



## human settlements

Department:  
Human Settlements  
REPUBLIC OF SOUTH AFRICA

### WORKSHOP: PORTFOLIO COMMITTEE FOR HUMAN SETTLEMENTS

### HOW TO MANAGE URBAN SPRAWL WHILE GIVING EFFECT TO THE DELIVERY OF HUMAN SETTLEMENTS

#### Discussion Paper

Draft 1

2 & 3 December 2009

#### 1. BACKGROUND

South Africa, like many other developing countries, is today facing a number of problems related to rapid urbanization, resulting from both rural and urban migration and internal growth of cities and towns, and rapid growth of a large informal housing sector. Moreover, South Africa is characterized by a dysfunctional space economy with highly uneven levels of urban densities, but overall, considered very low, and tied to relatively inadequate public transport infrastructure, contributing to unsustainable settlement sprawl.

Past planning measures preferring low-density, single story detached housing options, and that promoted the rigid separation of land uses compounded by a political agenda that sought the segregation of the population in terms of race and income level have been detrimental in seeking solutions to the broader structural trends defined above. Rather, the planning measures have contributed to the creation of sprawling, fragmented settlements, reflecting islands of differing uses, that hinder access to employment as well as social and retail amenities, and incur increased travelling costs for the poor - those who are least able to pay for transportation. The measures have also proved ineffective in integrating different race and income groups and in accommodating differing perceptions and traditions concerning the holding and use of land. Due to the failure of existing planning mechanisms there is an increased movement to seek new interventions by which to restructure settlements.

Numerous policy documents, both within and outside of government, have identified the need for human settlement development and particularly urban development to occur at residential densities higher than the current norm. The predominant reasons cited are more efficient utilization of bulk infrastructure and service provision and better access to the benefits of urban agglomeration.

Planning, and particularly, planning frameworks have [or ought to have] a significant bearing on human settlement development planning, land use, space standards and infrastructure provision. It is one of few instruments available to government to influence land and housing markets. As such, planning praxis and -frameworks have significant implications for the physical, economic and social environment of the poor and invariably impact directly on their livelihoods.

Departement van Behuising/Lefapha la go Tlamela ka Matlo/Lefapha la Matlo/umNyango wezeZindlu/Muhasho wa zwa Dzinndu  
Kgoro ya Mengwako/Ndzawulo ya ta Tiyindlu/LITiko le Tetindlu/isebe lezeZindlu/UmNyango Wokuhinzekeiwa ngeziIndu

It is further recognized that the task of reappraising planning processes, while valuable in itself, has also been given added urgency by the major impacts of rapid urbanization and new concerns for sustainable human settlement development such as social exclusions. In dealing with this diverse range of issues, planning needs to take cognizance of, among others:

- a. The promotion of understanding among policy-makers and practitioners of the adverse consequences of unplanned settlements in environmentally vulnerable areas, and of appropriate national and local land-use and settlement policies required for that purpose;
- b. The development and/or enhancement of fiscal incentives and land-use control measures; and
- c. The development and support of the implementation of improved land-management practices which deal comprehensively with potentially competing land requirements for agriculture, industry, commerce, transport, urban development, open public space, preserves and other vital needs.

## 2. PURPOSE OF PAPER

At the outset, it should be noted that, notwithstanding the specific brief provided, this discussion paper has a few aims, largely with a view to eliciting debate in respect of the current conjuncture around approaches to planning and development.

The paper is divided into three sections.

- a. The first gives some background to planning regulations and policy, and specifically how the aspect of sprawl is considered within the South African planning law and practice. This section also looks at the responsibilities incumbent of the various spheres of government in respect of [sprawl &] land-use management.
- b. The second section attempts to isolate aspects that give effect to the disjuncture between policy and practice, again, looking at legislation, institutional arrangements, and the use of fiscal tools in delivery of human settlements.
- c. Following from the above, the third section attempts to provide some pointers around interventions that currently being undertaken and that ought to be undertaken, in giving effect to 'contained' urban settlements.

