



# Vuthela SPARK

IGNITING INCLUSIVE ECONOMIC DEVELOPMENT IN ILEMBE

## Developmental impacts of business forums and possible solutions

In-depth look at business forums in South Africa and the iLembe district

02



## Plans afoot for improved recycling of e-waste in iLembe

Challenges and solutions for disposal of waste electronic and electrical equipment in the district

03

## Keeping water services on stream

Siza Water Concession review for sustainability



04

## iLembe municipalities will be able to deliver even during disruptions

Business Continuity Plans for the family of municipalities within iLembe district almost ready for validation

05

## Title deed issuance in low-income areas - complex problems exposed

Recent pilot studies on addressing title land administration challenges, and potential solutions in the iLembe district



06

## Editorial: Focus on (re)-building systems for stability and growth

**W**hile we are bombarded daily by more bad news and setbacks, it is important not to be discouraged by events, but to focus on the slow and steady work of (re)-building systems and processes that can provide stability, certainty and forward momentum for inclusive growth and a better future for everyone in the iLembe district.

In this *Vuthela Spark* we cover a range of issues including business continuity in municipalities, dealing with electronic waste, business forums, the work that the Vuthela iLembe LED Support Programme is doing with the water delivery Public-Private-Partnership (PPP) concession, Siza Water, and improving the system of land titling for local-income families.

What happens to municipalities and their delivery of critical services when disruptive incidents occur such as when government announced stringent restrictions on 26 March 2020 when South Africa entered Alert Level 5 Lockdown as part of government's Covid-19 Risk-Adjusted Strategy?

Having business continuity plans in place assists organisations as well as businesses to keep delivering services at predefined levels when such incidents occur.

### What happens to municipalities and their delivery of critical services when disruptive incidents occur?


In this *Vuthela Spark* we look at the work being done with the iLembe family of municipalities to develop these business continuity plans.

We also look at some of the challenges being experienced by iLembe municipalities in implementing the law which came into effect in August 2021 banning electronic waste from going to landfill sites, requiring that it must rather be diverted and recycled. We look at a possible partnership in iLembe to increase the volumes of Waste from Electrical and Electronic Equipment Recycling (WEEE) that are collected and further treated in the region.

The issue of business forums and their impact on both public and private infrastructure development projects is receiving local, provincial, and national government attention. The iLembe district hasn't been spared these site invasions and disruptions which undermine business and investment confidence.

We look at this challenge, trying to understand opportunities to ensure local communities benefit in a legally compliant manner.

The Vuthela Programme has also been providing technical assistance to the iLembe district and Siza Water in the review of the concession contract, which is due to expire in seven years. This *Spark* looks at what this assistance includes.

It is estimated that only 30% of property that is sold in South Africa is done through formal processes resulting in title deed handover. There is also a massive title deed backlog in low-income areas. How can this be eradicated? We look at key lessons learnt in the iLembe property registration project seeking to make it easier for low-income households to get their title deeds. 

**It is estimated that only 30% of property that is sold in South Africa is done through formal processes resulting in title deed handover.**

The Vuthela team requests your assistance in assessing the impact, relevance and effectiveness of the Vuthela iLembe LED Support Programme, and your thoughts on the *Vuthela Spark* newsletter.

Please click on this link to access the short five minute, confidential survey: <https://www.surveymonkey.com/r/Vuthela>



# Developmental impacts of business forums and counter initiatives

The disruption of construction projects in the iLembe District Municipality by groups seeking an illegitimate share of projects is part of a national trend that is inhibiting private and public infrastructure development throughout South Africa.

From the Premier of the Province to the President of the Republic, from construction companies to Chambers of Commerce, and from parliamentarians to law enforcers comes increasing concern about the extortionist activities of so-called “business forums”.

Some of these forums use strong-arm tactics and demand up to 30% of the work or contractual costs for private and public development projects - on threat of disruption.

The impact on infrastructure development and overall economic growth raises the question of what is being done, and what can be done, to ensure that development projects stay on schedule. How can the legitimate aspirations of local communities to benefit from developments in their vicinity be fulfilled in legally compliant and socially acceptable ways?



## Business forums: impacts of site disruptions spread far and wide

The activities and tactics of many of these self-constituted pressure groups, known widely as “business forums”, are putting local and national development plans, economic growth, investor confidence and the future of the construction sector at serious risk.

In 2019, at least 183 infrastructure and construction projects worth more than R63 billion were affected by illegal disruptions across the country. The escalating damage to the economy has prompted President Cyril Ramaphosa to announce urgent steps to counter these illegal activities earlier this year. But continuing disruptions in many municipalities in KwaZulu-Natal, and in other provinces, indicates that the disruptive tactics continue to hamper both private and public infrastructure development.

### Disruptions in iLembe

The iLembe Chamber of Commerce, Industry and Tourism and officials at Mandeni Local Municipality have confirmed that projects in the area have been disrupted by the activities of business forums.

“The iLembe region is not escaping the disruption caused by business forums, which is not limited to construction sites, but also business operations that involve third party contracts,” said the Chamber’s CEO Cobus Oelefse.

“The KZN Provincial Government’s stance on the matter is clear. In 2018, the Provincial Legislature passed a



Cobus Oelefse, CEO of iLembe Chamber of Commerce, Industry and Tourism

motion acknowledging the disruptive actions of organised groups and calling on government not to allow ‘mafia-like tactics’, including ‘blackmail, intimidation, and extortion for the enrichment of a few’,” added Oelefse.

Mandeni Municipal Manager, Sizwe Khuzwayo confirmed that some forums were using illegitimate tactics: “Most of these forums drive their own agenda and find it easy to deviate from legitimate processes.”

