

# The role of a Land Surveyor in the TRANCRAA process

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## Abstract

*In the history of land administration in the republic of South Africa, land in rural communities was put in the South African Development Trust (SADT) and other trusts like Tricameral Authorities. Trust Land is defined as land situated in a board area that vest in the Minister in terms of section 7 of the Rural Areas Act, 1987. After that process of vesting some land was transferred to the trusteeship of the Ministry of Department Rural Development and Land Reform (DRDLR) then called Department of Land Affairs (DLA). The Department has initiated the process of transferring trust land to its rightful beneficiary through Transformation of Certain Rural Areas Act (TRANCRAA). The DRDLR has in the process declared some of that land as “sites” in terms of the Comprehensive Rural Development Programme (CRDP). The CRDP was approved by Cabinet in 2009 and it aims to mobilise and empower rural communities to take initiatives and control of land development with the support of government.*

*In a historical milestone of reversing the legacy of the trust land, survey of property boundary is always done prior to transfer of land in terms of the TRANCRAA to ensure that the Land in question is not subjected to any encroachment, people tampering with boundary and beacons, etc. Subsequent to that the service of a land surveyor and town planner plays a big role into developing comprehensive spatial planning that informs the future development/use of the land.*

## 1. Introduction

TRANCRAA aims at providing the restoration of land that has been held in trust for the community in certain rural areas, to its rightful owner. Due to development or administrative processes on the land, the land is categorized according to TRANCRAA into:

- Land in a township (being every piece of land within the border of approved General Plans – mostly existing as Residential area). **Township** is also defined as any township situated in a board area established, approved, proclaimed or otherwise recognised as such under any law.
- And land in the remainder (being the remainder of the parent farm – the original trust land after Township Establishment has taken place - also known as **commonage land**).

**Remainder Trust Land** is also defined under TRANCRAA as land situated in a board area other than township land, including land which has been planned, classified and subdivided as an agricultural area or outer commonage in terms of section 20 (2) of the Rural Areas Act, 1987.

