



LAND-USE MANAGEMENT

IN LEPHALALE
LOCAL MUNICIPALITY



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LAND GOVERNANCE PROGRAMME

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The report is dedicated to the memory of the late Kgoshi David Phetogo Seleka and others who passed away during the time of this research.

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Acronyms and Abbreviations

CBD	Central Business District
CoGHSTA	Department of Cooperative Governance, Human Settlements and Traditional Authorities
CP	Conservative Party
CRU	Communal Residential Unit
CSO	Civil Society Organisation
DDM	District Development Model
DMR	Department of Mineral Resources
FPSU	Farmer Production Support Unit
GMEP	Grooteegeluk Medupi Expansion Project
HDA	Housing Development Agency
IDP	Integrated Development Plan
LDF	Lephalale Development Forum
LED	Local Economic Development
LLM	Lephalale Local Municipality
MCWAP	Mokolo-Crocodile Water Augmentation Project
MM	Municipal Manager
NP	National Party
PGP	Provincial Growth Point
SADC	Southern African Development Community
SDBIP	Service Delivery and Budget Implementation Plan
SDF	Spatial Development Framework
SOE	State-owned Enterprise
SPLUMA	Spatial Planning and Land Use Management Act

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INTRODUCTION

In 2006, Eskom unveiled plans to construct the Medupi coal power station in the town of Lephalale in Limpopo Province (Phadi and Pearson, 2018: vii). Through the Grooteegeluk Exxaro Medupi Expansion (GMEP) project, Exxaro has to provide coal to Medupi via its expanded Grooteegeluk mine. Medupi power station is one of the state-owned enterprise's investments in electricity generation to solve the country's ongoing energy crisis (Fig 2010:126). However, less than a week after announcing its completion, there was a reported explosion at one of the generators on 8 August 2021, a major setback for an already delayed project with cost overruns (Mahlaka, 2021).

Despite setbacks and delays in the project's completion, however, it is expected that more mines will open in the area with another state-owned enterprise, Transnet,¹ 'undertaking improvements in the rail capacity of the existing Lephalale-Thabazimbi-Rustenburg Pyramid line' (Phadi and Pearson, 2018:9). Boasting more than 40 per cent of South Africa's total coal reserves² and given the town's anticipated growth, Lephalale has been classified as a 'Growth Management Zone' (Lephalale CBD Development Plan, 2013) and is further identified as a 'petrochemical cluster' and has been given the status of a 'National Development Node'. With extensive coal reserves, the town is further envisioned to service other countries within the Southern African Development Community (SADC) region (Lephalale SDBIP, 2017-2018), creating new connections and collaborations beyond South Africa's borders.

Against the backdrop of this anticipated growth, the Lephalale Local Municipality (LLM) saw an opportunity 'to build the first city since 1994' and to address its historically segregated geography (Lephalale SDBIP 2013-2014: 9 in Monama, 2020). Recent research in Lephalale found that the municipality, due to colonial and apartheid land dispossessions, does not have land (Phadi and Pearson, 2018; Monama, 2020). Consequently, given the centrality of land towards realising the goal of building this first city, their land management strategy is threefold: to acquire land to provide integrated human settlements; to ensure infill development within the urban edge; and to connect Lephalale internally with rural areas and externally with other regions. The municipality has thus drawn up a nodal development plan comprising development corridors along which developments are proposed.

Research Aim

This research report focuses on land administration in Lephalale Local Municipality where the effects of the construction of Medupi power station have revealed how institutional dynamics in local government (in the case study region) are shaped by enduring legacies of colonial and apartheid administrations (Phadi and Pearson 2018; Monama, 2020).

¹ The largest and most important part of South Africa's transportation logistics network.

² Lephalale SDBIP: Service Delivery and Budget Implementation Plan, 2017_2018

The report looks at two things: First, what does land use management mean in a municipality without any land? And how then, does SPLUMA work within such a context? Second, the report investigates the incremental introduction of a rural land-use scheme in previously bantustan areas characterised by varied forms of land ownership. In doing so, it seeks to answer the following questions:

1. What is land-use management in Lephalale Local Municipality?
2. What is the role of stakeholders in land-use management including major mining and energy companies, individual land owners, private developers and civil society organisations?
3. What is the role of cooperative governance in land-use management with a focus on Coghsta, the HDA and a brief reflection of the District Development Model?
4. How does the municipality work with traditional authorities in land-use management as mandated by SPLUMA?

The report demonstrates how the municipality's land-use management strategy is shaped and informed by its historical foundations and contemporary struggles linked with the geographies of mining towns. It details the roles and challenges of working with various stakeholders in efforts to *transform* fragmented spatial development through land acquisition, the provision of integrated human settlements and regulating land-use developments. Furthermore, it reveals the varied history of areas under traditional authorities including diverse forms of land ownership and the implications these have for land allocation today.

Site selection

This report builds on earlier research undertaken in 2015 for the Public Affairs Research Institute (PARI) which resulted in an extensive report on the functioning of the municipality and several other publications. This work draws from and extends that earlier work to consider how land management works in the Lephalale Local Municipality. In particular, the report looks at how the municipality acquires, uses and regulates land in its area of jurisdiction. Specifically, it looks at the processes through which the municipality acquires land and the role of different stakeholders³ in this process; how the municipality uses the acquired land; how it regulates land-related developments; and how the municipality works with traditional authorities to facilitate the incremental land-use scheme in rural areas as required by SPLUMA. Furthermore, the research focuses on land-use management in traditional authorities and how the municipality works with them as part of the incremental introduction of land use schemes as required by SPLUMA. The report draws from the case of Seleka Traditional Authority as the biggest, both in land mass and as the first traditional authority in which the municipality has started introducing the incremental land-use scheme.

³ These include: mining and energy companies (Eskom and Exxaro), private land owners and private developers, Civil Society Organisation and Sector departments, particularly Coghsta and the Housing Development Agency.

Report structure

This report has five sections:

Section 1 describes the methodology used.

Section 2 looks at the development of the current legislative and institutional frameworks governing land and land-use management and planning in South Africa.

Section 3 locates and details the history of Lephalale and its current land-use management and planning framework.

Section 4 discusses the findings which are separated as follows:

Section 4.1: The municipality's land-acquisition strategy and the challenges related to this process.

Section 4.2: The provision of integrated human settlements within the municipality and the role of Coghsta and the HDA, and related challenges.

Section 4.3: Intergovernmental jurisdictions and relations in the Municipality

Section 4.4: The role of stakeholders in land-use

Section 4.5: This considers regulations including the enforcement of land-use regulations and litigation, the challenges related to these and municipal initiatives to tackle some of the challenges.

Section 4.6: Policy- and bureaucracy-related limitations with regards to land-use management.

Section 4.7: Case Study of Ga-Seleka Traditional Authority; experiences with land governance and Municipality interface.

Section 5 Conclusion

GOOD and BALANCED
Nutrition is key
to a healthy living



Section 1

Research methodology

This research drew on open-ended, semi-structured interviews. The participants were identified using snowball and opportunistic sampling. A total of 14 interviews were conducted. The key informants were six Lephalale Local Municipality officials, seven Seleka Traditional Authority headmen and one interview with members of the Seleka Royal Family.

While land is a topic that touches on many of the functions of local government, there are certain departments where land-related developments are central to their role. As such, purposive sampling was used to identify the relevant directorates to understand which departments play a significant role in land-use management within the municipality.

The participating departments include the Development and Planning Directorate which includes the divisions of SPLUMA, Human Settlements and Building Control. The Directorate is responsible for the municipal spatial development framework, land-use scheme and regulation which includes land-use applications and ensuring compliance in terms of land-related developments in the municipality.

The Directorate of Corporate Support Services, which includes the Divisions of Local Economic Development (LED), Integrated Development Planning (IDP) and Legal Services. LED deals with all developments happening in the municipality and, in particular, sits on the Lephalale Development Forum — a stakeholder platform that brings together all stakeholders to discuss the developmental projects happening in Lephalale.

The IDP is responsible for stakeholder engagement and aligning municipal plans with those of district and province, and with national plans. The IDP is therefore key to understanding cooperative governance and the recent progress of the District Development Model. The IDP division is also a platform through which the municipality engages with stakeholders like civil society organisations.

The department of Legal Services is the legal representative and advisor to the municipality and responsible for drafting legal documents and providing legal advice to the municipality. This was especially important in understanding land acquisition in the municipality, and the disputes and litigations related to land.

Contact with and sampling in Seleka Traditional Authority

The headmen and resident interviewees were identified through a combination of purposive sampling and snowballing. Due to a long-standing succession dispute, “there was a considerable delay in getting initial approval from the traditional authority. The researcher used the first interviews to gather information on settlement patterns and to decide which headmen were best to interview. In addition to the timespan of settlements, it became apparent that some settlements were bought by the residents (locally known as Borekoa) while others are on state and traditional authority land. Subsequently, the selection of headmen included those from the three different land arrangements. Under these three holdings, land is administered in different ways despite following a similar process of being registered under the Seleka Traditional Authority. These aspects had implications in terms of who could settle on which lands and how land was allocated. Residents from the different areas were also interviewed.

Reflections on research during Covid-19

The global pandemic has presented challenges for all research practices in different ways. For the social sciences especially, which depends largely on interactive methods, this has meant finding alternative ways to gather primary data. Many of these include virtual methods such as telephone interviews, video calling, text-based conversations and online surveying (see Jowett, 2020). Despite such possibilities, given the in-depth nature of this research and issues related to poor network, especially in rural areas, access to digital devices, and the age of the some of the participants, the researcher/s conducted face-to-face interviews while observing safety measures. The challenges imposed by Covid-19 included difficulty in locating key informants who worked from home and the tragic loss of key informants to Covid-19 during fieldwork. While the researchers observed social distancing protocols, wearing masks and where possible conducting interviews outside, they were exposed to Covid-19 following confirmations that they had been in contact with infected persons. In addition to the emotional toll of loss and the threat of infection, this delayed the timeframe as researchers had to suspend fieldwork during self-isolation. Apart from observing protocol, there was also constant pressure related to the possibility of more lockdowns.

4 This was apparently won by the late Kgoshi David Phetogo Seleka as of May 14th 2021.

Section 2

Legal and Institutional Framework: Land-use management and planning law in South Africa

Land-use management ‘refers to the officially recognized system that determines and regulates the use of land’ (Charlton, 2008:3). Land use is a sub-component of the broader concept of land management, which can be conceptualised as having the following five dimensions:

1. the manner in which land is accessed and acquired
2. the process by which individuals, households and communities continue to have and to hold rights to land;
3. the way in which land use is regulated;
4. the systems by which land is developed and
5. how land is traded (Rubin, 2008:3 as quoted in Charlton, 2008:3)

Linking land-use management with planning, ‘Berrisford and Kihato provide a useful way of locating land use management activities by suggesting that “the broad concept of planning” (2008:383) has two parts: those activities that are “geared towards shaping development over a period of time” such as IDPs, and those that implement the strategic plans’ (in Charlton, 2008:3). ‘These implementing and monitoring instruments include various legal and regulatory mechanisms used to regulate land development and land uses, including zoning schemes, and these are “also known as land use management systems”’ (Berrisford and Kihato, 2008:383 in Charlton, 2008: 3-4).

According to Charlton, in ‘contemporary South Africa, land use management may be considered to be a crucial but weak link in the transformative project attempted by the overall land management system, and planning activity in general’ (Charlton, 2008:5). Land-use management is, therefore ‘increasingly recognized to have been a neglected area of engagement, and this has had significant consequences’ (bid.). However, as will be shown later, this is changing, and several legislative changes have been made to respond to this shortcoming.

Locating the history of land management, Charlton contends that in South Africa, it has been largely influenced by ‘British town planning activities that developed initially in response to the urban impacts of industrial revolution’ (2008:4). Throughout the coming years, these were overlain with the segregationist ideologies and practices of both the colonial and later apartheid governments. Following the Union of South Africa in 1910, building on earlier legislation, the government passed what would become one of the most damning pieces of legislation, the Natives Land Act (No. 27 of 1913) (Joseph et al., 2014). The Act effectively prohibited black people from owning land anywhere in South Africa, limiting them to 7 per cent (and later 13 per cent) of land in the reserves.

The effects were crippling for people who depended on land for their livelihoods and whose cultures and society were associated with land (Joseph et al., 2014:2). The effect of this country-wide dispossession can be seen today, where a majority of the country's population remain landless and with precarious tenurial options, and planning practices continue to benefit the affluent segments of the population.

Following the victory of the National Party after the 1948 elections, racial segregation became the mainstay of all land and planning legislation in the country. 'During the 1950s, the pass-law system restricted black people from accessing urban areas unless they had employment there and the Group Areas Act further demarcated South Africa into areas based on race and resulted in mass forced removals. Later, the apartheid government reinforced the reserves into [10] ethnically determined "independent" homelands, supported by waves of forced removals of so-called "black spots" and [further] land dispossession' (Urban LandMark, 2013: 6). 'While commercial white farmers were given financial subsidies and other support, productive land was lost for black families, which undermined small-scale farming in rural areas' (Ibid. 6).

Consequently, the post-1994 transformative 'agenda cannot be complete without reclaiming and restoring the dignity, identity and legitimacy of black Africans, which is intimately connected to the land agenda' (Joseph et al., 2014:2). 'Numerous legislative interventions have thus been made to improve the management of land in line with economic, social and political objectives in South Africa' (Ibid., 3). However, according to Joseph et al., many of the existing 'set of legal and institutional arrangements [that] govern land management and planning [...] need to be [re-examined] in order to be more suited and give effect to transformation goals' (ibid.).

A recent step has been the introduction of Spatial Planning and Land Use Management Act No 16 of 2013, colloquially known as SPLUMA. This is South Africa's first 'single national piece of legislation that creates an overarching framework for spatial planning, policy and land use management for the entire country, including rural and informal settlements' (Nel, 2015:1-2, Joseph et al., 2014), and is applicable to all spheres of government. The Act replaces earlier legislations such as the Urban Development Framework (1997) and the Development Facilitation Act No. 67 of 1997. The latter was the first post-apartheid planning legislation which, among other things, sought to link planning and land development (Berrisford, 1997).

Given the legacy of colonial and apartheid spatial segregation, SPLUMA 'emphasises redress, social justice, equity and inclusion, community participation and transparent decision-making, and awareness of the role of property, housing and environmental management in creating functional, efficient and humane settlements' (Van Wyk and Oranje 2014 in Nel, 2015: 2). In terms of the delivery of these transformative goals, SPLUMA reinforces the legal and gives practical precedence for 'municipal planning' by shifting power in land-use management from provincial governments to local governments (De Visser and Poswa, 2019).

Prior to SPLUMA, 'the law was not clear on the relationship between spatial planning and actual land use rights, compromising government's ability to guide infrastructure projects through budgets and plans' (De Visser and Poswa, 2019:3). Spatial planning 'generally refers to the articulation of a spatial vision for a particular area or jurisdiction. These are laid down in spatial development frameworks (SDFs), which may be adopted at local, regional, provincial or national levels' (De Visser and Poswa 2019; SPLUMA, 2013). According to Pieterse (2007) 'for as long as land use management decision-making remained disconnected from the forward thinking of SDFs, the long-term spatial goals expressed in SDFs would be frustrated and difficult to realise' (in De Visser and Poswa, 2019:3).

Concurrently, 'there was concern that a dogged insistence on enforcing spatial plans would be unrealistic, inflexible and would discourage creativity' (De Visser and Poswa, 2019:3).

This, for De Visser and Poswa, raises important questions: How does 'the content of a planned vision for the area ought to influence the actual decision making with respect to land use rights? What legal mechanisms to use? Are the spatial plans soft guidelines, legally binding instruments or something in between?' (2019:4).

This research in part responds to some of these questions by demonstrating the roles of planned visions, the challenges and limitations of legal mechanisms in ensuring the implementation of such visions, and how these are dependent on the histories and contemporary dynamics of the geographic and institutional contexts within which they are applied.

Who does what? Local, Provincial and National Governments

Since the consolidation of South Africa in 1909, town and regional planning were provincial competences (De Visser and Poswa, 2019: 5) and this remained the case until recently. 'Provincial governments not only were the source of most law regarding planning, they were also the administrators and took most planning decisions. Gradually, local government were "authorised" to take certain planning decisions provided they complied with certain conditions in some provinces' (ibid.).