Khuzwayo points out a range of options to help communities benefit from local projects in legitimate ways: “Those forums that have organised themselves can work closely with municipalities or government to understand the policy approach towards SMME development,” he said, offering many constructive insights into initiatives that could help to resolve tensions.



Sizwe Khuzwayo, Mandeni Municipal Manager

The challenges described at Mandeni, their impacts and the options for bringing communities into local development projects are issues that have been playing out at construction sites, boardrooms and municipalities across the country since the invasion of construction sites began in KwaZulu-Natal around 2015.

This year the Bargaining Council for the Civil Engineering Industry made the current national situation public in a startling statement: **the problem of intimidation, extortion and violence on construction sites had reached “crisis levels”**, warned the Council.

Many pressure groups and business forums were using threatening tactics and disrupting site operations when construction companies refused to accede to demands for a share of the project’s value - in jobs, contracts or cash. The government’s response to such groups indicates the extent of the problem and its far-reaching implications for development and investment throughout South Africa.

In March this year President Ramaphosa told parliament that the South African Police Services would establish a special unit to address the disruption at construction sites.

By June the KwaZulu-Natal Provincial Commissioner announced that a provincial task team had been established to deal with the disruption of projects in the province. The work of the task team was kept under wraps, but the high number of disruptions at construction sites in the province and their devastating economic impact suggested that the team’s intervention would be swift.

But in September the MEC for Economic Development and Tourism in KwaZulu-Natal, Siboniso Duma, indicated that **the concerns of all businesses – including small, medium and large enterprises – who were hit by the impact of pressure groups had not abated.**

### Legitimate cause

Duma said that these groups may have a legitimate cause in calling for local empowerment and economic transformation, but the use of “intimidation, lawlessness and violation of rights and property” was unacceptable and would be dealt with by the law. At the same time, Duma opened a door for engagement with anyone who was genuinely looking for economic opportunities and was willing to conduct themselves within the law.

In October Public Works and Infrastructure Minister Patricia de Lille said that the demands of some pressure groups to be part of the projects as local contractors had an impact on the department’s ability to deliver public infrastructure projects efficiently.

“Sometimes their demands are outrageous,” Minister de Lille told a briefing in Parliament. “They demand to be allocated 30% of the project. They demand that the 30% is in terms of the preferential procurement regulations of 2017 and they also **blackmail constructors and professionals on the site by demanding money under the guise of a protection fee before the construction and the work can begin.** These interferences have severely affected construction activities.”

In November Durban Chamber of Commerce and Industry CEO Palesa Phili confirmed on a national television broadcast: “We have a serious problem of business forums who intimidate businesses.” Phili said construction companies were being targeted, and some forums were visiting other companies and demanding to see their list of suppliers.

continued on page 07 ▶



# Plans afoot for improved recycling of e-waste in iLembe

While the iLembe municipalities have developed plans to improve waste management, there are significant challenges around disposal of waste electronic and electrical equipment (WEEE) in the district, writes Paul Jones, Director of Lumec and Local Coordinator for the Sustainable Recycling Industries (SRI) iLembe local project component.



**O**n 23 August 2021, waste electronic and electrical equipment (WEEE), better known as e-waste, was banned from being accepted at landfills in South Africa.

In addition to the previous bans of lead acid batteries and lighting waste (such as spent fluorescent lamps) to landfill, this means that all types of WEEE must now be diverted from landfill and instead collected and recovered by licensed companies.

Although this ban has been enacted by the National Department of Forestry, Fisheries and Environment, there is limited awareness and a lack of understanding about the implications of the recent landfill ban, particularly by local government, small businesses, and households.

The United Nations defines e-waste as any discarded product with a battery or plug, and features toxic and hazardous substances such as mercury, that can pose severe risk to human and environmental health. This includes household appliances, ICT equipment, consumer electronics, lighting equipment, electrical and electronic tools and machinery, security and healthcare equipment, and batteries.

The SRI South African project seeks to “contribute to favourable framework conditions that enable the development of a sustainable recycling industry for waste electrical and electronic equipment (WEEE)”.

Falling under the Vuthela iLembe LED Support Programme, SRI also has a local component which is currently being implemented in iLembe. Local research has highlighted that little has been done in iLembe to comply with the WEEE ban; local policies and by-laws have not been scrutinised to ensure alignment with this ban, and limited WEEE collection and disposal options are available to avoid sending WEEE to landfill, especially for households and small businesses.

## Current WEEE landscape

The WEEE value chain starts with the production of electrical and electronic equipment (EEE), which when

sold to the consumer market and after its useful lifespan, ends up as WEEE.

Among households (and small businesses), there is limited education and awareness around disposal of WEEE in iLembe. This is made worse by the fact that only a third of all households in iLembe receive a weekly waste collection service, and almost half use their ‘own refuse dump’. As a result, WEEE either ends up being stockpiled, ends up going directly to landfill as part of the municipal waste collection service, or is dumped illegally. The landfill ban necessitates that WEEE needs to be diverted from the municipal waste stream.

Unlike households, WEEE generated by larger businesses and institutions is generally well recovered. WEEE is either passed on

directly to those who process for material recovery and/or refurbish WEEE (i.e. recyclers), or first to formal collectors (i.e. waste management companies) and then to recyclers. These strong business-to-business relationships ensure that large volumes of WEEE are being diverted from landfill. However, recyclers have indicated that one of the biggest challenges they face is access to WEEE volumes due to limited collection, especially from households. Additionally, government WEEE stockpiles are blocked from being released due to asset management policies.

