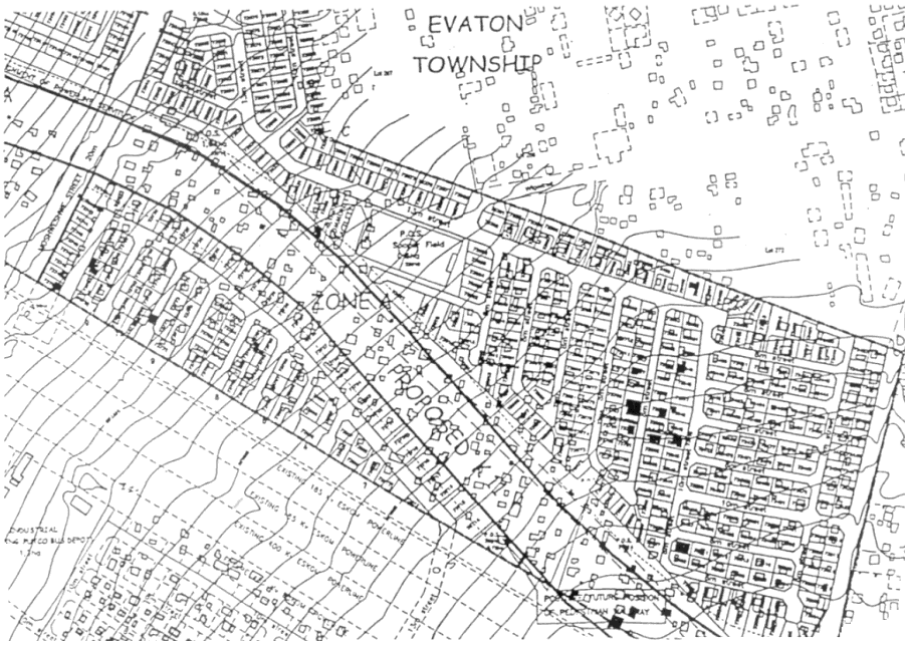
Map of the Kanana land invasion, Phase 2
Figure 3: The Kanana invasion layout

Source: Urban Dynamics

Intial planned layout for Kanana Phase 2



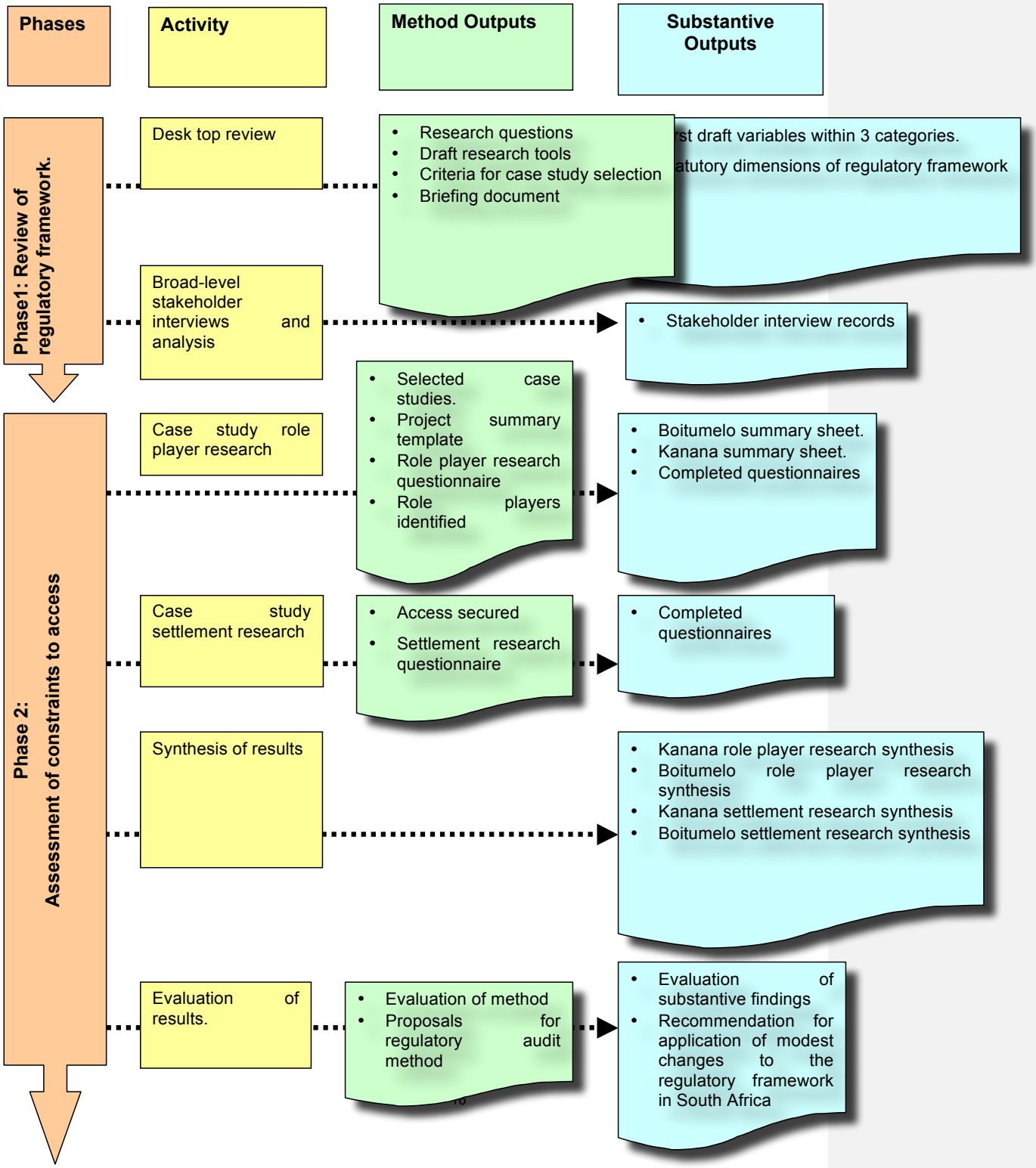
Planned in-situ layout for Kanana Phase 2

Figures 4 and 5: Initial and final planned layout for Kanana

The preliminary interviews were not directly linked with the two cases studies, in comparison with the second round of interviews which was undertaken with project role-players. These interviews were in-depth. A first step was the identification and selection of case studies, which required clear criteria including being located in the same area of political and administrative jurisdiction and proximity to one another (important for land price). Other selection criteria were age (old enough for sufficient progress to evaluate but not too long ago for there to be no memory) and willingness on the part of gatekeepers to buy-in. The case study role-player interviews were conducted with individuals who had a role to play in the respective settlements. The selection of role-players was a first step in this phase of the primary research. Preliminary information on both projects was a pre-requisite for identifying role-players. To this end, a project summary sheet template was developed which included case history and role player information tables – these were particularly helpful in identifying role-players. Another aid to role-player identification was the role-players interviews themselves. Successive interviews, especially in the beginning, tended to identify additional role-players who could then be contacted by the researchers. The summary sheet template is Annex 4. A total of 12 role-players were interviewed for the formal development case study, with 11 in the informal case. Interviews lasted about one and a half hours each. The interviews were conducted using a standard role-player research questionnaire, which is attached as Annex 5. The questionnaire was used flexibly by researchers – not all interviews covered all questions in the same amount of depth, depending on the respondents' roles in the projects. The questions are open-ended, requiring detailed responses, but the interviews were structured. Each interview was recorded by hand on a copy of the questionnaire. The interview responses were then synthesised into a single version of the questionnaire, for both case studies, and the originals kept on file.

The second type of primary research was undertaken after the in-depth role-player interviews in the two settlements. The settlement research was intended to emphasise the residents' experience of the regulatory framework in the general findings and to verify the role-player findings. A preliminary step in the settlement research was securing access. This entailed making contact with the relevant ward councillor, arranging a meeting, briefing on objectives and agreeing on procedure (such as being accompanied on site for protocol and safety concerns). A parallel component of the preparation work was drawing up a questionnaire for the settlement research, including specifying which issues required verification and which issues were a priority to target residents' perceptions. The settlement research questionnaires are attached as Appendices 7 and 8. The settlement research had three elements namely observation, focus groups and one-to-one interviews with residents. The observations were undertaken on the first settlement research site visit, with additional observations in follow-up visits. One focus group was conducted in each of the settlements – with local political representatives in the formal project and savings schemes members and community leadership in the informal project. A total of 23 interviews with residents were undertaken in the formal project, and 24 in the informal case. Interviews averaged about half an hour each. Each interview was recorded on site by hand on a copy of the settlement research questionnaire, which is on file. The responses were then synthesised into a single version of the questionnaire, for both cases. The diagram on the next page demonstrates the research method graphically.

Figure 6: South African study research method



RESULTS

Planning laws and regulations

The section describes the elements of the regulatory framework operative in each case and provides introductory financial cost information.

Township establishment took place in Boitumelo, the formal project, using the Transvaal Town Planning and Township Ordinance, Act 15 of 1986. The development site was originally farmland. The township establishment procedure provided for its rezoning to residential. Land use is managed by means of the Vanderbijlpark town planning scheme. The residential zoning provided for in Boitumelo is more flexible than that permitted in Vanderbijlpark as tuck shops and shebeens[9] are uses which are permitted with consent from the municipality. The professional role-players felt that it accommodated the informal nature of the area while ensuring the protection of rights (Boitumelo role-player research synthesis report, 2001).The settlement received subsidisation using the developer driven individual subsidy type. The following table summarises the cost breakdown per subsidy.

Table 7: Subsidy breakdown in Boitumelo

Item	In R	% of total
Town planning and surveying	350	2.01
Engineering (including certification of top structure and special design of slab for geo-technical conditions)	400	2.30
Conveyancer	300	1.72
Project management	250	1.44
Marketing (subsidy administration)	250	1.44
Land[10]	350	2.01
Infrastructure	5,000	28.74
Top structure 35m^2 [11]	10,500	60.34
Profit	1,044	6%
Total	17,400	100%

The township establishment procedure is underway in Kanana with general plan approval having been obtained in phases 1 and 2. Phase 3 has proceeded less far, a land availability agreement having been signed in January 2002. The township establishment legislation being used is the Less Formal Township Establishment Act. Prior to the land invasion the

[9] Tuck shops, spaza shops and shebeens are places of informal economic activity. The two former sell groceries of various kinds and the latter sells liquor.

[10] The low land cost is related to its long distance from the city

[11] The breakdown of the cost of materials to labour costs shows that the cost of labour is fairly minimal: 20% labour + materials 80% (excluding the services)

site was zoned farmland and was being used by residents of a settlement called Small Farm to graze their livestock. It was earmarked by the authorities for an industrial development. The view was expressed that this proposal was borne out of the site's convenient proximity to cheap labour and sufficient distance from middle-class neighbours and the city centre (Kanana role-player research synthesis report, 2002). According to the Lekoa/Vaal Metropolitan Council (1995), it was destined as the central business district for the Sebokeng Township. The land is being re-zoned to residential in the township establishment process. Loans have been accessed by savings schemes members from the uTshani Fund[12] for the construction of houses and for the installation of a demonstration sanitation system to 38 houses. Infrastructure and tenure regularisation was funded through a first phase of subsidisation and top-structures are in the process of being funded through subsidies under the People's Housing Process. The following table provides an average cost per site of the people's driven development process in Kanana. Alongside these costs, the costs of formal infrastructure provision and house construction in Kanana are provided.

Table 8: Average costs of infrastructure and housing delivered by Kanana savings schemes compared with costs of formalisation

	Informal	Formal
Infrastructure costs	R 1,000	R 6,860
Top structure	60m^2 - R 10,000	48,75m^2 - R 9,140 55,25m^2 - R 10,370
Total	60m^2 - R 11,000	48,75m^2 - R 16,000 55,25m^2 - R 17,230

The informal column represents costs incurred by members of the Kanana savings schemes in installing their own infrastructure and in constructing a 60m^2 house. The formal column represents the subsidies for infrastructure and tenure under the project linked subsidy and for houses under the people's housing process.

Procedures

The next part of the report describes the development procedure including township establishment, subsidisation and construction.

Outline of procedures in each case, how long they took and who was involved

Due to the existence of a subsidy in South Africa, a consideration of procedures needs to include both the planning and subsidy system procedures. This meant that both township establishment procedures and housing subsidy administration procedures were researched and assessed in Boitumelo and Kanana. In Kanana an added procedural dimension was the informal development process which led up to and preceded the formalisation. The following section reports on the development procedures chronologically, thereby combining steps in the township establishment and housing subsidy processes, which is how the development procedure unfolds in practice. [13] The section begins with a description of the pre-planning process in Boitumelo, as these activities are very much a part of the procedure although not governed by the formal planning and housing procedures which is the definition given to

[12] The revolving finance scheme of the South African Homeless People's Federation.

[13] The important point for comparability between the South African and other national studies is that the housing subsidy procedures are likely to be less generalisable than the township establishment procedures.

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"administrative procedures" in this study. After this, the results on planning and housing procedures are presented in tabular form for both projects.

The initiators of the Boitumelo housing development were some households from neighbouring Kanana and the private sector developer who purchased the land. In 1994 approximately 200 Kanana households encroached or spilled over onto the Boitumelo site (Boitumelo role-player research synthesis report, 2001). It is no coincidence that this initiative was taken in 1994 – the year in which South Africa's first democratic elections were held. The developer saw an opportunity and proceeded to purchase the land. The Boitumelo ward councillor (who was a community leader at the time) filled in on the history that preceded this land purchase. His perspective lent a much greater sense of a mobilised community taking land matters into their own hands (interview with Boitumelo ward councillor, 2001), at least at the beginning of the initiative. The original owner of the farm appears to have sold the land to a property development company whose intentions were to develop loan houses. There is not a great deal of clarity on whether the sale actually took place or whether there was an agreement between the farm-owner and the property developer on the housing development concept. Either way, before this development began, the invasion occurred and negotiations were entered into between the property developer and the community under the leadership of the current ward councillor. An agreement was struck to use about half of the land for developing houses for the community and they agreed that no more households would be allowed to settle on the land. In the meantime, it appears that the property developer encountered financial difficulties, the agreement lapsed and the farm-owner decided to put the land up for sale. It is at this point that the subsidy housing developer entered the scene in 1996. He purchased the land, made contact with the leadership, communicated his intention to develop RDP houses and, in due course, put up two show houses which came to be used as community offices (Boitumelo settlement research synthesis report, 2001). From this point on, the technical role-players begin to dominate the procedural narrative. This is an important point because, although the project began as a community driven initiative, it quickly became a developer driven housing subsidy project, thus falling squarely within the ambit of formal development procedures, both planning and housing. The initial residents were accommodated in the development but the developer and town planners associated with the project treated it (and referred to it) as a vacant land development. Reference was even made to the absence of a beneficiary community (South African workshop report, 2002). This attitude is encouraged by (and may even be the result of) the inflexible way in which the subsidy system works. Even upgrading projects tend to follow the vacant land development logic (Huchzermeyer, 2002). It is mainly the scale of the subsided units developed relative to the number of households involved in the invasion (3600 and 200 respectively), that allowed us to categorise this project as a formal greenfield development example, but the way the development was handled also contributed to this choice. It is interesting to note how the community leader's own changed position mirrors what happened to the development process – from land invasion leader outside of the apartheid system to ward councillor inside the democratic system. Residents in Boitumelo only begin to make a contribution to the narrative again at the post-occupation phase and their interaction with the regulatory framework is extremely limited as a result.[14]

Table 9: The Boitumelo procedures

List of procedural steps	Duration & Innovation	Responsible party	Other role-players

[14] The limited interface had methodological implications, which are explicitly addressed in the method sections of this report.

List of procedural steps	Duration & Innovation	Responsible party	Other role-players
1. Proposal to province in early 1997 for development of the land	6 months	Developer	Gauteng Department of Housing (GDoH)
2. Proposal accepted provided the subsidies granted are individual subsidies (requirement of province), contract signed	~ 6months	GdoH	Developer
3. Compilation and approval of subsidy application		***Developer***	GdoH, Developer
4. Disbursement of funds into conveyancer's dedicated account		GdoH	Conveyancer
5. Initial survey of the site to identify major geo-technical conditions and servitudes and survey outside figure	60 days. Steps 5, 6 & 7 were conducted simultaneously Step 11 is normally undertaken after municipality approves the application. It took 2 weeks. Step 12 is normally done after the township is proclaimed. It took 3 months.	Land Surveyor	
6. Layout for the site drawn up		Town Planner	
7. Calculation of land uses and redrafting of layout (3 to 4 weeks)		Land Surveyor	Town Planner
8. Submission of application for township establishment to the municipality		Town Planner	Municipal officials and Council
9. Distribution of application to municipality and stakeholders		Town Planner	Municipal official, Eskom, Water utility, some provincial departments (i.e. education)
10. Advertisement of township establishment application		Town Planner	
11. General plan drawn by surveyor, pegging of sites, submission to Surveyor General		Surveyor	Surveyor General's Office
12. Service agreement		Local and district municipality and utilities	Municipality
13. Drawing up of report to Council		Municipal officials	Town planner

List of procedural steps	Duration & Innovation	Responsible party	Other role-players
14. Council approval of township		Municipal Council	
15. Proclamation of township S 125	2 weeks	Council	
16. Opening of township register		Deeds Office	
17. Design of services		Engineers	
18. Services guarantees and implementation	3 months. This step occurred in parallel with several of the preceding steps.	Developer	Financial institutions
19. Draft transfer and obtain the transfer duty certificate from receiver of revenue (states the parties to the transaction, property + purchase price) (had a special arrangement: 1 or 2 days of lodgement)	8-12 weeks. Had a special arrangement on step 19 for only 1 or 2 days of lodgement.	Receiver of Revenue	Conveyancer
20. Get rates and services clearance certificate from the council (1 week)	Step 20 took 1 week.	Municipality	Conveyancer
21. Documents (power of attorney from the developer for transfer) lodged together with the deed of transfer	Step 21 was 20 minutes per document.	Conveyancer	Developer
22. Documents lodged for registration (normally 10 and 12 working days): Preparation (check pre-requisites); Registration (execute the document, numbered after registration); Microfilm in the deeds office; Delivered between 4 to 6 weeks later to offices of surveyors.		Deeds Office	Conveyancer
23. Hand over of title deeds to beneficiaries			
24. Payment 1 for transferred sites + services (per 250 batch on completion of previous 250 batch top-structures)	Fortnightly	Conveyancer	Developer
25. Design of houses + submission of plans to council		Structural engineer, Developer	
26. Training of beneficiaries for construction of top-structures	2-3 weeks	Developer	Contractor, community

List of procedural steps	Duration & Innovation	Responsible party	Other role-players
27. Top structures	250 per fortnight	Developer	Contractor, community, structural engineers
28. Happy letters[15]		Beneficiaries	Conveyancer
29. Payment 2 for top structures + happy letter (per 250 batch)	Fortnightly	Conveyancer	Developer

Table 10: The Kanana procedures

List of procedural steps	Date	Responsible party	Other role-players
1. Formation of residents committee of Sebokeng backyard shack dwellers, disgruntled with paying rent to boycotting council tenants & high levels of crime, whose aim is to invade Kanana	1991	***Community leaders & backyard shack dwellers***	-
2. Agreement to join the Sebokeng Civic Association (aligned to national civic structure and spear-heading rates and services boycott) who would negotiate on behalf of backyard shack dwellers' committee for land	1991	Residents Committee & Sebokeng Civic Association	-
3. Residents' Committee disbands from civic & proceeds to plan invasion, as no land has yet been secured by civic on their behalf	1994	Residents Committee	-
4. Pre settlement planning – the organisers of the invasion measure formal layouts in the township of Sebokeng on which to base the Kanana sites	Early 1994	Committee leadership & invasion organisers	-
5. The first families invade Kanana.	13th April 1994	Invading households	-
6. Plots are allocated and an orderly occupation is managed by community leadership. Roads, playing fields, clinics are demarcated and sites are left vacant.	13 – 24th April 1994	Leadership	

[15] A letter of compliance from the municipality on completion of the servicing by the developer, to the satisfaction of the municipality.

List of procedural steps	Date	Responsible party	Other role-players
7. More than 1500 families are settled on the land. Kanana, Election Park and Freedom Square to the south, Botshabelo to the north & Boitumelo to the west.	By 24th April 1994	Backyard shack dwelling households from Sebokeng	-
8. Kanana residents begin the join the Homeless People's Federation, both parties having been exposed to one another via media stories. Some residents set up savings schemes.	1995	***Homeless People's Federation, residents***	The press
9. Two community representative structures are established in phases 1 and 2 of Kanana respectively. The phase 2 civic has good relations with the Federation, its leadership being active members.		Residents	Federation
10. The local authority alerts the provincial administration of the invasion and province issues an eviction notice on the grounds of public health, there being no access to drinking water	1994	Local authority	Provincial governme nt
11. Kanana leadership organises water access, with the help of striking municipal workers, within 48 hours	1994	Kanana leadership	Striking municipal workers
12. Province threatens legal action against Kanana for stealing water. In response, Kanana leadership offers that the residents will pay for water consumption	1994	Provincial egovernment & ana leadership	-
13. Provinces ignores the settlement for 2 years	Until 1996	-	-
14. The Federation chooses Kanana as the locality of a Building, Training and Information (BIT) Centre which is constructed in "Phase 2" – the Federation stronghold. Joe Slovo, national housing minister, opens the centre.	1995	Federation	-
15. Savings scheme members begin to build houses. Eleven Federation houses are located in the high power electricity servitude and the reserve of a road planned prior to the invasion.	1995 onward s	Savings schemes members	***Federation, uTshani Fund***
16. The new minister of Land Affairs, Derek Hanekom, visits Kanana, encourages the Federation members in their endeavours, and instructs the transitional local government to apply for development funding from provincial government.	1995	National Minister of Land Affairs	Transition al local council
17. Local government elections take place and	Novem	Community	-

List of procedural steps	Date	Responsible party	Other role-players
the Kanana ward councillor's election is supported by the Federation.	ber 1995		
18. Due to lack of capacity at the level of the local council, the metropolitan council takes responsibility for the development. A social compact agreement is signed between the council and the community representative structures, including the Federation. Infrastructure and tenure funding is applied for and obtained from the government's capital housing subsidy.	1996	Civics, Federation, local government	-
19. The savings schemes spearhead a mapping process: all the shacks in the settlement are counted and they draw a representation to scale of the existing layout as designed in practice by the people when they invaded the land. They undertake a needs assessment survey of the households in the settlement, finding out about household sizes and income levels, generating employment data, migration histories, and information about densities and shack construction methods and materials. This information is submitted to the council, the Province, and the National Department of Land Affairs.		Saving scheme members, Federation	The council, the Province, and the National Departme nt of Land Affairs.
20. The metropolitan council ignores this information and appoints more than a dozen consultants for most aspects of the Kanana upgrading, including town planning, land surveying, conflict resolution, and 'facilitation of community participation', at a defined cost per household.		Metropolitan council, consultants	-
21. Planning consultants formalise the layout using aerial photography. Residents argue for a minimum of 300m^2. The local authority, under pressure from the Federation, instructs the consultants to accommodate as many plots as possible in the formal development.		Planning consultants	Federation , local authority, residents

List of procedural steps	Date	Responsible party	Other role-players
22. A series of workshops are organised at which the consultants who were facilitating community participation and resolving conflict try to convince the community to authorise them to proceed with development. A structure elected by the community, called the Kanana Project Team, tries to present the case for a people's process. However, the layout plan is agreed upon through community representative structures.		Community facilitation and conflict resolution consultants	Kanana project team, community structures
23. The Federation constructs further houses, despite an instruction from the local authority to wait until the formal pegging of the plots according to the new layout. The positioning did not correspond with the new layout.		Federation saving schemes members	Federation
24. The planning consultant proposes a layout adjustment to accommodate most of these houses. However, opposition from the 'broader community' to further concessions to the Federation members led to a 'vote' against changing the layout, which would have caused a further delay. Four such houses remain to date disputed, as they occupy either roads or plots designated for crèches. The eleven houses in the servitude and road reserve are not accommodated in the formal layout nor are they pegged.		Planning consultants, community representative structures	Federation members
25. The Federation at Kanana opposes the conventional development process which is ensuing, on the grounds that it takes no consideration of people's initiative, with support from NGO People's Dialogue.		Federation members at Kanana	People's Dialogue
26. The Federation's insistence on the people-driven approach is seen to be holding up the development process. The ward councillor promotes the conventional developer driven route to subsidisation, allegedly drawing phase 1 residents with him, while distancing himself from the Federation members and the people driven approach. The Federation withdraws / is kicked out of the social compact agreement, but continues to use its skills in the development process.		Phase 1 community representative structure, ward councillor	Federation

List of procedural steps	Date	Responsible party	Other role-players
27. With the support of People's Dialogue, the Federation arranges an exchange with the NGO-initiated Orangi Pilot Project (which has enabled informal settlement residents to install their own sanitation systems) and the National Slum Dwellers Federation (NSDF) of India.		Federation, People's Dialogue	Orangi Pilot Project and NSDF
28. The Federation disagrees with the costs of the formal infrastructure provision, obtains a loan from the uTshani Fund and a sanitation system is installed for 38 houses in Kanana, at a fraction of the formally budgeted cost.		Federation, plumbers in the community, uTshani Fund	
29. As a result of this demonstration, the authorities and consultants review the budget. A considerable reduction is achieved through the removal of various cost factors such as tarred roads, toilet structures, the local authority inspection fee and contingencies.		Province, metro and consultants	
30. Housing or "top-structure" subsidy applications are submitted for the People's Housing Process of national government. Ward councillor sides again with phase 2 as the Federation was considered a major player in the implementation of the People's Housing Process	2001	Local council	Ward councillor
31. 1008 subsidies are approved.	2001	Provincial government	
32. Developer finally obtains a land availability agreement from provincial government (the land owner) which gives him power of attorney over the land in order to proceed with transfer and conveyencing.	January 2002 (from 1996)	Top structure developer	Provincial governments of housing and local government
33. 250 subsidies are disbursed. 10 units are constructed to date. [16]	January 2002		

[16] Remaining subsidies to be disbursed by mid 2002.