In the former bantustans, 'the four provincial Ordinances did not apply in these areas as they were governed by a parallel system of planning legislation' (Van Wyk 2010 PELJ218 in De Visser and Poswa, 2019:5-6). The 1996 Constitution distributed planning authority across the three spheres of government (de Visser and Poswa, 2019). Constitutionally, municipal planning has been recognised as a municipal competence while provincial planning is a provincial competence, and rural and urban planning are the competence of both province and national spheres (De Visser and Poswa, 2019:6).

Prior to SPLUMA, 'those municipalities authorized to exercise land use management responsibilities did not do so in terms of their own by-laws' but in terms of mostly provincial ordinances (De Visser and Poswa 2019:10). Currently, SPLUMA grants

municipalities the power to draft their own by-laws. However, they are still subject to and must be consistent with the Constitution, including the Bill of Rights; and their by-laws may not conflict with a provincial or national law (ibid.). More concretely, according to SPLUMA, municipalities are responsible for the compilation, approval and review of municipal SDFs and their local land-use scheme, and for 'the control and regulation of land [use] within municipal areas, where the nature, scale and intensity of land use do not affect the provincial planning mandate of provincial government or national interest' (SPLUMA, 2013: 13).

Apart from drafting their own SDFs, laws and policies, provincial government is responsible for the monitoring of municipal compliance with their land-use management systems, and national for the design measures to 'monitor and support other spheres in their performance of spatial planning and land use management' (SPLUMA, 2013: 13-14). Nevertheless, the Constitution has made it clear that the intervention of national and province in municipal planning 'must be limited to framework legislation with minimum standards for municipalities' (Steytler and De Visser in De Visser and Poswa, 2019:11). Thus, the municipal planning by-law is where the effectiveness of the Act will be tested and where municipalities can provide locally relevant solutions (De Visser and Poswa, 2019:11).

SPLUMA Critiques

Despite being hailed as the first piece of legislation that provides clarity on the responsibilities of the different spheres of government, and establishing a wall-to-wall approach to land-use management and planning, SPLUMA has not been without critique.

According to Joseph et al. (2014:3), SPLUMA 'does not address fully all considerations about making choices around possible land uses and balancing trade-offs between possible conflicting visions (for limited urban land)'. The management of land, they argue, 'is not confined to one sphere of government, or even the public sector alone, as numerous private interests also drive and shape (urban and rural) land management'. As such, 'a myriad of competing frameworks and plans guide land-related policy and practice, which makes the management and use of land a complex and challenging issue. While the plans very rarely overlap or connect to each other, their implementation is happening in the same space' (Joseph et al., 2014:3). Since SPLUMA 'places local government at the forefront of spatial interventions', they contend that 'the details and implications [of this] need to be unpacked and translated, and local government needs to be capacitated' (Joseph et al., 2014:3).

Furthermore, land-use management 'is regarded as the implementation mechanism for spatial plans and policy and the realisation of the principles in practice' (Nel 2015:2). The main land-use management tools employed by SPLUMA are land-use schemes, based on zoning (ibid). However, according to Nel, 'land use zoning has been widely criticised for being exclusionary, rigid, segregating both land uses and people', something 'contrary to the goals of SPLUMA and the ethos of the Constitution' (ibid).

South Africa remains a spatially fragmented country and this is 'reflected in land use management and law enforcement' (Nel, 2015:3). Most areas, including those under traditional authorities, 'townships' and informal settlements have been 'excluded from land use management' (Sekonyela 2004 and Dubezane 2015 in Nel, 2015: 3). Consequently, SPLUMA requires that land-use schemes 'include provisions that permit the incremental introduction of land use management and regulation in... areas not previously subject to a land use scheme' (SPLUMA 2013, section 24(2)(c); Nel, 2015: 3). The challenges with this incremental introduction of land-use management are unique to the contexts.

In 'informal' settlements, the 'challenge[s] of introducing land use management is the very informality of such areas and the absence of surveyed sites or individual property boundaries and registered "owners" of those sites' (Nel, 2015: 3).

In former bantustans, 'land use management is closely bound with land tenure and traditional authority' (Nel, 2015: 3). Beyond its productive value, the cultural and cosmological values of land in these areas have been documented (Williams, 2013 in Nel, 2015; Mabasa and Mabasa, 2019; Hallows and Munnik, 2018; Kepe and Hall, 2018; Mogale 2020) which challenge the productive value of land as conceptualised and practiced by government. In these contexts, land allocation is a 'core role of traditional authorities' which implicitly determines the use of that land (Sekonyela 2014 in Nel, 2015: 3). Many traditional authorities, however, see the introduction of land-use management schemes and land-use decisions by municipalities as intruding on or usurping their roles (Nel, 2015: 3). Traditional authorities in the Eastern Cape, KwaZulu-Natal (Sowentanlive 2015 in Nel, 2015) and in Limpopo are voicing strong opposition to the Act.

Furthermore, Nel contends that 'the capacity to perform land use management — the preparation and maintenance of a land use scheme, the processing, evaluation and deciding of applications for and development and law enforcement, is unevenly spread throughout the country' (2015: 4). While metropolitan municipalities are generally well-resourced, smaller municipalities lack this capacity with many struggling with a chronic shortage of technical and professional skills (National Planning Commission 2011 in Nel 2015: 4) and financial resources. In 2012, the Municipal Demarcation Board reported that 'half of the country's planners are employed in metropolitan municipalities' (in Nel, 2015: 4) and further, 'there is a turnover of young professional planners in smaller municipalities who drift towards the higher paying metropolitan regions' (Oranje 2014 in Nel, 2015: 4).

The aforementioned demonstrates how, even with good intentions, implementing land-use management and planning still has challenging aspects. The following sections locate Lephalale Local Municipality by first briefly detailing the historical development of the municipality and town, and how the post-1994 dispensation inherited a landless institution. From this, it outlines the municipality's current spatial development plans in addressing the patchy geography of the town both internally and externally. Echoing De Visser and Poswa, the question remains of whether a town without land can, with its planned vision, 'influence the actual decision making with respect to land use'.



Section 3

Locating Lephalale

The town of Lephalale is located in the western part of the Limpopo Province, bordered 40km to the north-west by Botswana. 'The town is linked with Thabazimbi and Vaalwater to the south via routes R510 and R33 respectively, and with Mokopane to the south-east via route R518. To the north, it is linked to Stockpoort and Groblersbrug border posts to Botswana via R510 and R571/N11 freeway' (Lephalale CBD Development Plan 2013: 7). Lephalale Local Municipality is a category B municipality covering an estimated area of 14,000 km² (Nyembe 2018). The municipality falls under the Waterberg District Municipality along with Thabazimbi, Bela-Bela, Modimolle-Mookgopong and Mogalakwena Municipalities (See Fig.1).

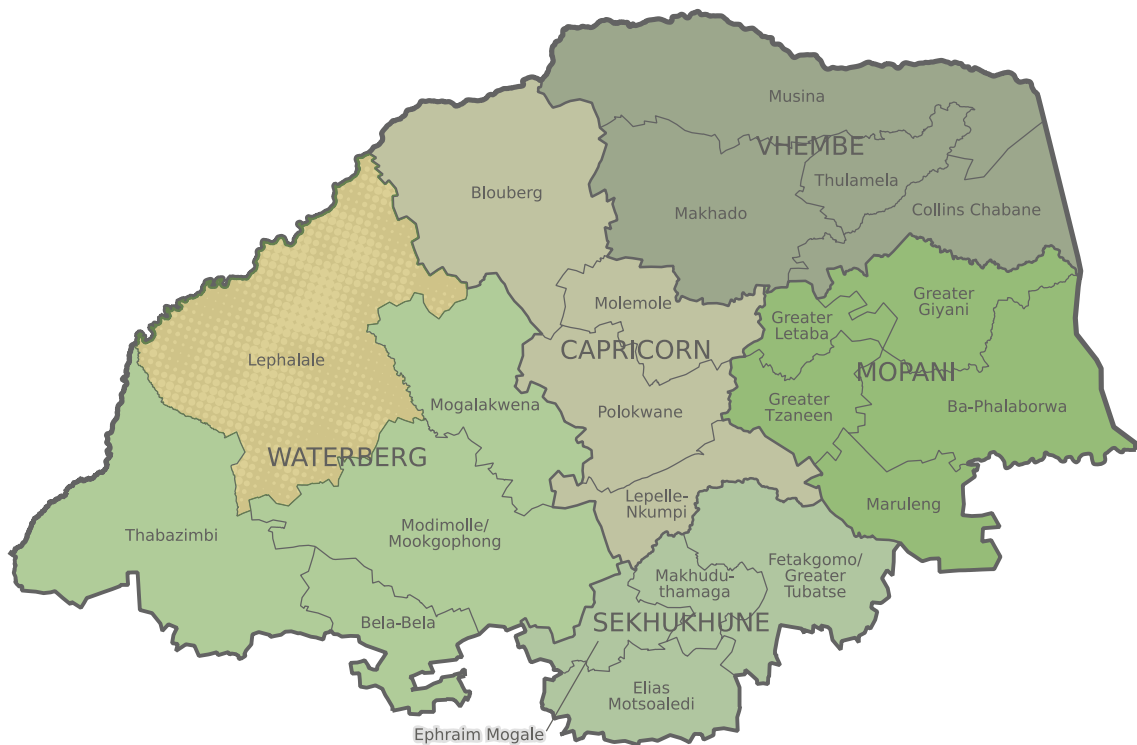


Figure 1: Lephalale Local Municipality geographic location in Waterberg District Municipality, Limpopo Province

3.1 Historical background Lephalale: then and now

Lephalale's current land-management strategy and related challenges need to be located within the historical political and economic situations of South Africa. The town owes much of its development and urbanisation to the presence of mining in the area. In 1954, following the discovery of coal, the apartheid government reserved the prospecting rights of 123 farms in the Waterberg district⁵ for the sole use of Sasol⁶ and the South African Iron and Steel Corporation's (Isacor). In 1957, the parastatal Isacor acquired the property rights to six farms in the area and in the mid-1970s, commenced the development of Grootegeluk coal mine (Alberts 1982).

Despite tensions around mining in the area, upon recognising the infrastructural benefits and the promise of 'orderly' urban development, Isacor's operation was gradually accepted. This cemented the company's determining role in administering coordinated urban planning (Ballim 2017:64) during the apartheid period. Through 'Isacor's financial muscle, Ellisras fulfilled its infrastructural requirements to afford the town municipal recognition' (Ballim 2017:68) and in 1960, the region was declared a 'township'⁷ (ibid.). Despite the town being administered under local and provincial governance structures (Ballim 2017), the company's executive effectively performed the functions of a local municipality (interview, de Ridder 2015 in Phadi and Pearson 2018).

In 1981, the then Escom,⁸ acquired land from Isacor and began work on the construction of Matimba Power Station. The subsequent growth in population necessitated the upgrading of the town and its infrastructure (Phadi and Mosa 2018, Buermann 1982). Isacor thus bought more land including Onverwacht farm north of Ellisras (Ballim 2017, Phadi and Pearson 2018) on which the company built the suburb of Onverwacht (Ballim 2017:60). The new suburb was built 5km away from Ellisras's central business district (CBD), splitting the local commercial activities into two CBDs (Ballim 2017).

In 1986, when Ellisras and its surroundings were granted full municipal status (Ballim, 2017:77), the National Party (NP) insisted that a municipal council be established to coordinate the development of the town (Phadi and Pearson 2018). Isacor executives opposed the decision⁹ and following negotiations, several officials from the parastatal became councillors in the new municipal structure (ibid.). This ensured that, despite its shifting presence in the municipality, the company continued to provide basic services and infrastructure development in the town, with specific roles reserved especially for mining officials (interview, de Ridder 2015 in Phadi and Pearson 2018).

5 The Waterberg district is the largest district in the Limpopo Province with several mining zones including Exxaro's Grootegeluk. The Waterberg Coalfields contain 40-45 % of the country's coal reserves.

6 The chemicals and energy company first established in Sasolburg, South Africa, in 1950 for the production of fuel from coal.

7 The term "township", in postcolonial Africa particularly, has a double meaning. In planning terms, it is used to denote "land allocated to host the site of a town and refers to both residential and industrial sites" (Laad, undated:406). The term is also most famously, especially in South Africa, used to denote black urban settlements constructed during the apartheid governance (Pernegger and Godehart 2007, Laad undated).

8 The State's electricity generator which later changed from Escom to Eskom.

9 The National Party insisted that the elected council members should be political party member.

By the 1980s, with the demand for a 'stable' workforce, Iscor and Escom agreed to fund the development of a black township within the vicinity of Ellisras (Ballim 2017:13-115). Despite objections from the Conservative Party (CP)¹⁰ and residents of Ellisras, the township of Marapong was built in 1991 (Ballim 2017, Hallows and Munnik 2018).

The township was built behind Matimba Power Station, 20km from Ellisras and with only one access route and minimal infrastructure (Ballim 2017). It remained under the administration of Escom, receiving basic services from the latter (Phadi and Pearson 2018:4). In 2000, the Ellisras Local Municipality was formally constituted, comprising Ellisras, Onverwacht, Marapong and 38 surrounding villages under a single municipal structure (Phadi and Pearson 2018).

The foregoing demonstrates how the mining company, Iscor, was important and central to the spatial and economic development of Ellisras (now Lephalale) and its surrounding areas. The governance of the town, its land-use management and planning, while subject to national government policies, were the result of the interface between Iscor, state officials, locally elected governing structures and later Escom (now Eskom) (Monama 2020). While Iscor's (now Exxaro) immediate role in administration and planning diminished post-1994, it has, through its extensive land holdings and infrastructural expertise, continued to control various services in the area and direct local economic development (Phadi and Pearson 2018; Monama 2020).

The contemporary town continues to be shaped by the presence of mining developments in the area. In 2013, the municipality had projected that its population would increase from 118,864 to 156,785 by 2020 (Lephalale CBD Development Plan). However, the total population of Lephalale had increased from 118,864 in 2011 to 140,120 by 2016 (Community Surveys, 2016), which is probably higher today than what the earlier 2020 projection was. By 2016, the number of households had also increased from 29,880 (2011) to 43,007 beyond the anticipated number of 40,723 (by 2020). The average household size, however, had decreased from 3.9 in 2011 to 3.3 in 2016 (Community Survey 2016). A large proportion of this growth is attributed especially to the developments during the construction of Medupi.

Since the arrival of Medupi, there has been an exponential increase in informal settlements, prompting the municipality to look for land to solve the 'crisis'. According to the 2016 Community Survey, 76.5 per cent live in formal dwelling structures while 21.3 per cent live in informal dwelling structures and 1.5 per cent in traditional structures. Water is also a very scarce resource in the area and whilst the municipality awaits the commencement of the Phase 2 MCWAP¹¹ project as its solution to this issue, 54.3 per cent of the population in the area strongly disagrees

10 The Conservative Party broke away from the NP in 1982 in opposition to the latter's apparent compromise to racial segregations and its concession to big capital (Ballim 2017:85)

11 A water augmentation project as part of the opening up the Waterberg mineral belt through the provision of water to "Lephalale municipality, Eskom's Matimba and Medupi power stations, Grootegeluk coal mine and to enable further development of the mineral and energy prospects in the larger Waterberg region" (Creamer, 2019). The project is scheduled to be completed in May 2026 but, similar to Medupi, it has faced delays.

that the municipality is trying to solve the 'problem of a lack of safe and reliable water supply' (Community survey, 2016:71).

Total Households	43 002	100%
Total Population	140 240	100%
Young (0 – 14)	40 358	29.2%
Working Age	95 103	54.8%
Elderly (65+)	5 403	3.5%
Dependency ratio	35 136	33.2%
Sex ratio	121 -5. 6	21-1
Growth rate	2011 – 2016	13.5%
Population density	8 persons per km ²	
Unemployment rate	2016	22.2%
Youth unemployment rate	2016	27%
No schooling aged 20+	3 769	6.2%
Higher education aged 20+	12 615	16.4%
Matric aged 20+	16 579	23.5%
Number of households	43 0002	
Number of agricultural households	6 757	22.6%
Average household size	3.2	

Figure 2: Key Population Statistics (Source: StatsSA 2016 in Lephalale IDP, 2021-22: 72)

According to the 2011 National Statistics, of the 45,527 economically active (employed and looking for work) population, 22.2 per cent were unemployed, and 26.9 per cent of economically active youth (15-34) were unemployed. At the time of the statistics, Medupi's construction and the operational Matimba power stations were the largest sources of employment along with agricultural activities including cattle, poultry and game farming (Statssa 2011). However, according to the 2020/21 municipal IDP, the agricultural sector is now the largest source of employment (38.85 per cent) followed by community services (15.71 per cent) (Lephalale IDP, 2020/21:46).