The iLembe area is well represented with formal WEEE recyclers including Indalo, RecycleX and Reclite. Although these companies vary in size and function, collectively they allow for WEEE in iLembe to be dismantled, pre-processed and/or refurbished. All recyclers do some form of dismantling, where materials are separated and then consolidated and sold to scrap dealers and plastic recyclers or exported to global recycling markets. Some pre-processing takes place, where complex WEEE components are processed (i.e. crushed), separated from each other and consolidated, and mainly exported for processing at smelters in global markets where technology is available to do complex processing of printed circuit boards, for example.

## Policy environment

Within South Africa, district municipalities are responsible for the management of landfills while local municipalities are responsible for collection and disposal of waste and diverting recyclable waste materials from landfill. As part of these responsibilities, local governments are required to promote recycling (including separation at source interventions), create public awareness, and facilitate local solutions for the public such as drop-off centres. Additionally, local government is also responsible for the development and enforcement of local by-laws.

The iLembe District Municipality and all four local municipalities have developed Integrated Waste



Paul Jones, Director of Lumec and Local Coordinator for the Sustainable Recycling Industries (SRI) iLembe local project component

## After its useful lifespan, electrical and electronic equipment (EEE) ends up as waste electrical and electronic equipment (WEEE)

Management Plans (IWMPs) which aim to assist, sustain and improve waste management in the district, and include strategies on how to collect, minimise, re-use, recycle and recover waste, and how waste should be treated and disposed of. Integrated Waste Management By-Laws also exist which provide regulations for waste management services such as collection and removal of waste, operation of garden sites, minimum management obligations for hazardous and industrial waste, and encourage recycling of waste.

Within all the IWMPs, there is however limited information or data on WEEE volumes or specific initiatives to support the WEEE industry. While most of the by-laws provide a framework for collection, recovery, recycling and disposal of waste in general, they do not make any specific reference to WEEE. In addition, capacity to enforce by-laws has been raised as a major challenge. As such, there is a lack of guidance and enforcement from local government around the correct disposal of WEEE which results in WEEE either being stockpiled or landfilled.

## Possible solutions

Given the ban of WEEE from landfill, new solutions for WEEE management are required. Firstly, it is important that local government creates a conducive policy environment, enforces waste management by-laws, and promotes the enhanced collection of WEEE in the district. By-laws must be revised to support the national ban of WEEE to landfill by providing clear regulations around correct treatment of WEEE, while IWMPs need to provide clear strategies and interventions to enhance municipal capacity to deal with WEEE. This includes how to encourage WEEE recycling in the district, how municipally-owned and operated drop-off and buy-back centres can be facilities for WEEE recovery, and how capacity can be enhanced to enforce waste management by-laws. Additionally, changes are required to current asset release policies to unlock WEEE that is currently within government stockpiles. Secondly, households and businesses should ensure that they are correctly disposing of WEEE with licensed collectors or recyclers active within the iLembe area, and encouraging their peers to follow suit.

The SRI iLembe project is in the process of establishing ‘WEEE are iLembe’, which is a partnership-based model aimed at ultimately increasing the volumes of WEEE that are collected and further treated in the region. ‘WEEE are iLembe’ will partner with existing stakeholders to drive a public awareness campaign, undertake further research to better understand stockpiles and collection preferences of households and businesses, and support local government to harmonise local policies and by-laws as well as optimise drop-off sites to accept WEEE as a key waste stream.





# Keeping water services on stream

**With reliable electricity supply under threat because of Eskom's woes, it is imperative that a consistent source of high-quality water – the lifeblood of the nation – is secured.**

**T**he Vuthela iLembe LED Support Programme is assisting the iLembe District Municipality to review water services delivered to consumers in areas that fall under the Siza Water Concession, as well as review the Siza Water contract and identify where revisions may be required.

Efficient water services are essential to maintain and expand economic activity by facilitating new developments. This will ultimately include more people in the economic activities of the district, creating greater inclusivity for many who would otherwise remain outside the mainstream economy.

Secure water services are, therefore, central to the iLembe District Municipality's development plans and to its growth trajectory in the future.

The 30-year concession to provide water and sewer services began in 1999 when Siza Water signed a contract with the Borough of Dolphin Coast, now incorporated as part of the KwaDukuza Local Municipality.

The contract required Siza Water to deliver water and sanitation services in Ballito, Zimbali, Shaka's Rock, Sheffield Beach, Tinley Manor and Salt Rock along the coast and in the inland areas of Shayamoya, Nkobongo, Shakaskraal and Etete.

## Legislative changes

In the two decades since its inception, many legislative changes have been implemented in South Africa; local development plans have evolved, and the numbers and profile of municipal customers have changed significantly.

With the Siza Water Concession scheduled to end in 2029, the Vuthela Programme is supporting the iLembe District Municipality to ensure that the contract continues to be viable over the remaining seven years.

The original contract for the Siza Water concession was based on the Framework for Restructuring of Municipal Services, the prevailing guiding policy in 1999. It was concluded well before any legislative frameworks for water services delivery, municipal services and Public-Private Partnerships came into effect. This makes it necessary to review the contract's alignment with the current legislative framework and revise it where necessary.

The Vuthela Programme is currently conducting an extensive review of the performance of the contract, legal and financial issues, and the changing customer base.



The analysis of the contract performance will identify the amendments needed to ensure it is aligned with the iLembe District Municipality Regional Water and Sanitation Master Plan (2016) and the Water Services Development Plan (2021).

The review team is working closely with analysts within the iLembe District Municipality's technical department to understand the infrastructure asset base within the concession area.

The infrastructure analysis includes assessments of present and future water demand, sales, non-revenue water (which refers to water that is supplied but not paid for), the average daily demand over the year, average daily sales over the year, consumption patterns in the various supply zones, the water infrastructure required, and the storage capacity required for the short and long term.

