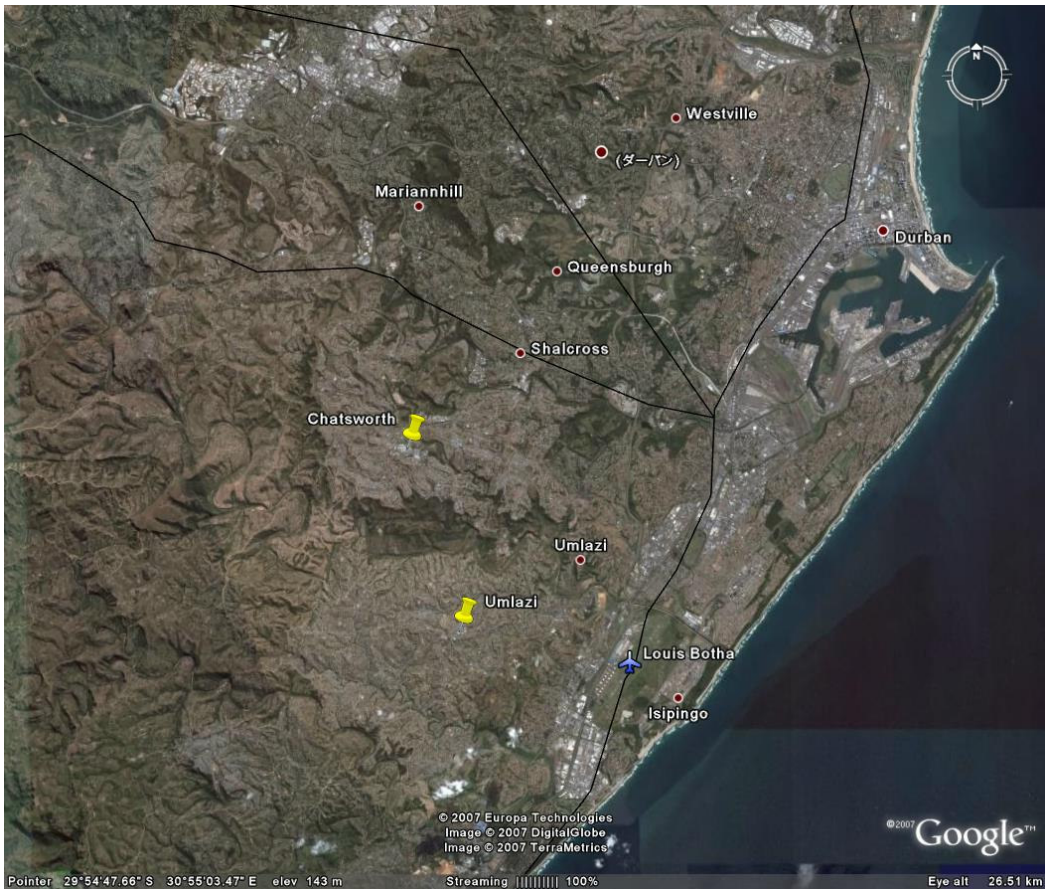
A TOWN PLANNING GUIDELINE
From an eThekwini & KwaZulu-Natal Perspective

JOHN A FORBES TRP(SA) MSAPI

Google Earth oblique view of the province of KwaZulu-Natal, South Africa situated on the southeastern coastline of Africa.

Google Earth oblique view of the metropolitan area of the eThekwini Municipality comprising greater Durban. The municipality extends from Umkomaas in the south to beyond Tongaat in the north to Cato Ridge in the west. Pietermaritzburg, the capital of the Province of KwaZulu-Natal, may be seen beyond Cato Ridge.



Google Earth overhead view of Durban showing the Mngeni River in the north, and moving southwards, the central business area of Durban, the Durban Bay/Port and the South Industrial Basin – the largest of the industrial areas – surrounding the Durban International Airport (incorrectly shown as Louis Botha). The Pinetown/New Germany industrial complex is shown in the upper left.

TABLE OF CONTENTS

PREAMBLE

The initial impetus for this publication on town planning belongs to Dr Debra Roberts, ironically an environmentalist, who in seeking to obtain for the Environmental Management Department of the eThekwini Municipality (Durban, KwaZulu-Natal, South Africa) a clearer understanding of what constitutes town planning (and what no doubt drives town planners!) unknowingly set in motion something larger than what she originally envisaged. I am sure her desire has been influenced by past differences in opinion between some town planners and environmentalists on the benefits or otherwise of development! This is in an age at the beginning of the twenty first century, which is seeing ever growing concerns in the public realm of man's effects on his natural environment. These are apparently, judging by an on-going series of severe climatic events, leading to an artificially increased rate of global warming with potentially disastrous effects on man's current habitat.

The first European engagement with the Durban area occurred in 1497 when Vasco da Gama's ships cast anchor in the lee of a protecting headland, which we know today as the Bluff. They named the headland *Ponta de Pescaria* as they "took much fish" - Malherbe [1965] Other than for shipwrecked sailors, it was to be another 327 years before the first settlers from Europe took up permanent abode!

Early painting showing view from the Berea to Durban /Port Natal Bay, Salisbury Island & Bluff

It is hard today to imagine that the present day Durban was first established by adventurers and ivory traders as recently as 1824 - "Farewell, with Fynn, returned [on 7th August 1824] joyfully to the Rio de Natal, to build their shacks and commence a trade.... the foundation and beginning of the great

commercial city and harbour of Durban.' In 1824 Shaka, as the leader of the amaZulu who held domain over the area, made a 'land grant' to 'Farewell and Company. This is based on a document, part of which read: '...grant, make over and sell to F.G. Farewell and Company, the entire and full possession ...of the Port or Harbour of Natal, known by the name of "Bubolongo", together with the islands therein and surrounding country ...' [Fynn, 1969].

At this stage according to Fynn, in reference to his first arrival at Port Natal on 10th March 1824, 'the bay appeared to be surrounded by bush in every direction; the only spot that was somewhat open was the locality now known as Khangela.' The situation today, a mere 183 years later, is vastly changed from the idyllic natural environment that they must have enjoyed! The preceding painting, indicative of Durban in the early years, is reminiscent of Richards Bay just some 35 years ago! It was not that long ago, only some 50 years, that there was still a bathing beach and mangroves at what is now the Island View berth on the Bluff side of the bay! And yet even greater plans are currently in store for the Durban harbour including a so-called "dug-out" port!

The environmentalists are often locked in battle with developers (and perhaps some town planners?) in defending their D'MOSS demarcations in an effort to maintain the last vestiges of the "bush", otherwise known as forest, scrubland, grassland and wetland, for future posterity! Something which no doubt was taken very much for granted by the early settlers from Europe and about which they did not much think, other than possibly to remove the potential "threat" of snakes, rats, spiders or other long since vanished large game that might hide in it such as lions, buffalo, elephants, hippopotami and crocodiles! We, supposedly of a more enlightened age, need to consider what will still be left in 2190, another 183 years in the future! Surely, it is worth preserving what we still have for our children's children's children!

While some planners in more recent time have attempted to "Design with Nature", as advocated by the renowned Scottish American landscape architect and planner, the late Ian L McHarg, this process is by no means always followed. Today it is possible, with current scientific knowledge, to have an enhanced understanding of the potential effects of developments on nature and how best to mitigate or preferably avoid against these negative effects. Accordingly, it is essential that nature be given the respect that it is due in all future planning. Further, that not only should such developments avoid deleteriously affecting the natural environment, but that they should also seek to enhance it and give back to nature some of its buffering effects which have been lost in the past by unthinkingly or unknowingly undertaken developments.

John A Forbes TRP(SA) July 2007

CHAPTER 1

INTRODUCTION

While the preparation of a simple document or guide on town planning in the greater Durban area came about with a view to imparting some basic town planning knowledge or understanding to new initiates to the Environments Management Department and others, in understanding the jargon regularly used by its own town planners, it is also the aim, in a small way, to introduce some knowledge of other disciplines within the document. These are facets with which the town planner should be *au fait.* While practicing town planners may find the document too simplistic, it is hoped that some of the mystics and obfuscation of town planning jargon, a topic that some consider has almost taken on the resemblances of being occult, will be revealed.

GENERAL

What is Town Planning?

Town planning very simply put is the intentional arrangement of man's spatial environment on the ground with a view to producing order out of what would otherwise almost certainly be chaos. How that particular order is obtained and the tools used in obtaining it, is what constitutes the science and/or art of town planning.

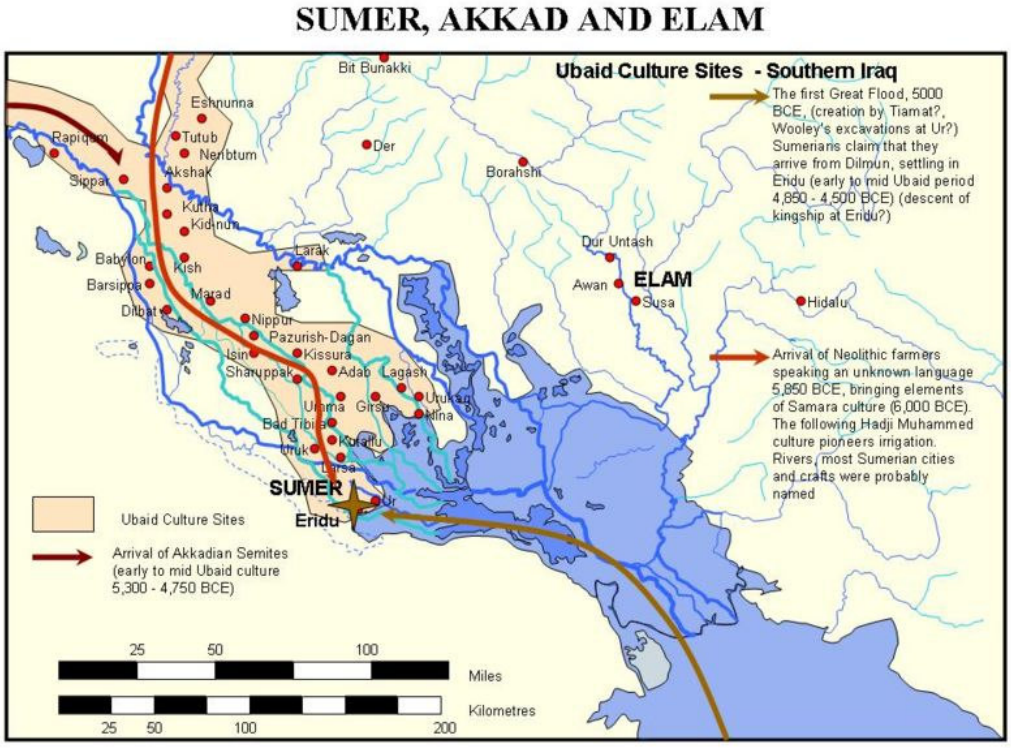
What are the aims of Town Planning?

In producing order in man's spatial environment it is desirable that better mental and physical health, economics, environment and social organisation be achieved for the general populous than may occur if left to pure chance.

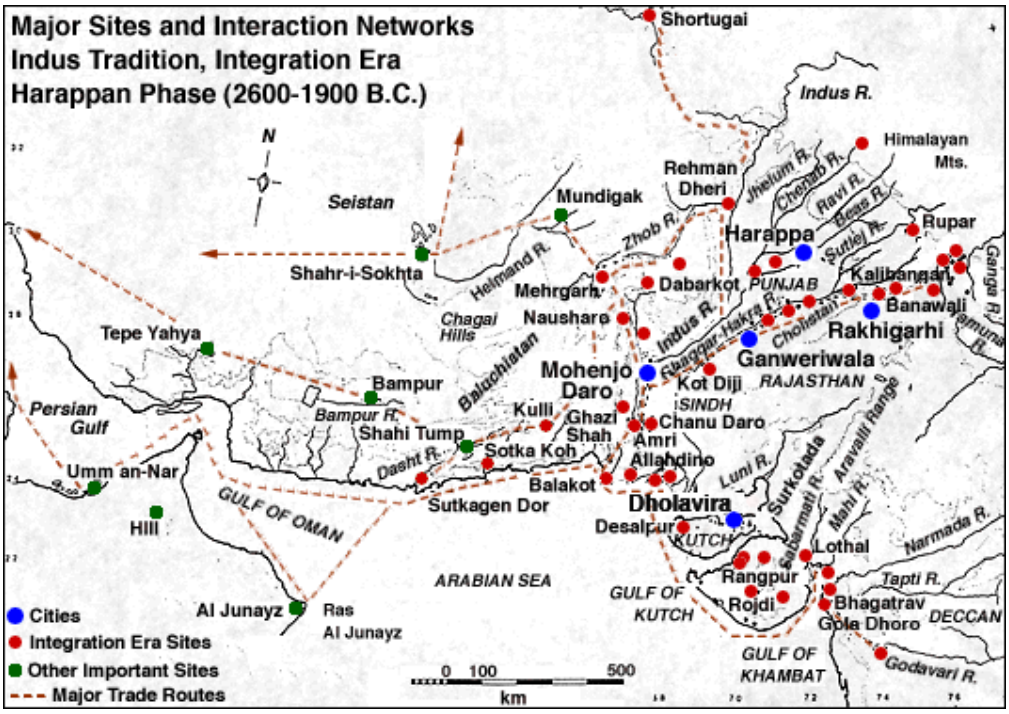
A very brief Historical Overview

The science of town planning has been practiced for at least four thousand years. It would have first been practiced some time after early groups of people had initially given up their prior nomadic way of life and settled down permanently, initially in a haphazard way, with other people where water and food were readily available or cultivatable and thereby gradually enabling increasing degrees of specialisation of occupations to occur.

Town planning was probably originally the exclusive preserve of the priest class that emerged in the very early civilisations located in Sumer (Ur, Uruk *et al*) in Mesopotainia (Iraq), in the Indus valley (Mohenjo Daro, Harappa *et al*), and along the length of the Nile valley (Egypt/Sudan). Later planning was practiced throughout the greater Hellenic Empire (Greece/Turkey/Persia), the Roman Empire, China and the Olmec/Aztec/Inca Empires in Central and South America. Today, generally only the grand scale achievements of those early civilisations are still evident, although ongoing excavations are constantly unearthing new evidence that indicate that even the common man at the time benefited from town planning in these early ages.

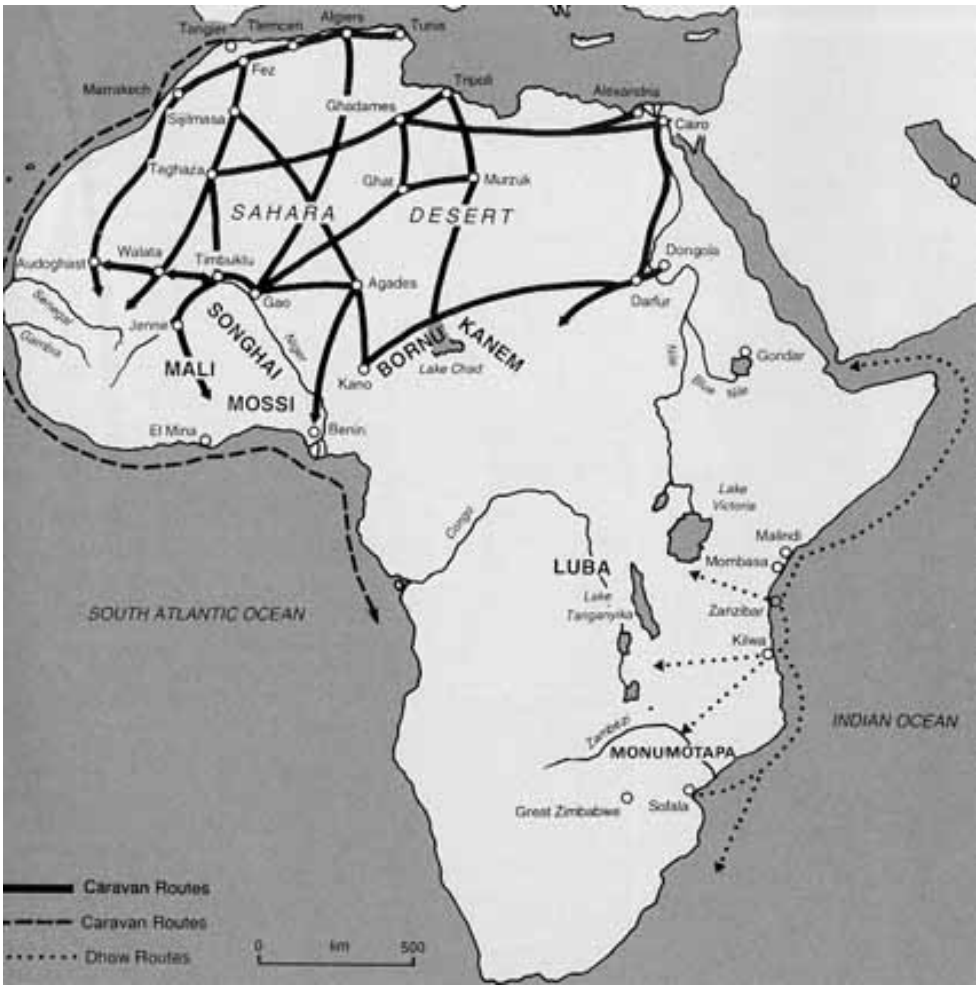


The Byzantium (Eastern Roman centred in Constantinople) and the Sassanian (Persian) empires, followed by the Islamic empire expanded on the achievements of earlier empires that they had "inherited". Baghdad and Al Qahira or The Victorious (known as Cairo in the west) being two of the new towns established during the latter's period of influence in the 8th and 10th centuries respectively by the Abbasid dynasty of Sunni Muslims and the Fatimid division of Shi'ia Muslims. In Africa the kingdoms of Ghana (in south eastern Mauritania – not the current state) followed by greater Mali were established in central western Africa, while the Zimbabwe kingdom was established in central southeastern Africa, in all cases of which certain planning principles were exercised. Significantly it should be considered that in the above times much of Western Europe was still a relatively primitive backwater while North America was yet to be "discovered"!



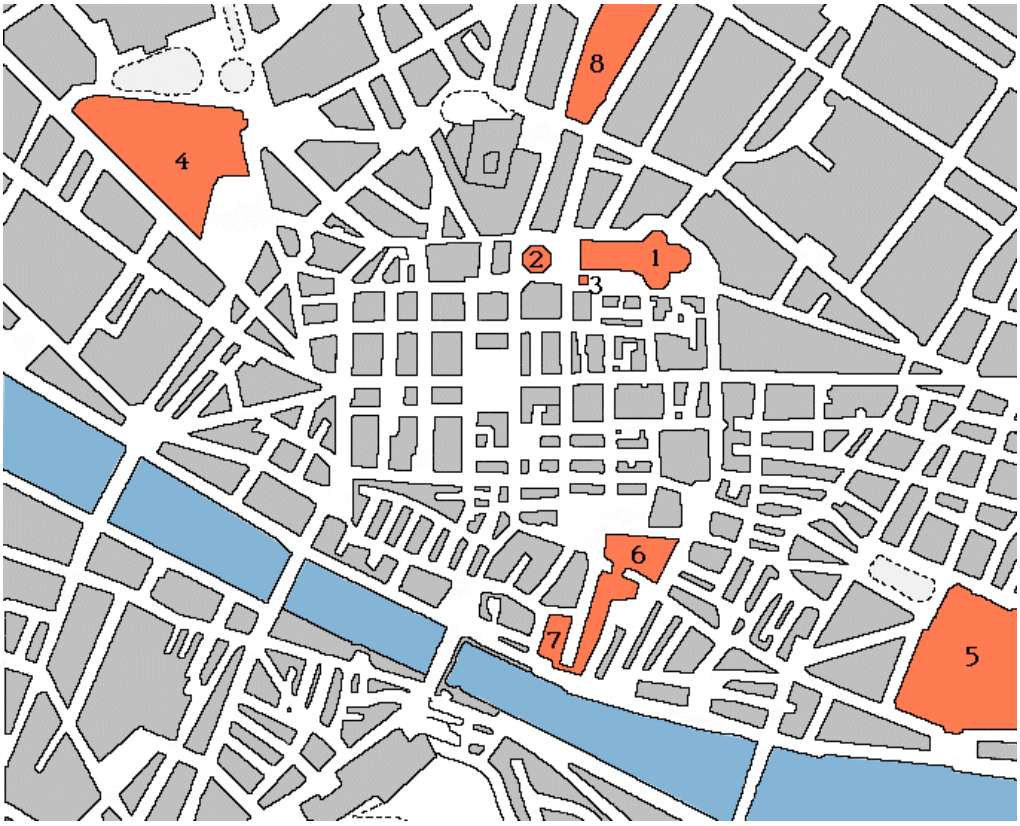
Ready access to food supplies and water and communication with others, either by land, river or sea, were paramount factors in fixing towns' initial locations. Often military considerations were also significant factors in determining the location, final shapes and boundaries of these early towns. As an example, Baghdad (ironically officially named Madina al Salem or City of Peace), a then perfectly circular shaped town, was established as a new capital in an interceptory position trade-wise near where the Euphrates and Tigris Rivers approached one another. It was sufficiently removed from the prior capital of Kafu to a location where it was considered politically and military-wise to be safer in those times!

The city of Baghdad was designed as a circle about 2 km in diameter, leading it to be known as the "Round City". The original design shows a ring of residential and commercial structures along the inside of the city walls, but the final construction added another ring, inside the first.[4] In the center of the city lay the mosque, as well as headquarters for guards. The purpose or use of the remaining space in the center is unknown. The circular design of the city was a direct reflection of the traditional Persian Sasanian urban design. The ancient Sasanian city of Gur/Firouzabad is nearly identical in its general circular design, radiating avenues, and the government buildings and temples at the center of the city. Ref. Wikipedia



Map of Africa showing trade routes prior to the advent of the European colonialism of the continent. Africa was a center of active trade with camel caravans going across the desert and ships sailing up and down the eastern coast. Source: Map by Ken Wass in *History Today* 42 (May 1992)

The Renaissance period in Europe, with its city-states, brought about new grandiose endeavours of planning which sought to achieve beauty in the overall design of the towns, its buildings and its open spaces.



Street Map of Firenze (Florence)

1. Santa Maria del Fiore
2. Battistero di San Giovanni
3. Campanile
4. Santa Maria Novella
5. Santa Croce
6. Palazzo Vecchio
7. Uffizi
8. Palazzo Medici Riccardi

It was however the industrial revolution in Europe that heralded the beginning of the modern era of town planning. This period saw the large-scale flight from the rural areas to the towns by those seeking job opportunities in the new industries. This led to the common people often living in squalor and experiencing major health epidemics. As a consequence the early town planning efforts in the United Kingdom was primarily focused on health improvements.

The colonial period saw the European powers export their culture and technology throughout the world. They established new towns, created along their traditional lines, wherever they settled, sometimes, when so doing, building on to or adjacent to earlier settlements of the indigenous peoples. These early towns often became the hub around which major future cities would grow in time.

In the case of South Africa the new towns were usually formally set out. In Cape Town, the so-called mother city, the majestic Gardens in the central city with its adjacent magnificent buildings, including Parliament, may be attributed to the initial formal setting aside of land for the vegetable gardens established by the Dutch's VOC (Vereenigde Oostindische Compagnie – United East India Company), the original *raison d'être* for the then small settlement!

The Trek Boere (Voortrekkers or Pathfinders), descendents of early Dutch, French and German settlers, in attempting to flee British imperialism, initially came down the Drakensberg Mountains from the interior in 1838. After having defeating the Zulu king Dingane's army, they established their own Republic of Natalia with their capital situated at Pietermaritzburg. This town was named after their leaders Piet Retief and Gert Maritz and/or the former's full first names, i.e. Pieter Maritz Retief, and who was earlier killed at uMgungundlovu (to the south of the present day town of Ulundi). The Voortrekkers set out the town on a gridiron layout on the flat land encompassing the Dorpspruit (town stream) and flanked by the Msunduzi River in the east and the escarpment/hills on the other sides.

Pietermaritzburg's original isiZulu name of uMgungundlovu suggests that the plain on which the town was established was formally traversed by herds of elephants. uMgungundlovu is sometimes loosely translated from the Zulu as the "Place of the Elephant" (indlovu = elephant), although it could perhaps be more appropriately translated as the "The elephant wins". uMgungundlovu is on this basis considered to be the site of a Zulu king's victory, as Indlovu is a name traditionally taken by the Zulu monarch. Legend also has it that Shaka had his warriors hunt elephant there to sell the ivory to the English traders at Port Natal/Durban – this, perhaps, is just that – a legend! The local authority is now named after the river that runs through it, i.e. the uMsunduzi Municipality.

There is also the view that the town's early isiZulu name of uMgungundlovu, may ironically have been so named by Andries Pretorius, the Voortrekker leader who replaced Piet Retief, after Dingane's most powerful establishment or kraal. Ref. Koopman et al - Internet. This would have been after Pretorius had defeated Dingane in the northern uMgungundlovu and was so taking the name for the new seat of power!

The original small town of Durban (named after Sir Benjamin D'Urban, the Governor of the Cape Colony), earlier called Rio de Natal by the Portuguese, referred to as Port Natal by the early English settlers of 1824 and the Voortrekkers and eThekwini (the locative form of the noun *itheku* - a meaning of which is 'bay' or 'lagoon') or kwaKhangela (place of viewing) or Khangela (Congella) by the local indigenous Nguni people, was established and formally laid out from circa 1835 in a gridiron pattern on the flat land located north of the Bay of Port Natal (eThekwini) and largely between the sand dunes fronting the Indian Ocean and the eastern and western vleis situated between the Mngeni River and the Berea

respectively. In 1843 Natal was proclaimed a British Colony and the majority of the Voortrekkers departed the following year.

The present major harbour city of South Africa is a place with a multitude of names associated with it including eBhodwe, Rio de Natal, Port Natal, Durban, D'Urban, Durbs, eMdubane, iTheku, eThekwini, eMhlume, kwaKhangela, eThusini, eManteku, KwaMalinde, Bubolongo and eGagasini (place of the wave). Ref. Koopman et al - Internet

In 1852, according to Fynn, the original inhabitants of Durban, the amaTuli Nguni tribe, then lead by Mnini, had dwelt on the **"***Ifenya*" (alluvial soils) or Bluff Lands through twelve generations of their chiefs (amakhosi) and had shortly before 1852 settled on the Bluff. Ref. Koopman et al - Internet

The tribe were later resettled during Queen Victoria's reign to the south of Durban in an area that is today called Mnini – presumably named after the same inkosi Mnini.

"The document, headed 'Port Natal' states that a meeting (held on the 23rd June 1835) of the residents of Port Natal [15 attended the meeting] decided to lay out a town to 'be called D'Urban, in honour of his excellency the Governor of the Cape Colony.' It was unanimously agreed that '...the said town be situated between the River Avon (Mbilo River) and the Buffalo Spring (marked by Old Well Court off Smith Street); that it be bounded on the west by the River Avon, on the east by a line drawn from the bay in a right angle, and touching the Buffalo Spring near the residence of F. Berkin, Esq., and that the town lands extend four miles inland, and include Salisbury Island in the bay.' "Koopman et al - Internet

"By 1854, the borough of Durban was proclaimed, with boundaries considerably wider than those of D'Urban in 1835. The new borough had as its boundaries the Indian Ocean, the uMngeni River, the farms *Springfield*, *Brickfields* and *Cato Manor*, the uMbilo River, and the Bay of Natal." Ref Koopman et al - Internet

Inserts from top to bottom: Vasco da Gama, Shaka kaSenzangakona & Henry Francis Fynn

KwaKhangela:
"Fynn, in reference to his first arrival at Port Natal on 10th March 1824, writes 'The bay appeared to be surrounded by bush in every direction; the only spot that was somewhat open was the locality now known as Khangela.'" Koopman et al - Internet

"The Zulu place name originates from KwaKhangela amankengane (view the foreigners in the sea), a name given by King Shaka. To 'khangela ' means to look at, behold, view ....KwaKhangela applied to King Shaka' s outpost on Durban Bay which is now known as 'Congella

King Shaka kaSenzangakona died violently in 1828 and his brother Dingane kaSenzangakona assumed kingship of the amaZulu (Zulu nation).

