TITLE
THE ROLE OF THE PRIVATE SECTOR IN PROVIDING LOW COST HOUSING IN SOUTH AFRICA: THE CASE OF TONGAAT HULETT

A Case Study Research Report
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I certify that the report is my own work and all references used have been accurately recorded.

Signed:
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ABSTRACT

This case study centres around Tongaat Hulett, a large agri-processing business in KwaZulu Natal, and its role in a recent low cost housing development. It discusses the organisation’s relationship with eThekwini Municipality, the local authority, and the decisions around a potential expropriation threat on one of their most prime pieces of real estate north of Durban. The case spans a period of approximately 4 years (2005 to present), but focuses on the management decisions made by the Tongaat Hulett leadership from February 2008 to November 2009.

KEYWORDS

Private sector, housing, public-private partnerships, Breaking New Ground, Government, housing policy, negotiation, CSR
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GLOSSARY OF TERMS

ANC   African National Congress
BNG   Breaking New Ground
CEO   Chief Executive Officer
CSR   Corporate Social Responsibility
CSI   Corporate Social Investment
DFA   Development Facilitation Act
EIA   Environmental Impact Assessment
FSC   Financial Services Charter
GMSA  General Motors South Africa
HDA   Housing Development Agency
HOD   Head of Housing
IDP   Integrated Development Plan
IRDP  Integrated Residential Development Programmes
KZN   KwaZulu-Natal
KZNDOHS KwaZulu-Natal Department of Human Settlements
MD   Managing Director
MDG   Millennium Development Goal
MFMA  Municipal Finance Management Act
MOU  Memorandum of Understanding
NDOHS National Department of Human Settlements
PLS  Project Linked Subsidy
PPP  Public-Private Partnership
ROD  Record of Decision
RDP  Reconstruction and Development Programme
SA   South Africa
SAIIA South African Institute of International Affairs
SPV  Special Purpose Vehicle
TH   Tongaat Hulett
THD  Tongaat Hulett Developments
UNHSP United Nation’s Human Settlement Programme
WACC Weighted Average Cost of Capital
ZOPA Zone of Possible Agreement
PART ONE: THEORETICAL AND CONCEPTUAL FRAMEWORK

1.0 THEORETICAL AND CONCEPTUAL OVERVIEW

1.1 Introduction
To date, private sector participation in the low-income housing market has been limited. Government sees the private sector as reluctant to participate in this market. This reluctance relates to a combination of the high risk, low-return nature of this subsidised market as well as the belief that it is government’s responsibility and mandate to provide housing. The private sector’s inability to penetrate the market has been ascribed to some structural barriers to the provision of housing – principally land, finance and governmental regulations and policy constraints. Yet despite these barriers, the South African government still expects the private sector to provide low-cost housing. In the context where organisational and business success is measured in terms of a company’s return on investment, return on equity and share price, low cost housing is a market that has been, and may still be largely avoided by private sector developers.

This case study explores the role of the private sector in the provision of low cost housing. The case centres around Tongaat Hulett (TH), a large public listed agri-processing company and one of the largest private landholders in the KwaZulu Natal (KZN) province. Owning 14 000ha of agricultural land, Tongaat Hulett therefore has a significant landholding in areas where urban expansion and housing demand is being experienced in Durban, and is often targeted by government as an organisation whose more strategic landholdings are suitable for urban development, more specifically housing.

In 2008, the organisation decided to enter into a co-operation and alignment agreement with the local authority, eThekwini Municipality (ETM), and signed a Memorandum of Understanding (MOU) with the municipality, which to many, this was seen as a response to a threat of expropriation. This MOU led to eThekwini Municipality purchasing almost half of a strategic landholding, to be referred to as “Cornubia”. This landholding and the experiences of Tongaat Hulett with eThekwini Municipality, forms the backdrop of this research and plays a central role in the development of an hypothesis.

1 Low income housing in this context refers to the fully subsidized housing segment, and caters only for those households/families earning less than R3 500 per month. Such housing is also referred to as “give-aways”.
The central hypothesis of this case study is that the private sector has an important role to play in providing low-cost housing. However, its involvement in the housing sector has been constrained by lack of appropriate incentives from government, which have prevented more active and meaningful participation. The findings from the qualitative research will either prove or disprove this hypothesis.

1.2 Structure of the Report

This case study consists of four separate but interrelated sections.

The first section provides a theoretical and conceptual overview in which the background to housing in South Africa and its key dimensions are discussed. This discussion is supported by an overview of international best practice in terms of low-cost housing models, using the South American countries of Bolivia, Chile, Colombia and Brazil as examples. Key concepts such as corporate social responsibility, negotiation and corporatism as well as public-private partnerships are also discussed. The literature review used both desktop research methods as well as archival research.

The second section presents the case itself. This is based on a combination of personal and telephonic interviews, presentations by executives at Tongaat Hulett Developments (THD) as well as observations over the last few years. Company annual reports, investor analyst information and key documents, provided important supplementary data for the case.

The third section consists of an instructor’s guide which includes a summary of the case, the key teaching themes and learning objectives as well as suggested assignment questions and answer guidelines. The guide concludes with further suggested discussion questions and a proposed class plan. Exhibits used to illustrate key points are also included in this section.

The fourth and last section presents the bibliography of all the sources used in the compilation of this research project.
1.3 Research Methodology

1.3.1 Approach
The methodology used for this research project is in the form of a case study. Yin (1994) states that a case study is “an empirical enquiry that investigates a contemporary phenomenon within its real-life context, especially when the boundaries between phenomenon and contexts are not evident and it relies on multiple sources of evidence.” He further argues that case studies are particularly relevant when three main questions are being asked: Why, how and what? This case study will attempt to ask the following questions: 1) why did Tongaat Hulett choose to go into a partnership with eThekwini, 2) how did the organisation go about doing this and 3) what were the results?

The case study is largely exploratory – using the method of “finding out what is happening and to seek new insights” (Lewis et al, 2003). The primary advantage of this research method is that is both flexible and adaptable. A qualitative approach was taken to conduct this exploratory research and unstructured interviews — with respondents from both the public and private sectors — were used as the main form of obtaining information. Questions focussed on whether there was a role for private sector in the provision of low-cost housing and if so, what this role was considered to be. Interviewees were also asked to highlight the reasons for the perceived limited private sector participation in this housing market and ways in which they believe the sector could be stimulated or incentivised. The study focussed predominantly on one province, KwaZulu-Natal, with key lessons taken from the Western, Eastern Cape and Gauteng Provinces.

Interviewees consisted of a mix of senior executives at Tongaat Hulett, senior officials/managers from government, academics, private developers and construction companies. The interviewing of more than twelve respondents assisted in avoiding a bias in the case study (Yin, 1994). The primary interviewees around which the case study is focussed, include:

- Mr Mike Deighton, Managing Director, Tongaat Hulett Developments; and
- Mr Couglan Pather, Head of Housing, eThekwini Municipality.

Renart (2005) advises that an informant be chosen to tell the story of the management issue and act as the key character in the story. Mike Deighton, will be the primary “ informant” for this case study.
1.3.2 Data collection methods

A case study database will be used to document and organise the data collected through the research process. Yin (1994) suggests a few categories of case material as the basis for the case study. These include:

- Unstructured interviews with key stakeholders (the narratives);
- Non-participant observation of meetings and discussions etc (field notes);
- Collection of financial data (case study documents);
- Company Annual Reports and Investor Analyst Slides (Tongaat Hulett)

As data will be recorded through both note taking and audio recording, a summary of key themes or critical issues that emerge from the interviews will be prepared (Lewis et al, 2003). As this summary develops, it provides areas for further exploration in additional interviews. Quotes taken from key interviews will be used in the narrative so as to build up the case study into a readable document that students and teachers/instructors can relate to (Christoffels, 2007).

Sources such as company reports, presentations and financial statements provide secondary data. Lewis et al (2003) states that the advantage of using secondary data is that it can provide “comparative and contextual data” and may result in “unforeseen discoveries”.

1.4 Literature Review

The theory covered in this case study falls into four main themes. First, the case talks to issues which are related to the housing industry, the delivery process, housing policy and reasons, why the private sector has not become more involved in the provision of low-cost housing. Second, the case describes the build up to a negotiation for a major land transaction between Tongaat Hulett and eThekwini Municipality and subsequent move towards a potential public-private partnership. Third, the case highlights the decisions around risk management in business strategy and the leadership that facilitated this process. Fourth, the case discusses the role that the private sector could play in the provision of low-cost housing, and outlines the various incentives that could potentially encourage its participation in this market.

1.4.1 Definitions Of Key Terms And Concepts

Housing and types of housing

Housing is a unique commodity in that it affects a major portion of any household’s annual income, and it is also an essential component of living standard, comfort,
security and social status. As such, housing is thus an important and valuable asset for any household. The Department of Housing in 1995 defined housing as:

“A variety of processes through which habitable stable and sustainable public residential environments are created for variable households and communities. The structure must be permanent, have a secure tenure and must provide privacy and adequate shelter against the elements. The structure must have access to potable water, adequate sanitary facilities and domestic electricity supply.”

Before a comprehensive discussion on the housing sector and process can be presented, it is important to identify the various types of housing available in the industry. The first is categorised as **low-cost housing** (formerly also referred to and known as RDP housing). This caters essentially for the poorest of the poor – those earning less than R3 500 per month (and who often reside in informal settlements and slums) – and who qualify for a national housing subsidy. **Affordable housing** is defined as the range between the cost of an RDP house (at around R90 000) to the top of the “affordable housing range” (defined at around R300 000) and caters for households earning between R3 500 and R7 000 per month\(^2\). **Social housing** is rental housing which is supported by Government, and managed by social housing institutions, and caters for households earning between R1 500 and R3 500 per month. **Inclusionary housing** refers to new developments of which a percentage needs to go to lower income earners. In South Africa, this has been pegged between 10-30%.

This research paper is concerned with **low-cost housing**, and whether or not private sector has a role to play in providing it.

**Informal settlements and slums**

“Informal settlements are residential areas which develop spontaneously that have no formal planning or management”. They are a “collection of dwellings constructed out of their locally sourced raw materials and waste material” (Obhudho et al, 1988, cited in Khoza, 2008). Also known as squatter settlements, they are usually located on non-private (state) land which is unoccupied or not zoned for residential use. The Housing Act 107 of 1997 defines “informal settlements” as areas of unplanned and unapproved informal settlement of predominantly indigent or poor people with poor or non-existent infrastructure or sanitation”. Slums are very similar, but are generally regarded as a low-income settlements for the poor (Khoza, 2008). The relevance of these two concepts is

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\(^2\) This is also referred to as the “gap” market
directly related to the issue of housing the poorest of the poor as well as the concept of slum eradication or clearance, concepts which form the backbone of the case study itself.

**Slum clearance and eradication**

As slums are a natural characteristic of most growing cities, most local authorities have plans or programmes in place to address this problem. eThekwini Municipality has been chosen by the United Nations Human Settlement Programme (UNHSP) as a pilot project for its global cities and phase one of the “Slum Clearance Project” has been operating since 2002. The success of slum clearance projects requires the co-operation and support of the National and Provincial Departments of Human Settlements as well as a variety of municipal service units.

In the context of Breaking New Ground (BNG), which highlights the need to shift the official response to informal settlements from one of conflict and neglect to one of integration and co-operation, “Government is undertaking an informal settlement upgrading programme, under which at least one informal settlement upgrading project is currently being implemented in each province” (Kohler, 2008). This initiative is in line with best practice as described by the UNHSP which, in its 2003 Global Report on Human Settlements, promotes “participatory slum upgrading programmes that include urban poverty reduction objectives”.

However, as Kohler (2008) states, there are indications that the government’s approach to informal settlements may be shifting away from best practice (as described by the UN) towards a strategy of eradication which, critics fear, may be detrimental to the achievement of human rights for South Africa’s poor. The Durban High Court recently dismissed an application challenging the country’s first provincial slum-elimination legislation. Abahlali Basemjondolo, a housing activist group based in Durban, argued that the Kwazulu-Natal (KZN) Elimination and Prevention of Re-Emergence of Slums Act 2007 was unconstitutional as it purported to regulate eviction, land tenure and access to land matters. The decision was subsequently overturned on appeal and sections of the act declared unconstitutional. Abahlali believed that shack settlements were communities to be developed and not slums to be eradicated. KZN was applauded for being the first province to attempt to deal with the “problem of slums and slum conditions”.


Private sector
The private sector is defined as enterprise that forms part of a country’s economy but is not controlled by government and includes both the personal sector (individuals and households) and corporate sector (firms and businesses). The primary motive of the private sector is the generation of profits in order to sustain and grow itself. The characteristics of the private sector can however vary significantly depending on the nature, size and type of the company, or, as Plummer (2002) describes, whether it is an international, national or informal/small-scale company. Tongaat Hulett, the subject organisation, represents the private sector in the case study.

1.4.2 The Legislative And Policy Framework
This section provides an overview of the overarching legislative and policy frameworks governing the delivery of housing in SA. Some of the legislation is specific to the housing sector, other pieces of legislation have a direct impact on the housing sector, while other pieces of legislation indirectly affect the housing industry.

An overarching policy of the ruling party, the Reconstruction and Development Programme (RDP) was developed after the democratic elections in 1994, and emerged from the participatory traditions of the Freedom Charter. As a “forerunner” to the White Paper on Housing, this macro-economic policy framework sought to eradicate all the negative effects of Apartheid and provide adequate housing for all. As a policy document, and not a blue-print, the underlying core values and principles of the RDP remain. These core values were to meet basic needs, develop human resources, build the economy and democratise the state and society.

As can be seen, the importance and relevance of this government initiative relates directly to the housing problem. Under this expanded housing delivery programme, a target of 1 million houses in five years was set. Since 1994 over 1 million houses have been built (ANC, 2007), signalling unparalleled progress and success not yet seen in the world.

Access to housing and secure accommodation is integral to government’s commitment to reducing poverty and improving the quality of people’s lives. Section 26 of the South African Constitution states that, “everyone has the right to have access to adequate housing”. In addition to the right to housing, the Constitution also outlines the role of
government in housing. This role included the need to provide democratic and accountable government for local communities; ensuring the provision of services to communities in a sustainable manner; and promoting social and economic development.

In the groundbreaking Grootboom case, the Constitutional Court sought to give effect to housing rights as provided for in Section 26. This leading case on the provision of housing, has implored all levels of government to “ensure that the housing programme is reasonably and appropriately implemented in the light of all the provisions in the Constitution.” However, it is the national government which bears the overall responsibility for ensuring that the state complies with the obligations imposed upon it by Section 26, and hence the obligations of the State are summarised by the Constitutional Court as follows:

This case shows the desperation of hundreds of thousands of people living in deplorable conditions throughout the country. The Constitution obliges the state to act positively to ameliorate these conditions. The obligation is to provide access to housing, health-care, sufficient food and water, and social security to those unable to support themselves and their dependants. The state must also foster conditions to enable citizens to gain access to land on an equitable basis. Those in need have a corresponding right to demand that this be done.”

One of the ways in which the government has sought to give effect to its obligations in terms of section 26 of the Constitution as reinforced by the Grootboom case, is through the provision of Breaking New Ground.

The Housing Act, No 107 of 1997

The Housing Act, as the supreme housing law in the land, legislated and extended the provisions set out in the Housing White Paper, and gave legal foundation to the implementation of the government’s housing programme and aligned the national housing policy with the new Constitution. The Act sets out very clearly the respective functions of the national, provincial and local spheres of government. However the Act also stipulates that while the legislation provides greater clarity on how the housing sector should operate given the principles it sets out and the roles it defines, its “effective implementation is reliant on government’s capacity”, and the willingness and capacity of the non-state sector to participate in the housing process as envisioned. (Briefing of the Housing Portfolio Committee, 1999, Parliamentary Monitoring Group).

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3 Government of the Republic of South Africa v Grootboom and Others 2000 (1) SA 46
An important part of the Act is “the Housing Code”, which provides a guide and policy context and sets out various national housing programmes. For the purposes of this case study, the most important chapter in the Code is in Part 3, more specifically Chapter 3A, which deals with subsidies granted for purposes of Integrated Residential Development Programmes (IRDP). The significance of this Chapter 3A lies in the fact that it now effectively restricts the entitlement to project-linked housing subsidies to developments in which the relevant municipality or provincial housing department is the developer. The Code repeatedly refers to the importance of meeting the housing challenge through partnerships, including partnerships between the public and private sectors. While the provisions of the IRDP Chapter do not outlaw partnerships altogether, they severely restrict the ability of the private sector to work with the public sector in providing low-income housing, since private developers are not able to access these subsidies any longer. And therefore, while the new IRDP chapter was ostensibly designed to enable the government to meet a constitutional obligation, they have had precisely the opposite effect – they have inhibited the potential of government progressively to provide housing for the poor.