The main procedural bottlenecks and their causes

A period of eight years elapsed in Kanana from invasion through to commencement of the construction of formal, subsidised housing units. In the three year period preceding this, there was considerable delay between mobilisation for invading the identified land and actual invasion. This period saw the informal process of development including securing the land, planning, access to water services and house-building. Upgrading also commenced in this period and is still underway. By comparison Boitumelo proceeded smoothly – an approximate period of two years, including the fortnightly 250 batch cycle. This elapse period is measured from the time that the developer first put in the land development proposal to province. The project period would be nearly three years longer if the early land negotiations were to be included. The obvious and indisputable conclusion is that Boitumelo was fast and Kanana is slow. A more dubious deduction would be that the formal subsidy route is necessarily quicker than the informal people-led process slow. Although valid to some extent, several factors need to be taken into account in making this over-simplistic comparison. The first is that Kanana is an informal people led process which became subject to formal upgrading. While some delays were experienced in the preliminary organisation phase, many others arose primarily as a result of attempting to overlay a formal development system onto Kanana, with little cognisance of what had already been done and scant regard for accomodating the same people-led approach in the upgrading phase. In fact, it was precisely this battle which caused delay – potential people-led upgrading and formalisation versus entrenched formal development approach. Ultimately, Kanana has been subjected to the dictates of formal development (Huchzermeyer, 1999). This experience underscores the need for the policy shift towards the People's Housing Process, which may better accommodate local initiative like that demonstrated in Kanana. The factors that caused delay are identified and analysed in this section. Secondly, Boitumelo is an example of how to get it right. The case study needs to be read as a set of lessons about how to make the existing system work more quickly, more smoothly and more profitably. Several pre-conditions made the Boitumelo experience possible; political support, technical capacity (especially project management an professional) and project scale.

Role-players identified the main causes of delay as local labour procurement, materials procurement, bridging finance availability, delays at the deeds office and surveyor general and municipal capacity. Poor quality professional contributions and environmental impact assessments[17] were also singled out, although we do not address environmental impact assessment requirements here, as they did not arise in either project. The Boitumelo project example complicates the neat, linear presentation of results because (1) some of the constrains identified are not procedural in nature; and (2) some bottlenecks identified were successfully overcome in Boitumelo. In the case of the former, we present these non-regulatory framework findings in the substantive evaluation section and we take up the innovative treatment of procedures in Boitumelo in a sub-section which follows as options for change. The main bottleneck in the informal phase of the Kanana development process was in securing land. It arose primarily out of the struggle for community representation. In the formalisation process delays were experienced in formalising the layout and in obtaining the land availability agreement.

Our results show that bottlenecks occur at:

- General plan approval
- In the approval phase, preparing documentation and circulating it to all stakeholders
- Deeds registration
- In the construction phase, local labour procurement

[17] Although environmental impact assessment was not a requirement at the time of the Boitumelo development, but role-players identified it as a factor of delay based on experiences in other projects

- Securing the land: in the informal process gaining land access informally and in the formal process obtaining the land availability agreement
- Agreeing on a formal layout plan including site sizes and the future of informal construction in no-go areas.

Main causes

Most bottlenecks can be ascribed to the human factor – capacity at the deeds office or the surveyor general's office or in the municipality. Additional causes are system related – the location of the deeds office and the SG at national level, excessive work-load with the rate of delivery of subsidised housing. Few, if any, are problems in the procedures *per se*. This finding needs to be tempered somewhat with the innovative nature of the Boitumelo project. The project drivers overcame many of the constraints normally associated with the procedures by loading the professional and technical capacity on the project and by playing creatively with the sequence of the procedures, to fast track the development. This made financial sense due to the large scale of the project. Skilled technical capacity was a pre-condition for this innovative approach in tampering with the system to make it work better. This also illustrates how important the human factor is in either causing bottlenecks or in overcoming them pre-emptively with creative solutions. In Kanana, the delays stemmed from the shifting and conflicting nature of who represents "the community". Other causes of delay were technical in nature – how to resolve site sizes and agreeing on what to do about houses constructed in the road reserve and the electricity servitude or wayleave. These delays stemmed in turn, from inadequate attention being given to and lack of awareness of some of the settlement (as opposed to site) scale technical constraints in the informal development process.

In the paragraphs that follow, each of these bottlenecks is described in turn, drawing on the evidence of the two cases.

General plan approval

This is a generally applicable constraint. Delays in the Surveyor General's Office are attributed to excessive workload, and the need to verify all pegs. In Boitumelo, this constraint was overcome by expanding the functions undertaken by the consulting professionals. From the surveyors' perspective, registering the plan is a bottleneck linked to inadequate attention being given to servitudes, or inappropriate preparation in stand numbering by the surveyors. If done professionally, the argument is made that these issues do not require going to and from he Surveyor General's office and the land surveyor – which is the nature of the delays commonly experienced.

Circulating application and obtaining comments

Writing the report for council by the municipal officials is frequently cited as a source of delay by the role-players involved in housing delivery – it has general applicability as a constraint. Obtaining comments from the various parties (municipal and provincial departments as well as other utilities and service providers) is a further area of delay that is associated with capacity constraints in the system and its users. In Boitumelo, this widely identified constraint was mitigated to some extent by the pro-active behaviour of the consulting town planner who supported municipal officials in drafting the report to council. Also, being a greenfield development, much of the delay that developers and professionals commonly associate with community participation did not arise.

Deeds registration

The registration of title deeds – performed at the national level – is routinely identified as a major cause of delay. The introduction of a one-stop examiner at the Deeds Office for subsidy project deeds expedited the process considerably - it shortened the process by between 2 to 3 days. However, due to political pressures and complaints from the examiners this system was disbanded. The complaints from the examiners were associated with

overtime payment being linked to the number of deeds examined, which was easy to maximise with subsidy project deeds due to the use of a standard format. This innovation was not applicable in Boitumelo, but was identified in the course of our role-player interviews.

Delays in construction arising from local labour procurement requirements

The use of local labour is seen as a significant delaying factor. Firstly, training is time consuming – it takes 6 weeks to get workers fit for the job, according to the contractor (Boitumelo role player research synthesis report, 2001). It also takes time to negotiate the terms of local labour procurement with the community. The implementation role-players also indicated that the local labour requirements mean that often unskilled people have to be employed which impacts on the quality of products and costs. Perceptions are that the increase in costs stems from lower productivity levels, as well as the fact that the contractor has to procure materials for labour-only sub-contractors. Such equipment includes scaffolding, shovels, wheelbarrows.

Other problems that arise with sub-contractors include a lack of business and people management skill, and their relative lack of ability to cost and manage the construction process (for example instances of it taking about 1 month for sub-contractors to be up and running on making the figures work). Perceptions are that if people were skilled in doing physical work and in the management aspect, 3 weeks could be cut out for every 400 houses delivered. Despite the training requirements leading to some form of delay and lower productivity levels, local labour alleviates the risk of local political opposition to projects (site boycotts, approval of township establishment, support from the municipality), and means that some funds can remain within the community. In Boitumelo, houses were built at a rate of 50 a day, and up to 25 sub-contractors were mobilised on site. Between 500 and 1,000 workers were mobilised on site during the construction phase. The rate of production averaged 2 houses per day per sub-contractor but some of the sub-contractors were doing up to 6 houses per day and others not even one. It is alleged that other contractors absconded with the money. This meant that the contractor had to pay the workers out of pocket, to avoid protests and disruptions on site. The cost of training local labour is borne by the subsidy. There is no dedicated budget for funding the local labour procurement requirement, as exists in other national departments.

Securing access to land

In Kanana, community participation issues created several delays in the development procedure. An initial delay in gaining access to the land of nearly three years ensued when the resident's committee aligned itself with the civic. Eventually, the committee withdrew its allegiance and pursued its invasion strategy anyway. This tension illustrates a dynamic between differing levels of interest – the committee pitched itself and its interest in a very localised way while the civic was tuned into national issues relating to the politics of transition. This community representation and leadership dynamic was further exacerbated when local democracy was ushered in. The procedural bottlenecks in this period of Kanana's development, as well as demonstrating what happens without community cohesion, are also a demonstration of what happens when the people-driven process comes up against the inflexible requirements of the formal system, driven by the subsidy imperative. In the period immediately preceding local elections, the local authority in place had not been interested in formalising the Kanana settlement - the decision to develop Kanana had come from national level. In a visit to Kanana the national minister of Land Affairs had encouraged the construction of houses through the Federation savings schemes. At the same time, his instructions to the local authority triggered a conventional formal development process that took no consideration of people's initiative. The Federation, having initiated the formal development project by mobilising the support of the minister, wanted to have its development philosophy accommodated.

The Federation's standing was supported by the NGO People's Dialogue, which funded national and international exchanges, to assist in arguing the Federation's case at Kanana.

In the Federation's view, as represented by People's Dialogue (1997) the Councillors drew supporters away from the Federation. The local Ward Councillor was said to have been supported in his election particularly by the Federation members. However, with the decision-making over the formal development project, he was said to have distanced himself from the Federation, siding instead with the 'Phase 1' portion of Kanana, whose residents he had drawn away from the Federation, by promoting instead a developer-driven rather than people-driven process. The old guard officials, who had little understanding of people-driven development processes, appear to have dictated to the new Councillors. As politicians however, their interests were in being seen to be delivering for the people, rather than facilitating people-driven processes. The Federation members meanwhile were finding that the procedure of community participation and capacity building followed by the consultants was ignoring the skills, capacities and aspirations of the community representative structure in phase 2 and the Federation members. They were opposed to the manner in which the development was taking place. In particular the Federation members interviewed identified with frustrated how professional expertise is unnecessary and expensive. In Kanana much of the layout work had been undertaken by the people themselves. They claim that for 100% of the fees (recouped from the subsidy), only 25% of the layout plan changed when town planner were brought in. The Federation was thus seen to be holding up the development. A more technical interpretation of the delay was that complicated and conflictive decision-making had arisen from grouping three informal development processes into one project for formalisation. Decision-making with divergent localised interest groups in each settlement, plus the membership of the Federation scattered throughout the project sub-areas, had ensued.[18]

Layout formalisation: plot sizes

The formalisation of the layout was another key stumbling block to progress. The formalisation requirements appear to have changed the residents' attitudes from a collective pride in the informally developed settlement to individualised concerns over maximum plot sizes. The aerial photograph showed plots to range from 120 to 300m². However, in the minds of the residents (according to the town planning consultant) the plot sizes in the informal layout were regular and at least 300m². When the formal development process undertook to standardise the plot sizes to 250m², which in reality was larger than many of the original plots, it appears that the question of plot size became a new issue to the residents, and they argued for a minimum of 300m². At the same time, the planning consultants were instructed by the local authority, which in turn was under pressure from the Homeless People's Federation, to accommodate as many plots as possible in the formal development (Huchzermeyer, 1999).

Layout formalisation: compensation for houses in the road reserve and electricity servitude

The formal layout was further complicated by the existence of Federation houses in the electricity servitude and the road reserve. In order to move the road alignment, high power electricity pylons would have to be relocated. The provincial Department of Transport agrees to this, provided local government bears the cost, which amounts to R2 million. With the safety regulations governing road intersection, which, though questionable in the context of township and informal settlement, are strictly adhered to by the Department of Transport, moving the road alignment would require the closing of the another road, currently the main access into the residential area. The only other option then, is to demolish the houses and relocate the affected households to pegged sites. While the formal layout was agreed to by the community, the issue of compensation for houses that must be demolished, remains unresolved. The position of the Provincial government is that houses are to be demolished, provided the households are compensated, i.e. their houses rebuilt. Responsibility for the compensation is found to rest between the NGO People's Dialogue, the local government and the Provincial government. While People's Dialogue faced the constraint that its funders

[18] Marie Huchzermyer's analysis of the Kanana development process is gratefully acknowledged.

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disagree with the demolition of houses, it agreed to share with the provincial government one third of the demolition cost. However, the local authority remained adamant firstly that the Kanana community was informed of the formal development and was instructed not to build, prior to the construction of the disputed houses. It also insisted that the community accept, at the commencement of the development, that the Council could not take responsibility of compensation of houses built outside of the layout. Thirdly, as municipality it was clear that it was not responsible for invasions on provincial servitudes, or Eskom's electricity servitudes. The council was also adamant that a precedent should not be set for other houses built in unregularised informal settlements and that it did not have the resources to cover demolition and rebuilding (Lekoa Vaal Metropolitan Council, 1995). The question of responsibility for the early house building at Kanana is clearly unresolved. While the Federation has officially agreed that demolition of the houses is inevitable, its members maintain that the K11 Road plan at some stage was deliberately changed so that Federation houses would have to be demolished - 'they want us to fold our arms'. They also maintain that national government endorsed the early house building at Kanana, and indeed, the late Minister of Housing, Joe Slovo, had opened the Kanana BIT Centre, the first Federation building to be built in the settlement prior to regularisation. National government, having made concessions to the Federation, is not involved in the current debate over compensation.

Figure 7: View of Kanana informal development with electricity pylons in the background

Obtaining the land availability agreement

A further constraint in the formalisation procedure is related to an underlying problem of human capacity. Gauteng provincial government owns the land. The developer has not been able to obtain a land availability agreement with the land owner. In order for transfer to take place and for residents to obtain their land rights, a land availability agreement has to be signed with the province giving power of attorney to the developer. The reason given for the nearly six year delay in obtaining the agreement is about government capacity to timeously process applications (Kanana role-player research synthesis report, 2002). In 1999 the land administration function shifted from the provincial department of housing to the provincial department of development planning. Most of the senior officials previously responsible for this function had not been transferred from the old department. At the time of writing, the situation appears to be on the point of resolution, by having called in the provincial political

leaders (the Members of the Executive Committee – MECs for both housing and land affairs and for development planning and local government) of the two departments to intervene. After communication between the two MECs it took only took two months to get the power of attorney letter signed for the land availability agreement. The impact of this constraint was delay in transfer, which means that residents have not secured formal title. In other circumstances this may not be a constraint in and of itself. However, in the South African subsidy context, lack of transfer delays the disbursement of the subsidy, which has a direct impact on some residents who borrowed money in anticipation of subsidisation and are now defaulting on loan repayments. Low repayments in turn threaten the viability of the uTshani Fund, which lends to Federation members, which could limit the fund's ability to lend to new savings scheme members in the future.

Who is affected by the procedural delays and how?

Anecdotal perceptions from the case study research about the cost implications of delays are presented in the following table.

Table 11: Perceptions about the costs of delay

Player	Perception about cost
Developer	For a 5000 unit development, the capital costs on land + professionals amounts to R 3 million. If you are able to borrow at prime lending rates this means that for every month of delay, the project costs an additional R 40 000. This does not even take into account escalation on building materials.
Contractor	Delays affect the contractors by cutting into the limited profit margins which subsidy houses represent. Every additional week on site means that the overheads provisions are exceeded. These overheads relate to the performance of logistic and technical tasks on site (distributing materials, checking quality, organising which contractor does which house…). Those who are performing those tasks are salaried (as opposed to being paid per unit product like sub-contractors). It is more difficult to have less sub-contractors although controlling and management is smoother, as productivity levels are low. On the other hand having more sub-contractors mean higher logistics and management activities which adds to the overhead costs.
Beneficiaries	Beneficiaries are at the bottom of the "food-chain", therefore any delay and related cost means that delays are also passed on to the beneficiaries who get access to their houses later, but also as hidden, pre-empted costs built into the price of the house (materials and labour squeezed to make way for other costs higher up in the chain)

What can be done to pre-empt and overcome expected procedural delays?

Perhaps the most significant findings about the Boitumelo development procedures lie less in the identification of bottlenecks and their cost implications than in the innovative way in which the technical role-players managed to fast-track the procedure and the cost savings associate with this. In respect of procedures, Boitumelo provides examples of options for change that have already been applied. The key innovation was the manner in which many steps occurred in parallel or out of sequence. For example, the plans were submitted prior to the approval of the township establishment application (Boitumelo role-player research synthesis report, 2001). Similar risks were taken with the location of uses and the numbering of plots (ibid). The surveyor had allocated plot numbers prior to the approval of the

application. Normally, the process requires that the layout be approved with fictitious plot numbers, and the Surveyor General allocates plot numbers on the approved layout plan. This standard procedure means that the plot numbers on the pre-proclamation conditions need to be amended. To save time, the plot numbers were allocated prior to proclamation. Although this is very risky for the professionals, it sped up the planning process considerably.

A pre-condition for the effective procedural innovation was a high level of technical competency on behalf of the professionals, who felt sufficiently confident about their knowledge of the planning system to make assumptions about the approval requirements (Boitumelo role-player research synthesis report, 2001). The risk that the professionals took on meant that they had interests in undertaking some of the responsibilities normally performed by the authorities, leaving the municipality merely to verify outputs (ibid). The planner, who also took on the role of managing other consultants, felt that this was a cost-effective measure. The additional cost of time far outweighed the potential delays which may have arisen had less competent technical capacity been made available to the project (ibid). Similarly, the surveying activities were undertaken by several firms, sub-contracted by a principal firm (ibid). This meant a dramatic reduction in the duration of the surveying activities. The surveyor mentioned that this level of risk is taken on the basis of the large scale, and because the fees are pre-determined (i.e. R100 per site for the surveyor ~ R360,000.00).

The additional technical and professional capacity provided to the project was made possible by the fact that the consultants were required to bridge their own professional fees, and agreed to be paid close to two years after completing the assignment. They were prepared to take on this bridging role, because of the scale of the project which offered them substantial earnings, and because the developer was able to secure guarantees to that effect (Boitumelo role-player research synthesis report, 2001). The impact of this is that the developer did not pay interest on the professional fees, which meant a saving on the capital. More funds were therefore available for other items (including profit). The bulk of the financial risk in the planning process is carried prior to the approval of the township establishment application, as land acquired and hours spent only generate value once the township is proclaimed.

Planning costs are allocated per subsidy, irrespective of the number of plots. This means, for large-scale projects, that the beneficiaries (as the end users of the subsidy) do not benefit from the economies of scale. Instead, it is the professionals who maximise their profits, as a large number of actions (save perhaps for surveying) are highly repetitive and can be done desktop (especially conveyancing). On the other hand, it was precisely the prospect of high returns which made the consultants amenable to bridge their own cost over a period of two years in Boitumelo. Had this not been the case, the professional fees would have had to be bridged by the developer- who would have had to offset the cost of pre-financing professional fees against both profit and other costs. In respect of the latter, we were unable to proceed much further into assessing the impact which pre-financing fees would have had on the subsidy and on the products. However, the significant point is that trade-offs were made.

Planning standards

The report now moves to a presentation of the results about planning standards.

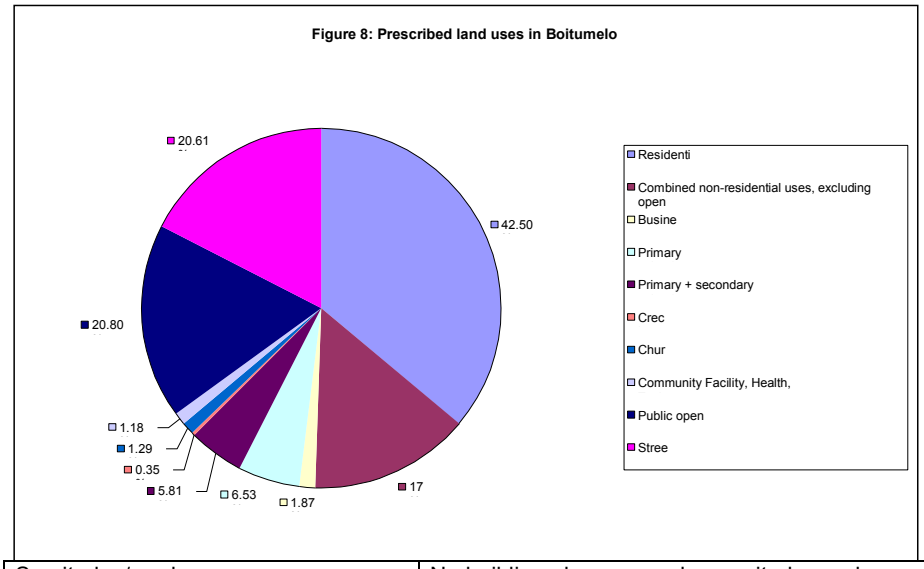
Planning standards applicable in the two settlements

The following tables summarise (1) which variables we identified in the category “planning standards” and (2) what standard is prescribed in respect of each; and where it is prescribed or who prescribes it.