## 3. PLANNING LEGISLATION & HUMAN SETTLEMENT DELIVERY

Planning Frameworks are essentially intended to ensure systematic growth of settlements, and can therefore be regarded as tools acting in the interest of broader society. Without restating the implications and consequences of rapid urban growth, these frameworks have both positive and negative consequences. From a positive aspect, they serve to facilitate efficient land management, attract and guide investment, protect the environment, and assist the poor to accessing the benefits of urban living such as housing, public services and –amenities. Negative aspects to regulation include being over prescriptive and prohibitive, excluding those who are resource-poor, etc.

At the outset an important aspect related to planning institutional arrangements - and that will be stated repeated during the course of this paper - should be noted, that is, the number of public (& private) institutions that assume responsibility for various facets within the planning environment in South Africa:

- a) Ministry of Planning, located within The Presidency;
- b) Department of Co-operative Governance and Traditional Affairs;
- c) Department of Rural Development and Land Reform; and
- d) Department of Human Settlements.

A number of issues pertain to the efficiency of our development control and town planning systems at a local level, namely policy and legislation, and the capacity of municipalities. The remainder of this section attempts to provide a brief synopsis of relevant planning legislation and its impact on human settlement development within the context of human settlement provision.

### 3.1 Planning Legislation

#### 3.1.1 National Legislation

##### a. Development Facilitation Act, Act 67 of 1995

In direct response to the highly fragmented and inequitable legal framework for land development and spatial planning inherited from the apartheid era, the Development Facilitation Act (DFA) was enacted in 1995. The DFA was envisaged as an interim measure that would deal with the immediate crisis of legal uncertainty in some parts of the country as well as provide a speedier means of approving 'RDP' projects. The DFA prescribes a comprehensive set of principles in terms of which all planning decisions have to be taken, regardless of the specific law under which a particular decision is made.

##### b. Less Formal Township Establishment Act, Act 113 of 1991

The act was assigned to all provinces and it provides for shortened procedures for less formal settlement and less formal township establishment and the settlement of indigenous tribes. It is geared towards speedy development of land.

##### c. Municipal Systems Act, Act 32 of 2000

The Municipal Systems Act has been developed to guide municipalities on the day-to-day running of the municipality. In terms of this Act, a municipality must undertake developmentally oriented planning in order to achieve the objectives of local government. As a consequence, Integrated Development Plans (IDPs) are important in guiding infrastructure investment, service delivery and economic development at a local level. Since development has long-term consequences on the physical landscape and on community life, it is important that planning be aimed at building sustainable human settlements and viable local economies.

##### d. Land Use Management Bill

From a planning aspect, of all the draft laws currently under development, the most significant is the Land Use Management Bill. This Bill is important not simply because of what impact it might have in practice, but also because it represents an opportunity to implement long-needed fundamental change to the country's planning system. In brief, the objectives of the Bill are manifold, and include, among others:

- a) To rationalize the multiplicity of planning laws, institutions and process;
- b) To improve the speed, efficiency and transparency in processing land use applications;
- c) To restructure current South African settlement patterns; and
- d) To provide tools and norms for land use "schemes" (plans).

#### 3.1.2 Provincial Planning Instruments: Ordinance and related legislation

Land use management in a number of provinces is regulated by [outdated] Town Planning Ordinances. Each ordinance has specific conditions and provisions concerning the creation, amendment and updating of town planning schemes. After preparation, schemes are submitted to provincial bodies for assessment and then approved to become legislation. Without stating the obvious, the potential conflicts with the already mentioned pieces of legislation are apparent.



### 3.1.3 Municipal By-laws

The Constitution provides that a municipality has the right to govern local government affairs of its community on its own initiative, subject to the national and provincial legislation. Municipalities are also required to be developmental, to structure and manage their administration and budgeting and planning processes to give priority to the basic needs of the community and to promote social and economic development of the community. A Municipality may adopt and administer by-laws for the effective administration of matters which it has a right to administer. However, unlike Provincial Ordinances, a municipal by-law that conflicts with national or provincial legislation would be considered invalid.

## 3.2 [Forward] Planning Frameworks

*"The development of sustainable human settlements must be undertaken within a broader spatial restructuring framework, incorporating the principles of the National Spatial Development Perspective and the National Urban Strategy."<sup>1</sup>*

### 3.2.1 The National Spatial Development Perspective (NSDP)

National spatial guidelines are increasingly recognised as tools to: co-ordinate and align government programme of action; provide rigorous basis for interpreting strategic direction; and maximise overall social and economic impact of government development investment. The NSDP is South Africa's initial set of spatial guidelines that establishes an overarching mechanism which enables a shared understanding of the national space economy, and provides a principle-based approach to co-ordinate and guide policy implementation across government.