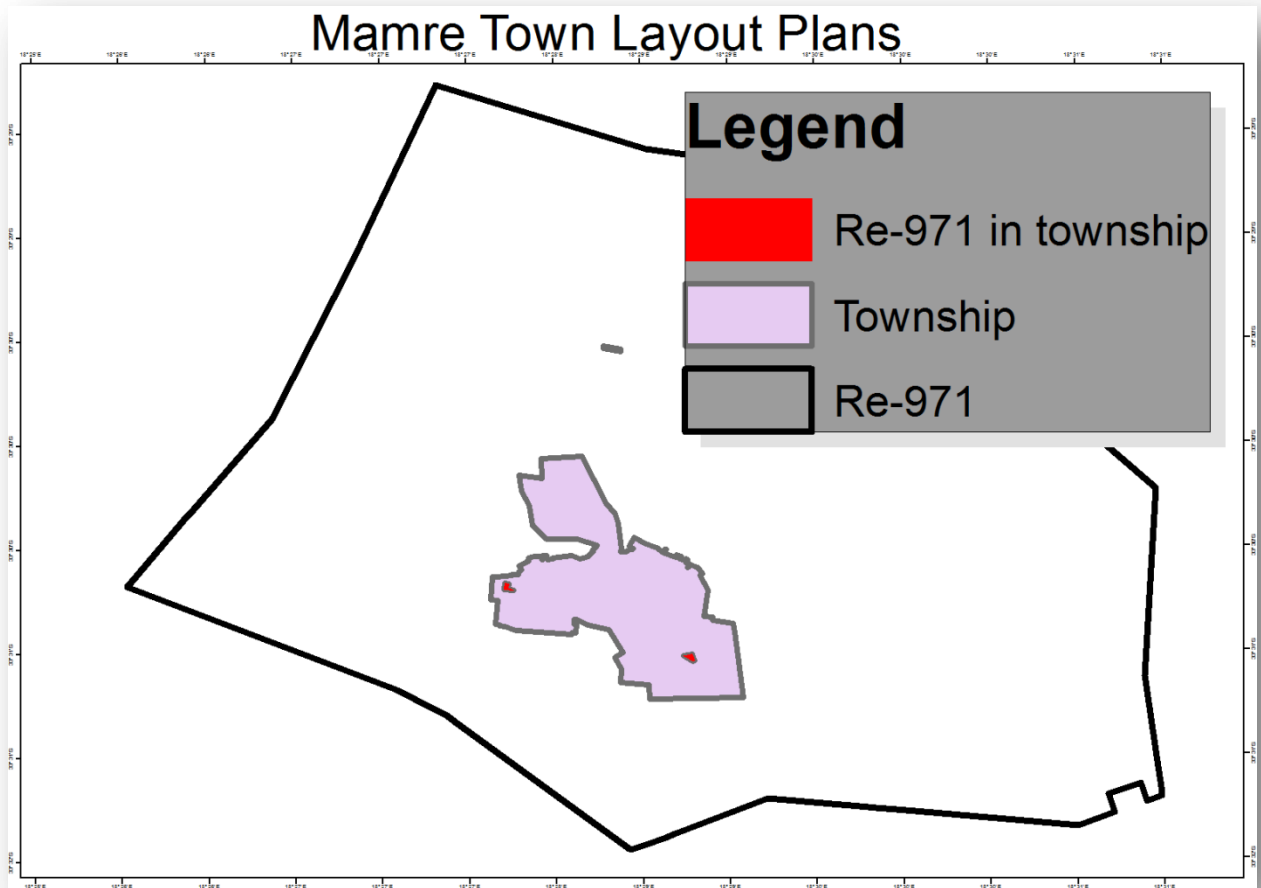


Figure 1: Township land (purple) Vs trust land (Re-971)

In terms of section 2 of TRANCRAA all trust land in a township at the commencement of the Act vests in the relevant local municipality(ies), and the commonage land (being the remainder land outside township that is held in trust for the community) is to be transferred to a legal entity of the community's choice, which can either be the municipality or a CPA. Land in a township would include all public open space within the township, all public roads and that includes any part of the trust land within the township (see Re-971 in township in figure 1). If there is any trust land remaining within a township as a result of successive township establishments having taken place which are not contiguous (like in figure 1 above), it has to be surveyed, subdivided and transferred to the community entity of choice or to owners/occupiers to whom it has been

allocated over time, as a formal land rights inquiry has to confirm. The ACT also makes provision for the repeal of the Rural Areas Act, 1987 and other related laws that prevented blacks to own land.

Department of Rural Development and Land Reform (DRDLR) have undertaken the mandate to restore land to its rightful owner through TRANCRAA. The department developed a Comprehensive Rural Development Programme (CRDP) enabling rural community(ies) to take control of their land with the close monitoring of government till the communities are able to stand on their own. CRDP is aimed at being an effective response against poverty and food insecurity by maximizing the use and management of natural resources to create vibrant, equitable and sustainable rural communities. The CRDP comprises of 3 programmes, being:

- Identify and meeting basic human needs
- Enterprise Development and,
- Implement light agricultural industries

“A CRDP must improve the standards of living and welfare but also rectify past injustices through rights-based interventions and address skewed patterns of distribution and ownership of wealth and assets. The strategic objective of the CRDP is therefore to facilitate integrated development and social cohesion through participatory approaches in partnership with all sectors of society.” Ministry of Rural Development and Land Reform.

There are about sixty four (64) sites in South Africa; twelve (12) in Western Cape Province, six(6) in North West, six(6) in Northern Cape, eight(8) in Mpumalanga, ten(10) in Limpopo, six(6) in KwaZulu Natal, five (5) in Gauteng, eight (8) in Free State and Three (3) in Eastern Cape. The minister of DRDLR Mr Gugile Nkwinti identified certain communities from the above mentioned to undergo CRDP post TRANCRAA based on their needs.

Survey of property boundary is always done prior to transfer of land in terms of the TRANCRAA to ensure that the Land in question is not subjected to any encroachment, people tampering with boundary lines and beacons, etc. The survey also serves to determine the exact extent of the trust land remaining earmarked for transfer. This is to ensure that the communities receive their land without any distortion. Land surveyor also confirms that the area represented on the original title deed correspond with the land earmarked for transfer. Subsequent to that process the service of a land surveyor and town planner plays a big role into developing comprehensive spatial planning that informs the future development/use of the land. In certain

areas the municipality already have the Site Development plan (SDP) and the department involves them in amending a plan that is in line with CRDP.

## **2. TRANCRAA**

Transformation of Certain Rural Areas ACT 94 OF 1998 Provide: For the transfer of certain land to municipalities and certain other legal entities; the removal of restrictions on the alienation of land; matters with regard to minerals; the repeal of the Rural Areas Act 9 of 1987, and related laws; and to provide for matters connected therewith. The status of trust land under Act 9 is similar to trust land in the former Bantustans and homelands. In Act 9 areas the trust land can now be transferred to community entities subject to the conditions set by the minister of DRDLR who is holding the land in trust of the communities. The Act applies to all land within the boundaries of a board area, both with and without township areas. This means that the TRANCRAA applies to all land affected by Act 9 of 1987 immediately before the commencement of this TRANCRAA.

According to section 2 of the act every public owned land (i.e. Trust land, public space, roads, etc) situated within the established township vest in the municipality of the area where such land is situated. Section 3 allows trust land outside the township to be transferred to the CPA or legal entity of the community choice being the legal entity.