"There may well be merit in the suggestion that Andries Pretorius, in establishing his camp on the shores of the bay in the 1840s, named it Khangela after the name of Dingane's second most powerful establishment (that is after uMgungundlovu)." Ref. Koopman et al - Internet

The Mngeni River, rather than exiting straight to sea as it does now, at that stage entered the Durban Bay near Cato Creek. The large vleis flanking the Mngeni were subsequently reclaimed and the river rerouted to its present location! Umgeni Road ran northwards between the two vleis from the town towards the river. The eastern vlei was used for rubbish disposal until fairly recent time when the city realised its greater potential for urban development! The lower portion of the Botanic Gardens, Curries Fountain and the Greyville Race Course, the latter with its included golf course, today approximately identifies the eastern vlei's original extent. It is very hard in this day and age with its strict environmental controls to imagine such a radical change to the natural wetland environment being permitted by the city or provincial authorities!

The name of the Mngeni River is variously spelt Umgeni, uMgeni, Mgeni, and Mngeni. This situation has come about as a result of turning the isiZulu vernacular into a written language and where the rules have evolved over a period of time. The road name is still written Umgeni Road, the 1:50 000 maps and river notice boards on national and provincial roads have dropped the "U" and it is written Mgeni River, while the erstwhile Howick/Mphophomeni municipality, through which the very same river flows forming the Howick Waterfall, has been renamed the Mngeni Municipality. A very similar situation exists in regard to other river names.

Durban gradually grew over the intervening years in a largely grid iron pattern up the slopes onto the Berea as far as the towns limits initially set along the Berea ridge, i.e. Toll Gate and along the Ridge Roads (North, central and South). It finally swallowed the little village of Sydenham to the west and with time, other settlements to the southwest, which were less formal in layout.

Plan of the Borough of Durban, Natal, 1892

It was not until the early nineteen fifties following the second world war that mainly British born and educated town planners were brought out to South Africa by the City of Durban and a Town Planning Section was set up in the then City Engineer's Department of the Durban Corporation with a view to introducing more modern and formal town planning controls. The first formal town planning scheme was adopted in 1953 for the Berea area or district.

The Natal Provincial Administration enacted the Natal Town Planning Ordinance in 1948, which set the framework for modern town planning schemes to be prepared.

The early town planning scheme prepared for the Berea by the new planners, was very severely criticised at the time by the public as, by special consent, high rise blocks of flats, which were then very fashionable could suddenly, with Council approval, appear in the otherwise low rise residential areas. Blanket zoning, mainly consisting of a special residential zone, was put in place over the remainder of the then city.

It was not until, after an overall "Outline Plan for the City" of 1964 was prepared at Provincial insistence and approved by Council and

subsequently approved by the Province, that a new town planning scheme and map for the Berea District, with far greater detailed zoning, was finally presented in 1966 to Council and eventually adopted after modification. The new scheme only allowed high-rise residential blocks in specifically designated General Residential areas, and the provision for their establishment by special consent in other residential zones was removed. The Berea District scheme was followed in 1967 with a scheme for the Bluff District and which process was then progressively rolled out, district by district, for almost the entire then City of Durban.

An in-house consultant team termed the Development Plan Section, which was led by Ken Green, prepared the Outline Plan for the City and the initial District schemes. Under the leadership of Bill Hurt, further Districts schemes were subsequently prepared. The Chief Town Planner during this era was Rowley Hill, while the City Engineer was Cecil Hands. Cecil Hands in particular was very involved in the internal planning process and he was instrumental in the initial wide spread establishment of suburban shopping centres on the Berea and beyond as a norm.

There are to this day still small vestiges of the original town planning scheme with blanket zoning and referred to as the “Rem of City” scheme.

A town planning scheme was prepared in the early years for Umgeni North, a then Indian occupied area sandwiched between the Umgeni River and the township of Durban North, and approved by the then Administrator following adoption by Council. This was to be the only finally approved town planning scheme in the province! All subsequent town planning schemes remained as town planning schemes-in-course-of-preparation. A special amendment to the Town Planning Ordinance was eventually put in place in 1965 to enable the Umgeni North Town Planning Scheme to be converted to a town planning scheme-in-course-of-preparation, thereby freeing up the area for a new town planning scheme to be prepared and adopted!

The surrounding largely dormitory local authorities of greater Durban, usually with provincial technical support, each prepared their own respective town planning schemes using the provincial model clauses, which the towns over time modified to suit their own requirements. In some cases the schemes differed quite radically from the model clauses.

Unfortunately, each individual local authority tended to promote its own area when preparing its town planning scheme with very little, if any, cognisance of flanking, let alone more remote local authorities. While the province did act as an advisor to the local authorities, this process did not achieve optimally integrated and complimentary planning. Even the later prepared structure plans produced by some of the erstwhile local authorities tended to treat their respective areas as islands.

A brief overview of Apartheid planning in Durban.

The concept of Group Area or racial zoning allegedly originated in South Africa, when the erstwhile Durban City Council introduced such provisions into its by-laws. This was supposedly because members of the then Council had expressed concern that the Indian community was acquiring property on the lower Berea. This, they claimed, would eventually lead to the then exclusive area of Berea becoming entirely Indian owner occupied. Following the coming into power of the National Party in 1948, these race based separatist policies were taken up by the new national government and legislation was enacted to effect the policies countrywide.

These separatist policies led to the various areas throughout greater Durban being designated for different race groups or industry and racially zoned accordingly. The Durban City Council, in its case, preparing initial Group Area plans, which were then investigated by the State for final racial zoning. In other cases, the state put forward the proposals largely based on then settlement patterns, which were allegedly aimed at achieving self-sustainable racially based communities, i.e. small racial enclaves were considered non-sustainable.

Conceptually, in greater Durban the White group areas broadly flanked the main north south and east west communication routes forming a large “T” with the city centre in the interceptory position. The Indian group areas were located on either side of the western spine of the “T”, while the Black Group areas were situated beyond and extended into the tribal areas. The central business district or city centre being variously zoned for White and Indian ownership and occupation, the latter centred on the then named Grey Street and the former on West and Smith Streets. No Black areas were designated in the city centre!

Properties owned by persons of a disqualified race group were eventually acquired by the state. As a result of the often considerable intervening time between the preliminary racial zoning and eventual acquisition and often accompanying general neglect of the area, properties frequently lost value. Quite apart from the affront, anger, unhappiness, etcetera, experienced by the affected parties who had had to leave their homes and businesses, this resultant loss of value often led to deep resentment of inappropriate compensation received for their residential and commercial properties.

Large areas of land were, in this process, acquired by the state. They were often re-planned albeit not always implemented. Some examples are the lower Berea, the Warwick Triangle, Umgeni North, Cato Manor, Maryvale in Westville and Isipingo Beach. The largely Indian occupied residential area of Clairwood was declared for industrial purposes but never finally so rezoned from a town planning perspective. This led to the piecemeal ingress of industry into the area by special consent and a general neglect of what had previously been a thriving residential neighbourhood.

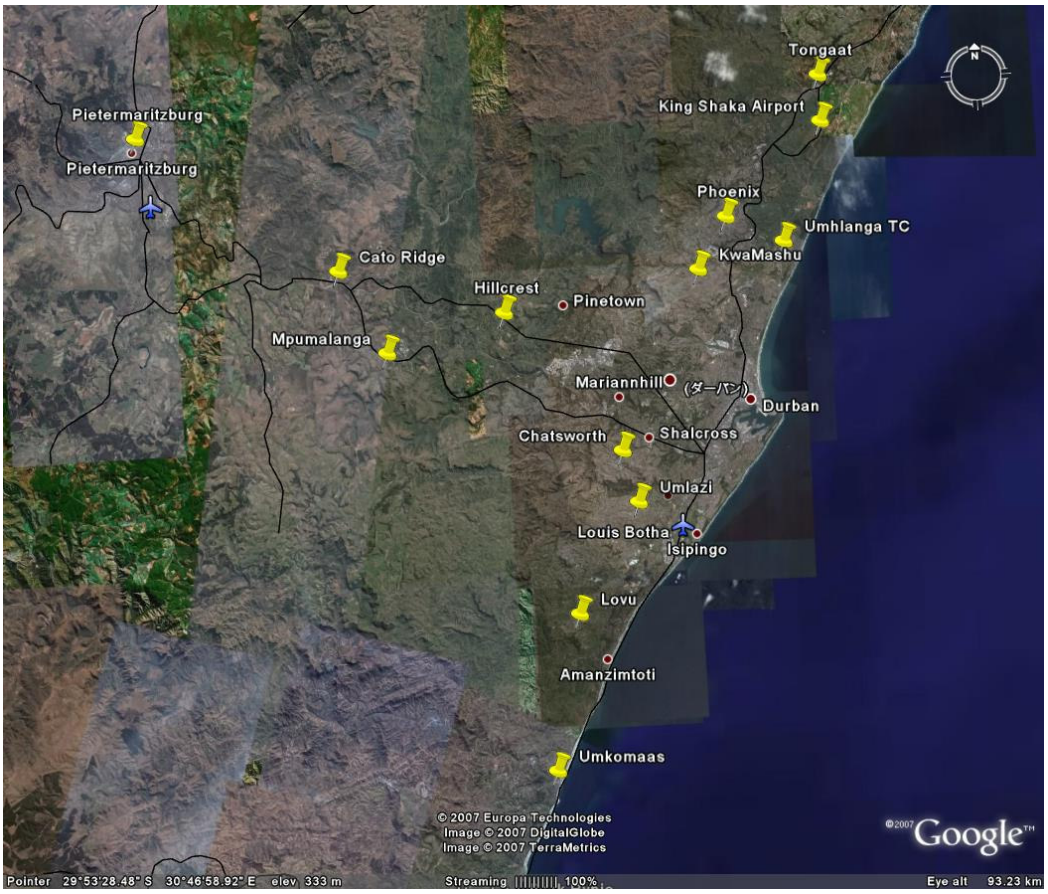
To this day, nearly sixty years later and some fifteen years after the removal of the Group Areas Act, Clairwood (sandwiched between the harbour to the north, industrial areas to the South, the Bluff residential area to the East and the transportation and commercial areas to the West) remains an enigma. It is a rallying cry and an emotional tussle between the ex-residents and those remaining, with officials and councillors. Recent official announcement suggest that it will yet all go to industry! Time will tell.

The farm Dunn's Grant No 0084 (as identified by the cadastre) is bounded by Dayal Road in Clairwood in the east, the boundary then cuts diagonally through Jacobs Road to Landsdown Road which if follows south to the southern end of the Clairwood Race Course, after running west it returns northwards approximately along the South Coast railway line until meeting the Mhlatuzana River which it then follows part of the way towards the bay, before cutting eastwards and diagonally through Bayhead till it meets the extension of Dayal Road on Edwin Swales VC Drive.

The bulk of the former residential area of Clairwood is therefore located within Dunn's Grant. Could John Dunn, one of the early English settlers, in fact have been granted the alluvial soils (ifenya) or land previously occupied by the amaTuli tribe, which Fynn claimed in 1852, they had vacated shortly before when they moved to the Bluff? Could this have been the first "Group Area" removal? John Dunn of course went on to gain fame as a Zulu Chief and acquired vast areas of land to the north of the Thukela (Tugela) River, land which is contested to this day by his descendents and local tribes!

Other largely small holding areas occupied by Indians such as Wyebank in Kloof, Stockville in Gillitts and Cliffdale, i.e. small enclaves, were for many years under the shadow of imminent zoning by the state to make the inhabitants disqualified. Fortunately, this did not happen and, in the case of Wyebank, following representations by both the occupants and the Kloof Council at prolonged enquiries, it was eventually zoned for Indian occupation in 1976. This led to the area being positively planned by the Kloof Council and the erstwhile Circle Golf Course being re-developed for housing by a prominent building society.

Large new dormitory townships were set up for Black people at KwaMashu (to which erstwhile Cato Manor residents were moved) and Ntuzuma in the north and Umlazi in the south. While for displaced Indian people, first the township of Chatsworth in the south, then Phoenix in the north, was established. The Durban City Council undertook both the planning and implementation of housing in these areas on behalf of the state.



Also, for Black people, large unisex hostel complexes were established by the state at KwaDabeka near Clermont close to Pinetown and in the south, near the major airport. A new dormitory township called Mpumalanga was established in the west, approximately halfway to Pietermaritzburg, flanking the newly established "border" industrial area of Hammarsdale.

Because of the need for vast tracts of land to establish these townships and in order to effect the policy of separation as outlined above, these areas were located a considerable distance from the centre of Durban, thereby further disadvantaging these generally poorer communities. Both rail and bus services were planned and generally extended into these areas. (The Ntuzuma rail line never materialised and the route was eventually informally settled over, while the Chatsworth line has since been closed down). Eventually lack of finance for these ongoing major housing projects saw slowdowns occurring leading to large scale informal housing being erected and attempts by the state to bring in the private sector to fill the gap, largely via the Independent Development Trust.

Gradual halting moves away from the Apartheid policy were initiated by the state, e.g. with the Free Settlement Area Act No 102 of 1988, which provided for the designation of a "Group Area" in which any race group could settle, i.e. free settlement. However only following the un-banning of the ANC *et al* in 1990, where after all the Apartheid legislation was gradually removed from the statute book prior to the 1994 democratic

election, was a normalisation of human settlement patterns gradually set in motion for the country.

This normalisation process started very slowly for Durban, but with a greater wealth being shared across the race groups, the pace has increased in recent years and has been a considerable driving force, via a process of “musical chairs” with respect to the various residential areas in the establishment of new urban growth nodes both at Umhlanga in the north and at Hillcrest in west, ironically also well removed from the Durban city centre. The large dormitory townships of KwaMashu, Ntuzuma, Umlazi, Mpumalanga and to a lesser extent Chatsworth and Phoenix have remained largely unchanged, the change occurring mainly in the many privately established residential areas previously designated for Whites and Indians. The Durban city centre has in turn undergone a metamorphism and is now, despite there having been no Black Group Area, a truly “African” city, while a new economic hub has developed to the north surrounding Gateway in Umhlanga and effectively constituting a parallel central business district or town centre for Durban.

How is town planning different from city planning, urban planning, rural planning or regional planning?

Town planners tend to confuse the public, and sometimes even themselves, with their varying terminology! There is very little difference in any of the above other than with regard to the level of detail, the scale and area of specialisation.

A Town Planner is the term usually used in the United Kingdom and Commonwealth countries, whereas the Americans are prone to use the term City Planner. An Urban Planner or Urban Designer would tend to bridge the gap between an Architect and a Town Planner and, amongst other, prepare detailed layouts showing future buildings. A Regional Planner would deal with vast areas including city, town and rural areas at a low level of detail, whereas a Rural Planner would normally only be involved in rural areas and, in the South African context, in Tribal areas. From time to time they are all likely to work in one another's more specialised fields.

To further complicate the matter, the South African Constitution refers to Municipal Planning as a function or responsibility specifically allocated to local authorities.

Municipal Planning means the compilation and implementation of an Integrated Development Plan in terms of the Municipal Systems Act No 32 of 2000.

Additionally in relation to the **District Municipality** "Municipal Planning" means:
Integrated Development Planning for the district as a whole, including a framework for integrated development plans of all municipalities in the area of the district municipality.

Additionally in relation to the **Local Municipality** "Municipal Planning" means:
Integrated Development Planning for the local municipality in accordance with the framework for integrated development plans prepared by the district municipality; AND the development and implementation of a town planning scheme or land use management scheme for the municipality including administration of development applications in terms of special consents and re-zonings.

What legal framework does town planning operate under in South Africa and in KwaZulu-Natal in particular?

Some of the specific legislation that guides town and regional planning nationally is as follows: -

1991: Physical Planning Act No 125 of 1991
1991: Less Formal Township Establishment Act No 113 of 1991
1995: Development Facilitation Act No 67 of 1995
2000: Development Facilitation Regulations No R 1

At a provincial level in KwaZulu-Natal the following legislation is relevant: -

1949: Town Planning Ordinance No 27 of 1949, as amended & Regulations.
1974: Local Authorities Ordinance No 25 of 1974
1991: KwaZulu Amakhosi and Iziphakayisa Act No 257 of 1991
1992: KwaZulu Land Affairs Act No 11 of 1992
1994: KwaZulu Land Affairs (Township Establishment) Regulations GN 29 of 1994
1994: KwaZulu Land Affairs (Town Planning) Regulations GN 30 of 1994
1994: KwaZulu Land Affairs (Conversion of Certain Tenure) Regulations GN 31 of 1994
1994: KwaZulu Ingonyama Trust Act No 3 of 1994
1997: KwaZulu-Natal Ingonyama Trust Amendment Act
1998: KwaZulu-Natal Housing Act
2001: KwaZulu-Natal Provincial Roads Act No. 4 of 2001

The Town Planning Ordinance No 27 of 1949 is the most used legislation for planning decisions taken in the province.

At a local level, there are a host of operative town planning schemes-in-course-of preparation prepared in terms of the Town Planning Ordinance No 27 of 1949 based on the erstwhile local authorities and development areas. Following the re-demarcation of the province in 1995 to reduce the number of local authorities some of these schemes have been consolidated into single schemes for a particular jurisdictional area. This however is more the exception than the rule with the original town planning schemes still in place, albeit they modified since 1995.

A town planning scheme-in-course-of-preparation does not mean what it literally says! The operative town planning schemes have been adopted by a council of a municipality and are relatively final, i.e. they are not still being prepared. They are however subject to amendment from time to time.

The original Natal Town Planning Ordinance No 27 of 1949 provided for finally approved town planning schemes; however this change in status involved in introduction of compensation and betterment for any changes in land use rights. As a result this position was broadly resisted and only one town planning scheme – the Umgeni North Town Planning Scheme in Durban - was ever approved. The Ordinance was subsequently amended specifically for this scheme to be converted to a town planning scheme-in-course-of-preparation! Although the provision to finally approve a town planning scheme still exists in the Ordinance, it is never exercised!

Are these laws being changed in the new South Africa?

Land Use Management Bill of 2002

Nationally, efforts have been made to put in place a common land use management system (LUMS). However, despite countrywide consultations over a period of time, the Land Use Management Bill of 2002 has not to date eventuated in an Act.

This Bill, as prepared by the national Department of Planning, was fairly simple compared to some planning legislation. What the Bill did contain, which is perhaps innovative, were certain **Directive Principles** that are to be used to guide the drafting, adoption and implementation of all policies and legislation in the municipal, provincial and national spheres of government, requiring that spatial planning, land development and land use management must promote and enhance equality, efficiency, integration, sustainability and fair and good governance. This is elaborated upon in the Bill. The Bill envisaged the repeal of various national Acts, *viz.* the Development Facilitation Act, the Physical Planning Acts of 1967 and 1991, the Less Formal Township Establishment Act, the Removal of Restrictions Act, the Provision of Land Assistance Act and the Upgrading of Land Tenure Rights Act.

KwaZulu-Natal Planning & Development Act No 5 of 1998 &
KwaZulu-Natal Planning & Development Amendment Act No 4/1999

In KwaZulu-Natal a Planning and Development Act was prepared by the Province and enacted. However the necessary accompanying regulations, despite several attempts, have not been promulgated and adopted.

KwaZulu-Natal Planning & Development Bill, 2006,
KwaZulu-Natal Town Planning Ordinance Amendment Bill, 2006 &
KwaZulu-Natal Rationalisation of Planning & Development Laws Bill, 2006

Subsequently, a totally new approach has been adopted in which the environmental provisions of the former Act have been omitted. This is primarily due to the responsibility for planning and the environment being split departmentally. An initial KwaZulu-Natal Development Bill was prepared in 2003 with the most recent version prepared in May 2006, and now known as the KwaZulu-Natal Planning and Development Bill. This is yet to see the light of day as an Act. Subsequently other interim legislation has been prepared and was advertised for comment by 5 March 2007.

The “Rationalisation” Bill, while providing for the Town Planning Ordinance No 27 of 1949 to apply to certain Black legislatively established townships and to portions of the erstwhile Transvaal and Cape provinces, also provides for Chapter XVI of the Durban Extended Powers Consolidated Ordinance to apply to the whole jurisdiction of the eThekwini Municipality.

What other related or relevant legislation impacts on planning?

There is a vast array of legislation which impacts to a lesser or greater degree upon town and regional planning. Some of the more relevant nationally is as follows: -

1967: Removal of Restrictions Act No 84 of 1967
1967: Physical Planning Act No 88 of 1967
1970: Subdivision of Agricultural Land Act No 70 of 1970
1977: National Building Regulations and Building Standards Act No 103 of 1977
1983: Conservation of Agricultural Resources Act No 43 of 1983 & Regulations
1989: Environmental Conservation Act No 73 of 1989
1991: White Paper on Land Reform
1991: Upgrading of Land Tenure Rights Act No 112 of 1991
1991: Physical Planning Act No 125 of 1991
1993: Provision of Land Assistance Act No 126 of 1993
1996: The Constitution of the Republic of South Africa (Act 108 of 1996)
1997: White Paper for Social Welfare
1997: Environmental Laws Rationalisation Act
1997: Housing Act (act No. 107 of 1997) as amended
1997 Identification in terms of Sect 21 of Activities, which may have a significant Detrimental Effect on the Environment R1182 (in terms of ECA No 73 of 1989)
1998: National Environmental Management Act (Act No. 107 of 1998
1998: National Forests Act (Act No. 84 of 1998)
1998: National Water Act (Act No. 36 of 1998)
1998: White Paper on Environmental Management Policy for South Africa
1998: Local Government White Paper
1998: Municipal Structures Act No 117 of 1998 (Amendment Act 1 of 2003)
1999: Abolition of Certain Title Conditions Act No 43 of 1999
1999: World Heritage Convention Act (Act No. 49 0f 1999)
2000: Housing Amendment Act (No. 8 of 2000)
2000: Promotion of Administrative Justice Act
2000: Municipal Systems Act 32 of 2000
2002: Environment Conservation Act, 1989: Identification Under Section 21 Of Activities Which May Have A Substantial Detrimental Effect On The Environment Amendment Notice
2002: Disaster Management Act 57 of 2002
2003: Municipal Finance Management Act 56 of 2003
2004: NEMA: Biodiversity Act (Act No. 10 of 2004)
2004: NEMA: Protected areas Amendment act (Act No 31 of 2004)
2006: Environmental Impact Assessment Regulations
2006: List of Activities & Competent Authorities Identified in terms of Sect. 24 & 24D of NEMA, 1996

What is Town Planning Jargon?

Jargon is defined in the dictionary as a specialised language concerned with a particular subject or as pretentious or nonsensical language. Town Planning, possibly more so than most professions, abounds with the use of jargon that is largely peculiar to it. Often using words that in common parlance, if found, may have different meanings. It is hoped that the most obscure examples may be uncovered within the text of the document. Suffice to say that probably both meanings of the word may be attributed to planning jargon!

What do the Acronyms mean?

An acronym is a word formed from the initial letters of other words. The following is not an exhaustive alphabetical list of acronyms commonly used by planners, particularly in the Durban area of KwaZulu-Natal.

- APES – KwaZulu-Natal Association of Architects Planners Engineers Surveyors. A broad inter-professional association at meetings of which matters of common interest are discussed.
- COWTPS – Consolidated Outer West Town Planning Scheme. A single town planning scheme incorporating the fourteen erstwhile town planning scheme areas ranging from Kloof to Cato Ridge within the Outer Western portion of the eThekwini Municipal Area.
- CBD - Central business district – a term usually reserved for the main commercial area in a city, or city centre, but sometimes also used for lesser business districts of the component towns making up a metropolitan area.
- DOG - Deed of Grant – a form of land tenure very similar to freehold. Used in formal townships originally falling under the erstwhile KwaZulu Government.
- D'MOSS – Durban Metropolitan Open Space System – the "moss" portion having an obvious green connotation!
- ECA – Environmental Conservation Act
- EESMP – eThekwini Environmental Services Management Plan (supersedes D'MOSS but which term is still commonly used)
- EIA – Environmental Impact Assessment. These studies are triggered by criteria set by the National Department of Environment Agriculture and Tourism (DEAT) in terms of NEMA.
- EMA - eThekwini Municipal Area- comprising of as area formerly known as greater or metropolitan Durban.
- ETA - eThekwini Transport Authority
- GIS - Geographic Information Systems – a geographic database in which information may be manipulated and displayed in a map on a computer screen.
- GR – General Residential
- IDP – Integrated Development Plan

- JDMC – Joint Decision Making Committee - an internal council committee of officials tasked with adjudicating on planning applications made in the eThekwini Municipality.
- LDP – Local Development Plan
- LTDF - Long Term Development Framework
- LUMS – Land Use Management System – a complex system of managing or controlling land use by means of a system of zoning plans, zone control templates, layers, and written polices and strategies.
- NEMA – National Environmental Management Act No. 107 of 1998
- NEMBA - National Environmental Management Biodiversity Act
- POS – Public Open Space
- PPDC - Provincial Planning & Development Commission – fulfils the statutory Chapter III requirement of the Development Facilitation Act for a provincial planning commission. The commission also fulfils the role of the erstwhile Town and Regional Planning Commission, a statutory body set up in terms of the Natal Town Planning Ordinance.
- PTO – Permission-to-Occupy - A loose form of tenure usually associated with the tribal areas of the erstwhile KwaZulu Government. Also applicable where permission may be granted by a land owner for certain public or other works to be undertaken prior to formal acquisition.
- RDP – Reconstruction and Development Programme. A comprehensive plan put forward by the African National Congress (ANC) to kick start development of the "new" South Africa circa 1994. Housing structures erected in large-scale public housing projects in terms of this policy were thereafter referred to as RDP houses.
- ROD – Record of Decision. A written decision given following an Environmental Impact Assessment application made to the provincial Department of Agriculture and Environment Affairs. If the decision is favourable it is normally conditional.
- SACPLAN - South African Council for Planners. Professional registration required in terms of the Town and Regional Planners Act of 1984 to undertake certain work.
- SACTRP – The South African Council for Town and Regional Planners. Renamed to South African Council for Planners in 2004.
- SAPI – The South African Planning Institutive – a professional body to which qualified town planners and planning technicians may belong.
- SDP – Spatial Development Plan
- SR – Special Residential
- TPO – Natal Town Planning Ordinance No 27 of 1949, as amended.
- TPS – Town Planning Scheme
- TRPC – Town and Regional Planning Commission – a statutory body set up in terms of the Natal Town Planning Ordinance. Now superseded by the Provincial Planning and Development Commission.
- TRP(SA) - Town and Regional Planner (South Africa) – The acronym normally follows an individual's name on correspondence and is indicative of their professional registration with the statutory South African Council for (Town and Regional) Planners.

What are the different types of plans?

Planners are well known for obfuscation when it comes to the different types of plans, strategies and frameworks, which are rolled out by them from time to time. Even amongst them there is often a lack of agreement on exactly what specific plans mean. This range of plans furthermore tends to change over time. This, obviously, makes it extremely difficult for lay-people to comprehend the subtle differences.

An alphabetic list of various plans is given below with hopefully a simple explanation using definitions, originating, where possible, via their legal routes. To complete the list, some non-town planning plans are included, which are often encountered in the planning field.

- **Area Plan** – Means a plan showing the broad zoning intentions for a specific and generally homogenous area and/or clearly identifiable area contained within a sub-region. It could contain a number of districts or suburbs. It would be supported by a detail report setting out the background, reasons for the plan, and intensions. The zoning designations would not be statutory, i.e. no rights would be conferred on the individual sites.

- **Building Plan** – Means a plan prepared by an architect or architectural technologist or similar registered with the South African Council for the Architectural Profession for a specific site or combination of sites and submitted to a local authority in terms of the National Building Regulations and Building Standards Act No 103 of 1977 in order to obtain permission to build or erect a structure or series of structures. The builder in erecting the structure(s) would use the approved building plan. The local authority before approving the plan would also need to ensure that the plan complied with the town planning scheme or other requirements, before granting its approval (although normally silent) in terms of Section 67 of the Town Planning Ordinance.