Development Facilitation Act (DFA), No 67 of 1995
The Development Facilitation Act (DFA), although not specifically housing related, is a piece of legislation that directly impacts on the housing industry. Since impediments to speedy land release threaten the success of many urban and rural development programmes, including all reconstruction and development projects, the DFA was formulated as a means to speed up land development processes, pending thorough on-going reform of planning and land development frameworks. The DFA introduced measures to facilitate and expedite land development projects, with its key aim being to overcome bottlenecks in existing regulations, to accelerate land development, especially the delivery of serviced land for low-income housing. The DFA was the township establishment route followed by Tongaat Hulett Developments in seeking to acquire development rights for Cornubia.

The Housing Development Agency (HDA) Act, No 23 of 2008
With land release in urban areas being identified as a major bottleneck to housing delivery, a new housing development agency to fast-track the country’s housing delivery programme was launched in February 2009. The establishment of the agency came as a response to the serious threat that the acquisition, holding and release of land posed to the government’s target of eradicating slums by 2014. While the HDA was
meant to compliment and augment the existing capacity across all spheres of government, its primary mandate was to perform the functions in line with the objectives set in the Breaking New Ground strategy where the key determinant of success is the location of new housing projects.” The HDA was instrumental in assisting the local authority, eThekwini Municipality, in the acquisition of 517 hectares on Cornubia, a transaction worth more than R180 million.

**Expropriation Act, No 63 of 1975**

Expropriation of property in South Africa is governed by the Constitution. In section 25, the Constitution empowers the State to expropriate property for a *public purpose* or in the *public interest*. The Act stipulates that:

“The State has a constitutional obligation to take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis. Further, the state is permitted to take legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination. Finally, the Constitution also provides that expropriation is subject to compensation, which must be agreed between the property owner and the expropriating authority. Where there is no agreement, compensation may either be decided or approved by a court.”

Expropriation under the 1975 Act could only be done for a public purpose and not in the public interest. As such, a new Expropriation Bill (2008) proposed, created a framework to give effect to the Constitution. It re-emphasized the salient provisions of the constitution and also gave the Minister of Public Works powers to expropriate property in the public interest or for a public purpose. This was a fundamental shift from the present legislative framework governing expropriations. (The relevance of this piece of legislation should be borne in mind when reading the case, as the local authority threatened to expropriate 1200ha of land on Cornubia in the “public interest”.)

**1.4.3 The Housing Problem And Challenges In South Africa**

**The Problem**

Insufficient and inadequate housing for the urban poor has a long history in South Africa. Nearly one-fifth of urban households in the country in an informal dwelling.  
(Department of Housing, 2008) The government has a constitutional responsibility to ensure that every South African has access to permanent housing that provides secure tenure, privacy, protection from the elements and access to basic services. Together
with bulk infrastructure and socio-economic services, housing is increasingly becoming a key government programme for the delivery of integrated development to South Africa’s communities. To date, government has made good progress in eradicating backlogs and providing adequate housing: over 3 million subsidies have been approved, benefitting over 10 million people, and cumulatively, government has spent R40 billion on housing development since the inception of the housing programme in 1994. (Department of Housing, 2008)

The housing crisis means that rapidly growing numbers of people are unable to access adequate housing. South African cities are characterised by a lack of integration: social, class, land use and urban opportunities. The sprawling cities have some of the lowest urban densities in the world - a leading factor mitigating against good urban quality, integration and sustainability (Tonkin, 2006). This is a direct consequence of the country’s apartheid policies, which left a legacy of segregated neighbourhoods and huge race and class inequalities, especially in the quality of services, housing and the urban environment. Growing poverty and unemployment and increasing income inequality have exacerbated these problems.

As a result, low cost housing provision has been a major focus of government in post-apartheid urban South Africa (Goebel, 2007). Despite the huge strides that have been made in trying to meet the housing backlog, it is clear there remain several problems in this process. One of the key problems is that the current dominant model of free-hold tenure inadequately deals with the dynamics of poverty. Furthermore, although policy documents recognise the need for densification, both to address racialised geography and environmental concerns, most new development of low-cost housing continues to be on the urban periphery. Land within the city’s urban edge is expensive and often controlled by private business interests. However, regardless of who owns it, it is considered too valuable for (particularly) low density low-cost housing. Pieterse (2004) states that the market-led approach favoured by the housing policy meant that government had to pay fair market price for such land and hence arguably precluded development of inner city land for low-cost housing. Moreover, there is also evidence that national housing expenditure has declined to below 2% of total government expenditure. By comparison, the international average for developing countries is about 2% of government expenditure and in many instances this percentage is much higher (Development Action Group).
The Challenges

The Housing Backlog

The Housing White Paper of 1994 refers to the housing backlog in terms of numbers of households needing housing and services. In the context of this paper, housing backlog will be defined as those households in informal settlements requiring formal housing. It will thus not include backyard shacks, or those in traditional (rural) settlements.

Since 1994, about 1.46 million houses were built to reduce the housing backlog to 2 million (National Department of Housing, 2008). While the country’s rate of delivery of subsidised units is unparalleled internationally, the supply of low cost housing has not met the demand and whilst more than 2.2 million low cost houses have been built since 1994, the country still faces a huge and increasing demand from about 2.4 million households, most of whom still live in informal settlements with no proper ablution services or running water.

According to the National Department of Human Settlements (NDOHS), a delivery rate of about 500 000 housing units per year would mean the backlog could be eradicated by 2014. Hence in quantitative terms, delivery has been impressive since 1994, however this level of delivery has been insufficient to reduce the backlog. Reasons for these inadequate levels of housing delivery and the growing housing backlog are, among others, attributed to inadequate resources devoted to the housing problem, poor capacity in government departments and skills shortages, but also to the lack of return (no taxes, no rates) for this type of housing, which remains unsustainable in the long term.

The Housing Delivery Process

The physical housing delivery process is a process that comprises various stages which require co-operation and co-ordination from all the role players in housing development (Madonda, 1998). The key roleplayers in this process include: 1) local municipalities, 2) contractors/suppliers, 3) developers, 4) landowners, 5) consultants, 6) the HDA, and 8) beneficiary communities. The developer (who can either be a municipality or a private developer) usually sits at the centre of this delivery process. He directs the progress of the project and manages the relationships between and among all stakeholders in the housing project (Madonda, 1998).

Chapter 3 of Part 1 of the Code (1997) refers to the process of homebuilding where a developer usually:
- Buys land or gets the right to develop land;
- Establishes a township on the land and provides services to that township;
- Sells the stands in the township to purchasers; and
- Builds a top structure on each stand for every purchaser or beneficiary.

Throughout this process, the developer also needs to use local labour to build the top structures, pay the labour and make a profit.

National Housing Policy
The National Department of Human Settlements (NDOHS) is responsible for housing delivery. In the 15 years since democracy, many changes have taken place in the housing policy arena. Before 1994, the focus on housing was on site and service developments, with beneficiaries often participating in the housing delivery process through sweat equity resulting in the People’s Housing Process. However, since 1994, the department has adopted and implemented two quite different housing policies. The first of these was the formulation of the 1998 White Paper on Housing, which essentially provided for a capital subsidy to drive housing delivery for poor households and 6 years later in 2004, a second and new housing policy – a Comprehensive Plan for Integrated Human Settlements, commonly referred to as Breaking New Ground, was formulated.

The White Paper prioritised the needs of the poor, encouraged community participation and the involvement of the private sector (Jenkins, 1999, cited in Goebel, 2007). It emphasised the inadequate provision and situation of low-income housing in the country and stated the need for government collaboration with the private sector to establish supportive mechanisms throughout the country to assist individuals and communities in developing housing projects (Department of Housing, 1994). This highlighted the role that the private sector could potentially play in helping to address the housing problem for the poor. Throughout the White Paper, a “partnership between the various tiers of government, the private sector and the communities is envisaged. This is seen as a fundamental prerequisite for the sustained delivery of housing at a level unprecedented in the history of South Africa. It requires all parties not only to argue for their rights, but also to accept their respective responsibilities.” (White Paper, 1994)

Key to this housing policy was the delivery of a once-off capital subsidy. The Department of Housing defined a government housing subsidy as a grant by
government to qualifying beneficiaries for housing purposes. There are several types of subsidies, ranging from individual and project-linked subsidies, to institutional, consolidation and rural housing subsidies. This research paper focuses on the subsidies at the bottom end of the spectrum – the project-linked subsidy – which caters for those earning less than R3 500 per month and this mechanism “enabled a qualifying household to access a complete residential unit, which was developed within an approved project linked housing subsidy project for ownership by the beneficiary.”

At the time, the subsidy was able to deliver a serviced site only, and was insufficient to provide a 4-roomed house, the vision as promised by the ANC Government in its election manifesto (Tomlinson, 2007). As this subsidy included the cost of the land, the urban poor who received houses ended up on the periphery of cities and towns, where land was cheaper, far from places of work and connected via expensive transport systems. In 1994, the maximum amount of the subsidy was R12 500, and increased over time, to R31 879 in 2005, and R43 506 in 2008 (Tomlinson, 2007). Currently the housing subsidy quantum is pegged at R55 706, and is funding for a 40m² top-structure only. To ensure that private developers and contractors are simultaneously able to run profitable businesses, build low and affordable housing, and get paid on time, the NDOH is revising the project-linked subsidy scheme.

Breaking New Ground, on the other hand, although never formally published, was approved as a framework for housing programmes over a period of five years, with the principal aim being to eradicate informal settlements in the country by 2014. It made provision for comprehensive oversight by government in promoting the residential property market, and included the development of low-cost housing, medium-density accommodation and rental housing; as well as stronger partnerships with the private sector; social infrastructure; and amenities. This policy recognized the need to provide for a range of interventions aimed at creating integrated human settlements rather than marginalized dormitory monotonous townships. In light of the above, it can be said that the Breaking New Ground programme is aimed at improving overall housing delivery.

The relevance of the Breaking New Ground strategy is that Cornubia was also classified as a BNG housing project by the local authority.

1.5 International Best Practice and Precedent

South African housing policy has been based on international good practice during the early 1990’s. However, since then major shifts in international trends have taken place. The following section aims to provide an overview of international experiences and
lessons from Latin American countries with similar characteristics, namely Brazil, Chile, Colombia and Bolivia. These countries are predominantly middle-to-low income, with high unemployment, rapid urbanisation, and has experienced several changes in political administration over the years.

**Brazil**

The housing backlog has been identified as a long-standing problem in Brazil and is exacerbated by limited government resources and poor planning. The exploding housing demand for the poor and the conflict it generates is one of the most challenging problems faced by Brazilian cities. A key feature of many of these cities (like many South African cities) is the existence of informal settlements, or “favelas”, which together with regulating land tenure is one of the fundamental goals in housing policies. Local authorities (e.g. Sao Paulo) have spent a great deal of effort and money on land acquisition for low-income housing, and critics point out that this policy is inappropriate as it facilitates government corruption in buying land at unreasonable prices (Malta, 2006).

Low-income housing provision remains an unsolved urban problem and can be attributed to a lack of housing policy that is capable of establishing criteria and principles for the planning process in terms of land provision, financing, urban design and architecture as well as the fact that housing is not seen as a strategic element within the overall planning processes. Traditionally, Brazilian housing policy has been centred around the granting of individual subsidies and credit for the purchase of private property, as well as the construction of new housing units, without effectively meeting the housing needs of the low-income population. Today, the housing policy is still characterised by housing provision that segregates low-income groups and locates them in peripheral locations at scale⁴, much like South African housing policy in the 1990’s.

**Chile**

Although Chilean housing policy has been a model for many other countries, including South Africa’s housing subsidy scheme introduced in 1994, there remain a number of gaps. Chilean housing policy differs in four main respects: 1) it does not have an integrated development approach; 2) it lacks urban upgrading; 3) it lacks managed land settlement programmes and 4) it does not provide for rental housing. These four factors

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⁴ At scale is defined as having a large critical mass, in the housing context this often means thousands
are pertinent to the South African context. Chile illustrates that there has only been success in reducing backlogs, where housing has been adequately resourced and made a priority. The key positive features revolve around the sustainable allocation of resources (i.e. the relative success of the housing policy is due to the “sustainability over time of the budgetary resources earmarked for the provision of subsidies”) (Gonzales, Arrocieta, 1999, cited in Smit, 2006); the range of subsidy options and subsidy types; high density urban environments with basic facilities; and the targeting of subsidies.

**Colombia**
The Colombian model by contrast had its emphasis on upgrading (i.e. it directed most subsidies to upgrading projects). As it had a larger housing deficit and higher proportion of poor people than Chile did, as well as generally being a much poorer country, it had very few resources. As a result it also spent a lot less on its housing subsidies. Typically governments in Third World countries spend approximately 2% of public expenditure on low-income housing. Measured against that norm, Colombia spent a lot less than 2% (Gilbert, 2004). Even though the level of subsidy in Colombia was generous (when compared to South Africa in 1998/9), the number of families eligible for subsidies amounted to almost 73% of all households in the country, indicating a huge demand and an inadequate supply. As families had to obtain credit and accumulate savings worth a minimum of 5% of the price of the house (Gilbert, 2004) in order to access a subsidy, there were problems in reaching the needy.

**Bolivia**
The Bolivian experience was a little different. The independent private sector, which included the informal sector, played a substantial role in the production of housing units, and contributed to 93% of housing production during the period 1975-1985. This was more than the state and private banks share of housing production during the same period. The Bolivian government saw the need to “return to a smaller and more efficient housing system; to organise it institutionally and legally, and to delegate some activities to the private sector, providing incentives for its active participation in achieving more dynamic housing construction processes.” (Author unknown, 1991) Through one of its statutes, the Bolivian government established joint responsibility between the public and private sector with regard to housing development, transforming the old state system of housing production into one of private responsibility, and the government recognised the need to co-ordinate and develop joint and complementary...
actions between public and private sector institutions in the housing and urban development sectors.

**Summary**

The challenge all governments face in the housing field is how to bridge the gap between substantial demand and the rather limited resources available to satisfy that demand, and no housing policy (including the capital subsidy approach), can get around that problem (Gilbert, 2004). Brazil, Chile, Colombia and South Africa together with Costa Rica represent the best examples of how the policy has been applied in Africa, Asia and Latin America, in implementing a capital housing subsidy model (Gilbert, 2004). Whilst subsidies have reduced the housing backlogs in Chile and South Africa, it is questionable whether it is “worth tackling housing problems in this way in conditions of high unemployment, huge income inequality and widespread poverty” (Gilbert, 2004). Evidence shows that the strongest support for the capital subsidy is found in Chile, and the least in Colombia. Nevertheless, the main motivation for adopting the new housing subsidy model in Chile, Colombia and South Africa, was that the previous housing system had not worked.

What is highly significant is the fact that each government or country, favoured different groups. The Chileans targeted the “deserving poor”, by giving high priority in the allocation system to those that showed willingness to save. Colombia did something similar, but changed the criteria to reach a poorer cohort, then reverted to something akin to the original system. Only South Africa promised to help virtually every family/household earning less than R3 500 (Gilbert, 2004).

Research shows that the Chilean capital subsidy model continues to represent current “best practice” (Gilbert 2004). Ducci (2000) cited in Gilbert (2004) states “Chilean housing policy is exemplary. It is meeting many of the goals set by all developing countries, such as bringing an end to the illegal occupation of land, providing housing solutions for all families that need them (including the poorest) and making basic services available to almost the entire population.” The fact that large numbers of houses have been provided can be attributed to the fact that the policy has been run honestly, transparently and effectively.

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5 Chile, Colombia and South Africa are the 3 countries which have taken up a capital housing subsidy approach seriously
1.6 Housing as Corporate Social Investment (CSI) / Responsibility (CSR)

Corporate Social Investment (CSI)\(^6\) is part of South Africa’s strategic private sector response to the economic and social problems it faces as a developing nation, and as the country is in dire need of funding for poverty alleviation and social upliftment projects, CSI is the response of business to this need. As such, CSR initiatives are projects that are in addition to a company’s normal business activities and are not for profit. They aim to uplift and develop communities and are seen as an investment in society.

Schermerhorn \textit{et al} (2005) defined CSR as the obligation of an organisation to act in ways that serve the interests of its stakeholders. There also appears to be a growing trend that there is an emerging consensus within the business sector to extend the role and responsibility of business beyond profit seeking. Furthermore, CSR in recent times has been given several various terms and definitions, ranging from corporate responsibility, corporate accountability, corporate ethics, corporate citizenship, sustainability, triple bottom line and responsible business (Hopkins, 2004).

