning was unable to guide development because the roles and responsibilities of Traditional Councils were not clearly defined and there was a lack of capacity among some stakeholders as well as weak participation. Recommendations are therefore made to address these issues in order that all stakeholders make meaningful contributions in the future. However international and African precedents have shown that a strong national intervention does yield positive results at local level, particularly if there is a buying of the policies by local stakeholders.

7.2   THE ROLES AND RESPONSIBILITIES OF TRADITIONAL COUNCILS WITHIN MUNICIPAL PLANNING

The study identified weaknesses in the legislation in terms of the roles and responsibilities of Traditional Councils regarding the planning and implementation of spatial planning interventions, and town planning scheme or maps. The new KwaZulu-Natal Traditional Leadership and Governance Bill, 2013 clearly defines the roles and responsibilities of the Traditional Council in so far as spatial planning is concerned. The researcher is of the view that the promulgation of this Bill should be expedited as it will hold Traditional Councils

accountable for the management of their areas within the ambit of the law. The researcher is also of the view that the Bill should be aligned with the SPLUMA, which was promulgated in 2013. Amongst other things, this Act calls for the establishment of municipal planning tribunals (MPT) that will be responsible for approving certain development applications and the delegation of some authority to municipal officials, while council will remain responsible for approving IDPs, SDFs, and town planning schemes. The researcher is of the view that the relationship between the Traditional Council, the ITB, and eThekwini Municipality should be formalized in the form of a memorandum of understanding (MOA or MOU) that ensures that all views and opinions are heard before the approval of any plans.

Furthermore, CoGTA should introduce a quality control or monitoring mechanism to ensure that municipalities not only conduct proper spatial planning but implement such plans in collaboration with the Traditional Council. However, the approval of IDPs, SDFs and the suite of plans including the LADP will remain the responsibility of the municipal council.

7.3   THE PARTICIPATION PROCESS

The researcher observed that, while public participation is a legislative requirement, there are a number of weaknesses. For example, not all stakeholders participated during the planning and implementation of spatial planning. The researcher therefore recommends that Arnstein's (1969) Ladder of Participation be used as the basis for public participation.

CoGTA, the ITB, and eThekwini Municipality in particular should have clear objectives to ensure that public participation is located on the top rungs of Arnstein's Ladder of Participation through partnerships, delegated power and citizen control. Traditional Councils are much more likely to take ownership of the outcomes of spatial planning interventions if Arnstein's rungs of participation are pursued. Furthermore, the participatory planning process associated with spatial planning interventions should be fully inclusive, informative and transparent.

7.4   BUILDING THE CAPACITY OF KEY STAKEHOLDERS

The research findings highlighted that both the ITB and Traditional Councils were not capacitated with skills to deal with spatial plans, with Traditional Councils being worse

affected. Thus, the ITB should lobby provincial government, including CoGTA, to provide additional resources to enable it to cover more areas throughout KwaZulu-Natal. Provincial government could also assist by providing technical and legal training programmes tailor made for Traditional Councils on how to manage their areas from spatial, land use and natural resource perspectives. CoGTA and eThekwini Municipality should introduce a user friendly manual on spatial planning and scheme maps that will be distributed to all Traditional Councils. Trained facilitators should also conduct workshops and discussions with Traditional Councils. The training could be extended to include conflict resolution skills which are an essential tool in resolving disputes.

The incorporation of *amaKhosi* (chiefs) in council decision making structures from this year with assistance from CoGTA is laudable and should be replicated throughout KwaZulu-Natal and other provinces in South Africa. This could promote integrated and inclusive decision making processes.

eThekwini Municipality has developed a good culture of engaging councillors whenever new laws are promulgated. This usually takes the form of workshops to discuss and debate the legislation.   The municipality should use similar mechanisms to capacitate Traditional Councils on both technical and legal issues so that they understand spatial plans both at planning and implementation stages. There is a need for committed and dedicated officials to act as facilitators in traditional areas to build strong relationships at grassroots or community level.

It is also recommended that Traditional Councils, particularly *iziNduna* should be encouraged and technically trained to use basic handheld GPS equipment during the allocation of sites. This would entail firstly, the calculation of points or potential sites for allocation by professional engineering land surveyors based on the spatial plan. The spatial plan would then be handed over to the Traditional Council who would allocate land using the predetermined GPS points.

