

GEOFFREY PAYNE & ASSOCIATES

Regulatory Framework for affordable shelter
The Case of South Africa

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This paper contains the report on Phases 1 and 2 of the project case study on South Africa, at which point work on this case study ceased. The paper lists the findings of the fieldwork and recommendations proposed.

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Acronyms

BCDA	Black Community Development Act
BIT	Building Information Training
CBD	Central Business District
CSIR	Council for Scientific and Industrial Research
DFA	Development Facilitation Act
DW	Development Works
GDoH	Gauteng Department of Housing
IDT	Independent Development Trust
LEFTA	Less Formal Township Establishment Act
MECs	Members of the Executive Committee
NBR	National Building Regulations
NGO	Non Governmental Organisation
NHBRC	National Home Builders Registration Council
NSDF	National Slum Dwellers Federation
PD	People's Dialogue
PHP	People's Housing Process
POS	Public Open Space
RSA	Republic of South Africa
SG	Surveyor General

EXECUTIVE SUMMARY

The Context

The land and housing supply options in South Africa incorporate formal, informal and customary. The formal supply option for the urban poor is the housing subsidy scheme, which is a once-off capital amount that purchases the land, infrastructure and house for qualifying beneficiaries, or aspects thereof depending on income. Between 1994 and January 2002, 1,442,285 subsidies had been approved and 1,324,886 units were built or under construction. The availability of formal land and housing for the poor has seen a dramatic increase, with 166,000 units having been completed on average each year since 1994. Nearly 84% of the total subsidies approved to January 2002 have been allocated to projects driven by formal private sector developers.

The Regulatory Framework

The results of the desk-top review of the regulatory framework:

The scope of the Phase 1 regulatory framework review was a record of planning regulations, standards and administrative procedures and an identification of processes of change. The review phase identified the historical evolution of the regulatory framework in terms of which South Africa's history has woven a complex framework which has resulted in parallel systems, overlapping laws, burdensome administrative procedures and high development standards. The planning system is premised on a series of legal measures which include provincial ordinances, national planning legislation for African areas, guide plans, apartheid era legal reform, interim reforms and longer term legal transformation. Historically in South Africa planning regulations for new projects on greenfield sites were applied through different mechanisms, depending on where an area was situated and who lived there. Development procedures are prescribed in the various township establishment or land development laws and the subsidy regulations. The ordinance procedure 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. These development procedures can take as little as four to six months (from the date of submission) if everything is in order and if the application 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. In addition to the planning system, the subsidy administration system is another aspect of development procedures. It is extremely rigid with prescribed progress payments, effective regulation of cost and minimum norms and standards. Planning, engineering and building standards have been variously set out in national guidelines. Standards have also been prescribed by provincial and local authorities and by housing policies, such as the early Independent Development Trust (IDT) developments and more recently the housing subsidy scheme. A minimum service level is outlined in the latest housing strategy and must be provided within the prescribed financial limit.

Objectives

Phase 2 of the South African research had three aims. The first was to assess actual or imputed social, economic and environmental costs of key variables in planning regulations, standards and administrative procedures in formal and informal settlements. The second aim was to assess local priorities and preferences for changes which have, or could, reduce costs of access or entry costs for low-income groups to new housing in officially sanctioned developments. The third aim was to document a methodology for assessing the costs of specific standards, regulations and procedures and options for reducing entry costs to officially sanctioned developments.

Research Methods

The first phase of the South African project was the review of the regulatory framework. It assisted in designing the research approach and in conceptually preparing the project. This phase also established the statutory dimensions of the regulatory framework, as opposed to its practical application which was researched in the second phase project example. In the second phase we undertook role-player research and settlement research or field work. We assessed the nature of the formal and informal framework of planning regulations, standards and administrative procedures by researching two settlements of similar location and period of development serving low-income households, Boitumelo and Kanana to the south of Johannesburg. Kanana and Boitumelo are adjacent to each other. Boitumelo was developed by a formal private sector developer using the housing subsidy. Kanana is an informal greenfield land development of 2,500 households. It originated in a land invasion led by a residents organisation representing the back-yard shack dwellers in Sebokeng between 16-30 April 1994, over the period of South Africa's democratic elections. Some of the residents at Kanana are members of the Homeless People's Federation and participants in savings schemes. Kanana is currently undergoing formalisation.