Table 12: Boitumelo planning standards

Variable	Standard
Plot size	250m^2 prescribed as a minimum standard in Gauteng province subsidy regulations.
Restrictions on the size of the building line	2 metres prescribed in the Red Book
The side and rear spaces required	2 metres back, 2 metres street, 1 metre side, 1 side boundary – Red Book
The coverage of the building on the site	30% coverage prescribed as a condition of township establishment
Parking requirements	Not applicable
Distribution of land uses	Almost 3,600 residential stands, informal activities accommodated with municipal consent, Red Book and provincial sector department prescribe education, health and public open space standards, land use plan designates education, health and church sites
Floodline	50-year floodline, recently changed to 100-years

Figure 8: Prescribed land uses in Boitumelo



Servitudes/wayleaves	No building above or under servitudes – also contained in conditions of establishment

Table 13: Kanana planning standards: informal development

Variable	Standard
Plot size	An average plot size of 250m[219], ranging between 120 to 300m² (according to the aerial photograph) versus the community view that they are regular and at least 300m² (according to the consulting town planner).
Restrictions on the size of the building line	None
The side and rear spaces required	1m side and rear spaces, determined by household in consultation with neighbours and technical team
The coverage of the building on the site	No prescriptions identified. On average appears to be about 36 %. Determined by household.
Parking requirements	Parking is optional determined by household
Residential land use	2 368 residential stands
Informal economic activity	A layout plan was developed to determine land use in accordance with household needs. One multi-purpose POS, designed to accommodate health, education and community activities. This was determined by community in order to provide for more residential sites.
Education facilities	
Health facilities	
Church sites	
Public open space	
Floodline	Not applicable
Servitudes/wayleaves	No restriction and eleven houses are located in the electricity servitude and the K11 road reserve.

Are the applicable planning standards conformed with and why or why not? What do people think regulates these norms? What impact they have on beneficiary affordability? How appropriate are they how should and could they change?

In respect of what was actually occurring on the ground in Boitumelo, we found evidence of (1) non-conformance, (2) flexibility, (3) inappropriateness and (4) innovation, partly but not always directly in relation to cost. In Kanana, despite the absence of formally applicable standards, the people-driven approach of the Federation is a mutually agreed regulatory system of its own. Certain requirements are imposed by the Utshani Fund, a revolving fund which lends to the Federation savings schemes. A layout plan was developed to determine land use in accordance with household needs. The Federation leaders in Kanana claim that 75% of their original plan is intact and that the professional planners have only amended 25% of it (Kanana role-player synthesis report, 2002). Regulation of the uses and standards is internal by mutual consent and household agreement. Under formalization, the Sebokeng Town Planning Scheme would be extended and regulations in terms of land use, layout and service standards would be applied.

Our planning standards results provide the basis for understanding the gap between what is prescribed and what actually exists on the ground, as well as an evaluation of financial cost implications in respect of some variables, where this information was possible to ascertain.

[19] a total of 2368 residential stands are developed on 174.57 ha

One key finding is that there are mis-matches between designation and use, in spite of the claim that designated use is enforced and that land use is monitored (Boitumelo role-player research synthesis report, 2001). One indication of this non-conformance with the land use standards is that there is little evidence that the sites designated business have been developed (Boitumelo settlement research synthesis report, 2002). On the other hand, several households have set up spazas, shebeens and other economic activities on their residential sites (ibid). Tuck shops and shebeens can be set up with consent from the municipality. However, the municipal planner reported an increasing number of uses that are not legally sanctioned, for example tuck shops without consent use (Boitumelo role-player research synthesis report, 2001). Other indications of the designation/use mis-match are that some areas designated open space are being used for spazas and other container-based economic activity and that only one of the sites earmarked for education has been developed. In addition, land left vacant is being used for soccer fields.

Another important finding is that aspects of the regulatory system can be applied flexibly, while in other areas the bureaucracy is extremely rigid. There was varied compliance with land use planning standards which regulate the use capacities and thresholds of facilities. For example, awareness of the strict application of standards by the provincial education department meant that relatively less flexibility was applied in allocating school sites than for church sites, where fewer sites were allocated than the standard prescribes. However, some innovation was evident in combining several primary and secondary school facilities, intensifying the use of land by providing for multi-purpose facilities, such as the combination of a clinic and a community centre.

A further finding is that some standards are inappropriate, but inflexible (whereas the previous paragraph demonstrates evidence of flexibility in respect of variables deemed to be inappropriate). The 30% coverage standard, which was included in the conditions of establishment, was deemed to be too restrictive by technical role-players (Boitumelo role-player research synthesis report, 2001). The municipal planner suggested that the planner who drew up the conditions of establishment was used to much larger plot sizes, putting it down to a “middle-class mind-set”.

What are the cost implications of the standards identified as constraining?

The first major area in which responses were elicited about the financial cost implications of planning standards, was the issue of residential versus non-residential uses. Several role-players shared an interest in maximising the residential proportion of the development. For the developer, more residential sites means more subsidies which amounts to greater profit (Boitumelo role-player research synthesis report, 2001) – an important consideration for the commercial viability of the low income housing market, already beset by the collapse or departure of developers and contractors (Development Works, 2002). For community representatives, more residential sites means more households get access to the settlement, which contributes to relieving the pressure for housing and delivers to constituencies (Boitumelo settlement research synthesis report, 2002). To serve this interest, effort was made in the layout design to make use of land not suitable for residential use (like the floodline) or physically awkward pieces of land (like triangles). In general, it seemed that the technical players in the development found the non-residential land use standards too high. Particular reference was made to land reserved for open space and churches. The impact cited was that these standards raise the cost of the development by (1) increasing the land costs per site and (2) decreasing the potential number of houses and subsidies that can be made available to the project. The developer expressed this quantitatively, as having to limit the number of residential sites to 18 per hectare instead of a possible 30 per hectare, if all sites were residential. Although no-one advocated a completely residential development, this quantification gives an order of magnitude. Expressed in financial terms, it amounts to approximately 2,700 more subsidies or R 49.68m (6 700 subsidies or R 123.28m, as opposed to approximately 4,000 or R 73.6m). This could have affected a number of cost items singly or collectively including reducing the land cost (and increasing the amount of

subsidy left over for top structure, meaning a bigger and/or better quality house) or increasing developer profit. The land cost on about 3,600 subsidies was 1.8% or R1.26m (or R350 per subsidy).

Another cost factor arising from standards relates to the issue of earmarked land remaining vacant. The developer bears financial costs resulting from the non-delivery of social facilities, like clinics and schools, and the non-development of sites set aside for economic uses. As landowner, the developer is obliged to pay rates and taxes to the municipality. In the cases of health and education, this is primarily a problem of uncoordinated planning and implementation. They are provincial functions, planned, budgeted and implemented by provincial government. In the absence of co-ordination between housing and other sectors and between municipal and provincial government, the clinic or school for which land has been allocated in a new development is unlikely to have any bearing on what will actually get implemented. A better case scenario may be where there is a degree of communication but a time-lag between the developer purchasing the land and the facility being developed. In either case, until ownership is transferred to the department of education or health, the developer must meet the tax-paying obligation. In the case of undeveloped business sites in the settlement, the problem is poverty related. In the absence of available capital in the community, the likelihood of development is low and economic activity finds expression in the informal and/or unsanctioned uses in Boitumelo, reported in previous paragraphs. Vulnerable to encroachment or invasion, the undeveloped earmarked sites may become more appropriately used, but the developer continues to remain responsible for the financial tax burden until such time as ownership is transferred.

Both sets of responses (the first being about maximising residential sites and the second undeveloped but earmarked non-residential uses) point to land use standards being a major constraint. The Gauteng provincial government is presently reviewing the planning framework (including but not limited to the regulations and procedures). One of the outcomes of this legislation will be that municipalities in the province draw up new land use management instruments for their areas of jurisdiction – most likely to be new town planning schemes that incorporate all areas. This could be a useful initiative on which to develop the phase 3 proposals around.

The second constraining variable about which quantifiable financial cost implications could be derived was coverage - 30% was deemed too high. It would cost R14,500 per site to increase the coverage through removing this restriction in the conditions of establishment (Boitumelo role-player research synthesis report, 2001). Alternatively, the town planning scheme would need to be amended (ibid). The former is unaffordable (compare it with the subsidy of R18,400). The latter is an administratively onerous process and quite unlikely to arise from coverage concerns (although there are moves in the pipeline to review town planning schemes arising from a land use management policy review and legal reform process).

What options for change?

Our final endeavour in respect of planning standards was to identify where change could occur. Despite land use standards being identified as a major constraint, most role-player research respondents, felt that the long term sustainability of the settlement would be compromised if land use standards were further reduced (including government officials and consulting professionals) (Boitumelo role-player research synthesis report, 2001). The extent to which Boitumelo's planners innovated with land use planning standards should be emphasised and it was in the context of already amending standards in practice that these comments were made. The long term sustainability sentiment was supported at the national workshop. For example if trade-offs are made on non-residential land uses, care must be taken to avoid the situation where a community that cannot afford a social service now does not get it in the future when it may be able to do so. Another example is an education department that has not programmed school delivery for now will be prevented from

delivering one in the future because no land has been allocated for it (South African workshop report, 2002). However, the financial burden on developers is not addressed by this response. On the question of coverage, we have deduced from the two unlikely alternatives that the reality of greater on-site coverage is accepted, if only by default.

Engineering standards

What service levels apply? What are the services regulated by?

Our approach to engineering standards was similar to that adopted for planning standards. The following table summarises (1) which variables we identified in the category "engineering standards" and (2) what standard is prescribed in respect of each; where it is prescribed or who prescribes it; and what applies on the ground. The report then discusses these findings in the paragraphs which follow the table and reports on the cost implications, where this information was possible to ascertain.

Table 14: Engineering standards in Boitumelo

Variable	Standard or Level
Water	An individual house connection prevails – this is required by the municipality. The housing subsidy stipulates a single, metered standpipe per plot as a minimum.
Sanitation	Waterborne sewerage, the municipal prescription, has been adhered to. The housing subsidy minimum standard is a ventilated improved pit latrine per plot. The municipality also prescribed and enforced clay piping.
Roads	Bus routes are tarred and internal roads are gravel. The ring road around the settlement is 20m wide and tarred. The internal roads are 16m wide and gravel.
Electricity	Pre-paid electricity connections. The housing subsidy minimum standards do not consider electricity to be a basic need.

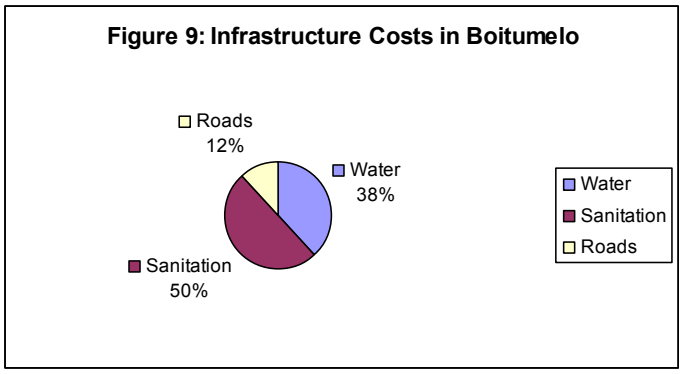
Table 15: Engineering standards in Kanana

Variable	Standard or Level
Water	Tap per site, deemed adequate by households upon consideration of costs association with connector services supplied by formal developers
Sanitation	VIP sanitation, deemed adequate by households
Waste management	Four skips for waste management, community requires door to door refuse removal on a weekly basis
Roads	Four graded main roads and residential footpaths wide enough to accommodate emergency services
Electricity	Pre-paid electricity connections. The housing subsidy minimum standards do not consider electricity to be a basic need.

The Federation adopts service levels and standards through consideration of neighboring service levels and standards as well as affordability. The infrastructure costs were reported in

Table 9 at R 1,000 per site or 9% of the costs. The infrastructure costs in Boitumelo are 27% of the subsidy, or R5,000 per site. R5,000 was the maximum amount of the subsidy that could be spent on infrastructure. The infrastructure portion is comprised as follows:

Figure 9: Infrastructure Costs in Boitumelo



Are they being conformed with? Why/ why not? What impact do these standards have on affordability? Are they appropriate? How could/should they change?

On the question of what determines infrastructure costs, the results of the role-player interviews shifted the emphasis slightly from the results of the phase 1 review. The latter found that service levels are key financial cost variables. The Boitumelo case study findings emphasised how geo-technical conditions and the spatial location of a development are also key factors in the cost of servicing sites, especially water and sanitation. Although the land component in Boitumelo is low at 1.8% of total costs (which relates to its peripheral location), the servicing costs were influenced by geo-technical conditions. However, the geo-technical conditions qualified the project for a 15% increment in the subsidy amount (from R16,000 to R18,400).

Previously, servicing could use up most of the subsidy (and frequently accounted for the full amount of the subsidy), leaving little for the house. However, the subsequent shift towards limiting the housing subsidy amount available for services has not been met by municipalities being prepared to shift service levels downward. The results demonstrate how in Boitumelo the municipality insisted on higher levels of service than the minimum prescribed by the housing subsidy. The municipal prescription can be enforced by numerous “sticks” that municipalities wield in terms of the regulatory framework. Firstly, the township establishment process requires that the municipality agree with the developer on service provision, before approval for development is granted. Secondly, individual plots cannot be transferred to the beneficiary without a letter of compliance (“happy letter”) from the municipality on completion of the servicing by the developer, to the satisfaction of the municipality. The last subsidy payment is contingent on the happy letter. Municipal insistence on higher levels of service is premised on the argument that new developments must be serviced to a high level to reduce maintenance costs.

Other Development Works research on the construction industry bears out the view elicited from the technical role-players in Boitumelo that, notwithstanding the increment, the inflexible maximum cost prescription is a major constraint, especially for developers and contractors (Boitumelo role-player synthesis report, 2001 & Development Works, 2002). Our stake-holder interviews also highlighted the crisis of financial viability being experienced by project managers of subsidy projects and the steady flow of this set of professional skills out of the subsidised housing sector (interview with former housing project manger, 2001). Higher servicing costs do not mean that savings can be made somewhere else within the subsidy. If

the actual cost of services exceeds R 5000, as a result of service levels being too high or geo-technical conditions imposing additional costs, then the profit margins of developers and contractors are compromised because the delivery of a 30m^2 house remains a requirement (interview with Boitumelo developer, 2001). Another area of compromise is in the professional fees paid to role-players like project managers, subsidy administrators or community facilitators, which also affects the commercial viability of these professions in this sector (ibid). Trade-offs on building materials or the quality of workmanship is a third area in which trade-offs are being made (Phase 1 report, 2000). The cumulative affect of these impacts is (1) a process of de-specification in product (subsidy beneficiaries get poorer quality top-structures) or process (project management, community facilitation etc) and a (2) drastic loss of expertise in the sector.

In other words, there is little room for give and take on cost items in relation to one another, except for mark-up, professional fees and quality of housing product. In summary, the inflexible subsidy cost prescription is the most important constraint and affects delivery agents and beneficiaries most. Service levels, along with other factors like geo-technical conditions and land cost, are factors, which contribute towards this inflexibility having a negative impact. Municipalities are the major “gate-keepers “ in respect of service levels. In addition, the context of non-payment of service charges is a disincentive to resident acceptance of lower service levels. In this respect, one role-player interviewee indicated that people who are not paying for the current level of service, and getting it, will not accept a lower level of service (Boitumelo role-player research synthesis report, 2001).

In Kanana, despite the delivery approach not having been changed, the Federation was successful in achieving an adjustment in the development approach in the cost of infrastructure development.[20] The Federation had disagreed with the high cost of the formal infrastructure solution and its commercialised implementation. The Federation set out to identify plumbing skills within the settlement, and with the support of People's Dialogue an exchange was arranged with the NGO-initiated Orangi Pilot Project (which has enabled informal settlement residents to install their own sanitation systems) and the National Slum Dwellers Federation (NSDF) of India. With a loan from the South African Homeless People's Federation's uTshani Fund, a sanitation system was installed for 38 houses in Kanana, at a fraction of the formally budgeted cost. Direct result of this demonstration was a review of the formal budget by the authorities and consultants. A considerable reduction was achieved through the removal of various cost factors such as tarred roads, toilet structures, the local authority inspection fee and contingencies. The Federation accepted the reduced budget as a compromise. It should be noted however that it is not clear who is repaying the loan from the Federation's uTshani Fund that led to this cost reduction.

Although there was little room in Boitumelo for lowering water and sanitation service levels, there seems to be more flexibility when it comes to roads. In Boitumelo the question of levels of service with respect to roads within the settlement was fairly flexibly approached. Only internal bus routes were tarred. Other internal roads are narrower than the norm and gravel. Cul-de sacs were used to maximise land for residential uses (Boitumelo role-player research synthesis report, 2001). The financial cost implication of lowering levels of service in this area is that costs saved here can be off-set against higher costs incurred on other infrastructure items like water and sanitation. This is one of the few areas in which we identified some flexibility. We have deduced that a saving on the cost of roads could also compensate for losses on profit margins or professional fees, or the impact of escalations in the price of materials on top structure quality. However, this was not a point of emphasis in our role-player interviews, which highlighted the financial viability crisis of delivery agents, and we could not quantify the financial impact.

[20] reference this paragraph to Marie

Building standards

In respect of building standards, the subsidy delivered a 35m^2 house per site in Boitumelo. Top structure costs are reported in table 8 at R10,800.00 per house. Five years on we observed formal and informal extensions and re-positioning of doors and windows (Boitumelo settlement research synthesis report, 2001). Building plan approval for more expensive building extensions has been applied for. A nationally prescribed minimum standard of 30m^2 is now in place. In Kanana there were nine savings schemes who each went through an exercise, driven by the Federation, to design their own houses, price the material costs of construction, determine levels of affordability of members and determine monthly repayment amounts (People's Dialogue, 1997). Being determined by savings schemes in relation to individual households, house sizes varied. By way of example, a 60m^2 house was built in two days in Kanana using a loan from the uTshani Fund. Its costs are reflected in the following table. Several dozen similar houses have been built to date.

The minimum building size was not applicable in Boitumelo, as it was only introduced in 1999. The issue of house size was originally avoided in South Africa's housing policy process, because policy makers naively assumed that housing beneficiaries would exert pressure on developers to deliver high quality products. The introduction of a minimum building size standard of 30m^2 was a well-intentioned effort to counter the tendency of profit-motivated developers to deliver the minimum (at the time the average house size rarely exceeded 25 m^2). However it frequently results in trade-offs being made by developers to cover the floor area requirements, in particular in respect of building materials or the quality of workmanship (Phase 1 review report, 2000). A developer perspective on the impact is that profit margins have shrunk from 6% to 2.5% since the introduction of the minimum house size norm. This is a successful developer still active in the subsidised housing market who finds it increasingly difficult to deliver this standard, taking into account especially escalation on the cost of materials (Boitumelo role-player research synthesis report, 2001). There is very little flexibility evident in the minimum house size. Although smaller houses would contribute to making projects more financially viable, most role-players agreed that the project would not find "buyers" (Boitumelo role-player research synthesis report, 2001). The national norm creates an expectation that a 30m^2 house is the minimum subsidy entitlement. Neither is there any scope for lowering building standards, which are already low and quality is poor (Boitumelo role-player synthesis report, 2001).

In Boitumelo, a combination of factors made the delivery of an above average house size possible, bearing in mind that this was over 5 years ago. One factor was that internal walls were not included, although provincial government is not in favour of this (ibid). However, some residents voiced concerns about some houses in the settlement suffering from structural weakness (Boitumelo settlement research synthesis report, 2001).

Another factor is that the normal costs associated with delays were written into the financial costing and minimised in practice with competent technical capacity to "work the system". But possibly the most significant factor was a combination of the scale of the project and the developer driven individual subsidy payment structure (Boitumelo role-player research synthesis report, 2001). The developer driven individual subsidies are disbursed to a conveyancer who makes payment in two batches, the first being once sites are serviced and transferred. In Boitumelo the developer was able to deliver 250 sites every second week and obtain approval for a further 250. A rapid rate of delivery and the scale of delivery ensured that cash flow was maintained and profit maximised. The Boitumelo developer indicated that currently the delivery of at least 200 houses per month is a requirement for minimum profit on a housing project to ensure financial feasibility (ibid).

Evaluation of substantive findings

How critical is the regulatory framework?

Significance of human capacity and resources

The South African research demonstrates that there are other factors at play, in addition to the regulatory framework, which affect access by the poor to affordable, legal shelter. These are pro-poor financing and non-profitability in the construction sector. The study also shows that the regulatory system "on the books" and the regulatory system in practice are not always the same thing. The flexible application of the system is especially evident in procedures, as demonstrated by Boitumelo. As a result of this finding, we conclude that there are often changes that can be made in practice to make the system work better, before systems (or even aspects of systems) need to be changed. A pre-condition is skilled and competent technical capacity. This position is partly informed by the experience of transition – even with new and improved policies, systems and structures in place, practice is still heavily influenced by the human factor - the policy implementers, the system's users, those that people the structures. So in Boitumelo skilled and experienced people were able to identify system constraints and find, within the system, the points of flexibility, the room for manoeuvre, the areas of benign neglect, to minimise the impact of the constraints and even to overcome them.

Pro-poor financing

The question of pro-poor financing must surely be the most significant of the "non-regulatory framework" factors. The South African study has two important contributions from experience to make to the question of pro-poor financing. Firstly, and of most significance from the point of view of scale, is the subsidy scheme. Notwithstanding the procedural and regulatory constraints that the research has identified in respect of the subsidy scheme[21], the rate and scale of delivery over the past eight years shows that the subsidy has successfully enabled access to housing for just over 1.3 million poor households. In addition to the subsidy scheme the research provides evidence of another instrument and system for accessing housing finance – the uTshani Fund, which is an example of an urban poor fund, and the savings schemes associated with it. The people led settlement process exemplified by the Federation in South Africa, and supported by the People's Housing Process in terms of which subsidisation can be obtained, is dependent for its viability on the existence of a fund of this sort and a membership who is saving. In South Africa the urban poor fund has taken on a unique dimension in that it tends to operate as something of a bridging fund - access a loan that will be retired by the subsidy.

Supply system constraints, especially non-profitability of the construction sector and inflexible subsidy prescriptions

In addition to pro-poor financing, the South African research demonstrates that the supply system, especially the financial viability of the construction sector, is itself a key factor in facilitating access by the poor to legal shelter. In South Africa, a significant departure of contractors developing subsidised housing is taking place due to lack of financial viability – few are able to make a profit on a 30 m^2 house. This factor is related to the regulatory framework in some ways, because delays of any sort (on the town planning side – township establishment approval, deeds registration, general plan approval or on the subsidy side - approval and payment) affect the cost of production. For example, the cost of materials (input price, securing materials on site, matching supply to rate) and the cost of finance increases over time. Most significantly this factor is related to the inflexible manner in which the subsidy components are prescribed. The value of the subsidy has decreased in real terms over time. Increases in input price take place annually, between 8 to 12 % for materials and 7 to 10% for labour. Developers are expected to deliver the same product with the same (in real terms less) subsidy and de-specification on product is not permitted. The subsidy regulations

[21] and other more qualitative concerns like location which have been identified in the assessments of and debates about the subsidy scheme in the country

prescribe how the subsidy must be allocated to infrastructure and top structure. The only area of "permissible" shrinkage is on mark-up.

Policy approach to informal settlement upgrading lacking

The Kanana project demonstrates how inflexibly the subsidy system operates – in particular by forcing a vacant land development logic onto upgrading. It also shows that the outcome of imposing the developer driven model onto a people-led process is community conflict. These points are not developed further here, as they fall outside the ambit of this study, which is focused on vacant land development not upgrading. This constraint is not about the regulatory framework in the first instance anyway – it is indicative a weakness in the housing policy framework on informal settlement upgrading, especially upgrading in a people-led manner.