The current concession contract and its various supplementary agreements are also being analysed for their compliance with B-BBEE legislation and the procurement regulatory framework. National water benchmarking norms and standards for the provision of water services are being considered in this analysis.

The concessionaire's audited annual financial statements and quarterly financial reports, income reports, contribution reports, tariff reports and statements are being assessed, along with Siza Water's contribution to SMME and youth development.

## Legal review

The legal review includes analysing the concession's performance and supplementary agreements to ensure that the contract is legally compliant with the current legislative and regulatory framework.

The review is also testing compliance with the contract's model for the equitable distribution of the financial proceeds between the iLembe District Municipality and the concessionaire and assessing the implications of the iLembe District Municipality's current mandate to provide universal water and sanitation, and appropriate levels of service.

Procurement and equity aspects of the contract are being assessed against the requirements of the Constitution of the Republic of South Africa, 1996; the Broad-Based Black Economic Empowerment Act, No. 53 of 2003; the Preferential Procurement Policy Framework Act, No. 5 of 2000; the Local Government: Municipal Finance Management Act, No. 56 of 2003; and the Municipal Fiscal Powers and Functions Act, No. 12 of 2007.

This assessment will inform the drafting of amendments to ensure that the contract is in line with current legislation and policies.

Performance and service level aspects of the contract are being reviewed by testing compliance with the Constitution of the Republic of South Africa; the Local Government: Municipal Structures Act, No. 117 of 1998; and the Local Government: Municipal Systems Act, No. 32 of 2000.

The review is also considering how the Siza Water contract fits in with the National Water Services Benchmarking Initiatives that South African Local Government Association (SALGA) has agreed to; the National Water Act, No. 36 of 1998; Water Services Act, No. 108 of 1997; and the National Environmental Management Act, No. 107 of 1998.

The professional team from SMEC, South Africa (Pty) Ltd. conducting the review will draft a Supplementary Agreement which will ensure that all compliance issues and proposed remedies are addressed.

The financial review of the Siza Water Concession is underway to ensure that projections of the financial model and profit-sharing model are accurate, complete, and robust. Experts are analysing the impacts of the Covid-19 pandemic on financial projections, investigating the financial performance of the concession, reviewing the current tariff structure, and analysing the estimated rate of return for each year until the contract expires.

## Shifting trends

Shifting trends in the demand and supply of water and sewer services for residential, commercial, and industrial consumers in the past 23 years since the concession's inception are also being analysed.

A customer base expert is assessing the socio-economic environment, income and affordability variables for the areas within the concession area to indicate the spatial distribution, income levels and affordability of customers supplied by Siza Water. The experts will use this information to forecast how growth areas and future development will impact on the demand and supply of water and sanitation services.

This forecast of future demand will guide the provision of additional capacity that may be required, ensuring that consumers in the KwaDukuza Local Municipality continue to receive water and sanitation services until the end of the Siza Water Concession in 2029.

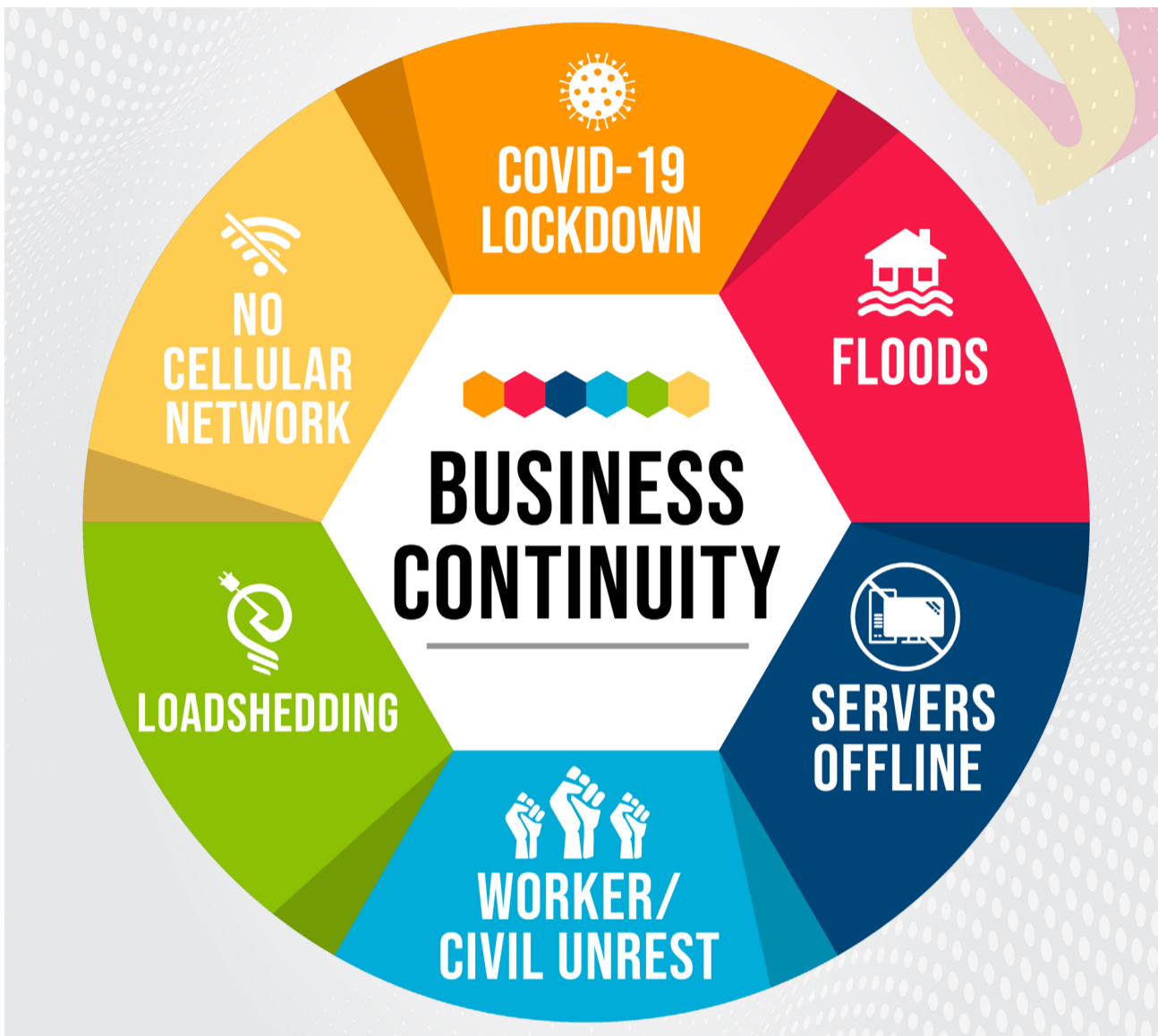
The Vuthela Programme continues to provide expert professional services that assist the iLembe District Municipality and Siza Water to supply water and provide sanitation services to communities in this rapidly growing region of KwaZulu-Natal.