Results

Planning laws and regulations

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 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.

Procedures

The report then proceeds to describe the development procedures in each settlement in detail. 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, which included a repetitive cycle of 250 subsidies turned over at a time.. 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 accommodating 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 and professional) and project scale.

Our results are that bottlenecks occur at general plan approval; in the approval phase, preparing documentation and circulating it to all stakeholders; with deeds registration; in the construction phase, especially local labour procurement; securing the land: in the informal process gaining land access informally and in the formal process obtaining the land availability agreement; and agreeing on a formal layout plan including site sizes and the future of informal construction in no-go areas. 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.

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. Similar risks were taken with the location of uses and the numbering of plots. 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. 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. 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. 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. 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).

Planning standards

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. In Boitumelo, there were mis-matches between designation and use, in spite of the claim that designated use is enforced and that land use is monitored. 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. 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. A further finding is that some standards are inappropriate, but inflexible. For example, the 30% maximum plot coverage standard, which was included in the conditions of establishment, was deemed to be too restrictive by technical role-players. 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. 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. 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, although the responsibility for delivery of schools and clinics resides at the provincial level.

Despite land use standards being identified as a major constraint (mainly in relation to the shared interest of maximising residential sites and reducing sites for non-residential uses), 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).

Engineering standards

The Federation adopts service levels and standards through consideration of neighboring service levels and standards as well as affordability. The infrastructure costs in Kanana were R 1000 per site or 9% of the costs. The infrastructure costs in Boitumelo were 27% of the subsidy, or R5000 per site. R5000 was the maximum amount of the subsidy that could be spent on infrastructure. 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 "gatekeepers" in respect of service levels, insisting that they remain high in order to keep the costs of maintenance lower. In addition, the context of non-payment of service charges is a disincentive to resident acceptance of lower service levels. In Kanana, a direct result of the Federation's demonstration of lowering the cost of infrastructure development, 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.

Evaluation of substantive findings

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. Notwithstanding the procedural and regulatory constraints that the research has identified in respect of the subsidy scheme, 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 uTshani Fund, which is an example of an urban poor fund, and the savings schemes associated with it, supported the people-led settlement process in Kanana. The supply system, especially the financial viability of the construction sector, is a key factor in facilitating access by the poor to legal shelter. Non-profitability, and withdrawal from the sector, is related to the inflexible manner in which the subsidy components are prescribed. Developers are expected to deliver the same product with the same (in real terms less) subsidy and there is little scope for de-specification on

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

The study also emphasises the importance of the human factor and an enabling informal settlement upgrading policy framework. 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 precondition is skilled and competent technical capacity. 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. The Kanana project demonstrates how inflexibly the subsidy system operates – in particular by forcing 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. This is indicative of a major weakness in the housing policy framework on informal settlement upgrading, especially upgrading in a people-led manner.

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 that it 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. The use of the developer driven individual subsidy mechanism in Boitumelo overcame many of the common delays in subsidy administration. 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 respect of regulations and standards are land use standards, utilities standards and minimum house size.

Evaluation of project method and proposals for the regulatory audit method:

The report emphasises that the matrices are an information capturing tool, useful at the end of a regulatory audit. It strongly urges the development of a regulatory audit methodology to strengthen the provision of the matrices as a tool and makes the following contributions to the development of a regulatory audit methodology, based on an assessment of the method used in the South African study for assessing the constraints in the regulatory framework:

- Use the matrices in amended form to capture the descriptive findings of the regulatory framework review
- Ensure that the review phase captures the regulatory framework dynamicProvide a glossary of terms to direct the review phase, especially for the three components of the regulatory framework
- Make the regulatory audit methodology subtle enough to cope with the diversity of between- and within-country contexts
- Make the regulatory audit methodology more flexible in comparing the formal with the informal systems than the matrices currently allow

Recommendations for action

The option for application proposed in the final section of the report focuses on the minimum plot size standard, as one step towards a less standardised subsidy delivery model and its more flexible application. The proposal is to promote the more flexible and varied application of the standard within a settlement to better conform with interest in maximising the delivery

of residential plots, accommodating a less standardised response which better responds to a variety of needs, and the promotion of less sprawling more compact settlements.