7.5   CONCLUSION

The hypothesis outlined in section 1.6 that *"Key stakeholders are not playing an effective role in the planning, preparation and implementation of the LADP in the ITB area within eThekwini Municipality in KwaZulu-Natal."* can be deemed correct based on the findings of this research. These failures may be attributable to myriad of challenges revealed in the findings which inter alia include:-

1. The weaknesses of the legislation as in clearly identifying the roles and responsible of traditional council in spatial planning and land use management;
2. The need to build capacity in the Traditional Councils and iNgonyama Trust Board both from technical and human resource perspectives; and,
3. The understanding of participatory process by stakeholders that participation is not only as legislative requirement but also a tool that can be used effectively to enhance engagement in order to achieve what Arnstein's (1969) regards as partnership.

It should be noted that there is tension between uMnini Traditional Council, particularly *iNkosi* and eThekwini Municipality. However, the tension between the municipality and the ITB seems to have eased as these institutions have established a good working relationship with the common goal of service delivery. It is hoped that, once capacitated, the ITB will be able to use its influence to mend the sour relationship between the uMnini Traditional Council and eThekwini Municipality to ensure sound spatial planning and implementation. The municipality has taken a significant step in incorporating *amaKhosi* (chiefs) in the municipal council. Hopefully this gesture will be extended to include other members of Traditional Councils, particularly those that are responsible for land allocation in traditional areas.

Finally, it is hoped that the promulgation of the KwaZulu-Natal Traditional Leadership and Governance Bill, 2013 will assist not only in the recognition of Traditional Authorities, but in defining their roles and responsibilities as well as their accountability in so far as integrated and properly negotiated spatial planning is concerned.

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APPENDICES

4.12   APPENDIX 1:   LOCALITY /CONTEXTUAL PLAN OF UMNINI TRADITIONAL AREA

Plan 1:   A Locality Map of the uMnini Trust Traditional Area

Source: Local Area Development Plan (LADP), (2006)

4.13   APPENDIX 2:   THE uMNINI LOCAL AREA DEVELOPMENT PLAN
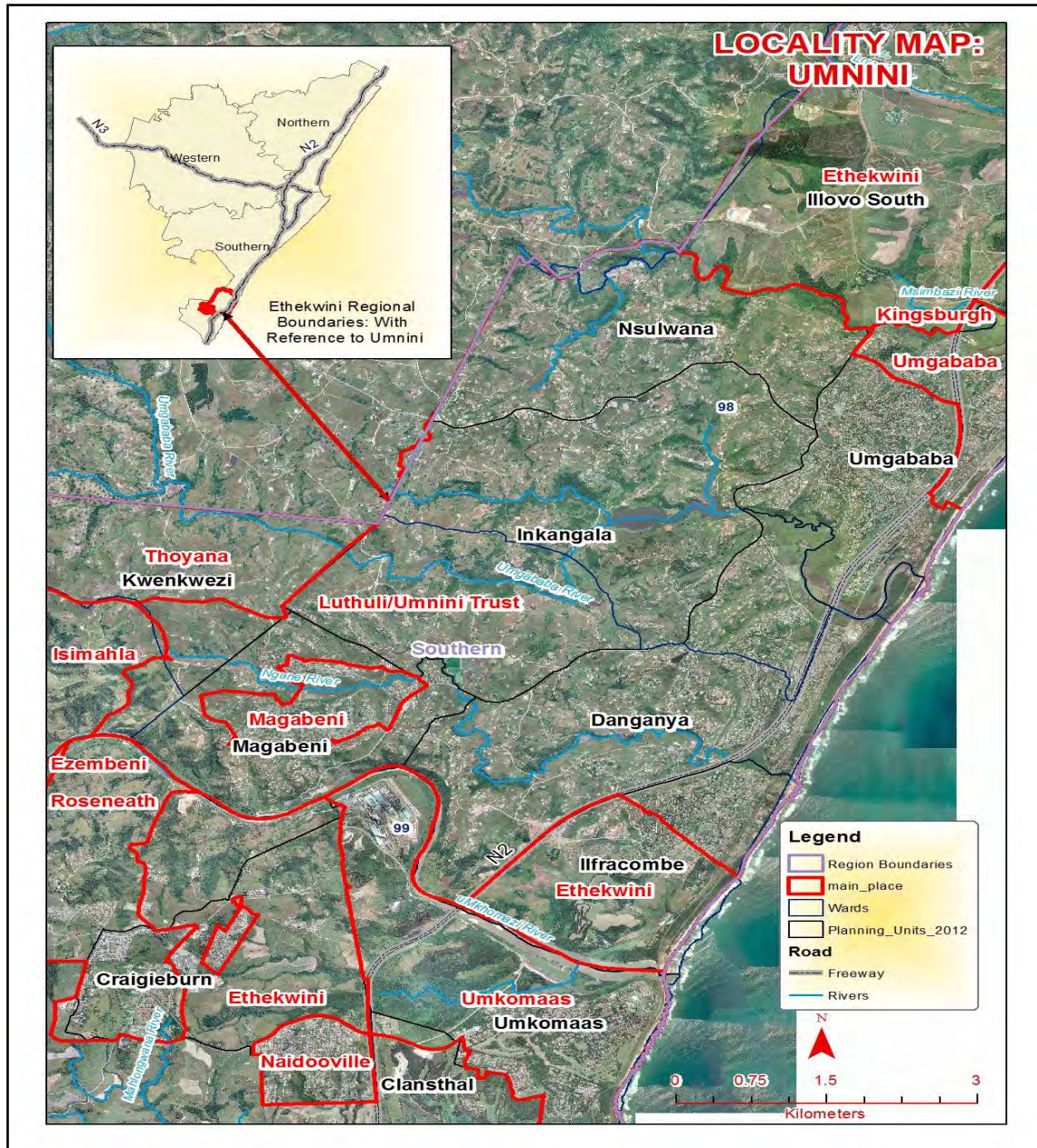
Source: Local Area Development Plan (LADP), (2006)