Baron (2003) states that CSR can be considered an efficient management strategy and can be a crucial factor in a company’s success, and that rather effective CSR should in fact be seen as a long-term proposition. Falck and Heblich (2007) argue that CSR can enhance a company’s reputation and that a “good reputation increases the value of the brand, which in turn, increases the company’s goodwill.” The authors further conclude that the strategic practice of CSR will involve a long-term shareholder value approach, which also implies a long-term view of profit maximisation. “If it is the company’s goal to survive and prosper, it can do nothing better than to take a long-term view and understand that if treats society well, society will return the favour.” (Falck and Heblich, 2007) Another study also revealed that there was a positive correlation between CSR and financial performance and that whilst CSR did not have much positive impact on short-term financial performance, it did offer a remarkable long-term fiscal advantage. (Lin, Yang and Liou, 2009)

The Housing White Paper emphasised the inadequate provision and situation of affordable housing in South Africa, and stated the need for government collaboration with the private sector to establish supportive mechanisms throughout the country to assist individuals and communities in development housing projects (Department of

\(^6\) CSI and CSR will be used interchangeably
Housing 1994). Othman and Mia (2008) argue that this highlighted the role that the private sector could play in mitigating the housing problem for the poor. There appears to be a definite role for practitioners in the built environment with respect to housing. This is supported by Verster (2004), cited in Mia & Othman (2008) who argues that “one of the most pressing problems facing the world that would need the focussed attention of the cost engineering, quantity surveying and project management professions is the settlement of people, specifically very poor people.”

The contemporary approach then to CSR entails supporting corporate objectives while simultaneously playing a CSR role so that the company’s social activity is complementary to its primary business role. Yet Norris (1981), states that there is growing controversy between the CSR of business and the profit-making responsibility of business. There are however arguments against CSR, and Smith (1990) indicates that business’s main function is economic, not social and as such the role of business is solely to make a profit. He also argues that social issues are the concern of government, thus companies pay taxes so that these issues may be resolved by government and therefore there is not need for additional CSR on the part of business.

The private sector acknowledges the importance of being seen to support government initiatives and to find solutions to housing problems. Within the context of a severe housing problem in South Africa, commercial businesses have a duty to care for society at large, in all aspects of their business operations (Othman and Mia, 2008). This implies that a business should undertake its functions not only based on financial indicators, but also take cognisance of the social consequences of its business decisions.

1.7 Public-Private Partnerships

Public-private partnerships (PPPs) have been hailed as a new way to conduct state business and harness the funding and expertise of the private sector. South African PPPs are governed by particular pieces of legislation, regulations and practices. Reuschke (2000), cited in Wilkinson (2006), argues that whilst there is a wide body of research and study of PPPs, the vast majority lack conceptually neat and/or empirically rigorous definitions and there is thus no ‘binding definition’ in use and consequently, the term PPP has been “abused” and “overworked” and has been given a wide variety of meanings and based on different perceptions. Reuschke (2000), argues that “…(PPPs) are a trade off between the participants in order to pool resources and certain abilities in
a development project that the partners could not have carried out alone.” She goes on to note two definitions that are worth consideration.

1) “Collaboration on a joint public/private development project involves the timely sharing of resources and expertise and the coordination of activities. In essence, it is a negotiated business deal in which trade-offs are made, and risks, benefits and profits are shared; and

2) “Defined broadly, (PPP) describes an innovative set of activities in which the public interest and private investment return are mutually pursued by a variety of mixed, collaborative entities. In reality the partnership is more a process than an organisational structure.

However, the formal PPP definition, as described by National Treasury is,

“a public private partnership means a commercial transaction between an institution and a private party in terms of which the private party:- a) “performs an institutional function on behalf of the institution for a specified or indefinite period, b) acquires the use of state property for its own commercial purposes, c) assumes substantial financial, technical and operational risks in connection with the performance of the institutional function and/or use of state property, and d) receives a benefit for performing the function or by utilising the state property.”

Both the New Partnership for Africa’s Development (NEPAD) and the Commission for Africa advocate PPPs as an answer to Africa’s developmental needs. A report undertaken for the South African Institute of International Affairs (SAIIA) stated that for governments to realise the efficiency and effectiveness of PPPs, they needed to fundamentally improve their systems for dealing with the private sector. Under the right conditions, and in the right sectors, PPPs can offer value for money to governments as well as good opportunities for investors. However, at the same it is noted that PPPs do not provide a “magic formula for development and are just one means towards the goal of improved infrastructure and better service delivery.” (SAIIA editorial, 2005)

Treasury believes that what PPPs ultimately do is let government be assisted in delivering its core services. “Government is not good at constructing buildings, for example, but business is.” (Kogan Pillay, Director of Business Development, National Treasury)

Experience in Bangkok reveals that a large proportion of private developers were in favour of collaboration with government/public sector, and that PPPs were the most preferred mechanism for private sector participation (Sahachaisaeree, 2008).
1.8 Negotiation and Corporatism

There are two main approaches to the negotiation process which is reflected in contemporary theory on business negotiation. The first approach revolves around a more competitive (win-lose) position, in which one party tries to extract as much gain as possible from the other, thus often creating resentment in the losing party and potentially harming the relations between them (Lewicki & Hiam, 2006, cited in Berold, 2008). The second approach focuses more around a collaborative (win-win) position, one that is mutually satisfying for both parties. Fischer & Ury (1991) describes this as co-operative or “interest-based”, and is characterised by adding value to the transaction, and building the relationship for both parties to go forward together.

Shell (2006) identified five styles/responses to negotiation. The style used during a negotiation depends on the context and the interests of the other party, among other factors. These five styles, which can change over time, include 1) accommodating, 2) avoiding, 3) collaborating, 4) competing, and 5) compromising.

Corporatism can be seen as an approach where government is not left alone in the provision of housing, but rather facilitates the process by forming partnerships with business and the beneficiary community (Uys, 1998; Schmitter, 1979; and Cawson 1986, cited in Maree 1993), perceived corporatism as the process of negotiation and implementation of agreements between sectors of the state and powerful monopolistic interest organisations whose co-operation is indispensable if desired policies are to be implemented. Uys (1998) further states that corporatism is a way of governing, where “decision making is shared and the aim is to reach negotiated consensus”, and is usually seen as a type of tripartite agreement between business, government and society. The presence of the State is a defining characteristic of corporatism.

A parallel can be drawn here through the main actors in the case study, i.e. Tongaat Hulett and eThekwini Municipality. In order to assist in providing 15 000 houses to the poorest of the poor, Tongaat Hulett sold hundreds of hectares of prime land to the local authority to assist government in reducing the backlog.

For corporatism to work it is necessary that 1) all parties be willing to participate in the social contract for it to work; 2) that all parties show a willingness to enter into compromises; 3) that parties show a willingness to work together in order to address the crisis; and 4) that it is essentially a political solution to some sort of (economic) crisis.
South Africa has no other option but to pursue corporatism (Adam et al, 1997) and argue that if it can work at a national level, then it must surely be encouraged at all levels, especially at local government level.

### 1.9 Private Sector Involvement – Barriers And Incentives

Research has shown that the private sector in South Africa has been involved in the provision of low-cost housing in some form or other. In the late 1980’s, when government’s policy was to privatise low income housing, the housing policy then involved a reduction in the responsibility of government with respect to low-income housing provision and placed an increased responsibility on the individual and the private sector, through site and service developments (Cronwright, 1987). The private sector could serve a positive role in the mobilisation of resources for low income self-help housing, however in order for the private sector to optimise its resources provision capabilities, it was necessary that self-help be promoted as one of a range of housing delivery systems (Cronwright, 1987). Housing policy then, as is today, allowed for substantial private sector participation in some form or other, and experiences in other countries have proved that the private sector has the capacity to assume larger roles and responsibilities in housing improvement and construction, becoming promoters and providers and not just facilitators.

**So what are the constraints or barriers?**

Some of the barriers identified which preclude and/or limit involvement from the private sector is the need for developers to have to absorb the costs of site and infrastructure work – a requirement from the municipality (Retsinas and Segel, 2007). This is supported by Sahachaisaeree (2008), who states that the high cost of land and the difficulty in breaking even in their investments on low-cost housing were cited as the major obstacles by private developers. In Bolivia, low productivity was a result of a lack of technical assistance, inadequate use of construction materials, severely restricted access to formal financial sources and lengthy and costly municipal and bureaucratic procedures.

**Incentives**

More recent studies have indicated that it is highly feasible for the private sector to provide low-cost housing with the support of government, and that various types of incentives were available to motivate the private sector to collaborate with the public sector (Sahachaisaeree, 2008). This is supported by Retsinas and Segel (2007) who state
that in order to house the poor on a large scale, private developers had to be motivated to actively participate, and that conditions and incentives had to be in place in order for private actors to become major players in the low-income market. Sahachaisaeree (2008) states that a large proportion of private developers are in favour of collaboration with the public sector, and that public-private partnerships (PPPs) were the most preferred mechanism for increased private sector participation.

In Bangkok, the most attractive incentives for private sector included a title deed transfer tax break, exile tax reduction, relaxation of estate and building regulation and the right to public utilities and infrastructure connections (Sahachaisaeree, 2008). In Malaysia, the government used new incentives by reducing infrastructure standards and increased the speed for land conversion and other regulatory matters in order to boost private sector involvement in low-cost housing. The government also assisted the private sector through certain instruments, to keep the cost of the house down such as subsidised federal loans, together with a reduction in the size and quality of individual units.

**Current trends**

Several changes have taken place following the inauguration of President Jacob Zuma’s government. A new Minister was appointed and the Department of Housing was renamed the Department of Human Settlements. Tokyo Sexwale, who took over from Dr Lindiwe Sisulu, made his position on the role and responsibility of the private sector very clear. Recent newspaper articles and press statements have quoted the Minister as stating that “individuals in business and other sectors are also going to be approached to see how they can help”. (The Citizen, 25 May 2009). He further indicated that the Department of Human Settlements would be approaching the top 300 JSE listed companies, to assist government in bridging the current 2.2 million housing shortfall in the country (Engineering News, 25 May 2009). In another Finweek article (18 June 2009), the Minister is quoted as saying that he wants a “‘personal guarantee’ from every ‘businessman and woman’ to build a house or give at least R50 000 – the equivalent of one person’s housing subsidy.” In his Housing Budget Vote speech, the Minister emphasised that the corporate sector was a key partner in ensuring that government met its objectives and recognised that by working together more can done.
1.10 Conclusion

It is clear that the provision of housing for the poorest of the poor will remain a huge challenge for the country, and that government alone will not win this battle. Balancing the demand for housing to house the poor and the requirements of the private sector to generate profits is not only a South African problem or issue. International experience shows that the private sector is keen to participate in the low-cost housing market, but only with the help of the state. The literature review illustrated that despite the inherent barriers and constraints for the private sector in this market, with sufficient incentives from government, private sector could assist in the provision of low cost housing.
PART TWO - THE CASE STUDY

2.0 THE CASE STUDY

2.1 Tongaat Hulett

As Mike Deighton drove back from the Tongaat Hulett head-office at Amanzimnyama along the R102 and witnessed the huge roadworks and upgrades taking place in time for the 2010 World Cup and the opening of the new international airport at La Mercy, he reflected on what Tongaat Hulett Group CEO, Peter Staude had said in their meeting earlier – “if you can protect shareholder value then perhaps we should consider selling the land to eThekwini for low-cost housing”. As newly appointed Managing Director (MD) for one of the largest private landowners and land developer in KwaZulu Natal, Deighton knew he was facing a dilemma. Tongaat Hulett had publicly stated over a protracted period that it had a strategy of partnering with stakeholders. Also, land development was by its nature an activity where the private sector and public sector were joined at the hip. The challenge, Deighton knew, given that low-cost housing was given away for no return and government was constrained financially, was how to reach a deal whereby both parties would see value. What would be a win-win negotiation, given that a win-lose was not a prospect for either party?

Does Tongaat Hulett sit back and permit an expropriation on Cornubia, or enter into talks to avoid expropriation and try and broker a win-win deal for both parties? Deighton knew that as MD of the developments operations, he was responsible for all Tongaat Hulett landholdings and ultimately accountable to the shareholders. Company executives were taught that the tracts of land they were managing, were major assets, and that ultimately a return on these assets and capital employed were both important. Would selling off a large portion of Cornubia achieve a decent return, meet Staude’s high expectations and create value for shareholders by producing a win-win outcome with government as a key stakeholder?

2.1.1 History Of Tongaat Hulett

Tongaat Hulett is an agri-processing business which includes integrated components of land management, property development and agriculture with its core businesses as sugar, starch and property management. It has considerable expertise in downstream agricultural products, biofuel production and electricity cogeneration, with competition for water and alternative land usages an ongoing challenge. Tongaat Hulett balances the operational requirement for cane supplies to its sugar cane processing operations with
the transition of agricultural land to other uses at the appropriate times and is thus well positioned to benefit from the changing world of agriculture and agri-processing.

**Figure 1: Tongaat Hulett Group Structure**

With its beginnings in the 19th century through the Hulett's Corporation Limited, and merger with Tongaat Group in the early 1980's, the Tongaat Hulett Group became the largest producer of starch and glucose on the African continent. Following the unbundling from Hulamin (an aluminium company) and a BBBEE transaction in 2007, the Tongaat Hulett Group’s name changed and is now known as Tongaat Hulett Limited.

The company maximised value through the various phases of land usage, from acquisition, agriculture and agri-processing to the transition to property development, which continued to enhance the value of its remaining land. As the city of Durban grew and further developments such as the new international airport at La Mercy began to materialise, the importance of converting agricultural land to development increased.

Since the basic business model was the conversion of agricultural land, Tongaat Hulett established a land and property development operation in the late 1980's, called Moreland. Moreland became known as the biggest land developer in the Kwa-Zulu Natal province and was rebranded Tongaat Hulett Developments in 2007. Tongaat Hulett Developments together with its partners, planned and developed approximately 1 500 hectares of land since 1990 at a cost of approximately R1,5 billion with a combined total investment of more than R13 billion. This resulted in Tongaat Hulett Developments being widely acknowledged as one of Southern Africa's leading property developers, facilitating the creation of more than 50 000 much needed new jobs in both the construction and end-use industries and a boost to economic activity in the Greater Durban and KZN North Coast Corridor. With customers ranging from built environment practitioners, to smaller private developers, commercial industries and government (municipalities etc), Tongaat Hulett Development’s vision was to continue
creating the most sought after quality of life environments in Southern Africa through developments of international standing.

Today, Tongaat Hulett is an organisation with assets worth approximately R13.4 billion and an annual turnover in excess of R3.9 billion. As a listed company on the Johannesburg Securities Exchange, it posted profits of over R864 million for its 2009 half-year results. Whilst the property and developments operation only contributed 7% to this despite depressed market conditions, Deighton was under pressure to maintain the division’s excellent performance and had the huge task of improving past earnings in the tough economic climate and residential property market downturn.

2.1.2 Tongaat Hulett’s Business Model
As a company with significant existing agricultural landholdings earmarked for future development, Tongaat Hulett had a business model premised on the conversion of agricultural land into serviced sites, Tongaat Hulett Developments facilitated the rights acquisition process, infrastructural servicing of the land, and subsequent sale of bulk. This was Tongaat Hulett Development’s core and value-added strengths – its ability to develop raw agricultural land from a vision and concept, to a high quality development and at the same time creating benchmarks in the property development industry. The timing of this conversion was dictated by the sugar mill cane supply needs, market demand and the capacity of local government to approve developments and provide bulk infrastructure.

2.1.3 A Change In Leadership
Staude took over from Cedric Savage as Group Chief Executive, after leaving Hulamin in 2003, and was therefore a relative newcomer to Tongaat Hulett. Under his leadership he was responsible for the rebranding of the group as well as facilitating the unbundling of the organization from Hulamin. Instrumental in concluding a Broad Based Black Economic Empowerment transaction, with a black economic empowerment company, Staude managed to raise Tongaat Hulett from a level 5 to a level 3 contributor in 2008. With the passing on of Gordon Hibbert, Moreland’s MD from 1984 to 2008, Staude, knew he was faced with a major challenge – he needed to find a person that could lead the property development operation through boom and bust periods. The first person that came to mind was Mike Deighton – a 44 year old Development Director, who had been at the firm since 2002. Staude was confident that Deighton was able to do the job
properly and effectively, and he had been impressed by Deighton’s dynamism and ability to think “out-of-the-box”.