THE CONTEXT

The nature of the local land and housing market

The land and housing supply options in South Africa incorporate formal, informal and customary.¹ The formal supply option for the urban poor is the housing subsidy scheme, which is a once-off capital amount that purchases the land, infrastructure and house for qualifying beneficiaries, or aspects thereof depending on income. The professional fees associated with town planning, surveying, engineering design, conveyancing, project management and subsidy administration activities are also paid from the subsidy. Within the housing subsidy scheme option, a range of alternative subsidy instruments exist (see table 1). The project-linked subsidy is applied to housing projects and provides for individual ownership. This subsidy gives individuals access to a housing subsidy to acquire ownership of, or upgrade an existing property, or to purchase/build a new property. Institutional subsidies are allocated to an institution (such as a co-operative or a housing association) as opposed to an individual and provide for alternative forms of tenure (such as group ownership or rental). Consolidation subsidies are available to individuals who have received housing assistance under the previous government in the form of a serviced site. The Discount Benefit Scheme (being phased out) allows long-term tenants of public rental stock to receive a discount on the historic cost of a property. The Hostel Upgrading Programme provides assistance for the upgrading of publicly owned hostels. Criteria for subsidy qualification are 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, R10,000.00 for those earning between R1,501.00 and R2,500.00 per month and R5,500.00 for those earning between R2,501.00 – R3,500.00.

Table 1: Housing subsidy scheme instruments and income bands: amounts currently applicable

Monthly beneficiary income	Project-linked capital subsidy	Consolidation subsidy	Institutional subsidy
up to R1 500	R16,000.00	R8,500.00	R16,000.00
R1 501 – R2,500	R10,000.00	-	R16,000.00
R2 501 – R3,500	R 5,500.00	-	R16,000.00

Although the subsidy amounts were revised upwards in 1999, they did not keep up with inflation, which ranged from 4% to 7% annually. It was only in May 2002 that the government announced an increase in the subsidy amounts to align the value of the subsidy with the effect of inflation on its buying power. In future, this upward alignment is to be reviewed annually on the basis of a formula to be developed for this purpose. The present value of R16,000 in 1996 has been calculated at R20,058. The cost of an escalated serviced stand is R9,400, and that of the 30m² house R10,675, according to the Core Consumer Price Index escalation. According to the construction industry's escalated cut list costing principle, the cost of the 30m² house is estimated at R13,418. It is the latter amount that was selected to increase the amount of the subsidy (Department of Housing, 2002). Cabinet also approved

¹ Although customary systems do not apply in Gauteng – the location of the primary research – because there are no traditional authority areas within its jurisdiction.

the principle of a beneficiary contribution, to be made either in terms of a financial contribution, or through participation in the People's Housing Process. For the former, this beneficiary contribution has been set at R2,479. Therefore, the new amount is R22,819, minus the beneficiary contribution of R 2,479, or R 20,340. The new breakdown per subsidy band is presented in the following table.

Table 2: Housing subsidy scheme instruments and income bands: revised amounts

Monthly beneficiary income	Project-linked capital subsidy	Consolidation subsidy	Institutional subsidy
up to R1,500	R20,340.00	R10,940.00	R27,000.00
R1 501 – R2,500	R12,700.00	-	R27,000.00
R2 501 – R3,500	R7,000.00	-	R27,000.00

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Old age, disabled and indigent households will be able to claim the full R22 800.00 subsidy. In addition, the subsidy amounts for medium density housing- primarily developed through the institutional subsidy has been increased to R27 000. 00.

As this increase has not yet been implemented, it did not affect this assessment.