Given the overall objective of the Developmental State to grow the economy, create employment and promote social cohesion, three fundamental planning questions are to be considered<sup>2</sup>:

- a. Where should (limited) public sector investment and development initiatives be directed to ensure maximum socio-economic impact?
- b. What kinds of spatial forms and arrangements are more conducive to the achievement of our objectives of democratic nation building and social and economic inclusion?
- c. How can government as a whole capitalize on complementarities and facilitate consistent decision-making?

In attempting to answer the above, the NSDP presents a set of normative principles in order to: firstly, contribute to the broader growth and development policy objectives of government; secondly, surface the spatial dimensions of social exclusion and inequality; and thirdly, lift the burden of unequal and inefficient spatial arrangements placed on the state. There are a number of critical assertions that the NSDP does make; these including:

- a. Location is critical for the poor to exploit opportunities for growth;
- b. The poor, concentrated around centres of economic opportunities have greater life chances and to gain from economic growth;
- c. Areas with demonstrated economic potential are most favourable to deal with poverty;
- d. The poor are making rational choices about relocating to areas of opportunity, viz migration to metros; and

<sup>1</sup> Dept of Housing (2004): Comprehensive Plan for Sustainable Human Settlements.

<sup>2</sup> The Presidency (2003): National Spatial Development Perspective. Pretoria.

Departement van Behuising\*Lefapha la go Tlamela ka Matlo\*Lefapha la Matlo\*umnyango wezeZindlu\*Muhasho wa zwa Dzinndu  
\*Kgoro ya Mengwako\*Ndzawulo ya ta Tiyindlu\*LITiko le Tetindlu\*Isebe lezeZindlu\*UmNyango WokuHinzekelwa ngezindlu

- e. Government needs to ensure that poor are able to benefit fully from growth and employment in these areas.

### 3.2.2 The Provincial Growth & Development Strategy (PGDS) and Integrated Development Plans (IDP)

Further to the previous section, it follows that there be a shared approach to planning and alignment between the Provincial Growth and Development Strategies (PGDSs), the municipal Integrated Development Plans (IDPs) and the National Spatial Development Perspective (NSDP). This approach primarily focuses on the role of the NSDP to facilitate alignment in intergovernmental prioritisation and resource allocation and the processes by which IDPs, PGDSs and the NSDP should be aligned. These planning instruments and the Medium Term Strategic Framework (MTSF) [ought to] form the core of the South African intergovernmental planning system. The spatial perspective thus becomes the centre of alignment and coordination, forming the platform for dialogue on the development potential of the space economy and serving as a frame of reference for guiding government actions. Put differently, the PGDS and IDP should, in part, become the provincial and local expression of the NSDP.

### 3.2.3 [Draft] Urban Strategy<sup>3</sup>

Further impetus for spatial restructuring is provided in the Draft "Urban Strategy – 2004" that aims to provide a broad framework for high level discussions on the issue of urban development, building onto the "Urban Strategy" (1995) and the "Urban Framework" (1997). Amongst other objectives the draft "Urban Strategy – 2004" attempts to:

- a. Promote debate among key stakeholders and initiate sustainable partnerships for urban regeneration, restructuring and growth;
- b. Initiate a process of developing a shared vision for urban regeneration, restructuring and growth in South Africa;
- c. Initiate a greater alignment of Government policies and programmes to strengthen inter-governmental relations and promote sustainable urban economic growth and development.
- d. Initiate the development of an appropriate funding framework that mobilises resources for current and future development of our urban areas.

In terms of key areas of intervention proposed by the "Urban Strategy – 2004", the then Department of Provincial and Local Government identified the Department of Housing as a lead **partner** in promoting and achieving sustainable human settlements through urban renewal and the densification of urban areas.