# iLembe municipalities will be able to deliver even during disruptions

A Business Continuity Plan for the family of municipalities within iLembe district is almost ready for validation, writes James Stewart, Business Continuity Specialist Consultant at SNG Grant Thornton.



James Stewart, Business Continuity Specialist Consultant at SNG Grant Thornton

most critical for the day-to-day business operations, and what the dependencies are, be it system or application, equipment, staffing or even external-related. Also determined was how soon business operations would need to resume following a disruption, including any potential risks. Every municipal resource that we engaged with over the past year demonstrated a huge commitment to this process, which again is rewarding. These are the high moments which always help to make the process and the journey even more enjoyable especially as we all get to learn new things from one another. I am also happy to say that there were never any low moments.

As stated, the end goal is to have a Business Continuity Plan in place. I can mention that this has already been drafted and is almost ready to share with the municipalities for review. The final stage of this journey will be to have all the key role players who will be an integral part of the plan such as the plan owners, team members and coordinators, come together for a two-day workshop (scheduled for 8-9 December). The BCM lifecycle requires that the plan be validated, and key aspects such as roles and responsibilities and recovery/relocation requirements must be walked through and exercised to ensure that the plan is deemed 'fit for purpose'. I must stress that whilst this may well be the final stage, it is by far not the end of the journey. Business continuity must always be seen as a living process, and when departments have their regular meetings, BCM should always be an agenda item, just as Health & Safety often is.

As responsibilities, business activities or resources change, so too must the Business Continuity Plan be updated along with the BIA. In addition, an annual review as a bare minimum should always take place, following the BCM lifecycle.

## Lessons learnt

As stated earlier, BCM has been around for many years, and perhaps partially associated with the term 'disaster recovery', which is more related to the ICT space than from a business operation prospective. The disastrous effects of Covid-19 are all too evident, not to mention the sadness and financial hardships encountered by so many, both locally as well as globally. However, many lessons have been learnt, and like everything else in life, we can learn from past events.

Business continuity has a place in all sectors, and it is highly commendable that all the municipalities within the iLembe district have taken this crucial step, more especially from a leadership approach.

Having a workable business continuity plan in place sends a very strong message, not only to the respective municipal staff that you care for their wellbeing, but just as importantly, the communities, stakeholders, and your suppliers.

Whilst BCM was a small part of the overall Vuthela Programme, it does demonstrate what can be done when bringing all the key role players together and provides for a great foundation for others to follow. Business continuity requires that everyone be involved in the process, not just ICT, HR, or senior management.

In an earlier issue of *Vuthela Spark*, Thantaswa Mpetsheni (iLembe Enterprise Risk Manager) wrote about the journey undertaken by the Vuthela iLembe LED Support Programme for business continuity and the priorities that must apply in the event of a disaster (or crisis).

So much has happened over the past two years, with many lessons learnt, not only in South Africa but globally as well. Over the past year, my colleagues and I at SNG Grant Thornton have been on an exciting journey to help bring business continuity to the five municipalities that form part of the iLembe District. In this article, I share some of the experiences as an external consultant looking at all the important work that is carried out by a dedicated team within the municipalities.

Business continuity has become quite a buzz phrase over the past few years, more especially when on 26 March 2020, South Africa entered Alert Level 5 Lockdown as part of government's Covid-19 Risk-Adjusted Strategy, which in most part involved high (but necessary) levels of restriction on movement of its citizens, forcing us to stay at home and be safe. This very sudden lockdown unfortunately meant that many organisations and businesses had to close, and those that had no proper business continuity arrangements in place found themselves wanting badly, regardless of size or sector. Business continuity is nothing new; in fact, it can be traced as far back as the 1970s.

Business continuity is defined by the ISO22301 standard (2018) as "the capability of the organisation to continue delivery of products or services at acceptable predefined levels following disruptive incident".

## Business Impact Assessment

The business continuity journey with iLembe District Municipality and the four local municipalities, not to forget the district economic development agency Enterprise iLembe, needed to have a starting point, and here we followed the Business Continuity Management (BCM) Lifecycle (Good Practice Guidelines of 2018-BCI). Before any Business Continuity Plan can be developed, we need to know and understand the business operations of the municipalities.