Figure 10: House under construction in Kanana

What is the most significant of the three, in what ways and which variables?

On the question of which of the three aspects of the regulatory framework is the most significant constraint to access to formal shelter by the poor, our conclusion is procedures. However, the significant procedural constraints are related more to the housing subsidy system than the planning system. Ironically, the subsidy is by far the most enabling factor in the poor getting access to affordable housing. It is the manner in which it is administered and disbursed that is so routinely hailed as the key constraint in the delivery of housing to the poor. In Boitumelo the province insisted on the use of the developer driven individual subsidy, rather than the developer driven project linked subsidy. This option accommodates only two subsidy payments (as opposed to the normal five) and the administration is undertaken by a conveyancer (as opposed to the provincial department of housing). In this way, many of the common delays in subsidy administration were overcome. In this sense the example we chose demonstrated the overarching constraint less by its evidence in the

project, than by the manner in which the project overcame it. On the planning side, bottlenecks at the surveyor general and the deeds office (for general plan approval and title deed registration) and the council report drafting and decision making rank high, but are not as significant as the subsidy administration constraints generally encountered.

The variables which are most significant in planning standards are land use standards, utilities standards and minimum house size. Note that were it not for the existence of the subsidy which pays for the installation of infrastructure, then the level of service for infrastructure or utilities may well emerge as the most significant constraint, possibly raising the significance of the planning standards to being the most constraining of the three. However, were it not or the subsidy, it is highly unlikely that such high levels of service would be implemented, unless municipalities found creative ways to self-finance them.

Evaluation of project method and proposals for the regulatory audit method

In this section we use our assessment of the South African project method to make proposals about the regulatory audit methodology. This goes slightly further than what was requested in the format instructions (beyond assessment into proposals), because we cannot yet speak of a regulatory audit methodology – this must still be developed. The matrices are not a method, but an information capturing tool – they merely summarise the results of the assessment. What we do have is the assessment of the regulatory framework assessment methods of five country cases[22]. We assume that it is the contractor's intention to develop a regulatory audit method on the basis of a comparative analysis of the five country method assessments. With this assumption in mind, we make the following contributions from the South African project's regulatory audit/Phase 2 assessment. We also assess the Phase 1 regulatory framework review method, in the belief that a first phase desk-top review is an important component of the regulatory audit method, still to be formally developed. Our contributions use self-assessment to make proposals for what should be considered in developing the regulatory audit method.

(1) Use the matrices in amended form to capture the descriptive findings of the regulatory framework review

Several points can be made about the method used for the review of the regulatory framework. Firstly, the review phase could be more explicitly related to the regulatory audit methodology concept, perhaps by capturing its results in the three regulatory audit matrices as "the statutory system" i.e. statutory system: administrative procedures; statutory system: planning standards and statutory system: planning regulations. Case study results would then provide two additional elements to the three matrices, namely informal land development example and formal development example. [23] This would help to focus the desk-top review. It would also assist in the identification of variables within each of the three categories which apply to the country in question. In the absence of such direction about the precise nature of the information required, it was difficult to know what focus to adopt. It is not possible to capture the South African review phase findings in this format at this late stage but the proposal is made with the benefit of hindsight. Given the orientation of the review phase (more descriptive than analytic), it would also not be possible to rank the constraints at this early stage, unless there was existing literature on which to draw. So the purpose of the matrices for the review phase would be a tool to summarise the primarily descriptive findings of the phase.

(2) Ensure that the review phase captures the regulatory framework dynamic, if appropriate to the country in question

[22] and possibly Bolivia and the Maldives?

[23] Or if the proposals made further on are taken on board then this would read "Role-player scan results would then provide two additional elements to the three matrices, namely informal practice and formal practice"

Secondly, the question of changes in the regulatory framework need to be adequately accommodated in the review phase. These changes give clues about the direction that the regulatory framework is going in, making any proposals for change emanating from the project more realistic. An information capturing tool could perhaps be developed that summarises (1) what changes have occurred in the regulatory framework in the recent past (one decade? Or since political transition if appropriate) and (2) what identified constraints these changes were a response to. The latter will inform the analysis of constraints in the second phase and the former will provide direction to applying changes in the third phase.

(3) Provide a glossary of terms to direct the review phase, especially for the three components of the regulatory framework

Thirdly, the review phase should be informed by greater terminological clarity, especially the meanings of planning regulations, standards and administrative procedures. Without this, the information about the statutory system required for the assessment phase is lacking and comparability is limited.

(4) Make the regulatory audit methodology subtle enough to cope with the diversity of between- and within-country contexts

In respect of the assessment phase method, one finding is that it is extremely difficult to generalise the findings of two local projects to conclusions about the country – in this case South Africa. The following list indicates what the South African variables are:

- A range of subsidy instruments within the formal supply system, with regulations which vary;
- A provincial subsidy approval authority, with an option for municipal accreditation to perform this function (relates to procedures);
- A variety of housing standards, set by provinces, of which there are nine;
- Several township establishment laws which provide for different procedures and different approving authorities, two of which are national laws and another provincial option – the applicant chooses which legislation to use;

Such contextual diversity has methodological implications. It means that one project represents one option within each of these variables. Applied to Boitumelo, this means that the research findings hold for:

- The developer driven individual subsidy (one of three main instruments)
- Gauteng province subsidy approval (one of nine provinces; some provinces opt for municipal accreditation which could imply one of upwards of four subsidy approving authorities)
- Gauteng housing standards (one of nine)
- The provincial town planning ordinance for township establishment (one of three)

Accordingly, it is extremely dubious to claim that Boitumelo's (or any other single project) findings represents the formal delivery system. It is an example of a specific set of variables. An alternative, more appropriate approach would be better suited to the intentions of identifying which variables within the regulatory framework constrain access to legal shelter for the poor. This alternative could be a "projects scan" (as opposed to a single project survey – less depth, more coverage) of role-players (as opposed to projects) in the housing delivery system. In this way, greater reach could be achieved – role-players would speak on the basis of several project experiences (which could be specified at the beginning of each interview). Role-players would be selected on the basis of the diversity of their experiences. For example, ensure that developers scanned have experience of project-linked, institutional, developer driven individual and PHP subsidy projects; that town planners have experiences of the ordinance, the DFA and LEFTEA; that representatives of communities are drawn from

a variety of project types. In this way a picture would be built of system constraints – synthesised into generally applicable constraints and specified or particularised where necessary (for example a constraint with the Ordinance but not with the DFA).

On the basis of these conclusions, and now with the clarity of the matrices as the end-point, it would be more appropriate to scan role-players in many projects; rather than survey two projects in-depth. The diversity variables highlighted above also clarify that the method and the matrix tool should be used at the municipal or provincial scale, rather than national. This could accommodate diversity and would be a better fit between the regulators, the systems users and the level (national or provincial or municipal) of assessment. Finally, the role-player focus proposed also accommodates another concern that the project approach raised in the South African case – how to treat residents in the research process? In the South African case, a range of formal system role-players in housing delivery interact around a set of complex and related activities. They include developers, contractors, sub-contractors, labour, community representatives, approving authority for subsidy, approving authority for township establishment, professionals both consulting and governmental including project managers, community facilitators, surveyors, town planners and engineers. This implies that residents are one of many role-players who need to be interviewed in the proposed scan. The South African project successfully adopted a role-player interviewing method, albeit within the overall project parameters of two local projects / settlements. Our experience is that the role-player interviews were far more informative than the settlement interviews because of (1) the nature of the system (residents don't interact closely with the procedures, standards or regulations in a formal development project) and (2) the orientation of the overall project (emphasis on access to legal shelter, not maintenance).

We found the settlement interviews in Boitumelo useful in understanding how people had experienced the implications of the implemented or adopted procedures, standards and regulations, once access had been secured, although this was not a primary focus of the overall project. The settlement research made a much less valuable contribution than the role-player research and review in obtaining responses to the research questions and ultimately, in getting to the end-point of the matrices. As a result we propose that organised residents (organisations of the poor, select residents associations etc) be treated as one of a set of important role-players with whom to engage across a range of different project types. Additional reasons for the importance of a role-player, rather than resident households, focus in the South African context are the inflexibility of the subsidy system (and indeed the very existence of a subsidy) and the highly professionalised nature of the delivery system. The subsidy purchases a certain level of service and a certain standard product – the manner in which the subsidy quantum must be apportioned is rigidly prescribed. Aside from the implementation agents, such as developers and contractors, a range of professional services are generally provided to a subsidy project including community facilitation, project management, subsidy administration, planning, surveying and engineering. As a result the housing delivery functions are highly fragmented, requiring that the range of role-players be interviewed if an accurate assessment of the regulatory framework is to be obtained.

(5) Make the regulatory audit methodology more flexible in comparing the formal with the informal systems than the matrices currently allow

The current format of the matrices requires us to report on the formal and informal project results on the same sheet. This assumes that:

(1) the variables within the three categories are the same for the formal and informal development regulatory frameworks;
(2) the degree of constraint for a specific variable is the same in both systems; and
(3) the nature of the constraint, accommodated in the comments row, is the same for both.

Our findings are that all three assumptions are false. As a result we reported on our results on separate sheets for the formal and informal project examples. The assumption that conclusions can be drawn about an appropriate system by deducing the gap between what the current system requires and what people deliver for themselves informally, is over-simplistic. As a result the South African project experience is that the comparative aspect of the research was limited. It would have benefited from much greater conceptual clarity than was provided in the overall project guidance. The relationship between people driven settlements and formal system delivery does provide clues as to what a more appropriate regulatory system might be. But greater flexibility is required than the matrices currently allow to analyse the relationships between:

(1) the formal system regulatory framework, structures and systems and formal delivery practices (in this case between the statutory system and Boitumelo as practice);

(2) the informal delivery system practices;

(3) the formal system regulatory framework and informal delivery system practices;

(4) formal system practices and informal system practices.[24]

[24] and possibly even (5) informal system regulations, systems and structures with informal and formal system practices ….

RECOMMENDATIONS FOR ACTION

Tackling the inflexible subsidy procedures and standards: apply the plot size standard more flexibly.

Description: The minimum plot size standard is regulated provincially. The standard is applied in an inflexible manner across the province and within projects. There is tension between the objective of maximising the number of sites on one hand and the ideal of as large a site as possible on the other. The research demonstrates that the former is an interest of both developers (who want to maximise subsidy amounts) and community leaders (who want to be seen to be delivering as much s possible to constituencies). The latter, on the other hand is in the interests of individual subsidy beneficiaries and provincial government, who wants to ensure a degree of equity in what people get from the subsidy and ensure that developers perform adequately (value for money). Another dimension of the tension is the regulation of a **minimum** by provinces and the promotion of denser, more compact settlements in the normative planning framework, legislated in the DFA chapter 1 principles.

Recommended course of action: work with a subsidy project developer in identifying a subsidy project in which a more flexible application of the plot size could be piloted in order to demonstrate how “appropriateness” of site size is a factor of location and settlement planning. Promote diversity of plot sizes within the settlement, highlighting implications for cost saving on service delivery and top-structure. Promote flexibility to provincial government.

Next steps: Step 1: Engage a subsidy project developer on the idea in detail. Step 2: Obtain approval on the terms of reference from contractor. Step 3: Implement proposal, monitor and review.

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ANNEXES

Annex 1: Phase 1 report: Review of Regulatory Framework in South Africa

1. INTRODUCTION

The research hypothesis is that it is difficult to reduce the scale of poverty by increasing incomes but that considerable improvements can be achieved by reducing committed expenditure on major household items such as access to land, shelter and essential services. The costs of access to legal shelter are significantly

influenced by official planning standards, regulations and administrative procedures. These frequently impose costs which the poor cannot afford, forcing many into unauthorised settlements which reduce security, inhibit access to credit and expose them to additional social, financial and environmental costs. Many of these standards, regulations and procedures are inherited or copied from other countries, outdated, or just inappropriate and lead to neither equity nor efficiency. Inappropriate planning standards, regulations and procedures 1) raise the costs of legal shelter; 2) inhibit social cohesion and economic activity; 3) waste land; 4) discourage private sector participation; 5) encourage unauthorised settlements and; 6) encourage corruption.

Based on this hypothesis the research aims to increase access by low-income groups to adequate, secure and affordable shelter, by improving knowledge among all stakeholders responsible for providing the urban poor with land, shelter and services, on regulatory frameworks which can reduce entry costs to legal and appropriate shelter.

The project will review the actual or imputed costs of key variables in formal and informal settlements in the selected countries and identify changes which have, or could, reduce costs of access for low-income groups to new housing, enabling them to retain a larger proportion of existing incomes. Options for further cost reductions will then be tested in local projects and disseminated widely for consideration in other countries. The project will focus on planning aspects of regulatory frameworks and complement other ongoing and proposed projects (eg by ITDG) funded by DFID.

The research will be undertaken in three main phases. Phase 1 will review existing planning regulations, standards and administrative procedures. Phase 2 will use field surveys and interviews to assess actual or imputed costs of key components in informal and formal settlements to identify which specific elements inhibit access to legal shelter. Local workshops will identify options for change which will be presented by the project team and other DFID teams at an international workshop in the UK. Phase 3 will monitor the application of proposals in projects in the selected countries. A manual, film and reports

This report is the South African case study result of phase 1. The primary activity in this phase has been to record planning regulations, standards and administrative procedures. In addition to the regulatory framework record, we also identified processes of change in this framework, thus making the review dynamic as well as enabling a preliminary identification of possible areas for test cases and commencing the process of setting up relationships required for the test cases. Finally, this phase also entailed a short review of secondary literature on the subject to identify academic and other commentaries and analyses on the hypothesis of lowering the ladder, the variables influencing access and on cost assessments. This exercise will assist in framing the South African debate on the hypothesis, as well as providing methodological and substantive insight.

REVIEW OF PLANNING REGULATIONS, ADMINISTRATIVE PROCEDURES AND STANDARDS

In this section of the report, we record South Africa's planning regulatory framework, the administrative procedures and standards. An historical approach has been taken in order to illustrate how history has woven a complex legal and administrative framework which has resulted in parallel systems, overlapping laws, burdensome administrative procedures and high development standards. These have all conspired to make entry costs into the formal planning and housing system high for the majority of the urban poor.

2.1 The regulatory framework for planning in South Africa

During different periods of the evolution of the planning system in South Africa, certain influences have been more prominent than others. This is what distinguishes the time frames identified in the section below. Each time period incorporates the planning regulations, the administrative procedures and where appropriate, standards. Four time periods have been identified, three relating to the pre-1994 period. The conclusion attempts to summarise how history has brought us to this present time and what this means for the future of planning laws, administration and standards for the poor.

i. Colonial beginnings – 1920

The earliest planning laws in South Africa can be traced back to the colonial settlements in the Cape and Natal and the Boer Republics where between the 1830's – 1860's attempts were made to control "nuisance" and health. A similar theme ran through the later laws that were promulgated after the discovery of diamonds and later, gold. There was an important difference in the "gold laws", in that they excluded non-Europeans from taking up residence in the mining towns. And so began the long history of racial segregation in South Africa. The early legislation made provision for orderly layouts and the survey of sites, mainly to protect the diggings. Only white persons were allowed to hold mining licences and hence own land.

Land survey and deeds registration was initiated very early in South Africa's colonial history. As early as 1686, Simon van der Stel made it compulsory to register all property rights and this system lasted until the first deeds registry was established in Cape Town in 1828[25]. The introduction of restrictions or restrictive covenants in title deeds, as they were known in Great Britain, became a common way of controlling the use of land and more particularly the racial ownership of land from the 1880's. This method of determining restrictions on land became widespread and is an important element of South African planning regulation. In fact, it became the main way in which land use was controlled in all areas until town planning schemes became widely accepted in white urban areas and remains the way in which land use in the majority of urban African areas is controlled even now.

Because of its early origins and its systematic recording of all land, the system of land registration and land surveying that subsequently developed in South Africa is considered to be one of the best in the world, providing protection to holders or rights and land owners. However, we will see later that the colonial powers did not impose this system over large parts of South Africa, choosing instead, inferior methods and establishing parallel systems of administration in African areas. Besides the inequality and lack of benefits of obtaining full ownership, it has left the country with a complex array of tenure types at different levels of sophistication and complexity to upgrade, if parity is to be achieved.

In the late 1800's there was an increase in urbanisation and many farms were subdivided in an uncoordinated way, resulting in the introduction of a number of new laws to regulate land development. To deal with chaotic land development, the first legislation to set out a development procedure to subdivide land, was introduced in the Orange Free State in 1894. The other way of regulating land use was through restricting uses in the title deeds. At first, it was the township developers who entered into agreements with purchasers of land, to restrict the use of the properties through restrictive covenants (mostly to protect property values). Later, legislation enabled conditions of title to be included into the title deeds of new townships[26]. A number of new Ordinances were introduced after the turn of the century and the Anglo Boer War, which incorporated these two aspects. While these were based on the 1894 Orange Free State Ordinance, the Transvaal Ordinance allowed for regulations to govern the establishment and proclamation of towns and the layout and survey of erven[27]. Through this Ordinance a "Townships Board" was established which introduced greater

[25] See An Overview of the cadastral system of South Africa, by Lester and Teversham, in South African Journal of Surveying and Mapping, Vol 23 Part 2, August 1995.

[26] See Planning Law : Principles and Procedures of Land use Management. Van Wyk, 1999.

[27] See A Report on Planning Laws applicable in the Nine Provinces of the Republic of South Africa: Status Quo and Recommendations for Change. Oranje, M, et al. 1999.

openness in hearing applications and this was later extended, by amendment, to allow participation through comments and objections. The institution of Townships Boards lives on to this day where they are still involved in approving applications made a local level. However, it is unlikely that they will survive the current wave of legislative reform which, in line with the Constitution, places decision-making at local level.

While urbanisation continued with the systematic exclusion of African people from land ownership and access to equal economic opportunities, the rural areas where most of the African population lived, became the subject of the now infamous Land Acts. The Black Land Act of 1913 was the first legislative attempt to define areas of South Africa where Africans could own land. Areas were scheduled for exclusive African ownership, effectively restricting this to around 13% of the land area. Later Land Acts saw greater control over African areas and effectively set up quite separate administrations, resulting in parallel government and administration of these areas.

Despite Union in 1910 and the formation of provinces, there was still considerable discord about administrative responsibility for town planning and things continued very much along the old lines of the two Boer Republics and two colonies. This meant that much of the power lay at the level of the province, a situation that has only very recently come under limited transformation. However, the devastating influenza epidemic toward the end of the first decade of the 1900's resulted in the Public Health Act of 1919 giving quite widespread powers to local authorities to prevent and eradicate unhealthy or unsanitary conditions. The law was applied mostly to African "locations" in white towns as a means of controlling such areas.

This early history of planning in South Africa is important because it established some of the pillars of the planning system and helps explain the origins of the interesting but very complex planning laws, procedures and administration. To sum up this early period, it was characterised by:

- The initiation of racial discrimination into laws, albeit it under the guise of public health and sanitation, through the use of:
- Restrictive conditions in title deeds
- Conditions of establishment in new township
- The restriction of land ownership to Europeans (as they were referred to then)
- The spatial determination of land for use by different race groups, especially through the Land Acts.
- The introduction of procedures for the establishment of townships in provincial laws
- The establishment of Townships Boards at Provincial level to hear applications
- Strong provincial control of planning due to the presence of the two Colonies and two Boer Republics, which were accustomed to their independence. Even after Union in 1910, strong provincial powers continued and became an important characteristic of South African planning, even through to the present time.

ii. 1920 –1948 : The Birth of Planning Legislation

This period saw the systematic divergence of planning laws and procedures applicable to white areas of South Africa and the black areas. Following on the 1913 Land Act which restricted rural African land settlement, the government of the day introduced the Natives (Urban Areas) Act of 1923, for urban areas. This Act was used to segregate Africans into "locations" for their exclusive occupation (not ownership). It also prevented the application of the provincial town planning ordinances in such areas. This set out the basis for future divergence of planning in what were later to become the township or "black" areas and the rest of "white" South Africa. In addition, the 1927 Black Administration Act was promulgated to institute stronger control and management of Black areas. This was important legislation because it enabled regulations to be passed in later years (in the 1960's) which formed the basis of planning regulations and administrative procedures for these areas. The Blacks (Urban Areas) Consolidation Act of 1945 also made provision for Regulations (the so-called 1036 Regs) to control African residential areas.

The 1920's and early 1930's saw the introduction of what can be called the basis of town planning legislation in South Africa. Lobby groups were established in all the main cities to push for planning legislation to be introduced (mainly in response to urbanisation in their towns and the desire for more local autonomy). In 1921 the Transvaal Local Government Commission recommended that town planning schemes be adopted to counter what was seen as neglected town planning resulting in overcrowding and housing problems.

Despite lobbying, little occurred until after a watershed law was introduced that gave the provinces power to draw up town planning legislation. The Provincial Subsidies and Taxation Powers Amendment Act 46 of 1925 did this through the inclusion of Section 17.

In 1929, the Transvaal Town Planning Commission concluded *that 'no country of any importance should be without town planning legislation'*[28]. Town planning provisions were included in the report and later formed the basis of the first "proper" town planning legislation in South Africa.

By the mid 1930's most of the provinces had their own town planning ordinance, with the Transvaal being the first and the others were modelled on it. The Transvaal Ordinance was pretty much an amended version of the English Town Planning Act of 1925. These ordinances remained practically in tact until changes in the 1980s and later in the late 1990's when more fundamental changes were on the cards.

It was through these ordinances that town planning schemes were introduced along with procedures for developing land or changing land uses. This is still the basis of all town planning administration, procedures and regulations today.

While strides were being made in provincial planning legislation, more national legislation was enacted to control Africans in both urban and rural areas. The 1936 Development and Trust Act gave the African 'reserves' more land (which it was in fact promised in 1913)[29]. So-called Trust Land became an important categorisation of land as the planning and administrative procedures to apply in these areas in later years was achieved through specific regulations applicable in those areas. This fuelled the fragmentation (national

[28] Taken verbatim from Planning Law : Principles and Procedures of Land use Management. Van Wyk, 1999. Pg. 91.

[29] These were the 'scheduled' areas which added 12%-13% to the reserves.

control over black areas and provincial and local control in white areas) that was to become a major characteristic of planning administration and regulation up to 1994. In the urban areas, stricter laws on slums were introduced, including the 1934 Slums Clearance Act.

With the outbreak of the Second World War in 1939, progress was slow in developing town planning schemes in terms of the new Ordinances and although Johannesburg and Pretoria had made some progress with this, they were only promulgated in the mid-1940s. Despite their introduction, full implementation was hampered by the widespread use of restrictive conditions of titles. This led to the introduction of national legislation to remove these restrictions through the Removal of Restrictions in Townships Act in 1946. The schemes heralded in the cornerstone of land use regulation and control in South Africa and today all former white towns and cities have town planning shemes and many of the former African areas have "watered down" versions of these[30]. The removal of restrictive title conditions had to be done as a separate application (in terms of the Removal of Restrictions Act), to the Province but this has now been rationalised and the decision making and law relating to removal of restrictions has devolved to local level.

Towards the end of this period, the first attempts at national control of physical planning and economic development of South Africa were legislated. Spurred on by the post-war reconstruction efforts in Europe (and England in particular), the Smuts government called for a super department at national tier to co-ordinate planning and development. While the strong provincial lobby did not favour this, it did result in the Natural Resources Development Act of 1947 and the establishment of the National Resources Development Council. This is mentioned because it became the forerunner to the Physical Planning Act of 1967 which introduced Guide Plans which became an important feature of planning systems in South Africa after that time, not least of all a means to control African urbanisation.