- **Development Plan** – Means a statutory plan prepared in terms of Section 40(3)(b) of the Town Planning Ordinance No 27 of 1949 and containing a financial budget for the envisaged implementation of the proposals contained in the town planning scheme or scheme, which would need to be in accordance with the aims and objectives of the structure plan. It would form one of the components of a package of plans comprised of a structure plan, a development plan and a town planning scheme or scheme. The development plan would also provide an indication of the time when and the stages during which it is intended to achieve the implementation of the scheme. This plan would not normally have an accompanying Map. Very few local authorities have prepared Development Plans since the introduction in the Ordinance of the provision allowing for it in 1985.

- **Framework Plan** – Means a very broad based plan, not unlike a structure plan, which would set out the framework within which a development strategy is set to unfold. It is not normally a statutory plan. It would contain an analysis of the study area, often containing its strengths, weaknesses, opportunities and threats, a desired outcome and how to achieve that outcome, possibly including timelines and budgets. Specific projects may be identified.

- **General Plan** – means a plan prepared by a Registered Land Surveyor for a private township in terms of Section 49 of the Land Survey Act, No 9 of 1927 and approved by the Surveyor General. It would typically show the dimensions, directions, coordinates and the areas of all the erven and servitudes in the township. Roads and Public Places (Public Open Space) are shown on such plans and designated as such.

  N.B. A survey diagram is similar to a General Plan except that it only provides information for an individual erf or servitude. A survey diagram is commonly prepared for erven in smaller "exemption" (Section 33 of the Town Planning Ordinance) townships, whereas General Plans are prepared for "full" townships or the larger "exemption" townships.

- **Integrated Development Plan** – Means a plan prepared by a local authority in terms of Section 44(2), 56(2) or 84(1) of the Municipal Structures Act No 117 of 1998 and Section 26 of the Municipal Systems Act No 32 of 2000 aimed at the integrated development and management of a municipal area. It is a very broad plan prepared by the municipality, normally covering a five-year period; with a view to channelling harmoniously all the local authority's collective resources to achieve certain identified needs in an optimised and sustainable manner, i.e. a suite of integrated departmental plans. It should amongst other plans, include a Spatial Development Plan and would list certain projects, which it would seek to achieve in the currency of the plan.

  The Integrated Development Plan is commonly referred to as the IDP.

- **Land Use Scheme** means a scheme as contemplated in terms of Section 22 of the Land Use Management Bill with a view to giving effect to the spatial development framework and integrated development plan of a municipality. It may apply to the whole area of the municipality, or as sub-schemes, to portion thereof. Section 23 of the Land Use Management Bill specifies the contents, which are similar to that found in a town planning scheme. The scheme has to be prepared within five years of the promulgation of the Act/Bill and in terms of Section 26 will override all existing town planning schemes and will supersede restrictive conditions of title in the event of inconsistency.

- **Local Development Plan** means a plan prepared for a very specifically defined area within a larger area of which it forms a part.

This would normally be because the defined area has certain characteristics, which makes it different to the overall area. It would examine the status quo of the defined area, look at alternative development scenarios for the area, and recommend a favoured outcome and ways to achieve it. It should accordingly have an implementation plan with an associated budget and draft zoning proposals. It may be adopted as a policy plan prior to detailed rezoning proposals for the area being implemented.

- **Long Term Development Framework** or LTDF means a very broad based plan prepared by a municipality and aimed at the tying together a number of consecutive five-year Integrated Development Plans, e.g. over a 20 year horizon, to meet specific objectives or challenges as identified by the municipality and that may be aimed at achieving a written Vision Statement.

- **Master Plan**. This is now dated terminology used for a structure or framework plan.

- **National Development Plan** – Means a policy plan prepared in terms of Chapter II of the Physical Planning Act of 1991 for the Republic as a whole. The policy plan consisting of broad guidelines to promote the orderly physical development of the country for all its inhabitants. The National Minister of Planning is the responsible authority.

- **Outline Plan** - This is now dated terminology used for a structure or framework plan.

- **Policy Plan** – Means a plan consisting of statements, objectives and policies to help guide development applications. It provides general guidance on where specific land uses may take place. At a local level is sometimes used in place of a zoning or scheme map. However it is more common in these circumstances to use it purely as a precursor to the formal introduction of a zoning or town planning scheme map.

- **Precinct Plan** – Means a plan prepared at a very local level for a clearly definable area with either similar current or future characteristics, usually showing urban design concepts. Prepared with a view to guiding future development at a fairly detailed level.

- **Provincial Growth and Development Strategy** means a written strategy devised at a provincial level with a view to maximising economic growth and encouraging development in the province while not compromising the environment.

- **Regional Development Plan** – Means a policy plan prepared in terms of Chapter II of the Physical Planning Act of 1991 for a development region (divisions into two or more named portions of the Republic). The policy plan shall consist of broad guidelines to promote the orderly

physical development of the area for all its inhabitants. The National Minister of Planning is the responsible authority.

- **Regional Structure Plan** - Means a policy plan prepared in terms Chapter II of the Physical Planning Act of 1991 for a planning region or portion of a planning region. The policy plan shall consist of broad guidelines to promote the orderly physical development of the area for all its inhabitants. The provincial minister dealing with planning is the responsible authority.

- **Scheme** – See Town Planning Scheme below.

- **Site Development Plan** – sometimes known simply as a Development Plan (not to be confused with the Development Plan in the Town Planning Ordinance). It is a plan, usually for a complex development, showing in some detail exactly how it is intended that a particular site will be developed, e.g. the building envelope showing predominant land and building uses, parking areas showing aisles and bay arrangements, access to the surrounding road system, internal traffic circulation etc. It could be more detailed and show broad floor plans and elevations. It is however not a substitute for a building plan, nor is it totally binding on the building plan which logically should follow it. It is however a tool to flesh out all potential problems such as environmentally sensitive or geotechnical unstable areas, addressing sewage disposal, storm water disposal and attenuation, the adequacy of parking provision, etc. It should be accompanied by specialist studies expanding on the detail and the rationale therefore. It is a vehicle devised to minimise subsequent conflict when the detailed building plans are lodged with the local authority for approval and by which stage the contentious issues should have been resolved.

- **Spatial Development Plan** – Means a plan prepared at a relatively large scale indicating broadly where certain activities should occur spatially within a defined area. It would normally be accompanied by a report analysing the status quo, strengths and weaknesses, examining options available for development and recommending a preferred outcome. It is similar to a structure plan and policy plan.

- **Spatial Development Framework** – similar to Spatial Development Plan. A National and Regional Spatial Development Framework is required to be published by the Minister of Planning in terms of Section 10 and 12 respectively of the Land Use Management Bill. Sections 11 and 13 respectively provide the necessary contents. A Provincial Spatial Development Framework must be published by the Province in terms of Section 14 of the Land Use Management Bill. Section 15 provides the necessary contents. A Municipal Spatial Development Framework is a requirement to be published with the Integrated Development Plan of a municipality as required in terms of Section 26(e) of the Municipal Systems Act No 32 of 2000. Section 18 of the Land Use Management Bill specifies the requirements. In terms of

Section 20 of the Land Use Management Bill, the Municipal Spatial Development Framework, unlike the Integrated Development Plan, does not lapse and remains valid until replaced or amended.

- **Structure Plan** – Means a statutory plan prepared in terms of Section 40(3)(a) of the Town Planning Ordinance and containing a statement of the policy and planning framework to be applied in the preparation of the town planning scheme or scheme, and the general aims and objectives which have been set for the use of the land to which the plan relates. It would form one of the components of a package of plans comprised of a structure plan, a development plan and a town planning scheme or scheme. Many local authorities have prepared Structure Plans since the introduction in the Ordinance of the provision allowing for it in 1985. It has however not been a universal phenomenon.

- **Sub-Regional Spatial Development Plan** – means a spatial development plan covering an entire sub-region.

- **Town Planning Scheme** or Scheme means a statutory plan prepared by a local authority in terms of Section 47bis or Section 47 bis A of the Town Planning Ordinance No 27 of 1949. It is variously a planning scheme, which is operative, approved by the Minister, prepared or in-the-course-of-preparation and includes a scheme supplementing, varying or revoking an approved scheme, and the map designating the land use zones. These zones designate specific land uses, which may take place on identifiable land parcels by free entry or after seeking specific planning approval, which may take a number of routes or processes to achieve.

  The town planning scheme would ideally form one of the components of a package of plans comprised of a structure plan, a development plan and a town planning scheme or scheme. However, this is often not the case and the scheme stands in isolation!

- **Urban Structure Plan** - Means a plan prepared in terms Chapter III of the Physical Planning Act of 1991 for a local authority, two or more local authorities or a regional authority. The structure plan shall consist of guidelines to promote the future physical development of the area. The local authority in the case of a single local authority shall be the responsible authority. In other cases, it shall be the regional authority.

Typically Used Plan Types

The Current Plan Hierarchy

- National Development Plan
- Provincial Growth and Development Strategy
- Long Term Development Framework
- Integrated Development Plan
- Spatial Development Framework Plan
- Sub-Regional Spatial Development Plan
- Local Development Plan
- Area Plan
- Town Planning Scheme
- Precinct Plan
- Site Development Plan
- Building Plan

The Package of Plans as per the Town Planning Ordinance No 27 of 1949 necessarily contains the following components: -

- Structure Plan
- Development Plan
- Town Planning Scheme

Other Plans

- Outline Development Plan
- Framework Plan
- Policy Plan

CHAPTER 2

TOWN PLANNING SCHEMES & LAND USE MANAGEMENT

Although reference is made below to particular sections of the Town Planning Ordinance No 27 of 1949, as amended, a lot is common and similar provisions and procedures may be found, to a lesser or greater degree, in most town planning related legislation.

Note that where abbreviated reference is made to specific Sections of the Town Planning Ordinance No 27 of 1949 as the most commonly used legal base for planning in the Province of KwaZulu-Natal, for convenience reference is also made immediately thereafter to equivalent Regulations contained in either the KwaZulu Land Affairs (Township Establishment) Regulations GN 29/94 or the KwaZulu Land Affairs (Town Planning) Regulations, e.g. S44(1) & S 44(2A) / R(TP)14 & 15. The specific regulations should however be consulted as there are variances of greater or lesser magnitude.

In addition, as a further convenience, reference has also been made within square brackets in some headings in this document to relevant Sections of the mooted KwaZulu-Natal Planning and Development Bill of 2006. The format of this Bill is however very different to that of the Town Planning Ordinance and the relevant Sections of the Bill need to be consulted.

Purposes of Plans, Schemes & Package of Plans S40

The Town Planning Ordinance provides as guidance in Section 40 a comprehensive statement of the general purposes of every structure plan, development plan, town planning scheme or package of plans. Namely: -

It specifically states that the general purpose or aim of every structure plan, development plan, town planning scheme plan or plans is to seek to achieve a co-ordinated and harmonious development of the entire local authority area, or of any portion of the area to which a particular plan or plans may relate. The plan or plans are accordingly to be structured in such a way so as to promote or to optimise the aspects of: -

- Health
- Safety
- Order
- Amenity
- Convenience
- General Welfare

- Efficiency in the process of development
- Economy in the process of development, and
- Communications Improvement.

Note that although no specific mention is made of promoting the protection of or conservation of the **environment** within the original Section 40 statement as outlined above, it is however understood that the word **amenity**, *viz.* a useful or pleasant facility or service, includes amongst others environmental services. In perhaps quaint terminology, environmentally sensitive areas worthy of preservation or conservation areas are referred to in the Schedule of the Ordinance, outlining matters in more detail to be dealt with in town planning schemes, as **places of natural interest or beauty**! Furthermore, common planning practice over the years since the original drafting of the Town Planning Ordinance in 1949 has drawn environmental matters more and more into the fold of concerns that specifically need to be addressed in any comprehensive development proposal or plan.

These plans may also allow for the reconstruction and redevelopment of any part of an area which has already been subdivided, and whether, or not, there are already buildings located in that particular area.

Preparation of a Town Planning Scheme

Intention to Prepare or Extend a Scheme S44 (1) & S 44(2A) / R(TP)14 & 15 / [S9]

Before a local authority may prepare a town planning scheme, the approval of the Provincial Planning and Development Commission has first to be obtained. To initiate the process the Council has to take an appropriate resolution to either establish a new town planning scheme for its area or, where there is an existing town planning scheme, to extend it. The proposed area needs to be clearly identified on a map. The Council's resolution and supporting map, together with any motivating information will then need to be forwarded to the Commission. Ideally the motivation should give a clear understanding of what the intended future zoning is and whether any community consultation has taken place to date. Similarly in the case of a structure plan or a development plan the local authority is required to take a resolution for which the Commission's approval needs to be sought.

Approval to proceed by the Provincial Planning & Development Commission S44 (2)

The Provincial Planning and Development Commission will consider the application by the local authority to prepare or extend a town planning scheme or other plan and will after deliberation come to a conclusion either to approve the proposal, to modify the area concerned or to not support it at all.

Advertising the Approval to Prepare a Scheme S45

Once an approval by the Provincial Planning and Development Commission is given to prepare or extend a scheme, the local authority is required within three weeks to advertise the fact to the public in both locally circulated newspapers and in the provincial gazette. These advertisements need to appear on at least two separate occasions and to be no more than three weeks, or less than one week, apart. The advertisements need to be in both official languages. The advertisements are also required to spell out in some detail the future approval process (implications for future development) and to advise where a map showing the area concerned may be inspected.

In terms of the Town Planning Ordinance notices have to be published in both official languages in the provincial gazette and local newspapers as provided in terms of Sections 109 and 110 of the Republic of South Africa Constitution Act No 32 of 1961. In terms of the erstwhile Constitution this meant they had to be advertised in both English and Afrikaans. The Constitution of 1961 has however since been replaced by the Constitution of the Republic of South Africa Act No 108 of 1996. The new constitution allows for the recognition of nine different official languages to suit local linguistic preference. The eThekwini Municipality has adopted both English and isiZulu (Zulu) as the two official languages. Accordingly, where advertisements are required to be publish they are required to be placed in English and isiZulu. This arrangement is likely to be repeated throughout the KwaZulu-Natal province where they are the majority languages.

Interim Approvals of Development applications S67

As soon as the resolution of the council to prepare a scheme has taken effect following approval by the Provincial Planning and Development Commission the responsibility for the approval of development applications passes to the local authority who may then in writing approve, with or without conditions, or refuse applications. This is despite the fact that at that stage there is no town planning scheme in place. There is no legal time limit by which a town planning scheme needs to be in place. Obviously, the continuation of such a situation is undesirable and is one of the reasons for the Provincial Planning and Development Commission wanting to know the local authority's intensions at the outset of the process!

Contents of a Town Planning Scheme S46 & 47 / R(TP) Schedule A & B / [S5]

The minimum contents for town planning schemes are set out in Sections 46 and 47 and further elaborated upon in a Schedule outlining matters to be dealt with schemes and forming part of the same Ordinance. These various requirements are broadly to effect the aims of a Town Planning Scheme as set out in the statement in Section 40.

The requirements include specifying what land uses are free entry in certain zones subject to obtaining written consent, what are prohibited land uses and what land uses are permitted only by special consent after following a very strict protocol. Further, where the local authority has exercised its discretion in coming to a decision in the latter case, it is necessary to provide advice on a right of appeal to the Town Planning Appeals Board.

The scheme also needs to set out for the respective zones in the scheme the building lines, if any, from the boundaries of sites, the maximum number of buildings permitted, and the maximum floor area, coverage and height of such buildings.

CHAPTER III

ZONING, REZONING AND SCHEME AMENDMENTS

When preparing a town planning scheme either for the first time, or when subsequently rezoning erven and/or amending the scheme provisions it is necessary to follow a strict protocol.

Intention by Local Authority S47bis & S47bis A / R(TP)16 & 17 / [S9]

When the local authority first decides to embark upon a *de nova* town planning scheme or amend a scheme the Council is required to take a formal resolution of its intention to zone, rezone, review or modify the scheme. This decision would normally involve first considering an accompanying written report to support the scheme provisions and a map or maps showing both the scheme zonings proposed and, if applicable, the former zonings.

These resolutions of intensions to proceed are normally undertaken by most local authorities in terms of Section 47*bis*, however in the case of so-exempted local authorities, which are deemed by the Minister of Local Government and Traditional Affairs to have sufficient experienced human capacity, it would be undertaken in terms of section 47*bis* A. This exemption status provides the local authority with a slightly more simplified process to the final adoption of the scheme amendment or rezoning. The main difference is that the former local authorities require the prior approval of the Minister, or his delegatee, to the zoning before it becomes effective after subsequent final adoption by the local authority, while in the latter case, the zoning becomes effective, without seeking the Minister's prior approval, four weeks after adoption by the Council and where no appeal has been lodged. Durban and Pietermaritzburg were the first local authorities to enjoy exemption status and were later joined by Newcastle. Richards Bay is now understood to also enjoy this status.

Rezoning Applications S47bis B / R(TP)21 – 26 / [S16,17]

Apart from rezoning that may be initiated by a local authority, the Ordinance provides for individual landowners or their representatives to apply after paying a fee for a rezoning of a site(s) or an amendment of the scheme provisions. A fully motivated application would in this case be lodged with the officials and does not initially appear before the Council before advertising.

Advertising

All zonings, rezonings, scheme amendments etcetera have to be advertised to the public in both locally circulated newspapers and in the provincial gazette. These advertisements need to appear only once. The advertisements need to be in both official languages. A copy is required to be displayed in the local authority offices. Adjacent and nearby owners of local rezonings have to be advised in writing of the proposals. Although there is no statutory requirement for an on-site notice to be displayed for an individual rezoning, this is often called for of applicants by the local authority. In the case of more significant rezonings or general rezonings or scheme initiations, public meetings may be called for by either the local authority or by the province. The notices are required to advise where the application may be viewed, that any objections or representations that may be lodged by the public must be received with 3 weeks of initial appearance of the notices in the press and with whom the objections or representations must be lodged.

Objections & Representations

Any letters of objection or representation should be addressed to the Municipal Manager or relevant official. In the case of an applicant brought rezoning, although it is not a statutory requirement to serve a copy of a letter on the applicant, it is good practice as it potentially foreshortens the consideration process. The local authority may consider late objections to a proposal received by officials PROVIDED that the Council has not yet considered the matter.

Adoption by Local Authority

The local authority is obliged by statute to consider any objections or representations and come to a decision within 12 weeks, viz. some 3 months, or 8 weeks in the case of an exempted local authority, of the close of the objection period. It may then adopt the proposal, refuse it or adopt it with certain amendments.

While not specifically required in terms of the Town Planning Ordinance, the local authority should simultaneously with coming to a decision formulate reasons for the decision. This is so as to be in a position to concurrently, along with the ultimate notification of the decision to the applicant and/or objectors, to give the reasons for the decision to them as required in terms of Promotion of Administrative Justice Act.

Notification

Following the taking of a decision by the Council by an exempted local authority the Minister, the applicant and/or the objectors are to be notified in writing of the decision within 1 week. The Minister is to be supplied with all relevant material considered by the local authority in reaching its decision.

In the case of the non-exempted local authority, the Provincial Planning and Development Commission is to be immediately notified of the local authority's decision, relevant material in reaching that decision forwarded and the commission's **opinion** sought on the matter. After the subsequent receipt of the commission's opinion, the local authority will again consider the matter and either resolve to finally adopt the rezoning in accordance with the commission's opinion, adopt the rezoning with modifications, or abandon the rezoning in its entirety. In the event of no difference in opinion on the rezoning, the commission has to be advised of the final outcome within three weeks. The applicant and/or the objectors would need to be simultaneously advised in writing.

Note: In the event of a non-concurrence of opinion on the rezoning between the non-exempted local authority and the commission, the process is further drawn out with a view to resolving the difference!

Appeal to Provincial Planning & Development Commission S47bis C / R(TP)34 – 36 / [S22]

Prior to a rezoning decision becoming effective when there have been objections, a 4 week period of time has first to elapse after the notification of the parties to ensure that no appeal has been lodged with the Provincial Planning & Development Commission against the local authority's decision by the objectors, or alternatively by the applicant when his original rezoning proposal has not been supported by the local authority.

A copy of the written appeal to the Provincial Planning & Development Commission has also to be served on the local authority, any other party that lodged objections or representations and/or on a rezoning applicant. Following the receipt of the written appeal to the commission, these parties then all have a four-week period in which to lodge counter arguments to the appeal document with the commission.

The Provincial Planning & Development Commission is thereafter obliged to come to a decision within 90 days (say three months) of the lodging of original appeal or after the last timeous counter argument was lodged.

The decision of the Provincial Planning & Development Commission is effectively a final decision and zoning in accordance with their decision

becomes immediately effective on notification of the decision to the respective parties.

It is possible for the local authority (not an applicant or an objector) subsequently to appeal a decision of the Provincial Planning & Development Commission to the Minister. The Minister may thereafter make an order as he thinks fit, and that order is final.

There is no legal obligation in the Ordinance for the Provincial Planning & Development Commission or for the Minister to hold public hearings prior to reaching their respective decisions. It is however common practice to hold such hearings. It may however be argued that in terms of Promotion of Administrative Justice Act, such hearings are necessary.

CHAPTER IV

DEVELOPMENT APPROVALS & APPEALS

Free Entry Land Uses S67

Free entry land uses are land uses that are able with the minimum of consideration by the local authority and without a public consultation process, to be granted approval within a particular zone.

Planning Approval S67 (1)

If a proposed land use is in fully accordance with the zoning provisions and requirements of the town planning scheme and does not require a special consent for such land use nor a relaxation of a building line or side or rear space, then it is normally only necessary for the applicant in the case of a building to submit to the local authority building plans for consideration when seeking their written approval. Although it is very rarely mentioned, the local authority while approving the building plan in terms of the National Building Regulations and Buildings Standards Act is also concurrently giving their planning approval in terms of Section 67 of the Town Planning Ordinance.

Ideally the building plan approvals should when referring to approving plans in terms of the National Building Regulations and Buildings Standards Act, should also refer to granting authority in terms of Section 67(1) of the Natal Town Planning Ordinance No 27 of 1949, as amended.

Conditional Approval or Refusal S67 (4)

In terms of this particular sub-section of the Ordinance it is possible for the local authority to impose conditions to any approval or even to refuse the application if, in its view, the proposal would interfere with amenities of the neighbourhood. This would not only apply to building plans but would also cover any development, land use or subdivision.

The word **amenity**, *viz.* a useful or pleasant facility or service, while including environmental services is not limited to this aspect and the term has in fact been very broad ranging in past interpretations. Consequently existing conditions relating to aesthetics, noise, traffic, privacy, light, lack of smoke, dust etcetera would all fall within its ambit.

This particular provision allows for the approval of building plans to include conditions of approval, something that is not otherwise provided for within the National Building Regulations and Buildings Standards Act!

Any person whose application is refused by the local authority has a right of appeal to the Town Planning Appeals Board. This provision however does not apply to any third person that may be aggrieved by the local authority's decision.

Note: While not specifically provided for within the Ordinance, a local authority sometimes requires a lesser form of public consultation process other than special consent process, before it gives its written consent. Such processes are generally reserved for what are considered very low impact changes and which are only likely to potentially impact on immediate neighbours. In these cases the neighbours are required to be notified of the proposal by the applicant and are invited to comment. Examples of this in a particular scheme may be to relax building lines, side or rear spaces or to allow a bed and breakfast establishment limited to no more than four guest rooms.

Null & Void Approvals S67 (3)

Any planning approval, of whatever type, given by a local authority (or by an official employed by a local authority) which is in conflict with the adopted provisions of the town planning scheme, howsoever the approval may have arisen, is null and void, unless so ordered by the Town Planning Appeals Board which is specially empowered to make such contrary approvals.

Special Consent Land Uses S67bis / R(TP) 27 - 31

Other than free entry land uses the Ordinance provides for special consent land uses. These are land uses that do not qualify as free entry land uses, which are very often synonymous with the name of the zone in which they fall. Special consent land uses on the other hand may be very varied and are generally land uses which are considered unlikely to have a significant impact on the free entry land uses for that particular zone, provided that they are adequately controlled and regulated. The way to adjudged to best flesh out what the possible conflicts may be at a neighbourhood level within a zone, is to involve the local community. This public consultation process enables the local authority to better assess the possible impacts, see if they may be adequately addressed and, if so, to grant approval for the particular land uses subject to the imposition of appropriate conditions of approval.

Special Consent Application

The special consent procedure is a very exacting one whereby it is easy for the uninitiated applicant to easily go wrong and have to initiate the process over again. Other than lodging the application with the local authority, it involves the following: -

Advertising

In consultation with the local authority, notices advising of the proposed activity or relaxation sought, where it is located by physical address, its cadastral description, where the detailed application may be inspected and by when objections or representations may be made and where and with whom to lodge them has to be placed in newspapers in the local press. This notice needs to be sufficiently clear and concise for the uninitiated to understand what the proposed activity or relaxation is about. Simultaneously, a copy of the notice has to be either hand delivered to the adjacent or nearby owners or delivered to them by certified/registered mail. A larger version of the notice has to be placed on the site in question for passers-by to see. Finally a copy of the notice has to be displayed on the notice board of the local authority. It is necessary that proof of these activities is supplied to the local authority prior to the application being finalised.

Objections & Representations

The public may lodge objections and representation to a special consent application with the local authority within three weeks immediately following the appearance of the advertisement. In addition, a copy of the objection or representation is required to be served by the objector on the applicant.

The local authority needs to ensure that all objections or representations are received by the close of business on the stated closure date.

Note: There is no provision in the Ordinance for consideration to be taken by the local authority of any late objections that may be lodged to a special consent application. This is irrespective of whether or not the local authority has considered the matter.

Before coming to a decision, the local authority will normally ensure that the applicant has received copies of all objections lodged with it. It may also request the applicant to respond to the issues raised in the objections or representations in order to better assess the validity of the objections.

Approval/Conditional Approval/Refusal

The local authority is required to make a decision within two months of the later of either the lodging of the special consent application or the appearance of the notice, unless the local authority mutually agrees with the applicant that the decision date may be extended. If this process is not followed and the two month period is exceeded, the application is deemed to have been refused.

The local authority after considering the application, the objections and the representations received, if any, and the applicant's response to same, makes a decision either to approve without conditions, with conditions or refuses the special consent application.

Notification

Within two weeks of the special consent decision being taken, the applicant and any objectors have to be notified in writing of the outcome, (reasons for the decision in terms of the Promotions of Administrative Justice Act) and the appeal options and procedures open to the parties to take the matter further, if deemed necessary by them.

Note: It is possible for an applicant to lodge a special consent application for a prohibited use. The local authority however is precluded from approving and must refuse the application. This refusal however opens the opportunity for an applicant to take the matter to the Town Planning Appeals Board for consideration on its merits.

Where there have been objections lodged, until four weeks has elapsed from the notification for the lodging of a possible appeal, or until any such appeal has been dealt with, an applicant may not proceed with any approval for a special consent granted by a local authority.

Appeal to the Town Planning Appeals Board S67ter / R(TP)35

An applicant or an objector wishing to lodge an appeal against a decision of the local authority with the Town Planning Appeals Board must within four weeks of being notified of the decision by the local authority, notify the local authority, (the appeals board) and all the other interested parties, i.e. applicant and/or objectors, of his intention to appeal. The date of posting of the decision letter or of personal delivery of the letter being the operative commencement date for such action!

NB. The appeals board may, in the case of the applicant, condone the late submission of the appeal notification for up to three weeks.

The actual appeal memorandum containing the grounds of appeal has to be lodged by the appellant with the appeals board within three weeks of lodging the notification of the intention to appeal.

The appellant (whether the applicant or an objector) may within a further period of three weeks from the date when the appeal memorandum should have been lodged, apply of the appeals board for condonation of that failure. In this case the three weeks for lodging the grounds of appeal will run from the receipt of the condonation, if granted by the appeals board.

The local authority must, within two months (60 days) of receiving the notification of appeal, submit to the appeals board its reasons for the decision in the form of a comprehensive memorandum including plans showing both land use and zoning in the vicinity of the site. This document must to be copied to all interested parties, i.e. the applicant and/or objectors.

All parties or their representatives are entitled to appear before the Appeals Board when it holds its hearing and to make representations to further their particular case.