The effects of the boom and bust of mining cycles are now evident in the once most expensive town in the country. While the Medupi rush led to an exponential increase in population and subsequent increased demand in accommodation, the town is currently beginning to resemble a ghost town. There are for-sale signs on many properties, decreased land and property prices (albeit with some speculation) and the once sought-after apartments and townhouses are now lying empty and almost abandoned. Many of those who came looking for work, and those who are now unemployed, are living in the informal settlements that have sprung up within the town, in Marapong township and on the town's outskirts. Consequently, one of the main goals of the municipality's land-use management strategy is to acquire land to provide integrated human settlements for those living in informal settlements (discussed in section 4.2).

3.2 Lephalale Municipality Land-Use Management and Planning Strategy

Lephalale Local Municipality has severe land constraints. According to the municipality's IDP, 'Within the urban edge the Municipality does not own land, with only 9.12 % belonging to government, Eskom 13.63 %, Exxaro 20.76 % and private individuals 56.38 %' (2021/22: 92). As a consequence, the municipality's land-use management and planning framework is centred around the following four aspects:

1. Land acquisition, particularly to solve the informal settlement issue in the town;
2. Land-use planning (with an emphasis on integration through infill development within the urban edge and spatially linking urban and rural areas);
3. Introduction of incremental land-use schemes in rural areas; and
4. Enforcement of regulations and dispute resolution.

Lephalale Local Municipality has two policy frameworks that inform their land-management (including acquisition, use and regulation) priorities and developments in the broader area of Lephalale. These include the Local Spatial Development Framework (SDF) which is mandated by the Municipal Systems Act (2000) as part of the Integrated Development Planning (IDP); and the Lephalale Local Municipality Land Use Scheme (2017) whose role is to 'give effect to the municipal spatial development framework' (Lephalale Land Use Scheme, 2017: 15). These are both guided and informed by the Spatial Planning and Land Use Management Act (No. 16 of 2013). This section details the municipality's spatial development framework priorities in terms of both rural and urban land developments and how the land-use scheme seeks to bring these to life.

3.2.1 ***Lephalale Spatial Development Framework [including Local SDF for rural areas]***

The Lephalale Municipality's SDF places emphasis on connecting the patchy geography of the CBD, internally and externally, with areas under traditional authorities and neighbouring towns. The SDF seeks to establish links with other regions as far as Gauteng, for instance. Subsequently, the area under the Lephalale Local Municipality is divided into hierarchical developmental nodes with different spatial plans for each, but connected through what are called Development Corridors. These nodes, explained below, include the Lephalale/Onverwacht/Marapong Provincial Growth Point (PGP), the Thabo Mbeki Municipal Growth Point, and the Ga-Seleka and Shongoane Rural Service Delivery Points (See Fig 3 below).

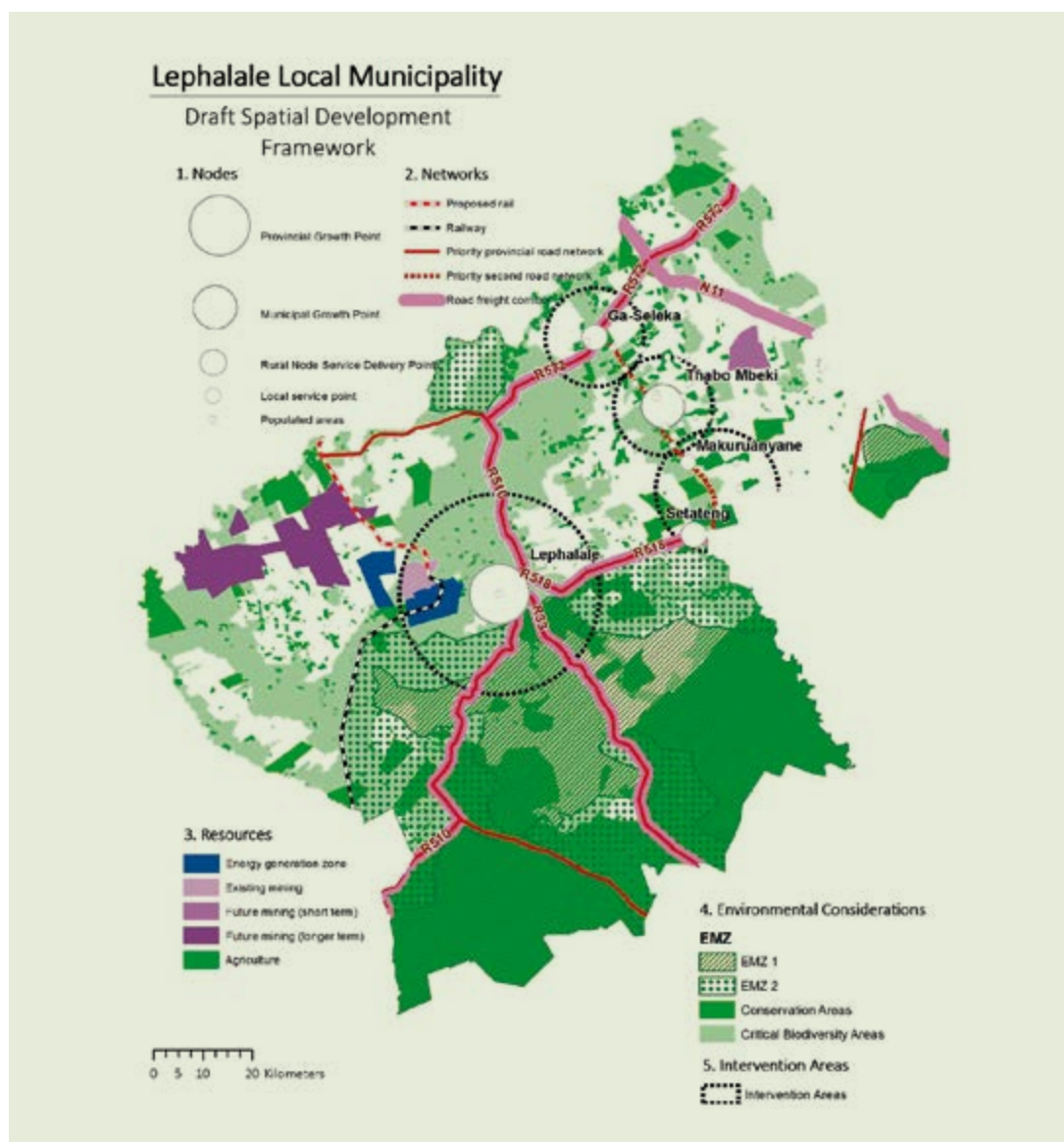


Figure 3: Lephalale Municipal Spatial Development Framework
(Source: Lephalale Municipal SDF, 2017:91)

A. Lephalale/Onverwacht/Marapong Provincial Growth Point (PGP)

This is the highest order in the province and it 'forms the spatial centre of the massive Waterberg Coal and Energy potential, of importance not only to the district but also the province and the country' (Lephalale SDF 2017:90). 'The bulk of future economic development will be undertaken by the private sector but should be supported by public investment in sufficient and high-quality engineering infrastructure, and additional social services to serve the fast-growing local population' (ibid). The PGP's spatial development plan is elaborated through the Lephalale CBD Development Plan, a study commissioned by the District Municipality in order to plan for future developments.

Against the backdrop of the anticipated developments in Lephale, the Waterberg District Municipality 'commissioned the drafting of a Central Business District (CBD) Development Plan for Lephale based on projected future growth of the town as defined by the Lephale SDF and IDP' (Lephale CBD Development Plan 2013:4). The plan envisions to address the CBD and disintegrated activity nodes within the town and the Marapong township. Thus, the plan's area of interest comprises four activity nodes including Lephale CBD, Onverwacht Node, Marapong Township (Spar Complex) and Marapong's proposed CBD (Ibid.). The main objectives of the plan are to revitalise the CBD, to create an integrated and functional urban environment and to rehabilitate the dysfunctional components of the CBD areas with economic development (ibid, 5).

According to the plan, 'The town of Lephale forms part of the National Energy Programme and the municipality is envisioned to become the "coal gate to Africa"'. The anticipated growth, in the short to medium term, will, according to the plan, have a significant impact on the town and the Marapong township. The National Development Plan (2030) directed that extensive attention be given to planning for and managing such growth. In line with the NDP, the Limpopo Spatial Rationale of 2002 identified Lephale town (Ellisras/Onverwacht/Marapong Cluster) as a *provincial growth point* (PGP) (ibid. 7).

Within this plan, the Ellisras/Onverwacht/Marapong node is recognised as the only urbanised and only real activity centre in the municipality as it is linked to the adjacent mines and power stations. The extent of rural areas, whose bulk of land is owned by/entrusted to traditional authorities, is identified as small and thus the focus is on one or two areas to the east of Lephale. The remainder of the municipal area is predominantly rural, whose needs are supported by the PGP node (ibid.).

Outside the centre of the PGP, the municipality also focuses on what they call Development Corridors as part of its PGP spatial development framework. These are 'links or transport routes between nodes with an increased intensity of development (mixed land use) in linear form along the length of the corridor/route or at lower order routes along such a corridor' (Lephale SDF 2017:92). These are meant to emphasise not only internal links but also external ones including linkages to Polokwane, Vaalwater, Gauteng and Botswana. In addition to the Development Corridors and their linkages between Strategic Routes,¹² the SDF identifies the proposed railway from coalfields linking to the Thabazimbi rail (2017:93).

¹² These are "link roads or transport routes between nodes and Development Corridors providing connectivity between such points including links with other municipalities or outside nodes" (Lephale SDF 2017:92).

B. Thabo Mbeki Municipal Growth Point

Thabo Mbeki is a proclaimed township that has been built in the rural areas between the Seleka and Langa (Mokuruanyane) Traditional Authorities. This, according to the SDF, 'represents the geographic centre of the rural priority area within Lephalale. It represents thousands of households with limited economic, institutional and local resources on which to build. Thus, given its accessibility via the district road network, it is prioritised for the provision of engineering infrastructure, higher order facilities and economic infrastructure where relevant' (2017:90).

The position of Thabo Mbeki as a municipal growth point is further 'strengthened with an activity node proposed at the intersection of D3110 and D3126 (roads) with a proposed small shopping centre and by strengthening the institutional facilities in support of other services already in the area' (2017:105). Furthermore, Extension 2 of the township is currently vacant and the proposed plan to populate it includes the relocation of houses affected by the 1:100 year flood line (these are located within Thabo Mbeki and Extension 1), the development of mixed income housing to accommodate all mineworkers from [a] proposed Iron Ore Mine, and the provision of significantly higher level services in the area in order to attract residents from all over the sub-region and to consider it as a pilot site for alternative 'green infrastructure' (Lephalale SDF 2017:105).

C. Seleka and Shongoane Rural Service Points

Both Ga-Seleka and Ga-Shongoane form the main villages amid a high number of small, scattered villages that are not serviced by the provincial road network. Given this isolation and consequent inefficiency of service delivery, the municipality has identified a nodal point among the villages where services will be clustered to the benefit of the broader area. It is acknowledged, however, that the economic potential of this node is less than that of the above-described growth points, thus, the focus is more on community infrastructure than economic infrastructure (Lephalale SDF 2017:90).

According to the municipality's rural development plan, 'agriculture is a very important economic sector in the rural areas' (Lephalale SDF 2017:104) depicted in figure 3 above. With a new Agri-Hub earmarked for the Modimolle area, the municipality has thus proposed an 'Agri-park¹³ related' focus for its rural SDF. Given this, the municipality proposes the development of a Farmer Production Support Unit (FPSU)¹⁴ in Seleka, Thabo Mbeki and Shongoane areas as part of connecting to this agricultural network with the Waterberg District Municipality. This, it is envisioned, will enable the development of transport networks between the rural areas and the district.

For the two clusters of villages, the SDF reinforces the proposal for an FPSU including communal kraals and mobile abattoirs. Furthermore, there is an emphasis on

13 Agri-Parks, according to the SDF, are systems of innovation of agro-production, processing, logistics, marketing and training and extension services in district municipalities. As a network, they enable a market-driven combination and integration of various agricultural activities and rural transformation services.

14 According to the municipal SDF, there are 'centres of agricultural input supplies, extension support, mechanization support, local logistics support, primary produce collection, and through-put to Agri-hubs. The FPSUs have limited sorting, packaging, storage, processing for local markets with through-put of excess product to Agri-hubs' (2017:104).

ensuring that no stands are allocated within the 1:100-year flood line (Lephale SDF 2017:107). Some houses, particularly within Thabo Mbeki, are allocated within the flood line and have on several occasions been flooded. Consequently, the municipality proposes discussions with traditional authorities regarding land-allocation plans and the future growth of residential settlements in rural areas. In addition, the SDF proposes various types of settlement plans in rural areas including mixed, low and medium density categories (ibid.).

Considering the points made in the municipality's SDF, the following subsections look at the municipality's land-use scheme, briefly outlining some of its provisions. According to the municipality, the purpose of the land-use scheme is to give effect to the municipal spatial development framework. The municipality does, however, acknowledge that linking these two is a challenge as the SDF is updated every five years, unlike the Lephale Land Use Scheme, which is not updated often.

3.2 Lephale Local Municipality Draft Land-Use Scheme 2017

SPLUMA provides for what is called 'wall-to-wall planning' which entails that municipalities have to prepare land-use scheme for all areas under its jurisdiction, including areas that were previously not subject to a land-use scheme. Accordingly, the Lephale Local Municipality's land-use scheme 'applies to the entire Municipal area' which includes all 38 villages falling within the three traditional authorities: Seleka, Langa and Shongoane.

In line with these provisions, the Lephale municipal area is divided into 'formal land use management areas where more formal land use management processes will apply; and incremental land use management areas where a less formal approach to land use management will permit the incremental introduction of land use management and regulation' (ibid. 2017, 15). The former comprises mainly areas that have been proclaimed with zoning and demarcation provided for while the former refers to mainly the areas under traditional authorities. The scheme further provides for offences, penalties and the enforcement of the by-law in both rural and urban areas.

3.3 Incremental land-use management areas (Proposed rural areas scheme)

The 2017 Land Use Scheme 'allow[s] for provisions that permit the incremental introduction of land use management and regulation in areas under traditional leadership'. Most of these have never been subject to formal land-use management processes and include many traditional villages. While the municipality prefers a 'more flexible [approach] towards land uses in these areas, and where possible, to make use of indigenous land use management processes', they recognise that 'certain land uses still require formal management and environmental authorisation' (e.g. a filling station). As such, they allow for the continual revision 'over time as land use management becomes more acceptable within these areas' (2017: 58).

Moreover, while the municipality recognises the need for a gradual introduction of the Scheme, some of the Scheme's provisions are rather strict with the possibility to be rejected by traditional authorities. Incremental land-use management areas would be divided into the following land-use zones: residential, business, industrial, education, cemetery, utilities, agriculture, public open space, government, filling station/public garage and commonage (ibid. 58). However, much of what the municipality is currently dealing with is the allocation of stands on residential land, and traditional authorities continue to define much of the land uses in their areas of jurisdiction.

The roles and responsibilities within these previously bantustan areas recognise the historical and contemporary roles that traditional authorities have continued to play with regards to land allocation. However, they propose that the latter can only continue to allocate 'low intensity land uses' in line with the scheme. While SPLUMA does not allow the participation of traditional authorities in the Municipal Tribunal, the land-use scheme does make provisions for a certain level of engagement between the two. For instance, it states that while traditional authorities 'can receive applications for higher order land uses', they can 'make recommendation to the Municipal Planning Tribunal'. Furthermore, if the tribunal does not approve an 'application as recommended by the traditional authority, the Municipal Planning Tribunal must arrange a meeting with the respective traditional authority and provide reasons why the application cannot be approved' (Lephalale Land Use Scheme, 2017: 58-59).

While the Municipality recognises that traditional authorities can allocate land, beyond the provision that they can only 'allocate low intensity land uses without a need to apply to the municipality', they also make the following regulations regarding the allocation of land in flood lines and within commonage areas. The scheme suggests that the municipality will decide on which areas within traditional authorities will be 'incremental management areas', outside of which authorities are not permitted to allocate land. It is also the municipality's role to extend and update the scheme maps to allow for future areas that can be allocated (ibid. 59).