To summarise the main developments and impacts of this era, it is clear that it saw the slow consolidation of racial, separatist legislation in both rural and urban areas, cementing a solid foundation for the next period in history. In juxtaposition, in the white towns, professionals were strongly influenced by their colonial counterparts to introduce town planning legislation. This period saw South Africa introduce its own planning legislation to deal with land development and the control of land use through town planning schemes. These early Ordinances set the template for the planning regulatory framework that hardly changed over the next fifty years. Just as the centralised control of African areas was taking shape, the idea of planning the resources of the nation from a centralised, national government department was introduced and grew in importance into the next period.

iii. 1948 – 1994: The rise and fall of apartheid planning

This period in South African history is probably the most significant as it saw the introduction and demise of "Grand Apartheid". Through the introduction of a plethora of laws, the country was balkanised along racial lines with parallel laws and administrations set up to govern separate areas of the country. The apartheid laws during this time resulted in South Africa having four "independent" states with their own planning laws, five "self-governing" territories also with their own planning legislation (comprising mostly rural, traditionally African areas). The remaining white cities and towns were fragmented along racial lines into Group Areas for whites, Indians and coloureds, each with their own administrations and the urban black areas

[30] For example, Annexure F of the BCDA is a variant of a town planning scheme.

also with their own legislation and administrations applicable. This complexity and duplication is a heritage that confronted the new government when it came to power in 1994. However, some reforms were significant in the early 1990s and these are detailed. As this is such an important period in history it is broken down into a number of phases, depending on the emphasis.

First legal attempts at racial segregation

In 1948 the National Party came into power and began the systematic institutionalisation and legalisation of apartheid segregation. While the foundations for this had been firmly set by the former colonial powers it was the bringing into law, and very strong control-oriented laws at that, of the policies that makes this period so noteworthy.

In 1949, in the first year of National Party rule, the Black Laws Amendment Act was passed that specifically excluded the application of the provincial planning ordinances in the South African Development Trust (SADT) areas. Instead, township establishment and development in the black urban areas were regulated through Proclamation R293 and tenure in the rural areas through Proclamation R188. The Black Authorities Act of 1951 provided for a hierarchy of planning and development authorities[31]. Proclamation R293 is an important regulation as it formed the main planning legislation in black urban areas and in the former homeland areas. Despite the repeal of it in later years, versions of it still exist in many parts of South Africa today (in the former "independent" states and some former self-governing territories).

A number of significant apartheid laws were passed in the 1950's that impacted on planning, mostly in response to the increasing numbers of African people moving to the white towns and cities. In 1950 the first Group Areas legislation was passed, to be firmly cemented in 1966. In 1951 the Prevention of Illegal Squatting Act was passed and permitted the tearing down of unlawful informal settlements. Subsequent amendments in later years allowed for 'transit camps' to be established. This law was employed extensively to remove Africans from shelters they had built in areas that the authorities believed were inconvenient to existing residents or unhealthy or unsafe. The 1950s were characterised by an increase in African urbanisation and growth in residential areas, despite attempts at influx control[32]. At the end of the decade the Promotion of Black Self-Government Act of 1959 was enacted, setting up the framework for the Verwoerdian policy of separate development. Through this legislation, "independent" homelands and self-governing territories were established (generally along ethnic lines) during the 1960s and 1970s. The legal and administrative basis was laid for the government to begin a major spatial restructuring of the country that took place over the next two decades.

Regional Planning and homeland balkanisation

The 1960s and 1970s are characterised by strong national and regional (directed by national) planning thrusts. There were two elements to this. The first was the homelands policy which essentially cut the country up into four homelands[33] and five self-governing

[31] See Planning Law : Principles and Procedures of Land use Management. Van Wyk, 1999. Pg. 101-103.

[32] Section 10 of the Urban Areas Act of 1952 made it compulsory for all African people over the age of 16 to carry a pass at all times. The purpose was to restrict the number of Africans living permanently in urban areas as they were perceived of as temporary sojourners in these areas.

[33] Transkei, Bophuthatswana, Venda and Ciskei.

territories[34]. The second was the growing concern at national level to control resource and economic development throughout the rest of the country. Before elaborating on these, it is important to note that in 1960 South Africa became a Republic, which probably accounts for some of the emphasis on national planning control. The constitution provided for three tiers of government where local government was not seen as autonomous, but rather an arm of Provincial government. This accounts for the slow devolution of planning functions and responsibilities to local government (only really happened in the PW Botha era in the mid-1980s) and the strong grip on decision making by Provincial Administrators in each province.

Regarding the homelands, the National States Constitution Act of 1971, permitted each of the homeland areas to proclaim their own town planning and township establishment legislation. Many of them did so, but all based the legislation on the laws that were applicable in the areas before independence or self-government. In most instances Proclamation R293 applied for town planning and township establishment in the denser areas and Proclamation R188[35] applied in the rural areas. Proclamation R293 (called the Regulation for the Administration and Control of Townships in Bantu Areas), as the title implies, was a combination of town planning regulations and administrative provisions. This was a characteristic of African legislation, which tended to include both aspects. So while provision was made for how the areas would be administered (included roles of Bantu Affairs Commissioners, township managers and superintendents and ward and voting structures), this was often conflated with the regulation and control of the development of these areas through the town planning provisions.

The town planning provisions established procedures for laying out plots and handing them over to occupiers. It did this through "inferior" methods compared to what was applicable in white South Africa. This was because the Land Survey Act and the Deeds Registry Act did not apply to these developments. The consequences of this are far-reaching for the new South Africa. A parallel and inferior legal system and administration for recording land rights (had registry offices and not deeds offices) was perpetuated that has made subsequent upgrading or regularising extremely difficult. Similarly, the survey requirements did not have the same degree of accuracy, making it difficult and expensive to upgrade these extensive areas to freehold tenure. SADT (Proc. R293) areas were given deed of grant rights, which residents considered as ownership, but is not full freehold tenure (State still owned the underlying title to the land), whereas Proclamation R188 gave permissions to occupy and quitrent) forms of tenure. This has resulted in later legislation having to be promulgated to upgrade tenure rights[36].

However, the real impact was felt on the ground. The difficulty of accessing the administrative system resulted in many residents of these areas entering into informal sales agreements as their circumstances changed. Hence, despite a formal legal framework for granting tenure to residents existed (and records of original deeds of grant being in existence

[34] Gazankulu, KaNgwane, KwaNdebele, KwaZulu, Lebowa and QwaQwa.

[35] This legislation is not detailed in this report because it applied mostly to the granting of tenure through permissions to occupy and quitrent forms. What is important to note is that these were tenuous forms of tenure and could easily be forfeited through failure to pay annual fees (which often occurred due to the migrant labour system). The state remained the freehold owner of the land and permission to undertake almost any activity was required. This included building permission. It also set out the succession of land rights upon the death of the main holder (male head of household) and this almost always discriminated against women obtaining access to land in their own right – a situation which persists in many areas to this day.

[36] The Upgrading of Land Tenure Rights Act, Act 112 of 1991.

in some registries), the *de facto* situation reflects a significant departure from the *de jure* situation.

Most areas where these regulations applied are therefore facing an uncertain future in the new South Africa[37] as authorities battle with the legal nightmare of not only how to upgrade the tenure status and introduce unitary administrative procedures, but who to grant the upgraded right to and how to do this.

Like Proclamation R188, Proclamation R293 was very control oriented[38]. To quote some clauses:

"A holder or grantee shall not allow any room, wholly or partly used by human beings for sleeping purposes, to be used by a greater number of persons than will allow for 400 cubic feet of free air space and 40 square feet of floor space for each person of or over the age of 10 years and 200 cubic feet of free air space and 20 square feet of floor space of each person under the age of 10 years; Provided that under no circumstances shall any latrine, passage, staircase, landing or cupboard be used for sleeping purposes" (Clause 14(7)(i).

"No person other than a holder or grantee or family of such holder or grantee shall remain in the township for longer than 30 days unless he shall first have obtained a lodger's permit" (Clause 19(1)).

"No vehicle, other than a bicycle, shall be driven within the township elsewhere than upon a public road or street and no such vehicle may be driven between halfanhour after sunset and halfanhour before sunrise unless such vehicle shall be equipped with two lights visible from the front and one light visible from the rear of such vehicle" (Clause 25)

These examples serve to illustrate the pervasive controls the government had over such areas and highlights the extent to which South Africa became trapped into a control-oriented planning approach. Officials did not have to apply discretion, they just had to apply the rules (which they frequently did to the letter). This legacy has important implications for future planning is South Africa as it is struggling to move from this system to a more policy-based or normative planning system.[39]. Ironically, while the regulatory aspects were strongly enforced, the administrative systems were under stress and authorities found it increasingly difficult to administer these areas. This trend continued through to the 1980's where administrative control could be said to have virtually broken down, mostly in protest against apartheid government structures. In many areas, community-based youth structures took control, further exacerbating the breakdown of controls and instituting 'community control'.

The aspect of homelands being able to promulgate their own laws also had important consequences for the legal complexity of planning laws.. In effect what happened, is that from the moment of "independence" the planning laws embarked on separate trajectories

[37] This is because these areas now form part of new, unitary local government boundaries and must be administered alongside areas in former white South Africa which had very different legal and administrative systems.

[38] Some of the aspects regulated included sub-letting, maintenance, lodgers, building permits, fences, use and control of water, vehicles, soliciting, indecency, slaughtering of livestock, making fires, keeping livestock and carrying dangerous weapons (including knobkerries!). For most of these activities, permission had to be granted.

[39] This is the basis of the Planning and Development Green Paper prepared by the Development Planning Commission on behalf of the Department of Land Affairs in 1999.

from those within white South Africa. This divergence of laws has created a legal complexity that has proved almost impossible to unravel in a new unitary South Africa as altered versions of the same legislation applies in a mosaic of geographical areas across the country. White South Africa repealed proclamation R293 in 1988 whereas versions of it continued in the four homelands and in fact continue to exist even today, in the geographic areas where they initially applied.

While the Trust areas were subject to the above legislation and administration, regional planning was gaining ground in (the rest of) white South Africa. In 1964 a national Department of Planning was established and the Natural Resources Development Council was variously transformed until in 1967 it became an advisory council to the Prime Minister, indicating the importance placed on these activities.

The Physical Planning Act was proclaimed later that year. It carried over the provisions of controlled areas previously contained in the Natural Resources Development Act. These were areas where the use of land and resources had to be co-ordinated. The Act also served to restrict the number of Africans that could be employed in urban areas and continued the pervasive use of permits (in this case to undertake economic activities). However, a significant inclusion in the Physical Planning Act from the point of view of planning, was that of Guide Plans. These were broad framework plans that co-ordinated planning and policies for land use, transportation and infrastructure for a period of up to 25 years. So the practice of forward planning through blue print planning (based on rational comprehensive planning inherited from Britain) became entrenched as many areas implemented Guide Plans over the next 20 years. They became the backbone of the land use planning system. They, however, had predictable problems, not least of all their inflexibility and consequential difficulty in making amendments and their somewhat fuzzy legal status.

Provincial Planning Legislation

The town planning ordinances remained more or less in tact since their promulgation in the 1930's until the Transvaal Ordinance was amended in 1965 and the Orange Free State Ordinance was amended in 1969. While this latter legislation still remains in tact in the Free State today, the Transvaal Ordinance was superseded by the Town Planning and Townships Ordinance 15 of 1986, which still remains in place in the area of the former Transvaal (parts of Mpumalanga, Northern Province and North West). This new Transvaal Ordinance saw a major shift in the devolution of decision-making to municipal level through the introduction of authorised local authorities. Previously decisions taken in terms of the Ordinances were made by either a provincial Townships Board or the Administrator. Now local authorities could approve applications in their own areas.

In general, the town planning Ordinances in South Africa made provision for procedures for township establishment (new subdivisions), for the preparation of land use management schemes in the form of Town Planning Schemes and procedures for changes or amendments to Town Planning Schemes (rezoning applications).

The basic procedures for township establishment involved making an application to the local authority (if it is an authorised local authority), submitting a range of required documents (usually many duplicates which incurs costs) and paying an application fee. The local authority (usually assisted by the applicant) then circulates the application, advertises it and receives comments or objections within a time period. The application is then heard by the

local authority's planning tribunal or the Provincial Townships Board (for areas where a local authority is not authorised). It is then approved or rejected, with or without conditions. After approval and if all conditions are met, the Surveyor General and Registrar of Deeds must be notified and the respective General Plan and township register opened. Properties can only be transferred to new owners once a township register is opened.

No provision is made for departures from this, for example to upgrade informal settlements where communities engage in development processes in a diametrically opposite way. There are few provisions to speed up any of the development procedures where there is urgency or need, for example to settle communities speedily because of removals. This basic procedure in the ordinance is still used in most of former white areas in South Africa where ordinances apply as well as in urban black areas since the ordinance has been made applicable in these areas.

This development procedure outlined above, can take as little as four-six months (from date of submission) if everything is in order and it has the support of everyone. However, such short time frames are uncommon and tend to be more of the order of six to eighteen months. With the current problems experienced in Johannesburg, for example, a two-year turnaround time (for very simple applications) is not uncommon. This greatly increases holding costs to developers. Ways to speed up slow procedures has been the subject of many investigations since the 1980's, especially in response to increased informal housing development. Many of these attempts at reform related to reducing time periods for comments or cutting through government bureaucratic procedures[40] and did not really challenge the conventional procedures. While government did entertain the idea of amending the regulations (it was investigating amendments to the BCDA in the late 1980's) to speed up development for housing in response to the informal housing crisis, instead it introduced the Less Formal Township Establishment Act in 1991 which made provision for early settlement of people and shortened procedures. However, the framework within which this law was passed was still very much within the apartheid paradigm and more will be said about these 1991 reforms later. The only real innovation in procedures and mechanisms came about in the 1995 Development Facilitation Act, which will be outlined later.

National Planning Legislation for African Areas

The late 1970s into the early 1980s saw an escalation in pressure on the government to recognise the permanence of Africans in white towns and cities. While changes to the status of land rights for Africans in urban areas were slow to materialise, incremental progress from short term leasehold rights (25 years) to full 99-year leasehold rights in 1984 and then ownership rights in 1986. The eighties also saw attempts by government to create a black middle-class. Part of the strategy was to promote home ownership. Because the state (here we can include the local authorities) owned most of the black housing, it became necessary to allow for freehold tenure. This required compliance with land survey and deeds registration regulations (African areas had inferior forms of this) and the need for mechanisms to convert lesser forms of land tenure. The government embarked on a massive campaign to survey black areas and then advertised the "Grand Sale" in 1983

[40] In fact, in submissions and research undertaken by the Urban Foundation, it was concluded that (with respect to comments on the BCDA) the main delays are caused by administrative action rather than problems with the regulations per se. Comments by up to 21 government departments was the main reason for delays. See Memorandum to the Director-General of Planning and Provincial Affairs concerning the administration of the Township and Land Use Regulations, 1986. August 1990

followed by the introduction of the Black Communities Development Act (BCDA) in 1984[41] and the Conversion of Certain Rights to Leasehold Act in 1988.

In 1986 the BCDA was amended to include some significant changes in government policy. Firstly, ownership rights (freehold, on a par with white areas) could be granted. Secondly, the provisions of the Land Survey Act and the Deeds Registries Act applied, putting legal requirements in white and African areas on an equal footing. Thirdly, in line with a policy shift to bring the private sector into this segment of the market, land could be made available for development to private developers through the designation of Development Areas[42] and Land Availability Agreements. This latter provision made it possible for a developer to get land that was not already designated for Africans and develop it. Previously only the government Development Boards could request that land be included in a Development Area.

Lastly, a simplified form of a Town Planning Scheme was included as a mechanism of providing some zoning controls[43]. Of importance is that the provisions in Annexure F were based largely on the Ordinances, in concept and in detail. What this means is that it was seen as the means to promote health, safety and amenity in black townships. This was done through ensuring that houses were not built too close together (building lines of one metre), or that the intensity of development was not too great as to pose a health risk where pit latrines were used (by restricting the coverage to 60% and height to two storeys). While some attempt was made to enable economic development on the sites (residential zoning also permitted economic uses so long as they were subservient to the residential use and were not noxious)

The development procedures contained in the Black Communities Development Act were very similar to those already established in the provincial Ordinances. However, one very significant difference was that the BCDA was national legislation requiring approval by the Minister. This was despite the recently-promulgated Black Local Authorities Act of 1982, which attempted to provide some legitimacy to black local government. Retaining national control over African areas was a reflection of the parallel administrations responsible for white and African areas in operation in South Africa at the time, where African areas were always controlled at the national level.

The BCDA was used to establish many black townships within towns in South Africa and did result in greater private sector involvement in housing development in this market. However, the legislation was repealed in 1991 when much of the racially-based legislation was removed from the statute books[44]. Interestingly however, parts of the regulations in terms of the Act were not repealed and remain in force even today.

[41] The BCDA makes provision for the establishment of townships in black urban areas and carried on the so-called 1036 Regulations promulgated under the Blacks (Urban Areas) Consolidation Act 25 of 1945.

[42] Section 33

[43] Annexure F- is a form of mini-scheme that can be referred to as standard conditions of title. A developer would merely make reference to Annexure F for the conditions of title. It includes side and rear space standards, erection and use of buildings (residential, business, industrial, community were the basic zones), restrictions on height, coverage, parking and procedures for consent use and relaxation of provisions. See the Urban Foundation 1987 Seminar Series on Legal Changes in Black Housing – Seminar Notes.

[44] Through the Abolition of Racially Based Land Measures Act, Act 108 of 1991.

Many of the ideas and procedures from the BCDA were later introduced into amended legislation applicable to black towns[45] that were established and governed in terms of the Black Administration Act of 1927 and the Development and Trust Act of 1936. Proclamation R.1886 was introduced in 1990 by the Department of Development Aid. The regulations were entitled "Township Development Regulations for Towns" and included provisions for township establishment and for town planning schemes both of which very similar to the BCDA which, ironically, was repealed the very next year.

The procedures in all these regulations outline the formal developmental stages that land would pass through before settlement occurs. It is ironic that while this legislation was being used, mostly by the private sector to deliver housing projects, informal settlements were burgeoning in the African township areas. This informal development process happens in reverse to the formal process and people settle on the land first and secure tenure last. There were few legal development procedures to cater for the informal processes and they remained largely outside of the law[46]. The establishment of many of the squatter camps in Soweto can be traced back to the late 1980's.

So, while there was an attempt by the authorities to begin placing the development of African urban areas and white urban areas on the same legal footing, the formal procedures for the development in African areas proved too onerous for the poor[47], who resorted to informal land development procedures, which provides more rapid access to land.

The 1980s were a decade of intense protest from urban Africans against the National Party government. While the legal amendments in the mid-eighties did very little to appease matters by granting land ownership rights on a similar basis as in the white areas, political rights were still withheld (except in the homeland areas).

Housing and Informal settlements

During the 1980s informal settlements continued to burgeon in all township areas, causing concern for the authorities. Even the aforementioned amendments to the Prevention of Illegal Squatting Act did little to control new developments[48]. This was because the

[45] These regulations applied in scheduled and released areas outside of self governing territories (i.e. in South Africa). Areas inside the self-governing territories were governed by Proc. R154 of 1983 (repealed in 1990) except where they had their own legislation.

[46] Amendments were made (section 6a) to the hated, Prevention of Illegal Squatting Act, 1951 to make provision for upgrading informal settlements in 1986 and again in 1988.

[47] The procedures were very detailed, requiring a professional planner to put an application together to comply with all the legal requirements of plans, legal powers of attorney, floodline certificates, geotechnical reports, environmental inputs, mineral rights and title deed requirements as well as a professional memorandum of motivation. Numerous copies of the application had to be submitted and a fee paid, advertisements taken out in local newspapers and other advertising requirements such as notices on site, registered letters served on neighbours and so forth undertaken before an application could even come before the decision-makers. Then there are the time costs of the delays in the bureaucratic process of circulating the application to up to 21 government departments for comments and approvals. Even after approval the development process is also complex and costly with considerable costs going into securing land, preparing it for services, installing underground services such as water and stormwater and sewerage reticulation. Everything up to this stage (can easily be two years) is not yet visible on the site, prompting concerns about delays in development and high costs for no apparent improvement to the site.

[48] It is interesting to note that Section 6a made provision for settlements to be established and for these to be regulated by promulgation. Orange Farm south of Johannesburg was one such area established in this way and had regulations promulgated. The regulations were devised very much along the lines of Annexure F of the BCDA but reverted back to including administrative aspects relating to management of the area, voters and voting etc. Regarding the land use regulations, it made provision for more permissive land use conditions in Annexure D

measures in this Act were largely punitive and represented no real commitment or attempt to address the underlying reasons for these settlements – they were treating the symptoms. At the heart of the matter was that government, since the 1960s effectively put a halt to the provision of housing for Africans in urban areas. Housing was used as an influx control measure.

Even in the 1970s, the allocation of land for African settlement was closely regulated through the Guide Plans introduced in the Physical Planning Act. Even the attempts at deconcentration, that resulted in far-flung settlements such as Botshabelo, did little to stem the growth of both free-standing informal settlements and the increase in backyard shacks. Based on approaches overseas and promoted to a large extent by the Urban Foundation, site and service schemes were introduced, supported largely by the less onerous development procedures in current legislation and the new legislation to be introduced in the reforms of 1991, discussed in detail below. In addition, the site and service approach was further promoted through the Independent Development Trust (IDT) capital subsidy scheme that was introduced at the turn of the decade. The IDT was granted a lump sum from government to pilot a capital subsidy scheme whereby beneficiaries obtained a site and services to the value of R7 500.00. This was the forerunner to the new government's housing subsidy scheme, which will be detailed later. By the end of 1992 the IDT announced that it had reached the end of its capital subsidy scheme and that no new projects would be implemented after March 1993.

The 1991 Land Reforms

As pressure on the government mounted against racial discrimination, it reluctantly conceded some major policy shifts in 1991, relating to land and development.

In the 1991 Land Reform White Paper[49] was released amidst much fanfare, largely because it proposed the abolition of racially based land legislation. This meant that the Group Areas Act was to be repealed, along with the abovementioned Black Communities Development Act and many other laws. The government saw these reforms in the context of promoting "orderly urbanisation", largely to appease its white constituents who feared their areas suddenly being "overrun" by Africans. To quote the White Paper,

"Making land available to regulate the urbanisation process in an orderly manner and to accommodate it timeously, is one of the greatest development challenges which this country has ever faced."

It then adopted an approach which hardly showed any reform at all, and to quote again,

" Town planning and the establishment and expansion of towns will be regulated in accordance with the needs and level of sophistication of the community concerned"

It introduced the Less Formal Township Establishment Act, Act 113 of 1991 (LFTEA), to provide less onerous measures to develop land in formerly African areas. Essentially, the legislation was government's response to increased calls to accommodate informal housing

– side spaces of 1m, rear spaces of 2,5m, frontage 2m and coverage up to 70% were permitted. See Provincial Gazette 11 July 1990.

[49] Released 12 March 1991 and supported by a layman's guide put out by the Bureau for Information.

processes and upgrade inferior and discriminatory land tenure. To quote from the White Paper, *"The housing shortage should be eased in order also to lessen the pressure on established residential areas, to counter unlawful squatting and prevent established communities from being displaced, and to protect community life against social disorder, disruption and the disregard of community values"* (pg. 9)

While ideas of moving form informal to formal systems along a continuum and introducing a concept of staged tenure were put to government, it instead introduced LFTEA and effectively introduced an inferior form of tenure for areas to be developed using this legislation (Certificates of Ownership). This legislation is still in force in South Africa at present and, interestingly, Chapter II is being used extensively by the new government in developing housing areas, because it is a quicker procedure.