Deighton joined Moreland in March 2000, starting out as a Project Manager before moving on to become Portfolio Manager for the operation’s Commercial and Industrial Division. Thanks to his strengths, Deighton was promoted to the position of Development Director in 2005. Appointed as MD of Tongaat Hulett Developments in February 2008, Deighton was the first non-chartered accountant to lead the company’s property development operations, having qualified as a civil engineer in the 1980’s. He didn’t see his new role as being the head of Tongaat Hulett Developments, but rather about being “at the centre of the property development operation of Tongaat Hulett”. To many, Deighton’s appointment was seen as political suicide. In an environment where often the success of a business and its relationships with government were based on having someone from the right racial group leading a major company, a white male heading the biggest development company in the province, was not looked upon favourably. Did Tongaat Hulett not see the importance of transformation? This was the question that was asked by the eThekwini political leadership. There were other Black African directors on the Tongaat Hulett Board – surely Staude could not have been so short-sighted to disregard the potential impact this appointment could make? However, as a leader, Deighton had proved that he was the right person for this sensitive job: he was competent, dynamic, proactive, and consultative and had an enquiring mind.

Despite the intricacies and challenges of the various projects on the approximately 1 772 hectares of prime coastal property that would be developed over the next four years, Deighton was particularly interested in Cornubia, having been responsible for the landholding several years earlier. And even though he was no longer directly involved in the day to day management of the project, he knew he needed to keep an eye on developments, knowing that it had become a strategic project not only for Tongaat Hulett Developments, but for the entire company.

2.2 Cornubia

2.2.1 The Landholding
Cornubia was a large 1200ha landholding, under sugar cane, located between Phoenix and Umhlanga, and presented an important opportunity to address the integration of Durban and the imbalances of apartheid planning, consolidating and integrating the
currently dispersed and dislocated points of urban development in the region. For that reason, Deighton believed that Cornubia was the most strategic portion of land in the northern Durban area.

**Figure 2: Cornubia Locality Plan**

In terms of the eThekwini IDP documentation, Cornubia fell within what was referred to as the “urban periphery”, but immediately adjacent to an “investment corridor”, and close to a major investment node, i.e. Umhlanga, one of three in the Durban metropolitan area. As a result the proposed development of Cornubia presented a significant opportunity to attract new investment to the area by releasing land to meet the significant demand for well-located industrial and commercial land being generated as a result of the increased economic growth of the metropolitan economy. In addition, development would create substantial new job and employment opportunities, particularly for residents of areas such as Phoenix, Verulam and Waterloo where (due to apartheid planning) work opportunities close to places of residence, as a consequence of apartheid planning, were lacking.
2.2.2 The Significance Of Cornubia

Deighton also believed that Cornubia was the only landholding that could meet government’s Breaking New Ground objectives. It was the ideal opportunity for Tongaat Hulett (the private sector) to “walk the talk” and show government, and everyone else, how it could be done. He felt passionately about it and knew his team felt that way too. As a former project manager and director responsible for Cornubia in 2004, Deighton saw how over the last 5 years, more than a million Rands were spent in consultant fees for the planning of Cornubia.

Planning for Cornubia started in late 2004, with the consultants briefed to develop a framework plan for a new mixed-use, mixed-income development that catered predominantly for the working middle-class – a departure from the usual upmarket and elite residential gated golfing estates Tongaat Hulett was renowned for. At the same time, eThekwini Municipality also identified the large tract of land for low to middle income housing and appointed their own consultants to undertake planning for the area, which they referred to as Phoenix East. The primary bone of contention between the two parties was the insistence by eThekwini Municipality for Tongaat Hulett to include 15 000 subsidised houses in its planning. Whilst Deighton and the rest of his team had always envisaged Cornubia as an affordable housing area for the working class, the inclusion of 15 000 effectively “free” houses would not assist in making the project fully integrated, nor viable, and the implications thereof would imply that cross-subsidisation from the more lucrative non-affordable housing developments, such as the industrial and commercial areas, would be required.

In December 2005, eThekwini Mayor, Obed Mlaba, frustrated by the apparent lack of progress and agreement on the planning for Cornubia, went on to the site and declared that 15 000 low cost houses would be built. (see exhibit 3). With elections looming in 2006, and the African National Congress wanting to be seen to be delivering on its promises, this public declaration was regarded as an election ploy by many. Only if Tongaat Hulett did not agree to the inclusion of 15 000 low-cost houses in its planning, would expropriation become a real option. Deighton felt that it was necessary to include the municipality in the planning of Cornubia and started a joint planning exercise with key officials that spanned a period of almost 9 months, and which resulted in a spatial framework plan being approved in principle. 2008 saw the start of a joint environmental impact assessment (EIA) application and the agreement to submit an application for
development rights with both Tongaat Hulett and eThekwini Municipality as co-applicants.

In line with national goals, the key objectives of the Cornubia project included its ability to “make a contribution to building, consolidating and integrating the social and economic base of the northern region of eThekwini, to ensure a sustainable mixed-use, inclusionary mixed-income development that maximized economic opportunities for future residents and investment; to create value by maximising the potential of the land through public-private partnerships so that the development of the land delivered a positive and a balanced economic, environmental and social return that was both financially sustainable and contributed to redressing inequalities; as well as to position both Tongaat Hulett Developments and eThekwini as leaders, innovators and promoters of integrated visionary planning and development.” (Urban Skywalkers report, December 2006)

2.2.3 The Proposed Development

The development framework of Cornubia responded powerfully to the key challenges and policy thrusts articulated by National Government. It provided for a higher density, mixed-use and mixed-income development that significantly responded to housing demand across a broad spectrum of market segments. The project could yield affordable and sustainable housing and tenure options for a range of income groups and had the potential to accommodate more than 50,000 dwelling units and house 200,000 people. On its 750 developable hectares, it made provision for a large industrial development and more than 1,500,000m² of combined bulk. Due to the immense scale and size of the Cornubia project and the fact that it could take close to 20 years to realise, it was decided to phase the development into three phases. Phase 1 measuring 614ha, made provision for 90ha industrial, approximately 9,000 subsidised units and 2,500 affordable units, as well as associated social facilities and amenities. The balance of Phase 1 would be open space in the form of rehabilitated wetlands and buffers. Phases 2 and 3 was planned to be realised in 2013 and 2018 respectively, but would ultimately be dictated by market forces.

Yet despite a robust development framework and commitment to the Breaking New Ground principles, Deighton was very aware that in trying to do something very groundbreaking, the team could also get it very wrong. He was a huge proponent of the “pay the school fees” mindset, and was willing to pursue avenues in which the Tongaat
Hulett Developments team could illustrate how low income settlements did not have to be the monotonous and sterile living environments that were currently being produced, and that they too could have similar qualities that existed in higher-income developments, such as a sense of place and community, a respectable level of quality with efficient urban management arrangements. Poor people, he believed, did not have needs essentially different to those that lived in the luxury golf estates that the organisation was accustomed to developing.

He immediately thought of the much-publicised N2 Gateway Project in the Western Cape, a project that was approved by Cabinet in 2004 as a pilot and the lead project of the NDOH’s Breaking New Ground strategy. It became a “top-down technocratic development, shrouded in secrecy and planned without the participation of the communities” (Anonymous interviewee, 2009). More importantly, the project showed that institutional blockages, poor inter-governmental relations, lack of funding and policy gaps limited appropriate and effective housing delivery. It was riddled with technical and political difficulties and demonstrated some of the fundamental problems with housing delivery in the country. It also highlighted the kinds of complexities and resistance that were encountered in the delivery of medium-density housing where all components of sustainability, social, financial and institutional sustainability were not given adequate attention. Deighton was determined that Tongaat Hulett Developments did not leave behind a similar legacy, and that the Cornubia project team take cognisance of the lessons learnt from the N2 Gateway project. He made a mental note to ask the project manager to include it as an item on the agenda for the upcoming Steering Committee meeting.

Deighton knew that it could be done. Despite the failure of the N2 Gateway project, he had heard of another, slightly older low-cost housing development that was built within the government subsidy at the time. Sakhasoneke was living proof that low-cost housing developments could be decent liveable human settlements. Having won an award for the most Innovative Project-linked Subsidy Housing Project, this development in Port Elizabeth was only possible through the joint efforts of the private sector (General Motors Foundation – the Corporate Social Investment division of General Motors South Africa) and the local municipality (Nelson Mandela Bay Municipality), a partnership that resulted in a successful innovative housing solution for those earning below R1 500/pm. Following several site visits to Port Elizabeth to see the project, Deighton was comfortable that the team and the eThekwini housing officials had bought into the idea
of a higher density housing model, and as a result, the Sakhasonke model informed the planning and design of Cornubia’s low-cost housing precinct.

2.3 eThekwini

2.3.1 eThekwini Municipality - The Local Authority

eThekwini is located on the east coast of South Africa and comprises the former municipal areas of Durban, Westville, Pinetown, Umhlanga Rocks, Umkomaas and Amanzimtoti. It is the third largest metropolitan area in South Africa after Johannesburg and Cape Town, and has a population of approximately 4.5 million. eThekwini also won the country’s coveted Vuna Award in 2005 and 2006, which was South Africa’s foremost recognition bestowed on a local government for a municipality that was effectively and efficiently run. It also won the Best Cities Award twice, illustrating that it was Africa’s strongest municipality financially. As local government, the municipality was an agent for the National and Provincial Departments of Human Settlements and was required to ensure that all its citizens have access to adequate shelter. This meant that the municipality was responsible for providing houses for the poorest of the poor. The mission statement of the municipality stated that its primary purpose was to facilitate and ensure the provision of infrastructure, services and support for the people of eThekwini and it’s vision was to be Africa’s most caring and liveable city by 2020.

Faced with a huge housing backlog of approximately 196 000 households, eThekwini managed to construct more than 73 000 houses between 2005 and 2009, costing approximately R3.5 billion. This led eThekwini to be voted the champion of housing delivery in the country for the second time. The Municipality received the National Govan Mbeki Award for being the only metropolitan government in the country to deliver low and middle income housing on a large scale. The municipality was rewarded for the speed at which it was housing the poor, upgrading rental stock, refurbishing existing housing, and for its slums clearance programme. The Head of eThekwini’s Housing Department, Couglan Pather, expressed delight at winning the award. “We have been working hard to meet our annual target of providing 16 000 housing units, and last year we went beyond this target by building 18 000 houses,” he said. The Chairperson of the Housing Portfolio Committee, ANC Councillor Nigel Gumede, believed that housing delivery could be accelerated to more than 22 000 units per year and expected the private sector to assist government in achieving this goal. Cornubia was planned to form part of eThekwini’s Accelerated Housing Programme.
2.3.2 eThekwini’s Leadership

Having joined the municipality almost 10 years ago, the 45 year old Pather, had amassed considerable experience in low-cost housing projects at local government level. He took over from Professor Dan Smit as Head of Department in 2002, in what was widely considered to be a politically astute move – eThekwini Municipality needed a black person (Pather was of Indian descent) to manage a department that had as its primary responsibility that of providing housing for Durban’s citizens. Mandated to negotiate on the municipality’s behalf in all housing related matters, ranging from expropriation and land acquisition deals, he was a direct conduit to the political leadership at Council level, having access to and informing the key decision-makers of the ruling party. Pather had met Deighton several times before at various high-level meetings, including the ANC caucus, but neither man had the inclination, desire or reason to engage with the other more than they needed to.

The ruling ANC in KZN consisted of two camps: one the “mediocre” and “capitalist” camp, and the other the more “socialist” and “controversial” camp. Whilst Obed Mlaba was eThekwini Mayor, he served more as a figurehead, and together with the City Manager, Mike Sutcliffe, as well as other “conservative” ANC councillors fell into the first camp. The “socialist” camp was led by ANC Councillor and Chief Whip, Nigel Gumede, the real powerbroker who drove the ANC’s political agenda and was instrumental in influencing party decisions relating to Tongaat Hulett. In his capacity as councillor responsible for housing, it was Gumede who made the decisions and gave Pather negotiating mandates with Tongaat Hulett. With the local elections scheduled for 2011, there was pressure to provide housing and social services to the poor. With this as his political mandate, it was Pather’s job to guide and direct the political leadership and was often in the delicate, yet strategic, position of having to act as an intermediary between eThekwini Municipality and Tongaat Hulett.

2.3.3 The Relationship Between eThekwini Municipality and Tongaat Hulett

Relations between the 115-year old agri-processing company and the local authority could at best be described as being strained and confrontational. There were certain councillors and officials at the municipality that regarded Tongaat Hulett as the beneficiary of land considered to rightfully belong to the indigenous people of the province. They believed the time had come for the company to relinquish the land it had made a massive fortune from for decades.
About 80% of the land in the eThekwini municipal area was owned by 13% of the population, with Tongaat Hulett a major landowner in Durban, owning >35% of the land within the municipal area. This meant that in pursuing urban and land development, eThekwini Municipality had to engage with Tongaat Hulett, as a large portion of the latter’s landholdings was strategically located for residential development. As a land developer, seeking to secure development rights and bulk infrastructure investment from government, Tongaat Hulett on the other hand was forced to engage with eThekwini. In the post-apartheid era, the relationship between the ANC government at national level and big business has been generally characterised by a great deal of mistrust. This mistrust has been reflected in the relationship between eThekwini Municipality and Tongaat Hulett, who have been perceived by the former as “white colonialists” and profit-seekers who benefited from apartheid.

eThekwini Municipality had always been suspicious of Tongaat Hulett and its motives and believed that that any dealings with the company would always be driven by a profit motive rather than social good. They municipality regarded Tongaat Hulett’s leadership as arrogant and non-co-operative For its part, Tongaat Hulett had little time for the municipality and tolerated the bureaucratic processes only in order to obtain development rights. Tongaat Hulett also believed that on many occasions several of its projects had been delayed because the local authority had refused to approve the development applications, often delaying the implementation of several developments by years. With no love lost between the two parties, both Deighton and Pather realised that there was a need to build mutual confidence and improve relations, and one way of attempting to establish common ground was to attend a weekly Cornubia Steering Committee meeting, formed to fast-track key planning and development issues which needed high-level intervention and support.

2.3.4 The Deadlock – The Expropriation Threat
In the eThekwini executive committee meeting held on the 28th August 2008, Executive Committee member Vivan Reddy advised that the issue of expropriation could not be negotiated and had to remain an option. (ETM Council minutes, 2008-08-28). Both the Deputy Mayor and Mayor expressed their support for expropriation, with the Mayor stating that expropriation was essential. Only the Democratic Alliance felt that threatening expropriation in negotiation talks was in bad faith, and that this would ultimately damage the relationship with Tongaat Hulett, one of the city’s biggest development partners. After that meeting, Council resolved that should the land “not be
acquired through private treaty, that the Head of Housing be authorised to proceed with expropriation in terms of the Housing Act (Section 9 of Act 107 of 1997) or in terms of Section 190 of the Ordinance 25 of 1975 and Section 5 of the Expropriation Act 63 of 1975, whichever was deemed to be more expedient.” In essence, eThekwini Municipality was willing to enter into negotiations to purchase the land, however should these efforts fail, they would expropriate land on Cornubia.

Deighton quickly did his sums: Tongaat Hulett land, although agricultural, and under sugar cane, could easily reach R1 million per net developable hectare\(^7\), and if eThekwini had to expropriate the entire Cornubia, this could mean an expropriation bill of close to R1.2 billion. Surely this would amount to the largest single expropriation ever undertaken by local government with a private landowner and corporate citizen in the country? It would also be the quick and easy way of securing a decent return on an asset, without acquiring development rights or servicing the land, two key aspects and challenges faced by all developers, and which could both take a long time and require substantial amounts of upfront capital.

Although expropriation was not considered the ideal solution to obtaining the land, Deighton also realised that it remained an option. But the organisation could also not risk an expropriation. He thought of the potential reputational damage to both Tongaat Hulett and eThekwini Municipality (as well as the country) of a high profile expropriation. He knew from conversations from family in the United Kingdom that the “land grab threat” had been reported as far afield in the local British newspapers. In addition, based on its experience in land development, Tongaat Hulett expected to be able to generate values from elements of the land for higher than would be achieved by an expropriation at comparable market value. Moreover, if not developed optimally, there could be huge value destruction (for all) on adjacent landholdings. Lastly, Deighton believed that any expropriation would go against the co-operation philosophy of the organisation in partnering with government.