4.14 APPENDIX 3: INTERVIEWS INCLUDING PROMPTING QUESTIONS

Appendix 3a

Interview Schedule/Questions directed to the Co-operative Governance and Traditional Affairs (CoGTA)

1.   Is CoGTA as the organ of state involved in any way with doing the spatial planning within the ITB areas? If it is so could you briefly explain the nature of CoGTA's involvement in spatial planning initiatives in the ITB areas.

2.   Do you know anything about the Local Area Development Plan for uMnini area that was drafted in 2006? If you know about this spatial planning initiative, could you unpack whether CoGTA played any role in the preparation, thereof?

3.   What is the importance of these initiatives from the point of view of CoGTA?

4.   What is your assessment of these spatial planning interventions in terms of their effectiveness in achieving of the purpose for which they have been designed for?

5.   If you regard them as effective or ineffective, can you provide the reasons for your response?

6.   Who are key stakeholders and what are generally accepted roles and responsibly in so far planning interventions?

7.   To what extent is the legislation effective?

8.   What would you say are the main factors and/or causes that contribute in making these spatial planning initiatives to be effective or ineffective?

9. With particular reference to uMnini, what do you think is the cause of traditional authority to disregard the Local Area Development Plan?

10. Do you think the participatory may have played a role in the success or failure of these spatial planning interventions? If so how?

11. In future, what should the relevant local authorities do to ensure the compliance of the affected communities to these spatial planning initiatives?

Appendix 3b

Interview Schedule/Questions directed to the Head of iNgonyama Trust Board (ITB)

The eThekwini Municipality in conjunction with various stakeholders in 2002 produced the Rural Development Framework all area within ITB in its jurisdiction and later, 2006 the Local Area Development plan for uMnini .The primary purpose of the spatial interventions by eThekwini municipality was to guide development within uMnini Trust Traditional area. These spatial planning interventions appear to have not been effective.

1. Is ITB as of the key stakeholders, the organ of state involved in any way with doing the spatial planning within the ITB areas? If it is so could you briefly explain the nature of ITB's involvement in spatial planning initiatives in the ITB areas.

2. Do you know anything about the Local Area Development Plan for uMnini area that was drafted in 2006? If you know about this spatial plan, could you unpack whether ITB played any role in the preparation, thereof?

3. Who are key stakeholders and what their roles from ITB point of view?

4. What is the importance of these initiatives from the point of view of ITB?

5. What is your assessment of these spatial planning interventions in terms of their effectiveness in achieving of the purpose for which they have been designed for?

6. If you regard them as effective or ineffective, can you provide the reasons for your response?

7. What would you say are the main factors and/or causes that contribute in making these spatial planning initiatives to be effective or ineffective?

8. With particular reference to uMnini, what do you think is the cause of traditional authority to disregard the Local Area Development Plan?

9. Do you think the participatory may have played a role in the success or failure of these spatial planning interventions? If so how?

10. In future, what should the relevant local authorities do to ensure the compliance of the affected communities to these spatial planning initiatives?