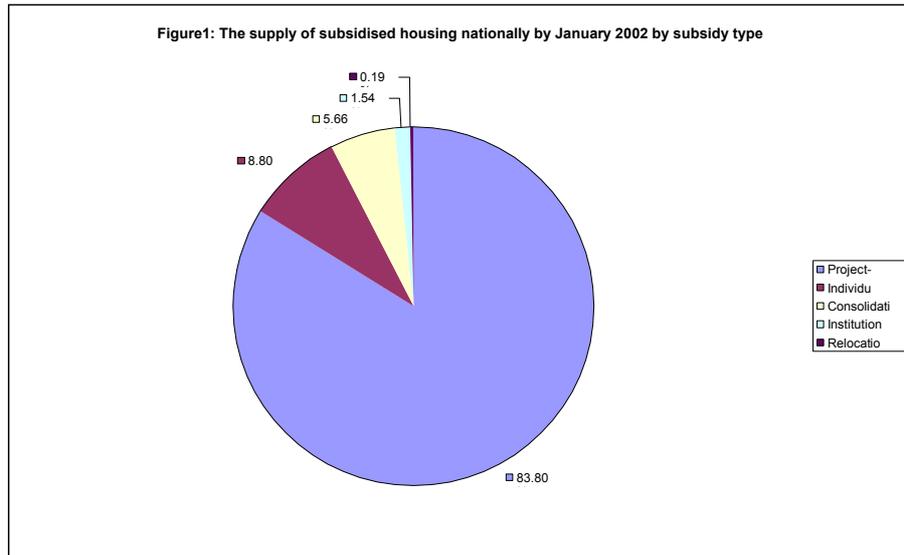
A range of informal land and housing practices exist in South Africa, namely squatting, unauthorised land development and informal rental arrangements (Durand-Lasserve and Royston, 2002). Squatting is a common informal option for the poor and occurs through land invasion or encroachment (Royston, 2002). Unauthorised land developments include shack farming (a process of irregular subdivision in which occupants rent land), land allocation by 'shack-lords' (processes of land transaction characterised by violent conflict), and land allocation by traditional authorities (where there may be conflict over jurisdictions with local authorities) (ibid). Informal rental arrangements, especially subletting and sharing, appear to be a significant informal supply option for the urban poor (ibid). Backyard shacks are informal rental or sub-tenancy arrangements on sites mainly within former black group areas and an important informal option in Gauteng province, where the case study research was located.

The national department of housing collects data on the number of each subsidy type supplied annually since 1994. Data on the informal supply system is very limited. Recent figures indicate that in 1998, free-standing informal houses were 4.7% of dwellings in the country (compared with 11.5% in 1995) and backyard shacks were 2.4% (CSIR, 1999). Traditional dwellings now represent 15.5% of the national housing stock (compared with 18% in 1995) (ibid). Formal housing types (formal dwellings, flats, townhouses and backyard flats) constituted 72% of the total in 1998, compared with 65% in 1995 (ibid). These figures indicate that informal housing remains an important form of shelter supply for many people and that there is an improvement in the level of formal housing stock (ibid). The following table summarises the supply of subsidised housing - the performance of the formal supply system to the poor –between 1994 and 2002.

Table 3: The supply of subsidised housing nationally since democracy

Period	Subsidies approved	Houses completed or under construction
April 1994 to March 1998	692,488 ²	515,335
1998/1999	275,182	227,947
1999/2000	178,347	263,763
2000/2001	205,243	204,507
2001/2002 ³	91,025	113,334
Total	1,442,285	1,324,886

The following figure takes the total number of approved subsidies to January 2002 and



provides a breakdown by subsidy instrument.⁴

The estimated urban housing shortage in 1994 was 1.5 million units (RSA, 1994). In the early nineties low cost housing supply was about 30,000 units per annum (ibid). The availability of formal land and housing for the poor has clearly seen a dramatic increase. 166,000 units have been completed on average each year since 1994, a 550% increase since the early nineties. Significant in-roads have been made into the 1994 backlog - 1.3 million houses were completed or under construction by January 2002. However, taking natural population increase into account, it is evident that there continues to be a gap between demand and supply. This conclusion is verified by South Africa's State of Human Settlements report which found that need continues to far outstrip production, although there are signs that the high levels of government investment are having an impact on reducing levels of informal settlement (CSIR, 1999). Expenditure on the housing vote is budgeted for R4.2 billion in

² An annual average of 173 122

³ Up to January 2002

⁴ There is a discrepancy of 57 399 houses, which we were unable to solve at the time of writing.