The land-use scheme further makes provisions regarding the allocation of taverns and shebeens, and for other small business (shops) with provisions that the latter must 'be allocated close to nodes identified in the SDF' (ibid. 60) and that the municipality 'reserves the right to impose any additional conditions and to rescind any approval in case of valid objections/ complaints having been received or should the approval conditions not be complied with' (ibid.) with regards to tavern and shebeens. While the scheme makes provision for the enforcement of the by-law, as the findings sections will demonstrate, the introduction of the land-use scheme has been a slow process and while there is an openness on both sides, challenges abound.

The following sections discuss the findings and seek to relate these with the proposed SDF and the regulatory provisions of the Land Use Scheme. The findings,

however, do not address everything that has been proposed in the SDF but the findings that came up during the research process. Specifically, the sections focus on the municipality's land-use management strategy, and how — for a municipality without land — they work with the various stakeholders including mining and energy companies, sector departments and private landowners in managing land-use developments. Furthermore, it highlights the roles of civil society organisations in challenging some developments in the town. Lastly, it looks at contemporary land-use management in rural areas (with a specific focus on allocation), the relationship between traditional authorities and the municipality with regards to the introduction of the incremental land-use scheme in rural areas, and the challenges related to this.



Section 4

Research Findings

This section focuses on how the municipality deals with challenges of land shortage, land invasions and land regulation (this includes zoning and fragmented planning). The municipality's land-use management strategy is centred around resolving these three main issues. This is done through land acquisition, most of which is planned towards the provision of housing to solve the informal settlements that have sprung up (invasion), and measures to regulate land use more effectively. The next sections are thus organised in this order, including the roles of other stakeholders in land-use management. These includes negotiations for land from Eskom and Exxaro, how they work with sector departments to provide integrated human settlements, and the role of civil society organisations in land related matters.

4.1 Municipal Land Acquisition

As mentioned earlier, the municipality has no land of its own. The local authority depends largely on land donations and purchases from Exxaro and Eskom (Phadi and Pearson 2018). Thus, the municipality neither allocates any land nor has any extensive land-use management strategy. Because of this, the municipality's internal land-management strategy primarily focuses on acquiring land and regulating land-related developments in Lephalale. The following subsections detail the municipality's land acquisition strategy, and related challenges.

4.1.1 *Municipal land acquisition through donations from Exxaro and/or Eskom*

When the municipality requires land for a specific purpose, for instance housing, waste management or cemetery, the responsible technical department drafts an initial letter to the landowner. The municipal manager (MM) reviews and may adjust this letter. The letter will leave from the municipal manager's office to the landowner, in most cases Exxaro or Eskom. The municipal manager and the mayor will have a meeting with either Exxaro or Eskom (depending on who owns the land in question) and discuss the need.

These land transactions between the municipality and the landowners work on a type of bartering system where donators of land can ask for various cuts on charges. For example, institutions can donate land in exchange for exemptions or discounts on bulk infrastructure payments. Where land has been availed for housing development in the past, companies like Exxaro and Eskom may request that a some of the housing units be reserved for their employees.

4.1.2 Municipal land purchases and related challenges

To purchase land for development, the municipality must first define a need and detail why they need the land. Following this, the relevant department identifies the land and from there, who the owners of the identified land are. Following that, they can decide to approach the seller and negotiations are initiated. However, this process depends on the municipal budget process without which all negotiations are simply for estimations, and no final decisions can be taken. The municipality checks the availability of funds to purchase the land and if this is during the planning of the next year's budget, then the land budget gets included in that. If it is within the time frame of the budget readjustment process, they then check if they can allocate money for the land. But if the process happens once the budget adjustment process has already lapsed, the responsible department must wait until the setting of the following year's budget. Ideally, the budget must be approved by council before any negotiations can start (See the Grootfontein land purchase as example — p.38).

4.1.3 Challenges faced by the Municipality in land acquisition

A. Land price inflation

The main challenge to getting land is money. The municipality, according to officials, already has a small budget and as such, as mentioned, is dependent on donations from Exxaro and Eskom. Private landowners also capitalise on the municipality's land challenge and sometimes inflate prices. Although there is little development since Medupi's rush has subsided, private owners know that the municipality needs the land and they sell it to them at exorbitant prices. However, a fair price can be ensured by use of independent land valuers to assess the land, and where there is a wide variance, the price is negotiated.

While previously, farmers and private landowners have refused to sell their land to the municipality (de Ridder interview, 2015 in Monama, 2020), there is now a willingness to sell, but due to a limited budget, the municipality remains unable to afford land.

B. Internal coordination and communication

The municipality faces internal coordination challenges in instances where, for example, although the land request originates from a technical department, the municipal manager and executive mayor negotiate for land on behalf of the municipality. Sometimes this leads to adjustments in the original requests – leading to developments that may distort the outcome.

4.2 Integrated Human Settlements

Given the town's historically patchy development, the municipality focuses on **acquiring** land to build integrated human settlements, both to infill and integrate the town's patchy spatial planning and to address the housing backlog (see fig 4 below) and respond to the informal settlements that have sprung up within the CBD and in Marapong.

Rural Units	Project Linked	BNG/IRPD	Individual	Social	Backyard rental	Informal Settlements	CRU	GAP	Total
3 452		8 369		936	2 098	8 631	524	1 584	24 008

Figure 4: Housing backlog in the municipality (Source: Lephalale IDP 2021/22)

For this reason, the municipality proposes and explains the need for and identifies land, and then checks first if the land belongs to government and if it does, they then request for it. If it does not, as housing is a provincial mandate, they work with sector departments including the Department of Cooperative Governance, Human Settlements and Traditional Authorities (Coghsta) and the Human Development Agency (HDA), for support in purchasing land and housing provision. Several housing projects are currently underway in the municipality including the Altoostyd (Joe Slovo) project, the Marapong CRU project and Grootfontein farm.

In the case that the land is privately owned by Eskom or Exxaro for instance, the municipality often proposes and explains the need to either company as the two major landowners after private owners. They ask them for the land to be donated, and if this is agreed on, they proceed with the legal paperwork.

4.2.1 Altoostyd (Joe Slovo) and the Marapong CRU projects – intra governmental misalignment in land administration

In 2012, the then Minister of Human Settlements, Tokyo Sexwale, announced the Joe Slovo Housing Development in Lephalale to be located on the Altoostyd farm (Molefe, 2018). Coghsta, in collaboration with the HDA, were to develop integrated human settlements as part of the municipality's strategy of infill development. Coghsta bought the 500 hectare Altoostyd farm. At the time, the municipality could not mobilise adequate financial resources to develop the land, and as a result, the land has remained under the ownership of Coghsta (Martins interview, 2015 in Monama 2020). Since then, however, the project has barely started. According to the municipality, part of the bulk infrastructure has been installed but following delays, some of this infrastructure has been stolen (explained below under 'challenges' section).

Another second example is the Marapong Community Residential Units (CRU) project also meant to provide social housing in Marapong township. This land either belonged to Eskom or Exxaro and was donated to the municipality. The delay in both projects has been caused by funding issues at sector departments. An additional consideration is that since housing is a provincial mandate, these projects are essentially managed by Coghsta with the support of the HDA, with the municipality offering support in terms of what they see on site and to ensure that developments fit within the scope of their desired planning and land-use scheme.

A. Challenges with the Altoostyd and Marapong CRU housing projects

As mentioned above, both housing projects have been delayed. The two cases demonstrate the following four challenges:

- A lack of financial resources on the part of the municipality to install bulk infrastructure;
- The challenges of intra-governmental coordination;
- Jurisdictional challenges affecting the delivery of projects at the municipal level; and
- Contractual issues and their effects on project developments.

As the examples below demonstrate, these work simultaneously, challenging a 'silo approach' towards addressing them.

For Altoostyd in particular, it has been almost two decades since the farm was purchased. According to the municipality, some infrastructure was already installed in a section of the Altoostyd farm and the construction of units had already started in Marapong. However, in both cases, the projects have stopped and some of the installed infrastructure has already been stolen. Budget constraints and high staff turnover at the HDA were also cited as challenges that compromised the projects (See section 4.3.2).

On 11 May 2021, the MEC for Coghsta, Mr Basikopo Makamu, was invited to the local Waterberg radio station to talk about the two projects and to offer an explanation for the delays. According to Makamu, the Marapong CRU project was halted due to 'contractual challenges between service providers, Qinisa and Ryland companies. There are, he continued, plans under way to make sure that the project is resumed from 21 May 2021, and investigations regarding the stolen infrastructure (Makamu interview on Waterberg FM, 11.05.2021). Both these projects have also revealed the complexity and challenges of jurisdictional relations with regards to land-related development (see section 4.3 for discussion on these).

4.2.2 Grootfontein Farm

In light of these jurisdictional challenges, the municipality has taken steps to address housing backlogs and informal settlements 'unrestrictedly'. Mamojela Park is a recent informal settlement located in the flood line of the Palala River at the entrance of Lephalale, and has on several occasions been flooded. Recently, recognising the delays from Coghsta and the HDA, the municipality, seeking to be proactive in the provision of housing, decided to purchase land for the relocation of the Mamojela Park residents. For this, the municipality has internally secured the budget for 9 or 10 hectares of privately owned land and adjacent to it, 3.5 hectares of land from the Department of Public Works.

The municipality successfully negotiated with the Department of Public Works for the release of land for the resettlement of informal dwellers. Although the Department

of Public Works agreed to avail the land to the municipality, this was not enough. The municipality was at the time of writing negotiating for more land from a private landowner who owned the adjacent piece of land. A tentative offer was made, and the municipality had been waiting for Council approval of the budget which was then approved in May 2021. This will be followed by appointing a valuer to verify the price, and if this is more than the approved budget, the municipality will have to wait for the next budget year to secure funding to acquire the land.

4.3 Intergovernmental jurisdictions and relations, and how they impact on land management

Following the announcement of Medupi and against the backdrop of the town's anticipated growth, Lephalale was classified as a PGP and attained the status of a national development node (Monama 2020:104.). While these classifications are supposed make the town eligible for infrastructural interventions by provincial government (ibid.), the experience for officials has been a different one. This section looks at aspects that relate to intergovernmental relations and jurisdictional challenges as they are played out in local government. It starts with officials' perceptions of the role that the classification of the municipality as a growth point has played, followed by the challenges associated with working with sector departments, drawing from the above case studies on housing provision. Lastly, it looks at an example of how other spheres of government can interfere with the municipalities' land-use schemes.

4.3.1 Lephalale Provincial Growth Point (PGP)

Previous research has highlighted how the municipality barely received any support from province and national government with the advent of Medupi (Phadi and Pearson 2018). The recognition and classification of the municipality as a PGP has not changed this in the years following the announcement of the power station. The municipality has received very little support from both provincial and national governments. The lack of a sustainable growth plan and financial support from province and national government negates the designation of the town as a growth point. For some officials, coal alone is not enough of a resource to classify the town as a growth point.

4.3.2 Challenges of integrated human settlements: HDA and Coghsta

While the municipality works with most government departments at province level, whose role is to offer support to the former regarding any developments, this subsection focuses specifically on the relationship with Coghsta and the HDA in the provision of housing and for assistance with the incremental introduction of land-use schemes in rural areas. There are two reasons for this: Firstly, housing is at the centre of the municipality's land-use management as part of the infill development within the urban edge and dealing with the inherited patchy historical development of the town. Secondly, with regards to the incremental introduction of a land-use scheme

in rural areas, prior to the introduction of SPLUMA, provincial government was the responsible authority for surveying and land-use demarcation. Currently, as the municipality does not have a budget for this, they are dependent on the support of province for this role.

Despite what may seem like a conflicting point, according to officials, the relationship between the municipality, Coghsta and HDA is good and both are supportive of the former. Nevertheless, challenges within the HDA have affected projects in the municipality. These challenges include funding which has delayed and abruptly halted the Joe Slovo and Marapong CRU projects. The HDA's own internal dynamics — including high staff turnover and institutional instability have also impeded the projects.

Given that town planning was previously a provincial mandate, the municipality, given a lack of resources, still largely depends on Coghsta for the support in surveying rural lands. When traditional authorities ask for assistance with the allocation of stands, as they have been asked to do so by the municipality, the municipality collects this information, including the number people looking for stands, and then sends it to Coghsta to request the services of surveyors. However, this is a slow and frustrating process, with the municipality taking the brunt of the blame for delays.

4.3.3 *Groothoek mining and the interference with municipal land-use schemes*

Apart from the designation of the municipality as a growth point, the above-mentioned projects have also highlighted some relational and jurisdictional issues within government that undermine local authority efficiency in land management. This raises questions regarding the roles of different stakeholders and how these could interfere with that of other spheres of governance. For instance, SPLUMA clearly outlines the different roles of the different spheres of government, however, it still happens that province and national governments can interfere with municipal land-use provisions. The following exemplifies such a case.

According to the municipality, 'the Waterberg coal fields contain an estimated 50 billion tons of coal of which 25% could be mined by the opencast method' (Lephalale CBD Development Plan 2013). Groothoek Coal Mining Company (Pty) Ltd 'is the holder of a prospecting right over the farms Eedracht 505 LQ and Groothoek 504 LQ between the Onverwacht Node and Marapong Township (See Fig 5 below). Based on the feasibility studies, the prospecting right area has the potential to be a large, multi-product, opencast mine' (Lephalale CBD Development Plan 2013:15). The products of which would 'include an export thermal coal, power station coal for domestic supply to Eskom, and low-ash product with potential for metallurgical coal. In 2007, a prospecting right was issued by the Department of Mineral Resources and was subsequently renewed and valid from 1 August 2012 to 31 July 2015' (ibid. 2013, 15).



Figure 5: Aerial photograph indicating the location of the proposed Groothoek mine in relation to Marapong township and Onverwacht within the municipal integration zone (Source: Lephalale IDP 2021/22)

In 2015, Groothoek Coal Mining Company (Pty) Ltd applied for an environmental authorisation which was granted in April 2017 by the Department of Mineral Resources (DMR) for a coal mine on the same farms. Civil society organisations and the municipality challenged this (see section under Civil Society Organisations for further details) and the authorisation was subsequently withdrawn. Among other challenges, this example highlights the intergovernmental interference in land management.

While this case does not relate to national planning per se, and while mining is a national responsibility, it does speak to how national departments derail local municipal land-use decisions. While it has previously been ruled that ‘national government does not trump municipal land use decisions by issuing mining licenses’ (*Maccsands* case in Visser and Poswa 2019:9), it is clear from this case that they can and successfully do so. In this case, the DMR issued an environmental authorisation to the Groothoek Mining Company in contravention of the municipality’s land-use planning schemes – and the danger of developing a mine in a residential area is clear. Some officials had hoped that despite the granting of authorisation from DMR, they [the municipality] would challenge the mine’s application to rezone the land to mining.

4.3.5 Cooperative Governance through the District Development Model (DDM)

In 2019, the government announced the District Development Model, which emphasises strengthening cooperative governance and supporting local government from a district point of view. The model is an 'integrated planning model for cooperative governance which seeks to be a new integrated, district-based, service-delivery approach aimed at fast-tracking service delivery and ensur[ing] that municipalities are adequately supported and resourced to carry out their mandate' (SA News, 2019).

The model has been championed in several districts within the country, and in the Limpopo province, it has been rolled out in five districts including Sekhukhune, Vhembe, Waterberg, Mopani and Capricorn. In the Waterberg district, the model involves 'unlocking the Northern Mineral Belt with Waterberg as the catalyst' (Lephalale IDP, 2021: 64). This plan is structured through the following projects: Medupi; Mokolo Crocodile Bulk Water Distribution, Waterberg Rail Expansion Programme, Northam Integrated Human Settlement, Waterberg Electrification Programme, Lephalale Urban Development, Key Sector Departments, Seda Initiatives and Anglo and Exxaro initiatives (ibid.)

Undoubtedly, the Waterberg plan involves a significant number of projects which directly affect Lephalale. It was thus unsurprising when, on 6 November 2019, the government announced the launch of the DDM in and with Lephalale as the final launch of the pilot phase (SA News, 2019).

Although implementation of the DDM is still in its early stages, the initiative has projects under way. These include: financial and access to markets support for emerging farmers and specifically women in farming; linking early childhood development to education value chains; linking emerging farmers with established commercial farming sector for support and mentorship; small business development through the support of mining companies; and business services through establishing call centres (Lephalale IDP 2021/22: 64-65).

4.4 Role of stakeholders in Lephalale land-use management

Land-use management, as discussed earlier, does not involve only government. Various stakeholders play different roles in influencing land-use management in municipal areas. In the context of Lephalale, and for this particular section, stakeholders include the two prominent mining and energy companies: Exxaro and Eskom, private landowners and private developers,¹⁵ and civil society organisations.