## **3 The Role of a Land Surveyor before transfer**

### **3.1 Surveyed land**

Land surveyor investigates the case and search for any Surveyor General (SG) records related to the land earmarked for transfer. Usually there will be a diagram surveyed showing the extent of the parent farm and all the subdivisions or deductions thereof. The first step is to conduct a beacon relocation survey and the search data is based on the latest registered diagram. Sometimes communities are not happy with the latest diagram as they believe the reason for substituting the old diagram was to reduce the size of the property. It is the role of a land surveyor to explain to communities why the old diagram was replaced as they are many reasons of substituting a diagram (i.e. red line diagram, data missing on the original diagram, etc). Land surveyor can also reconstruct beacons in a prescribed manner if they are lost due to human interference or natural causes. Upon confirming the outer boundary a land surveyor will also provide the extent of the land to be transferred to the community. This is done because some people may have acquired real rights by means of buying land from the parent farm. Mostly on the residential area people have title deeds for the land they are currently occupying.

### 3.2 Un-surveyed land

If the land is not surveyed it is a role of a land surveyor to ensure that he/she surveys the property in the manner prescribed in The Land Survey Act No. 8 of 1997. The office of Surveyor General, Deeds office and Chief Directorate National Geospatial Information (CD:NGI); where possible work in harmony to ensure a speedy delivery of both the diagram and title deed. The previous government used proclamations as boundaries before the diagram era. A land Surveyor would then follow the proclamation in consultation with community representatives affected by the survey; to physically define the boundary. Where the communities do not agree with the proclamation a beacon is placed on agreement between the affected parties and beacon agreement form is filled and signed for record keeping.

### 3.3 Dealing with subdivisions

It can be complicated if one is dealing with a big piece of land because every erf or piece of land that is subdivided from the parent farm should be accounted for. It is more easier if the subdivisions are formal and when dealing with general plans. In a case where subdivision are for the purpose of creating general plans the strategy is to check small scale diagrams (see diagram below) if it is registered with deeds office or not. There area of a subdivision must be subtracted from the parent farm if that subdivision is registered.