The Town Planning Appeals Board will after the hearing deliberate and come to a decision. The Minister, prior to the parties being advised of the decision, reviews the written decision. This normally results in a delay of the order of three months from the date of the hearing till the parties receive the decision.

Regulation 408/61 Relating to Town Planning Appeals

These regulations, which form an addendum to the Ordinance, give more precise guidance than Section 67*ter* on the procedures that are required to be followed by all the parties in processing an appeal.

Power of Town Planning Appeals Board S73 quat

The Town Planning Appeals Board powers are set out in Section 73 *quat* of the Ordinance.

The appeals board may summons persons to appear before it and has the same powers, jurisdictions and privileges as are those enjoyed by members of a commission as set out in the Commissions Ordinance No 26 of 1966.

The appeals board may take note of any information, document or other information, which may assist it in reaching a decision.

The appeals board may decide to hold *in loco* inspections and has a right to enter the appeal property to inspect both land and buildings provided that prior notice is given to all parties and who may all be present at the inspection.

A very important power that the appeals board enjoys in making its decision is the ability, if necessary, to override the existing town planning scheme. This is set out in Section 73 *quat* (5)(d) of the Ordinance.

The appeals board may make an award of cost against the local authority if the local authority's original decision is adjudged to have been unreasonable.

The appeals board may make an award of cost against the appellant if the appeal is adjudged to be frivolous and vexatious.

The Town Planning Appeals Board will not normally approve an appeal that is totally contrary to the existing town planning scheme unless I may be proved by the appellant that: -

(i) The existing town planning scheme is wrong,
(ii) The site of the appeal is unique, and/or
(iii) The appellant will suffer hardship of a town planning nature.

Appeal to the Municipal Manager S62 MSA

A relatively new phenomenon from 29 June 2001 is the possibility, outside of the Town Planning Ordinance, for any party to appeal to the Municipal Manager any decision taken by delegated local authority officials and as provided for in terms of Section 62 (1) of the Municipal Systems Act No 32 of 2000. This appeal (both the notification and the grounds) has to be lodged with the Municipal Manager within three weeks of the date of notification of the decision. (Note this is different to the four weeks from notification in the case of the Ordinance appeal of the date of posting!)

An appeal to the Municipal Manager effectively sets aside the original delegated decision taken by the officials. This obviously significantly delays the approval process and makes possible compliance with the time periods as specified for the local authority by the Ordinance all but impossible to meet.

The process to be followed is not specified in detail in the Municipal Systems Act and the eThekwini Municipality has followed two systems to date.

Initially appeals were heard by a one-man Council Sub-committee (The Mayor's Decision Making Committee), which was assisted by an official that had not participated in the prior process. Parties appeared before the committee to make representations. This decision was then possible to be appealed sequentially to both the Council's Administrative Appeals Committee and the Town Planning Appeals Board.

In more recent time, as from 26 April 2006, the Municipal Manager, who is assisted by some senior officials in this role as an appeal authority, has replaced the former committee. No right to appear before him has been

granted. The decision is then taken on the basis of written submissions made by both the appellant and the town planning department.

Appeal to the Administrative Appeals Committee S62 MSA

A further new phenomenon from 29 June 2001 is the possibility, outside of the Town Planning Ordinance, for any party to appeal to the Administrative Appeals Committee any decision taken by a Committee of the Council, i.e. not the full Council, as provided for in terms of Section 62 (1) of the Municipal Systems Act No 32 of 2000.

The appeal to the Administrative Appeals committee effectively sets aside the original decision taken by the Council committee dealing with town planning matters (The Town Planning Sub-Committee or the Executive Committee). This obviously further delays the approval process and compounds the possible compliance with the time periods as specified for the local authority by the Ordinance.

The process to be followed is not specified in detail in the Municipal Systems Act and the eThekwini Municipality has followed the following process.

The Council set up an Administrative Appeals Committee, assisted by an official that had not participated in the prior process, to hear appeals. Parties then appeared before the committee to make representations. The committee's decision was then possible to be appealed to the Town Planning Appeals Board.

In more recent time, as from 26 April 2006, it was decided by Council that officials would deal with all special consent applications under delegated authority. This has resulted in the need for an Administrative Appeal Committee largely falling away in regard to town planning matters.

Note: There is a view held in some quarters that although the Municipal System Act of 2000 provides an appeal mechanism either to the Municipal Manager for an administrative action taken by officials or to an appeal committee in respect of a decision taken by another committee of local authority other than full council (and which processes could logically be used for any other administrative action other than just town planning), that these are inappropriate or unnecessary uses of the Section 62(1) of the Municipal System Act as there are already appropriate appeal processes available specifically aimed at town planning matters within the Town Planning Ordinance No 27 of 1949, as amended.

- **Prohibited Land Uses**

These are defined land uses in the town planning scheme that are specifically precluded from certain zones in the town planning scheme, i.e. the scheme does not allow them either as free entry or special consent land uses. The

Council is accordingly not in a position to be able to approve such uses in a zone and any application received for such a prohibited land use must be refused. Prohibited land uses would normally be so designated because they are perceived as likely to cause a significant impact in a particular zone.

This prohibition on a land use in the zone does not preclude an applicant from making an application, with a view to taking the refusal on appeal to the Town Planning Appeals Board. The Council may elect to strongly oppose in the subsequent appeal, alternatively, if the Council sees merit in the application but is simply not in a position to be able to consider the application favourably because of the existing constraints of the town planning scheme, it may take a "soft" approach at the appeal hearing and not oppose the appeal.

This latter approach may be helpful to the appeal board in reaching its decision; it may also considerably shorten the hearing!

CHAPTER V

OTHER MATTERS & CONTRAVENTIONS

Binding Conditions on Successors-in-Title S67sex

Any approval given with conditions for either a free entry or a special consent land use by either the local authority or, as may subsequently be modified, by the appeals board, is binding on not only the original owner, occupier or applicant at the time of seeking the approval, but is also binding on all subsequent owners or occupiers.

The local authority may elect in any conditions of approval to make the approval specific to the applicant and/or other named parties. The approval would then lapse when the property changes hands or the named parties were no longer involved and a new special consent will need to be sought if the same or similar use is to continue with the new owner or parties. It may alternatively state in the conditions of approval that in the event of a change of ownership or named parties that the written authority of the local authority will be required. These approaches are aimed at evaluating potentially greater impacting land use, albeit that only an apparent subtle change may be involved.

Acquisition of Land for Public Purposes S67sept [S94-95]

Where land is reserved in the town planning scheme for a public use by either its self or for another public authority, the land so reserved shall be acquired by the relevant authority within five years of the zoning becoming effective or within any extension of time as may be agreed to for the acquisition by the Provincial Planning and Development Commission. Alternatively, the local authority or the public authority concerned is to enter into a written agreement with the owner postponing the acquisition, alleviating the financial burden or offering the owner alternative relief. This relief may be in the form of either rates relief, the interim use of the land in conflict with the reservation (conditionally or otherwise) and with the Provincial Planning and Development Commission approval, an amendment of the town planning scheme or the making partial payment as interim relief.

If the land which has been reserved has not been acquired by a local authority and there is no written agreement in place at the end of the five-year period, or any extension of time as may be agreed by the Provincial Planning and Development Commission, the local authority shall then forthwith acquire the land. Alternatively, if the reservation was in favour of a public authority and the

land has not been acquired by that authority, the land shall be deemed to be rezoned back to its earlier zoning, i.e. the zoning rescinded.

CONTRAVENTIONS

Prohibition Order S67 (5) / R(TP)37 – 40 / [S76-93]

The local authority may serve a Prohibition Order in terms of Section 67(5) of the Ordinance prohibiting an owner or occupier of any land or building thereon from building or altering a structure, using the land or building or subdividing the land for a purpose for which the local authority's written authority is required and which authority has not been sought or obtained. If the order is served personally, ideally proof of such serving should be obtained by obtaining a signature from the individual or by a witness confirming a refusal to accept.

The owner or occupier may subsequently seek the necessary approval of the local authority, and if appropriate, on the granting of approval, the activity may proceed.

Offences and Penalties S77 / [S76-93]

Section 77 is a very wide ranging provision of the Ordinance that covers all obvious contraventions by persons to the town planning scheme zoning provisions, special consent approvals conditions, appeal decisions, conditions of title requirements or township establishment conditions, or who build on or sell sites prior to proclamation of a township, or is the owner of such land on which the particular contravention in question takes place.

The enforcement authority (primarily the local authority but in some instances the Provincial Planning and Development Commission or the Minister) is obliged to serve a written notice in terms of Section 77 of the Ordinance where amongst others the written authority of the local authority has not been obtained for a development or land is used contrary to the title deeds, where a land use has been discontinued for eighteen months or more is recommenced without written authority, where a prohibition notice has been served, where an activity does not comply with the town planning scheme or does not comply with a ruling of the Town Planning Appeals Board or proceeds with a development prior to the appeal lodging period expiring, *etc.*

The notice needs to specify the activity that needs to cease, to be complied with, building demolished or permission obtained etc. and by when this should occur at the latest. The notice has to be served personally or by registered post at the individual's last known address. If the notice is served personally,

ideally proof of such serving should be obtained by obtaining a signature from the individual or by a witness confirming a refusal to accept.

If the individual does not comply with the Notice they are guilty of an offence and are liable to a fine of R5000 or five years imprisonment or both. In addition infringement charges of R50 per day are liable for each subsequent day after the serving of the notice on the individual that the activity continues unlawfully.

The Minster may waive or modify the infringement charges.

If the local authority does not act diligently as the enforcement authority, the Minster may take over the role and recover costs from the local authority.

Regulations S78

This Section of the Ordinance provides for the Minister to make regulations regarding the appointment and dismissal of the members of the Provincial Planning and Development Commission or the Private Townships Board, proceedings thereof, fees, charges, procedures to be followed, etc., etc.

CHAPTER VI

POLICY MATTERS

POLICY DECISIONS

The Ordinance provides no specific provisions for policy to be included as a basis for decisions within a town planning scheme or scheme. However, in the case of a structure plan it requires that it contain a statement of the policy and planning framework to be applied in the preparation of the scheme, and to provide the general aims and objectives, which have been set for the use of the land to which such plan relates.

Clearly then, via the structure plan, the local authority may adopt policies which are ultimately to be incorporated within the town planning scheme. This position does not seem to support the view that policies may be used in isolations as a second set of planning tools, independent of the town planning scheme. It is therefore incumbent on the local authority to modify, within a reasonable period of time, the town planning scheme so as to embrace aims of the policy in a clear and unambiguous manner. Within this period it is concluded that the policies may be used to influence day-to-day decisions.

DEVELOPMENT CONTRIBUTION LEVIES

In the aftermath of the development boom that erupted in South Africa in the early 2000s, following the successful transition to a democratic South Africa in 1994 and a significant and ongoing broadening of middle class, certain areas of cities were put under severe pressure by very significant building developments being undertaken by the private sector to accommodate the demographic shifts that were occurring in the cities.

In the case of Durban, the majority of this development initially occurred in two areas, in the North and in the Outer West Administrative Areas of the eThekwini Municipality. In the former, the majority of the land holding was in a single ownership and involved the conversion of significant areas of sugar land, without any infrastructure of any note, into an urban landscape. The major developer had therefore, at his cost, to ensure that suitable infrastructure was put in place or the development would never have happened. In the case of the Outer West, the area had been developed for many years, but generally at fairly low densities and/or with land use rights that held significant potential but which over the years had not been fully exploited. The boom consequently resulted in a multitude of smaller

developers seeking out small to medium sized parcels of land and developing largely in terms of the existing zoning rights.

While the early planning for the erstwhile disparate local authorities comprising the Outer West had in some cases foreseen the ultimate need to upgrade their respective infrastructure, the development at scale had not happened, and the need for the infrastructure upgrade had not arisen. Furthermore, the need for the ultimate infrastructure upgrade had to a large degree not been fully appreciated or understood by the inheriting local authority and which, when it did, had in addition to take a much more holistic view involving all these areas.

As a result, in an attempt to control "a runaway train" the eThekwini Municipality in late 2004 declared a moratorium on all development while it undertook a strategic planning exercise to better comprehend the situation and to plan a sustainable way forward. This action eventually resulted in the moratorium being lifted in early 2005, a draft Outer West Spatial Development Plan being prepared and with each developer, before proceeding, individually signing his/her agreement to a process to make a financial contribution towards the infrastructure upgrade based on the anticipated load of his development and the estimated total cost to rectify the situation, i.e. upgrade the infrastructure. In particular, it is to provide for the road infrastructure and environmental services. This financial contribution has been termed a "Development Contribution Levy" and is ring-fenced to be spent only in the area in which it is raised, i.e. the Outer West.

It is contemplated that this process will in time be extended to other areas of the city where infrastructure in not keeping up with development.

The Development Contribution Levy was originally determined in 2005 as being R10 000 per residential unit and R15 000 per 100 m2 of gross leaseable commercial area. Although provision was made in the original agreements signed by developers for yearly increments, by mid 2007 this had not eventuated. The levy's possible extension to other areas of the city is being investigated.

CHAPTER VII

HOUSING TYPES & LAND OWNERSHIP SYSTEMS

- **Allotment** - Area allocated to an individual in terms of the KwaZulu legislation and normally of an agricultural nature.

- **Cluster Housing** - Housing that is clustered together on a site and which may be freestanding or detached. Ownership would normally be held by sectional title. Height would not normally exceed two storeys. The respective zoning controls would determine the density, which would not normally exceed medium.

- **Common Property** – Property, be it land or buildings, within a sectional title development that is jointly owned by all owners within the development. It would be normally be indivisible and would include the exterior of the sectional title individually owned buildings.

- **Conservancy –** this is not a form of housing, land ownership system or normally even a zone, but is rather an association formed in a rural or urban neighbourhood where the collective aim of the members is to protect, promote and enhance the natural environment of the designated area. However due to confusion in the past a so-called Conservancy zone was established in Alverstone, near Assagay and Bothas Hill. It is however effectively a Rural Residential zone in which, while it has a minimum erf size of 15 hectares, the subdivisions, which occurred prior to the zoning being put in place, are normally considerably smaller. As a result it is a *de facto* non-subdivisable Rural Residential zone! (See Rural Residential below).

- **Curtilage** – Refers to the area of ground directly associated with a unit within a multi-unit development. It could be an exclusive use area within sectional title development or it could be a freehold site.

- **Deeds of Grant** (DOG) – This is a form of bondable title over an erf granted within the erstwhile KwaZulu areas and that may be registered in the Deeds Office.

- **Development without Subdivision** – This is a provision which was introduced into town planning schemes in the 1970's to enable multi-unit development with a common entrance to occur where normally conventional subdivision would be expected to minimum areas as specified in terms of the town planning scheme. In respect of areas outside of a town planning scheme area this form of development could also occur following the conclusion of procedures provided for in terms of Section 11(2) of the Town Planning Ordinance. Normally ownership

would be by sectional title and the total number of permitted units would be determined by dividing the developable site area by the otherwise minimum site area.

Note: Within some town planning schemes a variant of "Development without Subdivision" may provide for the exclusive use areas to be subdivided off as freehold sites below the otherwise minimum erf size, i.e. miniature-subdivisions or so-called mini-subs. This obviously involves subdivision but the principles are otherwise identical.

- **Erf** or Erven (plural) – A term now universally applied South Africa for Lot or Lots. It is of Dutch origin and was originally used in the erstwhile Cape Province of South Africa. From 1 June 1997 the use of the word Lot and Lots in KwaZulu-Natal have been replaced by the words Erf and Erven as directed by the Surveyor General.

- **Exclusive Use Area** – This is an Area that is set aside within a sectional title development for the exclusive use of the (normally) adjacent section owner. The area may be defined in terms of the rules of the complex or it may be beaconed by a land surveyor and shown on the sectional plan.

- **Extended Residential** – implies a number of residential units within one structure, usually no more than three, which collectively have the physical appearance of a single detached unit, albeit large, on an individual site and normally not more than two storeys in height. It was originally a form of Special Residential that was designed specifically to cater for the extended family form of living as practiced in some cultures, where there are several generations living in one household, but while still affording a greater degree of privacy to the individual nuclear families contained within the household.

- **Fractional Ownership** – This form of ownership is very similar to time share (see below) in that persons purchase a share or a fraction of a unit for its occupation for a proportion of a year. The time period is for four weeks, i.e. 1/13 of the year.

- **Freehold** - This is from the financial institutes' perspective, the most preferred form of bondable title over an individual erf that may be registered in the Deeds Office.

- **General Residential** – While the term is normally associated with high-rise blocks of flats or apartments at a relatively high density depending on the actual zoning controls, in reality it covers all lesser forms of residential development from individual detached houses upwards and usually also including hotels, boarding houses, hostels, etc.

- **Group Housing** – This housing form is very similar to Cluster Housing, but unlike the latter where ownership is by sectional title with the

common property being held in joint indivisible ownership, ownership of each curtilage is by freehold title while the roads and open space are both owned and maintained by the local authority. Similarly the development density would normally be medium.

- **Intermediate Residential** – This term is applicable to housing areas that are zoned to cater for residential developments falling between high density, and often high rise, residential and low density detached housing, i.e. it is of a medium density nature.

- **Leasehold** – This is a form of ownership whereby an individual obtains possession of a portion of land for development purposes for a limited period of time, normally between twenty and ninety nine years. Approval of the "subdivisions" would have still to be obtained prior to registration in the Deeds Office. Many longer-term leasehold ownerships have been converted in time to freehold title.

- **Medium Density Housing** – While the comments applicable to Intermediate Residential above should be fully interchangeable, Medium Density Housing was a term mistakenly also used for multi-unit developments or development without subdivision within Special Residential zones, where NO increase in density was permitted by the zoning and the controls, i.e. total number of units was determined by developable area being divided by the otherwise minimum erf area. The term Multi-Unit Development is therefore seen as being more appropriate in these circumstances.

- **Mini-Subs** – Subdivisions smaller than the minimum subdivisional area required for a parent erf in a zone permitting Multi-Unit Development.

  Within a Multi-Unit development in the past, ownership would have normally been by sectional title and the total number of permitted residential units determined by the applicable density allowed in an Intermediate Residential zone or, in the case of Special Residential zoning, by dividing the developable site area by the otherwise minimum subdivisional area for the particular zone.

  There are a number of problems associated with sectional title including that the sectional unit has to be completed before the section may be registered and be transferable, lack of flexibility in the end product sought by a future owner and difficulty in securing approval to extend an existing section by an existing owner. Most of the problems may be resolved if the "exclusive use" area, including the section's footprint, may become a bondable freehold site. Visually on the ground there is no obvious difference between the two land ownership concepts, which does not affect density in any way.

  This has led in recent time to a switch in the market place for a requirement for miniature subdivisions, less than that normally permitted for the parent site. This subdivision may be sold off to

individual owners, who would then be obliged to build, or have built, to a development theme and to become joint owners of the common property or land. This common property is then held by a Homeowners Association; similar in concept to that of a Body Corporate in a Sectional Title scheme.

- **Multi Unit Development** – Means a development in which more than a single unit may be developed on a site. There is NO density connotation. The applicable zoning and controls would determine density. The land ownership of the individual units may be by either Sectional Title or by Mini-Subs.

- **Permission-to-Occupy** (PTO) - A loose form of tenure usually associated with the tribal areas of the erstwhile KwaZulu. Individual prospective homebuilders would normally approach the tribal council of the inkosi and his indunas (chief and elders) in a particular tribal area for permission to build. The tribal council would keep a register of where permission to occupy land has been given and the building will proceed on un-demarcated land. In more significant developments the Ingonyama (Lion) Trust, as the custodian of all ex-KwaZulu land would be approached for permission to occupy land and survey diagrams, following beaconing, would eventually be prepared for successful applicants. Permission-to-Occupy rights would not normally be bondable.

  This term is also applicable to where permission may be granted by a landowner in other areas for certain public or other works to be undertaken prior to the formal acquisition of land.

- **Planned Unit Development** – Means development within a zone, which provides for an infinitely flexible approach to housing provision depending on market demand. The only limits set in the zone controls are the number of permitted units and the height. It is then up to the developer to determine the housing type, floor area controls, coverage and building lines. The zone would, prior to building plans being approved, require the submission of an overall site development plan to the local authority, which may require opportunity for public comment prior to approval. The site development plan effectively takes on the role of a mini-town planning scheme, which may include matters such as minimum building lines and maximum coverage and floor area. The zone may, in addition to allowing residential development, provide for limited commercial and community facilities with a view to serving primarily the inhabitants of a particular development and their guests.

- **Portion** – means a subdivision of an erf. From 1 June 1997 the use of the word Subdivision or Sub in KwaZulu-Natal have been replaced by the words Portion or Port. as directed by the Surveyor General.

- **Real Rights** means legal rights to develop in terms of the Sectional Title Act No 95 of 1986 on a designated area of land and registered with the Register of Deeds.

  This does not necessarily imply that such development may be possible from either the local authority's or the environmental authority's perspective!

  When a developer in the past developed a sectional title scheme, he/she may, due to the significant cost implications in completing all units, have elected to defer development of certain units or phases of units. The remaining land become common property in which all the new unit owners have a common undivided share and who might not agree to further development. To overcome this potential clash of interests the Sectional Title Act provides for developers to develop further units at a later stage by registering Real Rights over the land for the additional units. He/she is also able to secure development bonds from financial institutions on these Real Rights. Similarly the Real Right may be sold in its entirety to a further developer, who may then exercise the right to develop further units. The local authority has no role in this approval process. Generally, this provision has worked reasonably well for such scenarios and where a real right usually provided for a number of units within a designated area.

  However in the early 2000s an alternative use of the Sectional Title Act provision has been made use of by certain developers who have used it as a vehicle to register one real right for each individual projected unit. These Real Right areas are then beaconed on the land and sold off to individual "developers" who have in turn developed their individual houses on the "site" and fenced them off. Effectively such a development becomes a *de facto* conventional residential township, but which has not gone through either the local or provincial authority's approval processes for township development. As a result there are no conditions of establishment and consequently no minimum standards are set for the provision of services etc.

  The public have often not fully understood the concept and have considered that they have bought a building site within a conventional township. The strong possibility also exists in these circumstances that the completions of the Section Title processes involving the measuring up of the finished units, or alterations and additions thereto, ongoing determination of the Participation Quota or registration in the Deeds Office will not be effected. It is understood that in recent time that some financial institutes have become reluctant to bond units in such developments.

- **Rural Residential** – a term commonly used with respect to zones rather than any particular type of residential unit. The residential structure erected within such a zone would normally be an individual detached unit on an individual site and normally not higher than two

storeys. Rural Residential is of a low density nature and such zones may be expected to be found on the periphery of the urban areas. It may be expected that "country type" activities, e.g. keeping of horses, including stables, and low-key or part-time farming, will take place on such sites rather than boundary to boundary manicured gardens as may be found on large sites in Special Residential areas. Density is normally designated by a simple number used as a suffix to the zone, e.g. Rural Residential 1, and reference needs to be made to an appropriate clause in the town planning scheme to ascertain the minimum erf size e.g. 4000 m^2.

While not termed officially Rural Residential, a number of other zones may be found which are also effectively Rural Residential in nature. This includes Agriculture zones with minimum erf sizes of 1.5 hectares or 2 hectares and the so-called Conservancy zone in Alverstone, which while it has a minimum erf size of 15 hectares, the subdivisions, which occurred prior to the zoning being put in place, are normally considerably smaller. The use of land in these areas on the urban periphery, such as at Shongweni, is being used less and less for true commercial agriculture purposes as, when subdivided down, the erf sizes are generally not viable for such use, but alternatively lend themselves for country mansions and the stabling of horses.

- **Sectional Title** – A Sectional Title development is a development, which may be multi-storey and/or even high rise, undertaken in terms of the Sectional Title Act No 95 of 1986 and where a land surveyor or architect has to measure up the completed units, termed sections, and prepare plans reflecting the sections which extend to the centre of walls, floors and ceilings. Based on the areas of the respective Sections, Participation Quotas (decimal fractions of one) are prepared which sets out the respective proportional contribution of each individual future owner towards common costs incurred by the development. These costs as reflected in the monthly levy and possible special levies. The Surveyor General approves the Sectional Plans and the sections are then registered with the Registrar of Deeds, and which process then permits the transfer of ownership of sections. All other land and building is designated Common Property and in which each individual owner has an undivided share and responsibility. The development as a whole is administered by a Body Corporate, which elects a Chairman and Trustees to handle the day-to-day matters.

  In the event of any individual owner wishing to extend an existing sectional title unit, the approval of the Body Corporate has first to be obtained. On completion of the particular extension the above processes need to be revisited to reflect the new status quo. This may in practice be very onerous for a variety of reasons and often as a result the correct procedures are not undertaken.

- **Special Residential** – implies a special type of residential unit, i.e. an individual detached unit on an individual site and normally not higher than two storeys. This is opposed to say a general residential development, which may encompass any form of residential unit from the single to multi storied and contain any number of units on the site in question. Special Residential is usually of a relatively low density. Density is normally contained in the zoning designation attached as a suffix indicating the minimum erf size, e.g. Special Residential 1800m^2. The minimum areas in the zones may however vary considerably from say 200 m^2 to 8000 m^2, which implies a considerable variance in density! Alternatively a simple number is used as a suffix, e.g. Special Residential 2, and reference needs to be made to an appropriate clause in the town planning scheme to ascertain the minimum erf size.

- **Time Share** - persons purchase a share in the ownership of a unit in blocks of weeks with guaranteed occupation. This share may, or may not be "bankable" and/or tradable for alternative accommodation in other locations.

CHAPTER VIII

LAND USE MANAGEMENT OR DEVELOPMENT CONTROL MECHANISMS AND TOOLS

- **Zone** – means an area identified on a map within which certain land use activities may be carried out in terms of certain established rules for all sites sharing the same designation.

  Under the land use management system (LUMS) nomenclature sub-zones are referred to as Districts, i.e. the same zones in name but with different applicable development controls is certain districts, e.g. Low Impact Mixed Use: District 1 & Low Impact Mixed Use: District 2.

- **Reservation** – similarly means an area identified on a map within which certain land use activities may be carried out in terms of certain established rules for all sites sharing the same designation. The Reservation is only different to the Zone in that the permitted land use activities are usually reserved for a public authority, which in most cases is expected to acquire the property in order to be in a position to carry out the reserved activity.

  Under the land use management system (LUMS) there are no reservations, which are alternatively designated as zones.

- **Definitions** – In order to establish rules to manage land use, there has to be a precise and common understanding of exactly what is meant by particular words, particularly when a term or activity may imply something far more complex than what may be gleamed from a simple dictionary understanding of a word. According clear definitions, as far as possible, of land uses are required.

- **Defined Land Uses** – Due to the complex nature of man's varying land use activities undertaken on the planet, it is desirable for administration purposes to categorise the land uses, grouping common land uses with similar impacts as far as possible in order to avoid inordinately long lists. Accordingly, these land uses need to be defined for administrative purposes.

- **Low Impact**

  A low impact land use is a land use that will normally have no or a very limited impact or effect on the amenities of other adjacent or nearby land uses or on reasonable individuals either living or working in the area concerned. Factors that would be assessed in determining impact

would include the generation or otherwise of noise, vibration, smell, fumes, smoke, soot, ash, dust, grit, traffic generation, size, lighting or other causes and, if applicable, the time of such generation.

- **High Impact**

  A high impact land use is a land use that will normally have a considerable impact or effect on the amenities of other adjacent or nearby land uses or on reasonable individuals either living or working in the area concerned. Factors that would be assessed in determining impact would include the generation or otherwise of noise, vibration, smell, fumes, smoke, soot, ash, dust, grit, traffic generation, size, lighting or other causes and, if applicable, the time of such generation. It may be possible to ameliorate the likely impact by undertaking or putting in place certain protective or shielding measures. High Impact land uses would not normally be allowed in a low impact zoned area.

- **Free Entry** – in relation to land use means uses that may be established on a site within a particular zone with the minimum of checks and controls due to the perceived low impact of the particular land use on other sites in the same zone. If the land is only to be used for the particular land use, no planning approval will be required. When a new structure for a free entry land use is to be erected, a building plan will be required to be submitted to the local authority for consideration prior to the establishment of the particular land use within the zone.