¹⁵ Private developer can be either an individual land owner who wants to develop their property or someone hired to develop a piece of land on behalf of someone else.

4.4.1 Mining and Energy Companies: Exxaro and Eskom

Most of the land that is owned by the municipality is acquired through purchases and donations from Exxaro and Eskom. While it is usually the two companies that donate land to the municipality, in one case that was later contested by the then MM, in exchange for services, the municipality gave land to the Eskom. In this case, Eskom agreed to upgrade a water treatment plant in exchange for a piece of land that the municipality owns. The piece of land, called portion 7, is located just outside of the Lephalale hospital and is used as a temporary compound for Eskom labours especially necessary during the construction of Medupi power station.

At the time of the exchange, the municipality had a problem with the waste-water treatment plant, and in anticipation of how Medupi was going to increase demand for infrastructure, the institution approached Eskom with a proposal to exchange portion 7 for the upgrading of the plant. According to one official, the waste water treatment plant upgrade was an expensive project that the municipality could not have afforded and the exchange for land was a reasonable move on their part. However, as will be discussed below, the decision to exchange with land was contested within the municipality (see following subsection under 'Negotiating power').

A. Challenges with Eskom and Exxaro

(i) Resources (capital) and power

While the municipality sees its relationship with Eskom and Exxaro as working, recognising that they have different interests, recent research has highlighted how through their land holdings, infrastructural power and disregard for land-use regulations, major landowners have more power with regards to spatial development in the town (Phadi and Pearson, 2018; Monama 2020). For instance, asked how a mining company can insist on planning a mine in the middle of the town, one official responded: "Power and money". As with many officials, this was an acknowledgement of the power that mining and energy companies have in directing some of the developments that happen in Lephalale. Consequently, while some of the issues regarding land-use management are easily-resolved daily disputes, and others take a long time. (See Section 4.5 for a discussion on disputes).

(ii) Negotiating power

When negotiating for land through sale and/or purchase, the municipality is in a weak position as compared to the custodians of land. The municipality has limited wiggle room because of its financial constraints. Eskom and Exxaro do not always accede to requests for land donations and have been known to refuse and/or push for land purchase instead.

4.4.2 Private landowners (and private developers)

Over 50 percent of land in Lephalale is privately owned. As mentioned in the section on land acquisition, the municipality's relationship with private landowners and private developers is very minimal. Their relationship revolves around the application of building plans in the case of the latter group, but not so much beyond. Although the municipality's difficulty with land acquisition is evident, they do not receive assistance from private landowners and developers. Most landowners and private developers understand that the municipality does not have land and they are aware of its demand. As such, instead of helping, they prefer to sell to the municipality (ibid.). This dynamic creates challenges of land inflation and, in some cases, the contravention of land-use schemes as developers, who are big role players in terms of development, try to impose their plans on the municipality (explained below).

A. Challenges with other private landowners and developers**(i) Contravention of land-use regulations**

As mentioned earlier, one of the municipality's main challenges in terms of land-use management is around regulating land use. According to municipal officials, a significant number of developments happen without approval from the municipality. Developers always try to find gaps within municipal policy frameworks or try to bypass them. There is, according to some, nothing the municipality can do in such cases because developers have the financial muscle to go all the way to the courts if need be.

(ii) Land price inflation

While the Medupi rush has calmed and the Lephalale town is starting to resemble a ghost town, land remains a highly valuable asset. Given the possible expansion in mining projects linked to the MCWAP 2 project, land speculation remains a strategic opportunity. For instance, as most private developers and private landowners are aware of the need for land in the area of Lephalale, their prices are exorbitant.

4.4.3 Civil Society Organisations

The municipality does not work directly with civil society organisations. There are three avenues through which the latter engage developments in the municipality. First, regarding land-related developments, as with everyone in the community, civil society organisations are mainly engaged with the reviews of development applications in the municipality through public participation (where they submit their grievances and concerns regarding the nature of the developments and their impacts). Second, they take part in the IDP Representative Forum as part of community/public participation of the IPD process. Third, they participate in the Lephalale Development Forum. As a mining town, most of the notable civil society organisations are engaged in local economic developments issues, and environmental impacts of the mining industry, and the impact of these on the communities. The following examples demonstrate the engagements of different civil society organisations.

Example 1: Accountability on the part of developers

This first case demonstrates how civil society organisations hold both the developers accountable with specific demands on labour matters. In a case involving the Radical Economic Transformation Committee (RETC), when there are developments they are not aware of in the town, the members go to the municipality and ask if the municipality granted the developer approval for their developments. They would then ask about the conditions on which such a development was approved as there are obligations around consultation and/or compensation and hiring practices (i.e. requiring a developer to hire local labour). Civil society organisations mobilise different strategies to enforce their position — including petitions and strikes.

Example 2: Challenging coal mining developments

As already mentioned, coal mining and energy generation in Lephalale has provoked debates including questions regarding the socio-economic and environmental impacts of such developments. In April 2017, Groothoek Mining Company (Pty) Ltd was granted an environmental authorisation by the Department of Mineral Resources for a coal mine on the farms, Eendracht LQ and Groothoek LQ. The Lephalale Local Municipality, Earthlife Africa with Concerned Citizens of Lephalale, the Centre for Environmental Rights, Eskom's Matimba Power Station and Camelot Reserve submitted separate appeals (Mzamo, 2017). 'According to Earthlife Africa Johannesburg, the proposed mine would be situated between Marapong and Onverwacht and this "angered the local residents as it was planned inside the residential boundaries of Lephalale, a few metres from a block of flats, and the provincial hospital in Lephalale"' (Earthlife Africa Johannesburg quoted in Mzamo 2017, mining news). In November 2017, the then Minister of Environmental Affairs, Edna Molewa, set aside the decision and referred it back to DMR for reconsideration (Mzamo 2017, Mining news). The case is currently under judicial consideration (subjudicae) and officials could not share any further details on it.

4.5 Regulation: Enforcement and Disputes

SPLUMA allows for the municipality to draft its own land-use scheme and associated by-laws. As the Act provides for both areas that have previously and those that have not yet been subject to a land-use scheme, the municipality's land-use scheme also makes provisions along the same division. This section on regulations deals with the regulation of areas that have and continue to be subject to a land-use scheme which comprises urban area and rural areas — including commercial farms and conservation spaces. While the municipal land-use scheme makes provisions for enforcing zoning and other regulations, this section demonstrates how the municipality has limited capacity to enforce its by-laws, and some of the initiatives taken to resolve these.

4.5.1 Enforcement of land-use regulations

According to the municipality's land-use scheme, 'No person may erect any building structure of or any part thereof without first obtaining approval from the Municipality in terms of the Planning By-law, and for purposes not permitted by

the By-law and in accordance with the applicable development parameters' (2017). However, this subsection demonstrates how developers have been able to proceed with developments undeterred by the penalties of the by-law and with little or no consequences in some cases. The municipality lacks the financial resources to enforce regulations and/or mobilise the courts against violators.

A. Illegal developments and violation of zoning regulations

Private developers have continued with their unapproved applications, undeterred by penalties from the municipality. An incessant challenge is developers who carry out developments without municipal permits. According to one official, almost 80% of the applications made to the municipality are going ahead illegally i.e., without approval from the municipality. Despite the presence of a regulatory framework, however, the municipality has not been able to enforce compliance with the Land Use Scheme (Monama, 2020).

In some cases, when the municipality turns down a development application, developers threaten legal action against the local authority.

The Municipality has limited capacity to enforce land use zoning regulations. The main violators include those erecting lodges and game farms in land that is zoned for agricultural use. Residents in the local authority's urban area also convert residential zoned land for business purposes, especially guest houses.

In both instances, besides the clear contravention of zoning regulations, the municipality also loses the potential income of these as agriculturally zoned land is cheaper compared to residential and business zoned land.

B. Municipality's limited capacity to take legal action against defaulters

Although the Municipality has an option of legal recourse to deal with illegal land developments within its jurisdiction this is rarely evoked. This is because of limited Municipal financial and technical resources.

C. Municipal Initiatives to improve land management

In July 2018 the Municipality hired a geographic information system (GIS) specialist whose role involves and fills in the technical capacity gap. In 2021 the Municipality hired a service provider (Database Server) who will be working with the GIS specialist as part of centralising their data. This includes land data (which they don't have currently), land-use management and related developments.

The municipality has a Municipal Planning Tribunal; whose role is to resolve some of the land development disputes. According to one official, however, the municipal tribunal only deals with appeals. While there have been only a few cases, the effectiveness of the independent adjudicative body in resolving some of the existing disputes is yet to be demonstrated.

4.5.2 Disputes: Appeals and Litigation

A. Development application appeals

The municipality is bound by the legislation to ensure public participation in land-use applications and according to the municipality, people do, in fact, challenge some applications. When an appeal is submitted to the municipality, it goes to the Municipal Planning Tribunal for review. Previously, the municipality did not have the capacity to comply with SPLUMA regulations, and thus were part of the District Tribunal as a 2-year interim plan (Tukakgomo interview, 2015 in Phadi and Pearson, 2018). They, according to officials, managed to establish their municipal planning tribunal whose role is to review township planning applications. Two forms of appeals dominate:

(i) Appealing municipal decisions: In these cases, residents or other stakeholders appeal decisions made by the municipality to either approve or decline an application.

(ii) Municipality and/or other stakeholders appealing development applications: These cases include those where either the municipality, residents, CSOs, and/or other stakeholders can appeal applications made to the municipality.

4.6 Policy- and Bureaucracy-related limitations

The municipality (and local government in general) has adequate legislative and policy frameworks. However, there are implementation challenges. This section looks at some of the challenges that are prevalent in the Lephalale Local Municipality despite having a good policy framework. Though separated into policy- and bureaucracy-related limitations, they are interwoven, and some examples are used demonstrate this.

4.6.1 Policy-related challenges

A. From Ordinance to SPLUMA: Policy shift backlog

As with previous findings (Mutshavi interview in Phadi and Pearson, 2018), SPLUMA was hastily applied and the municipality is still working with a backlog of the old Ordinance¹⁶ which they then have to translate to SPLUMA regulations. This is time-consuming and delays processing of current applications. There was, according to some, not enough time given to municipalities for the transition.

B. Linking the SDF to Land Use Scheme

As mentioned earlier, SPLUMA requires that municipalities link their SDFs to their land use schemes. According to the Municipality, however, “Linking these two

¹⁶ ‘The former Transvaal Ordinance (Town-planning and Township Ordinance No.15 of 1986) provides guidance as to the purpose of town planning, the regulation of land use by town planning schemes (including the content and application procedures), the establishment of townships, the roles and functions of statutory boards. Most municipalities are “authorized” by Province in terms of the s2 of the Ordinance (1986) for the purpose set out in Chapters II (town planning schemes), III (establishment of townships by private land owner), and IV (establishment of townships by local authority). In effect, they can consider, approve, or refuse and use applications’ (Baylis 2011: 4).

planning instruments has, in the past, proven difficult. While the SDF guides wide planning and provides future spatial form of the municipality, land use scheme deals with existing property rights. The time frames of the two instruments have also varied drastically in the past. SDFs are reviewed every five years while land use schemes tend to stick around for far longer. The scheme is “amended” through development applications (such as rezoning, consent use application etc.) but that really only affects individual properties and property rights. In the past, the scheme as a tool was not really changed or amended” (Lephalale Municipality SDF, 13).

4.6.2 Bureaucracy-related challenges

A. Failure to implement policy

Officials were polarised regarding policy implementation. While some believed that, for instance, the municipality is doing well in regulating developments (as prescribed by policy), others argued that despite a very good legislative framework, the issue is a lack of implementation of policies.

B. Lack of Internal support

The following two examples demonstrate the limits of administrative staff in their ability to alleviate some of the challenges that the municipality might have. In both cases, the development and planning department sought to find ways to deal with some challenges related to land-use planning and regulation. However, as they are policy changes, they require public participation as well as support from management. While the administrative people can make such suggestions, they are unable to push this any further than that.

(i) Precinct plan: The Development and planning department wants a densification and precinct plan, with the argument that the SDF is too broad and that the latter would be very specific in terms of its regulations. The lack of this localised regulatory framework has meant the municipality has very little control in terms of land use.

(ii) Taxing vacant land: Given the town’s patchy geography, this means that huge tracts of land remain undeveloped within the municipal boundaries and the municipality is trying to find ways to encourage infill development. In addition to the SDF proposal to develop land use incentives, another more stringent proposal is to increase the vacant land tax from the current R107 to R1,205. This could potentially encourage the release of idle land within the municipal boundary.

C. Politicised environment

The politicisation of the local government space poses challenges for professional work. This is compounded by the red tape.

D. Turnover of Section 56 managers

Beyond a turnover in young junior staff in municipalities (Visser and Poswa, 2019), the turnover of executive managers every five years was noted as something that impedes the delivery of projects precisely for how long it takes to plan and see through the completion of a project.

4.7 Traditional Authorities: the case of Seleka Traditional Authority

The case study of Seleka Traditional Authority will be used to provide insights into the relationship between traditional authorities and local government in land-use management. The Seleka Traditional Authority was selected because it is the biggest and most prominent of the three tribal authorities in Lephalale. Ga-Seleka covers 60 per cent (27/38 villages) of the area under tribal authorities followed by Shongoane and Langa Traditional Authorities respectively. Secondly, the headmen of Ga-Seleka were the only ones the Municipality had engaged with regards to SPLUMA.

Seleka Traditional Authority and its villages fall under the jurisdictional boundaries of Lephalale Local Municipality. The north-eastern part of the municipality includes other more densely populated rural areas of the former Lebowa bantustan, to which black people were forcibly moved from the then white area known as Ellisras (Hallowes & Munnik, 2018) and from elsewhere. Obtaining statistical information for the total area of Seleka was a challenge as some villages do not have figures and others do not appear on the statistics website. Despite this, the population is estimated to have increased since 2007 especially due to the expansion of mining and the construction of Medupi Power Station in Lephalale.

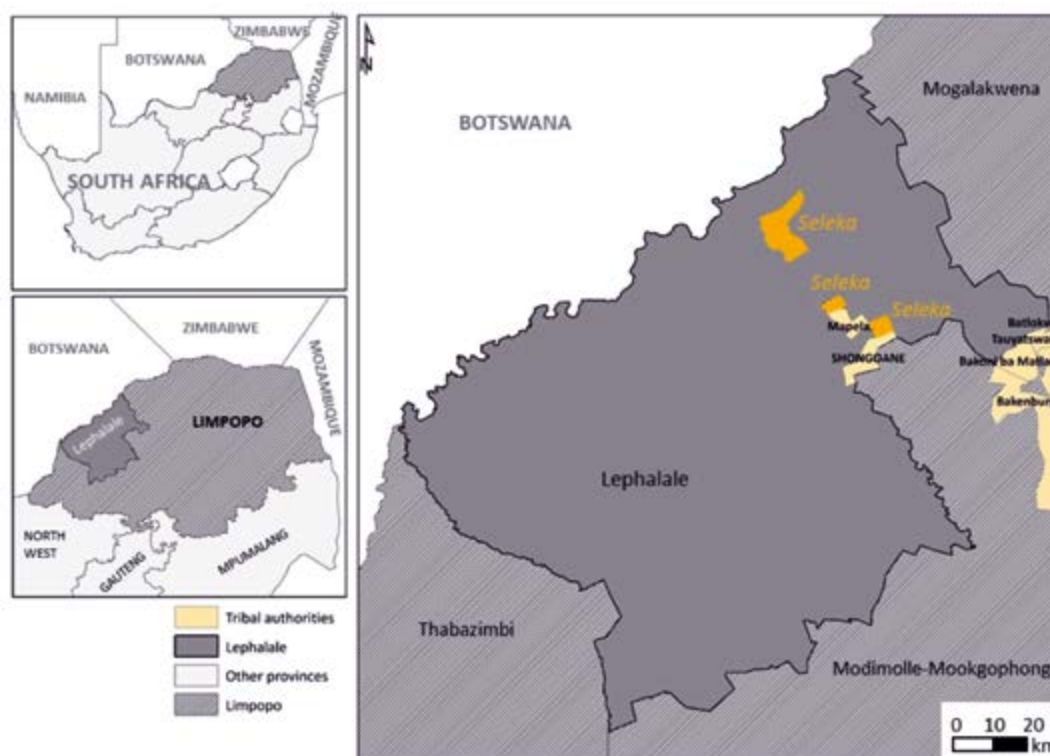


Figure 6: Map showing the location of Seleka within Lephalale district municipality
(Source: Miriam Maina, 2019)

While there is not much written on Seleka, earlier research indicates that the traditional authority has been in the area prior to the apartheid regime. With the start of farming activities of white settlers by 1850, Ga-Seleka provided an important source of labour for white farmers (de Jongh & de Beer 1992: 103). The period during and after the Anglo-Boer war of 1899-1902 saw an encroachment of white farmers onto black land in the territory claimed by the ZAR – the old Transvaal (Hallowes and Munnik, 2018). Following the passing of the Native Land Act of 1913, and as part of the Union government's consolidation of land to regulate tenancy arrangements for black people, 'the Seleka area was scheduled under the Native Land Commission in 1916 and reaffirmed in with the Natives Trust and Land Act of 1936' (Vig, 2018: 86).