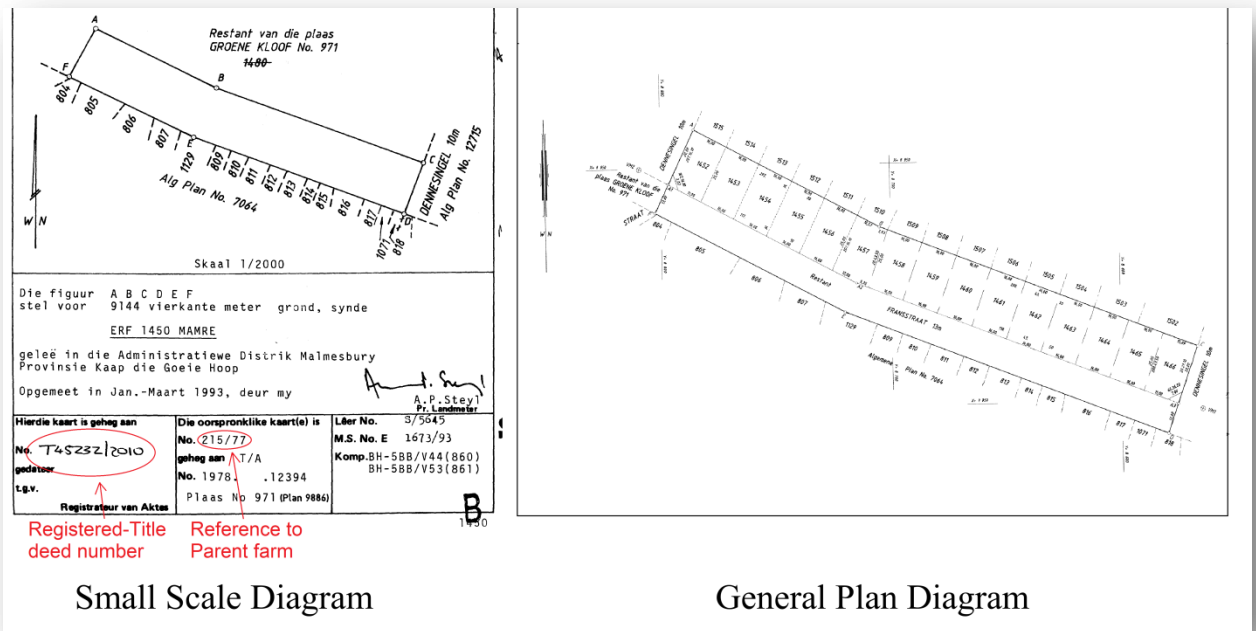


Figure 2: Small scale diagram vs. General plan diagram

If a subdivision is not registered a land surveyor will have to advise the best suitable time (i.e. before or post transfer) to resolve it, because it basically means that that piece of land still forms part of the trust/commonage land as far as deeds office is concerned. Before transfer can take place the municipality must issue rates clearance certificate (just like in every other transfer) and all outstanding rates should be paid by DRDLR prior transfer. The problem arises when the municipality bill the rates of the unregistered development on the commonage land and the rates account can easily amount to 4 million (i.e. an example is Mamre TRANCRAA project). Bear in mind that the commonage land is mostly vacant land and it terrifies to get rates at that value on an un-serviced land. Rates issue can delay the transfer process, so usually the municipality can issues the rates clearance certificate if the department undertake to pay the corrected rates after transfer.

### **3.4 The Role of a Land Surveyor after transfer**

This is the stage where all flagged and unresolved issues listed above should be dealt with properly. The big problem is when the subdivision is approved by the SG office and not registered with deeds office. One needs to go investigate the intension of the subdivision and advice on the way forward. With the consent of the owner of the subdivision that subdivision can be cancelled or registered. A land surveyor together with SG office assists the community to clear up all those problematic subdivisions.

As stated in 3.2 above rates for the unregistered land can easily be charged on the trust land, and therefore is the role of a land surveyor to provide spatial information that will assist in the investigation of the rates account. The municipality will have to provide a breakdown of the rates account stating the exact land the rates are being billed on.

Land surveyors together with town planners are also heavily involved in developing a Site Development Plan (SDP). Land surveyors based on the SDP subdivide the transferred land and create lease area where necessary. Terms of reference for lease agreement drawn are by a business entity and the CPA. Land surveyor will facilitate the registration of the lease with the deeds office.

## **4. Field Surveys**

Field surveys are straight forward more especially when there is already a registered diagram. As mentioned before the search data used is always from the latest diagram and the coordinates are converted to WGS84 reference ellipsoid. A survey is usually conducted without the presence

of the community if it is a beacon relocation survey and pictures are taken and presented to the community. Mostly a graphical presentation is sufficient but a site visit to all beacons can be arranged on request by the community. In figure 3 is an example of a beacons found in the field. Most beacons are found as originally defined in the diagram but that in figure 3 is not as described and was found within the vicinity of the searched position as wooden fence post. People mostly replace original beacon with permant futures like wall conrner and fence post, hence a land surveyor can adopt that as a new beacon if the beacon is within certain tolerance.



Figure 3: Wooden fence post beacon

Another type of beacons used in the olden days was a trigonometry beacon but it should be emphasised that trig beacons are no longer allowed by SG offices across the country; to be used as farm/property beacons. Mostly a surveyor will paint all found beacons but this particular one they don't as it is a government property and it is required to stay in its original state.



Figure 4: Trigonometry beacon



Figure 5: 1.5m above ground projected stone

A well-known beacon is planted stone. Surveyors used this type of stone and it is mostly different from all nearby stones; have no idea how did the then surveyors manage to carry these stone in hard to reach places. Beacons like these give surveyors confidence when presenting them to the clients (i.e. communities in TRANCRAA case).



Figure 5: Cross cut on rock pinnacle



Surveyors often create man made beacons depending on what was available at their disposal during the time of the survey and could make a mark or cross on rocks like in this example. There is a cross cut at the position of the GPS pole and it was found as described on the diagram. Survey regulation allows surveyors to place this type of beacons provided they are permanent and physically defined.

All these beacons and others not mentioned are typical examples of old beacons and there are mostly found as per original description. Based on this fact surveyors can easily convince the communities that their boundaries have not been moved as most communities allegedly claim that the original size was reduced by moving the farm beacons. Often communities claim more than what is due to them and it is a duty of a surveyor to make them aware that it is impossible to get away with stealing land by moving beacons. Having said that people can still move beacons (these cases are rare though) but a land surveyor would pick it up easily as all beacons should be in sync with another.

## **5. Conclusion**

TRANCRAA processes deal with matters pertaining to land size, ownership and demarcation, and land surveyors are expected to measure distance and areas on ground accurately. Most of the diagrams are very old and in various units of measurement that most people are not familiar with. Units of measurement have since been standardized to meters for distances and hectares for areas bigger than 10 square meters. It is also the responsibility of a land surveyor to convert all units to universal SI units that most people relate to today.

Land surveyors also play a big role in creating property descriptions for all new property or existing property with a tempered boundary(s) or beacon(s). Land surveyors assist in the planning and layout of erven, blocks, streets in a new subdivision.

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