- **Written Consent** – in relation to land use means uses that may be established on a site within a particular zone with the minimal of checks and controls due to the perceived un-likeliness of significant impact of the particular land use on other sites in the same zone. If the land is only to be used for the particular land use, written planning approval will be required from the local authority. When a new structure for a land use is to be erected, a building plan will be required to be submitted to the local authority for consideration prior to the establishment of the particular land use within the zone. The local authority may however in either case require, prior to granting it written approval, that the applicant notify or obtain the written consent/comments of neighbours and if necessary modify the proposal to address concerns that may arise in this process.

- **Special Consent** – in relation to land use means uses that may be established on a site within a particular zone with necessary checks and controls so as to ensure that no significant impact of the particular land use occurs on other sites in the same or adjacent zones. The local authority shall require, prior to considering the proposal, that the applicant notify the public of the proposal via a notice in the press, by advising neighbours in writing, by displaying a notice(s) both on site and in the local authority office of the proposal with a view to obtaining written representations or objections within a stipulated time (normally

three weeks). After receiving such representations or objections and the applicant possible response thereto, the local authority shall come to a decision. This may be to approve the proposal as proposed, with or without conditions, to seek modification of the proposal to address concerns that may arise or to refuse the application outright.

- **Prohibited** – in relation to land use means uses that may NOT be granted rights by a local authority to be established on a site within a particular zone due to an anticipated significant or high impact the particular land use, by definition, is expected to inflict on other sites in the same zone. The local authority must accordingly refuse any such application brought to it for such land use. Only the Town Planning Appeals Board may grant an approval for such a land after due consideration by virtue of its special powers. This would only be after a special consent procedure had first been followed and the local authority had refused the application, which it was precluding from approving. The Appeals Board, if it were to ignore the scheme provisions, would no doubt impose very strict controls so as to ensure that no disamenity occurs.

- **Floor Area** means sum of the floor area of the roofed area of a building taken at each floor level, including wall thicknesses, lift shafts, staircases, balconies and access galleries. Covered parking areas, malls and public conveniences are normally excluded in commercial developments. Staircases are normally counted over all floors less one and lift shafts counted on only one floor.

- **Floor Area Ratio** (FAR) – means the ratio of the totally defined floor area of a building in relation to the total site area excluding any roads or road servitudes and expressed as a decimal fraction. This definition is found in the provincial originated town planning schemes. The defined area may exclude or partially exclude certain areas, e.g. access ways, verandahs, malls, stairwells, lift shafts, etc.

- **Floor Space Index** (FSI) – means the ratio of the totally defined floor area of a building in relation to the total site area including roads or road servitudes and expressed as a decimal fraction. This archaic definition was previously used in the City of Durban where the property boundaries commonly extended to the center of roads. This definition from a bulk point of view was accordingly far more advantageous to corner sites than for sites with only a single frontage.

- **Plot Area Ratio** (PAR) – means the ratio of the totally defined floor area of a building in relation to the total site area excluding any roads or road servitudes and expressed as a decimal fraction. This nomenclature is used in the erstwhile City of Durban and replaced the Floor Space Index (FSI) definition. Practically, other than for the nomenclature, it is identical to Floor Area Ratio.

- **Coverage** - means the ratio of a total area of a building under roof in relation to the total site area excluding any roads or road servitudes and expressed as a percentage. The normal unsupported outward projection of a roof beyond the walls of a building would not normally be considered in the calculation of the coverage. Although unfortunately not normally included in town planning scheme definitions, where a roof is deliberately cantilevered out by (say) more than 1.2 metres, the projection should be included in the coverage.

- **Height** - means the height is storeys of a building. There is often confusion on this aspect as there are a number of criteria by which height is judged and which varies between different town planning schemes, primarily between the provincial based schemes and the Durban town planning scheme and by what appears visually to be the situation when the building elevation is viewed at a distance. The particular scheme clauses need to be studied in detail.

  Some of the issues leading to the confusion, particularly with the public, are as follows: -

  (i) In the Durban Town Planning Scheme, the basement counts as a storey, in other provincial based schemes, provided the basement is 50 per cent or more below ground, is non-residential and is used for parking, services or storage, it is not counted as a storey.
  (ii) The height in storeys of a stepped building may be measured at any point or, alternatively, it may be measured in different locations from the highest storey to the lowest storey in a building. This may have a very different outcome on what is deemed acceptable!
  (iii) Roofs do not count as a storey, although their height may be considerable, particularly with high pitches and larger buildings.
  (iv) A roof containing a habitable room constitutes a storey.
  (v) A non-habitable mezzanine floor in a roof space does not count as a storey.
  (vi) Projections above the top storey if they are lift motor rooms, stairwells, air conditioning plants or architectural features, e.g. ornamental or decorative towers, do not constitute a storey.
  (vii) The normal storey height is of the order of 3 metres, however as a concession a height of 4.5 metres per storey is allowed in most schemes.
  (viii) A storey slightly higher than 4.5 metres therefore constitutes two storeys irrespective of whether there are two floors.
  (ix) Schemes do normally specify from where a storey shall be measured, i.e. from finished floor to finished floor (the architectural norm) or from ceiling to ceiling. In some instances this may make a difference in what is acceptable from the scheme point of view, i.e. when there is service ducting.

In industrial and, in particular, commercial buildings when services and air conditioning ducting is required in addition to air space to avoid a sense of claustrophobia for shoppers over large display areas, this 4.5 metre concession height limit is inadequate and may result in the town planning scheme precluding a multi-storied development that may otherwise be fully acceptable and in fact desirable. Scheme provisions therefore need to be revisited in these instances either to allow an additional floor, to exclude the ducting space entirely, or to increase the height concession.

- **Density** – means the number of residential units permitted per unit area. This concept is normally expressed as units per hectare, but it could be the number of square metres per unit. Density is normally expressed as being Low, Medium or High Density, but there is great variance in opinion (particularly within the public realm) as to exactly what the numbers are for the various density categories. This perception is further confused by the form the housing takes, i.e. whether as detached units on individual sites, low rise multi-unit developments detached or attached and high rise apartments. As a guideline the following guide is offered: -

Low Density	0.5 – 5 units per hectare
Medium Density	10 – 30 units per hectare
High Density	40 – 200 units per hectare

  The general confusion may be further compounded where density may alternatively be described as being either Net or Gross Density. The Net Density being assessed on the net developable area, i.e. where road servitudes, oversteep (greater than 1:3) land, land subject to flooding, inaccessible land, geotechnically unstable land, environmentally sensitive land, power line servitudes, etc. are all excluded. The Gross Density is obviously assessed on the total site area.

- **Parking Requirements** – Parking, usually on a ratio basis, is specifically required in most town planning schemes for the main land uses that generate significant amount of vehicles that need to be accommodated for that particular land use. Where there is no specific parking requirement for a land use the appropriate National or Provincial Department of Transport norm should be applied.

  Some schemes provide for certain parking relaxations if land has been donated for road widening, alternative transport modes to cars are available and are likely to be used, different land uses on a site have different parking peak hours, on-street parking is readily available and/or monies may be donated to provide for alternative offsite parking. There is however generally a great lack of conformity between schemes.

There is probably greater variance in town planning scheme parking requirements than in any other aspect. This is either due on the one hand to lack of updating in the past or on the other to very conservative norms being applied by the erstwhile local authority.

The parking requirements in schemes are generally based on norms that were established from empirical studies conducted either in South Africa or internationally. However, car ownership patterns and transport modes have changed with time as have the economic positions of the public and it is consequently periodically advisable to revisit these standards and update town planning schemes accordingly.

The eThekwini Transport Authority (ETA) has a well-established guideline titled the "Schedule of Guiding Rules for Off-Street Parking Facilities" dating back to 1985 that it uses in assessing parking layouts put before it for consideration of new development proposals. This schedule, including diagrams, indicates acceptable parking bay widths and depths, bay angles, aisle widths, gradients, manoeuvring space etcetera.

- **Building Line** mean an imaginary line set back from the street boundary beyond which a structure should not be erected without the approval of the local authority, which may or may not require a written consent and/or a special consent procedure to be first followed in order to give potentially affected parties an opportunity to have an input in the final decision.

Early town houses in South Africa did not require a building line set back and generally, like their European and other counter parts, were erected on or near the street boundary. The newly established Gowrie Township at Nottingham Road is an attempt to re-invent this life style. Formalised town planning schemes however, in an attempt to establish a garden suburb type appearance in the nineteen forties and fifties, set specific building lines, usually of the order of 7.5 metres (25 feet). With the erection of high security walls in more recent time the value of such set backs are negated and perhaps this requirement needs to be revisited with a view to following more after the North African model by building on the road and creating a private internal courtyard as a quiet space. The trend of progressively allowing ever-smaller erven and needing more and more building line relaxations also points in this direction.

- **Side Space** mean an imaginary line set back from the side boundary beyond which a structure should not be erected without the approval of the local authority which may or may not require a written and/or a special consent procedure to be first followed.

In the Durban Town Planning Scheme the side space requirement behind the main building falls away in respect of out buildings that may be erected on the boundaries!

- **Rear Space** mean an imaginary line set back from the rear boundary beyond which a structure should not be erected without the approval of the local authority which may or may not require a written and/or a special consent procedure to be first followed. A corner site would not have a rear space but rather would have two side spaces. In some schemes there is no variance between Side and Rear Space and the same requirements are set for both.

The Durban Town Planning Scheme contains no rear space requirement for outbuildings set beyond the rear of the main structure.

- **Non-Conforming Existing Use** means a land use or existing building that was lawfully established prior to the introduction and adoption of a town planning scheme and which does not conform to the zoning or controls of the town planning scheme. This implies that there would have been, where there was no town planning scheme in the past and prior to the extension of a scheme over the area, a development approval given by the province in terms of Section 11(2) of the Town Planning Ordinance.

  Most schemes provide that where there is an existing lawful Non-Conforming land use, the land use and/or the bulk thereof may be extended by a fixed percentage or by special consent by a greater percentage. Further that the existing land use may be modified or changed provided that the alternative land use presents no greater impact than the existing non-conforming land use.

  In the event of a discontinuity of such a land use for a period of 18 months or more, the right to operate shall lapse and the non-conforming land use may not be recommenced.

- **Exemptions** - Notwithstanding any other controls contained within it, most schemes provide that without obtaining the local authority's further permission any owner may let out portion of a dwelling house or residential unit and similarly provide that a work place, an educational facility, a hall or an institution may in addition to such use be used, without obtaining further permission, as a place of amusement provided that such use is for less than three weeks in any one year.

  Further provision is generally made in schemes for a local authority to conditionally permit, either with its written or by special consent, any residence to be used in addition as a place of work provided that limited employees are engaged by the occupier and that no

interference with local amenities are caused, i.e. the activity is to be of a low impact nature. Detailed examples are given of such activities.

The local authority, in deciding in respect of a home business whether a special consent procedure should be called for or to simply give its written consent after limited consultations with neighbours, will be mindful of potential impacts. The greater the potential for an impact the more likely it will be that the local authority will request the special consent procedures to be followed. This is to ensure a wider opportunity for representations to be made to the proposal prior to the local authority coming to a decision.

- **Advertisements** – Although the level of detail of the control of advertisements in most town planning schemes is limited, the town planning scheme normally provides that the approval of the local authority needs to be obtained for any signage in excess of 0.2 m^2 (say 400 mm x 500 mm). Some schemes in addition refer to the need to confirm with the guidelines of the South African Manual for Outdoor Advertising Control (SAMOAC).

The SAMOAC has very specific requirements for different types of signs, where they may be erected and under what conditions. The SAMOAC also provides for areas of a town to be differentially zoned in this regard, i.e. lesser or greater degrees of freedom in acceptable advertising signage. These advertising zones may accordingly be incorporated as a layer in a comprehensive Land Use Management System suite.

- **External Appearances**

Over and above the requirements that are required to be met when submitting building plans for a approval to the local authority in terms of the National Building Regulations and Building Standards Act No 103 of 1987, as amended, some provincial based town planning schemes in addition provide a further level of control to the local authority with regard to the character, design and/or the external appearance of any building by requiring that the local authority consider, prior to approving any building plans, the possible deleterious or injurious affects of the materials proposed to be used or the external appearance of a building on the amenities of the particular locality and its local character. A right of appeal to the Town Planning Appeals Board is normally provided in the town planning scheme to an aggrieved applicant.

The local authority may have an elevation control committee, including architects, as part of its building plan assessment process, which will be tasked with considering the above aspects as a matter of course under the National Building Regulations and Building Standards Act No 103 of 1987, as amended. Powers are specifically granted to the local authority in terms

of Section 7(1)(b)(ii)(aa) of the National Building Regulations Act whereby if an area is which a building is proposed to be erected is likely to be, or will be, disfigured, the building proposed is unsightly or is objectionable or if the building will derogate from the value of surrounding properties, the local authority shall refuse the application and give its written reasons.
The scheme provisions therefore help add weight in enforcing the local authority's opinion on reluctant building designers and architects. Having said that, recent decisions of the Town Planning Appeals Board, where the local authority used the provisions of the town planning scheme to refuse an application, have indicated that a local authority must be on very firm ground and that all its assertions are fully defendable or it is likely to lose any appeal to the Appeals Board.

Specific Land Use Controls

The provincial based town planning schemes provide specific sets of controls for some specific land uses. Some of which controls are also to be found in the Durban Town Planning Scheme.

- **Ancillary Dwelling** means a secondary self-contained residential building of limited area and accommodation, which may be erected in addition to the primary residential building on a site in a special residential or similar zone. The ancillary dwelling is commonly known as a granny flat or cottage notwithstanding the fact that these units are often rented out to persons with no connection to the residents of the primary structure. All the eThekwini Municipality schemes have now been brought into unison with the requirements for this particular land use.

  Basically the limitations are that the structure shall be compatible in both style and material with the primary structure and that the area of the unit shall not exceed eighty square metres, excluding a twenty square metre covered patio and a single garage or carport.

- **Bed & Breakfast Establishment** means owner managed tourist or short stay accommodation containing no more than four bedrooms for guests. Kitchenettes for self-catering are allowed. Membership of a Bed and Breakfast and/or tourism body is required when approval is granted either via written or special consent. All the eThekwini Municipality schemes have now been brought substantially into unison with the requirements for this particular land use.

- **Guest House or Lodge** means owner managed tourist or short stay accommodation containing between five and ten bedrooms for guests. Kitchenettes for self-catering are allowed. Membership of a Bed and Breakfast and/or tourism body is required when approval is granted via special consent. All the eThekwini Municipality schemes have now been brought into unison with the requirements for this particular land use. Certain ancillary uses may also be permitted.

- **Caravan Park** means an area provided with permanent ablution and possibly communal cooking/wash-up facilities for the accommodation of primarily vehicle drawn caravans used for holiday or short stay accommodation. Detailed requirements for the setting up of such facilities are provided within most scheme provisions.

  In recent time very few, if any, new caravan park facilities have been established and a number of parks have been rezoned for other purposes.

- **Mobile Home** means a movable, with or without wheels, factory assembled structure, 12.5 x 3.3 metres or greater in size, with service connections and designed for use as a permanent dwelling. It should be manufactured in accordance with SABS 1122-1976. In order to establish a new Mobile Home Park site, specific provision is made in some schemes including the detailed procedures to be followed, including complying with the SABS Code of Practice SABS 0130-1976.

  While in North America mobile homes house a very considerable portion of their population, the local market has apparently not taken up the opportunity provided jointly by both the SABS code and scheme provisions to establish such facilities in South Africa. Apart from the mobile home park established in the late nineteen seventies at Inchanga, no further instances of mobile home parks are known to occur within the eThekwini Municipality. In fact, the mobile home in South Africa seems to have been reserved almost exclusively for construction camp accommodation on major projects!

- **Medium Density Housing** means multiple unit development with a common theme on a parent site where ownership is either by sectional title and where individual curtilages have either been demarcated by exclusive use servitudes or by freehold on small subdivisions (mini-subs) within a common area belonging to all owners of units as a body corporate or home owners association respectively. The detail controls for establishing this form of housing do not appear in all eThekwini Municipality schemes, being entirely absent in some or, alternatively, in some schemes appearing as separate **Cluster Housing** and **Group Housing** controls for sectional title and freehold tile respectfully.

  The detail requirements, to be prepared by suitably qualified individuals prior to approval by the local authority, include a site development plan showing undevelopable areas, access and driveways, positioning of typical units, platforms, banks, retaining walls, development phases, etc., architectural sketch plans showing typical units, wastewater and storm water disposal reports, a geotechnical report, an environmental report etc. These detailed requirements tend to vary from scheme to scheme.

- **Garage** and **Service Station** mean a petrol and diesel filling station serving predominantly light motor vehicles. They commonly have minor convenience shops associated with them as an ancillary use. A Garage would in addition to the above uses also have workshop facilities and in some instance may also have limited vehicle show room facilities as an ancillary use. It may also be allowed panel beating by special consent. Most schemes have detailed controls to guide the establishment for a new facility. These controls are based to a large degree on guidelines originally prepared by the province in regard to "Planning Standards for Control of Traffic Generating Sites".

A prior favourable environmental impact assessment record of decision is required from the Department of Agricultural and Environmental Affairs in addition to any planning permission that may be required from the local authority to establish a petrol filling station.

Petrol filling stations have over time constituted more appeals to the Town Planning Appeals Board than any other single land use!

CHAPTER IX

THE LUMS ALTERNATIVE

As an alternative to the conventional town planning scheme, town planners have in recent time attempted to arrive at a simpler, yet more widely embracing, town planning mechanism or tool to control new developments. This has been termed the Land Use Management System or LUMS for short. The idea simply is that there will be a number of very broad land use zones and which then will be broken down into a number of districts (or sub-zones), each of which shall have its own particular control mechanisms. This simplistically allows for a far wider level of appropriate controls at the local level, as opposed to a one size fits all control, which the normal zone tends to encourage.

The LUMS zone nomenclature is generally very different to that found within normal town planning schemes. It tends to be based more on envisaged impact rather than the permitted primary land use, which is the norm in conventional zonings. Further the range of permitted uses, both free entry and by consent, is generally much wider than that to be found in most conventional zone controls. The zones therefore in some instances tend to be of a mixed land use nature. The KwaZulu-Natal province has prepared a manual to guide the preparation of LUMS and a number of pilot schemes for limited areas within eThekwini Municipality area have been prepared. While the city has taken the decision to expand the LUMS city wide, the role-out tends to be slow.

- **Definitions** – A suite of new land use definitions has been prepared by the KwaZulu-Natal province which includes the majority of the existing town planning scheme definitions, some modified, but in addition includes more detailed land uses, most of which in the past fell under one or other of the broader land use definitions. These model definitions, sometimes with modifications, have been used in the pilot LUMS.

- **Templates** – In place of having a variety of the town planning controls for a zone spread throughout a town planning scheme document, as is the norm, a comprehensive single page control template for each zone or district is prepared which sets out the respective development parameters. The level of information contained within a template will relate to the level of development control or direction required in any particular zone or district.

  Typically the template will specify the policy principles behind the zone, the objectives of the zone, a definition of the zone and a statement of intent. The detailed control information provided should cover the

maximum floor area ratio, the maximum coverage, the respective building lines, the maximum building height, the parking requirement, the minimum erf size and the free-entry, development permit (written consent), special consent and prohibited land uses. The template may also provide additional unique controls pertaining to a particular site and/or specific planning, design and/or management procedures required within a particular zone or district.

As it is almost inevitable due to complexities in land uses that not all information may be contained within a particular template, it may be necessary to refer to another source as a final reference. This practice should however be minimised as far as possible, or it will defeat the object of the template as a comprehensive one-stop control sheet.

- **Overlays**. While the principles of overlays is not unknown in conventional town planning schemes, i.e. the Restricted Development Area control zone as demarcated on the Bluff District map of the Durban Town Planning Scheme indicating steep slopes requiring a detailed geotechnical assessment prior to development being considered, it is not usual. This has been primarily because it is difficult to show an overlay and not obscure the underlying zoning. In the Bluff District map a red honeycomb pattern was used through which it was still possible to see the zoning.

  However the advent of the Geographic Information System (GIS) makes possible the integration of various layers of information and, via the selective display of otherwise transparent overlays, gives a potential for a far greater level of detail to be both captured and displayed. Consequently, something like an advertising control designation or status may easily be ascertained for a particular site without necessarily constantly displaying it on a map.

CHAPTER X

TITLE DEED CONDITIONS

Imposition in terms of Grant of Application or other

When a new township is established the province issues a grant of application or conditions of establishment that usually contain "C" conditions. These conditions are conditions that are incorporated by the conveyances into the title deeds of the newly established properties. The Registrar of Deeds prior to transfer checks for inclusion. N.B. There may in addition be other residual conditions pertaining to the parent site – see below.

Permitted Land Uses

In the absence of a town planning scheme, particularly in the past, future land uses for sites would sometimes be designated in terms of the title deeds. This practice has been reduced, however where it is still retained in the absence of a town planning scheme, e.g. in a Less Formal Township Establishment Act township, the clause now normally reads that the land use reservation will fall away when, and if, a future town planning scheme becomes operative. These permitted land uses are normal relatively generic and do not normally specify other detailed controls such as are found in town planning schemes.

Conditions carried forward on Transfer

Any condition of title that exists for a property is usually* carried forward when a property is transferred to a new owner. This is undertaken by the conveyancer and checked by the Registrar of Deeds. Similarly when an existing property is subdivided, or a township established on it, any existing conditions of title for the parent site are usually* carried forward by the conveyancer for the new individual sites.

* See below.

Removal in terms of the Removal of Title Deed Restrictions Act [S61-71]

If there is a title deed restriction on a property, which, for arguments sake, prevents a property from being developed in accordance with the town planning scheme, e.g. by only allowing a single unit on a site despite the scheme allowing for multiple units or is otherwise restrictive, the condition may be removed after following a process set out in terms of the Removal of Title Deeds Restrictions Act.

The province administers this removal process and the Private Townships Board, including the Registrar of Deeds and the Surveyor General as members, is charged with deliberating on and taking decisions all removal applications. The process involves advertising for comment in the gazette and on the site. The local authority is circulated the proposal and has to comment. After holding a hearing at which all interested parties may be heard, the Board makes a decision.

Note: It is likely that in future that the Provincial Planning and Development Commission will take on the Private Townships Board's responsibility for removal applications.

Removal in terms of the Abolition of Certain Title Conditions Act

Following the removal of the Group Areas Act and other race based legislation from the statute book after 1990; it became necessary to remove all offensive references to race or exclusions of certain race groups from owning land from title deeds. Rather than go through a series of replica processes in terms of the Removal of Restriction Act, a specific Act, titled the Abolition of Certain Title Conditions Act No 43 of 1999 was promulgated by the central government. This act enables all conditions in title that do not fall under the ambit of or relating to a town planning scheme, land use control, mineral rights, time restrictions on alienation, relevant to State ownership of the land and/or the Water Act of 1956, prior to its abolition in terms of the Water Act No 36 of 1998, to be removed when the conveyancor prepares new title deeds for approval by the Registrars of Deeds.

CHAPTER XI

SUBDIVISION OF LAND – LEGAL FRAMEWORK

Development of Land S11(2) / R(TE)8

No land, either falling outside a town planning scheme or where there is no approved township and the conditions of establishment specifically provide for the proposed development, may be developed unless the approval of the Minister is first obtained in terms of Section 11(2) of the Town Planning Ordinance.

The local authority is not legally competent to approve building plans for development unless the province has first issued a conditional approval and notified the local authority that such conditions have been complied with.

In this context "development" means either the erection of buildings or the use of land without subdivision for non-agricultural purposes, but does not include the erection of a first dwelling house and the usual outbuildings on the land.

Need and Desirability S11bis / R(TE)9-11

Prior to establishing a major (Section 12 or full) township on land where there is no town planning scheme and where the land falls outside of a local authority area, a fully motivated application that the proposed township is necessary for development purposes and desirable in the public interest has to be made to the Minster in terms of Section 11*bis* of the Town Planning Ordinance No 27 of 1949. This motivation should also address the availability of suitable services to accommodate the township.

The Minister will then refer the application to the Provincial Planning & Development Commission for an opinion, who prior to considering the matter, will on two occasions, over consecutive weeks, advertise the proposal both in the provincial gazette and in a local newspaper calling for representations to be made by the public within three weeks of the first advertisement. Usually following a hearing (mandatory if there are representations) the commission will make a recommendation to the Minister. The Minister will then take the final decision to conditionally allow the proposed township on the land subject to the submission of a township application (in terms of Section 12 of the Ordinance), allow portion of it or alternatively refuse the application.

Following the redemarcation of the country with wall-to-wall local authorities, no land should fall out of a local authority area. However there are still large areas where town planning schemes have not as yet been established. Consequently instances of need and desirability applications being made should still occur. The practice has however in these circumstances been significantly diminished by applications alternatively brought by applicants in terms of the Development Facilitation Act. A Development Tribunal will then consider very similar matters that may otherwise have been considered by the Provincial Planning & Development Commission.

Application to Establish a Private Township S12 & S33 / R(TP)32 & R(TE)12-15 / [S24-26]

Before a private township, be it residential or other, may be established i.e. the creation of two or more sites, it is necessary that a suitable subdivisional application be lodged with the Minister either in terms of Section 12 for major or full townships or Section 33 of the Ordinance for minor or exemption townships. The form and content of the township applications and the number of copies are as specified in regulations.

Note that a local authority may in terms of Section 39 of the Town Planning Ordinance be exempted from the provisions of the Ordinance relating to the establishment of townships. The local authority areas under the control and jurisdiction of the erstwhile City Councils of Pietermaritzburg and Durban were initially so exempted.

The Minster may further, after proclamation in the *Gazette* and subject to such conditions as he may consider necessary or desirable, exclude any other local authority if he is satisfied that the local authority has qualified technical officers competent to advise it upon matters connected with the subdivision of land and the layout of new private townships, and it is in the public interest so to do. It is understood that (at least) Newcastle and Richards Bay/Empangeni have since obtained such exemption.

In the case of the eThekwini Municipality, incorporating amongst others the erstwhile City of Durban, the exemption status has not as yet been exercised outside of the initial area. In the added areas township establishment continue to be sought via the Minister. This is partially due to the fact that the Durban Subdivisional Bylaws applies to the area of the erstwhile City of Durban, while erf control in the added areas continues to be exercised in terms of the respective operational town planning schemes for those areas and the provisions of the Town Planning Ordinance.

Full Townships (100 plus sites)

In the case of full township comprised of 100 or more sites, a certificate is required from the local authority stating that a copy of the subdivisional layout plan was lodged with it and that the proposal complies in all respects with the town planning scheme or, if it does not, a statement by the local authority indicating in what respects the proposed private township does not comply with the provisions of the scheme. In addition a need and desirability approval from the Minister normally has to be obtained in terms of Section 11*bis* of the Town Planning Ordinance.

Minor or Exemption Townships

In the case of a proposed township of **less than hundred sites** or **where there is a structure plan** for the local authority approved in terms of the Ordinance, **exemption** may be sought from the Minister of the requirement to obtain his prior need and desirability approval.

21 – 99 Sites or Greater if under a Structure Plan

If the proposed township comprises **more than twenty** sites and the Minister has not yet agreed to the establishment or extension of a town planning scheme over the area in terms of section 44 of the Ordinance, the applicant is obliged to provide a **statement** setting out the need for and desirability of the township and giving reasons why such township is in the public interest.

If the proposed township comprises **more than twenty** sites and if the land is situated within an area where there is a town planning scheme, the applicant is obliged to provide with his application, a certificate signed by the local authority indicating compliance or otherwise with the scheme.

2 – 20 Sites

If the proposed township comprises **no more than twenty** sites it is necessary that the applicant provides the Minister with proof of compliance with any local authority bylaws or regulations and obtain from the local authority an endorsed copy of the layout plan of the proposed private township accompanied by, if necessary, a separate statement setting out the local authority's views of the proposal, and any conditions which in its opinion ought to be imposed before the establishment of the township.