This Act made provision for three types of developments – less formal settlement, less formal township establishment and settlement by indigenous tribes. The first chapter of the Act outlined procedures for less formal settlement where the Administrator makes land available and designates it for such purpose. There were very few administrative and bureaucratic procedures applicable to these areas and the land only had to be developed in such a way that upgrading was possible (Section 4 (2)). General plans had to be prepared and ultimately a register opened and properties registered. Persons could be settled as soon as the land had been surveyed or in some instances, with the permission of the Administrator, before survey. (Section 8(2)). It allowed for registration in the form of Certificates of Ownership, which did not require the provisions of the Deeds Registry Act to be applied. So through these procedures, land could be developed through very simplified measures, albeit at the dictate of the Administrator and by reverting to old concepts of inferior rights.

Chapter II of the Act contained "shortened procedures for less formal township establishment". This set out a slightly more formalised set of procedures than Chapter I. It required that permission first be obtained from the Administrator to use these procedures. The Administrator had to *"satisfy himself that the demand for housing in the area to which the relevant application applies, justifies township establishment in accordance with this Chapter"*. Once this approval had been obtained, the application for actual township establishment had to be submitted to the Administrator for approval. There were no explicit provisions for public comment or objections, making this a very closed and top-down procedure. It also allowed for many other township establishment requirements to be uplifted and on approval, the new township was deemed to have been established in accordance with the law governing the establishment of townships in force in the area within which the land is situated. Regulations were also promulgated to regulate the Chapter II procedures. They were also simplified requirements, based on the Ordinances.

Hence, this Chapter provided for much speedier procedures, but at the expense of transparency and decentralised decision-making. Many townships were established using this procedure and its provisions are still used in some instances to this day. However, when used today, it usually includes provisions for participation. This legislation, like all the other laws applicable to black area, was national legislation, however, it did devolve responsibility to the Provincial Administrators, bringing it a little closer into line with the Ordinances. However, no devolution took place down to municipal level and the Administrator maintained a firm grip on these developments, to ensure the implementation of the policy of orderly urbanisation.

The third Chapter was introduced for development in rural areas and was called "Settlement by Indigenous Tribes". It, *inter alia*, provided for a tribe to obtain ownership of land where it intends formalising a settlement and made provision for communal forms of residential development.

Returning to the 1991 White Paper, the third important leg of the reform (abolition of racial laws and orderly urbanisation being the other two), was the rationalisation of land tenure rights. As mentioned, Africans were historically granted lesser or inferior forms of tenure, because of their 'temporary' status. With permanency now recognised and racial discrimination about to fall off the statute books, upgrading these inferior forms of tenure to full ownership became necessary. The Upgrading of Land Tenure Rights Act, Act 112 or 1991 was promulgated to achieve these aims. This Act categorised all rights into two schedules – Schedule 1 related to rights that were granted via complying with some survey and registration requirements (albeit, lesser forms) and applied to deeds of grant, leasehold and quitrent. Schedule 2 related to tenuous rights granted in the form of permissions to occupy. The legislation made provision for opening township registers and introducing land use conditions in the newly-formalised townships.

At the time, the White Paper acknowledged the need for government financial assistance, especially with respect of surveying and opening township registers. It embarked on a mass survey programme, much of which was completed by the late 1990's. However, the opening of registers proved a much more difficult process and this has lagged behind the survey programme. The White Paper made lofty projections of granting ownership to 1 000 000 additional residential sites and providing for the automatic conversion of 300 000 leasehold and deed of grant to ownership, through this legislation[50]. It is not known if this has even been reached today.

The Act was not applicable in the four independent homelands and could, if requested, be applied in the self-governing territories.

Except for the abolition of racially based legislation, these new reforms were met with great disappointment by the extra-parliamentary grouping and NGOs involved in housing and development. It was seen as 'old wine in new bottles'. Meanwhile other reformist forces were at play.

The National Housing Forum

In the same year as the White Paper was released, far-reaching processes were already beginning outside of government[51], that resulted in the establishment of the National Housing Forum. While it proved difficult to bring all opposing parties together (especially around the polarised issue of migrant hostels and government's paranoia about it becoming interim government by stealth), the National Housing Forum was eventually established on the 31 August 1992 when a Founding Agreement was signed by 16 representative organisations[52]. Broadly it comprised political parties, the building supply industry, the private sector, financial institutions and large NGOs. So began the enormous task of hammering out consensual positions on how to deal with South Africa's housing crisis.

[50] See Pg. 8

[51] By this stage other broader political processes had led to the unbanning of the African National Congress (ANC), the Communist Party and AZAPO and the release of Nelson Mandela.

[52] See "A Mandate to Build" edited by Kecia Rust and Sue Rubenstein, 1996

By April 1993, government had allocated funds to a Joint Housing Board (JHB) and at last structures in the NHF could begin seeing their structures as possible interim structures rather than ones that duplicated existing state housing institutions[53]. By August 1993, some interim structures were agreed[54] including the National Housing Board and four Regional Housing Boards which were to replace all the existing Boards, previously based on racial lines. It took another year before there was any agreement on the housing subsidy proposals. In order to break through the impasse over the disposal of state land and to speed up housing development, the Development Facilitation Bill, as it was then, was brought to the NHF in the later stages. The other achievement of the NHF was the preparation of a White Paper on Housing which later became one of the first White Papers of the new government. More will be said about these latter two achievements. The NHF continued after April 1994, where many of the policies, interim structures and legislation were taken up by the new government.

Of relevance to this paper is the workings of the Land and Services Working Group of the NHF. The policy positions adopted by the Working Group formed the basis of the Housing White Paper and the Development Facilitation Act. The key policy issues identified by the Working Group included developing a new planning framework, developing new mechanisms for land development and land use control, reforming land registration and tenure systems and the provision of bulk infrastructure and service standards and tariffs. Each is outlined very briefly, mainly to set the context for the new planning and development paradigm that was to emerge with the introduction of the Development Facilitation Act.

Given the history of planning sketched out in this paper so far, there was little dispute in the NHF about the need for a new approach to planning which should:

- Redress the spatial inequality and distortions that has resulted from segregationist apartheid planning;
- Promote efficient and better functioning cities that would become the engines of growth and development for the country as a whole;
- Provide a framework to mobilise investment into development;
- Translate the vision, goals and objectives of the Reconstruction and Development Programme (RDP) that the government had introduced to redress social inequalities.[55]
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There was also a strong concern that any new planning system be more participative. Based very much on the positive experiences within the NHF with respect to participation, it proposed that meaningful participation be built into all processes of development and preparation of plans and that information should be freely available to the public. It supported transparency, which had been sorely lacking in almost all of the development processes relating to low income housing development.

With respect to the regulatory framework for land development, some far-reaching proposals were made in the Working Group. It called on a new regulatory framework to :

- Recognise both formal and informal housing processes;

[53] See “A Mandate to Build” edited by Kecia Rust and Sue Rubenstein, 1996, page 18.

[54] Through a Record of Understandings

[55] This information was obtained from the chapter 9 – The delivery of land and services for housing by Gemey Abrahams and Johannes Rantete in “Mandate to Build” edited by Kecia Rust and Sue Rubenstein, 1996

- Provide security of tenure to individuals, families and groups;
- Be even-handed when applying to government and non-government developments;
- Speed up the sluggish development procedures and provide for fair hearings of disputes, through a new mechanism such as a tribunal.

We will see later how these important aspects gained recognition in the Development Facilitation Act.

The Working Group also tackled the thorny issue of land tenure as it related to housing and proposed that inferior and parallel systems be unified, that inferior forms be upgraded and that staged tenure be introduced through the concept of "initial ownership" which is fully upgradeable to ownership over time.

One of its most far-reaching proposals was around conflict resolution in the development process. With the increase in land invasions at the time and the promotion of more compact, integrated forms of urban development, conflicts over the location of development were expected to escalate. The NHF proposed :

- That a dedicated mechanism be established to decide over conflicts;
- That it be subject to special procedures to make speedy decisions;
- That this mechanism make its decisions, not in a vacuum, but in relation to policies and guidelines or principles – this was at the heart of the new planning paradigm that was about to emerge;
- That proceedings be a matter of public record.

Out of this, the idea of a housing or development tribunal was formed. The tribunal was conceptualised as comprising officials, politicians and specialists. These ideas were carried almost lock, stock and barrel into the DFA, as will be seen later.

The last area of concern for the Working Group was that of services. It must be remembered that local government in African areas had all but broken down by the end of the 1980s and the backlogs in service provision, not to mention the lack of maintenance, was growing. This put considerable strain on existing services. But more importantly, service provision and particularly the payment of services became a highly politicised arena in the 1980s and 1990s. Boycotts of service payments became the norm in this period. The NHF proposed that :

- Clear roles and responsibilities for servicing must be established;
- Standards for engineering services should be in line with residents' and local authority's affordability, rather than being unaffordable and unsustainable;
- Standards should be set at the Provincial level and made known across the Province;
- Lifeline tariffs should apply to the poor and national government should set the tariff structure for each municipality to apply in its area.

Most of the land policy positions were carried over into the Housing White Paper, but more importantly into legislation, through the Development Facilitation Act and in fact, represented the kernel of the new planning paradigm that was introduced in 1995.

To sum up and analyse this period between 1948 and 1994, the following characteristics and trends are worth noting:

The abolition of racial legislation in 1991 could be seen as the "thin edge of the wedge" in dismantling the elaborate apartheid planning and development system that had been so meticulously crafted over the past 40 years. But the reforms were guarded and highlighted the government's reluctance to shift from the pervasive, control-oriented approaches of the past. It took other forces outside of government to shake the foundations of the monolithic system.

Housing issues came into the arena of multi-party negotiations over a new South Africa through the high profile National Housing Forum. While the NHF was ostensibly about negotiating a new housing future for South Africa, it did much more than that. It impacted on the whole housing delivery chain from planning to land development to land tenure, servicing and housing finance. The most notable achievement of the NHF, from a planning point of view, was undoubtedly the preparation of the Development Facilitation Act. It introduced a whole new planning paradigm that was to impact not only on planning and housing, but on almost all sectoral policy formulation after 1994 (e.g. the introduction of principles and a strong policy orientation features in most new sectoral legislation after 1995).

This era saw the rise and fall of apartheid planning but its demise left South Africa with one of the most complex regulatory frameworks in the world, characterised by:

- Duplicated and overlapping laws
- Complex, control-oriented regulations;
- Parallel legal and administrative systems;
- A spectrum of tenure rights with the lowest forms being available to Africans in rural areas and the highest forms for whites in urban areas;
- Laws being applicable in a myriad of specific geographic areas, many of which are still applicable today due to the "night life" of existing legislation;
- Un-transparent laws and procedures with little scope for public participation.
- The segregation of racial groups into geographical areas (and even the further delineation of sub-areas within the broad racial groups) each with its own legislation, its own forms of tenure and own administrative systems created complexity far beyond the capacity of a country like South Africa. Upon drawing new provincial boundaries and dissolving the homelands a complex mosaic of areas was created as laws in these areas continued to apply.

The application of laws at different tiers of government was another characteristic of this era. National government had a firm grip on legislation governing African areas and Provinces controlling all the former white areas. This created parallel laws, procedures and administrations.

The unwillingness or inability to address the housing problem was another characteristic of this era as informal settlements burgeoned. While the 1991 reforms could be seen as a minor breakthrough in "lowering the ladder" by introducing simplified procedures to promote African housing, they was conceptualised within a very paternalistic and dictatorial paradigm, indicating a need to retain control over African urbanisation. The introduction of capital housing subsidies and site and service schemes were further developments that lowered the ladder, in some respects. However, they were really introduced as measures to encourage private sector involvement in housing than primarily addressing the real needs of the poor.

Post 1994 – a new planning paradigm for a new South Africa

In April 1994, elections were held and a new democracy was heralded in. The ANC won a majority in government and the stage was set for a new era of policy development and implementation. One of the most formidable consequences of the new Interim Constitution of 1994 was the creation of nine provinces out of the existing four provinces. All the numerous land and development laws applicable across the country, remained applicable in the geographic area in which they were previously applicable. This created even more complexity in the already over-regulated planning system as geographic areas where laws applied now became split into two or more provinces, or across new local government boundaries. This fuelled the need for unitary legislation to cut through the complexities at local level. The other important aspects in relation to the new planning system was the introduction of a rights-based culture and the continuation of powers of provincial planning, however this time through a co-operative governance approach.

Because the housing process was the most advanced due to the NHF's activities, it was not surprising that new legislation and policy related to housing was the first to be introduced by the new government. The Housing Amendment Act of 1994 formalised the National Housing Board and the four Provincial Housing Boards. In October 1994 a National Housing Summit took place in Botshabelo. This was masterminded by Mr Joe Slovo, the first housing Minister in the new South Africa. It was a forum to engage the broader public on the new housing strategy to pave the way for the new Housing White Paper scheduled for release later that year.

i. The Development Facilitation Act, Act 67 of 1995

In the planning arena (but initiated in the NHF), progress was made with completing the Development Facilitation Act (DFA) and it was finally promulgated on 4 October1995. It is important to understand just how much of a shift in thinking this legislation represented. While even today, six years after its promulgation, its full impact has not been felt. It established new ways of doing planning which are still being integrated in current approaches, for example it was through this process that integrated development planning was conceptualised. The main objectives of the DFA are

- to create a new policy framework away from the control-oriented approaches of the past to an approach based on norms and standards, policies and principles (a normative planning approach, based on a right-based culture);
- to create a common national development procedure for all areas;
- to fast-track development procedures.

The new planning approach was supported by the introduction of principles to guide all decision-making in relation to development and plan making. The principles gave an indication of government's vision of how it saw development happening in future. It was also supported by the introduction of Land Development Objectives (LDOs). This was the policy link where local authorities were urged to become more performance oriented and accountable for how their decisions shape development. While the (LDOs) had a housing bias, they became the new planning instrument for local authorities to determine their vision, goals and objectives for development of their areas – which became particularly important after local government elections and the drawing up of new, integrated local government

areas. The LDOs and the principles had to apply to all planning and development decisions, even decisions taken in terms of the Provincial Ordinances.

Given the strong need to move towards a unitary planning system and have one procedure that could apply in every part of South Africa, it was not surprising that the DFA included a new planning procedure. However, it was set up as a parallel process because of the difficulties of repealing the Ordinances and the Less Formal Township Establishment Act. The new development procedure made some important departures from past development procedures. The overarching goal was to cut through bureaucratic log jams to develop low income housing more efficiently (there was the expectation that housing development would pick up pace when the new government came to power). The development procedures and requirements of the DFA were driven very much by the applicant in this new procedure and the documentation required to accompany an application had to be completed up front. This did shift more risk and cost onto developers, but the *quid pro quo* was to be found in the speedy decision-making. An innovative new decision-making body was introduced.

This was the provincial planning tribunal. It comprised members of provincial and local government and members of civil society who are specialists in their field. While this may seem unconstitutional now, the DFA was crafted at a time of local government illegitimacy. The tribunal was given extra-ordinary powers to uplift certain legislation that would create blockages. Most importantly, it had subpoena powers to call all who needed to be present at a hearing to appear and make their case. This was an important breakthrough, because the development process had been bedevilled by slow decision-making by government departments. Recent amendments to the DFA have included a pre-hearing conference of the parties, to further speed up decision-making by the tribunal. It allowed fair and open presentation of facts and objections by all parties, whereafter the tribunal would weigh up the facts, apply the principles and LDOs and come to a decision within a week of the hearing. So the speedy decision-making more than compensated for the more onerous application requirements.

The other means of fast-tracking related to the introduction of initial tenure, which is the first stage on the way to full ownership. Other ways in which it lowers the threshold for the development of low income housing is that it permits informal and formal housing development, it allows for other building standards to apply, where more suitable. It also gives professionals responsibility over their professional area of expertise to guarantee certain facts and thereby fast track things like survey and registration.

The DFA, while being so innovative, has not been as readily embraced as was initially hoped. There are a number of reasons for this. The first reason is that it introduced a new normative planning paradigm. As with many new and innovative approaches, they are difficult to introduce into mainstream systems. The application of principles was difficult to grasp and professional planners and administrators had (have) difficulty interpreting them and applying them. Also, while there was much education and publicity about the new system at the time the Act was passed, a new generation of public officials entered government soon afterwards who had little understanding of the new Act. This was exacerbated by local government elections and the legitimisation of local democracy which saw a strong shift to local decision-making. The concept of a provincial tribunal taking local decisions was not met with great enthusiasm. Also the bureaucracy needed to support the DFA, through the implementation of LDOs took time to be set up. So by the time the LDO process was picking up momentum, the concept of integrated development planning was gaining ground and causing doubt about the usefulness of LDOs. Notwithstanding this, all

provinces supported most aspects of the DFA (the Western Cape and KwaZuluNatal did not support development tribunals, but supported the new planning paradigm that was introduced) and began implementing it.

The second reason why the DFA has not had the impact intended relates to the development procedures it established. As mentioned, it was a parallel system and developers were faced with a choice of what route to use when developing a new area. Most opted for the mainstream Ordinance route because it was familiar and because they did not know how to "read" the new tribunals that were set up. Also, any developers simply did not know about the DFA (and surprisingly this is still the case). Developers cite the fact that the application requirements are more onerous and hence costly to them. In terms of the DFA, geotechnical reports, environmental reports and services agreements, in addition to the usual Ordinance requirements, need to be completed up front and submitted with the application. All advertising, comments and objections and responses to objections must be completed and included in the application. All this expense must be borne before an application even gets to be heard and some developers feel that the risks have been passed on to them. Developers also cite the legal requirements relating to procedures, time frames and actions leave considerable scope for turning down an application on a technicality. So for these reasons developers have chosen the comfort of the Ordinances in many instances. However, those who have followed the DFA route are quick to explain how much faster the decision-making is. In fact, a hearing date must be set between 80 to 120 days from submission to the Registrar. This means that an application can be decided in four months. Developers also note that it requires greater professionalism and responsibility for ensuring that an application is complete and to a high standard, and the likelihood of experiencing problems and delays usually relate to sloppiness of developers or town planners rather than failings in the DFA itself.

The third reason why the DFA has not been as widely embraced as anticipated, has already been touched on and relates to the resistance at municipal sphere. Because decisions are taken by tribunals, developers using the DFA are often seen as snubbing or being disloyal to local government political structures. This has become an increasing problem with the new Constitution and the increased decentralisation of decision-making powers to municipal sphere. The provincial tribunal system is something that is likely to change in the future and most provinces that have drafted their own new provincial Acts based on the DFA, are unlikely to perpetuate in the form presented in the DFA.

Notwithstanding these limitations, the DFA's main impacts can be felt in other areas. One such area is the establishment of a national Development Planning Commission to advise the Minister on a new planning system. The other is the introduction of policy-based planning through the LDOs[56] and lastly, the framework it has created for new provincial planning legislation, which will form the basis of the new planning system in South Africa. These are touched on below.

ii. The Development Planning Commission

[56] Although the Local Government Transition Act of 1993 did introduce the concept of integrated development planning, this concept developed out of the processes of formulating the DFA. The details of integrated development planning are currently being incorporated into the Municipal Systems Bill and will supercede the LDOs.

The Minister[57] tasked the Development Planning Commission to prepare a Green Paper on Development and Planning. It achieved this objective in May 1999 and began a process of broad participation and consultation on the new approach it had developed. The Green Paper focused on spatial planning as a sector of broader integrated development planning. It endorsed the paradigm of the DFA and supported a minimalist approach to planning. What this means is that regulation and control must be kept to a minimum, to guide and give space to local interpretation of the broad intentions. It clarified the roles of government in the new dispensation of spheres of government and co-operative governance. National government should confine itself to co-ordination, support and monitoring and establishing national norms and standards. For provinces, the ability to draft their own provincial planning laws was established. This allows provinces to rationalise all the overlapping legislation and replace it with a unitary law, applicable throughout the province. More will be said about this later. At local sphere, it supported integrated development planning and urged a strong spatial planning component. This was part of the proactive, managerial approach to local planning that it promoted. This meant a strong role for politicians in developing and implementing policy and a putting in place land management systems that is consistent with the policy but allows for discretion in decision-making (not control-oriented).

With respect to land use management, the Green Paper made some important policy statements that are intended to shape a new land management system, consistent with the normative approach. Firstly, a land management system should be policy led and be consistent with the DFA principles and the LDOs or IDPs. It must extend equal protection to property owners and occupiers from adverse effects of development. Any decision to change land use (such as a rezoning) should be assessed in terms of the policies and the LDOs/IDPs, rather than in an ad hoc manner. It also proposed that development rights awarded should be exercised within a set time period or be lost, to curb speculation. It supported strong participation and transparency in decision – making through promoting procedures that allow anyone who feels aggrieved by an application to object and be given a fair hearing. It supported speeding up bureaucratic procedures through delegation of certain decisions to professionals where there are no objections and the application is consistent with the policies of the municipality. Neighbour consent for minor, uncontentious applications was also supported.

- The Green Paper proposals regarding the speeding up of land development included :
- Establishing a single approval route for applications that includes planning, environment, transport and other sector approval requirements;
- Setting a firm time limit on decision-making where failure to comply could result in automatic approval;
- Introducing a staged approval process for large applications, which can reduce costs and risk to developers as they only submit more detailed investigations once approval in principle is obtained;
- Giving applicants and objectors a fair hearing.

The two aspects of land management and land development detailed above have been singled out here because they have the potential to impact positively on development procedures and lower the costs of development. They are also important because they are the key aspects that will be incorporated into new Provincial planning legislation.

[57] The DFA was unusual in that it had three ministers responsible for different parts (Housing, Land Affairs and RDP ministers) of it. However, the managing Minister was the Minister of Land Affairs.

Some provinces have already prepared new Provincial legislation within this new framework and others are busy drafting new Bills[58]. The new Provincial Acts are essentially "mini" DFAs with strong land management content to replace the current provincial Ordinances.

One of the biggest challenges facing the new provincial Acts is how best to deal with the introduction of unitary systems for land management. Given the history of different laws, procedures and standards applying in former black and white areas, the application of the principle of equity in managing development across all areas is a thorny issue. While the new Provincial Acts wish to extend land use management systems (in reality this means extending town planning schemes) to former black areas, the development rights conferred on land through zoning are at variance in any use zone (residential use allows different activities and intensities of uses in former black and white areas). The introduction of blanket zoning will therefore reduce rights in some areas and be seen as more permissive (and lead to a breakdown in the development fabric of the area) in other areas. Authorities need to trade these equity issues off against the what people need to do on their erven to survive and make a living. Few municipalities grappling with transforming their town planning and zoning schemes have the answer and many have resorted to perpetuating a dualist zoning approaches (for example by providing different definitions and hence zonings of residential uses for the two types of areas). While this may in some ways protect the more permissive aspects of land use in former black areas, it does not adequately deal with the issue of equity. In an attempt to break through this problem, the Green Paper proposed those guidelines referred to above and even went further in subsequent work[59] to introduce principles for land use management systems

The new Provincial Acts are all in line with the new planning paradigm and importantly will lead to the rationalisation of planning laws. However, they do not necessarily incorporate all the suggestions in the Green Paper (only released after some Acts were already passed) but they are sufficiently consistent and will herald in a new era of planning in South Africa, once fully introduced[60].

iii. Housing Policy in the new South Africa

Turning now to the changes in housing policy in the new South Africa, the main features discussed below include the Housing White Paper and the housing subsidy scheme.