After coming to power in 1948, the apartheid government adopted the Bantu Authorities Act of 1951, leading to the reinforcement of native reserves as tribal, regional and territorial authorities respectively (King & McCusker, 2007: 7). Through this and accompanying legislation, the government reinforced and consolidated the native reserves into ten ethnically defined territories — the bantustans (Claassens & Boyle, 2015) (See Map below). Building on colonial distortions of customary law, the government allocated increased power to traditional authorities in administering rural lands and populations, denying South African citizenship rights to those living in bantustans. Although the bantustans were envisioned as being independent, and with some granted independence, they still depended largely upon and were subject to interventions by the central government. Across the country, black people were routinely and forcibly moved to the bantustans, both as part of the segregationist policies and to make way for the expanding mineral-energy sectors.

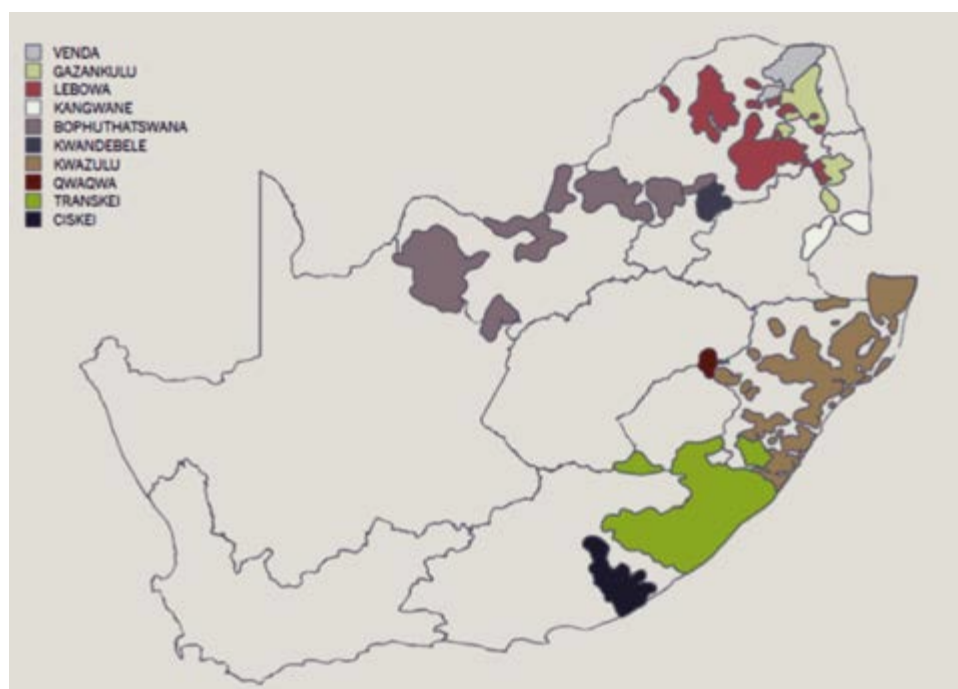


Fig 6: Map of the ten Bantustans in 1986 (Courtesy of www.customcontested.co.za in Weinberg 2015:7)

The Seleka tribal authority was formally 'established' as a Ndebele tribal authority by the apartheid government in 1954 under the leadership of Chief David Radibake Seleka,¹⁷ the father of the late Kgoshi David Phetogo Seleka. The area of Ga-Seleka later fell under the 'self-governing' Lebowa bantustan, established in 1972 for the dominant Northern-Sotho-speaking groups in the Transvaal, along with other groups including Northern Ndebele, Tswana and Tsonga. As part of the consolidation of the bantustans and to make way for the mining developments black people residing in the Ellisras area (and surrounding farms) were forcibly removed to Steilooop, while others settled in the area of Ba ga Seleka.

The end of apartheid rule marked the incorporation of Lebowa into the Limpopo Province, along with Venda and GaZankulu bantustans in 1993/4. Following the 1994 elections, a transitional council was established in the Ellisras municipality and all the areas around Ellisras (later Lephalale), and 38 villages from the Lebowa Bantustan — including the area of Ga-Seleka — were incorporated into the new municipality. While these new jurisdictional borders have repositioned colonial and apartheid spatial boundaries, it has been widely argued that they have mainly remained the same (Ramutsindela, 2007). For instance, land in areas under traditional authorities continues to be administered by those authorities and until recently, the areas were not subject to land-use schemes.

SPLUMA is the first legislation to make provisions for the incremental introduction of land-use schemes in areas that were previously not subject to them. While areas under traditional authorities do not have a formalised land-use management systems, this report demonstrates that in some cases, there is a framework that is followed which structures land-use and regulation, albeit with challenges. Using the case of Ga-Seleka, these sections look at what this structure might look like, and how this structure is shaped by the varied histories and land ownership within villages. The following subsections look at the varied forms of land ownership and the implications for land allocation systems, including who can settle where, and how. This is followed by subsections on the introduction of the municipal land-use scheme in Ga-Seleka and how this process has worked so far, and the challenges related to it. These are followed by municipal strategies to address these challenges; land-related disputes in Ga-Seleka; and finally perceptions of both municipal officials and headmen in working together.

17 Government Union of South Africa, 'Establishment of the Seleka Tribal Authority-District Potgietersrus', Government Gazette No 26114, 24 December 1954

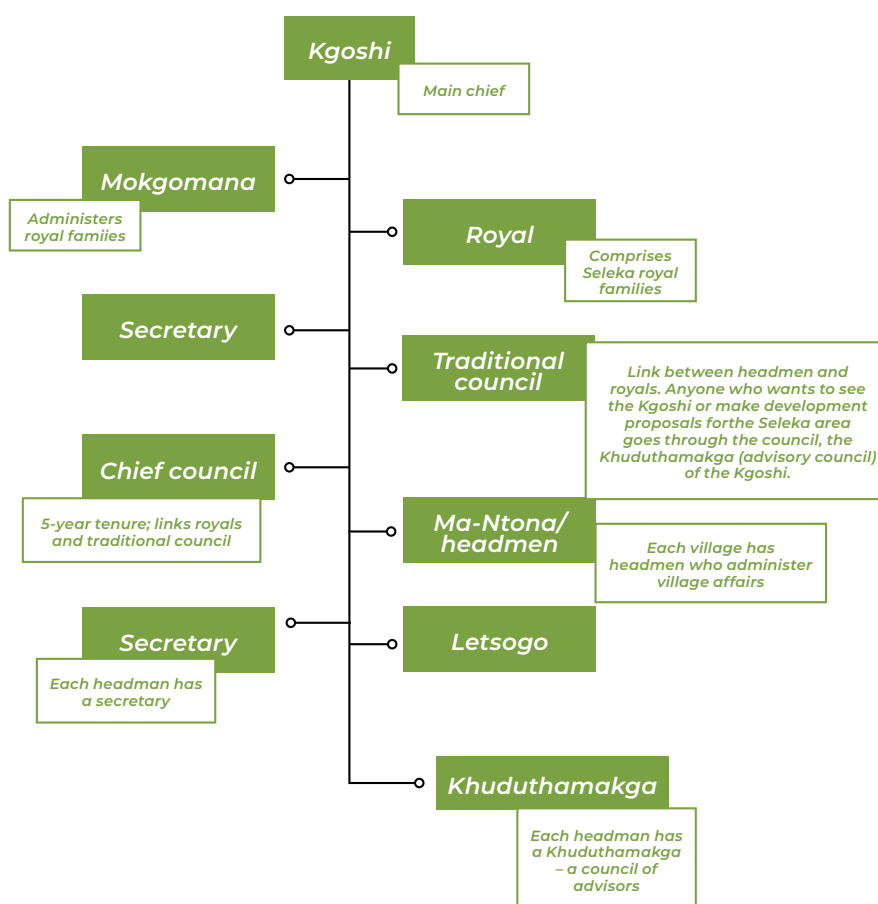


Figure 6: The structure of Ga-Seleka Traditional Authority (Source: Constructed using interviews with Ga-Seleka Headmen, 2021)

4.7.1 Contested and diverse land tenure under Seleka traditional authority

Land controlled by traditional authorities is generally understood as state land that is under the custodianship of the former. Such a tenure system is considered as 'communal', "taken to imply common ownership of all resources and collective production, [which, however,] is rarely the case" (Cousins and Klaasens, 2004:139). According to Cousins and Klaasens, "What 'communal' generally means is a degree of community control over who is allowed into the group, thereby qualifying for an allocation of land for residence and cropping, as well as rights of access to the common property" (ibid.). Furthermore, the authors demonstrate how this was varied across the country given historical dynamics. In the Transvaal, for instance, "competing systems and conceptions of land rights co-existed in varying degrees of tension and conflict" (Delius 1997:24 in Cousins and Klaasens 2004:141). While "the boundaries of African land were established through market transactions or administrative fiat, internally the tenure systems continued to operate along customary lines (Delius 1997:19 in Cousins and Klaasens 2004:141).

The Seleka case study highlights another example of a contested idea of communality, control and access. According to interviews, the land (and corresponding villages) of Ba ga Seleka can be loosely organised in three forms of tenure:

1. land that is owned by the Seleka Royal family,
2. land that legally belongs to residents of a particular village (colloquially known as *borekoa*), and
3. land that belongs to the state but under the custodianship of the Seleka traditional authority (Trust farms).

Under these three holdings, land is administered in different ways despite following a similar, yet contested, process of registration under the Seleka traditional authority.

In the first form of land holding, the land has been bought by the Seleka traditional authority. There is, however, some level of uncertainty regarding farms which are state-owned and those that are tribally owned. The title deeds of the former are said to be held by Coghsta. In maps that were provided by the Lephalale Local Municipality (which they received from the Municipal Demarcation Board) delineates most of the land as belonging to the State (across various departments). Regarding the second tenure, i.e. those farms bought by residents, there are further contestations around these. While the council (and by extension the Royal Family) insists that there is only one farm bought by residents, interviews with headmen and residents point out that there are several of these. This has led to contestations between the Council (and by extension Royal Family), some residents, and headmen. It is important to outline a brief historical timeline of the settlement areas in Ga Seleka and the corresponding farms/villages. The third tenure includes those farms that were bought by the apartheid government and held in trust of the Seleka traditional authority. Please note that 'trust' farms is used loosely here because even those farms that were bought by "tribes" and/or their "tribal" authority were sometimes held by the state in their trust and therefore the idea of 'trust' farms does not necessarily mean that the land was bought by the government.

In 1946, in line with the provisions of the Native Administration Act No. 38 of 1927, the Union government approved the appointment of David Radibake Seleka as the Chief of the Ndebele Tribe resident in Seleka's location and on the following "tribally owned" (own emphasis) farms: Beauty No. 919, Lily No. 286, Rietfontein No. 624, and Kafferskraal No. 381. These indeed coincide with some of the earliest recorded settlement areas of Ba ga Seleka. These were later extended and changed post-1948 by the proclamation, in terms of Section two of the Bantu Authorities Act, No. 68 of 195, of Ga Seleka as a Bantu tribal authority under the leadership of David Radibake Seleka in 1954. The proclamation announced the following scheduled "tribal farms" (own emphasis): Lily No. 986, Beauty No. 919 (known as Seleka's location), Rietfontein No. 624, Kafferskraal No. 381,¹⁸ Harry Smith No. 772, remaining extent of Olifantdrift No. 1021 and the remaining extent of Witfontein No. 383. What the shift from "tribally-owned" to "tribal farms" meant in legal terms remains uncertain. Indeed, some of these farms are currently under contestation in terms of their ownership.

18 Government Union of South Africa, 'Appointment of David Radibake Seleka', Government Gazette No.?, August 1946

In the following years, several farms (including Trust farms) were added to the above mentioned to which many would relocate as part of the apartheid Betterment Planning. As mentioned earlier, there are about 26/27 villages that fall within the jurisdiction of the Seleka traditional authority. These (with corresponding farm names) are listed below. Please note that, as described during interviews, “borekoa” is used to designate those farms bought by residents, and “tribally-owned” as those bought by the traditional authority:

1. Seleka (Lily) (Bought, tribally owned)
2. Seleka (Beauty) (Bought, tribally owned)
3. Seleka Wyk: This area incorporates several villages including Seleka 1, 2, 3 and 4 (Old Seleka’s location which includes farms Beauty and Lily)
4. Kauletsi (Kafferskraal) (Bought, tribally owned)
5. Tshelammake (Witfontein) (Bought, borekoa)
6. Letlora (Boschkop) (Trust)
7. Gobagodimo 1 (Klipspruit) (Trust)
8. Gobagodimo 2 (Soetendalsvlei) (Trust)
9. Kopanong (Immelman) (Trust)
10. Magadimela (Strydomsdrift) (Bought, borekoa)
11. Lebu (Gedroogte) (Trust)
12. Kokstad? (Trust?)
13. Sefitlhogo (Rietfontein) (Bought, tribally owned)
14. Morwe (Rob Roy 1) (Trust)
15. Botshabelo (Rob Roy 2) (Trust)
16. Moong (Registrasie) (Trust)
17. Botsalanong (Friendship) (Trust)
18. Segale (Honey) (Trust)
19. Lerupurupung (Witpoort) (Trust)
20. Senoela (Melkbosch) (Trust)
21. Tlapaleburethi (Hugo De Groot) (Trust)
22. Ga Mocheke (Van Leeuwen) (Trust or bought) (?)
23. Everywhere (Trust)
24. Ga Maeteletsa (Harry Smith) (Bought, borekoa)
25. Ditlounng (Olifantsdrift) (Bought, borekoa)
26. Kgokwe (Steenbokpan area)
27. De End (Madibaneng) (Bought, borekoa)
28. Motlhasedi (Bossche Diesch) (Bought, interviews with the Motlhasedi council ongoing therefore not used as part of the report)

The above list includes both bought and trust farms, the latter being those farms that were bought by Africans (either the traditional authority or residents) and the former as those held in trust for black people by the government as per the terms of the Native Trust and Land Act of 1936, No. 18 of 1936. An important note to consider is that during the time of research, only the deeds registry office documents belonging to De End (Madibaneng) were made available to the researcher. For the rest, the designation of 'bought' is only made so from the accounts of interviews done with council members, residents and headmen. Some of these designations are, as mentioned earlier, contested. For instance, in some interviews, while some argued that farms such as Beauty belonged to the Royal Family, others argued that the farm was bought by the resources from the community¹⁹ and therefore is owned by the residents, particularly those early settlers who contributed to its purchase.

As mentioned earlier, it is not certain which and how many of the villages are owned by the traditional authority. According to council, except for Madibaneng as the one true bought farm (i.e. borekoa), all other bought farms under Ga Seleka are legally owned by the Royal Family. All bought farms according to the Seleka council include the following: Rietfontein (Sefitlhogo), Beauty, Lily, Kafferskraal (Kaulets), and Bossche Diesch (Motlhasedi).²⁰ Furthermore, they argue, an even more extensive area within and beyond the Lephalale boundaries belongs to the Seleka traditional authority.

While residents were not certain of farms that legally belonged to the traditional authority, they seemed certain of which were borekoa. According to interviews with headmen and residents, areas that were bought by residents consistently (with minor variations) included the following farms: De End (Madibaneng), Olifantsdrift (Ditlounge), Harry Smith (Ga Maetelets), Witfontein (Tshelammake), Strydomsdrift (Magadimela), and Olifantsdrift (Ditlounge). Anomalies: Ga Mocheke/Botshabelo (Van Leeuwen). Apart from Madibaneng, however, there are contestations as to who bought the rest of these farms. Some argue that they were bought collectively by the 'old' residents (i.e., those that first settled in the area), by one person (i.e. one farm bought by one person), and those saying they were bought collectively by old residents but due to failure to finish paying, they were paid off by the then Chief David Radibake Seleka (and the corresponding title deeds under his name).