Conditions of Establishment S16 / R(TE)16 / [S29]

The Minister through the Private Townships Board would, following the receipt of comments received from various departments and the local authority's input, prepare draft conditions of establishment subject to which approval of the establishment of private township might be granted.

Succinctly, special reference is required to be paid in the conditions of establishment to:

(i) The physical characteristics of the parent site(s),
(ii) The external road access and continuity of roads over the parent site,
(iii) Any existing servitudes,
(iv) The proposed future use of erven,
(v) The suitability of the proposed erven for the envisaged uses and their access off the proposed or existing roads,
(vi) The reservation of certain sites for local or other government purposes,
(vii) The installation of necessary services,
(viii) The size and shape of the proposed erven in terms of the specified erf controls,
(ix) The need for new servitudes for services,
(x) The payment of endowment (if any),
(xi) Any building stipulation or sale restriction clauses,
(xii) The township name, etc.

Endowment, Levies & Service Contributions

As indicated in (x) above, provision is made in the Ordinance for the inclusion of conditions of establishment to collect endowment levied on erven.

Historically, the Private Townships Board in their conditions of establishment imposed a standard 5 percent endowment, based on the selling price of the individual erven, payable to the province towards the establishment of schools. A further 5 per cent endowment was also imposed for the benefit of the local authority. The alternative donation of public open space and/or land for school sites in terms of a rational scale based on the number of sites within a particular township could sometimes be set off against the amount payable. Subsequently the respective endowment was reduced to 2 ½ per cent in both cases.

In addition funds were required to be paid by developers to the respective regional water services corporations for both water and, if available, sewer reticulation. The amount payable was based on the actual costs of installation of the service and/or bulk infrastructure and was updated annually.

Eventually, following the setting up of a commission of enquiry by the central government to investigate the high cost of residential land country wide, all township endowment was dropped first for the state and then for the local authorities. Never the less the endowment has remained valid in some now dated, but still valid, conditions of establishment. The eThekwini Municipality in fact in relatively recent time, due to the inconsistency with then current conditions of establishment being issued, took a resolution to waive the dated endowments on application.

The City of Durban Subdivisional Bylaws contain a requirement for a five to ten per cent endowment based on the selling price of the individual erven. This endowment has remained in place till this day (2007). The funds obtained were originally meant to be ring fenced for the purchase of new open space, however, as understood, it has often been used by the Parks Department, the beneficiary, in operational expenditure thereby defeating the whole object of the imposition of the endowment.

The water and sewer contributions remained in place until the redemarcation of the province saw the disappearance of the Water Services Boards whose functions were taken over by the new District and Metro Councils.

Following the building boom experienced on the urban fringes of the eThekwini Municipality in the early 2000s, the Municipality in October 2003 imposed a development moratorium on all development in the Outer West area of the city, while a strategic assessment was undertaken.

The municipality finally took a decision, when lifting the moratorium in March 2004 and presenting a way forward, that a development contribution levy or endowment would henceforth be levied on all future residential units in complexes and on commercial development in the Outer West area. The latter levied at building plan approval stage. This decision was taken with a view to the developers contributing approximately a third share of the cost, as then estimated, of upgrading the existing road infrastructure to accommodate the rapid growth in the area and for which the city was totally unprepared and for environmental services. The monies were to be ring fenced for this purpose.

The development contribution levy imposed in early 2004 was R10 000 per residential unit and R15 000 per 100 m^2 of additional leasable commercial floor area. In June 2004 the R10 000 was extended to include all additional residential sites created in conventional townships. Although provision was made in development agreements signed with developers to escalate the amount annually, this amount had not changed by mid 2007.

The development contribution levy is also imposed in respect sectional title developments based on the number of residential units. The conventional township contribution requirement for additional sites created was

reflected in the conditions of establishment prepared by the province post June 2004.

The eThekwini Municipality was in June 2007 investigating extending the development contribution levy or endowment citywide.

Granting or Refusing S17 & 18 / R(TP)33 & R(TE)17 & 18 / [S30]

Assuming that the township application is to be approved by the Minister, the draft conditions of establishment are circulated to both the applicant and the local authority for their prior comments/acceptance. The local authority is obliged to respond within a month. If the applicant does not respond to the Private Townships Board within a period of six months, then the application lapses.

After considering any responses, and, if necessary, modifying the draft conditions of establishment, the Minister via the Private Townships Board, issues his final conditions of establishment.

Note that in an attempt to speed up the processing of, in particularly, the minor townships where the conditions are usually very straight forward, the Private Townships Board has in recent time reverted to issuing final conditions of establishment without issuing prior draft conditions of establishment and if subsequently found necessary, amending the final conditions of establishment in terms of Section 20 of the Ordinance (see below).

Amendment of Conditions S20 / R(TE)20

The Minister may amend any final conditions of establishment if, prior to his declaration or proclamation in the Provincial Gazette, submissions are received from either the local authority or the applicant, or if he considers it appropriate. This amendment of the conditions of establishment will be subject to mutual prior consultation and/or the consent of the parties concerned.

General Plan S21 / R(TE)21 / [S35]

It is required that the applicant, after a land surveyor has beaconed the township in accordance with the conditions of establishment including the approved layout plan, lodges a General Plan of the township for approval with the Surveyor General as contemplated by the Land Survey Act No 9 of 1927, as amended. This requirement is normally set out in the conditions of establishment.

Note: The applicant is upon proclamation/declaration of the township, required to lodge a copy of the approved General Plan with the local authority in terms of Section 24.

Township Register Opening S22 / R(TE)22 / [S36]

It is required that the applicant, lodge a copy of the approved General Plan together with the final conditions of establishment with the Registrar of Deeds for the purposes of opening a township register and to record the township conditions and the public places in the register. This requirement is normally set out in the conditions of establishment.

Note: Upon proclamation/declaration of the township, the open spaces are vested with the local authority in terms of Section 25 and will be so recorded by the Register of Deeds. Any land designated for the local or other authority will be transferred at the applicant's costs in terms of Section 26.

Notice in Gazette S23 & S33 / R(TE)23

Upon the completion of all the requirements as set out in the conditions of establishment, and upon the receipt from the applicant of confirmatory certificates obtained by him from the concerned parties that all the necessary services etcetera are in place, the Minister will publish a notice or proclamation in the provincial gazette, that the township is an approved township. Provided that where the township is a minor township the Minister may elect to declare the township approved without publishing a notice in the gazette.

Certificate to Enable Transfer S 28 / R(TE)28 / [S34]

Prior to any erf within a private township being transferred by the Registrar of Deeds the Minster is required to issue a (Section 28(1)) certificate confirming that all the stipulated conditions of establishment have been complied with and that the newly created erven may accordingly be transferred to the new owners.

Building Prior to Transfer S36(1) / R(TE)36(1)

Prior to the Minister issuing his Section 28(1) certificate a new owner, developer and/or an applicant may not commence building on a proposed erf in a new private township; provided that the Minister may grant early building permission. Such early building permission is normally contingent upon the township already having been beaconed by the land surveyor,

adequate access being available to the erven and/or services having been largely installed or suitable guarantees being in place for the installation of the services and the local authority having agreed to the granting of such permission.

The local authority is precluded from approving building plans in terms of the National Building Regulations and Building Standards Act unless either the section 28(1) certificate is issued or the Minister has first given his consent for early building.

Selling Prior to Transfer S36(2) / R(TE)36(2) / [S34]

Prior to the Minister issuing his Section 28(1) certificate an applicant or developer may not, other than for a single erf, commence selling or advertising to sell any proposed erf or erven in a new private township; provided that the Minister may grant early selling permission. Such early building permission is normally contingent upon the township having already been beaconed by the land surveyor, adequate access being available to the erven and/or services having been largely installed or suitable guarantees being in place for the installation of the services and the local authority having agreed to the granting of such permission.

Appeals to Private Townships Board S39A / [S31]

Where a local authority has had any powers generally relating to township establishment delegated to it by the Minister in terms of Section 39 of the Town Planning Ordinance, i.e. the City Councils of Durban, Pietermaritzburg and any other local authority on application considered competent and where it is adjudged to be in the public interest, an aggrieved applicant may appeal to the Private Townships Board in terms of Section 39A any decision made by that local authority pertaining to: -

(xiii) The conditions set with respect a development application,
(xiv) A refusal
(xv) Any condition of establishment set pertaining to a grant of approval of a township
(xvi) Any subsequent amendment of such conditions of establishment,
(xvii) The consideration of an exemption application
(xviii) Allowing early building or selling, and
(xix) Any amendment or cancellation of a general plan.

Amendment or Cancellation of a General Plan S38 / R(TE)37 / [S51]

Once a township has been proclaimed or declared as an approved township by the Minister it is still possible to amend the township in terms of section 30 of the Land Survey Act No. 9 of 1927 read with Section 38 of the Town Planning Ordinance. This entails an application being made to the Surveyor General to amend, either wholly or partially, or cancel a general plan comprising the township. The Surveyor General will then refer the application to the Private Townships Board for comment and who will first circulate the application for comment as in the case of a *de nova* township. As before (draft) conditions of establishment are produced and which are then required to be acted upon prior to the Minister re-proclaiming it an approved township.

In the event of there having been any sites or public places that were vested in the local authority or a service provider, they are prior to finalisation of the amended township required to be re-vested in the name of the applicant by the Registrar of Deeds. This re-vesting may however only take place after a process to formally close the public places, as contemplated by the Local Authorities Ordinance No 25 of 1974, has first been concluded, unless the Minister determines otherwise.

CHAPTER XII

DEVELOPMENT FACILITATION ACT AND LESS FORMAL TOWNSHIP ESTABLISHMENT ACT ALTERNATIVES

In very general terms the processes as outlined above with regard to the Town Planning Ordinance No 27 of 1949 are still undertaken for township established under either the national Less Formal Township Establishment Act No 113 of 1991 or under the national Development Facilitation Act No 67 of 1995. However it is obviously undertaken in terms of the respective specific provisions of these Acts.

Less Formal Township Establishment Act

The Less Formal Township Establishment Act was enacted by the Central Government in an attempt to speed up or fast track less formal settlement and township establishment in the provinces by cutting through the existing myriad of red tape delaying such settlements and the approval of township applications. In terms of the act, the Minister designates the land proposed for the township by a notice in the gazette and he may suspend most laws other than those pertaining to mineral rights. Existing servitudes and conditions of title may also be suspended. The province plays the role of the coordinator and, as with the Ordinance townships, prepares conditions of establishment for the township.

Less formal settlement in terms of Chapter 1 of the Act, designed for very rapid settlement, must be undertaken in such a way that subsequent upgrading is possible. The Minister may even allow, in particular cases, settlement to occur prior to beaconing of the erven by the land surveyor and the submission of the draft General Plan to the Surveyor General for approval.

The township establishment in terms of Chapter 2, designed for rapid processing but installation of services, requires the prior written approval of the Minister prior to the lodging of an application. The minister will have to decide in the case of the particular township the validity, or otherwise, for using the Act. The minister subsequently on receipt of the township application will publish a notice in the gazette and shall come to a decision within sixty days. From the date of authorisation of the Minister to utilise the Act, no selling of sites or erection of units without the approval of the Minister may occur until the Minister has declared in the gazette that the township has been serviced in accordance with the relevant conditions of establishment.

Note: A General Plan has in both cases to be approved by the Surveyor General; and the Register of Deeds has to open a township register.

The Less Formal Townships Establishment Act under Chapter 3 provides, on application to the Minster, for the settlement on any land of indigenous tribes by way of traditional communal tenure and the waiving of the normal township establishment procedures. A General Plan is however required to be prepared designating erven. A Township Register may be opened to facilitate transfer to the individual tribal members if ownership is not in the name of the tribe or chief. This chapter excludes existing tribal areas from consideration. The utilisation of this Chapter is not known to have been significant.

Although not a statutory requirement in terms of the Less Formal Townships Establishment Act, these applications are advertised in KwaZulu-Natal after submission inviting public comment so as to ensure that possible interested parties have an opportunity to make submissions and so have an input in the final outcome. Such action would accord with the provisions of the Promotion of Administrative Justice Act.

Development Facilitation Act

The Development Facilitation Act, together with its associated Development Facilitation Regulations, while also intended to fast track housing, and sets specific time frames in this regard, took a different approach.

Section 1 of Chapter 1 of the Act establishes **General Principles for Land Development** which may be regarded as universal and which should be strived towards in any development, of whatever nature, undertaken.

The principles require that the policies, administrative practice and laws should provide for urban and rural development, discourage illegal occupation of land and promote efficient and integrated development.

In so doing, it should they should: -

- Promote the integration of the social, economic, institutional and physical aspects of land development
- Promote integrated land development in urban and rural areas.
- Promote the availability of residential and employment opportunities.
- Encourage the optimal use of existing resources.
- Promote a diverse combination of land use.
- Discourage urban sprawl.
- Assist in correcting historically distorted settlement patterns.
- Encourage environmental sustainability.

- Encourage the active participation of communities in the land development process.
- Develop the skills and capacity of people involved in land development.
- The laws and procedures must be clear and made generally available and should promote trust and acceptance.
- Provision must be made for security of tenure and different tenure options.
- Land development should be coordinated so as to minimise conflict and stimulate competition.
- Provision must be made for fair and transparent decision making and appeal.

In Section 2 the Act establishes **General Principles for Decision Making and Conflict Resolution** leading towards a process of negotiation between the respective role players, i.e. the applicant or land developer, the service providers and the local community in which it is generally expected that a suitable compromise will be reached by abiding by the development principles.

The Act while substantively enacted to facilitate housing delivery has since been used as a vehicle for pursuing all forms of development.

A Designated Officer, usually an official of the local authority, acts as a neutral coordinator in the process and he is expected to ensure that prior to the land development application being accepted by him as a valid application, that the application contains all the necessary support information to ensure that the provincially appointed Development Tribunal, that adjudges the application, are in possession of all the required facts to come to a proper decision. This would require, amongst others, at least an initial geotechnical assessment and an environmental scoping report. One of the other required accompanying support documents to the application is draft conditions of establishment prepared by the applicant. The Designated Officer within a week of accepting a land development application is required to notify the Tribunal Registrar that a valid application has been lodged and the Registrar then sets specific dates for the pre-hearing, site inspection and hearing of the application. The hearing date should take place between 80 and 120 days of receipt if a registration arrangement is submitted with a land development application.

Substantial loads on development tribunals have often made keeping to the set time frames for the hearings impossible to meet.

The applications consequently tend to be very weighty in comparison to the alternative processes, and while they may be quickly adjudged, they take a significant time to prepare by the applicant's consultant team prior to their submission. Land development applications are immediately or simultaneously advertised and interested parties notified following acceptance by the Designated Officer so as to ensure that all possible

interested parties have an adequate opportunity to view and in which to make an input towards the final outcome.

Note: An approved Spatial Development Plan may be taken by the Development Tribunal to fulfil the role of Land Development Objectives in their otherwise absence, as is generally the case in KwaZulu-Natal.

It is necessary that a services agreement, consistent with land development objectives contained within the Act, be signed between the local authority and the land developer. This is a process that is a standard procedure in many other provinces in terms of their respective township establishment legislation.

The Designated Officer, after the conclusion of the advertising period and receipt of representations will prepare a comprehensive report for the Development Tribunal for their consideration at the hearing of the application. Due to the complexities of applications it has become standard practice to hold pre-hearings so as to ensure to the satisfaction of the Chairman of the Development Tribunal that all material information will be available at the set hearing. Assuming that the Development Tribunal eventually supports the application, the Tribunal Registrar through the provincial support staff to the Tribunal will finalise the township conditions of establishment and the Chairman will prepare a written judgement.

There is a provincial appointed Appeal Tribunal to which the parties may appeal if they do not concur with the judgement of the Development Tribunal.

CHAPTER XIII

DURBAN EXTENDED POWERS CONSOLIDATED ORDINANCE NO 18 OF 1976

The Durban Extended Powers Consolidated Ordinance No 18 of 1976 gave to the erstwhile City of Durban certain independent powers to conduct its own affairs. Although certain elements of the Ordinance have since been replaced by new and/or overriding legislation, Chapter XVI of the Ordinance specifically dealing with streets and subdivisions *viz.* Sections 141 to 160, generally subsists or survives.

Some of the more pertinent sections in this regard are as follows: -

- Section 144 provides that the Council approval must first be obtained for any subdivision of land, etc.
- Section 145 provides for the granting of approval with conditions, or refusal of any subdivisional application.
- Section 146 provides for the making of by-laws pertaining to creation of subdivisions, building of roads and the application procedure to be followed.

The Durban Town Planning Scheme, unlike the provincial model based town planning schemes, does not regulate Erf Control, control of which is alternatively left to the subdivisional by-laws, i.e. the "By-Laws Relating to Subdivision of Land and New Streets - PN 36/86". In addition to erf control, the by-laws also specify the requirements for road widths, turning devices, maximum gradients, road design plans, carriageway widths and endowment. The endowment is required to finance the provision of open space by Council and ranges from 5% to 10%, depending on the minimum erf size for the particular zone, larger to smaller respectively.

- Section 148 provides that prior to the Register of Deeds transferring land etc, a suitable certificate shall be provided from the Council.
- Section 150 provides for copies of the diagrams or general plan are to be lodged with the Surveyor General for his approval.
- Section 155 provides for the Council to name private streets after consultation with the owners, as it seems practical and desirable.
- Section 156 provides for the closing of private streets with the consent of Council.
- Section 157 deems that Section 211 (2)(j) of the Local Authorities Ordinance No 25 of 1974 shall apply for the closing of any street.

It must be borne in mind that the closure of streets in terms of sections 156 and 157 by the Council are still subject to compliance with the conditions as set out in section 11(2) of the Local Authorities Ordinance No 25 of 1974.

There has been some debate as to whether the Durban Extended Powers Consolidated Ordinance No 18 of 1976 is applicable to the entire eThekwini Municipality Area as the inheriting, albeit it larger, municipality or merely the erstwhile City of Durban, i.e. the North and South Central entities. On the one hand the Surveyor General has accepted hand plans for acquisition purposes for the outer areas as prepared by the municipality's Survey Department and processed them, on the other hand all private subdivisional applications outside the North and South Central entities continue to be processed via the Private Townships Board.

The province's Department of Local and Traditional Affairs Land Administration officials in discussions do not support the extension contention, however, it is intended by them that the necessary legal processes be followed by their administration so as to effect such extension and for the eThekwini Municipality to take over all township approval processes within the municipal boundaries and, in addition, to delegate to the municipality the removal of title deed restriction processes.

In this regard in terms of Section 21 of the KwaZulu-Natal Rationalisation of Planning and Development Laws Bill, 2006, Chapter XVI of the Durban Extended Powers Consolidated Ordinance, 1976 will apply to the whole jurisdiction of the eThekwini Municipality.

CHAPTER XIV

TOWNSHIP LAYOUTS

A township layout of any significance may not be commenced until such time as the site has been properly assessed and the assessment(s) assimilated by the designer. Only thereafter may the layout design be initiated. The following, while not necessarily being applicable to township design alone, hopefully gives a limited idea of some of the complexities that need to be considered by the township designer.

DEVELOPMENT LIMITING CONSTRAINTS & PARAMETERS

It is necessary at the outset to establish areas where development may not be accommodated, or where it may be allowed subject to certain constraints or parameters. The following assessments, of one or other form, are usually necessary for a competent township layout design

ENVIRONMENTAL ASSESSMENT

- **Environmental Processes & Investigations**

In recent years the fields of planning and the environment have tended to move ever closer and currently there is a significant amount of overlap and duplication in the respective assessment processes of developments. This understandably has resulted in confusion is some quarters, particularly amongst the public.

It has also resulted in some cases in developers effectively seeking planning permission via the EIA process, as once a favourable EIA Record of Decision (ROD) has been obtained from the provincial environmental department, and bearing in mind that the local authority has been consulted in the EIA process and has commented, the subsequent refusal of a rezoning or special consent application by the developer is made very difficult and no doubt increases the applicant chance of success on appeal if the local authority turns it down!

In the Stoneford Development Facilitation Act land development application appeal heard by the Appeal Tribunal for an Equestrian Estate in Assagay, where the local authority did not support the development and brought an appeal against the decision of the Development Tribunal, one of the factors raised in the appeal judgement, which counted against the local authority in the Tribunal dismissing the appeal, was the fact that the local authority had

not, in addition to the appeal lodged against the decision of the Development Tribunal, also lodged an appeal against the EIA Record of Decision. In fact, the local authority in its comments on the EIA scoping report, while supporting the environmental aspects, had specifically drawn attention to the fact that it did not support the proposal at a planning level, but which was a separate process to follow. Namely "While approval for the development is supported from an environmental perspective this should not be construed as inferring that a favourable rezoning from Agriculture and Conservancy to a suitable residential zone will eventually be supported by the Council, or that such rezoning will be a formality. On the contrary, such a rezoning is unlikely to be supported based on the motivation supplied to date. In any event, a specific rezoning application will need to be made in terms of Section 47*bis* B of the Natal Town Planning Ordinance No 27 of 1949, as amended, and the application considered on its merits at the time." Accordingly, no appeal of the favourable EIA Record of Decision was considered warranted by the local authority or lodged!

There are a variety of environmental processes and investigations which may be called upon by the provincial and/or local authorities in terms of the Environmental Conservation Act, the National Environmental Management Act and their respective regulations, and even in some town planning schemes. These may range from the most sophisticated to very basic assessment of existing vegetation and the provision of landscaping plans.

Legal Framework & Regulations

The Environmental Conservation Act No 73 of 1989 (ECA) and relevant regulations including "The Identification under Section 21 of Activities which may have a Substantial Detrimental Effect on the Environment – R 1182" has now (largely) been replaced by the National Environmental Management Act, 1998 (Act No 107 of 1998), as amended, and the Environmental Impact Assessment Regulations as published in Government Notice No. R. 385 of 2006, considering Government Notice No. R. 386 and 387 of 2006.

The Government Notice "List of Activities and Competent Authorities Identified in terms of Section 24 and 24D of the National Environmental Management Act, 1998 – R386" indicates when an Environmental Assessment is required for a particular activity and who the competent authority is for that activity.

In order to achieve the NEMA objectives of integrated environmental management, the potential impact on the environment, socio-economic conditions and the cultural heritage of listed activities that may significantly affect the environment are required to be investigated and assessed prior to their possible implementation. This process is reported to the relevant state body (national or provincial) before it may authorise the activity, conditionally or otherwise.

NEMA commences in Chapter 1 with a set of principles including that: -

- Environmental management must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably.
- Development must be socially, environmentally and economically sustainable, i.e. the triple bottom line.
- Sustainable development requires the consideration of all relevant factors.

Activities Defined from July 2006 in terms of Section 24 & 24D of NEMA 1998

Activities and sub activities are enumerated and comprise nearly 50 in total. From a planning perspective some of the more significant activities requiring an environmental assessment and approval by the provincial Department of Agriculture and Environmental Affairs prior to proceeding are: -

- The transformation of undeveloped or vacant land greater than 1 hectare in extent and comprising residential, mixed, retail, commercial, industrial and/or institutional land uses.
- The transformation of undeveloped or vacant land greater than 5 hectares or less than 20 hectares in extent for infill development - excluding industry.
- The subdivision of land greater than 9 hectares in extent into portions of 5 hectares or less.
- The transformation or removal of indigenous vegetation greater than 3 hectares in extent in an endangered ecosystem.
- Development within 1:10 year flood line or within 32 metres of a river or stream - includes bridges, canals, dams *et al*
- Outdoor racing including motor cycles and quad bikes
- Construction of a road entailing a carriageway wider than 4 metres or within a road reserve wider than 6 metres and which road is greater than 30 metres in length in total.
- The installation of sewage & storm water pipes greater than 360 mm in diameter

Note: In terms of a Government Gazette No. 29862 published on 4 May 2007, written comments were sought by 4 June 2007 on the National Environmental Management Second Amendment Bill, 2007; the National Environmental Management Environmental Impact Assessment Regulations, 2006; and the National Environmental Management Act, 1998: Amendment to the List of Activities and Competent Authorities Identified in terms of section 24 (2) and 24D. These proposals will, when finalized, see new parameters adopted.

Background Information Document

Background Information Documents or BIDs are exactly what they say, a succinct paper that outlines what a proposed activity constitutes, where it is located, the extent, and possible affects that may need to be mitigated, i.e. it gives a background to the proposal. It is a document designed to flesh out concerns and matters or issues that need to be investigated in a more extensive assessment process. It will also present an opportunity for parties to register as interested and affected parties at an early stage.

Basic Assessment Report

A Basic Assessment Report is very similar to a scoping report other than it is likely to be more limited and the potential impacts may have to be identified/anticipated by the environmental consultant compiling the report prior to obtaining any input from the public by way of a BID circulation. It may be expected that a basic assessment will be undertaken only when an activity is not expected to be a very controversial in the particular context. The draft report will be advertised for public comment, a public presentation will be given, and comments collected from the public or interested and affected parties including the local authority. The environmental Consultant will then prepare a final report containing ameliorating action for all identified impacts for submission to the provincial Department of Agriculture and Environmental Affairs with a view to obtaining a favourable Record of Decision.

Scoping Report

A Scoping report process will normally follow on the circulation of a BID as a document designed to flesh out concerns and matters or issues that need to be investigated in a more extensive assessment process and which presents an opportunity for parties to register and interested and affected parties at an early stage.

A draft scoping report will be advertised for public comment, a public presentation will be given, and comments collected from the public or interested and affected parties including the local authority. Subject to specialist studies not being required, the environmental consultant will then prepare a final scoping report containing ameliorating action for submission to the provincial Department of Agriculture and Environmental Affairs with a view to obtaining a favourable Record of Decision.

Environmental Impact Assessment Report

The Environmental Impact Report is an extension of the Scoping Report process where the need for additional specialist studies has been identified in

the scoping process and where the environmental consultant is not normally competent to undertake the work. The specialist studies are appended and the document advertised for comment and input from interested and affected parties as before. Depending on the outcome, it may be necessary to repeat the process if it emerges that an even greater level of detail and further specialist studies are required indicating that the concerns may be successfully mitigated before a final decision may be taken by the provincial department.

Environmental Authorisation/Record of Decision

The Record of Decision, if favourable, will contain a variety of conditions imposed by the Department of Agriculture and Environmental Affairs and a time frame within which the proposed activity must commence/be completed. The conditions are, amongst others, likely to contain a requirement for the preparation and approval by the provincial and local authority of an Environmental Management Plan addressing the pre-construction, construction and post-construction phases of the activity. They are also likely to contain the need for the appointment of an independent Environmental Control Officer and who is obliged to make regular reports to the respective authorities. Finally the conditions will contain a requirement for the interested and affected parties to be notified within a fixed time frame of the Record of Decision and the appeals procedures open to the parties should they chose to so exercise them.

Appeals to the Provincial Minister

Following the advertisement of the Record of Decision, registered interested and affected parties may lodge an appeal with the provincial Minister of Agriculture and Environmental Affairs or MEC. There is currently no time frame within which the Minister is obliged to come to a decision, so the time period between the departmental Record of Decision and the MEC appeal decision could be considerable. Further, although an appeal may have been lodged following a favourable Record of Decision, the proposed activity may be commenced in accordance with the Record of Decision, which makes the appeal process questionable as it is deemed as unlikely by some that the Minster will entirely rule against a development that has significantly progressed, albeit that he could so rule. A more likely outcome is a degree of modification of the conditions of approval.

In terms of the draft revised regulations published on 4 May 2007 it is proposed that the appeal is required to be finalised within 6 months of all relevant information being made available.

D'MOSS / EESMP

Something which is unique to the eThekwini Municipality, although not the concept, is D'MOSS / EESMP. The acronym stands for the Durban Metropolitan Open Space System or more recently known as the eThekwini Environmental Services Management Plan.

Historically, in the late 1970's the Wildlife Society of South Africa (now known as the Wildlife and Environmental Society of South Africa or WESSA) under the leadership of Keith Cooper in Durban and other interested parties including environmentalists, planners and engineers set about attempting to preserve and link the then vestiges of natural habitat in the Durban metropolitan area via a system of green corridors. This early plan was known appropriately as MOSS standing for Metropolitan Open Space System – but enjoyed no real standing with the authorities. Under the auspices of Dr Debra Roberts, of the then newly established Environmental section or unit of the Durban City Council, the plan was eventually taken over officially by the authorities and became part of municipal policy while undergoing a name change to Durban Metropolitan Open Space System or D'MOSS. Since then the spatial areas identified as being of environmental or biodiversity importance have been progressively enhanced, refined and extended. This refinement process continues to this day.