The approach to housing in the Housing White Paper comprised of stabilising the housing environment, institutional support, mobilising savings and housing credit, providing subsidies and facilitating the speedy release of land. The most well known of all the policies was the introduction of the housing capital subsidy scheme for low income beneficiaries.

While there was (and still is) no doubt that the housing backlogs were enormous (estimated 1,5 million informally housed people), the policy was based very much on the IDT subsidy

[58] The Western Cape, the Northern Cape and KwaZuluNatal already have Acts and Gauteng has a draft Bill, as does the Eastern Cape and Northern Province.

[59] See Proposed New and Re-ordered DFA Principles document prepared by the DPC in March 2000.

[60] Most do not have regulations yet and are therefore not being implemented presently.

scheme. It comprised a once-off capital amount towards the land services and house of qualifying beneficiaries.

The government developed criteria for subsidy qualification, based largely on income. Anyone earning less than R3 500.00 per month and meeting a range of other criteria (age, dependants, not received assistance before) is eligible. The subsidy is stepped and the lowest income earners qualify for a higher subsidy. The full subsidy amount is R16 000.00 for beneficiaries earning below R1 500.00 per month and R5 500.00 for those earning between R2 501.00 – R3 500.00.

While there has been criticism regarding the approach which superficially equates poverty with income level, the subsidy has enabled one million beneficiaries to obtain a serviced site and a modest structure, since its inception.

However, several criticisms have been levelled at the housing subsidy scheme and warrants some discussion of them. These criticisms serves to illustrate that despite the good intention of government in assisting poor families to acquire their own homes, the framing of policy is important as it can result in unintended consequences for the very people it intends assisting.

Firstly the scheme was developed within the framework of promoting more private sector involvement in low-income housing delivery. This theme ran through many of the strategies, including moving the financial institutions downmarket. Housing projects were largely developer-driven, with developers choosing land and designing projects and products that they thought the poor wanted. The location of these projects (land acquired on the open market) perpetuated the apartheid spatial form of the past, with housing being established long distances from economic centres. Usually families had to relocate to these developments, severing existing social ties and settling in areas with few, if any, social facilities. While families may have gained an asset in the form of a house, they lost other social assets in the process.

Secondly, the eligibility criteria equate income with poverty or put another way, people have inadequate housing because they lack sufficient income to acquire housing on the open market. The subsidy was always seen as a ‘temporary’ measure until the poor somehow moved up the economic ladder and no longer needed to rely on the government for housing handouts. This position is still articulated in the latest housing strategy document.

Thirdly, the subsidy emphasised ownership forms of tenure over other forms. Given the history sketched above, it is understandable that this position was adopted, but it is a form of tenure relatively new to most beneficiaries and its implications are less understood. The registration requirements are also quite burdensome and have relatively higher associated costs (need conveyancers, for instance). It also discriminated against women in customary marriages or married under community of property until fairly recently. The subsidy scheme has been broadened to include other forms of tenure such as communal tenure and rental schemes.

All the three factors combined have resulted in many beneficiaries selling their subsidised houses for less than the delivery value. This phenomenon is quite widespread (although no numbers are known). Houses have been sold for as little as R500.00. As a beneficiary may

only receive one government subsidy once only, people who sell return to the informal housing circumstances they were in before. Government has shown some concern about this phenomenon and is discussing ways to prevent this. The types of solutions being bandied about include restricting sale for a defined period after obtaining a subsidy or granting the government the first right of refusal. It is unlikely that these measures will be successful as they do not address the underlying reasons for on-selling.

One proposal being investigated is to increase the beneficiary's stake or risk in the new house, through encouraging beneficiary saving towards housing. This spreads government's risk in housing as contributions come from the beneficiary, financial institutions (if small loans are taken out), employers (if applicable) and local authorities. The criticisms of the inferior housing product can be addressed as a small monthly saving can gear in enough additional resources to vastly improve the product (R50.00 per month can result in a R20 000.00 product being afforded). This approach will not necessarily target the very poor, but it will provide bigger or better houses to those who can afford them. It will also achieve a non-housing, macroeconomic goal of getting the nation to save.

In acknowledgement of the problems of developer-driven housing, and in order to comply with state procurement procedures, the procedures for identifying land and projects is set to change.[61] Whereas developers identified land and projects and applied to the Provincial Housing Advisory Board for approval of the subsidy, there was very little open competition. This is set to change and municipalities will soon have to identify land an put it up for proposal calls. If a land owner offers land, they have no guarantee that they would also be a successful bidder for developing the land. While this process will allow authorities to judge development proposals more effectively, it will also lengthen the period before land is released for development. This new approach will also encourage more involvement by municipalities, who justifiably (in many instances) feel that they are being by-passed in the decision-making stages yet handed the burden of servicing, maintaining and governing the areas afterwards. Many municipalities believe that the provinces are making them more impoverished through the housing subsidy scheme (approving projects that do not match their budgeted priorities, forcing them to find additional funds for servicing).

iv. Planning, Engineering and Building Standards

The above problem raises another important debate in low-income housing – the issue of servicing and development standards. Firstly, developments need to comply with the development procedures outlined above when developing a new project on a greenfields site. It must meet all the town planning requirements and be subject to zoning at the end of the process. As outlined in this paper, planning standards were (are) applied through town planning schemes in Ordinances, through Annexure F of the BCDA, the regulations in the LFTEA and Proclamation R.1888 and even gazetted in terms of Section 6a of the Prevention of Illegal Squatting Act, depending on where the area was situated and what population groups lived there. These generally related to restrictions on the size of the building line, the side and rear spaces required, the coverage of the building on the site, parking requirements and land use. While the standards applicable in former black areas were generally thought to be more lenient than those in former white areas, most were still seen as inappropriate for low income areas, especially informal areas. In the new South Africa few municipalities have

[61] See Draft Housing Strategy 2000 and discussion documents on procurement compliance by the Department of Housing.

grappled with the issue of appropriate planning standards for low-income areas and have tended to focus on the engineering and building standards.

The second hurdle of standards relating to housing is that of the standard of services, or more accurately, the level of services. Given the early origins of planning controls under the guise of health concerns, engineering services likewise suffer under the same origins, but with more complexities. Because of the historical backlogs in services in former black areas and the political resistance to paying for services, municipalities are reluctant to take on new developments unless they are serviced to a high level. In South Africa, most developments have the same servicing standards, but the levels of service vary. In order to reduce maintenance costs, municipalities insist on relatively high levels of service. A township may not be approved for development unless the municipality agrees with the developer on service provision and individual plots cannot be transferred to the beneficiary without a letter of compliance ("happy letter") from the municipality on completion of the servicing by the developer, to the satisfaction of the municipality.

Levels of services have been variously set out in Guideline manuals[62], by local authorities and by housing policies, such as the early IDT developments and more recently the housing subsidy scheme. Through the Ordinances, municipalities were responsible for the external or bulk services and the developer did the internal servicing. It is interesting to note that in the BCDA townships, which fell within black local authority areas that were cash-strapped, developers had to provide the bulk and internal services and then passed the additional cost of the bulk services on to the purchasers. It was commonly accepted in the 1980s that housing developments in BCDA areas were more expensive than equivalent developments in Ordinance areas for this reason. At that time the cost of external services was in the order of R3 000.00 per stand.

Ironically, high service levels make the projects unsustainable in the long run as levels of service beyond the financial means of families, are being installed. Monthly service fees cannot be paid. This high service level also contributes to the phenomenon of on-selling, through downward-raiding. A plot with minimum services is less attractive to middle income raiders than a fully serviced plot. Through the subsidy scheme, various attempts have been made to define minimum standards and this approach continues today. The IDT schemes set minimum standards for their developments which then influenced the setting of standards from that time onwards, even up to the Reconstruction and Development Programme, which emphasised basic needs. The IDT levels of service included:

- A metered water supply
- A sewer connection to a waterborne reticulation system;
- Major roads to be bitumen surfaced;
- Minor roads to be formed with in-situ materials;
- Open stormwater wherever possible;
- A toilet structure connected to the water and sewer reticulation.

For urban developments, the cost of installing these services (circa 1990 costs) was of the order of R 6 500.00 per erf. Town planning, township establishment, surveying and project overheads comprised about R550.00 per erf. While it is difficult to compare with current

[62] The Blue Book then the Green Book then the Red Book, which has recently been revised by the CSIR.

costs of a similar development, on a Mayibuye project the professional fees in a recent project came to about R1 000.00 per erf, ten years down the line.

It was also around the time of the IDT projects that ideas derived largely from World Bank studies, relating to levels of services for low-income housing gained momentum. Three levels were proposed – basic, intermediate and full. These concepts are still widely used today by the new government. Basic levels as defined by the IDT at the time, included communal standpipes within walking distance, on-site sanitation (pit latrine), solid waste collection, gravel roads and high mast electric lighting for the area. In 1990 prices, this level cost approximately R2 500.00 - R3 000.00 per erf to install. Intermediate service levels included individual standpipes, paved bus routes and intermediate sanitation (ventilated improved pit latrine), high mast electric lighting and possibly electricity to homes. The cost of providing this was in the order of R4 500.00 - R6 000.00 per erf. Full service levels included metered water connections to each house, conventional sewerage, waste collection, paved and kerbed roads with stormwater drainage and metered electricity connections to each house. The cost of providing this level in 1990 was between R6 500.00 – R10 000.00 per erf[63]. It is interesting to note that the costs of services have not changed significantly, mostly because of the ceiling on the housing subsidy. While real costs have escalated, the levels of service have been redefined (electricity not included as a rule these days) and the materials used been replaced by cheaper ones to keep within the limits of the housing subsidy.

Urban developments, especially in large towns and cities, rarely have levels below full waterborne sewerage, water on site and electricity (which is usually installed later at beneficiary's cost, if subsidy cannot cover the costs). These are high levels and cost at least R7 000.00 to install in areas with good soils. The housing subsidy is moving towards providing R7 500.00 towards services and employing the remaining R8 500.00 on the top structure. The minimum service level outlined in the latest housing strategy is a single, metered standpipe per erf, a ventilated improved pit latrine per erf, stormwater to be conveyed along lined open channels along roads and streetlight in the form of high-mast security lighting. Electricity is not considered a basic need. This must be provided within the R7 500.00 limit (includes a portion for land acquisition).

It is apparent that the level of services is shifting downward to match the availability of government subsidies. While this may be the case, affordability by individuals and by municipalities to sustain high levels of services is also a consideration, and having a national guideline which promotes more realistic services (in terms of affordability) may be necessary at this time. It should also be seen in the light of political pressure on government to provide a more substantial house structure with the subsidy money, as servicing can use up most of the subsidy (and often accounts for the full amount of the subsidy), leaving little for the house.

Defining the appropriate levels of services to low income housing areas is not easy, made more difficult by the 'hidden' or unquantifiable benefits of high service levels on the poor (juxtaposed by the affordability and political considerations mentioned above). Higher service levels can contribute to the overall improvement of environmental conditions which ultimately cause a decline in waterborne or other diseases (so frequently found in unserviced areas). Higher levels also free up time of women and children to spend more time on meeting the social needs of the family or engage in economic activities or in the case of

[63] Most of the information on costs and levels of service in this paragraph was taken from the NHF Status Quo Report on Services and Servicing Activities by Ulli Bleibaum, November 1992.,

children, doing homework or other necessary family chores. The provision of electricity can open up many new opportunities for economic development and improve social development (education, for example). Bearing the above in mind, municipalities need to develop approaches to servicing that incorporate the social and potential economic benefits to households and communities, rather than a direct cost-benefit mathematical calculation and weigh these up against different affordability scenarios.

Having complied with planning and engineering standards, building standards are the next hurdle that a low-income housing development must comply with. These are also very rigorous. The National Building Regulations (NBR) are applicable in these areas. They relate to matters such as the construction standards – foundations, walls, roof – ventilation, electrical wiring, plumbing and so forth. Townships that are developed using the LFTEA and the DFA may be exempt from the NBR, providing some relief from these requirements. There is some leeway in the building regulations to apply indigenous building technologies, but these require Agrement certification, which can be a lengthy and costly process. Although building standards of some form are necessary for safety and health reasons, they should be kept to an absolute minimum for low-income areas. It is banks and building societies who finance houses through bonds and loans, who require the higher building standards to protect their risk. It is suggested that it should be this requirement that drives the need for building standards that are higher than a basic level for poor households.

In order to protect housing consumers, the National Home Builders Registration Council (NHBRC) has a duty to ensure home building quality (by issuing warranties). This requires that builders register with them. Not all small builders are able to comply with the registration criteria, causing a situation of "insiders" and "outsiders". It also promotes access to the market for emerging contractors through training and inspection services.

The national Department of Housing has set out National Minimum Norms and Standards for permanent residential structures, effective from April 1999. In terms of these norms, a minimum size norm of 30m^2 per home applies along with prescribed engineering norms and specifications.

This has raised some dilemmas for the subsidy scheme. With only R8 500.00 of subsidy money left over after land and services, the production of a house of this size is very difficult. If possible, it has few finishes and is simply a shell. In fact, the government acknowledges that 80% of homes built with housing subsidies do not allow the NHBRC warranty to be applied, because they do not specify how the requirements of the National Building Regulations are to be met in practice. This is also a problem for houses built by owners and by small contractors under community-driven housing processes, in an attempt to make the subsidy stretch further.

v. Community-driven housing processes

In the light of the restrictions placed on home building by the standards outlined above, it is little wonder that community organisations have emerged to build houses for the homeless. The People's Housing Process was established in 1997 with the main aim of helping households to acquire subsidies and build houses for themselves. By contributing their own time, skills and labour (sweat equity) the subsidy value could be maximised and a bigger, higher quality house could be built. A group of people wanting to access the subsidy and build a home through this process, must form a Support Organisation as a legal entity. It opens a bank account through which the subsidies flow to individuals in the group. The

subsidy is drawn down in regular payments to match home construction. Savings are encouraged and individuals must open a bank account with the same bank as the support organisation. The government has indicated support for the form of housing and sees most housing in the lowest income bracket eventually being provided this way. However, the initiative has been slow to take off.

This form of housing delivery certainly lowers the ladder for the poor. It has the potential to deliver a bigger house to beneficiaries, in return for own time, commitment and labour. One important spin-off is that not only are houses produced, but better capacitated and skilled communities are also produced. It also may be a way to address the downward raiding problem as individuals have invested their time and energy in the production of their home, seen what quantities of materials and workmanship can be purchased with the subsidy funding and developed an acute sense of the value of the housing product.

vi. Summary of the post-1994 era

To summarise the post 1994 era, a number of important legislative and policy shifts occurred.:

The DFA was introduced and shifted the planning paradigm to a normative one, based on policies and principles. It also incorporated the expression of a number of other policies of the new government, including fair and open decision-making, speedy development procedures, public participation and access to information, accountability for performance, strong policy making by local politicians. It is set to be amended through the White Paper process[64] but its essence will remain on. It will also remain on in new provincial planning legislation.

The introduction of housing policy and especially the housing subsidy scheme delivered one million houses to date. However, it too has undergone changes over time and has broadened to include a range of subsidy types. There is however growing criticism of it in relation to it addressing poverty[65]. Many of the aspects tend to exacerbate poverty (through relocation, severing social networks and safety nets, small sites and houses, higher transport costs and less disposable income, long distances from schools and other social facilities). The new housing strategy has a continued emphasis on norms and standards in relation to housing and finds itself caught between wanting high standards, providing adequate shelter and confined to a limited size of subsidy.

2.3. The current situation and way forward

South Africa's planning history has resulted in a complex legal and administrative system characterised by racial discrimination, duplication of laws and administrations, unequal legal status and procedures and control-oriented laws. Even though the changes brought about since 1994 have concentrated on trying to develop a unitary system, a system which is

[64] The DPC completed a Green Paper, the Department of Land Affairs now must produce a White Paper, which is doing, but rather slowly at present.

[65] SEE TED BAUMANN'S PAPER ON HOUSING POLICY AND POVERTY IN SOUTH AFRICA, BAY RESEARCH AND CONSULTANCY SERVICES, PREPARED FOR ISANDLA INSTITUTE, 2000

equitable, a system which accommodates informal and formal development procedures and one where meaningful participation occurs, much of this old legacy is still with us.

Presently, the legal situation is that the four provincial Ordinances are still the mainstream planning legislation. LFTEA is still on the statute books and being used for low-income housing developments. Regulations in terms of repealed legislation still exists and most of the former homeland planning legislation still applies. The need to move to a unitary, albeit Provincially-based, system is still a high priority.

The DFA, which, although promulgated in 1995, still sets the policy framework for planning into the future. Through the DFA and the Development Planning Commission's Green Paper, a process is underway to formulate a White Paper on planning and development. This will result in amendments to the DFA but will also set out clearly the government's policy position on the planning framework. It will be used to guide those provinces that have not yet prepared Provincial planning legislation to do so in a consistent manner.

It is through the Provincial legislation that real change will be brought to bear on the planning system. It is through these laws that the duplicated planning legislation will be rationalised and streamlined into one unitary procedure, through the repeal of laws such as LFTEA, the provincial Ordinances, the Removal of Restrictions Act, the remaining sections of the Physical Planning Act and so forth. It is through these new laws that uniform land management systems will be established to cover all parts of a municipality and not just the former white areas. It is hoped that these new systems will be equitable and protect all residents equally from negative planning impacts. The new Provincial legislation will support transparent and speedy decision-making in its new unitary procedures, placing all development applications on an even footing, even upgrading and informal housing developments.

While the planning system is undergoing transformation into a new paradigm, the delivery of housing for low-income families has been driven almost exclusively by the housing subsidy programme. Presently, the housing policy of government is also under review and some changes to procurement procedures, to norms and standards, to allocations and risk spread are in the pipeline. There is also a renewed emphasis on providing a bigger and/or better quality house with the subsidy money which is driving government to support efforts such as the People's Housing Process and savings-linked subsidies which will both result in a bigger and/or better product for the same amount of government subsidy.

"LOWERING THE LADDER" – POSITIONING THE SOUTH AFRICAN LAND AND HOUSING DEBATE IN RELATION TO THE RESEARCH HYPOTHESIS

In this section of the report we present the findings of our literature survey. Our objective is to position the South African case study in relation to the research hypothesis of lowering the ladder by drawing on the post-apartheid land and housing debate. We pose four questions:

- What does the literature reveal about how the South African housing policy, and critiques of it, respond to the notion of lowering the ladder so that the poor can get access to affordable shelter via the formal system? This will contextualise the research historically and enhance the understanding underpinning the assessment and application phases.

- What variables are perceived to inhibit access by the poor to formal affordable shelter, in addition to planning regulations, administrative procedures and standards? And how do the three planning variables relate to others? This will ground the stakeholder analysis of key variables proposed for phase 2 in the housing debate. It will also ensure that the research focus – planning variables – is informed by a more holistic starting point.
- What evidence exists of cost assessments having been carried out? What insight does this lend, methodologically and substantively, to phase 2 – assessing the costs of key variables which inhibit access to legal shelter? We hope that this will strengthen our method for the assessment and provide early insight into the nature of planning costs vis a vis others.
- What evidence exists of changes to the regulatory framework – both government and non-government initiated? This will ensure that the review is dynamic and set the stage for the identification of options for change that are context related, build on country experiences and are ultimately more likely to be acceptable and successful.

3.1 Introduction to the South African land and housing debate since apartheid

South Africa's White Paper on Housing encapsulated the dominant position that had emerged in the early nineties about post-apartheid housing policy. This position was negotiated at the National Housing Forum in the course of the negotiations phase of the transition to democracy and provided the basis for the early preparation and issue of South Africa's new housing policy and strategy in 1994. The material commissioned and produced by the NHF is an extensive body of literature which indicates the debates at the time. Their resolution has since come to be mainstream housing policy. We begin by consulting this literature for responses to our starting questions. The NHF approached the housing question by focussing on how to facilitate the improved operation of the land and housing market. Unsurprisingly therefore, its conclusions were overwhelmingly supply driven, with little attention given to facilitating housing solutions that build on what people themselves are doing, albeit informally. This approach neatly coincided with the political imperatives of quick, visible delivery by the government of national unity, driven by the ANC, whose election manifesto promised one million houses in five years.

Although there were always detractors in opposition to the emerging housing policy, they were unable to articulate an alternative position that swayed the balance of power in the NHF and it is only recently that debate has become more widespread and vibrant once again. This coincides with apparently increasing openness in the housing ministry. While some of the earlier critiques were based on alternative ideological starting points, much of the current debate is pragmatic, drawing on the benefits of five year's implementation experience. To this extent the recent and alternative body of literature captures a more demand orientated perspective. We draw selectively on this literature to demonstrate alternative responses to our starting questions, which may lead to the development of alternatives to the housing subsidy scheme and its uniform application.

3.2 The National Housing Forum Literature: shaping the current policy approach

Planning regulations, administrative procedures and standards were considered by the Land and Services Working Group, a sub-structure of the NHF established in 1992. It turned its attention to the thematic areas of land use planning, land tenure, conflict at the interface between the development of low, middle and upper income housing, service standards, and the institutional and legal frameworks for service delivery. The manner in which planning matters were conceptualised and resolved by NHF remain a feature of the current housing intervention (Abrahams and Rantete, 1996).

i. The NHF literature on planning regulations

In respect of planning regulations, the Working Group identified that racially-based legislation and policies were a major stumbling block to land and housing access for low-income households. Insufficient quantities of land were identified for the urban poor and the criteria used to assess applications for the development of

housing for black households were tightly controlled by the apartheid state. This led to the identification of less desirable and less valuable land, thereby reinforcing fragmented, inefficient and sprawling land development processes (Land and Services Working Group, undated). Land use and zoning regulations imposed control on population densities, negatively impacting on the poor in that lower population densities were often beyond the means of poor households.

In respect of forward planning, the NHF identified that Guide Plans (introduced by the Physical Planning Act of 1967) did not make sufficient provision for low income housing demand. They also restricted the rapid and timeous identification of land as they took up to five years to prepare.

ii. The NHF literature on administrative procedures for land development

Abrahams and Rantete (1996) summarise that the inherited complexity and legal diversity of township establishment and land development application processes in the face of limited administrative human and financial resources were the main procedural problems in land development.

The Urban Foundation (1991), a key influence in the Forum, identified time delays as a key procedural constraint to effective land release, township establishment and housing development for the poor. According to the Urban Foundation, this was usually caused by lack of co-ordination between actors dealing with aspects of township approval and engineering services and between different local government areas of jurisdiction. The diversity and complexity of institutional and legal requirements unnecessarily increased the level of skills required from the various professions (town planners, engineers, land surveyors, attorneys and conveyancers).

The NHF found that, whereas the formal processes of township establishment began with planning and ended with settlement, informal land development occurred in the opposite way. The control-orientated framework of the day was thus unable to accommodate this reversal and as a result, the NHF put forward the proposal that new legislation should be able to accommodate both formal and informal land development processes (Abrahams and Rantete, 1996). This came to feature in national legislation as part of the principles for land development contained in Chapter 1 of the Development Facilitation Act.

The Working Group also identified the occurrence of conflict as a significant hindrance, often delaying and threatening to derail the housing development process. The implementation of a new decision-making authority with extraordinary decision-making powers to speed up development was taken on board during the legislative process leading to the formulation of the DFA.