Staude and Deighton knew that there had to be a better alternative, one that met the needs of both parties. Even with 15 000 subsidised houses, Deighton was confident that the project team could still deliver an integrated development, offering not only houses,

\(^7\) Developable hectare was defined as all land that was not considered undevelopable through steep slopes, geotechnically unstable, servitudes, floodplain as well as wetlands and their buffers.
but industrial and commercial opportunities as well. Preliminary studies had revealed that over 100,000 new sustainable jobs could be created with more than 96,000 short-term construction jobs. It was estimated that the proposed development would also have a major impact on the rates base of the city over time bringing in more than R250 million in rates revenue per annum for the municipality. Surely, Cornubia had the potential to represent the largest public-private partnership between eThekwini and Tongaat Hulett, as well as be Durban and the Province’s largest sustainable integrated human settlement initiative ever undertaken. Deighton was excited. But he knew that some homework still needed to be done and decided to meet his executive team and discuss the options available to them. He had to convince his Board and Staude that despite the loss of a major asset and resultant loss of sugar cane to Maidstone Mill, which was already not running at full capacity, value could be protected. Deighton knew this was a hurdle he had to cross first.

2.4 The Negotiation Process

Both eThekwini and Tongaat Hulett knew the time had come for them to address the problem. It was 4 years since both parties began planning for the property, with very little progress being shown. It was also coming close to 3 years since Mayor Mlaba made his announcement on site, and the ANC politicians, more specifically those that fell in the more radical and socialist camp, were getting annoyed and aggravated with the lack of housing delivery since the last elections. Cornubia provided the opportunity for both Deighton and Pather to start engaging on a more frequent basis.

Although a civil servant, Pather understood where the other man was coming from. Deighton was a businessman and his primary responsibility was to the Tongaat Hulett shareholders, and would most likely drive a hard bargain. Pather was torn between having to assuage the “radical” ANC councillors who wanted to see delivery at all costs, and knowing that perhaps the “conservative” councillors in the ANC and those in other parties had merit in their argument that expropriation was not a solution. But Pather also knew that ultimately he had to fulfil public sector responsibility. He thought back to the recent ANC caucus where it was discussed that the only reason Tongaat Hulett would be willing to enter into negotiations and sell the land was that they could “benefit from the transaction, piggyback and ride the political wave, and in so doing secure access to government funds for bulk infrastructure”. He hoped that they would not butt heads in this negotiation – he respected Deighton and did not want to be at loggerheads with him.
2.4.1 The Two Parties’ Strategies

The extreme opening gambit for Tongaat Hulett would be to sell the land at maximum value (the value of the land which would be realised if it was serviced and had development rights), which could arguably reach approximately R4 million/net ha, but involving significant investment, risk and a lengthy time period. eThekwini Municipality on the other extreme end, would want the land for free. The realistic bargaining range for Tongaat Hulett was between R1 million/ha (the normal value of the land, without services and development rights) and market value (which would be revealed by the land valuation process). The extreme point at which the organisation would exit, was the marginal milling\(^8\) value. eThekwini’s bottomline would be any price above market value. The bargaining range for both parties is illustrated in Table 1 below.

Table 1: The Parties’ Bargaining Range

<table>
<thead>
<tr>
<th>Zone of opportunity</th>
<th>Tongaat Hulett</th>
<th>eThekwini</th>
</tr>
</thead>
<tbody>
<tr>
<td>Starting point</td>
<td>R4 million/net hectare(^7)</td>
<td>Land had to be for free</td>
</tr>
<tr>
<td>Aspiration base</td>
<td>R1 million/net hectare</td>
<td>Marginal milling</td>
</tr>
<tr>
<td>Real base</td>
<td>Market value</td>
<td>Market value</td>
</tr>
<tr>
<td>Bottom line/exit</td>
<td>Marginal milling</td>
<td>Above market value</td>
</tr>
</tbody>
</table>

The strategies used by each party were very different. Deighton realised that for Tongaat Hulett, the type of strategy to be employed depended on two main concerns: the relationship with the municipality, and the outcome of the negotiation itself. He understood that the strength or importance of each of these two concerns, and their relative priority, had to direct the selection of the optimal negotiation strategy. Pather also realised the value in Tongaat Hulett preserving the relationship with the municipality and knew Deighton would not just be interested in a positive outcome only.

As a private developer, Tongaat Hulett was highly dependent on the municipality for development approvals and the contribution to bulk infrastructure, and hence, the first consideration was to not sour existing relations with eThekwini. As the local authority, eThekwini was obliged to contribute to the cost of the provision of bulk infrastructure, which if they did not, would cost Tongaat Hulett billions. This was a serious concern, as

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\(^8\) Marginal milling was the price/value of the land reached when the sugar was taken to the mill and was usually pegged between R200-300 000/ha.
the feasibility study had indicated that Cornubia required a minimum of R2 billion to unlock Cornubia, through the construction of much needed new road interchanges and upgrades. The only strategy Deighton knew he had to employ was a win-win (collaborative) strategy. Tongaat Hulett in its strategies and also in terms of practice, understood that land development, at scale, as well as other aspects in an agri-business based on land and water, was inherently a “partnership between public and private sector and communities”. Deighton believed that there was no alternative for either party.

Apart from needing to preserve and foster a good working relationship with eThekwini, Tongaat Hulett knew that it was important to achieve a good outcome from the negotiation, an outcome that met the needs of and would benefit both parties. Both Pather and Deighton knew that any negotiation between Tongaat Hulett and the municipality would not be an easy one, especially with two contrasting positions and strategies. But as leader of the property division, he knew he had to be positive, and in an official press release on 20 August 2008, he stated that

“Cornubia offers a unique opportunity to address the urgent need for affordable housing, city-building and job creation in the region. A development of the magnitude envisaged can only be achieved in partnership between the public and private sector and to this end we have been planning jointly with the city to achieve an optimal outcome and this process is continuing as a matter of urgency.”

Staude supported Deighton and mandated the latter to facilitate a partnership with eThekwini Municipality and where possible steer the process from one of expropriation to one of acquisition.

The strategy employed by eThekwini was in stark contrast to Tongaat Hulett’s, since the outcome of the negotiation was seen as more important than the relationship. This win-lose (competitive) strategy would only strain and endanger the relationship further between the parties. The municipality was faced with a huge housing backlog, and needed to deliver in light of the upcoming elections in 2011. Key drivers of the municipality’s strategy were the need to show delivery to its constituencies and acquire land in order to effect such delivery. And it was Pather’s job to ensure that this was carried out.

Deighton decided to see the problem as an opportunity and chose to reframe the issue as one based on (mutual) interests not positions. Instead of two opposing needs and
positions, he believed that in fact, each party wanted the same thing. Both parties wanted to see *development*, both parties wanted to see *sustainable development*, and both parties needed *bulk infrastructure* in order for the land to be developed. Hence, the issue when reframed, was that both parties wanted to *unlock the development potential of Cornubia*, and this could only be done through a joint development rights acquisition process and the provision of bulk infrastructure. The fact that each party would be focussing on different types of development (housing vs industrial and commercial) was not an issue. It did not take long for Pather to see the merit and value in a joint position and soon agreed that together, in a possible partnership, they could achieve a lot more.

Following several negative articles in the local newspapers, it was decided that the senior leadership of the two parties meet face to face and engage on the issue. The press saw an opportunity to stoke controversy and emotion over the issue, which, given the accessibility of Council processes, was hard to avoid, but helped neither party. Deighton arranged a high level meeting between the organisation and the municipality, requesting the attendance of Mayor Mlaba, Pather, and Gumede. It was agreed that land on Cornubia be identified for a sale to the municipality and that a Memorandum of Understanding (MOU) be entered into, which would provide a framework for co-operation and alignment between the parties for the sole purpose of trying to address the housing shortage and facilitate the creation of integrated human settlements, not only on Cornubia, but on other Tongaat Hulett landholdings as well. eThekwini and Tongaat Hulett agreed to co-operate and work together and jointly align efforts with respect to planning and achieving their mutual goals. It was further agreed that a first sale of land be effected before the end of December 2008, after which other land sales could follow. Both parties had less than 4 months to conclude this deal.

### 2.4.2 The Outcomes

Following this historical meeting between the leadership of the two parties several key milestones facilitated a positive outcome.

**The MOU**

This “co-operation and alignment” agreement, a phrase coined by the attorneys who drafted the agreement, was signed on the 28th November 2008, on the basis and spirit of mutual respect, goodwill and trust. Both Deighton and Pather realised the magnitude of this achievement as it marked a huge shift in the nature of the relationship between the two parties from one that was that was confrontational to one that was more
collaborative. The MOU was based on a shared vision of Breaking New Ground as the underlying policy, as well as key development principles. In addition to outlining the responsibilities of both the local authority and Tongaat Hulett, it was agreed that the parties jointly work towards achieving the delivery of approximately 5 000 subsidised units as a first phase, through a single EIA and development rights application.

The sale/acquisition process

In order to give effect to the MOU, a separate process had to be followed, that of the sale of the first portion of land on Cornubia, based on willing buyer, willing seller. Through a higher density model, less than 600 ha would be required to accommodate 15 000 subsidised units, and hence there was agreement that only a portion of the landholding would be acquired by the municipality, leaving the balance for Tongaat Hulett to develop commercial and industrial development. It was also agreed that the land acquisition process be done in 3 phases, so as to minimize the risk to Tongaat Hulett on the one hand, and allow the municipality to acquire sufficient funds for the land transactions.

Land valuations were undertaken and were based on the principle of “best and highest use”. Pather was mandated by his executive committee to purchase the land at market value. For Tongaat Hulett, the situation was not that simple. As a working sugar cane farm, Cornubia was delivering approx 65 000 tonnes of cane to the Maidstone Mill, and any land valuation had to take into account the marginal milling profit. Deighton knew that he did not have the mandate to accept any figure below this. An operating profit of R3-4 million per developable hectare was considered the benchmark in Tongaat Hulett’s agricultural land conversion financial forecasts and Deighton knew he would have to motivate to Staude and his Board, that anything less would not destroy value.

The negotiations revealed that eThekwini’s and Tongaat Hulett’s valuations came in at R700 000 and R750 000 per developable hectare respectively. Deighton and Pather, at the weekly steering committee, as the principals mandated to conclude a deal, agreed on a figure of R725 000 per developable hectare. This first sale amounted to a total of R67 million and the sale agreement, signed on Friday 28th November 2008, marked a historic moment for both parties. This made it the single largest land acquisition made by the municipality in history. Deighton was pleased as a win-win was achieved and R67 million paid in cash on transfer (expected in weeks) presented acceptable value. And there was more to come – his team was hard at work trying to secure further land sales.
As he drove home, Deighton silently smiled. He knew he would finally have his first good night’s sleep in weeks and phoned his wife to tell her the good news.

The first sale signalled a step in the right direction. A good working relationship was beginning to materialise between the two parties. Two additional land sales were concluded in the following 6 months. By June 2009, with a total of 517 hectares purchased for the development of low cost housing, eThekwini owned almost 40% of Cornubia and the deal amounted to the largest bulk land transaction ever undertaken by eThekwini and Tongaat Hulett independently, totalling R188.5 million. (See Table 2)

### Table 2: Land sales to eThekwini

<table>
<thead>
<tr>
<th>Phases</th>
<th>Gross area</th>
<th>Developable area</th>
<th>Price/hectare</th>
<th>Total value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ph 1</td>
<td>177ha</td>
<td>85ha</td>
<td>R725 000/ha</td>
<td>R61 625 000</td>
</tr>
<tr>
<td>Ph 2</td>
<td>160ha</td>
<td>75ha</td>
<td>R725 000/ha</td>
<td>R54 375 000</td>
</tr>
<tr>
<td>Ph 3</td>
<td>180ha</td>
<td>100ha</td>
<td>R725 000/ha</td>
<td>R72 500 000</td>
</tr>
<tr>
<td>Total</td>
<td>517ha</td>
<td>260ha</td>
<td>R725 000/ha</td>
<td>R188 500 000</td>
</tr>
</tbody>
</table>

Figure 3: Plan Showing Land Purchased By eThekwini

2.5 So why did private sector not want to get involved in low cost housing?

Despite calls for private sector to get more involved in low-cost housing, private developers believed that there were two ways in which government was handling the situation. The first involved using a “stick” approach where the State forced the private sector to participate and penalised them if they did not. The second involved the “carrot” approach where the State incentivised the private sector and possibly rewarded them for their efforts. But as low-cost housing was not market-driven, and as historically very little “carrot” was used, the private sector has not
been active in the low cost housing market as they could have been (or as they are currently in market-driven initiatives), with some players choosing to stay out of the space totally. In many instances, the argument was that government had chosen the “stick” approach, and this was illustrated through either the delaying of development approvals and/or little or no contribution to bulk infrastructure. Even though the private sector had tried to employ a “carrot” negotiating approach, believed to be more conducive to a synergetic relationship between private and public sector, this had not always succeeded.

Pather knew that if they were to deliver on their promises to provide more than 18 000 units a year, one of the biggest questions he believed needed to be asked was how to get the private sector into a market where there was little or no profit. He believed that the only way to get them involved was if there was something in it for them. Deighton was not convinced. The key challenge he felt, was the need for a balance between return and associated risk.

2.5.1 High Risks
Deighton was familiar with the risks associated with low-cost housing, which had the potential to impact negatively on profitability, quality, reputation, brand value and earnings quality. Players in the industry felt that these risks included the perception that there was little or no return on investment, low profit margins, high cost of capital, potential to lose ISO accreditation, and impact on brand equity and hence shareholder value. Whilst some developers stated that what was needed was certainty (certainty with regards to approvals, timeframes and the stability of interest rates), the main issue was in fact risk, and not uncertainty. Risk was seen as the most important barrier to private sector involvement, due to the many variables that could not be controlled. He thought of the discussion he had with many other players in the industry at the last SAPOA function at the ICC, and was reminded of a few key risks.

1) Viability
The private sector was in the main driven by shareholder value, and in order to provide shareholder value, return on investment was needed. (Veerasamy interview, 2009). This was linked to three aspects, 1) land (a precious, scarce and depleting resource which pushed the price/land value up), 2) servicing costs (these were not fixed and increased over time) and 3) (cyclical) revenue. Therefore, after taking this all into consideration, margins, if any, were very tight. Low-cost housing projects
also required huge investment (upfront capital) from private sector developers, and due to the long time it took to break ground (up to 3 years just to get planning and EIA approvals), developers were often required to carry these costs. Even if finance was obtained from the banks and lending institutions, because low-cost housing was too risky, banks who were generally conservative and risk averse, were not known to support developers. Hence return on investment became an important and very relevant factor.

The inadequate housing subsidy in which to produce a decent quality top structure coupled with the low profit margins, also prohibited many private developers from entering the low cost housing market (Welman interview, 2009). This was especially relevant for smaller contractors, who often did not have access to funding, and to whom the cost of capital was just too high. However, contractors also acknowledged that despite low profit margins, a return of between 5-8% was considered a good return and that by reducing the risk as far as possible, reducing mark-ups, it was possible. “It can be done.....we can make it work, but need economies of scale, and lets face it, 5% profit over thousands of houses, is better than no profit at all.” (Welman interview, 2009).

This notion was supported by academics who postulated that there was a misconception that there was no money in low cost housing. “It was a lucrative business, why else would companies get involved?” Instead, it was the “cost of money that was prohibiting the private sector from getting involved in the low-cost housing market” (Dewar interview, 2009). This was significant when considering that development finance or the cost thereof is directly linked to interest rates. “Government does not have to borrow money at the same rate as the private sector”, (Pather interview, 2009) and that for the private sector to be enticed into entering the market, government would need to “soften the cost of money” (Dewar interview 2009).

2) Brand

Brands are typically considered intangible corporate assets and that they possess economic value and create wealth for the company’s shareholders (Pahud de Mortanges and Van Riel, 2003). As such, the value of a brand or brand equity, had to manifest itself in the market value of the firm and thus have an impact on shareholder value. For a variety of reasons, the importance of brand as a driver of
shareholder value was growing and the risks were growing proportionately. Hence, effective brand risk management was essential.

Clearly, if a brand had a value, it could also lose value. Deighton was only too aware of this. Staude on countless times, had stressed to his executive team, that as a land developer, they were also asset managers, and that the primary purpose or objective of the organisation, was to deliver (on) shareholder value. Deighton knew that brand equity influenced sales growth and operating profit margins, and that it was one of the factors that drove value. In addition, among the ways that a company could lose value rapidly – management change, catastrophe – serious brand damage was high on the list. He saw brand risk defined as the threatened loss of value due to a change in people’s perceptions about the company and further regarded low cost housing as a real risk to the brand.