As a matter of course all development applications of whatever nature, either adjacent to, or within any area identified as D'MOSS on the municipality's Geographical Information System (GIS) is referred to the now Environmental Management Department for detailed assessment in terms of the policy document, i.e. the eThekwini Environmental Services Management Plan.

The metropolitan open space system concept and principles has since been applied in both Johannesburg and Cape Town and could equally be used elsewhere in the interest of maintaining the country's biodiversity heritage and in extending natural corridors between adjacent municipalities.

GEOTECHNICAL ASSESSMENT

Geology

The under-lying geology largely determines the expected site conditions, which will then varying depending on other factors. Succinctly, from oldest to youngest the main geology formations found in the greater Durban area and some local example locations are as follows: -

- Achaean Granites forming part of the Basement Complex or Natal Metamorphic Province – of igneous origin and found in the dissected Valley of Thousand Hills and on the floors of the valleys of deeply cut gorges like Krantzkloof Nature Reserve.

- Natal Group Sandstones (formerly known as Table Mountain Sandstone) – sediments comprised of transported sand originally deposited in braided rivers or in a shallow ongressing marine environment, derived from erosion of ancient mountains that used to lie to the north. – Portion of Westville, Kloof, Waterfall, Hillcrest. Strata exposed, amongst others, in the cliffs of the Krantzkloof Nature Reserve.

- Dwyka Tillite [part of the Karroo Sequence] composed of fine sediments deposited in a deep marine environment from ice flows similar to that currently found off the Ross Ice Shelf in Antarctica. Boulder inclusions, comprised of transported material broken free by the ice, sometimes found. Exposed faces may be found in the disused Umgeni Quarry & the Cannonby Quarry at Umkomaas.

- Pietermaritzburg Shale [part of the Ecca Group, Karroo Sequence] – fine-grained sediments deposited in moderately deep, lacustrian (lake) environments. Found In Cato Manor, Clare Hills etc.

- Vryheid Formation [also part of the Ecca Group] – coarser sediments deposited in shallower, higher-energy environments with significant vegetation growth leading to eventual coal formation. Most exposures north of Durban through to Tongaat, as in disused quarries near Newlands and Effingham near the Hippo Valley Industrial Park.

- Karroo dolerite dykes and sills of molten lava thrusting towards the surface and associated with the formation of the capping of the Stormberg Series in Lesotho may be found, mostly intruded into the Ecca Group. These intrusions occurred about the time of the break-up of the southern continent of Gondwanaland into the current continents.

- Berea Formation (Berea Red Sands) – Aeolian (wind blown) reddish-brown sands associated with much lower sea levels when vast sand dunes were created along the current KwaZulu-Natal coastline in the Pleistocene Period. The Berea, Bluff, Umhlanga Ridge and Amanzimtoti/ Umbogintwini ridge are some examples.

KwaZulu-Natal has been severely block faulted and tilted towards the sea with the result that some sediments or formations occur relatively higher than adjacent but earlier formations.

Soils

The rock weathers to form overlying soils that may have very different characteristics to the parent rocks. The below schedule gives a very approximate indication of some properties for typical examples but these may vary extensively.

Geological Series	Type	Sewage System Required	Unstable	Aquifer	Porosity	Building Material Use
Basement Complex	Schists & Mica	Septic tank	No	No	Fair	River washed sands used as fine aggregates
Natal Group Sandstone	Sand	Septic Tank	Not normally unless adversely faulted	Good	Fair	Plaster & Building Sand. Stone quarried for course aggregates.
Dwyka Tillite	Siltstone	Water borne	Occasionally where jointed	Moderate	Impervious	Stone quarried for course aggregates.
Pietermaritz burg Shale	Shale	Water borne	Yes, particularly if water lubricated	No	Poor	Brick making
Dolerite	Clays	Water borne preferred	Occasionally	Good	Fair	Aggregate
Berea Red Sand	Sand	Septic tank	Collapsing sand phenomenon -on exhibited	No	Good	Plaster & Building Sand where clay content less than 5%.

Natural Land Form

Other than the impracticality of building on extremely steep slopes due to possible instability or inaccessibility, the natural landform of the slope and whether it is concave or convex affects the properties of a site with respect to evapotranspiration (a combination of evaporation and transpiration via vegetation) of wastewater from a septic tank sewage system. This aspect accordingly needs to be fully analysed and understood. A maximum slope of 1 in 3 is usually taken as the limit on which development may take place and based on which development potential is assessed.

Platforming

Unlike building practice in many parts of the world where structures are erected without significantly disturbing the natural ground levels, traditionally in modern South African developments, all sites are platformed prior to their development, be it for a small RDP house or for a large factory. Further that where the province allows the subdivision of sites that are steeper than 1:3 they require engineering plans to prove that the site may be adequately platformed to facilitate the erection of a structure. Accordingly it is necessary when designing a township layout to constantly have in mind what the minimum platformed requirement is for the particular development. In some cases for a RDP type housing layout and where sites are generally small, the authorities may, in order to demonstrate practicality, call for a platform plan for the entire township.

Natural Angles of Repose

Every soil type, depending on the binding characteristics of its granules, has a natural angle of repose beyond which it is likely fail. Customarily the norm has been for a 1:1 cut slope and a 1:1.5 fill slope or embankment. However it is recommended by many geotechnical engineers that slopes of 1:2 be used with platforming, particularly with ground that may be unstable. The difficulty of course where platforms are required with steep land is that a 1:2 slope goes on indefinitely, or so it seems!

While the engineers may plan adequately for slopes that do not fail, often in housing projects for the masses with small sites the individual owners will seek to maximise their respective sites and will over weekends cut vertical banks undermining their neighbours. This is obviously a recipe for disaster, with failures almost certain in time, but it is a practical problem that has to be anticipated and planned for as far as possible! Obviously in more salubrious housing projects engineer designed retaining wall or so-called “Loffelstein” or similar walls may be erected. The latter may, with suitable design, be very steep indeed.

Depending on the different professions, different systems are used to describe the severity of slopes or grades. Town planners will refer to a slope as being 1 in x, civil engineers refer to a slope as a percentage, i.e. x : 100, and while geotechnical engineers will refer to the slope in degrees! Consequently a slope of 1in 2 may also be known as 50% or 26.6 degrees.

Unstable Land

Unstable land refers to land that is geotechnically unstable, i.e. a structure erected on it may move leading to partial to total failure. Such land is normally excluded from development potential. Structures erected on the extremely steep slopes of the Bluff, which exceed the normal angle of repose of the sand (due to the presence of vegetation holding it artificially in place), have been identified and any building proposal must be accompanied by a geotechnical engineering report. Other areas in the erstwhile City of Durban have had broad geotechnical assessment undertaken which identify either totally or potentially unstable areas. This situation is often found in areas where Pietermaritzburg Shale is the underlying geology. Other areas of the extended city do not have such studies and in any suspect unstable areas geotechnical reports will be called for to accompany any development proposals.

Swelling or Heaving Clays

While swelling or heaving clays are not unknown in the greater Durban Region, the extent of the problem, as say found in the Kimberly area of the Northern Cape, fortunately does not exist. When the moisture content of the clay changes either as a result of seasonal changes or because a building restricts the ingress of, or traps, moisture under it, very significant differential swelling with resultant cracking of structures may occur.

Collapsing Sands

Collapsing sands occur when as a result of significant amounts of water being fed onto certain soils; the interstice space between the individual sand grains is taken up, leading to the ground level sinking. Berea Red Sand is known to exhibit this phenomenon and consequently rainwater should not be directed directly onto the ground immediately adjacent to a building. More serious collapsing sand instances occur in other soils found elsewhere in the country, e.g. Gauteng.

Disposal of Sewage

Of all the factors related to the soil, its suitability for the disposal of sewage wastewater is one of the most critical, particularly when the use of a septic tank, soak pit and evapotranspiration system is being contemplated. Customarily test holes are dug and the fall of water measured over time, as specified in the National Building Regulations read with the relevant SABS code. The result indicates if the soil is suitable or otherwise and from this it is possible to calculate the required surface area of the walls of the soak pit(s). However in more recent time, significantly more sophisticated calculations are required as specified in some town planning schemes (COWTPS) and as required by the eThekwini Water and Waste Department. This requires factoring in the above soil characteristics, the slope of the land and whether the ground is planar, concave or convex. The number of bedrooms is applied and an overall evapotranspiration area as viewed from above is obtained. The eThekwini Municipality requires that this area be contained within the site boundary and, allowing space for future buildings, is reflected on the subdivisional plans to prove subdivisional feasibility. This work is required to be undertaken by a suitable qualified and experienced geotechnical engineer.

SEWAGE DISPOSAL SYSTEMS

Pit Latrine

Pit latrines are the most common sanitation facility used in developing countries. Ref World bank Report Res 22, 1978. They are both technically appropriate and financially affordable and are socially acceptable subject to proper design, use and maintenance. Subject to the latter, they are as safe as flush toilets though not of the same user convenience.

There are four different versions in use, namely the conventional pit latrine, the ventilated improved pit latrine or VIP, the Reed odourless earth closet or ROEC and the permanent improved pit latrine or PIP – generally each more sophisticated than the earlier.

Pit latrines, while having significant cost advantages over water borne sewage, can contaminate the soil and ground water and should not be located uphill or within 30 metres of a water source or borehole. Preferably external water should be obtained from a remote source. Ideally pit latrines should be located at a distance of 6 metres or greater from the house.

Septic Tank, Soak Pit & Evapotranspiration

This is a very widely used flushable sewage system where no water borne sewage system is available and yet a sophisticated system is required. It is however dependant on soil that is able to absorb the treated waste water on a constant basis throughout both the wet and dry seasons. The three components of the system are: -

- The septic tank which is normally a two tank or chamber system with adequate capacity so as to ensure that it may function as both a digester and precipitator. Wastewater is initially fed into it at one end and it passes to the second chamber before the final by-products proceed to the soak pit(s),
- The soak pit (or French drain), which acts as a filtration system, needs to be specifically designed so as to ensure that the surface areas of the walls are adequate for the expected load and the soil conditions, and
- The evapotranspiration area, which also needs to be specifically designed for the soils and the load so as to ensure that the water load may be constantly transferred out of the soil by a combined process of evaporation and/or transpiration via vegetation.

Not all soils are suitable for this system due to poor percolation rates. Pollution of the ground water may occur particularly where there are fissures in the soil; consequently soak pits should not be located near any underground drinking water sources. Maintenance in a well-designed system is minimal other than for periodic de-silting. It is not suitable where there are expected high fat or chemical loads in non-domestic situations.

Conservancy Tank or Vacuum Tank System

A conservancy tank system is used where the ground conditions are not suitable for a septic tank system, there is no water borne sewage system and there is a high fat or chemical load. Due to the high cost for the removal of the effluent via a motorised septic tanker service (“honey suckers”) and conveyance to a central wastewater treatment works, efforts should be made to minimise the use of water via low flushing systems, etc. The system involves the construction of a suitable conservancy tank of adequate size bearing in mind likely wastewater generation and the frequency of the vacuum tanker service. The conservancy tank needs to be readily accessible from the tanker service vehicle equipped with vacuum pipes. It is a workable but not an ideal system, particularly for the longer term due to the associated high costs and potential odours problems during the discharge process.

Package Type Plants

These are small largely sealed propriety wastewater treatment facilities designed primarily to serve a smallish development or complex. Some of these systems are modular and may be expanded with increased demand.

While these systems perform adequately in theory, in practice many of these within the eThekwini Municipality area were found to not consistently meet the General Authorisation General Limit Values (GLV) criteria of the Department of Water Affairs and Forestry (DWAF) and consequently a moratorium was placed in July 2003 by the eThekwini Municipality Wastewater Department on the establishment of any new systems until such time as they could be found to comply with the DWAF GLV criteria.

In 2005, in terms of new Policy Guideline 13, the moratorium was lifted for privately owned low volume domestic sewage treatment systems for the on-site treatment of **domestic wastewater** where the application fell within the scope of the Department of Water Affairs and Forestry General Authorisations, the projected discharge is less than 2Mℓ/day, the disposal of the treated wastewater is to a natural surface watercourse and that extraordinary terrain or geological conditions did not exist. In the updated policy document a plant will not be considered for approval where the industrial loading, e.g. from a restaurant or a frail care facility, exceeds 20per cent of the total effluent.

Small Activated Sludge Waste Water Treatment Plants

This is no different to full water borne wastewater treatment works other than that the treatment plant is small in scale. The effluent is activated by mechanical plant and aerated to accelerate the braking down of the bacteria. Such plants may fill a similar niche in the market to that occupied by the propriety package plants.

Small Bore Water Borne

This system is a hybrid between a septic tank system and full water borne system. Intermediate septic tanks treat effluent from individual domestic residences. The partially treated liquid then feeds into a small bore pipe system that leads to a wastewater treatment works. The saving in the cost of the small-bore pipe system as opposed to a conventional system is considered marginal. It however makes sense if conventional septic tanks and soak pits are converted to a full water borne system.

Full Water Borne

This is the “Roll Royce” system towards which most wastewater treatment authorities strive. Large well designed and centralise wastewater treatment works are designed, constructed and managed with economies of scale. They have however the disadvantage of high initial establishment costs. No pollution of ground water should occur under normal circumstances. The increased flows at sewage works after significant rainfall events however demonstrate that a disadvantage of the system (along with other water borne

systems) is that storm water pipes are easily illegally connected into the sewer system and are difficult to subsequently pick up. This unnecessarily pollutes clean water and increases processing costs.

Another disadvantage, where the system is not sufficiently ubiquitous in a region so to have a extensive dentric system or where the topography otherwise so dictates, is that pump stations are required in order to move effluent to where it may gravitate to the waste water treatment works. Pump stations break down (even with backup pumps), are high maintenance, have specific design capacity that it may be difficult to expand, and are subject to the vagarities of the electricity supply authorities. Where pump stations exist on the coast/beach front or in the flood plain of a river, they may be destroyed in extreme events leading to pollution of the environment until such time as they are repaired or replaced.

The electricity supply concern is a matter that is increasingly of importance as the electricity supply authorities are not keeping up with the growing electricity demand and are moving into load shedding!

STORM WATER SYSTEMS

Disposal on-site

This implies that rain water from the roof of a structure is either discharged on the surface of the site or is lead into soak pits on the site. On large and level sites surface disposal usually presents little in the way of problems, however on small sites particularly when steeper, this method of disposal may be problematic leading to erosion of embankments. Sub-surface disposal, is perfect provided that adequate area/volume exist to accommodate the rainwater and is ideal from a storm water attenuation perspective. However, in certain geotechnical situations with sustained rainfall over a prolonged period, super-saturation of the ground may occur with the adjacent soil liquidising and catastrophic failures of embankments occurring resulting in the potential loss downstream of structures and life. Such a situation occurred in some of the Natal Group Sandstone areas of Mariannhill near Pinetown during Cyclone Demonia.

Disposal to street

This implies the simple piping of all storm water from structures to the street and is the classical disposal method used in most urban situations with small erven. No direct attenuation normally occurs and the maximum impact is felt by the rapid discharge directly to the general storm water system, even in minor storms.

Design for Rainfall Events

The flow and intensity of storm water after a development has taken place normally increases due to increased areas of hardened surfaces, less absorbing and less roughage in the surfaces to retard the flow of water e.g. tarred roads, tiled roofs, driveways and paving as compared to grass, crops and trees.

Township design, including both the layout and the engineering design, should be undertaken in such a way so as to anticipate likely rainfall events and in particular to cater for both minor and major storms. This design requirement will result in a necessary iteration process between the town planners and the engineers. The piping of storm water is designed to cater for minor storms, however major events are likely to result in overland flows of water and suitable channels for such water must be left open. Poor design in the past, e.g. a house developed on an erf sited directly opposite and on the downhill side of a steep intersecting road, will almost certainly be flooded in a

major storm when the minor storm water system cannot cope and the sheer volume and the inertia of the water coming down the steep intersecting road carries it up and over the normally adequate kerb on the downhill side of the transverse road.

While town planners will not normally become involved it should perhaps be noted that the storm water drainage of roads requires that the water table be lowered to a depth of approximately one metre below the road surface in order to avoid instability under heavy traffic and potholes developing during extended wet periods.

Attenuation

In recent years storm water attenuation has gone from a nice to have to an essential for all new major developments. The classical engineering solution in the past has been to shed all rainfall as rapidly as possible from structures, roads and car parks to the natural drainage systems. While individually this approach may have limited effect, the accumulative effect has seen more and more flooding, the disruption and destruction of infrastructure and the erosion and widening of the river beds with the resultant destruction of flanking vegetation which might otherwise retard the flow and the unnecessary siltation of dams.

Consequently attenuation structures and methodology in design is required to retard the flow of storm water to the natural drainage systems. Examples of storm water attenuation or retention features include, wet ponds, i.e. low level dams with restricted outflows that with increased storm water inflow will hold back water and gradually release it until it drops back to the original level, dry ponds (same as former but normally dry), suitably designed and constructed sport fields and car parks as temporary detention features.

Note: Wet ponds are known as retention ponds while dry ponds are know as detention ponds.

Storm Water Management Plan

A storm water management plan is a plan prepared by a suitably qualified civil engineer that shows the anticipated storm water impact of an area of land in its natural state before a development occurs together with a similar calculation undertaken for the same area of land after a development has taken place. The plan, in order to obtain the approval of the authorities, should prove that after the introduction of suitably designed attenuation facilities, that the peak flow storm water leaving the area of land is no greater after the development has taken place than before.

CHAPTER XV

EXCLUSIONS FROM DEVELOPABLE LAND

In some town planning schemes certain areas or categories of land are specifically excluded in some zones when calculating the development potential of a particular site.

Oversteep

While it may theoretically be possible to build on almost slope at a cost, the cost and practicality of development on slopes greater than 1:3 becomes prohibitive. Indeed, in respect of low income housing the line was at one stage drawn at slopes greater 1:4. Consequently in assessing development potential it is customary to exclude all areas of land steeper than 1:3 and which land is termed oversteep. If the land is marginally oversteep it may notwithstanding still be appropriate to consider it for development subject to assessing exactly how it may practically be developed. This is however seen as the exception rather than the rule.

Subject to Flooding

Land subject to flooding refers to land that falls either within the 1 in 50 year or 1 in 100 year return period flood lines as calculated by a suitably qualified engineer. It is a requirement with township establishment that these flood levels be determined and demarcated on layout plans for any area having a catchment in excess of 1 square kilometre.

Environmentally Sensitive Areas

Environmentally sensitive areas are areas that are desirable from a biodiversity aspect to keep in their natural state by virtue of being wetlands, grassland, thickets, forests, etc.

It is preferable that for development purposes prior to any detailed planning of a project commencing so as to avoid abortive costs and not run foul with the authorities that an environmental consultant or natural scientist be engaged at an early stage to ascertain the full extent of any environmentally sensitive areas. This work may in any event be required for an environmental impact assessment. Specialists should be engaged in appropriate situations as advised by the environmental consultant.

Wetlands (Permanent, Temporary & Seasonal)

Wetlands are not confined to land that is apparently wet as the name suggests. It is land (rather than water) that is subject high levels of moisture either on a permanent, temporary or seasonal basis and that is likely to support vegetation types associated with such situations. The absence of such vegetation does not necessarily infer that an area may not be classified as a wetland, and which determination is only ascertainable after a detailed study of soil samples. Wetlands, apart from their significant biodiversity role, fulfil a critical role in the filtering of water and minimising flooding.

It is preferable that for development purposes where it is anticipated that a wetland exists prior to any detailed planning of a project commencing and so as to avoid abortive costs and not run foul with the authorities that a Wetland specialist be engaged at an early stage to ascertain the full extent of the various wetlands.

Unstable

Unstable land is land that is subject to possible slipping, slumping, collapse etc. due to the geotechnical situation pertaining to it as assessed by a suitably qualified geotechnical engineer.

Inaccessible

Inaccessible land is land that may not be reached by normal methods of walking and/or driving after preparing suitable driveways at normally acceptable grades etc. Examples would be land at the base of a cliff or steep sided valley separate from the balance of the site from which road access is taken or land situated on the far side of a wetland or water body, which may not be bridged for whatever reason.

Power Line Servitudes

Land that is subject to high voltage electricity power lines may not be considered as part of the developable land area despite being otherwise suitable for development by virtue of its topography. There may be certain exception where it may be considered countable in assessing development potential if, for example, the electricity supply authorities are happy for it to be used and there is no health or safety hazard.

Heritage Sensitive Areas

These are areas which have been identified by Amafa or a similar authority as being worthy of conservation due to them containing artefacts or remains of an anthropological nature, being of historical interest, etc.

CHAPTER XVI

TOWNSHIP DESIGN CRITERIA

ZONING

It is necessary before designing a township layout to understand exactly what the zone is for the particular area, and exactly what the zone controls associated with that zone are for erven in order for the layout to be approvable by the authorities.

ERF CONTROLS

Minimum Area

This is simply the minimum area which is allowed within a particular zone as specified in the town planning scheme or alternatively in any subdivisional byelaws.

Shape/Proportion

Some zones may specify a minimum proportion that may not be exceeded other than in exceptional circumstances. This is so as to ensure that the proportions are such that a structure may be erected without resorting to unusual or contrived solutions. Typically the length of a regular site may not be more than three times the width.

Minimum Rectangles

As an adage to the proportion requirement above, where it is necessary to revert to irregular shaped erven for whatever reason, it is often stated that a minimum regular rectangle is to be contained within the overall site and which is expressed as a percentage of the minimum erf area. This percentage may vary from 100 per cent for very small erven to say fifty percent for very large sites where the irregularity of the erf is unlike to be much of a restraint in designing a structure thereon.

Frontage

The minimum road frontage, which a regular erf or an erf fronting a straight section of road must have, is normally established with the required erf proportion in mind. For irregular shaped erven on the outside of curved sections of road or around turning devices (cul-de-sac turning circles, turning "T"'s or reversing bays) a relaxation is usually allowed, the minimum frontage in these circumstances is customarily of the order of half the normal frontage requirement. Typically they will be 18 and 9 metres respectively. This obviously has to be reduced for smaller erven.

Width of Access Strips

Panhandle sites need to be accessed via access strips that connect them to the road and which access strip usually form part and parcel of the erf. The width of the access strip is ultimately dependent on the practical considerations of getting a vehicle comfortably up or down the access strip, the accommodation of underground services if necessary, and possibly, on each side, screening vegetation and a fence or wall. It may also be necessary from time to time to reverse a vehicle along an access strip. The absolute minimum width is of the order of 3 metres but most schemes require a minimum of 4 or 4.5 metres.

It may sometimes be proposed to twin two panhandle sites with abutting access strips and further to have reciprocal right of ways over the adjacent access strip. This makes it easier for a relaxation, if so provided for in the scheme, to be considered. Relaxations may also be warranted where there are existing buildings on a site that is proposed to be subdivided, which might otherwise preclude subdivision if the full access strip was to be required.

Length of Access Strips

Access strips should not be of inordinate lengths as it is largely a waste of space (land being a valuable and irreplaceable resource), it is impractical for the eventual occupant and it could be a security risk for adjacent owners. The scheme should therefore tend to curtail their length or they could be used in a layout as a cheap alternative to providing conventional roads. The length restriction should however bear in mind the minimum erf size. Generally a double bank of panhandle erven is not to be encouraged in township layouts. Typical maximum lengths of access strips are 65 and 75 metres where larger erven are found.

Exceptions

In some instances subdivision controls may permit a single site within a particular township to be less than the minimum erf size by (say) ten per cent. There may also be similar exceptions allowed (say) where erven have donated land for road widening, new roads or are split by an existing road. This allowance would normally be subject to the erf still being fully sustainable in terms of its servicing.

Policy Requirements

While observance of the town planning scheme requirements is usually the only requirement when preparing a township layout, in the case of the eThekwini Municipality's outer western area a policy was adopted by the Council that required the observance of a minimum erf size in excess of that otherwise required by the town planning scheme, *viz.* 2000 m^2 minimum area erven in special residential zones rather than the stipulated 1400 m^2 or 1800 m^2 as required in terms of the zones. Certain exceptions to this policy directive have been allowed for up to two erven. The primary justification for this sometimes-contentiously regarded minimum area policy was based originally on ensuring adequate areas existed for septic tank; soak pit and evapotranspiration in addition to that required for the house footprint.

ROADS

Traffic Impact Statements, Assessments & Reports

Any significant development proposal, be it for a shopping centre, school, residential township, etc. needs to have an appropriate level traffic study undertaken in order to examine what the likely impact of the development will be on adjacent properties and land uses. In addition it should optimise access points onto the surrounding road infrastructure and assess the need for improvements or otherwise to such infrastructure.

Customarily traffic engineers look at a five-year horizon in terms of traffic growth on the surrounding road system. However sometimes this needs to be modified to accommodate known new growth factors other than simple percentages. The development proposal may also be setting a precedent which may lead to similar applications, in this case the accumulated affected should be examined.

In the case of developments with large car parks, the traffic engineer should also comment on these as regards the adequacy of numbers (in terms of the town planning scheme and/or otherwise), bay shape and size, lane width, free flow of traffic, loading areas, etc.

Blue, Green and Red Book Standards!

The National Institute for Transport & Road Research and the National Building Research Institute, both components of the Council for Scientific and Industrial Research, researched and eventually published in 1983 a blue covered ring binder book titled “Guidelines for the Provisions of Engineering Services in Residential Townships” for the erstwhile Department of Community Development. This book was followed in 1987 by a green fronted publication titled “Towards Guidelines for Services and Amenities in Developing Communities” and which the erstwhile Department of Development Aid put out as an interim document. This book, also prepared by the CSIR, built on the former book and was at time considered to be more appropriate in respect of low cost housing where the primary transport mode was not usually the private car. Finally a red covered ring binder book titled “Guidelines for Engineering Services and Amenities in Residential Township Development” was published by the CSIR and issued by National Housing Board in 1992 and revised in 1994. This was in effect a consolidation and refinement of the previous two books, though perhaps not as readable to the layperson. Alternative levels of service are identified so as to suit different circumstances and affordability levels found in practice. These three books are known respectively known as the Blue, Green and Red Books.
The Blue book in particular, as the ice breaker, set new milestones for township engineering standards in South Africa where there had been very

little or no generally accepted standards before. During the compilation of the document wide consultation was undertaken with local authorities around the country with a view to obtaining a consensus view as far as possible.

The Durban City Engineer's Department in circa 1970 produced a draft document titled "Guidelines for the Design of Roads in Suburban Townships" which was, until the Blue Book was published, the only local guide of considered design standards to apply when undertaking new residential township layouts in the more severe terrain commonly encountered in KwaZulu-Natal.

Hierarchy

While there had obviously been different categories or orders of roads before, the Blue Book established a broadly accepted road hierarchy in South Africa with different classes of roads depending on their respective function, amount of traffic they carry or serve, access allowed to them or otherwise, width, etc. As a general principle a road should never connect to a road more than one class immediately above it. The residential roads off of which individual erf accesses were permitted in particular were divided into sub-classes (Classes 5a – 5d). Each sub-class progressively serving a lesser amount of traffic and being more pedestrian oriented.

Widths

The Blue Book did not set absolute widths for roads or road carriageways, but it gave a range of realistic criteria to use when undertaking township design. This was supplemented by typical cross sections showing services. This was a significant improvement than in the past when equal width road reserves of some 18 metres were commonly requested, irrespective of the fact that it was often highly unlikely that the full road width would ever be used and that the wide reserve in steep terrain caused access difficulties.