In the following example, one area of borekoa will be used demonstrates the ways in which this form of land ownership under a traditional authority impacts the governing structures, allocation of and access to land.

De End (Madibaneng): The farm De End, on which the village of Madibaneng is located on, consistently came up as an exemplary bought farm and confirmed by

¹⁹ Community here is used loosely to refer to residents of the village.

²⁰ While not dealt with in this report, it is important to note that the farm, Bossche Diesch, on which the village of Motlhasedi is located, is under its own traditional authority structure. According to its council members, the farm was bought by Solomon Motlhasedi Seleka, a relative of the Seleka Royal Family. Even though they seem to have been subsumed by the Seleka traditional authority under both the colonial and apartheid government, they insist that they have always been independent, with their own administration and managing their own land.

residents of the village. According to interviews with residents and the governing council, Madibaneng was bought by 84 people. The sale of which was concluded in 1949. It is widely acknowledged that the apartheid government “entrenched the [colonial] link between communal land tenure and notions of tribal identity” (Weinberg 2015:7, Ramutsindela 2012). Under apartheid, black people were not allowed to buy land without falling under a traditional/tribal authority. Furthermore, while the 1913 Land Act did permit Africans land ownership in scheduled areas, the government “made it illegal for [them] to hold individual titles to property, arguing that this would erode ‘communal land tenure’” (Evans 1997 in Weinberg 2015:7).

In the case of the purchase of De End, a restrictive number of ‘no more than four’ was imposed on how many black people could purchase land as a group. With the help of lawyers, the names of four people from the larger group were used to purchase the farm for the rest of the group. Depending on how much each member paid, plots of varying sizes were subdivided amongst them. To date, the title deed of the farm remains under the names of the four members.

One of the contested aspects of De End is which traditional authority the people fall under. While some argue that the people are subjects of Mamabolo, others argue against this. According to the latter group, while many the people who bought the farm came from Mamabolo, a considerable number of them came from other areas including Viena, Mmakgodu, Ga Dikgale, and Louis Trichard (but knew of farm-De End- while living in Ga Matlhodi). Thus, for that reason, Madibaneng does not belong under the authority of Mamabolo despite an acknowledgement of the link with the said authority.

Furthermore, according to some residents, the original buyers of the farm went to lotsha at Ga Seleka (as their closest neighbours and traditional authority) and asked for their help in resolving conflicts within their community, if they had failed to do so amongst themselves. This, however, was not a submission to fall under the administration of this authority. In addition, as one interviewee said, under the previous political dispensation, African people were not allowed to exist outside of tribal structures. So, within their negotiations of freehold and communality, the community still had to negotiate some links with tribal authorities.

This refusal to be wholly governed under traditional structures has had implications for their governing structures. While an apparently small group wishes to work with both traditional authorities, a larger population of residents see themselves as falling under the administration and jurisdiction of neither Seleka nor Mamabolo. Indeed, they choose their own governing council, headed by a chairperson. This, despite their usage of terms such as Ntona/Chairperson or governing council/khuduthamaga]. This has sowed divisions within the community between the two groups. Further, governing council, with the help of descendants of the four title holders, have started the process to ensure that each member receives their own individual title deeds. While the village has worked with the Seleka authority in some forms, their land allocation strategy deviates from theirs with a similar and yet slightly different management (See section on land allocation).

In the third form of land holding, the land belongs to the South African government but is under the custodianship of the Seleka traditional authority. Trust farms that were settled during the 1960s when the apartheid government carried out betterment planning in the Bantustans came up as land that remains under the ownership of the state, with the Seleka traditional authority as the user rights holder. During this time, the government purchased several farms in the area and relocated part of the population from existing villages as part of its 'orderly' rural development. However, as mentioned earlier, there are contestations around who owns which farms and most of the land is recorded on municipal maps as belonging to either the "state" or specific state departments. As will be explained below, these different forms of ownership and land holdings have implications in terms of who can settle on which lands and how land is allocated.

A. Land allocation in areas under traditional authorities

Some years ago, the municipality, with Coghsta's help, prepared simple layouts of pegged stands for each traditional authority. These, however, only covered certain parts of the area and have since stopped. Headmen in Ga Seleka have continued to allocate stands in the general direction of these old plans using similar dimensions. Interviews with headmen highlight that while there is no standardised land-use plan for the entire area, there is a loose regulatory framework that they use. The allocation of land is dependent on the type of land tenure that characterises an area. As mentioned earlier, the area under Seleka has three types of land holdings which — as will be demonstrated in this subsection — have an impact on how and to whom land is allocated.

(i) Allocation of land under traditional authority (tribally-owned and state land)

In the first and third forms of land holding, since both are under Seleka traditional authority, as the supposed legal owner in one and custodian in the other, it is the traditional authority's land allocation system that is used. While there is no administrative procedure that has been outlined for traditional authorities in managing land in their areas, as this case study demonstrates, traditional authorities come up with their own administrative systems with accompanying criteria, procedural steps and forms of documentation. In some cases, while some steps might be new, old forms of administration are refined and appropriated to suit contemporary demands and changing circumstances.

In the case of Ga Seleka, allocation procedures vary between indigenes and those from outside of Seleka. A land 'applicant' approaches the headman who then asks the applicant to submit a *treka*.²¹ The headman will then assess this and in

²¹ The *treka* appropriates the terminology of the old "trekpass" which was "an eviction notice previously used to allow evicted labour tenants to travel without being arrested" (Haffajee and Chabalala 1999:10). Today, this functions like a 'reference' from the headman from which the applicant comes which confirms the residence of the applicant and attests to their 'good standing' and that the person is not leaving under questionable circumstances. Since this applies to people coming from another village, if the person is coming from an established township, they then have to bring their latest proof of address.

some cases assess the applicant.²² The headman submits the application to the Traditional Council where he then introduces the applicant (this does not need to be in person but can be if the applicant wants) and submits their documents. If successful, the headman will then, with the help of the elected members of his/her Khuduthamaga²³ allocate a stand to the applicant and then the headman will prepare a *springbok*²⁴ (Permission to Occupy) for them at the council office, and a stand number will be allocated to them.

Although there is no fee that people pay for the allocation of stands, according to residents and headmen, residents of Ga Seleka pay a Royally set annual fee of R40 at the traditional council. Furthermore, those applying for land from either outside of Seleka or from one village to another are subject to a R140 fee (R100 for administration and R40 for the first annual fee). Some residents believe that the money is paid to the offices of Coghsta and used for the remuneration of headmen working in the area. However, according to council, this is more gratuity than remuneration, and it is not uniformly paid out. While some of the headmen get monthly payments, others do not.

As part of their administrative roles, the headmen of all villages under these two tenures receive stamps bearing the Baphuthing bo Seleka signature and are authorised to give “proofs of residence” (colloquially known as proof) to members of their individual villages. These, as with other proofs of residence in proclaimed areas, are used to access several services including opening bank accounts and looking for employment, for instance.

Furthermore, within their own jurisdiction, headmen have some authority to decide on several other levies payable only by members of their respective villages. In each village, headmen along with their Khuduthamaga, have the power to decide on what people can pay for. In all the cases, most of the villagers’ money goes directly towards paying for certain services in these areas. Some of these could be on a need basis and thus paid once (when the need arises) or it could be a standardised fee that people pay annually. For instance, in a case where the villages needed to upgrade their communally shared livestock infrastructure, people were asked to contribute. In some villages, residents pay annual fees of between R30 and R50 towards the installation and maintenance of fencing and for the hard copies of proof of residence papers,²⁵ as headmen do not get any budget for the provision of these.

22 According to Matlamela, his criteria of assessment is centred on age. He is mostly interested in giving stands to young people as they are more likely to have children who will more likely attend local schools. He does not want the schools and creche in his village to close and that is why he prefers to allocate stands to people he perceives as more likely to have children (Matlamela interview, 2021)

23 Khuduthamaga are the council of advisors to the headman. According to the headmen interviewed, they do not allocate land themselves but instead, several members of the Khuduthamaga are selected with that responsibility. The headmen only give authority and the permission to occupy (PTO).

24 This term, according to interviewees, also appropriates the name used for a P.T.O under the Lebowa government in the previous political dispensation. Today, this document is issued out by the Seleka Traditional Council, and is the P.T.O for residents of the area.

25 These are signed and issued by Headmen. They are usually used when people need proof of residence for instance when applying for jobs or opening a bank account.

While communal land tenure prohibits people from selling it, this is not as clear cut in these two cases. In most interviews, there was acknowledgement that people can and do, in some cases, sell their stands. While others made the distinction between selling your house (located on the stand), others argued that there are people who sell even 'empty' stands without any physical property structures on it. Furthermore, while it is not common practice, interviewees did mention that people were renting out their stands, houses, and backyard rooms to people looking for accommodation in the area (e.g. those people working at the Groblersbrug border post) and for shops. In some cases, some stands have been turned into lodging facilities located on parts of the area that the Council has designated as for businesses. Despite the designated, some businesses especially shops and taverns are located in residentially designated areas, some to the discontent of residents (especially taverns).

(ii) Allocation of land owned by residents (borekoa)

As already mentioned, some of the land in Ga-Seleka is legally owned by the residents of those villages. Madibaneng, as outlined in the previous section, has been attested to by all interviewed headmen, residents and the traditional council as such an area. This section outlines land allocation in this case, and highlights the differences with the first and second tenures. In Madibaneng (De End), the allocation land does not use the same system. As the farm is subdivided into individual plots, there is not much land left to allocate to anyone else. However, the original buyers/inhabitants had subdivided certain portions of land for communal use including for schools, churches and similar. While some of this land is in use for its intended purposes, some of it is now being used to allocate stands²⁶ to descendants of the original buyers. The community does not allocate this land to anyone else outside of the existing community. When it comes to individual plots, while it is possible that people can sell to 'outsiders' or allocate to persons of their interest, preference, especially if one is selling, is first given to people from the village. This refusal to allocate stands even to people coming from other villages under Seleka means that they too have difficulties accessing land in other villages. Like the previously mentioned two land holdings, new tenants are registered at the chairperson's (headman) office and the council office.

Due to the contestation surrounding their administration, i.e., not wanting to be wholly administered under either Seleka (or Mmamabolo), some residents do not pay the R40 annual fee because they own their land. They see the fee as only applicable to those people staying on tribally owned or trust farms. Nevertheless, some residents, are apparently paying for and have the springbok (and proofs of residence) from the Seleka traditional authority. This, some argue, is not because people want to fall under the authority per se but because they recognize the significance of this alignment in accessing especially job opportunities.

²⁶ As the communal portion of land is not big, but also the recipients are not buying, the stands allocated to them are much smaller in comparison to the original plots.

Unlike villages falling on the two latter tenures, the Madibaneng governing council has its own stamp, bearing their own council's name, that is used on their official communiqué and documentation. Additionally, as most of the residents don't yet have their own title deeds, residents need to obtain proofs of residence from their council. In some cases, when necessary, they also get proofs of residence from the municipality. New tenants are introduced to the community and governing council, and if they have bought the land from another resident, they are issued with a deed of sale by the governing council, stipulating the details of the transaction.

It is interesting to note that despite their ambiguous and disputed role in the country, as demonstrated in many studies, traditional authorities remain important in democratic South Africa. Their administration of land reinforces this significance, and as this case demonstrates, the necessity of documents such as P.T.Os and proofs of residence in accessing services such as banking and employment further reinforces their role. For instance, in an interview with a resident of Madibaneng, a bank asked that for the proof of residence from their council to be acceptable, it had to bear the title "headman" as opposed to "chairperson" as they had it. Currently, the stamp has both "chairperson/headman" as a way to ensure that they are not given problems by other institutions and to ensure that they still maintain their authority by not getting rid of "chairperson".

This section demonstrates that the geographical histories of villages and corresponding land tenure within traditional authorities affect the ways in which current land-use management functions. While traditional authorities continue to have power with regards to the latter functions, these case studies show the variety of contestation and how understandings and uses of land change with economic and political dynamics. Furthermore, current literature reflects on the precarious tenurial systems operating in rural areas, this report adds to this, highlighting the contested nature of power as well in relation to land use management. This section further reflects how even as they were subject to apartheid's grand segregatory planning developments, within the limits of what power they had, Africans contributed to the construction of internal bantustan geographies. Additionally, residents themselves have negotiated tenure between freehold and communal tenure historically and today are negotiating this in relation to not only forms of belonging but as well to security.

In the following section, the report looks at the recent introduction of SPLUMA as the first post-1994 legislation that requires the introduction of municipal land-use schemes in areas under traditional authorities. Using the case of Ga Seleka, it considers how the municipality and the traditional authority have negotiated this process especially given the disputed policy in the province. It highlights the working relations between local government and traditional authorities and what the impact of these are on the ground.

4.7.2 Introducing SPLUMA to areas under traditional authorities

SPLUMA is the first law that mandates municipalities to include rural areas, particularly previously bantustan areas, in their land-use schemes. As Fourie highlights, 'Traditional authorities [within Lephalale and elsewhere] have in many cases, been excluded from land use schemes' (2019:67). The introduction of land use scheme, however, has been happening on an ad hoc basis without any outlined structure of the procedure that municipalities are supposed to follow. Similar to other areas in Limpopo, the Seleka traditional council had its own reservations regarding the SPLUMA.

SPLUMA mandates municipalities to include public participation as part of the development of both their SDFs and land-use schemes. In Lephalale, the municipality engages traditional authorities on three platforms: community consultation, IDP Representative Forum and the Municipal Council. In the latter, traditional authorities form part of the Municipal Council and can decide on matters related to developments in the area of Lephalale. Through community consultation and the IDP Representative Forum, the municipality gathers the needs of the community which are then consolidated for inclusion in the IDP and the drafting of the SDF.

Interviewed headmen had diverse experiences regarding public participation in SPLUMA, the municipal SDFs and land-use scheme. It is important to note that many of them had never heard of SPLUMA, the SDF and/or a land use scheme. Only one of the five interviewed headmen had heard of SPLUMA in 2013 when the municipality, along with sector departments including Coghsta, consulted the Seleka traditional authority about it. This communication, they assumed was through the council. Recently, as part of the introduction of the land use scheme, the municipality had, for the second time, asked them to suspend allocating land. The reason was that the Municipality wanted to assist traditional authorities to survey their land and ensure that stands were not allocated in unsuitable areas, e.g. flood plain. At the time of research, this process had just begun and since then, the surveying process was yet to begin.

Furthermore, when asked about the role of councillors and ward committees as the link between communities and municipalities, the responses were diverse. The perceptions and experiences of the headmen working with ward committees was varied. The role of ward committees is understood by all interviewed headmen as a responsibility to make sure that all community complaints and demands are taken to the municipality. The ward committee is supposed to communicate this with the councillor who will then take these complaints and demands to the municipality. While their working relationship with the latter is good for some, it is less so for others.

The following subsection will look specifically at the introduction of the incremental land-use scheme as prescribed by SPLUMA. The focus is on how the municipality is introducing the scheme, the experiences and perceptions of the headmen in this process and the related challenges of the process. As the process was still in its early stages, this section of the report does not make clear connections between the various forms of tenure and the introduction of a land use scheme.

A. Introducing incremental land-use schemes through the allocation of stands

Recent research with all three traditional authorities in Lephalale shows that they have been marginalised from municipal land use planning processes (Fourie, 2019). At best, the only form of planning done in most of these areas includes some form of future planning in precinct plans or inclusion in [the] Municipal Spatial Development Framework (ibid.). This was confirmed by an official who says that traditional authorities have only been engaged regarding the SDF. In this process, the role of traditional authorities is to assist the municipality in developing the SDF.

For the SDF, the municipality works with the traditional authorities to identify growth points and advise them as to which direction their villages can extend so that this also aligns with service provision. During this process, traditional authorities and communities will be involved during the discussion of the local SDF and communicate on the possible limitations they may encounter in their plans from their perspectives as residents of the area. The municipality will then consolidate this information into a plan that will be the guiding document for developing those areas.

Given that the SDF for the municipality is a broad vision with the main goal of infill developments, and connecting internal and external development nodes, Ga-Seleka (and Ga-Shongoane) are included as rural service delivery points and thus the focus of their role in the SDF also takes that form. As explained in the municipal SDF section, both Ga-Seleka and Ga-Shongoane have been identified as a nodal point where services will be clustered to the benefit of the broader area and as part of connecting to an agricultural network with the Waterberg District Municipality. Their input in the SDF is thus mainly around the services that communities need that can be offered to them efficiently through the proposed nodal development structure.