Tongaat Hulett had a strong brand – one that had both stature and strength. Brands were affected, if there was political interference/influence or when the project was high-profile, such as Cornubia. Prospects of political backlash had in the past also prevented organisations from becoming (too) involved in projects. The threat of expropriation led to fears that it would negatively affect the shareprice, and as a listed company on the JSE, Tongaat Hulett needed to be aware of the potential impact that negative publicity would have on the shareprice. (McCarthy interview 2009) “…no-one wants to see problems if you’re a listed company” and believed that the risk profile of a company such as Tongaat Hulett needed to be handled in a certain way. Tongaat Hulett chose consciously not to respond to press articles on the belief that one couldn’t conduct a successful business through newspapers or the media.

In addition to the above, Deighton recalled his last conversation with Des Hughes, the MD of Basil Read Developments, who indicated that their ISO accreditation was important, and that as an international rating, they did not “want to lose this rating”.

Proper quality management generally improved business, often having a positive effect on a company’s investment, market share, net profit, sales margins and competitive advantage. Deighton knew that ISO accreditation did this. Another reason he thought, why private developers were reluctant to get involved in low cost housing.
2.5.2 Flawed Housing Policy

But apart from the obvious viability issues of low returns and cost of capital, there was also another key barrier to the provision of low cost housing by the private sector, that of housing policy.

Ten years ago, critics stated that contrary to being a failure, the post-1994 housing policy actually worked well, especially when compared to international housing delivery benchmarks. Today, there are several criticisms of the housing policy and in fact, some had even gone as far as saying that it had failed dismally. The South African housing policy was currently “profoundly schizophrenic about the role of policy” (Dewar interview, 2009). Housing policy as it stood implied that the state was a facilitator of housing, but ‘through its actions, was showing that it accepted responsibility as a provider”. Moreover, it delegated its responsibility as provider to key political agencies, e.g. local authorities, thereby increasing the politicised nature of housing. Low-income housing had also become highly and dangerously politicised in South Africa, since its primary deliverer was defined as being the local state.

The current approach to housing policy, especially low-income housing policy, continued to promote and facilitate several negative tendencies, including a growing culture of entitlement on the part of the beneficiaries, continuing and increasing poverty, unemployment and inequality, and a failure of service delivery especially in the housing arena, and was therefore the antithesis of the Breaking New Ground strategy.

The historical RDP model of development, (single unit on its own plot, delivered through large mono-functional and sterile mass housing projects), remained the dominant form of housing delivery, despite the rhetorical commitment made in the Breaking New Ground policy documents to change it radically. The quality of these houses remains poor and would require renovation in years, rather than decades. In short, government policy has not been adding adequate value to the fixed capital assets of the country. In order for the housing crisis to be overcome, “a paradigm shift is required, and that the state should take a facilitator rather than a provider role in housing” (Dewar interview 2009). The leaders of Tongaat Hulett and eThekwini’s Housing Department felt the same. Both Deighton and Pather considered the housing policy as fundamentally flawed – they were not convinced that giving free housing to
poor people was the answer and believed that the root cause of the problem was that it was driven by short-term political expediency and expectations.

2.5.3 Development Rights Acquisition Processes

Another deterrent would include the lengthy time it took to secure development rights. An environmental impact assessment (EIA) for the entire Cornubia was commenced in November 2008, with the hope that a Record of Decision (ROD) would be obtained before the end of 2009. The acquisition of a ROD was a key milestone in any development process, as it was the trigger to several subsequent development application approvals. Essentially, without a ROD, no developer could commence a development. The problem was that this EIA process took notoriously long – with some developers often waiting longer than 3 years to obtain a positive authorization. Since Cornubia was a political imperative, it was hoped that the EIA approval would be fast-tracked, which would pave the way for a smooth DFA application.

eThekwini was not enthusiastic about the DFA, as it took the control of the development rights acquisition process out of their hands as local authority and service provider, and into that of the DFA Tribunal. However, they conceded that since there was pressure from the ANC politicians to see progress on site, they would support the DFA process – a process which would normally take 120 days to finalise.

Large private developers and contractors felt that the time it took to break ground was far too long, with the first 3 years only involving planning approvals. It could take up to 5 years from the date of appointment to laying the first brick (Welman interview 2009). Some housing projects took as long as 10 years, from the time the consultants commenced their planning and design, to the time transfer was taken by the beneficiary. eThekwini themselves acknowledged that “no developer was going to hold out that long, as they could not afford to bear the costs, and that government had to be responsible for subsidized housing” (Benson interview 2009). The private sector believed that government ultimately had to remember that time was money, and that the private sector lost interest when it took years for ideas to come to fruition.

2.6 Towards A Mutual And Beneficial Partnership

The private sector believed that the “stick” was getting longer – “we’ll hit you if you don’t get involved and will not give you rights”. They wanted government to consider
using a more softer approach - the carrot approach – by incentivising players to the industry.

2.6.1 Incentives
Despite the high risk and several barriers, the private sector believed that there had to be ways of attracting them to the low-cost housing market. International precedent showed that it was highly feasible for the private sector to provide low-cost housing with the intervention of the state, and that creativity was required by government to come up with a package of incentives or solutions to bring private sector into the market. Apart from creating a more business-friendly environment, some of the more attractive incentives include:

- *Municipal rates holidays* – this was especially relevant if the developer was a large landowner, such as Tongaat Hulett;
- *Bulk infrastructure contributions* – another key incentive highly attractive to developers;
- *Density bonuses* – possible if the developer contributed to the bulk infrastructure and the local authority granted him extra bulk;
- *A drop in the repo rate* – the variability of interest rates affected WACC and a different financing regime for low-cost housing was required;
- *Drop VAT by 2%* - this would stimulate the economy and create more jobs;
- *Tax reduction* – developments could be ringfenced and developers offered a reduced tax rate if they complied with planning statutes and/or delivered a certain number of units;
- *Awarding of CSI points* – especially if efforts in low-cost housing were recognised on the BBBEE scorecard;
- *Speedier development approvals* – unnecessary red tape and bureaucratic processes needed to be minimised.
- *Increased housing/capital subsidy or availability of top-up funds*; and more importantly
- The need for *government to be the facilitator*, not the deliverer of housing.

2.6.2 Public-Private Partnerships
Despite the many obstacles and hurdles facing the organisation, there was general consensus that a PPP was the most appropriate vehicle for future ongoing implementation and management of the development. Tongaat Hulett had formed a
successful PPP with eThekwini for the development of Bridge City, (another successful development project between Tongaat Hulett and the municipality), and with a 66:33 split, both partners benefited from the profits that accrued from this development. This partnership model was a good example of how the private and public sector could work together. However, although Tongaat Hulett was in favour of this, some of the ANC politicians expressed reservations around the feasibility and viability of this arrangement.

Although the municipal PPP regulations contained extremely stringent requirements for PPP’s, most importantly with regard to public procurement and National and Provincial Treasury controls, Pather indicated that the MFMA made provision for this type of mechanism/entity, and emphasised that the political administration of the Council had both a willingness and appetite to consider a type of PPP (SPV) with Tongaat Hulett for Cornubia. This was good news: Deighton knew that this was the only way the development of Cornubia could be unlocked, if eThekwini was an equal partner, stakeholder and shareholder in the development. Public-private partnerships were also the key to resolving infrastructure backlogs, which was holding back housing development. He thought of the success of the Effingham Joint Venture, which resulted in two projects, Bridge City and Riverhorse Valley Business Estate – both high-profile and successful developments, and illustrated that where there was commitment from both parties, there was a greater chance of success.

There were key implications about the changing relationship between government and the private sector. Firstly, both parties needed to be clear on what the other wanted and needed. The private sector wanted long-term profitable contracts and government wanted enhanced service delivery, using some of the skills and financial resources of the private sector and most importantly, risk transfer to the private sector. In order for a PPP to work, the relationship had to be stable and it had to be profitable. As Treasury Head Kogan Pillay stated, “…you can’t expect the private sector to lock itself into long-term delivery relationships without profit”.

Pather felt strongly that for PPPs to succeed, both public and private sector goals and objectives needed to be aligned and where parties had hidden agendas (not based on goodwill), there was a greater chance that they would not succeed. He knew that his municipality’s and Tongaat Hulett’s agendas were not the same. Despite the success of the Effingham JV, he believed that whilst no PPP was the same, it was a good concept
regardless which could be converted into an agreement and was a very flexible mechanism which could be geared in a way that suited both parties. However, “they generally fail when there’s a mutual need but different objectives”. He further believed that PPPs were a means to an end, and that all partnerships have lifespans and come to an end, and that it was how you manage that end that was important. “…For a PPP to succeed” he said, “high levels of distrust had to fall away, with transparency and accountability of utmost importance.” Deighton agreed with Pather to a degree, but remained slightly sceptical. Although he believed that a PPP was the only way to go for Cornubia (it was not only a large housing project), he was not convinced that a PPP would sufficiently incentivise the private sector into getting involved in the low-cost housing market and he knew that a lot of other private developers felt the same way. They believed that PPPs were only useful for large construction projects such as the Gautrain, toll roads etc, and not for housing projects.

2.6.3 Low-Cost Housing – Mandatory Obligation Or CSR?

BEE regulations encourage involvement in CSI/CSR. The broad-based BBEE codes of good practice allowed five points for contribution to socio-economic development with a target of 1% of net profit after tax (NPAT). Like many others, Tongaat Hulett believed that there was a role for the private sector in affordable housing, not necessarily low-cost housing, and it was perhaps not appropriate to regard it as a form of CSR/CSP. The organisation promoted the concept of CSP (corporate social partnership) which aimed to engage with other stakeholders and shareholders as partners, rather than beneficiaries. Moreover, CSP contributed to brand equity, business value and shareholder value. With the advent of BBBEE, CSI was becoming a means to improving an enterprise’s BBBEE scorecard through the measurement of its qualifying contributions in terms of the socio-economic development element. The Tongaat Hulett leadership was aware that not all contributions would qualify for recognition, and accordingly was becoming increasingly aware of the need to approach CSI strategically, and directing resources towards specific projects which qualified for recognition and which were aligned with the core business of the organisation.

Roger Matlock, MD of General Motors Foundation, who Deighton met several years earlier, believed that low-cost housing provided by the private sector could be regarded as a form of CSI. Matlock believed that there was no doubt that housing offered an ideal area for any company to include in its CSI portfolio without becoming involved in any distortion of market forces. Housing, he said, “was not the easiest of terrains to
navigate, but there were potentially massive rewards in terms of new innovations which could make a permanent and visible impact on the country’s socio economic development.” Others felt that it was dangerous to want to regard housing as a form of CSI, stating that companies would feel obliged to undertake housing, and that their involvement needed to be voluntary.

Staude realised that it was becoming increasingly important that as a very important player in the province, Tongaat Hulett was seen to be contributing in a meaningful and sustainable way to enhance the standard of living and improve the well-being of the communities around its developments and to assist in their development and empowerment. To give effect to this aim, he facilitated the formation of the Mphakathi Trust (together with one of its BBBEE shareholders, Ayavuna) to ensure that benefits accrue to the communities surrounding Tongaat Hulett’s property developments.

Deighton had strong feelings with housing as CSR. He believed that there was a lot of good in the BBBEE scorecard. If housing was such a major imperative and national priority, then surely there would be merit in designing an additional pillar to the BBBEE scorecard. If an 8th pillar was included as one that dealt only with housing, and if private sector’s efforts in assisting in the provision of housing, or in providing housing opportunities for their employees in the form of employee assisted housing (EAH), could be recognised in the form of points on the scorecard, then this would incentivise the sector more. He knew that if this opportunity existed, Tongaat Hulett would be in a position to contribute more meaningfully and get the brownie points accordingly.

2.6.4 The Way Forward
With the development and planning applications of Cornubia well underway, Deighton knew that it would be necessary to enter into further negotiations with eThekwini Municipality around the provision and contributions of bulk infrastructure. He and Pather had been skirting around the issue of bulk infrastructure for months now, and it was time to sit down and agree on the philosophical approach to Cornubia first.

Cornubia required five major interchanges and massive public transport linkages, which together amounted to almost R2 billion. He was certain that without significant public sector contribution, the development would not be unlocked, and he was hoping that Pather would see that too. They had come a long way and did not want to derail the process, but was concerned that the petty, small-minded mentality of decision-makers,
could scupper progress done to date. The Business Plan for the development, prepared by private consultants for the Municipality saw the housing component as separate from the rest of the development, and Deighton believed that this approach was fundamentally flawed. Cornubia had to be seen as a holistic integrated development, which not only provided housing opportunities, but access to jobs and employment for hundreds of thousands of people. He resolved to set aside time to sit with Pather to discuss the matter. As with the successful land transactions, he was confident that a collaborative approach would be a win-win for both parties.

2.7 The role of the Private Sector

In light of the housing backlog and South African context, there is increasingly a question around the role of the private sector in the provision of housing. There was consensus that housing was a national priority and hence an important social imperative, but that government needed to drive this process, and although constitutionally and legally obliged, government could not do it alone.

2.7.1 Arguments For And Against Private Sector Involvement

Deighton recalled a conversation he had had previously with other players in the development industry. There were essentially two standpoints on private sector involvement. One of the main arguments against private sector involvement, and one in which he too believed, was the belief or perception that it was solely government’s role and responsibility to provide low cost housing, with the government being held solely accountable. He knew also that eThekwini Housing also acknowledged that eThekwini Municipality should be responsible for subsidised housing as it was a government mandate and that it was not the private sector’s duty or obligation to provide subsidised housing. The private sector and government had different objectives and agendas: private sector was profit-driven, whilst government was socially driven.

With the private sector seeking to increase its profits, it was not likely to enter into a market known for its low profit margins. Prior to 1994, private sector was the main developer for low cost housing as government had neither the know-how, capacity, nor resources to undertake large scale housing projects. In order to maximise profits, these developers found cheap land (usually on the outskirts of urban areas, where there were no infrastructure and services) and built poor quality houses. As there was no accountability (or recourse), developers could exit the project upon their last payment, and as a result of the badly built houses, a rectification fund was set up at local
government level, in order to rectify failed projects. It was for this reason that eThekwini Municipality was not keen that private developers take an increased role in the housing delivery process but Pather also felt that with “additional controls and monitoring and enforcement in place, private sector could play a greater role”.

“Housing delivery is accelerated if local government acts as a facilitator as opposed to a developer” (Madonda, 2006). This was a key requirement for private sector to become involved. The only way to overcome the housing crisis is for the “state to take over the facilitator rather than a provider role in housing, and that in fact what is needed is a synthesis of public and private sector energies, with private sector being the creative leader and supplier of expertise and the state as an enabler” (Dewar interview 2009) It was agreed that there were many ways in which the private sector could assist the state in housing provision, from technical expertise, physical construction of top structures, the servicing of land as well as the sale or donation of land for low-housing.

Whilst legislation stipulates Government’s obligation to the provision of low cost housing, it does also make provision for private sector involvement and contribution. Some of the reasons why private sector would choose to get involved included social stability, meet financial objectives, score points through CSI and enhance or promote their brand.

### 2.7.2 So What Role Can The Private Sector Play?

Deighton believed that historically the private sector had not played a particularly creative, facilitative or leading role in low cost housing, a situation that was limited by current mindset and focus. A huge gap existed between policy intent and actual implementation. A different paradigm was needed for private sector to play a more meaningful role – and instead of focussing on government delivery to beneficiaries based on need, a market had to be created. The real issue he believed was not so much the lack of, and need for housing, but rather the ability to tackle poverty and provide access to opportunities and amenities. He did not know of a business model that worked, that would make it viable for the private sector to provide low cost housing.

Like Pather, he also believed that there was a greater role for the private sector in bonded housing servicing the gap market, but also acknowledged that there were ways in which private sector could assist government in the low-cost housing market, without it impacting on the private sector’s profit-driven objectives. These included:
- **Involvement at a strategic level - in strategic/policy planning** – private sector had the capacity and competence to influence policy;
- **At an operational level, to undertake regional and local scale planning** through the district and municipal IDP processes;
- **Implementation and delivery**, through access to resources (land, building, labour etc); and
- **Technical expertise and “innovative know-how”** – an area where private sector added the most value.

**The role that TH played in the housing process**

Tongaat Hulett played several roles in the Cornubia development process. Firstly, it avoided a lose-lose situation by convincing the municipality that expropriation was not the best route and instead sold valuable agricultural land for the development of housing. Secondly, through the MOU, it managed to ensure that an integrated, sustainable human settlement was being planned and designed, by utilising its own consultant team for the joint planning of the development. This facilitated the development of innovative and creative ideas around the use of the land, as well as ideas around the pilot project, through unit design, housing typologies, building methodologies and urban management options and alternatives.