2002-2003 and R4.9 billion in 2004-2005. This represents 1.5% of the total budget in 2002-2003 and 2004-2005. Over the next three years expenditure will shift to medium density housing and the People's Housing Process programme, aimed at households who wish to enhance their subsidies by building or organising home-building for themselves (RSA, 2002).

The policy environment

In South Africa, the government is not directly involved in the provision of housing and infrastructure.⁵ To quote the policy:

“The State has insufficient resources to meet the needs of the homeless on its own and recognises that sustained, substantial investment in housing from sources outside of the national fiscus will be required. Housing policy will therefore need to recognise the fundamental pre-condition for attracting such investment, which is that housing must be provided within a normalised market and thus attract maximum private investment. The challenge is achieving a balance between State intervention and the effective functioning of the housing market with vigorous and open competition between suppliers of goods and services to end users” (RSA, 1994, p25).

The housing policy establishes government strategies in respect of housing as stabilising the housing environment, institutional support, mobilising savings and housing credit, providing subsidies and facilitating the speedy release of land (RSA, 1994). The last two strategies have most bearing on the regulatory framework focus of this study and are considered in greater detail in the sections that follow.

On the question of market share, figure 1 demonstrates that the project-linked subsidy is by far the most significant instrument used to date – nearly 84% of the total subsidies approved to January 2002. This instrument is driven by formal private sector developers, who choose land and design projects and products. This data demonstrates how, despite an extremely slow start to the subsidy scheme, the private sector did come on board, once certain amendments had been made to the structure of the subsidy. To date, the lion's share of the subsidised housing market has been channelled to formal private developers.

⁵ Although municipalities can, and do, take on the role of developer in some housing delivery projects.

THE REGULATORY FRAMEWORK

Introduction: the results of the desk-top review of the regulatory framework

Phase 1 of the study was a desk-top review of the regulatory framework. The phase 1 report is attached to this report as Annex 1. This section summarises the results of the review. The scope of the regulatory framework review was a record of planning regulations, standards and administrative procedures and an identification of processes of change. We adopted an historical approach in order to illustrate how history has woven a complex legal and administrative framework. The work of the National Housing Forum (in the early nineties) and of the national Development and Planning Commission (which deliberated between 1997 and 1999) provided an extensive body of literature on which to draw. We continued to develop the second component and a summary of these findings is contained in Annex 2.

The first outcome of the review phase was clarification of terminology. In particular, the review gave local definition to the three terms planning regulations, standards and administrative procedures. It also indicated the need to include planning laws into the review of the regulatory framework. "Planning regulations" are drafted in respect of town planning and land development laws and are primarily about the management of land use. "Administrative procedures" were given a fairly expansive definition to include the township establishment or land development procedures contained in the various planning laws, as well as the housing subsidy administration procedures, as these factors influence how the land delivery process unfolds. As such, administrative procedures are more aptly termed development procedures in this study. In respect of "standards", there are three components namely planning, engineering and building standards. As with the other cases, this study focuses on planning rather than building standards and regulations. We also found that there was a procedural logic in considering laws, regulations, development procedures and then planning, engineering and building standards in that order, as this reflects the order of things in practice.

The second set of review phase findings relates to the historical evolution of the regulatory framework. South Africa's history has woven a complex regulatory framework which has resulted in parallel systems, overlapping laws, burdensome administrative procedures and high development standards. An example of these early origins is the initiation and consolidation of racial legislation in both rural and urban areas during the colonial era (albeit it under the guise of public health and sanitation). Others are strong provincial control of planning due to the presence of the two British Colonies and two Afrikaner (Boer) Republics, which were accustomed to their independence, and colonial influence on the planning profession, especially in the formulation of town planning legislation. The Transvaal Town Planning and Townships Ordinance, no 15 of 1986, the model for other provinces, was basically an amended version of the English Town Planning Act of 1925.