A Business Impact Analysis (BIA) is conducted to help clarify what is required. The following is a definition of a Business Impact Analysis: "The BIA identifies the business continuity requirements, providing information to determine the most appropriate business continuity solutions. The BIA identifies the urgency of each activity undertaken by the organisation by assessing the impact over time by any potential or actual disruption to this activity on the delivery of products and/or services."

From a consulting aspect, the analysis stage would usually be done as a face-to-face interaction. However, since the pandemic, we embarked on 'a new way of working' by embracing online meetings. All the interactions with the various departments took place online and while we occasionally experienced network and electricity challenges, the process was still rewarding. The end goal is to have a district-wide Business Continuity Plan, with more agile and resilient municipalities.

## Demonstrated resilience

Being able to work online, especially at other locations, demonstrates resilience that is already present, which is a huge bonus. Through the analysis stage, the valuable information gained provided a clear picture of what is





# Title deed issuance in low-income areas - complex problems exposed

South Africa has a massive title deed backlog in low-income areas. How can this be eradicated? Recent pilot studies confirmed challenges facing the country with respect to property titling, writes Chris Carter, Director of GeoAfrika.

**W**hile South Africa has a robust and well-regarded system for registering property ownership, it is expensive, complex and inaccessible for lower income households. As a result, parties to property transactions commonly make use of alternative mechanisms to transfer ownership without using conveyancers and without reference to the deeds registry.

In terms of first-time transfers, it is estimated that there are over a million subsidy houses built by government and occupied by subsidy beneficiaries that have not been registered in the deed's office. These properties are the most significant assets for low-income households and not having title deeds constrains their ability to participate fully in the formal property market, access finance and use their assets more productively. This also impacts substantially on city finances as well as on the national economy.

In 2019 the International Finance Corporation, as a component of the Vuthela iLembe LED Support Programme, launched an advisory project to pilot potential solutions and draw lessons that can support the design of solutions and policy changes that address titling and land administration challenges for low-cost housing in the iLembe District Municipality, specifically in KwaDukuza and Mandeni Local Municipalities. In this article we explore some of the challenges and successes of this project.

The project entailed two pilot projects that were supported by council approval: one with the aim of establishing a simpler and more affordable system for registering property transactions for low-income areas; and the second one focused on a mass systematic registration programme of housing projects in order to issue the first title deeds to owners. These pilot projects were called "Pilot A" and "Pilot B" respectively and would be run simultaneously in both KwaDukuza and Mandeni Local Municipalities. GeoAfrika Surveys was appointed to lead the implementation of these pilots.

Pilot A was critical to better understand the titling situation in low-income / low-property value areas and

test the appetite of homeowners to access official titling services, were such services provided closer and cheaper to local communities. Within each municipality and following a communication campaign in close coordination with ward councillors, centres were opened for two weeks for the community. The centres catered for very specific areas within the township for the community to come forward and lay claim to their title deeds. Mandeni Local Municipality chose Sundumbili as their Pilot A area and KwaDukuza Local Municipality chose Groutville as theirs.

In Mandeni, Sundumbili is a very established and older township which has a total of 3 402 properties. A total of 350 title deed claimants recorded their claims which means that more than 10% of the community do not have title deeds to their property. The majority of which by far were heir occupiers, where the rightful owner of the property had died intestate (meaning without a will). The next highest category (20%) had purchased their properties through informal sales (i.e., without registering the change of title in the Deeds Office through a conveyancer).

## Partnership approach

To address the titling cases received in Sundumbili Pilot A project, a partnership between the Mandeni Local Municipality and the Department of Human Settlements was forged creating the Sundumbili Dispute Resolution Committee. This committee is being rolled out under the leadership of the municipality and funded by the department. These claims are now being dealt with on a case-by-case basis. Another good outcome was that it was discovered through the claimants that the municipality had been withholding the issuance of title deeds due to non-payment of rates. This practice had been deemed unlawful and a total of 150 title deeds were eventually released by Mandeni Local Municipality to property owners.

In Groutville Ward 12 the results were startling. Out of a total of 1 104 properties in Ward 12 a total of 785 claimants came forward to the centre over three weeks. This means that 71% of the properties in the area had residents who do not hold title deeds for the properties that they claim are theirs. More importantly, it illustrated the very strong appetite for beneficiaries to obtain title deeds were a service to be provided in a more accessible and less costly



Chris Carter,  
Director of GeoAfrika

manner. By far the largest category of these claimants (50%) claimed to be original subsidy beneficiaries of the eThafeni housing project that was discovered, after some investigation, to have completely stalled years ago with no title deeds issued.

The Groutville Pilot A project also had a good outcome. After the project team conducted a land audit to investigate and validate the land-legal blockages preventing the eThafeni transfers to occur, work was undertaken to secure the relevant Power of Attorney over the underlying land for appointed conveyancers to deal with the cases and transfer title following a detailed beneficiary validation process. There are now 204 title deeds about to be issued, with more to follow.

While the Pilot A projects did have positive outcomes in terms of the assistance rendered to the community to access their title deeds, it did also highlight some alarming trends. Low-value property owners tend not to have wills in place so the passing on of title to heirs often does not happen. Secondly, informal sales are common practice and seem to be even more prevalent in more dynamic areas. Thirdly, as was witnessed in eThafeni as well as in the Pilot B projects, hundreds of thousands of housing project beneficiaries in South Africa never did receive their title deeds in the first instance usually due to technical issues on the project, which makes the passing on of title either by inheritance or by formal sale simply impossible.

There are various additional factors impeding the attractiveness of using the formal land registration system to transact low value properties, most notably the high costs and complex procedures. The findings from Pilot A projects paint a bleak picture of formal and correctly registered property ownership in the iLembe district. While the setup of well-capacitated local land offices like the Pilot A centres within local municipalities will definitely assist communities with title deed issues, the real challenge remains on how to make sales of low value properties quicker and cheaper in order to make it sustainable and how to ensure the new housing projects do not create a new flow of backlog of title deeds. The only long-term solution is to introduce new legislation, and this is a key recommendation of this project.