Tongaat Hulett was always concerned about trying to uplift the lives of the less privileged, especially those residing in the communities adjacent to their landholdings and developments. The leadership acknowledged that as a large corporate entity which derived its income from a local market, the social responsibility to provide help to those who are less fortunate was of prime importance. Deighton believed that Tongaat Hulett made housing a priority (provision of affordable housing opportunities), and that it was not just seen as a CSI project, and that the organisation’s commitment to providing a better life to those less fortunate was reflected in its involvement and partnership with the municipality in Cornubia.

**2.9 Conclusion**

“Housing is not just about building houses. It is also about transforming our residential areas and building communities with closer access to work and social amenities, including sports and recreation facilities,” proclaimed President Jacob Zuma during his state-of-the-nation address. This process requires the commitment and assistance from both government and private sector.
The private sector has shown that it would be both willing and able to participate in this market, provided there are sufficient incentives in place to make this a feasible and viable alternative. Tongaat Hulett and its partnership with eThekwini Municipality for Cornubia, is such a case in point.
3.0 INTRODUCTION

This section of the research thesis is intended to serve as a teaching guide of the Tongaat Hulett Case Study. It contains a summary of the case as well as the intended teaching themes. It also recommends some assignment questions with the suggested relevant answers. The guide concludes with additional discussion questions to facilitate in-class discussion about the case. Some suggested reading to assist the students in preparing for the case is included at the end of the guide.

3.1 Case Summary

This case study provides an overview of Tongaat Hulett, its role in a proposed low-cost housing development of Cornubia, as well as how it dealt with and mitigated against an expropriation threat from the local municipality. Following on from an historical overview of the two main organisations (parties) as well as an overview of the housing process, the case highlights the outcomes of co-operation and alignment agreement, land transactions and the move towards a PPP. It discusses the reasons for the limited private sector involvement and presents ways to incentivise the private sector. It concludes with a discussion on the role of the private sector and the contribution Tongaat Hulett made in the Cornubia development. The case spans a period of approximately 4 years, and focusses on the management decisions made by the Tongaat Hulett leadership over the last 18 months.

3.2 Teaching Themes

There are a few core courses and electives that would be ideally suited to this case study. However, due to the nature of the case, it could also be presented at workshops and seminars dealing with both PPP’s and the housing sector. The MBA courses and electives include:

a) Business, Government & Society (BGS);
b) Negotiation (NEG);
c) Doing Business in Africa (DBIA);
d) Leadership (CLL);

Due to the nature of this case, it will have more value if presented in the BGS, DBIA and Negotiation courses.
3.2.1 Business Government & Society

With appropriate literature and policy documentation in the literature review and theoretical framework, this case ideally illustrates the learning objectives in the BGS course. The case highlights issues around corporate social responsibility, corporatism, public-private partnerships, the relationship between private and public sectors, through interactions with business (corporations), government (all three tiers of government) and society (local communities). It also deals with the role of both private and public sector in housing delivery and the provision of infrastructure to unlock and service housing developments. The case also illustrates how to understand the motives for government intervention in order to better judge when and how political developments may relate to and affect business. At the same time it also focuses on the role of business in society and its impact on the environment.

Suggested reading:

- Finweek, 18 June 2009. Your Country wants your money
- Pivot – Driving Growth in KwaZulu-Natal, April 2009 – official publication of Ministry of Local Government, Housing and Traditional Affairs,
- Kotler, P & Lee, N. (2005), Corporate Social Responsibility: Doing the most Good for your company and your cause, Wiley, New York, NY


3.2.2 Negotiation

If this case was presented in the Negotiation elective, emphasis would be placed on conflict resolution and how key stakeholders and roleplayers deal with the conflict and tension caused by situational and contextual factors. It would highlight or illustrate how a deadlock situation (stalemate) can be overcome and/or addressed and how expropriation can be avoided through civil and active engagement. The two parties’ positions and needs are discussed and the process of reaching a win-win situation is presented. Role play provides an opportunity for students to learn about the impacts and implications of various negotiation styles.

Suggested reading:


3.2.3 Doing Business in Africa (DBIA)

This case is also suited as a teaching case for the DBIA course, highlighting the dynamics of private and public sector interaction and relationships in a development context in Africa. The case is illustrative of a colonial legacy and inheritance of the past, the baggage and politics that come from redressing the imbalances of the past
as well as the maturity that is needed in conducting business. Despite South Africa being the leading and most advanced economy on the continent, it has the most disjunction, where there is still so much animosity and suspicion between public and private sectors. Although focussed around an organisation in a relatively developed market, the issues and challenges are similar regardless of the country in which one operates.

Suggested reading:

- Tongaat Hulett website – www.tongaat.co.za;
- eThekwini Municipality website www.durban.gov.za;
- Finweek, 18 June 2009. Your Country wants your money

3.2.4 Leadership (CLL)

This case study also illustrates the importance of strong leadership, both within an organisation, and how this can affect and impact on the decisions made. The AprilK-Choice model could be used to illustrate the dimensions of choice (conscience, independent will, patterned awareness etc) and how each of these
dimensions affect one’s choices. In parallel to this is the ability of an executive (whether in government or private sector) to carry out his mandate in line with the organisation’s corporate strategy.

Suggested reading:


### 3.3 Statement of Learning Objectives

On completion of the case study, the students are expected to:

- Appreciate and understand the historical, economic and political significance of the provision of housing for the poor;

- Appreciate and explore the dynamics of a large public listed company who tries to contribute positively to the country’s transformation;

- Understand PPPs and the challenges posed by it as a legal entity;

- Understand some of the issues, dynamics and challenges in relation to the negotiations between public and private sector agencies over a major piece of real estate;
• Get a sense of how private enterprise view risks and how risk management is incorporated into business strategy.

3.4 Suggested Student Assignment Questions

The case study should not take longer the 2-3 hours to read and prepare. The following questions are suggested, and answer guidelines are also presented. All information that is required to answer the questions is contained in the case itself. Students will benefit from the additional reading presented at the end of the section.

Question 1  (15 mins)

With respect to the expropriation threat, there are clearly two different points of departure in the case. What is Tongaat Hulett’s basic argument? What is eThekwini’s point of departure?

Answer guideline

The critical point of departure for Tongaat Hulett was the belief that Cornubia (and the expropriation threat) was a political ploy. With local and national government elections looming, eThekwini had to be seen to be making the right noises and secure votes. Tongaat Hulett believed that an expropriation was the wrong approach in trying to deal with the housing backlog. They believed that this would perpetuate the negative perception people had of low cost housing environments, and believed that because of its strategic location, Cornubia could offer a lot more opportunities than mere shelter. Tongaat Hulett was concerned that eThekwini would develop a low cost housing township in isolation of the broader subregion, ignoring huge potential to integrate and link the development to the surrounding areas and urban opportunities. By collaborating with the government, together private and public sector could meet the country’s socio-economic, environmental and physical development goals as well as Tongaat Hulett’s financial objectives. The executive/leadership at Tongaat Hulett also believed that by partnering with government, and forming a PPP or SPV, this would be the key to unlock the development and one from which both parties would benefit.

eThekwini on the other hand regarded Tongaat Hulett as the benefactor of land which rightfully belonged to the indigenous people of the province. They believed that it was time for the organisation to relinquish the land they made huge profits from for decades, and donate to those less privileged, which had to be seen as their corporate social responsibility. Cornubia was regarded as prime real estate, close to work and social
opportunities, and ideal for accommodating thousands of people with homes. With a huge housing backlog, a slum clearance programme in place, expropriation by the Council was seen as the only way to acquire the land needed for low cost housing in light of Tongaat Hulett’s perceived reluctance or willingness to engage with the municipality.

**Question 2** (30 mins)

Why would Tongaat Hulett not get involved in low cost housing? What factors would influence or impact on Mike Deighton’s decision?

**Answer guideline**

Tongaat Hulett was an agri-processing business which includes integrated components of land management, property development and agriculture. The development operation’s core business was conversion of agricultural land and the sale of bulk, not the construction of top-structures. As a public listed company it was also hugely profit-driven and shareholder value had to be preserved at all costs. Low cost housing was considered high risk (low returns, high cost of capital, little or no return on investment, brand risk) and in financial terms, higher returns could be achieved with another land use. More importantly, there was the belief that the provision and delivery of low cost housing was in fact the sole responsibility and mandate of Government, not private sector. Mike Deighton was not convinced that a model existed that would incentivise the private sector to engage more meaningfully in the low cost housing market.

**Question 3** (30 mins)

What strategy to the negotiation can add and preserve value between the parties? What was Mike Deighton’s fundamental approach to the negotiation process? Why did his strategy work? What made his approach/strategy difficult? What lessons can we learn about negotiation in this case study?

**Answer guideline**

The win-win collaborative strategy/approach adds the most value to any negotiation process. By exploring options, value can be created and distributed. Mike Deighton’s fundamental approach to the negotiation was that the problem needed to be reframed and only when reframing the issue/problem, could a way forward be crafted. As far as he was concerned, both parties had the same needs, although their positions were different. Both parties wanted to see development, both parties wanted to see
sustainable development, and both parties needed bulk infrastructure in order for the land to be developed. Hence, the issue when reframed, was that both parties wanted to unlock the development potential of Cornubia, and this could only be done through a joint development rights acquisition process and the provision of bulk infrastructure. When looking at it from an interest-based perspective, it could be seen that both the City and Tongaat Hulett wanted development rights and bulk infrastructure, both of which were required in order to unlock Cornubia.

Two main concerns influenced his strategy: the relationship with the municipality, and the outcome of the negotiation itself. Whilst the outcome of the negotiation was important, the relationship with the local authority was just as important. Tongaat Hulett Developments, as a developer, was highly dependent on the municipality for development approvals and the contribution to bulk infrastructure, and therefore it was important to not sour existing relations with eThekwini. His strategy worked as both parties had an opportunity to achieve their needs. Challenges that Mike Deighton faced in pursuing his strategy were that certain elements within eThekwini were motivated to accomplish its own ends, and did not see the situation as having the potential for collaboration. The municipality also wanted to be competitive and rationalised this behaviour and more importantly, the officials mandated to engage in the negotiation were accountable to a constituency (ANC ruling party) that preferred the competitive strategy.

Key lessons learnt:

- A collaborative strategy, as opposed to a competitive strategy, is a win-win for both parties;
- It is possible to collaborate on collaborative issues and compete on competitive issues. However, competitive processes tend to drive out collaborative processes, making collaboration harder to achieve.
- Relationships are important, not only the outcomes;
- Communication is of major importance when you are trying to establish a collaborative relationship;
- Value can be created by exploring interests and options. Mike Deighton was instrumental in facilitating this process and the outcomes were successful;
- By reframing a problem or issue, a problem can be seen as an opportunity.
Question 4          (15 mins)

Why was it important for Couglan Pather to acquire land at Cornubia? What were his options and what were the implications of either of them?

Answer guideline:

While the country’s rate of delivery of subsidised units is unparalleled internationally, the supply of low cost housing has not met the demand. More than 2.2 million low cost houses have been built since 1994, yet the country still faces a huge and increasing demand from about 2.4 million households, most of them still live in informal settlements with no proper ablution services or running water. A delivery rate of about 500 000 housing units per year would mean the backlog could only be eradicated by 2014. eThekwini faced with a huge housing backlog of approximately 196 000 households, and was under pressure to deliver 22 000 units per year. The municipality was also chosen by the United Nations Human Settlement Programme (UNHSP) as a pilot project for its global cities and phase one of the “Slum Clearance Project”. Several informal settlements had mushroomed and provided unsafe and unhygienic conditions to those that resided in them. The aim of acquiring land at Cornubia was to relocate those living in these unhealthy and unsafe areas into formal structures with services and access to tenure.

Pather had 2 options available to him: 1) expropriation and 2) a land purchase from Tongaat Hulett. He was under pressure from the politicians to expropriate but realised it was not the answer to the housing problem. A land acquisition was the other option, which would be based on a free and independent land valuation, based on the principle of highest and best use. The latter option was the route Tongaat Hulett would most likely enter into negotiations. Pather was also fully aware that an expropriation of the entire Cornubia would amount to more than R1.2 billion in costs and the legalities surrounding an expropriation would involve several years. He believed purchasing the land necessary for 15 000 houses would suffice and although it would not solve the housing backlog in the metro, it would go a long way in helping to reduce the shortage. In addition, he also had access to funds via the Housing Development Agency (HDA), who would finance the transaction on eThekwini’s behalf.
3.5 Suggested Discussion Questions Organised By Learning Objectives

Some additional possible questions to be answered:

1. Why did Mike Deighton believe that it was necessary to swing the municipality’s mindset from one of expropriation to one of acquisition?
2. Why was expropriation not the best route to follow?
3. What negotiation strategy would you formulate to avoid expropriation / to meet the needs of eThekwini?
4. If you were Mayor Obed Mlaba, how would you approach the situation with Tongaat Hulett?
5. What leadership attributes do you think are necessary for a leader in a situation like this? Which leadership qualities do you think Mike Deighton and Couglen Pather had which helped them steer the parties away from potential political backfire to a interest-based mutually inclusive partnership?
6. What role do you think there was for the private sector in low cost housing provision? What was Mike Deighton’s approach to the organisation’s involvement in this market?
7. As project manager for Cornubia, how would you brief Mike Deighton on Breaking New Ground, if he was asked to make a presentation to the Board?

Other key issues for discussion:

- Provision is made in the legislation that government is responsible for the provision of housing;
- Housing as a form of corporate social investment (CSI/CSP);
- Inadequacy of the existing housing subsidy;
- The nature of the contribution private sector can make to housing delivery;
- Balancing shareholder needs and values with the need to address the housing backlog;
- Housing as a potential 8th pillar to the BBBEE codes.
- Breaking New Ground – is it working?
3.6 **Proposed Class Plan**

Session – 2 hours:

1\textsuperscript{st} hour:

- Introduction: 5 mins
- Summarise case (students): 5 mins
- Video interview with Deighton/Mayor/Pather/Housing Minister: 5 mins
- Breaking New Ground: 5 mins
- Housing backlog & eThekwini dynamics: 10 mins
- Tongaat Hulett’s business model and vision: 10 mins
- Questions to class (& discussion): 20 mins

Break

2\textsuperscript{nd} hour:

- Proposed planning for Cornubia: 10 mins
- PPP model: 10 mins
- Negotiation skills: 20 mins
- Class discussion: 20 mins

3.7 **Concluding Remarks**

The case covers a real life transaction and negotiation process and is thus interdisciplinary in nature, however it does not require in-depth knowledge of either the housing sector, business strategy nor negotiation skills. The case highlights the dynamics and challenges faced by a public listed company conducting business in Africa, from the manner in which politics can influence company strategy and the decisions leaders have to make in order to preserve shareholder value.

The case also provides a useful setting for a negotiation role-play exercise, and can demonstrate the importance of communication and the ability to manage conflict in the negotiation process.

The nature and strength of Tongaat Hulett’s relationship with government will continue to be tested in increasingly uncertain times, the relevance of corporatism and
partnerships with the state, and hence this forms the basis of the value of presenting this case study in the Business, Government and Society course.

3.8 **Suggested Supplementary Reading**

- Housing Act;
- The Reconstruction and Development Programme;
- Public Private Partnerships,
- White Paper on Local Government;
- Constitution of SA;
- Guidelines for Private Sector Participation in Municipal Service Delivery – Dept of Constitutional Affairs;
- The Housing Development Agency (Act);
- Expropriation Act;
- Breaking New Ground – Integrated Sustainable Human Settlements

3.9 **Exhibits**

Exhibit 1: Tongaat Hulett’s landholdings
Exhibit 2: eThekwini municipal area
Exhibit 3: Newspaper articles
Exhibit 4: Cornubia Spatial Development Framework Plan
Exhibit 5 TH financials *(from investor analyst presentation)*
Exhibit 6: Negotiation slides
PART FOUR: BIBLIOGRAPHY / REFERENCES

4.0 REFERENCES / BIBLIOGRAPHY

Journal Articles


Paper version journal articles


Electronic copy journals


**Electronic copy journals (retrieved off the internet)**


**Books**


Kotler, P & Lee, N. (2005), *Corporate Social Responsibility: Doing the most Good for your company and your cause*, Wiley, New York, NY


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Engineering News, 25 May 2009

*Finweek*, 18 June 2009. *Your Country wants your money*

Pivot – Driving Growth in KwaZulu-Natal, April 2009 – official publication of Ministry of Local Government, Housing and Traditional Affairs,

**Newspapers**


Daily News, 21 August 2008

The Mercury, 20 August 2008

Metro Ezasegagazini, 22 August 2008

The Citizen, 25 May 2009
Dissertations (unpublished)


Webpages/sites


Other Articles


Conferences
What is the problem with housing delivery? CDE debate on 9 May 1996.