Additional issues which the Working Group identified as hindering the land development process, included:

- Conferring of non-ownership tenure rights to black end-users;
- The high level of discretion of the administrators of township establishment legislation;
- Delays in the approval of applications for development, which impacted negatively on developers' cash-flows in low-income housing projects, thereby limiting the willingness of the private sector developers to participate in the market.

As a result, the Working Group proposed the provision of secure tenure rights, and the identification and reduction of costly delays in planning procedures.

In response to the weakness of the land administration system, in particular, the Working Group proposed the introduction of a phased process of accessing ownership rights. This proposal was taken forward in the Development Facilitation Act of 1995, which makes provision for the introduction of initial ownership as an intermediate right. Initial ownership

can be upgraded to ownership once all the cadastral and registration requirements have been fulfilled, even long-after the development of housing structures and infrastructure on the site.

iii. The NHF literature on planning standards

The Working Group made specific mention of town planning schemes and zoning regulations as factors hindering the development of housing for low income households by setting land use and construction standards that fell well beyond what poor households could afford. According to Bleibaum (1992), the net effect of these planning standards has been to limit the choices available to designers or operating agencies to meet housing preferences while considering affordability constraints of end users.

The NHF examined past attempts at lowering standards to fast-track housing and land delivery processes, such as the Less Formal Township Establishment Act (Act 113 of 1991). It found that they had mostly contributed to ad hoc land identification and assembly, far from major economic nodes and that they had done little in the way of providing for a suitable living environment (Bleibaum, 1992).

iv. The NHF literature on other variables

Service Standards

The Working Group approached the question of inadequate service levels from the perspectives of basic health, as well as local government sustainability. At the time, the NHF was operating in a context of service charge boycotts which had arisen in protest against illegitimate black local authorities set up and administered by the apartheid government, unacceptable services standards and affordability constraints. Abrahams and Rantete (1996) explained that the NHF acknowledged the difficulty of setting standards due to traditional tensions between community needs, developers' objectives to provide services at the lowest possible costs, and local authorities who want to minimise maintenance costs over the life-span of the infrastructure.

The NHF identified minimum; rudimentary or basic; intermediate; and full levels of service. This framework later became the core of the 1998's National Department of Housing's submission to MINMEC (a meeting of provincial and national politicians with the housing portfolio) in determining national norms and standards in respect of permanent residential structures.

Housing standards

The minimal package provided through the IDT capital subsidy scheme, consisting merely of a serviced site and tenure, was criticised for several reasons including the lack of top structure, the slow rate of consolidation, the poor location of the site, and the lack of flexibility of the policy approach (Urban Foundation, 1991).

To address this experience of lowering the ladder, the NHF recommended that some form of rudimentary top-structure be delivered. The intention was to encourage households to consolidate the starter product which they would receive from the state. Critically, it also represented a lifeline capital injection into the private construction industry.

Land market constraints

The other key variable identified by the Working Group was the inefficiency of the land market in assembling and delivering land to low income households. Although the NHF identified the influences of inflation, interest rates and a stable economic environment, it emphasised the interventionist role played by the apartheid government as the key factor distorting the market and inhibiting entry. The land market "failings" were reduced to problems with the regulatory framework guiding the assembly and release of land. Even although land speculation was identified as an exclusionary factor, the literature ultimately insisted on the role of regulations and laws such as racial zoning.

Its consideration of market forces was limited to the operation of the formal land market as an inhibiting factor. The NHF overlooked the crucial role of informal land markets in facilitating access to land and housing for the urban poor. Instead, the NHF states that "the visible consequence of the failure of land markets is the proliferation of informal land markets (land invasions, shack farming and etc...)" (Abrahams and Rantete, 1996).

Technical factors that affect land values

In addition to the regulatory framework problems, the NHF emphasised a range of other technical factors. These include inefficient bulk infrastructure spread across urban areas, long distances between areas of residential and economic activity, housing types and geo-technical suitability of the land.

3.3 Evidence of debate – alternatives to the mainstream NHF approach

i. Limited choice and lack of differentiation, leading to exclusion

Cross (2000) demonstrates how accessing land and housing cannot, in practice, be disassociated from formal land delivery processes within the ambit of the housing subsidy scheme. Similarly, Huchzermeyer also identifies the fact that tenure interventions in informal settlement contexts amount to little more than a formal housing delivery process, leading to the production of tenure rights, planned sites and settlements, services, and housing products. This, both researchers argue, has profoundly destabilising impacts on the livelihoods of poor households and contribute to exacerbating conditions of insecure tenure and poverty.

In relation to the question of planning regulations, procedures and standards, Cross (2000) argues that the current system of land management and administration does not make it possible for households to obtain secure tenure and provide for their own housing and services requirements without the de facto formalisation of settlements. This occurs as individual households in informally settled areas would probably only be able to obtain formal land security by paying themselves for survey and registration under the system used by high-income households. This represents an insurmountable task as households would have to demonstrate that their claimed site had identifiable boundaries, that they had signed an agreement with the previous owner, and that the land was free of disputes with neighbours as well as any other claims from the city, from developers, property owners or other parties (Cross, 2000).

ii. Cost recovery on operational costs and affordability constraints

Under the current system of tenure intervention, which delivers a package of "benefits" households are primarily able to secure their tenure rights in the long-term where they are able to afford the service charges, delivered simultaneously with the tenure rights, as well as other charges related to home ownership. When households are unable to afford such services, it may lead to on-migration of upgraded households into renewed informality and

the informal (because unregistered) sale of the property. When this sequence happens it cuts off the upgraded household's only route to tenure security, since they will not be eligible for a housing subsidy again (Cross, 2000). The issue of affordability is taken up provocatively by Napier (1999) who argues that there is an inherent tension within the state's policy of benefits to the poorest which is often not recognised, where by effectively targeting poor households and insisting on cost recovery for operation and maintenance costs a state benefit is passed to households who can then often not afford to maintain it

iii. Faulty assumptions about homeless people and people-led housing

Bauman (1999) goes further in respect of the shortcomings of the housing policy approach by not only challenging the "package of benefits" approach but also deploring the lack of innovation of the policy in terms of current system of land management and standards. He identifies that the housing policy approach's views of the homeless are first and foremost interested in acquiring "permanent residential structures" as inherently problematic as it prevents household initiatives in respect of providing for their own housing needs by making use of their own resources and capacities. In a similar vein, he also explains that the policy implementation process is fundamentally unsuited to people-led development processes as it is still views that the housing development process proceeds best when it is formal and follows the following order: develop overall plans; identify land; survey land; design development; install infrastructure; build houses; transfer title; occupy.

Finally, Bauman also argues that there is an unresolved tension between the intention of mobilising the profit-motivated private sector financial resources and other capacities for housing for the very poor. In questioning the rationale that the supply-focused marked driven will adequately address the needs of the poor, Bauman echoes Huchzermeyer (1999) 's assertion that a centralised system of housing policy-making for the urban poor will inherently fail to address the complex set of conditions, needs and capacities of poor households at settlement level. Bauman (1998) deconstructs the focus of the politically-driven numbers game of the million houses promise as a consequence of viewing housing as a commodity, where housing is implicitly equated to any other product: produced by developers and purchased by consumers (Bauman, 1998). Yet, he goes on to argue, housing for the poor is an urgent and never-ending process of shelter provision (Ibid.).

iv. Tensions between communal and individual assets

In assessing the manner in which standards affect people driven housing delivery processes, Napier identifies that the structure of subsidies where servicing is included in the process is a significant obstacle (CSIR, 1999). Because the servicing and housing elements are part of the same amount, tensions are set up in the participation process between individuals assets and communal assets. He explains that on the one hand municipalities were demanding certain minimum standards of infrastructure and on the other residents were attempting to maximise personal assets (through both house size and levels of on-site service). As infrastructure remains the property of the municipality while the house becomes the property of the individual, in a participation process it is difficult for communities always to act in the public interest (Huchzermeyer, in Napier 2000).

v. Control orientation of local authorities

Napier (2000) notes that a limitation of people-driven processes seems to be the capacity of local authorities to support them. He also explains that the way that local authorities typically apply construction standards, even in People's Housing Process projects, demonstrates a desire to control rather than support. Critically however, it is in relation to the question of land

assembly that he identifies the primary obstacle to people's housing processes. He argues that if the People's Housing Process is essentially about recognising informal settlement processes, the opening up of serviceable, sustainably located land parcels by officials for development by the people are critically lacking. He goes on to explain that the interface between land delivery strategies and people's processes have been largely neglected.

EARLY FINDINGS: SOUTH AFRICAN OPTIONS FOR CHANGE

4.1 Easing cash flows to entice the private sector "partner"

Against all expectations, implementation of the housing subsidy scheme was extremely slow in the first two years and was marked by an extremely slow pace of disbursement of the housing budget. Despite intentions to make the low income housing market segment attractive to formal private sector developers – a conrnerstone of the policy – it had attracted only a fraction of the interest anticipated. Narsoo (2000) links this state of affairs to problems with the manner in which the subsidy was structured at the time. He explains that at its inception, it was to have been paid out in two tranches: 70% on completion with 30% retention. This had the net effect of forcing developers to carry the main development risk and of enabling government to retain control over the quality of housing products being delivered. As developers were forced to raise bridging finance at market-related interest rates, few were willing to play the housing supply game.

In response to this situation, in which the key role-player in the policy implementation - the private sector- was slow to participate, the government introduced a system to allow for 5 progress payments to reduce the risk for private-sector developers. (see table below on costing).

4.2 Setting minimum house sizes

The question of service standards (and more properly, levels of service) feature prominently in the NHF discussions and proposals, as indicated previously. The issue of housing standards was deliberately avoided by the NHF (Narsoo, 2000), aside from the intention to break from the experience of site and service schemes by enabling delivery of a rudimentary top-structure. Narsoo (2000) explains that this stemmed from lack of clarity about the final value of the subsidy at the time and, more importantly, because of the naïve assumption that housing beneficiaries would exert pressure on developers to deliver high quality products. Contrary to this assumption, profit-motivated developers tended to deliver the minimum. At the time the average size of housing built rarely exceeded 25 m^2 (Baumann, 1999). In response to this situation, a minimum standard of $30m^2$ was established in the Minimum Norms and Standards in respect of permanent residential structures set by the National Department of Housing. At present, the national average stands at between 33 m^2 and $35m^2$ (Narsoo, 2000).

The value of the subsidy has only marginally increased since its inception from R 15 000 to R 16 000. However well intentioned this standard may have been, it could have resulted in trade-offs being made by developers to cover the floor area requirements, in particular in respect of building materials or the quality of workmanship.

4.3 Phased housing delivery – lowering the ladder?

The slow pace of implementation of the housing delivery, in the face of ever increasing demand for land and housing, led to a spate of land invasions in the period following the

transition to democracy. In 1995 after a series of discussions were held between the national Department of Land Affairs (DLA) and the Gauteng Provincial Government on how the DLA might support the rapid release of urban land for settlement purposes. The phased housing programme was refined to become a proposal for a formal government-managed process to create access to land, while simultaneously recognising that development will occur once land has been granted. At the time, the emphasis was placed on tenure security and community-based planning methods (C. Engelbrecht, 1996). This approach remained ground within the parameters of the housing debate which views land and housing within a supply-driven framework.

The Mayibuye Programme was approved by the DLA in December 1995, and a number of concerns were raised around certain costs. The DLA specifically argued that land costs and transfer costs must be pinned to a site, and that professional costs had to be elaborated to ascertain whether they are commensurate with the current departmental policy.

The standards applicable to the delivery process were to be as follows in the table below, in respect of the first step of the phased housing programme.

Key Aspects to consider under the Mayibuye Programme	
Location criteria	DFA criteria to apply, preference for in-fill areas
Size of sites	200 to 250 m^2 -
Type of occupant	Initial tenure with full individual or collective ownership
Services	Emergency services, followed by rudimentary but upgradable services to high level over time
Planning methodology	Local authority or community based planning
Upgrading activities	Upgrading of services and shelter over time
Allocation mechanism	Organisational allocation mechanisms

The Mayibuye Programme proposed:

- block planning;
- the provision of emergency services at the time of occupation (i.e. portable toilets and water tankers); and
- the granting of a 'tenure certificate' to reflect the right to remain in occupation of an undefined portion of the area/block to be upgraded once individual sites had been allocated.

4.4 Current proposals under consideration

In addition to the above interventions, the National Department of Housing is in the process of evaluating proposals in respect of the housing subsidy scheme. These proposals are primarily focused on how extend the benefits accessible through the housing subsidy scheme.

Access to housing subsidies by persons owning unsubsidised sites or housing

Under the current eligibility criteria, persons who acquired ownership of residential property without assistance from the housing subsidy, but meet all requirements, are disqualified from any assistance available under the scheme. Some of these persons were able to construct a basic house or only an informal structure and these structures very seldom meet the minimum health and safety standards set by municipalities. A substantial number of persons who bought sights from private developers are not in a position to access private finance to assist them in providing for the construction of top structures. The Department of Housing is currently investigating the possibility of awarding access to those households.

Amendment of the project-linked subsidy progress payment system.

The Department of Housing has acknowledged that the progress payment system does not accommodate delays in projects that are undertaken on the basis of development processes as envisaged by the Development Facilitation Act. In particular the initial ownership provisions. In addition, it also does not take into account cost and process requirements in terms of the development of state owned land or projects where considerable delays are experienced. As such, a review of the system is currently under investigation (National Department of Housing, 2000).

Co-ownership of single residential property

The existing subsidy policy does not provide for the allocation of housing towards prospective beneficiaries who will obtain co-ownership of single residential property. The need for the recognition of such ownership emanates from the current problems regarding the delivery of houses, the cost of individual serviced sites and the location of new housing developments in general. (National Department of Housing, 2000)

Proposals for the restriction on the disposal of subsidy delivered housing

Mounting concern is experienced in the provincial and national departments of housing that households are disposing of their subsidy delivered housing products often at below market value and without registering their tenure transactions. This has prompted a proposal from the national department of housing to amend the Housing Act to outlaw the disposal of state-delivered houses to purchasers other than the state for a period of five years (Lewis, Interview, 2000)

A belated response to people-driven housing

Formal supply driven land and housing delivery dominated the NHF thinking and the housing policy approach. Government's response to the question of people-driven housing is a programme entitled the People's Housing Process which is derived from a policy adopted in 1998. The PHP is an effort to support assisted self-help by means of the subsidy scheme (CSIR, 1999). Independent estimates of quantity are that less than 10,000 houses have been delivered through the People's Housing Process support programme, meaning that delivery is just over 1% of the 800,000 housing 'opportunities' created nationally (Farouk, in Napier, 2000).

The Homeless People's Federation is the driving force behind the concept of people driven housing in South Africa. The Homeless People's Federation is a formalised network of close to 800 homeless communities structured around more than 1 500 saving and collective schemes (Harvard Study Team, 2000). Preconditions for becoming a member of the Federation, include residence in an informal settlement and contributions in the form of savings. The People's Dialogue, is the support organisation to the Federation and acts as an interface for interaction with formal and governmental institutions. Part of this support role includes technical assistance in terms of housing construction.

The primary approach of the Federation in respect of housing is that people-led housing is a process to be understood rather than as a programme to be implemented. Key in the notion of people-led housing development is the level of autonomy and decision-making power of residents in respect of planning, location, house design, use of resources, how to access building materials and how the houses should be built.

In some cases, Federation members have sought to access land by means of invasions. Routinely, to by-pass prospects of eviction, households plan the site which they invaded, install rudimentary services and initiate the construction of permanent housing structures, using finance loaned to them by the Utshani fund, in anticipation of the subsidy allocation. In May 2000, members of the Federation had secured land tenure for 17 000 families, achieved the construction of over 7000 housing units (Harvard Study Team, 2000).

ASSESSMENT OF COSTS

NHF costing exercises focused on service levels. Inquiry into planning regulations and administrative procedures was of the more qualitative nature outline earlier. Narsoo (2000) argues that at the time, debates were still ongoing in the Forum as to the total value of the housing subsidy, which left a vacuum for defining costs.

5.1 World Bank research on costs of different service levels

In 1992, the World Band produced research estimating the cost to the South African state of different service levels. The following table summarises the findings of the research.

World Bank's Total Costs estimates to the SA state for the provision of different service levels (1992 prices and based on an estimated population size of 22,3 million households)

Level of Service	Cost estimate R, m
Basic	**6300**
Intermediate	**11100**
Full	**19400**

Water and Sanitation Research 2000 total costs estimates to the SA state for the provision of water and sanitation services in urban areas

Water Supply	**5158**
Sanitation	**10425**
Sub-total	**15583**
VIP	**8384**
	Status Report, NHF, Undated

This research demonstrated that the costs of providing intermediate levels of services is approximately 1,76 times more expensive than basic service levels, and 1,74 less expensive than the provision of full services. Similarly, the research indicates that in opting to provide basic services over full services the state would result in a saving coefficient of approximately 3,07 for the entire South African population.

5.2 NHF research on costs of different service levels

In quantifying the diverse service levels options, the National Housing forum undertook to detail these costs in terms of minimum, rudimentary or basic, intermediate or full levels of services. The following table examines the levels of services, standards and the associated capital and operational costs, in 1992 Rand prices.

Costs estimates of different service levels per site per annum (1992 prices)					
Standard levels	**Standards used to describe service levels**		**Capital Costs Aver. Rands**	**Oper.& Costs Aver. Rands**	**Total (Cap.+ Oper. Costs)**
Minimum	Water	Communal standpipes (250 m)	450	-	450
	Toilets/ Sanitation	Bucket/ community toilets/VIP detached from house including top structure	1250	-	1250
	Roads	Un-surfaced tracks/ paths/ gravelled and levelled walkway per KM	61600		61600
	Drainage	No drainage ditches	0		0
	Refuse collection	No formal refuse collection	0	-	0
	Electricity	No electricity service	0	-	0
Rudimentary or basic	Water	Partial reticulation, 1 standpipe to 20 sites, 100-150m walk	850	-	850
	Toilets/ Sanitatio	Ventilated Pits or Aqua-Privy without sewer collection	2500		2500

	n				
	Roads	Gravel/design structure/surfaced per KM	452000	6150	458150
	Drainage	Unimproved Drainage Ditches and Improved Drainage Ditches at crossings	300	-	300
	Refuse collection	Irregular weekly collection door to door, owner supplies storage	35		35
	Electricity	Mast lighting for Streets and few house connections			
Intermediate	Water	Yard stand pipe	1250	100	1350
	Toilets/Sanitation	Aqua Privy connected to small piped sewer or in-house water borne sewerage	2100	-	2100
	Roads	Routes designed, surfaced and kerbed per KM	575700	8850	584550
	Drainage	Main roads have Improved Drainage Channels, smaller roads have Unimproved Ditches	950	-	950
	Refuse collection	Regular Collection door to door, plastic liners supplied	100	125	225
	Electricity	Mast lighting for Streets, Restricted House connections (pre-paid metres)			
Full	Water	Metered in-house water supply	1650	125	1775
	Toilets/ Sanitation	Full water-borne to sewer system @ 750//day	1800	100	1900
	Roads	All roads curbed and paved			
	Drainage	**On-road drainage and Pipes and Culverts on Main Roads**	**750**	**-**	**750**
	Refuse collection	Regular Weekly Collection from Houses	-	-	
	Electricity	Street Lighting, Unrestricted Metered House Connection			
					Adopted from the NHF (1992)

These costs were utilised, together with a consideration of the capacity of the national fiscus, to develop an approach which favoured the option of delivering a minimum service to a maximum number of “beneficiaries”. As such, minimum standards services standards were set primarily in relation to operating and capital costs, as opposed to an assessment of say, social and environmental costs. Operating costs are the responsibility of municipalities, and the capital costs are covered by the subsidy. However, it is the end users who are ultimately

responsible in the form of service charges, especially in the context of the cost-recovery drive.

5.3 Prescribed project linked subsidy costs

The following table presents a typical subsidy breakdown for project linked subsidies.

Project Linked Subsidy Breakdown (2000 prices)			
	Rands	%	% with variation
Payment 1: Engineering designs	680	4.25 %	3.6%
Payment 2: Approval of general plans	350	2.1%	1.9%
Payment 3: Installation of Services	5970	37.3%	36.3%
Variation (15%)	710		
Subtotal inclusive of variation	6680		
Payment 4: Transfer of ownership	750	4.6%	4%
Payment 5: Top structure	8250	51%	54%
Variation (15%)	1690		
Subtotal inclusive of variation	9940		
Total 5 phases	16000	100%	
Total 3 phases inclusive of variation (15%)	18400		100%

A 15% variation subsidy was introduced in terms of the Subsidy scheme to cover the requirements of land development where geo-technical conditions would add significant costs (i.e. gradient, nature of the soil…). Importantly this increment is not applicable to the planning and tenure costs of the housing programme but only to the services and the top-structure.

Narsoo (2000) identifies that as a reviewing the draw downs, the benefits of retention in relation to performance have been lost. By linking payments to outputs (i.e. land acquisition, planning, services, construction and transfer to the beneficiary), some expenditure has been kept deliberately low to increase the amounts available for other payments, in particular those where developers are able to extract most of their profit margins: services and the housing product. As a result qualitative aspects of land development, such as its spatial location, were progressively sacrificed.

In terms of the hypothesis of the research, it appears that the costs related to planning activities (Payment 2 & 4) are relatively low, especially where the variation increment is accessed. However, these costs do not account for costs which are incurred by the developer due to delays, such as holding costs. Neither does this table indicate maintenance costs associated with services which are passed on in service charges.

5.4 Mayibuye cost indictors

The following table presents the costs of the planning component of a phased provincial housing delivery programme in Gauteng called Mayibuye. These costs are prescribed in guidelines issued by the Provincial Housing Department. The guidelines issued by the Province were based on an average of actual projects.

For the first phase, planning costs constitute approximately 25,5% of the total subsidy of about R 7568. The Gauteng government estimates that land costs may constitute up to 53,3% of the pre-construction costs. Transfer costs constitute about 13,7%.

During the construction phase, the installation of toilets contributes to 31% of the total construction costs. The other expensive variable is sewerage at 25,3% of the total construction costs.

The installation of toilets seems to be the most expensive item in the Mayibuye project cycle. It consumes approximately 23,1% of the total subsidy, followed by the installation of sewer system at 18,8% of the total of the project cycle. Land costs are also significantly expensive in that they constitute about 13,63% of the total costs incurred during the whole project cycle.

In terms of the provincial guidelines, planning activities should amount to approximately R 600. In practice these costs can be affected by factors such as the scale of a particular project and where the developer or the local authority negotiate professional fees. For instance, the costs allocated in practice in the Pretoria City Council average R 350.

Mayibuye Programmes' cost indicators (1999 market prices)			
Variable	**Rands**	**% of phase**	**% of total**
Land price	1032	53.3	13.6
Project Management	171	8.8	2.2
Geo-Technical	24	1.2	0.3
Town Planning	168	8.6	2.2
Surveying contours	41	2.1	0.5
Surveying pegs	164	8.4	2.7
Township Register	30	1.5	0.4
Transfer Costs	266	13.7	3.5
10% Engineering	41		
Sub Total	1937		

Water supply	962	17.1	12.7
Sewer	1425	25.3	18.8
Toilets	1750	31.1	23.1
Roads	902	16	11.9
Engineering (R406-10%)	365	6.5	4.8
Stormwater	227	4	2.9
Sub Total	5631		
Total	7568		
Notes: Escalation rate = 6% and Average size = 268 sqm			

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