## Pilot B

The Pilot B projects nominated by each local municipality varied considerably in size and quantum of issues hindering the issuance of title. A huge amount of time-consuming work ensued on these projects in conjunction with the project Implementing Agent, the municipality concerned and the KwaZulu-Natal Department of Human Settlements where necessary in an attempt to resolve the numerous issues at hand.

Several common themes are observed across most of the projects that had stalled with respect to issuing title deeds.

Land-legal impedances and/or the non-availability of municipal services certificates for water, roads, stormwater, or electricity were the most common major reasons preventing the opening of the township registers.

Secondly, projects approved under previous legislation and now are subject to the Spatial Planning and Land



Despite President Ramaphosa's urgent intervention early this year, the challenge persists as the year reaches its end.

While the SAPS provincial task team investigates possible criminal aspects to the persisting disruptions, several issues around the impact on economic and social development must be addressed, along with initiatives to address the impacts.

### Crippling impact cripple investment

For the Mandeni Local Municipality, the impact of disruptions starts at the project site and ripples outwards, undermining legislative initiatives and damaging investor confidence.

"Yes, the forums at times have stopped projects which has resulted in the delays in the completion of the projects," says Khuzwayo.

"Some business forums demand to be paid as much as 30% of the value of the contract without even doing

a job, which is contrary to the spirit of the Preferential Procurement System. It has a negative effect on investment as they are disruptive in their approach and this creates uncertainty for the investors."

The impact on development in other regions is similar. Several projects have been delayed in eThekweni, resulting in significant financial losses, according to Phili, Durban Chamber CEO: "Investor confidence is low in the province and one of the key reasons is security. Security is very important following the July unrest last year."

### The demand for work and contracts made by business forums could also threaten jobs by the thousands, according to the Bargaining Council for the Civil Engineering Industry.

Many projects to reconstruct damaged infrastructure began in KwaZulu-Natal after the 2021 unrest and recent floods, leading to a steady rise in the disruptive activities of business forums.

## Investor confidence is low in the province and one of the key reasons is security.

These disruptions discouraged local and international investors and the entire construction industry and destabilised the development of communities. The industry already faced limited job opportunities and would continue to lose the skills needed for vital infrastructure projects in the country, warned the Council.

Construction industry experts fear that the burden of paying an additional 30% for what amounts to "protection money" will drive many construction companies bankrupt and cripple the industry.

Just as in Mandeni, the impacts of business forums spread rapidly from inhibiting growth in local communities to a flight of skills.

The far-reaching consequences of all these impacts makes it essential to consider ways of managing them.

## Business forums: finding better ways

Current initiatives to include more local contractors in projects include improved Preferential Procurement Regulations being steered through Parliament, recourse through the courts, and police action.

In 2017, regulations on preferential procurement required all contracts above R30 million to include a local sub-contracting element of 30%. The regulations also provided for state entities to set aside a portion of contracts for previously disadvantaged groups.

The National Treasury is now considering public comments made on revised Preferential Procurement Regulations published in March 2022.

In his Medium-Term Budget Policy Statement in October this year, Minister Enoch Godongwana outlined two major changes to procurement governance.

**"We expect to introduce the Public Procurement Bill – which will enhance transparency, integrity and promote the use of technology for efficiency and effectiveness in public procurement – to Parliament in March 2023," said the Minister.**

"The new Preferential Procurement Regulations of 2022, replacing the now invalid Regulations of 2017, will be promulgated in November 2022 to be effective from 16 January 2023. The regulations empower organs of state with the authority to determine their own preferential procurement policies within the ambit of the Preferential Procurement Policy Framework Act," he added.

### Interdicts granted

Some companies have asked the courts for protection from business forums who disrupt work on their sites. Although over 50 interdicts were granted over the past few years, the activities of the forums have not stopped and tactics have not changed. **The private sector has partnered with the provincial SAPS and invested resources to help the police to counter threats in the province.** The Durban Chamber works closely with the Provincial Commissioner's Task Team and the city's Metro Police.

In addition to these legislative and law-enforcement measures, various forms of engagement are emerging as potential ways to avoid construction site conflict and allow developments to proceed.

At Mandeni, greater interaction between local communities, construction companies and municipalities is being advocated as options to resolve conflict and avoid disruptions, along with other innovative tactics.

**"The approach should not merely seek to address the concerns or aspirations of business forums but should also promote and develop SMMEs in general,"** says Khuzwayo.

### Including SMMEs

"The tender process can be open for potential main contractors to include the local SMMEs so that their pricing will be all inclusive. This will ensure that the businesses associated with the business forums do not demand rates that are above the rates quoted by the main contractor, which may make the project not viable.

"The municipal supply chain management policies must promote SMME development in their approach and include an element of sub-contracting local businesses and procurement of material locally.

"The municipality must formulate a policy on contractor development, where some upcoming contractors are put on a programme to compete on construction projects reserved for lower gradings. This will enable fair competition, but it must be supported by continuous training and coaching programmes," says Khuzwayo.

The iLembe Chamber supports the Global Initiative Against Transnational Crime's approach that requires a broader strategy and strong partnerships that involve businesses, communities, and various levels of government to address the issue of extortion within the construction sector.

"Whilst local employment pacts that encourage local employment and procurement are welcomed, free market principles and law and order should hold sway," said CEO Oeelfse.

The iLembe Chamber regards free market principles, compliance, competence and capacity as critical elements to challenge the disruptions.