11. Institutional Capacity does not exist in ITB and TC – do you agree?

Appendix 3c

Interview Schedule/Questions directed to the representatives of the Traditional Authority or council which comprises iNkosi of aMathuli Traditional Authority, iziNduna (Headmen) and Traditional Councils.

The eThekwini Municipality in conjunction with various stakeholders in 2002 produced the Rural Development Framework all area within ITB in its jurisdiction and later, in 2006 the Local Area Development plan for uMnini was produced following extensive consultation with yourself, iziNduna, then the Councillor and the Ward Committee. The primary purpose of these spatial planning interventions was to guide development within the area uMnini trust traditional area. It would appear people have occupied land proposed for other uses including encroachment into servitudes, services, floodplains, dunes etc.

1. Was iNkosi as of the key stakeholders, involved in any way with doing the spatial planning within the ITB areas? If it is so could you briefly explain the nature of ITB's involvement in spatial planning initiatives in the ITB areas.

2. Do you know anything about the Local Area Development Plan for uMnini area that was drafted in 2006? If you know about this spatial planning initiative, could you unpack whether the traditional authority played any role in the preparation, thereof?

3. Does the ITB make use of these SDP in allocation of land?

4. What is the importance of these initiatives from the point of view of traditional authority?

5. What is your assessment of these spatial planning interventions in terms of their effectiveness in achieving of the purpose for which they have been designed for?

6. If you regard them as effective or ineffective, can you provide the reasons for your response?

7. What would you say are the main factors and/or causes that contribute in making these spatial planning initiatives to be effective or ineffective?

8. How is the relation between traditional authority and eThekwini Municipality?

9. What role should the traditional authority or leader and council should play?

10. What does the traditional authority understand their legislative requirement in so far as spatial planning is concerned?

11. Do you think the participatory may have played a role in the success or failure of these spatial planning interventions? If so how?

12. In future, what should the relevant local authorities do to ensure the compliance of the affected communities to these spatial planning initiatives?

Appendix 3d

Interview Schedule/Questions directed to the Ward Councillor and council of eThekwini Municipality in the uMnini Trust Traditional area:

The eThekwini Municipality in conjunction with various stakeholders in 2002 produced the Rural Development Framework all area within ITB in its jurisdiction and later, in 2006 the Local Area Development plan for uMnini was produced following extensive consultation with yourself, IziNduna, the then the Councillor and the Ward Committee. The primary purpose of these spatial planning interventions was to guide development within the area uMnini trust traditional area. It would appear people have occupied land proposed for other uses including encroachment into servitudes, services, floodplains, dunes etc.

1.   Is iNkosi as of the key stakeholders, involved in any way with doing the spatial planning within the ITB areas? If it is so could you briefly explain the nature of ITB's involvement in spatial planning initiatives in the ITB areas.

2.   Do you know anything about the Local Area Development Plan for Umnini area that was drafted in 2006? If you know about this spatial planning initiative, could you unpack whether the role that you as council played any role in the preparation, thereof?

3.   Why these plans are important form council point of view?

4.   What is your assessment of these spatial planning interventions in terms of their effectiveness in achieving of the purpose for which they have been designed for?

5.   If you regard them as ineffective, can you provide the reasons for your response?

6.   What would you say are the main factors and/or causes that contribute in making these spatial planning initiatives to be effective or ineffective?

7. How is the relation between traditional authority and eThekwini Municipality?

8. Kindly explain if Amakhosi been introduced into council?

9. What does the traditional authority understand their legislative requirement in so far as spatial planning is concerned?

10. Do you think the participatory may have played a role in the success or failure of these spatial planning interventions? If so how?

11. In future, what should the relevant local authorities do to ensure the compliance of the affected communities to these spatial planning initiatives?

Appendix 3e

Interview Schedule/Questions directed to eThekwini Municipality: Development Planning Environment and Management (DPEM) Unit, a key unit in formulation of Spatial Planning Initiatives: Deputy Head:

1.   The eThekwini Municipality in conjunction with various stakeholders in 2002 produced the Rural Development Framework all area within ITB in its jurisdiction and later, 2006 the Local Area Development plan for uMnini. The primary purpose of the Spatial Interventions by eThekwini Municipality was to guide development within uMnini Trust Traditional Area. These Spatial Planning Interventions appear to have not been effective since people have copied land proposed for other uses including encroachment into servitudes, services, floodplains, dunes etc.

2.   Do you know anything about the Local Area Development Plan for uMnini area that was drafted in 2006? If you know about this Spatial Planning Initiative, could you unpack whether the traditional authority played any role in the preparation, thereof?