Housing in Metropolitan Durban, The Way Forward – A private sector response. 20-21 August 1998, Royal Hotel

Other
A Strategic Housing Framework for the Durban Metropolitan Area, (1999) Produced by Metro Housing, February

Unstructured Interviews with the following:
1. Rob Welman, Manager, Stedone Developments, Durban, 7 July 2009
2. Roger Matlock, MD, GM Foundation, telephonic interview, 09 July 2009
3. Professor Dave Dewar, Dean of School of Architecture and Planning, CTN, 28 July 2009
4. Greg Vereensammy, Development Executive, THD, Durban, 14 August 2009
5. Belinda Benson, Manager: Land, eThekwini Housing, Durban, 4 September 2009
6. Professor Jeff McCarthy, development economist, Durban, 17 September 2009
7. Cyril Gwala, Development Director, THD, Durban, 11 September 2009
8. Des Hughes, MD, Basil Read Developments, Cape Town, 20 October 2009
9. Coglan Pather, eThekwini Head of Housing, Durban, 9 November 2009
10. Louis van der Walk, Chief Director Policy, National Dept of Human Settlements, telephonic interview, 13 November 2009;
11. Mike Deighton, MD, THD, Durban, 19 November 2009
EXHIBIT 1: TONGAAT HULETT’S LANDHOLDINGS
EXHIBIT 3: NEWSPAPER ARTICLES

City threatens big land grab

The Mercury

August 20, 2008

TOWARDS THE END OF LAST WEEK, A RECOMMENDATION BY THE CITY "THREATENS" THE DEVELOPMENT OF A PROPOSED HOUSING AREA.

The Housing Development Area (HDA) is located in Tongaat-Hulett and is expected to accommodate approximately 15,000 people. The city has proposed to use the land for low-cost housing, and the opposition against the development has been intense.

The DA, the opposition party, has condemned the city's actions, describing them as "thuggish" and threatening legal action. The DA has also accused the city of "thugism" and "bullying" the local community.

The city's decision to proceed with the development has sparked outrage among residents, who fear that it will lead to a "land grab." The DA has vowed to fight the decision in court, and residents have vowed to continue their protests.

The situation has become increasingly tense, with police called in to keep order at the protest sites. The city has defended its actions, saying that it is simply following the law and that the opposition is "hoaxing" the community.

Residents fear that the development will lead to a "land grab" and that their rights as homeowners will be undermined. They say that the city is "bullying" them and that it is "thuggish" to proceed with the development in the face of their protests.

The DA has vowed to continue its fight against the development, and residents have vowed to continue their protests until their concerns are addressed.

The situation remains tense, with both sides dug in and unlikely to back down. The city has defended its actions, saying that it is simply following the law and that the opposition is "hoaxing" the community.

The DA has vowed to continue its fight against the development, and residents have vowed to continue their protests until their concerns are addressed.

The situation remains tense, with both sides dug in and unlikely to back down. The city has defended its actions, saying that it is simply following the law and that the opposition is "hoaxing" the community.

The DA has vowed to continue its fight against the development, and residents have vowed to continue their protests until their concerns are addressed.
Elections a factor in land-grab threat

Through expropriation. All it is is a case of taking and pulling our eggs in one basket.”

If expropriation took place, some of the land would be developed for low-cost housing and the council was not to be held accountable.

In January, the council, Tongaat-Hulett Developments executive Mike du Toit said land sales for the property would take place towards the end of 2004.

But Guinevere said the council would not be held to Tongaat-Hulett’s threats.

He said when people asked if the ANC wanted to develop the land, the party would be able to show them the work being done on the site, and that elections were a factor.

According to attorneys close to the negotiations, one of the major issues of contention was the municipality’s insistence on having 10,000 low-cost housing units.

Tongaat-Hulett was insisting on a fully integrated development comprising many different land uses, and to do this effectively, it was necessary to decide on the number of low-cost housing units in the development.

Unless this was done, the people who moved into the low-cost housing would not have any chance of economic upliftment.

In essence, the development would amount to the creation of another squatter camp, informal settlement in the mould of neighboring Westbrook.

Also, developers who were responsible for the bigger, more lucrative developments would be prepared to cross-subsidize the cheaper housing forms and public service infrastructure because of the money they stood to make.

Apparently there was agreement in this regard from city officials, including Satcliffe, but the political officials were so focused on the housing issues that they were not prepared to make the projections.

Satcliffe said the final layout would result in some areas being residential while others were more integrated.

“We will just cut different models and see what works best. This is a huge piece of land, and there are a variety of options for us,” he said.

Satcliffe said it was difficult to estimate when the development would begin because of all the options.

He expected basic details to be finalized “in the next few weeks.”

matthew.jw@ihi.co.za
Housing project not an election ploy: ANC

HENK DE BOER
and BONANNA MTHEMBULU

IF ANYTHING, the biggest housing challenge facing many municipalities is not the need for more housing but the fact that they have to deal with the social challenges that come with it. The housing shortage in many areas is not just a matter of numbers but also of the quality of the houses that are being built. The ANC has been under pressure to deliver on its housing targets, and there have been concerns that the party is using housing as a tool for political gain.

In the case of the Ceres housing project, the ANC has been accused of using it as a way to curry favour with voters in the area. The project is set to be completed in 2023, and it is claimed that the ANC has been able to deliver on its promise of housing because of the project.

However, some have argued that the project is not a true representation of the ANC's commitment to housing. They argue that the project is not enough to meet the needs of the people in the area, and that the ANC should be doing more to address the housing crisis.

The ANC has denied these accusations, saying that the project is an important step towards resolving the housing crisis in the area. They argue that the project will provide thousands of new homes, and that it is a testament to the ANC's commitment to improving the lives of the people in the area.

In conclusion, the Ceres housing project is a significant step towards resolving the housing crisis in the area. It is hoped that it will be successful in meeting the needs of the people, and that it will be a model for similar projects in the future.
Plan for 25 000 new homes

**Nhlanhla Naphethu**

The Hill Council's executive committee (Exco) is negotiating the acquisition of a vast tract of privately-owned land for a housing project in south Durban.

The 3 200 hectares in Camnab, Mount Edgecombe North, is owned by Tongaat Holst Development and is being used for sugar cane farming. Exco said negotiations were underway with the private land developers to release the land in the city.

The land could support more than 73 000 housing units, but the municipality intends building 25 000 new and multi-income units in the project's first phase.

ANC Cllr Ngigi Gwesile, who chairs the City's housing, planning, demographic, solid waste and human resources committee, said the project would start in less than six months, once the city had signed a memorandum of understanding with Tongaat Holst.

Gwesile said negotiations with the company were promising, but, he said, "The city must ensure that the land should be used to the redric of the people."

A combination of double-storey, one and two-storey, and other housing would be built to accommodate the capacity of Camnab," he said.

The DA and IFP respectively voiced opposition to the proposed land expropriation and the use of farming land for housing.

The Minority Front welcomed the recommendation.

dpv. correct reader, Cllr John Shinnissen, who had earlier in the meeting been denied permission by APF to deliver a letter to him. Exco met with Gwesile over the issue, described the city's stance as holding Tongaat Holst to its promise.

"The DM is caught by the development...the expropriation is, however, not the right way to do things and the DM believes this is conducive to going into negotiations with a blocked gate," he said.

But ANC Cllr Masithule Shebulu said the city would have to compensate the owners. "This matter has been long outstanding. Expropriation will be used should there be no results out of the negotiations," she said.

Shebulu also shut down the IFP's remarks that the land earmarked for housing was prime agricultural land and therefore critical against compensating high land prices.

"If they (IFP) had no strong financial backing they should do something about prioritising the delivery of housing to the poor," she said.

Mayor Cllr Mdleyi Mntshiwa said the city was now meeting the city's target of expropriating more land by 2014 and promises normal economic activity in the north of the city.

"Most industries are concentrated to the north of the city. We have therefore opted for a transit-oriented approach that will provide housing and employment opportunities in the north," he said.

**Blessing:***

Mntshiwa said the project had the blessing of the government. He promised the project to another of his kind in Johannesburg.

"I've heard that Cosmo City is huge; this one is going to be immense," he said.

Mntshiwa alleged that the project was likely to undermine property prices and the city's tax base to the Mount Edgecombe area.

"The planning and layout has taken into consideration all these factors. If anything, people are likely to be assisted by their neighbours to improve their habitats," he said.

In Phase 1, 7 000 homes will be built for low-income families (rent controlling R1,500 a month), and 15 000 homes for the middle-income group (R2 399-3 300 a month).
EXHIBIT 4: CORNUBIA SPATIAL FRAMEWORK PLAN
# EXHIBIT 5: TONGAAT HULETT HALF-YEAR FINANCIAL STATEMENTS

## TONGAAT HULETT LIMITED

Registration number: 1992/000610/06  JSE share code: TON  ISIN: ZAE000056541

### INTERIM RESULTS

for the half-year ended 30 June 2009

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<td><strong>Revenue</strong></td>
<td>3 882</td>
<td>3 109</td>
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<tr>
<td>Profit from operations</td>
<td>864</td>
<td>443</td>
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<tr>
<td>Capital profit on land</td>
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<td>Capital profit on insurance claim</td>
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<tr>
<td>BEE IFRS 2 charge and transaction costs</td>
<td>(15)</td>
<td>(17)</td>
<td>(33)</td>
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<tr>
<td>Zimbabwe consolidation take-on gain</td>
<td>1 969</td>
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<tr>
<td>Valuation adjustments</td>
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<td>6</td>
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<tr>
<td><strong>Operating profit</strong></td>
<td>2 831</td>
<td>447</td>
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<td>Share of associate company’s profit</td>
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<tr>
<td>Net financing costs</td>
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<td>(280)</td>
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<td><strong>Profit before tax</strong></td>
<td>2 681</td>
<td>362</td>
<td>892</td>
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<tr>
<td><strong>Tax</strong></td>
<td>2</td>
<td>(84)</td>
<td>(212)</td>
</tr>
<tr>
<td><strong>Net profit for the period</strong></td>
<td>2 473</td>
<td>278</td>
<td>680</td>
</tr>
</tbody>
</table>

### Profit attributable to:

| Shareholders of Tongaat Hulett | 2 419 | 266 | 649 |
| Minority (non-controlling) interest | 54     | 12   | 31  |
| **Total** | 2 473 | 278 | 680 |

### Headline earnings attributable to Tongaat Hulett shareholders

| 3 | 440 | 252 | 583 |

### Earnings per share (cents)

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<tr>
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<th>Net profit per share</th>
<th>Headline earnings per share</th>
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<tr>
<td><strong>Basic</strong></td>
<td>2 342.9</td>
<td>426.2</td>
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<tr>
<td><strong>Diluted</strong></td>
<td>2 305.5</td>
<td>419.4</td>
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</table>

### Dividend per share (cents)

| 100.0 | 160.0 | 310.0 |

### Currency conversion

| Rand/US dollar average | 9.20 | 7.66 | 8.27 |
| Rand/US dollar closing | 7.74 | 7.83 | 9.30 |
| Rand/GBP pound closing | 12.73 | 15.58 | 13.45 |
## Segmental Analysis

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<th>Unaudited</th>
<th>Audited</th>
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<tr>
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<td>Half-year</td>
<td>Year ended</td>
<td>Year ended</td>
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<tr>
<td>RMillion</td>
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<td></td>
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<td></td>
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<td><strong>REVENUE</strong></td>
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<td>Starch operations</td>
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<td>982</td>
<td>2 150</td>
<td></td>
<td></td>
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<tr>
<td>Agricultural Land Conversion and Developments</td>
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<td>322</td>
<td>412</td>
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<td>Sugar operations</td>
<td>2 682</td>
<td>1 805</td>
<td>4 544</td>
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<td>3 852</td>
<td>3 109</td>
<td>7 106</td>
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## PROFIT FROM OPERATIONS

|                      |                        |                 |                 |                  |            |
|                      | 2008                   | 2008            | 2008            |                  |            |
|                      |                        |                 |                 |                  |            |
| Starch operations    | 112                    | 103             | 240             |                  |            |
| Agricultural Land Conversion and Developments | 64            | 115             | 263             |                  |            |
| Sugar                |                        |                 |                 |                  |            |
| Zimbabwe operations (2008: dividends) | 305      | 35              | 35              |                  |            |
| Swaziland operations | 34                     | 29              | 44              |                  |            |
| Mozambique operations | 134                | 77              | 250             |                  |            |
| SA agriculture, milling and refining | 77          | 37              | 73              |                  |            |
| Downstream value added activities | 94          | 75              | 204             |                  |            |
| Centrally accounted items | 44          | (28)            | 23              |                  |            |
| **Consolidated total** | 864               | 443             | 1 132           |                  |            |
## Statement of Financial Position

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<th>Unaudited</th>
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<td>Non-current assets</td>
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<td>Property, plant and equipment</td>
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<td>Tax</td>
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<td>317</td>
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<td><strong>TOTAL ASSETS</strong></td>
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<td>8 904</td>
<td>9 557</td>
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## EQUITY AND LIABILITIES

|                        |           |           |         |
| Capital and reserves   |           |           |         |
| Share capital          | 138       | 138       | 138     |
| Share premium          | 1 512     | 1 503     | 1 506   |
| BHE held consolidation shares | (1 009) | (1 038) | (1 023) |
| Retained income        | 4 335     | 1 894     | 2 087   |
| Other reserves         | (370)     | 384       | 351     |
| **Shareholders' interest** | 4 606 | 2 871 | 3 059 |
| Minority interest in subsidiaries | 889 | 247 | 276 |
| **Equity**             | 5 495     | 3 118     | 3 335   |
| Non-current liabilities | 4 089     | 2 564     | 2 865   |
| Deferred tax           | 1 562     | 688       | 582     |
| Long-term borrowings   | 1 263     | 806       | 1 212   |
| Non-recourse equity-settled BEE borrowings | 789 | 803 | 792 |
| Provisions             | 484       | 267       | 279     |
| **Current liabilities**| 3 859     | 3 222     | 3 357   |
| Trade and other payables (note 4) | 1 781 | 1 862 | 1 849 |
| Short-term borrowings  | 2 019     | 1 350     | 1 373   |
| Derivative instruments | 2         |           | 23      |
| Tax                    | 57        | 10        | 112     |
| **TOTAL EQUITY AND LIABILITIES** | 13 443 | 8 904 | 9 557 |

**Number of shares (000)**
- in issue                             | 103 247 | 103 078 | 103 247 |
- weighted average (basic)              | 103 247 | 103 043 | 103 070 |
- weighted average (diluted)            | 104 924 | 105 734 | 105 225 |
EXHIBIT 6: NEGOTIATION SLIDES

The following diagram neatly illustrates an ideal negotiation strategy based on an interest-based and principled approach:

- Constructive engagement
- Creativity
- Defer commitment
- Separating the people from the problem

Dealing with people:
- Acceptance
- Understanding
- Communication
- Rationality
- Reliability
- Persuasion versus coercion

Dealing with problems:
- Interests versus positions
- Options for mutual gain
- Objective criteria
- A BATNA

Goals:
- A fair deal
- A good working relationship

Adapted from: Anstey Managing change, negotiating conflict

Note: ‘10’ is very assertive or cooperative and ‘0’ is very unassertive or uncooperative.

This grid is important for a number of reasons. First, it illustrates three methods of conflict resolution:

- Win-win (or 'integrative') methods, the focus is problem-solving rather than exploitation of differences
- Lose-lose methods, where neither party achieves their goal
- Win-lose methods, e.g. using one's authority or power

Second, it also provides a useful means of analysing negotiator behaviour relative to two dimensions, i.e. assertiveness and cooperativeness. Assertiveness relates to the motivation of a negotiator to achieve his/her goals, objectives and outcomes in a negotiation, whereas cooperativeness relates to the negotiator's willingness to allow or assist the other party to achieve their goals, objectives and outcomes.
Declaration

1. I/We know that plagiarism is wrong. Plagiarism is to use another’s work and pretend that it is one’s own.

2. I/We have used a recognised convention for citation and referencing. Each significant contribution and quotation from the works of other people has been attributed, cited and referenced.

3. I/We certify that this submission is all my/our own work.

4. I/We have not allowed and will not allow anyone to copy this essay with the intention of passing it off as his or her own work.

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