## 4. PROBLEM STATEMENT

So, who then is responsible for [human settlement planning &] managing sprawl? The previous section begins to adduct that this aspect and responsibility is multi-faceted, both between various National Sector Departments and between spheres of Government. This section of the paper takes certain aspects thereof further by looking at:

- a. The current disjuncture in planning legislation;
- b. The concurrent planning and housing delivery implementation functions across; and finally
- c. The implementation/use of the [conditional] Integrated Housing & Human Settlement Development Grant, as referred to as the Housing Grant.

<sup>3</sup> Dept of Provincial & Local Government (2007). Urban Framework. Pretoria.

Departement van Behuising/Lefapha la go Tlamela ka Matlo/Lefapha la Matlo/Umnyango wezaZindlu/Muhasho wa zwa Dzinndu  
\*Kgoro ya Mengwako/Ndzawulo ya la Tiyindlu/LITiko le Teindlu/Isabe lazeZindlu/UmNyango WokuHinzekelwa ngezindlu

#### 4.1 Disjuncture in Planning Legislation

The competency to address legislative reform related to development control and town planning systems rests with the Department of Rural Development and Land Reform, while the Department of Co-operative Governance and Traditional Affairs is primarily responsible to ensure effective functioning of Municipalities and implementation of related legislation. Although the Department of Human Settlements does not have control over the legislative mandate of other departments, it should exercise some influence on processes in this regard.

The relationship between the proposed new national law and planning/land development legislation that is administered by the provinces, such as the old RSA Ordinances remains unclear. Further, none of the said legislation is to be repealed under the [draft] Land Use Management Bill (LUMB), as it cannot be repealed by national legislation, yet it contains the entire regulatory framework inherited from the previous apartheid dispensation.

The LUMB asserts that a particular set of criteria in the Constitution will be used to determine in which cases the LUMB will prevail over these provincially-administered laws and in which cases it will not; and, further, declares that where the LUMB conflicts with other national legislation that 'concerns land use management', the LUMB will prevail. It, therefore, becomes difficult to see how the LUMB will be implemented as it will be plagued with uncertainty as to how its provisions relate to those both of provincially administered pre-1994 legislation as well as other national legislation. Contrary to its well-meaning intentions, therefore, it will make it more difficult to understand and implement land use management and land development legislation in South Africa.

#### 4.2 Concurrent planning & housing delivery implementation functions

Housing is a concurrent responsibility of National and Provincial Government and the broad legislative framework for the planning and delivery of housing is set out in the Constitution, 1996. And, while the Constitution does not assign any direct responsibilities for housing to local government, it does provide for functions to be allocated to local government under certain conditions. The above notwithstanding, communities are of the opinion that municipalities are responsible for housing delivery.

The table below attempts to provide a breakdown of the responsibilities that the various spheres of government have in respect of housing delivery<sup>4</sup>. In summary, the primary function of the National Department is to "establish and facilitate a sustainable housing development process", after consultation with the provinces and local government.

<b>National Government</b>	<ul style="list-style-type: none"> <li>• Policy formulation</li> <li>• Managing housing-related legislation and regulation</li> <li>• Funding frameworks and financing</li> <li>• Co-ordination, integration and alignment of implementation</li> <li>• Communication</li> <li>• Managing housing agencies</li> <li>• Engaging with all housing stakeholders and role players</li> <li>• Monitoring and evaluation.</li> </ul> <p>Other responsibilities include providing support for provincial and local government in the execution of their respective powers and functions.</p>
<b>Provincial Government</b>	<ul style="list-style-type: none"> <li>• Determining provincial policy in respect of housing development</li> <li>• Strengthening the capacity of local governments to effectively</li> </ul>

<sup>4</sup> DPLG (2008). IGR working together for development: An Intergovernmental Perspective.

Departament van Behuising\*Lefapha la go Tlamela ka Matlo\*Lefapha la Matlo\*uMnyango wezeZindlu\*Muhesho wa zwa Dzinndu  
 \*Kgoro ya Mengwako\*Ndzawulo ya ta Tiyindlu\*LITiko le Tetindlu\*Isebe lezeZindlu\*UmiNyango WokuHinzekelwa ngezindlu



























### 5.3 Human Settlement Development Grants

- a. The plethora of funding sources for making human settlement delivery happen needs to be rationalised and aligned in order that local government is better able to tap into these funding sources.
- b. Specifically, with regard to the Housing Grant, the conditions under which it is allocated and disbursed needs to be tighten considerably; these relate not only to sprawl and containment, but also to densification and in-fill development.