Since the policy does not say how and what should be introduced and when (with regards to land-use schemes), municipalities can decide what to introduce. In the context of Seleka, the municipality has currently been focusing on the stand-allocation process. This is done for three reasons: first, to make sure that the growth of rural areas merges with the municipal SDF goals; second, to ensure that service delivery is effective by planning stands in a manner that allows for the seamless installation of services such as electricity and water; and third, to ensure that houses are not allocated within the flood line of the Palala river which runs through most of the villages.

Despite what in general seems like an acknowledgement of the significance of SPLUMA and its necessity, in practice this has proved challenging for both parties. While traditional authorities are keen to work with municipalities to ensure that land allocation and the growth of rural is in line with the municipal service delivery objectives, they are also clear that they do not want the municipality to be sole the decision-maker when it comes to land use in rural areas.

The next subsections discuss in particular the challenges that are related with the allocation of stands as part of the incremental introduction of the municipal land-use scheme.

(i) Challenges related to incremental land use and the allocation of stands

Mapping rural areas and the lack of data

Nationally, most, if not all areas under traditional authorities lack GIS data sets. While the collection of such data is a municipal function, it requires the support of province. Headmen within Ga-Seleka did not have a system of land registration that they used within their villages. However, each knew where the demarcations of their villages were and at some sites, there were fences demarcating the boundaries of each village from another.

Delays in allocating stands

Most headmen are not familiar with the municipal SDF and/or even SPLUMA. In interviews with headmen under Seleka, there was no recollection of working with the municipality to create the land-use scheme either. Sometime in 2019, and again last year, the municipality asked them to stop allocating stands and they did. However, they did not hear from the municipality again afterwards. As more and more people became desperate to receive stands, they resumed stand allocation. While community members do wait for certain periods that they are told they need to wait for, after some time, frustration mounts. In some cases, frustrated people invade and claim stands, bypassing the role of the headmen and his Khuduthamaga.²⁷

Lack of resources and capacity

Part of the reason the municipality has not been able to assist with surveying land and allocating sites in rural areas is due to a lack of resources and capacity. Although this responsibility falls within the municipal jurisdiction, the provision of layout plans is the function of province. While the municipality can hire the services of one, due to a lack of funds, they are entirely dependent on Coghsta to send them surveyors whenever there is a need.

In addition, the municipality recognises that for wall-to-wall planning to be effective, future extensive spatial planning needs to be undertaken in areas under traditional authorities. The effectiveness thus depends on the consistent support of provincial government to ensure that municipalities implement the land-use scheme.

Allocation on unsuitable sites

As land in areas under traditional authorities is not surveyed, this consequent lack of maps showing the extent of each property presents further challenges for the allocation and regulation of land use. While traditional authorities have their own system of land-use management, it is not easily regulated and sometimes stand allocation happens on an ad hoc basis. For instance, various other areas within

²⁷ Each village has a Khuduthamaga from which several members are elected who will be the ones responsible to allocate stands after springboks/permission to occupy have been issued.

the Seleka and Shongoane traditional authorities are situated within flood plains (Waterberg District Municipality IDP, 2020/21) and during heavy rainfall, some villages are flooded. Further, in all the villages, business, residential, entertainment and school sites have been allocated in the same areas.

Given these challenges with the allocation of stands, the municipality, particularly the development and planning directorate, as the one directly working with traditional authorities in land-use related matters, are trying to find solutions to deal with some of the challenges above. The next subsection looks at some of those strategies that have been devised on their part.

B. Municipal strategies to deal with land allocation challenges in rural areas

The municipality and traditional authorities are working on an arrangement to define their roles and responsibilities with regards to land use and management. The following are two examples of municipal strategies including taking initiative and planning ahead.

(i) Taking initiative

The municipality has a capacity challenge related to surveyors and the delays experienced with Coghsta. As the municipality does not have its own surveyors to peg and demarcate stands in rural areas, to ensure that there are not further delays in allocating rural stands, their current strategy is to exercise a professional eye in advising traditional authorities in terms of allocating stands. For this reason, the municipality has again since the end of 2020 asked traditional authorities to halt the process of allocating stands. They are in the process of engaging traditional authorities and have since visited five villages including Seleka, Seleka 4, Lerupurupung, Kauletsi and Ditlounge.²⁸ The municipality is working with Coghsta who will produce the layout maps of the villages. The process, however, has since stalled.

(ii) Planning ahead

Sometime recently, the Marapong cemetery was full and the residents had to travel long distances to town for burials. To avoid the same oversight, an Initiative involving the traditional leadership and the GIS specialist is evaluating cemetery capacity to inform future land needs. A draft document has been submitted to the Public Works department which deals directly with cemeteries.

(iii) Quarterly Engagement

To ensure a structured engagement with traditional authorities, the development and planning department has recognised a need for a consistency in engagement. The municipality recognises the need to have a quarterly engagement calendar with traditional authorities.

²⁸ At the time when initial interviews were conducted with some headmen, the municipality had not started with its visits to the traditional. They started after some interviews were done and so these were the ones who had been waiting. Thus, at the time of writing, only one of the 5 villages the municipality had engaged was interviewed by the researcher.

C. Land-related disputes under traditional authority: Process and Examples

As outlined in earlier sections, given the history of land distribution and communal tenure, land ownership in Ga Seleka is contested. This, as shown has implications for its administration and allocation. In the case of tribally owned and state owned land, despite the contestation regarding its ownership, it was clear if and how residents were challenging the tribal authority. In the case of Madibaneng, as an area of borekoa, the residents are currently trying to find ways to get title deeds for each of the 84 plots. This process has not been easy as it is unclear to them which government department is supposed to be of help. The procedure has also been costly as they have had to require legal assistance in figuring out the process and getting documents from the Deeds Registry.

For other land disputes, e.g. between residents, when they arise, the first step is to try to resolve it within the village between affected parties, along with the headman and his/her Khuduthamaga. If this is not possible, the matter gets taken to the traditional council office where the matter will be presented to council for resolution. The most prevalent challenges with land included people who allocate stands for themselves and those that insist on being allocated in unsuitable sites (e.g. closer to flood prone areas). While many of these can be resolved within the traditional council, it is not uncommon for land disputes to escalate to the courts.

An example of land ownership disputes: Boschkop Farm

Boschkop farm encompasses several villages including the village of Letlora. In this case, the nearby village of Tshelammake, located on Witfontein farm, was encroaching on a contested portion of Boschkop farm which, according to some interviews, falls under Letlora. According to some interviewees, the contested area falls under Tshelammake, and stands were allocated in that portion of the land. As people started building beyond the fenced boundary that separate the two farms, some people from Letlora went to stop them. This apparently turned into a fight and some people were arrested. The case escalated and lawyers were brought in. Construction and the allocation of stands in the area has since-circa 2009-stopped and the unfinished and abandoned houses are a reminder of the dispute. While some informants argued that the case was over, for some this was not clear.

D. Perceptions of relationship between municipal and traditional authorities

Despite what seems like an inconsistent relationship mired with challenges related to the questions of authority, power (re. decision making), and different goals, there is an acknowledgement that the relationship between the municipality and traditional authorities is a good one. Municipal authorities, however, gave mixed views on their relationship with the traditional authorities in land management. For some, there needs to be a better understanding of responsibilities. For the Seleka Traditional Authority, there is a general understanding of the necessity of land-use schemes in rural areas, however, the headmen interviewed want to be recognised and engaged as the people responsible for those areas.



Section 5

Conclusion

This research sought to understand Lephalale Local Municipality's land-use management strategy and the roles of different stakeholders in it. These include sector departments, mining and energy companies, private landowners, commercial farmers, civil society organisations and traditional authorities. Recent research in the area has highlighted how, given the historical land dispossession under colonialism and apartheid, particularly the governance in concessions between mining companies and the apartheid government, the municipality finds itself without land. Due to this lack, it is thus dependent on mining and energy for the donations and sometimes purchases of land.

The municipality's lack of land is one of three challenges it is confronted with; additional challenges are land invasion (informal settlements) and the contravention of the land-use regulations. Consequently, the municipality's land-use management strategy is focused around addressing these challenges and centred on the following three actions: land acquisition, the provision of integrated human settlements and regulating land-use developments. In acquiring land, the municipality depends on donations and purchases from Exxaro and Eskom, and from purchases from sector departments. Challenges faced by the municipality in acquiring land include the lack of funds and land price inflation (by private landowners as they understand the demand). In the case of donations, which work on an exchange basis, companies like Exxaro are able to make conditions and while these are not necessarily unfair, in some cases, companies have more negotiating power due to their land holdings and capital.

In the provision of integrated human settlements, as housing is a provincial mandate, the municipality depends on Cogesta and the HDA, who have bought land and are running several housing projects in the area including the Altoostyd (Joe Slovo) project and the Marapong CRU project. These, however have been delayed by challenges related to budget, contractual issues, the theft of infrastructure and dismissals at the HDA. Such delays have meant that the municipality cannot do anything more than wait for the projects to be completed. However, the municipality is currently trying to be proactive and are in the process of purchasing their own land to provide housing. While they will still, in part, depend on provincial assistance, as the provider of housing, buying land for themselves is one way in which they feel they can ensure that projects are completed quicker.

The principles of cooperative government and intergovernmental relations recognise the distinct and yet interdependent character of the three spheres of government. Within the context of land-use management and planning, SPLUMA mandates both province and national government to monitor the performance of, and provide support to, municipalities. However, the Lephalale Local Municipality has received no more support, even with the Medupi rush. Further, the municipality has been classified as a PGP, which means it is liable for more support, but this has not been the case.

In November 2019, the District Development Model was launched in the Waterberg District and Lephalale local municipality elected as one of the pilot municipalities. So far, while there is not much happening, the municipal IDP and LED managers say there are projects that are coming. Much of the projects planned for the Waterberg District fall within the Lephalale area as part of expanding its mining and energy operations. It is, however, still too early to make any comments on the model. For some of the officials interviewed, they have not heard of it since its launch.

It is well acknowledged that land management does not only happen in the public sector. For this research, the roles of mining and energy companies, private landowners and private developers, and civil society organisations were considered. Eskom and Exxaro, as the second biggest owners of land in area, are important to the municipality. Even though the municipality claims they do not play any official role, they do assist as mentioned earlier with regards to donations and purchases. Such a position, however, is not without its challenges. In some cases, the municipality does not have the negotiating power that these two companies have. Consequently, they can and do, through their land holdings and infrastructural power, decide when and how to intervene.

With regards to private landowners and developers, they, according to officials, do not help the municipality at all. Instead of offering land, they would rather sell it to them. One of the biggest challenges with private developers is the contravention of building regulations, including developments without the approval from the municipality and the contravention of zoning regulations. Many of the farms and conservation areas in the area illegally build lodges without changing the zoning rights. Some of the guest houses in the town are also operating on residentially zoned land. Beyond the simple fact of contravening regulations, this also means that the municipality loses money that it could be making from these illegal businesses.

Another important stakeholder is civil society organisations. The report highlights two cases; one focuses on local economic issues and other on the environmental impacts of mining in the Lephalale. In the first case, the action is directed towards developers in the area where the interest is in whether developments are beneficial for locals, for example, through employment. Where this is found to not be the case, developments can be stopped with the threat of violence on the site. The municipality usually advises developers to make sure that they are balanced in their hiring practices to avoid such problems going forward. In the second case, usually involving multiple organisations working together, the interest is in stopping some of the big projects considering their environmental, health and social impacts. While they don't work directly with the municipality, civil society organisations do play a role in ensuring accountability. Sometimes they even help (indirectly) the municipality by stopping unwanted developments that impact not only people and the environment, but also contravene municipal land-use schemes.

Regarding contraventions, the municipality does enforce its regulatory framework. However, due to certain challenges, they are limited in terms of the actions they

can take. These include limited funds (litigation is expensive), and lack of technical capacity (although they have started addressing this). While some disputes are managed quickly, others take years. In one case, the municipality is fighting over land that was previously sold outside of proper channels by the municipality. For the already cash-strapped municipality, the cost of this case has had them criticised by the Auditor General. But given their lack of land, they are continuing with the case.

The report makes the distinction between policy-related and bureaucracy-related challenges in terms of the limitations of the municipality in land-use management. In the former, municipal officials recognise that the municipality and local government in general have a good legislative framework. The main challenge is the short time given to municipalities to translate previous applications from Ordinances to SPLUMA. This, they argue, is related to the haste in which the Act was introduced and that there could have been more time given to municipalities to deal with this or strategies to address this.

Bureaucracy-related challenges in dealing with land-use management issues include the failure to implement, lack of internal support (in introducing policy changes e.g. vacant land tax), lack of innovation (some officials for instance argue that the above mentioned disputed land could be used in the meantime to generate money but now it is just there, unused, with the risk of invasion), and working in a politicised environment (developmental suggestions to other departments can be read as going against protocol if you suggest something outside of your mandated role).

The last section considers land administration in areas under traditional authorities and their role land-use management in Lephalale. Using the case of Seleka traditional authority, It reveals how the history of traditional authorities and forms of land ownership have shaped its land use management system. The case demonstrates how in the post-94 dispensation, in the absence of formalised systems of land administration, traditional authorities have created their own systems bringing new but also refining and appropriating earlier systems of land administration to meet new demands and changing circumstances. The case also shows how residents are continuously negotiating access to land and related resources with others negotiating between freehold and communal tenure.

While traditional authorities are generally considered to be the custodians of state land on behalf of its communities, in this context, it is revealed that land ownership is varied between state-owned land, tribally owned land and resident-owned land (borekoa). These have implications for how and to whom land is allocated. Additionally, In particular, the case demonstrates how the process of land allocation and role of the chieftaincy and headmen changes depending on land ownership.

As SPLUMA mandates municipalities to introduce land-use schemes in rural areas, this was another aspect that was considered in the report. As land allocation and regulations are the two main functions that traditional authorities manage in their

areas of jurisdiction, the incremental introduction of SPLUMA has focused on the allocation of land. Although there has been a delay in starting the process, the municipality has recently started to collect data from headmen, including the direction in which they want their towns to grow and the number of stands they want. This data will be sent to Coghsta to provide layout plans for the villages. This process is to ensure that stands are not allocated in flood-prone areas; to ensure that stand allocation aligns with service delivery; and to ensure that the growth of villages is linked with the SDF developmental goals of the municipality.

The introduction of the land-use scheme is challenged by a lack of rural data sets; delays in allocating stands — with consequences where people end up self-allocating stands; a lack of resources and capacity (municipality does not have its own surveyors etc. so dependent on Coghsta); and locating stands on unsuitable sites. The municipality has come up with strategies to respond to these including exercising a professional eye in assisting traditional authorities with the allocation of stands, planning ahead to avoid being reactive and building consistent structures of engagement regarding land-use management.

While the report highlights a significant number of challenges, both in the municipality and in its engagements with traditional authorities, many of the officials and headmen interviewed perceive their relationship as good. There is a general understanding of the necessity of land-use schemes in rural areas, however, traditional authorities want to be recognised and engaged as the people responsible for those areas. The municipality does recognise this, with many officials saying that what makes an effective working relationship between the two is understanding each other's roles, respect and recognising the traditional authorities — without their buy-in, says one official, you will have issues and, in many cases, they do want to engage and work with the municipality.

List of Interviewees

Lephalale Local Municipality Officials

Charity Radipabe Executive Manager, Development and Planning
Odirile Ramutla Town Planner, SPLUM and Acting Division Manager
Charles Seanego Manager, Local Economic Development
Frans Mabotja Manager, Integrated Development Planning
Kabelo Mokgoebo GIS Specialist, Development and Planning
Joseph Moaloshi, Manager, Legal Services

Seleka Traditional Authority Headmen

Seleka Royal Family, Seleka Traditional Authority
Ntona Chokeo, Tshelammake Village, Seleka Traditional Authority
Ntona Majadibodu, Letlora Village, Seleka Traditional Authority
Ntona Ditsela, Kauletsi Village, Seleka Traditional Authority
Ntona Manaka, Gobagodimo 2 Village, Seleka Traditional Authority
Ntona Matlamela, Gobagodimo 1 Village, Seleka Traditional Authority
Ntona Bopape, Madibaneng Village, Seleka Traditional Authority
Ntona Kale Mocheke,²⁹ Sefitlhogo Village, Seleka Traditional Authority

²⁹ Ntona Kale Mocheke was not well at the time of the interview and we interviewed his wife instead.

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