The next set of review phase findings is about laws, regulations, procedures and standards (planning, engineering and building).

Legal framework

The planning system is premised on a series of legal measures which include provincial ordinances, national planning legislation for African areas, guide plans, apartheid era legal reform, interim reforms and longer term legal transformation. The provincial ordinances introduced town planning schemes and procedures for developing land and changing land uses. National planning legislation for African areas (notably the Black Communities Development Act, no.4 of 1984 (BCDA) contained very similar procedures to those contained in the ordinances, although approval from the national minister was a specific requirement.

Guide plans, essentially blue print plans, became the backbone of the land use planning system. Early, apartheid era legal reform permitted earlier settlement of people and shortened procedures through the Less Formal Township Establishment Act, no. 113 of 1991 (LEFTEA). The Development Facilitation Act, no. 67 of 1995 (DFA) was an interim legal reform measure which aimed to speed up procedures. Longer term transformation of the planning legal system was proposed in the Green Paper on Development and Planning (1999), the draft White Paper on Spatial Planning and Land Use Management (2001) and the draft Land Use Bill (2001).

Planning regulations

Historically in South Africa planning regulations for new projects on greenfield sites were applied through different mechanisms, depending on where an area was situated and who lived there. These are: town planning schemes in the ordinances; Annexure F of the BCDA (a simplified form of town planning scheme which allowed for zoning controls and standard conditions of title); and regulations in the LEFTEA. Planning regulations can also be gazetted in terms of the Prevention of Illegal Squatting Act. Currently the land use management mechanisms are the subject of policy development, to overcome the historical apartheid bias and to put in place a new and equitable system of land use management.

Administrative procedures

Development procedures are prescribed in the various township establishment or land development laws and the subsidy regulations. The township establishment laws are the provincial ordinances, various versions of Regulation R293⁶, the LEFTEA and the DFA. Choice of legislation rests with the applicant.

A greenfield project initiator or land development applicant (generally a developer whether public or private) will go through a series of preliminary procedures for township establishment. These include: make an application to the local authority (if it is an authorised local authority); submit a range of required documents (usually many duplicates which incurs costs); and pay 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 for informal settlement regularisation. 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. These development procedures can take as little as four to six months (from the date of submission) if everything is in order and if the application 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. The following table summarises this process.

⁶ Proclamation R293 of 1962 in terms of the Bantu Trust and Land act no. 18 of 1936 and the Bantu Administration Act no. 38 of 1927.

Table 4: Administrative procedures in the township establishment process (the Ordinance route)

Step	Party	6 to 18 months can take 4 to 6 months instances of over 2 years
Make application, submit required documents, pay application fee	Applicant (normally the developer)	
Circulate and advertise application, receive comments and / or objections	Municipal authority (often assisted by applicant)	
Hearing, approval or rejection with or without conditions	Decision making authority (in the Ordinance route a municipality's planning tribunal or the Provincial Townships Board for areas where a local authority is not authorised; a provincial tribunal or provincial administrator in the Development Facilitation Act and Less Formal Township Establishment Act routes respectively)	
Notify surveyor general and deeds registry	Applicant	
Prepare general plan	Surveyor general	
Open township register	Deeds registry	
Transfer of title deeds	Conveyancer	

In addition to the planning system (discussed above), the subsidy administration system is a key aspect of development procedures. At its inception, the subsidy 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 participate in housing delivery. 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 five progress payments to reduce the risk for private-sector developers. Provincial governments are able to regulate aspects of the subsidy themselves, including the maximum subsidy amount that can be paid out on each item. In Gauteng for example, this means that payment 3, for engineering services, cannot exceed R5,970.00 or that payment 5, for top structure, is set at a maximum of R8,250.00. In addition to cost prescriptions linked to progress payments, minimum product standards have also been set (for example, a minimum house size of 30m²). Prescribed progress payments, effective regulation of cost and minimum norms and standards – these all add up to an extremely rigid subsidy system.