Horizontal Curves

These are horizontal curves or radii that are acceptable for different categories of road. Generally, the higher the order of a road, the larger is the minimum acceptable radius for the curve. Ideally one horizontal curve should be separated from another horizontal curve by a straight section of road and 'broken back' curves e.g. a right hand curve following another right hand curve, should be avoided, except perhaps on lower order roads

Splays

These are set backs at the intersections of roads to improve sight distances and also to facilitate the placing of overhead and underground utility services. The normal minimum standard is a symmetrical set back of 6 metres on both roads. The exception might be a turning device where 3 metre splays may be acceptable. Where intersections occur with higher order roads, it is desirable to increase the set back along the higher order road to take account of the higher speed that is likely to take place on that road, i.e. asymmetric setbacks.

Road Grades

Road grades or gradients are measured in ratios or in percentages by town planners and engineers respectively. Acceptable road grades have always tended to be a controversial subject, particularly in steeper terrain where the use of the land is dependent on access roads that are steep. A maximum grade of 1 in 6 or 16 per cent is the usual norm, while a maximum of 1 in 8 or 12.5 per cent should be strived for in residential areas. Bus routes should be no steeper than 1 in 10 or 10 per cent. In an extreme situation a grade of 1 in 5 or 20 per cent may be considered, but this would only be for a very lowly trafficked and low order road. At the other end of the scale it is necessary for roads to achieve a certain minimum fall so as to ensure that water will drain off the surface during a storm. A minimum grade of 1in 200 or half a per cent is normally the limit. Concern about this latter aspect is however very rarely a concern in KwaZulu-Natal!

Where there are steep grades on a bus route or where heavy vehicles may commonly be expected, an additional climbing land may be necessary, which may require a wider road reserve.

While running steep grades may be acceptable as outlined above, when they intersect with another road and traffic has to negotiate the intersection, and indeed often stop, it must be possible for the stopped vehicle to safely take off. This will require a short section of a much flatter grade – usually of the order of 2.5 per cent.

Vertical Curves

Vertical Curves are used to join two vertical grades in a road. Parabolic curves, rather than fixed radius curves, are normally used in the case of vertical curves and which are consequently transitional in nature. The vertical curve is expressed as a length, which length is obtained by rounding up the algebraic differences between grades multiplied by a constant, which depends on the design speed of the road as explained below. The length of the vertical curve ideally should be increased beyond the minimum based on the constant, however in so extending sightlines should be checked to ensure

adequate visibility is still maintained. Unlike horizontal curves, vertical curves may abut one another and commonly so do.

The constant used with crest or camber vertical curve length calculation is based on design criteria ensuring a safe stopping sight distance for the particular design speed for the road.

In the case of sag vertical curves, i.e. in a dip, the length of vertical curve is not as critical as it is in the case of crests curves. Headlight illumination of the road at night, and comfort while travelling, are the main determination considerations for fixing the constant for the calculation of the length of the sag curve.

Much reduced constants may be used at the intersections of roads where the ultimate criteria are to ensure negotiability by vehicles and sight distance through the intersection.

Stopping & Intersection Sight Distances

Stopping sight distance (SSD) is the distance it will take a driver seated in a car (driver eye height of 1.05 metres) to see a stationary object lying on the road (height of 0.15 metres), to assimilate the fact and to come to a safe stop at the particular design speed of the road in wet conditions.

Intersection Sight Distance (ISD) (previously known as Shoulder Sight Distance) is the distance required for a driver of a car on a minor road entering an intersection to evaluate whether it is safe to cross or enter the opposing stream of traffic and then to carry out the maneuvers necessary either to join or to cross the opposing traffic streams. It is distance required within the quadrants of an intersection to safely allow turning and crossing movements.

Pedestrian Routes

Road design tends to dominate township layouts and development plans, furthermore inadequate thought is sometimes given by the designer to pedestrian movements. Pedestrian movements should be high on the agenda in the design process and suitable pedestrian routes established radiating out from and interlinking the nodes, i.e. the educational and commercial facilities. These routes should preferably be more direct than the road system to encourage their use and be separated from it as far as possible, certainly from the more highly trafficked roads. Ideally the pedestrian routes will maximise the use and enjoyment of the open space system.

RAILWAY DESIGN STANDARDS

The design of railway systems is a specialised task that planners do not normally become involved with, however they may be called upon to design an industrial township that contains a private siding and some understanding is accordingly required. This design would normally be undertaken for an assumed electrified line with a 1.065 metre gauge.

Very succinctly, railway lines are broken down into running lines (greater than 1 kilometre in length), shunting lines and staging lines where trucks are staged and loading and unloading occurs. Critical factors to consider include the necessary overhead and lateral clearances, maximum track grades (1:50, 1:150 and 1:400 respectively), the minimum horizontal curvature radii (140 metres or 100 metres in special circumstances), turnouts (usually 1:9), and the spacing of multiple track centres (which varies from 4 to 5.5 metres). Where flammable liquids are to be handled on tracks, their centre line has to be at increased distances from locomotive traversed tracks or boundaries (up to 15 metres).

GENERAL PLANNING STANDARDS

While it is not intended to go into any great detail on the general applicable standards that need to be considered in designing a township, particularly as they are anything but standard, perhaps it is desirable to mention some of the more important land uses requiring the establishment of the relevant standard before embarking on a major township layout and provide some comment.

- **Education** – may be broken down into classes of schools, e.g. pre-primary, junior primary, senior primary, high, etc. Usually quoted as the number of schools required per number of units. The minimum areas required for the different type of schools are specified and are usually based on achieving certain minimum building envelopes and sports field configurations.

  A current difficulty is that the education authorities while now all under one department, have been focusing on addressing historical backlogs, and little thought seems to have been given to matching the concurrent growth in the residential market and at least acquiring new school sites in parallel. Consequently the private sector appears by default to have been tasked with seeking out school sites and building new schools. Furthermore existing schools have had to increase their number of classrooms and learners far beyond what were originally envisaged, effectively changing the de facto standard!

- **Public Open Space** – traditionally open space has been broken down into playlots, active open space and passive open space. Usually quoted as hectares per projected 1000 population. Standards originally set on the Berea District of Durban, based on overseas standards, where subsequently reduced, notwithstanding this still led to large areas being required for open space in the Umgeni South District where densities were to be increased. Much of this proposed open space was subsequently dropped following massive objections when the town planning scheme was advertised. Passive open space areas in the past were often viewed as undevelopable land of little value other than for their visual worth and disparagingly referred to as "monkey country". Today they are seen as a valuable resource in providing environmental resources for the established areas!

- **Shopping** – Empirical studies were used as base data for establishing shopping standards in the early Durban town planning schemes, which reflected different requirements for different economic areas. These empirical figures were then increased to allow for future growth and rounded up. Shopping has however undergone a revolution since then with much greater decentralisation from the central business district than originally imagined. Further, the disposable income of people across all sectors has increased considerably. In fact the projected disposable income of the primary catchment area is today perhaps a better tool on which to establish standards.

- **Places of Worship** – usually quoted as a factor of the number of units. Some areas however have a great variety of different religious sects, albeit of the same basic religion, consequently sites demand has sometimes not been adequate. Also taken up sites are not always utilised due to lack of funds by some sects, which has caused frustration by those seeking to establish places of worship, with the funds and unable to obtain a site. It is essential, when setting the site size, that apart from the building envelope that consideration is given to adequate off-street parking if the primary mode of transport of worshipers is likely to be private motor vehicles.

- **Crèches** – usually quoted as a factor of number of units. It is essential, when setting the site size, that apart from the building envelope that consideration is given to adequate off-street off loading and collection of learners if the primary mode of transport is likely to be private motor vehicles.

- **Community Halls**– usually quoted as a factor of number of units. It is essential, when setting the site size, that apart from the building envelope that consideration is given to adequate off-street parking if the primary mode of transport is likely to be private motor vehicles.

CHAPTER XVII

TOWNSHIP ESTABLISHMENT

Conditions of Establishment/Grant of Application

When approval for a new township is granted, it is normally subject to a series of conditions that have to be met prior to it being possible to transfer the new erven to the future owners. In the case of the model provincial conditions of establishment, the conditions are split into three sections covering general items, township services and conditions that need to be contained in the future title deeds. Conditions issued by the eThekwini Municipality in terms of its subdivisional by-laws follow a different format and are more succinct, but effectively fulfil the same requirements.

General Conditions (A)

The general conditions and advices that need to be complied with or necessary certificates that need to be obtained before a township may be proclaimed by the Minister (or declared in the case of a minor township) include the township name, fees to be paid, designations of the erven, geotechnical report, in principle availability of water, in principle availability of sewer reticulation (if this is the proposed method of disposal), consolidation of components (if any), town planning compliance and/or amendment of the town planning scheme (if applicable), establishment of a Home Owners Association and/or Section 21 company (if applicable), lodging and approval of the General Plan with the Surveyor General, opening of the township register with the Register of Deeds, advice that the future erven may not be build on or sold without the prior approval of the Minister, etc.

Services Conditions (B)

The service conditions generally have to be fully complied with on the ground, i.e. services installed, only after which it is possible to obtain a so-called Section 28(1) or township completion certificate from the Minister, and without which certificate the Register of Deeds will not process any transfer of land that may be lodged with him by the conveyancers. The service conditions for which individual certificates of compliance from the respective service authorities have to be obtained include, roads, storm water, sewage, lights, water, telephones (Telkom), refuse services, demolition of unauthorised buildings (if any) and clearance from boundaries, completion of external road works to satisfaction of the transport authorities (if applicable).

A Section 28(1) Certificate relates to certificate that needs to be obtained from the Minister in terms of Section 28(1) of the Town Planning Ordinance No 27 of 1949, as amended, prior to which transfer of erven may not occur. In the case of the erstwhile City of Durban the equivalent certificate is issued in terms of Section 148(2) of the Durban Extended Powers Consolidated Ordinance No 18 of 1976, as amended.

Title Deed Conditions (C)

These are conditions that generally need to be transcribed into the future title deeds by the conveyancers and include specific and/or omnibus servitudes for the deposition on or removal of material on erven adjacent to roads, sewers, water pipelines, electricity cable, Telkom lines, conservation servitudes, land use limitations on specific erven, erven designated Public Place or Road and which to be transferred to the local authority simultaneously with the first other transfer, erven to be transferred to the Home Owners Association (if applicable).

Endowment

The Conditions of Establishment would also include any requirements for an endowment or development contribution levy. Proof of compliance would have to be obtained before the certificate to enable transfer of erven to occur could be obtained. The Durban subdivisional bylaws provide for a 5 - 10 per cent endowment in terms of Section 16(1) of the Subdivision of Land and New Street Bylaws to finance the provision of open space while residential townships in the Outer West are subject to a R10 000 per additional site development contribution levy imposed in terms of Section 16(k) of the Town Planning Ordinance. This is with a view of financing towards the road infrastructure upgrade of that area and for environmental services.

The development contribution levy was in June 2007 being reviewed with a view to increasing it and/or extending it citywide across the eThekwini Municipality.

Services Agreement

Service Agreements are not usually required in KwaZulu-Natal other than in the case of Development Facilitation Act land development applications. This is a detailed agreement that must be signed by both the developer and the local authority/service provider. It identifies exactly what services will be provided, and under what conditions, and the respective responsibilities are.

Services Installations

The various service requirements have to be complied with under the supervision of an engineer.

- The local authority would have to issue certificates to the effect that to their satisfaction: -

    (i) Roads and Storm water have been constructed
    (ii) Water had been installed (the local authority may in fact carry this out)
    (iii) Electricity was available at normal service distances

- Telkom would have to issue a certificate stating that any necessary deviations/relaying of cables/moving of poles had been effected.

- The KwaZulu-Natal Department of Transport would, if applicable, have to issue a certificate to the effect that all connecting road works into their system had been completed to its satisfaction.

General Plan Lodgement and Approval - Surveyor General

A General Plan is plan showing final surveyed dimensions, directions and areas of all erven within a township. In the case of full townships and larger exemption townships, the land surveyor would, following the receipt of the conditions of establishment, prepare a draft general plan showing all the sites in the township, beacon the township in accordance with the plan, modify the general plan if necessary and then lodge it with the Surveyor General. The surveyor General would after examining the plan and checking the submitted calculations etc. approve the plan and notify the Minister. A copy of the approved plan would be then lodged with the local authority for its records.

The Surveyor General will accept General Plans in respect of exemptions townships as low as 20 to 5 erven, provided that the drafter of the conditions of establishment has framed them accordingly.

Note: If the Minister was to approve building on or selling of erven in terms of Section 36(1)&(2), i.e. prior to a Section 28(1) township completion certificate being issued, he would normally require that the township had first been beaconed. The lodgement of the general plan with the Surveyor General would accordingly accord with this situation and would enable far more realistic assessment of potential by prospective purchasers or builders as they could observe the erven on the ground.

Survey Diagram Lodgement and Approval - Surveyor General

Alternatively to preparing a General Plan, individual Survey Diagrams for each of the respective new erven are prepared in the case of minor exemption townships. These diagrams collectively fulfil exactly the same role and function as a General Plan as outlined above.

Opening of the Township Register - Registrar of Deeds

The Register of Deeds, once he has received the final Conditions of Establishment and a copy of the approved General Plan or the individual Survey Diagrams, is in a position to open the Township Register. He may however still not at this stage effect transfer of individual erven!

Township Completion Certificate S28/R(TE)28

The final Conditions of Title stipulate a number of actions that have to be completed and/or lists certificates that have to be obtained from the service authorities that such actions have been completed to their satisfaction (for the entire township or portion thereof). When all such actions required in the "A" conditions have been completed the Minister may proclaim or declare the township, as the case may be, in the provincial gazette as an approved township.). When all such actions required in the "B" conditions have been completed, the Minister will issue a certificate for the entire township, or the serviced portion thereof, to the effect that the township has been approved and that the Register of Deeds may transfer the designated serviced sites. This township completion certificate for the serviced sites is referred to as a Section 28(1) certificate in the case of the Natal Town Planning Ordinance No 27 of 1949, as amended.

In the event that the township was only partially serviced and a Section 28(1) certificate was issued for the partially serviced portion, on the eventual servicing of the then un-serviced portion(s), further service certificates from the service authorities and ultimately a further Section 28(1) certificate(s) will be required.

In the case of the erstwhile City of Durban the equivalent township completion certificate is issued in terms of Section 148(2) of the Durban Extended Powers Consolidated Ordinance No 18 of 1976, as amended.

Vesting of Public Land in Authorities

Commonly the conditions of establishment stipulate that on the transfer of the first site or sites in a township that any land designated for a public authority *viz.* the local authority shall be vested in the local authority. The Register of

Deeds will accordingly with the first transfer of land record in the Township Register the owner of designated land as being the local authority.

Transfer of Erven

The Register of Deeds, after checking, processes transfers of land following the lodgement with him by conveyancers of the original township completion Section 28(1) certificate together with the respective draft title deeds prepared by the conveyancers. The conveyancers will have carried forward in the draft title deeds any restrictions contained in the original title deeds of the parent site after first excluding restrictions or conditions that have not been specifically identified in terms of the Abolition of Certain Title Conditions Act No 43 of 1999 e.g. racially offensive or exclusion provisions, and having added new restrictions as stipulated in the final Conditions of Establishment under Section C or equivalent.

Amendment of General Plan S38

Following the proclamation or declaration of a township it is still possible to cancel or amend the township. This however involves a fresh application being made initially to the Surveyor General to cancel or amend the General Plan as provided for in terms of Section 30(2) of the Land Survey Act No 9 of 1927 read with Section 38 of the Town Planning Ordinance No 27 of 1949.

Prior to the conclusion of the new process, any public place or roads that have been vested in the local authority will have to be closed as required in terms of Section 211(2)(j) of the Local Authorities Ordinance No 25 of 1974 and revested in the original owner.

The Surveyor General, after initial processing of the application, will forward it to the provincial Minister (not the national Minister of Land Affairs) for further processing. As before the Minister will prepare draft conditions of establishment. However, these conditions on receipt are then required to be acted upon as final conditions of establishment.

Servitudes

A variety of types of servitudes may be created either by survey or by description, including the following: -

- Sewer & Drain Servitude – A specifically surveyed servitude to convey sewage in either a drain (a sewer pipe on a private property) or a sewer pipe forming part of the general reticulation.

- Storm water Servitude – A specifically surveyed servitude to convey storm water in a pipe.
- Electricity Servitude – A specifically surveyed servitude in which to bury electrical cables.
- Omnibus Servitude – a general un-surveyed servitude usually a specific distance from a boundary in which any or all services could be conveyed, buried or placed. Disliked in some quarters as often unutilised; consequently building relaxations may be given ignorant of the fact that services may unknowingly be located within the servitude.
- Environmental / Conservation Servitude – a servitude expressly set aside to protect land on which something of environmental, geological, cultural or heritage value is located and which is deemed worthy of conservation. The servitude is normally in favour of the local authority with the owner only allowed to enjoy its use in its unaltered state. Any changes to the state only being allowed following receipt of local authority approval.
- Non Building Servitude – A servitude in favour of another property prohibiting the erection of a building over the servitude. An original owner, protecting a view over a new subdivision he creates on the parent erf, may use this form of servitude.
- Exclusive Use Servitude – A servitude in favour of a sectional title unit granting the exclusive use to the owner of the sectional title unit to use a designated portion the common property as his own. No right to build over the servitude area is conferred! The servitude may or may not be beaconed.
- Right-of-Way Servitude – This is a servitude over one site in favour of another site with a view to enabling vehicular or pedestrian access. Reciprocal Right-of-way servitudes are sometimes established over two adjacent access strips of panhandle sites with a view to them both enjoying a common access way. This common access way concept may be taken further by making the rights-of-way also in favour of the sites flanking the access strips, i.e. the latter sites would not take direct access off the fronting road.

CHAPTER XVIII

TOWN PLANNING AUTHORITIES & BODIES

The following contact details are provided. Please note that the details may vary from time to time and no responsibility may be accepted for such changes. Note where available both the street and postal address has been provided. Obviously, both should not be used in correspondence!

National Departments

The Surveyor General

Private Box X 396
Pietermaritzburg 3200
Tel: 033-355-2900
CDWilliwyn@lg0331.kzntl.gov.za

The Register of Deeds

Private Bag X 9028
Pietermaritzburg 3200
Tel: 033-355-6836
registrarPMB@dla.gov.za

Department of Land Affairs

Private Bag X 833
184 Jan Mare Street
Pretoria 0001
Tel: 012-312-8911
Fax: 012-312-8066

Department of Provincial & Local Government

Private Bag X 804
87 Hamilton Street
Arcadia
Pretoria 0001
Tel: 012-334-0600
Fax: 012-334-0603/4

Provincial Departments

MEC for Local Government, Housing & Traditional Affairs

(Minister Michael Mabuyakhulu)
Private Bag X 54367
Durban 4000
Tel: 031-336-5321
Fax: 031-368-1725
http://www.kznhousing.gov.za
http://www.dtlga.kzntl.gov.za

Director Planning & Development

Local Government and Traditional Affairs
Private Bag X 54310
Mayville
Durban 4000
Tel: 031-204-1711

Provincial Planning & Development Commission

11 Floor Natalia
330 Langebelile (Longmarket) Street
Private Bag X 9038
Pietermaritzburg 3200
Tel: 033-395-3067
Tel: 033-395-2111 General Switchboard
ppdc@tlga.kzntl.gov.za

Town Planning Appeals Board

Room 21 & 23,
Southern Life Plaza
271 Church Street,
Pietermaritzburg 3201
Private Bag X9123,
Pietermaritzburg 3200
Tel: 033-355-6244
Tel: 033-355-6100 General Switchboard
Fax: 033-355-6106
jungmohv@tlga.kzntl.gov.za

Private Townships Board

Private Bag X9018
Pietermaritzburg 3200
Tel: 033-395-2111 General Switchboard

Assistant Director: Land Administration

Local Government and Traditional Affairs
Private Bag X 54310
Mayville
Durban 4000
Tel: 031-204-1711

Local Authority Departments & Area Offices

Head: Development Planning Environment & Management
166 Old Fort Road
Durban
4001
PO Box 680
Durban 4000
Tel: 031-311-1111

Hillcrest Area Office
Regional Coordinator: Land Use Management
Development Planning Environment & Management
21 Delamore Road
Hillcrest 3610
PO Box 36
Kloof 3640
Tel: 031-311-1111

Illovu Area Office
Regional Coordinator: Land Use Management
Development Planning Environment & Management
(Old Illovu Sugar Mill)
Liberty Road (off Wesley Road)
Off Old Main Road/MR 197
Illovu South
Tel: 031-311-1111

Pinetown Area Office
Regional Coordinator: Land Use Management
Development Planning Environment & Management
Club Lane
Pinetown 3601
Tel: 031-311-1111

Umhlanga Area Office
Regional Coordinator: Land Use Management
Development Planning Environment & Management
Lagoon Drive
Umhlanga
Tel: 031-311-1111

Development Tribunal

The Tribunal Registrar
Private Bag X 9123
Pietermaritzburg 3200
Southern Life Plaza
271 Church Street
Pietermaritzburg 3200
Tel: 033-355-6562
Tel: 033-355-6100 General Switchboard
Fax: 033-355-6292

Development Appeals Tribunal
Southern Life Plaza, Rooms 21 & 23,
271 Church Street,
Pietermaritzburg 3201
Private Bag X9123,
Pietermaritzburg 3200
Tel: 033-355-6244
Tel: 033-355-6100 General Switchboard
Fax: 033-355-6106
jungmohv@tlga.kzntl.gov.za

TOWN PLANNING CONSULTANTS

The below alphabetical list of town planning consultants operating in the greater Durban and Pietermaritzburg area is not necessarily fully inclusive or up to date! No endorsement or recommendation of any company, association or individual is implied by inclusion below.

Celeste Stretch
Christine Platt
Clair Norton
Duckworth Elliot Associates
FutureWorks!
Henry Msinga & Associates
Iyer Rothaug Associates
Lang Hooyberg-Smuts Associates
Maleke Luthuli Development Planners
Maseko Hlonga & Associates
Ndebele Kirby Planners
Neil Klug
Peter Jewel
Planning Initiative
Rod Jolly
SiVest Selatile Moloi
Terraplan
Vincent Leggo Associates
Vines Mikula Associates
Zu Designs

LAND SURVEYORS

While customarily it may be expected that town planners will undertake all town planning related work, in fact land surveyors have traditionally prepared township layouts, both large and small, and are in fact responsible for the majority of smaller townships submitted for approval to local authorities. In more recent times a number of practices have prepared rezoning and various types of multi-unit applications where there has tended to be an overlap in the work.

The following list contains land surveyors or practices operating in greater Durban and Pietermaritzburg and is not necessarily fully inclusive or up to date!. No endorsement or recommendation is implied by inclusion below.

Button & O'Connor
Chris Krause
Douglas Cook
John Watt
Kim de Villiers
Laurence Ausmeier
LD Baker
Manning Hoffmann
McCann & O'Neil
Moloi & Miller
Stan Gibson
Symington Trench & Geyser
Tarboton Holder Ross
Visick & Moodie

PROFESSIONAL BODIES – PAST & PRESENT

South African Council for Town and Regional Planners

Renamed to South African Council for Planners (SACPLAN) in 2004.

South African Institute of Town and Regional Planners

No longer operative – since 1996 falls under the auspices of the SAPI

Development Planning Association of South Africa

No longer operative – since 1996 falls under the auspices of the SAPI

South African Council for Planners

International Business Gateway Park
Cnr. New Road & 6th Street
Midridge Office Park
1st Floor
PO Box 1084
Halfway House
Midrand 1685
Tel: 011-318-0460
Fax: 011-318-0405
planner@sacplan.co.za
http://www.saplanners.org.za/

South African Planning Institute

10 Fairbairn Street
Rynfield
Benoni
PO Box 12381
Benoryn 1504
Tel: 011-425-4502
Fax: 011-425-4502
sapi@worldonline.co.za
http://www.saplanners.org.za/new/homepage.htm

Association of Consulting Town and Regional Planners of South Africa *(North Region including KwaZulu-Natal)*

P O Box 36086
Menlo Park 0102
Tel (012) 362 1741 (Peter Dacomb)
Fax (012) 362 0983

http://www.saplanners.org.za/

KwaZulu-Natal Association of Architects Planners Engineers and Surveyors

C/O WSP Walmsley Environmental Consultants
27-29 Jan Hofmeyr Road
Westville 3629
PO Box 1442
Westville 3630
Tel: 240-8860
Fax: 240-8861
wspwd@wspgroup.co.za

Royal Town Planning Institute

41 Botolph Lane
London EC3R 8DL
United Kingdom
Tel: +44-207-929 -9494
Fax: +44-207-929-9490
http://www.rtpi.org.uk/

Commonwealth Association of Planners

C/O Royal Town Planning Institute in Scotland
57 Melville Street
Edinburgh EH3 7HL
United Kingdom
Tel: +44 131 226 1959
Fax: +44 131 226 1909
email: annette.odonnell@rtpi.org.uk
http://www.commonwealth-planners.org

USEFUL CONTACTS

MEC for Agriculture and Environmental Affairs (Environmental Appeals)

Minister ME Mthimkhulu
Ministry of Agriculture and Environmental Affairs
PO Box 2132
Durban 4000
Tel: 031-368-2223
Fax: 031-368-1601

KZN Agriculture and Environmental Affairs (Environmental Management)

Private Bag X 6005
Hilton 3245
Tel: 033-343-8300
Fax: 033-343-8470

KZN Agriculture and Environmental Affairs (Durban)

Private Bag X006
Bishopsgate
Durban 4008
Tel: 031-361-2669

Ingonyama Trust Board

Chairman (Acting): Judge Jerome Ngwenya
Ingonyama Trust Board Secretariat**:** Chris Aitkin
PO Box 601
Pietermaritzburg 3200
Tel: 033-355-4300
Fax: 033-342-5045
itb@dla.gov.za
Land Surveyor: Rob Queripal –033-355-4361

South African Council for the Architectural Profession

Private Bag X 02
Randpark Ridge 2156
Randpark Ridge Office Park, Block 5
Ateljee Street
Randpark Ridge
Randburg
Tel: 011-794-8333
Fax: 011-794-8380/8339
admin@sacapsa.com; nita@sacapsa.com
http://www.sacapsa.com

Department of Water Affairs & Forestry

Southern Life House
88 Field Street
Durban
PO Box 1018
Durban 4000
Tel: 031-336-2760
Fax: 031-305-9915

Occutech

Occupational Health and Safety (Noise Investigations)
121 Chelmsford Road
Glenwood
Durban 4001
Tel: 031-206-1244
Cell: 083-625-2914: Harold Glaze
occutech@global.co.za

ACKNOWLEDGEMENTS

Helpful comments, suggestions, assistance and corrections from the following parties are acknowledged with much appreciation:

Chris Krause – Chris Krause Land Surveyors
Dr Tim Francis - Chief Engineering Geologist, eThekwini Municipality
Kevin Suzor - Assistant Director: Land Administration, KZN DLGTA
Lilian Develing – CONOMIRRA
Rick Millard – Millard Consulting

John A Forbes

REFERENCES

1949, *Town Planning Ordinance* No 27 of 1949

1970, Durban City Engineer's Department, *Guidelines for the Design of Roads in Suburban Townships*, unpublished draft document

1983, Department of Community Development, *Guidelines for the Provisions of Engineering Services in Residential Townships*, CSIR, Pretoria (Blue Book)

1984, National Building Research Institute, *Sanitation Systems*, NBRI Information Sheet X-Bou 2-67, CSIR, Pretoria.

1985, eThekwini Transport Authority, *Schedule of Guiding Rules for Off-Street Parking Facilities,* unpublished internal document

1987, Department of Development Aid, *Towards Guidelines for Services and Amenities in Developing Communities*, CSIR, Pretoria (Green Book).

1991, *Less Formal Township Establishment Act* No 113 of 1991

1992, KwaZulu Land Affairs Act No 11 of 1992

1994, National Housing Board, *Guidelines for Engineering Services and Amenities in Residential Township Development*, CSIR, Pretoria (Red Book)

1994, *KwaZulu Land Affairs (Township Establishment) Regulations* GN 29 of 1994

1994, *KwaZulu Land Affairs (Town Planning) Regulations,* GN 30 of 1994

1995, *Development Facilitation Act* No 67 of 1995

2002, *Land Use Management Bill*

2007, Koopman, A, *The Names and the Naming of Durban*, Internet paper

INDEX