## 6. CONCLUSION

It is evident that aspects of planning law and frameworks, fiscal planning, and institutional alignment in South Africa are not functional optimally. More specifically, planning is not doing enough to manage and direct spatial growth in South Africa. While it goes beyond the scope of this discussion paper, the following broad conclusions can be drawn:

- a. Urban Restructuring cannot occur through isolated interventions. Urban restructuring requires a comprehensive and coordinated effort to engage with the perceived causes of poor urban structure. Not only will this require the coordination of interventions at the project level but also between the spheres of government and between the responsible sector departments. Government's policy underlying the perceptions of 'good city form' needs to be made far more explicit, as the policy statements related to sprawl, densification and compaction are often inconsistent with the manner in which they are manifested spatially.
- b. There is a plethora of planning and development related legislation which assigns responsibilities to different sector departments and spheres of government. There are also numerous Government programmes and initiatives ongoing to ensure that government facilitate a better life for all the people who live in South Africa. Developmentally-orientated initiatives and creation of sustainable human settlements will always be multi-sectoral and require collaboration between across spheres of government. It is therefore critical to ensure that Government Departments and institutions are adequately resourced to perform their functions and duties and make use available planning instruments appropriately and efficiently, rather than considering the introduction of another department to deal with planning *per se*.
- c. Given the constant competing demands and interests placed on land and particularly how it is to be used, land management has to be informed by both clear planning policies and guidelines, ie. forward and regulatory planning instruments. Further, for it to be in any way effective, land management requires the crafting and management of effective and efficient approval implementation systems. The importance, therefore, between strategic level development and spatial planning (NSDP, PGDSs & IDPs), and land use management cannot be over-emphasized. It therefore begins to suggest that South Africa requires more than simply the Land Use Management Bill, but rather a broader piece of legislation that addresses aspects of forward and regulatory planning, the roles of each sphere of Government, as well as guiding the responsibilities of various sector departments across the various spheres of Government.
- d. The principle of integrated development planning is fundamental for the development and creation sustainable human settlements. It should be supported by a framework, which indicates the demand, and provides housing opportunities for a municipality's jurisdiction. Therefore, this requires a close linkage with the local municipality operating in the area to ensure access to information and assistance in the identification of land and access to social amenities.

D:\Documents and Settings\Administrator.ANTON-BF2D0F945\Desktop\HUMAN SETTLEMENTS PLANNING UNIT-2\INCIDENTAL TASKS\Sub to PortComm on Urban Sprawl 091129.doc

Departement van Behuising\*Lefapha la go Tlamela ka Matlo\*Lefapha la Matlo\*umnyango wezeZindlu\*Muhesho wa zwa Dzirindlu  
\*Kgoro ya Mengwako\*Ndzawulo ya ta Tiyindlu\*LiTiko le Tetindlu\*Isebe lezeZindlu\*UmNyango WokuHirzekelwa ngezIndlu

### Human Settlement Development Grants

- a. The purpose of funding is to assist in the development of housing and related services in areas where the Government is not able to provide them.
- b. Specifically, the funding is to assist in the development of housing and related services in areas where the Government is not able to provide them.

### CONCLUSION

It is evident that aspects of planning and development are not always considered in the same way as they should be. This is particularly true in the case of housing and related services in areas where the Government is not able to provide them.

Other factors that may affect the development of housing and related services in areas where the Government is not able to provide them are the availability of land and the availability of services. These factors are not always considered in the same way as they should be.

There is a need for a more integrated approach to the development of housing and related services in areas where the Government is not able to provide them. This approach should take into account the availability of land and the availability of services.

Given the current state of affairs, it is clear that a more integrated approach to the development of housing and related services in areas where the Government is not able to provide them is needed. This approach should take into account the availability of land and the availability of services.

The principle of integrated development planning is a fundamental one. It is based on the idea that housing and related services should be developed in a way that takes into account the availability of land and the availability of services.

The principle of integrated development planning is a fundamental one. It is based on the idea that housing and related services should be developed in a way that takes into account the availability of land and the availability of services.