Table 5: Gauteng provincial government prescribed maximum subsidy breakdown per item

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%

Source: Development Works, 2000

Note: variation refers to the increase permitted under certain conditions such as geo-technical constraints like dolomite, undermining or steep slope.

Standards

Planning, engineering and building standards have been variously set out in national guidelines - the Blue Book then the Green Book then the Red Book, which has recently been revised by the CSIR. These books, which take their titles from the colour of their respective ring binders, provide national guidelines for the provision of engineering services and amenities in residential township development. The latest edition of the Red Book aims to assist professionals in creating sustainable and vibrant human settlements, a shift from merely producing efficiently serviced townships. This approach is reflected in the new title of the book – Guidelines for Human Settlement Planning and Design. The intention of the new Red Book is to provide performance based guidelines for informed decision-making about local services and planning issues (CSIR, 2000). Standards have also been prescribed by provincial and local authorities and by housing policies, such as the early Independent Development Trust (IDT) developments and more recently the housing subsidy scheme.

Planning standards

Planning standards generally relate 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. Few municipalities have grappled with the issue of appropriate planning standards and have tended to focus on the engineering and building standards.

Servicing standards

In South Africa, most developments have the same servicing standards, but the levels of service vary. The concept of three levels of services, derived from World Bank Studies in the early nineties, is still widely used today. Basic levels include communal standpipes within walking distance, on-site sanitation (pit latrine), solid waste collection, gravel roads and high mast electric lighting for the area. 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. Full service levels included metered water connections to each house, conventional sewerage, waste collection, paved and kerbed roads with storm-water drainage and metered electricity connections to each house.

Table 6: Three levels of service

	Basic	Intermediate	Full
Water	Communal standpipes	Individual standpipes	Metered water connections to each house
Sewerage	pit latrine	Ventilated improved pit latrine	Public mains sewerage
Solid Waste	solid waste collection	Waste collection	waste collection
Electricity	high mast electric lighting	high mast electric lighting and possibly electricity to homes	Metered electricity connections to each house
Roads	gravel roads	paved bus routes	paved and kerbed roads with storm-water drainage

Through the Ordinances, municipalities were responsible for the off-site services ⁷ and the developer did the internal servicing. It is interesting to note that in the BCDA townships, which fell within the cash-strapped black local authority areas, developers had to provide the off-site 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 (i.e. black areas) were more expensive than equivalent developments in Ordinance areas (i.e. white areas) for this reason.

A minimum service level is outlined in the latest housing strategy and must be provided within the prescribed financial limit. It is a single, metered standpipe per plot; a ventilated improved pit latrine per plot; 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.

Building standards

Building standards are prescribed by the National Building Regulations (NBR). 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 Agreement certification, which can be a lengthy and costly process. It is banks and building societies who finance houses through bonds and loans, who require the high building standards to protect their risk. In order to protect housing consumers, the National Home Builders Registration Council (NHBR) 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”. 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

⁷ external or bulk services

minimum size norm of 30m² per house applies along with prescribed engineering norms and specifications.

Objectives

Phase 2 of the South African research had three aims. The first was to assess actual or imputed social, economic and environmental costs of key variables in planning regulations, standards and administrative procedures in formal and informal settlements. The second aim was to assess local priorities and preferences for changes in the regulatory guidelines which have, or could, reduce costs of access or entry costs for low-income groups to new housing in officially sanctioned developments, enabling them to retain a larger proportion of existing incomes. The terms of reference were clear that our focus was to be the costs of entry into legal shelter. This focus led to an emphasis on financial costs, as many of the potential social and environmental costs will only be felt later, once entry has been secured. However, having made this assumption we flagged the other non-financial costs in interviews with residents who are likely to be affected most by them.

The subsidy scheme is clearly a key contextual element in the South African case. The subsidy was itself a key intervention to facilitate the entry of poor people into formal housing. The research in the South African case thus needed to test the extent to which regulations, procedures and standards influence the efficient and effective use of the subsidy. Can altered planning regulations, standards and procedures use up less of the subsidy or use it more efficiently? Are there ways in which the subsidy administrative procedures and regulations could be amended to enhance its application?