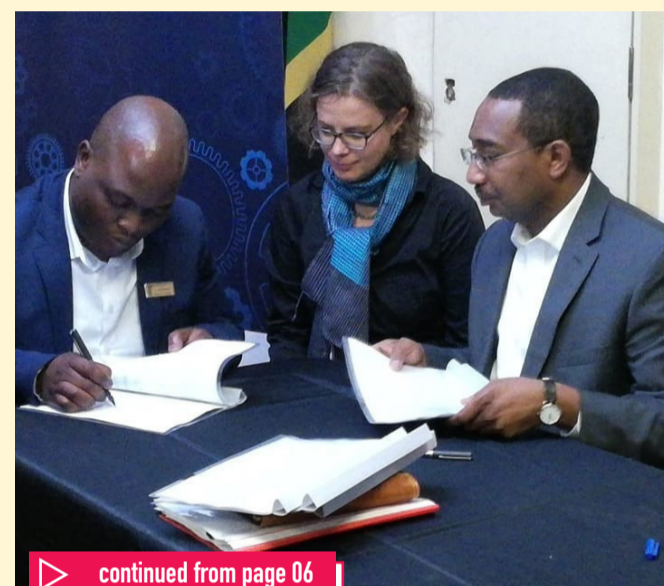
"There have been a number of successful interdicts," says Oeelfse. "More than 51 were granted against businesses forums, and their leaders in their personal capacities, to prevent them from further intimidation and disruption of construction sites. These interdicts often do not have the desired effect because other forums spring up to exploit the void, or are substituted by groups of endorsed forums."

### Collaboration

To support emerging contractors operating in the built environment, the iLembe Chamber collaborated with several construction sector members to present the iLembe Emerging Contractors Programme, which was delivered by the KZN Master Builders Association.

The Chamber also assists members with business compliance verification, and supports emerging contractors to become compliant.

The options outlined by Khuzwayo and Oeelfse offer hope that, in addition to legislative reform, the courts and the police, the potential for direct engagement to bring all parties together and resolve tensions will contribute to ending the disruption of development in the region.



▶ continued from page 06

## Title deed issuance

Use Management Act (because the township registers were not opened timeously) are quite rightly subjected to a level of scrutiny that unfortunately is at odds with the development that has been allowed to continue on the ground through the passage of time. Illegal structures, encroachments and building in environmentally sensitive areas, often in conflict with the approved cadastral layout of the township, creates all manner of problems when trying to regularise these projects. As an example, the Inyoni Housing Project in Mandeni took three full years to successfully get the first batch of title deeds issued in August 2022.

The project worked with the Centre for Affordable Housing in Africa and National Treasury's City Support Programme to develop a toolkit that offers housing authorities practical advice on how to deal with the common cases that emerge during the primary transfer process.

The toolkit can be viewed or downloaded here: <https://cahf.gitbook.io/primary-transfer-toolkit/v/land-legal-toolkit/>

### So whereto from here South Africa?

Pilots A and B highlighted and confirmed numerous challenges facing our country with respect to property titling and the system, particularly in low-value/ low-income areas. How can the massive title deed backlog, that is increasing by the day, be largely eradicated? And what system (legislation and supporting government infrastructure) needs to be in place to ensure sustainability via an attractive new system of registration for lower-value properties?

Look out for the upcoming case study on this project where the strengths and weaknesses of our existing legislation, government departments and municipal capacity is considered, and recommendations are made for fundamental legislation changes to enable the mass rectification of titling that is urgently required in South Africa.





## WHAT IT IS ABOUT

The Vuthela iLembe LED Programme responds directly to the urgent need to address unemployment, poverty and inequality by accelerating inclusive local economic development and growth in line with the National Development Plan, the KZN Provincial Growth and Development Plan, iLembe District Municipality Growth and Development Plan as well as the Integrated Development Plans of the family of local municipalities in the district.

## OBJECTIVES

The overarching objective and expected impact of the programme is to contribute to the improvement of the economic future of the iLembe District and the quality of life of its inhabitants, through sustainable growth of the local economy, and the creation of higher, better and more inclusive employment and income generating opportunities.

## STATUS OF PROJECTS

The programme comprises 43 projects (contracts) across the five components of which 20 have been completed, 12 are in implementation, three are approved for award, one is subject to award approval, two have been recommended for transfer to municipalities, one to commence to procurement, and four have been withdrawn.



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## WHO ARE THE PARTNERS?

The Vuthela iLembe LED Programme, is a joint initiative of the State Secretariat of Economic Affairs of the Swiss Confederation, the KwaZulu-Natal Department of Economic Development, Tourism and Environmental Affairs, the iLembe District Municipality, and the KwaDukuza and Mandeni Local Municipalities. The programme includes participation of the Ndwedwe and Maphumulo Local Municipalities.

## THE FIVE INTER-RELATED COMPONENTS OF THE PROGRAMME

- ▶ **Public Finance Management** - strengthening the financial position of municipalities through better capacity to plan, finance and manage infrastructure investments and the provision of public services.
- ▶ **Municipal Infrastructure** - improved planning and access to infrastructure services for development investment, effective and efficient service delivery, and sustainable growth.
- ▶ **Private Sector Development Component** - Address obstacles to doing business in the district by improving the regulatory environment and supporting skills development; greater investment in and growth of Small and Medium Enterprises, leading to increased employment.
- ▶ **Building Inclusive Growth Component** - inclusive and sustainable growth and employment interventions to support SMEs in growth sectors.
- ▶ **Programme Management, Partnership and Co-ordination Component** - sustained partnerships and capacity for local economic development in the iLembe District, and the replication of the approach in policy elsewhere in South Africa.