3.   What is the importance of these initiatives from the point of view of traditional authority?

4.   What is your assessment of these Spatial Planning interventions in terms of their effectiveness in achieving of the purpose for which they have been designed for?

5.   If you regard them as effective or ineffective, can you provide the reasons for your response?

6.   What would you say are the main factors and/or causes that contribute in making the Spatial Planning initiatives to be effective or ineffective?

7.   How is the relation between traditional authority and eThekwini Municipality?

8.   What role should the traditional authority or leader and council should play?

9. What does the traditional authority understand as their legislative requirement in so far as Spatial Planning is concerned?

10. Do you think the participatory may have played a role in the success or failure of these Spatial Planning interventions? If so how?

11. In future, what should the relevant local authorities do to ensure the compliance of the affected communities to these Spatial Planning initiatives?

Appendix 3f

Interview Schedule/Questions directed to the Senior Manager of Economic Development Unit (EDU) and Former Project Manager Rural Area Based Management (Rural ABM) and Coordinator of uMnini Local Area Development Plan:

The eThekwini Municipality in conjunction with various stakeholders in 2002 produced the Rural Development Framework all area within ITB in its jurisdiction and later, 2006 the Local Area Development plan for uMnini The primary purpose of the spatial interventions by eThekwini municipality was to guide development within uMnini Trust Traditional area. These spatial planning interventions appear to have not been effective since people have occupied land proposed for other uses including encroachment into servitudes, services, floodplains, dunes etc.

1.   Do you know anything about the Local Area Development Plan for uMnini area that was drafted in 2006? If you know about this spatial planning initiative, could you unpack whether the traditional authority played any role in the preparation, thereof?

2.   What is the importance of these initiatives from the point of view of traditional authority?

3.   What is your assessment of these spatial planning interventions in terms of their effectiveness in achieving of the purpose for which they have been designed for?

4.   If you regard them as effective or ineffective, can you provide the reasons for your response?

5.   What would you say are the main factors and/or causes that contribute in making these spatial planning initiatives to be effective or ineffective?

6.   How is the relation between traditional authority and eThekwini Municipality?

7.   What role should the traditional authority or leader and council should play from your point of view?

8.   What does the traditional authority understand their legislative requirement in so far as spatial planning is concerned?

9.   Do you think the participatory may have played a role in the success or failure of these spatial planning interventions? If so how?

10.   In future, what should the relevant local authorities do to ensure the compliance of the affected communities to these spatial planning initiatives?

Interview 3g

Interview Schedule/Questions directed to consultant that was appointed to undertake the formulation uMnini Local Area Development Plan or Spatial Planning Framework: Rob Kirby Associates

The eThekwini Municipality in conjunction with various stakeholders in 2002 produced the Rural Development Framework all area within ITB in its jurisdiction and later, 2006 the Local Area Development plan for uMnini. The primary purpose of the spatial interventions by eThekwini municipality was to guide development within uMnini Trust Traditional area.

Your company was appointed to assist in the formulation of Local area development plan (LADP) and recently the uMnini scheme.

1. Did you include as ITB, CoGTA, Development Committee, and Ward Councillor as some of the key stakeholders during the participatory process which during the formulation of these? If you did, could you unpack role played by the traditional authority (iNkosi, iziNduna) in the preparation, thereof?

2. What was your approach or form of consultation or participatory process or that you pursued?

3. Briefly describe the nature or stages of your consultation i.e. conceptual or detail phase etc.?

4. Do you think the TC had the technical ability to understand these plans?

5. Was there a point where such dots were converted by Engineering land surveyor?

6. Kindly elaborate on the product of spatial plans prior and post consultation with the stakeholders.

7. How was the relationship between the EThekwini Municipality and iNgonyama Trust Board (ITB) and uMnini Trust Traditional authority?

8. What is your assessment of these spatial planning interventions in terms of their effectiveness in achieving of the purpose for which they have been designed for?

9. If you regard them as effective or ineffective, can you provide the reasons for your response?

10. What would you say are the main factors and/or causes that contribute in making these spatial planning initiatives to be effective or ineffective?

11. How is the relation between the Traditional Authority and eThekwini Municipality?

   i. What role should the traditional authority or leader and council should play?

   ii. What do you think is the levels of understanding of legislation by Traditional Council in so far as spatial planning is concerned?

   iii. Do you think the participatory may have played a role in the success or failure of these spatial planning interventions? If so how?

12. In future, what should the relevant local authorities do to ensure the compliance of the affected communities to these spatial planning initiatives?