In accordance with these aims and our interpretation of them, we began by identifying which laws and regulations were applicable in the settlement case studies. We set out to outline, cost and qualitatively assess the steps in the land development procedure in the two case study settlements. To conduct the assessment of procedures, we phrased a series of questions about how long the steps took, what and where bottlenecks occurred, who is affected by delay in the procedure and how, how costs are passed on to residents or subsidy beneficiaries. We also asked where most savings could be made and what should change to overcome their bottlenecks and their impact.

On the question of planning standards we set out to identify which apply in the two settlements (and both formally and informally in the informal development case). We then investigated whether or not the applicable standards are conformed with and why or why not. We identified what people think regulates these norms and investigated what impact they have on beneficiary affordability. We also asked how appropriate they are and how they should and could change.

We phrased a similar set of questions about the engineering standards. What service levels apply? Are they being conformed with? Why/why not? What are the services regulated by? What impact do these standards have on affordability? Are they appropriate? How could/should they change?

The third aim was to document a methodology for assessing the costs of specific standards, regulations and procedures and options for reducing entry costs to officially sanctioned developments. In this respect we recorded our methodology as we developed, undertook and amended it, especially the tools (protocols, questionnaires, briefing documents etc). We also requested the researchers to reflect on the methodology after each role-player interview.

Research methods

The first phase of the South African project was the review of the regulatory framework. Some phase one method questions have already introduced in the introduction section. At this point we would like to emphasise the importance of the review phase in designing the research approach and in conceptually preparing the project. For example, it was in this

phase that clarity on the regulatory framework categories was developed and the variables within each were first drafted. At this point the research questions and interview protocols were developed. The manner in which the housing subsidy system in South Africa would be conceptually incorporated into the hypothesis was also clarified, as were the recent and proposed changes to the regulatory framework. This phase also established the statutory dimensions of the regulatory framework, as opposed to the practical application of the regulatory framework.⁸

The second phase of the South African project was the primary research. In this phase we undertook two kinds of primary research namely role-player research and settlement research or field work. The role player research took place at two different scales which corresponded with two steps. It began with 5 interviews with players in the land and housing delivery field who were selected as preliminary interviewees who would help position the research, add value to the research questions and provide insightful views on case study selection. The importance of positioning the research deserves particular emphasis, as it enables to agree on mutual benefits – a pre-requisite for gaining access and getting people to make time available as respondents. A briefing document, Annex 3, helped pave the way for the interviews.

Then we sought to assess the nature of the formal and informal framework of planning regulations, standards and administrative procedures by researching two settlements of similar location and period of development serving low-income households. We selected Boitumelo and Kanana as respective examples of the formal, subsidy approach and the informal, people led approach respectively. At the time of writing Kanana was undergoing formalisation. Kanana and Boitumelo are adjacent to each other. Boitumelo was developed by a formal private sector developer using the housing subsidy. It is 223.62 hectares in extent and consists of 3,959 plots. It is adjacent to Sebokeng township, 16 km north of Vanderbijlpark and Vereniging and 45 km south of the Johannesburg CBD.

Kanana is an informal greenfield land development of 2,500 households. It originated in a land invasion led by a residents organisation representing the back-yard shack dwellers in Sebokeng between 16-30 April 1994, over the period of South Africa's democratic elections. Some of the residents at Kanana are members of the Homeless People's Federation (the Federation) and participants in savings schemes. Kanana is currently undergoing formalisation and consists of three extensions to the neighbouring township of Sebokeng. Kanana is situated 16 km north of Vereniging and Vanderbijlpark and 45 km south of the Johannesburg CBD. A locality plan and the successive Kanana layout plans are on the next pages.

⁸ The importance of the distinction between the statutory system and its application is that the formal development project case and the statutory system cannot be conflated, as there is room for flexibility and innovation in practice. The need to identify the nature of and understand the pre-conditions for the room for manoeuvre in practice was one of the reasons that the Boitumelo case study was selected.