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# Making land available for affordable housing: challenges for local government

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# MAKING LAND AVAILABLE FOR AFFORDABLE HOUSING: CHALLENGES FOR LOCAL GOVERNMENT.

**Malimakatso Louisa Thellane**

**A research report submitted to the Faculty of Engineering and Built Environment, University of the Witwatersrand, in partial fulfillment of the requirement for the degree of Master of Science in Town and Regional Planning.**

**Johannesburg, 19 December 2008**

**Declaration:**

I declare that this research report is my own work, done fully by me with some of information obtained through various institutions I work for and with and assistance only limited to provision of information from interviews. This research is being submitted for the Degree of Master of Science in Town and Regional Planning in the field of Housing in the University of the Witwatersrand, Johannesburg. This work has not been submitted before for any degree or examination in any other university.

_____

Malimakatso Louisa Thellane

Date: 19 December 2008

**Dedication:**
This work is dedicated to my family and friends for their inspiration, encouragement and time especially to my mom Majoalane, who has set the base for my life and given me foundation to be persistent in whatever I am doing, and to my daughter Thatohatsi who had to take on compromises as a baby while I worked through the nights to finish the report, at times she had to sit in interviews with me and supervision meetings.

**Acknowledgment**
My sincere gratitude and thanks to Professor Marie Huchzermeyer of the Department of Town and Regional Planning, University of Witwatersrand for her assistance and guidance as well as encouragement in compiling and completing this report throughout the duration of this research. My gratitude also goes to Professor Roger Boaden, who opened my eyes into planning issues while I was coming from a different discipline in preparation for me taking on my course work for this degree.

Special thanks for the support and advice, and information given both informally, formally and through interviews by the following organizations: Ethekweni Municipality-Land Assembly and Real Estate Units; City of Joburg-Projects Implementation Unit; City of Cape Town-Housing Project Support Unit; Joburg Property Company; The Department of Provincial and Local Government and Traditional Affairs in Kwa Zulu Natal, The National Department of Land Affairs , The National Department of Housing, Basil Read, SOHCO, JHC, JOSHCO, Nedbank Affordable Housing Scheme; NHFC.

**Abstract**

This research report addresses the challenges facing local government in making land available for affordable housing. It seeks to establish what challenges the three leading South African metropolitan municipalities of Johannesburg, Cape Town and eThekwini face in their attempts at making land available for affordable housing.

Affordable housing is defined in this research as the housing market segment for households earning between R3500 and R10,000 per month, which is usually referred to as ôthe gap marketô and which represents housing opportunities in the price range between R100,000 and R400,000. Many studies have argued that a combination of historical and policy options that have evolved in the post apartheid South Africa has caused this sector of the housing market to be conspicuously under-catered for by the private housing sector and as a result of Governmentôs focus on low income ôRDPô housing.

This research, specifically focuses on obstacles to land availability.

The research is exploratory in intent and qualitative in its approach. It relies on desktop research, supplemented by in-depth interviews of 16 strategically placed government and private sector representatives of the housing sector.

The research reviews literature which touches on the concepts and debates relating to the complexity of accessing urban land for housing, from both international and local perspectives. Access to land for housing is a complex web of interacting factors, with intense debates surrounding the need for regulation or not. Affordable housing in a competitive urban environment fails due to its weak financial basis.

The research arrives at the conclusion that the land question is particularly complex in South Africa arising from its clear but cumbersome policy and legislative framework. From a political and institutional perspective the research points out that there is the need to understand the political processes that impact on land and housing. Another finding is that there is obstructive use of legislation and, together with a reluctance to implement policy, significantly contribute to curtailing access to land for affordable housing

The research concludes that the impediments result from a mixture of factors that include (i) the availability of land, (ii) the political, policy and legislative processes involved in its acquisition, (iii) the nominal and mandated roles of the metropolitan authorities and the private sector, (iv) the interplay between the regulated and non-regulated markets, (v) local human resource capabilities and administrative matters across the spheres of government, in particular within the municipalities for dealing with cumbersome administrative steps and processes which require many people to deal with land transactions, and (vi) the obstructive use of legislation.

Finally the observation is made that there is the need for a concerted effort to understand, confront and remedy these complex interacting factors to enable affordable housing to find its place in the housing spectrum.

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**List of Acronyms**

| | |
|---|---|
| BNG | Breaking New Ground Policy |
| CoJ | City of Joburg Metropolitan Municipality |
| DFA | Development Facilitation Act no 67 of 1995 |
| DLA | Department of Land Affairs |
| DOH | Department of Housing |
| DPLG | Department of Planning Local Government |
| EIA | Environment Impact Assessment |
| GLD | Guided Land Development Programme |
| HDA | Housing Development Agency |
| JHC | Johannesburg Housing Company |
| JOSHCO | Johannesburg Social Housing Company |
| JPC | Joburg Property Company |
| KZN | Kwa Zulu Natal |
| LLFTEA | Less Formal Township Establishment Act of 1991 |
| MFMA | Municipal Finance Management Act of 2003 |
| NHFC | National Housing Finance Corperation |
| NPM | New Public Management |
| NSDP | National Spatial Development Programme |
| NUMP | New Urban Management Programme |
| PFMA | Public Finance Management Act of 1999 |
| RDP | Reconstruction and Development Programme |
| RSA | Republic of South Africa |
| SACN | South African City etwork |
| SAIRR | South African Institute of Race Relations |
| SDF | Spatial Development Framework |
| SOHCO | Social Housing Company |
| ULMA | Urban Land Market Assessment |
| USN | Urban Sector Network |

## Chapter One: Introduction, the problem and research context

### 1.1 Introduction

This chapter introduces the purpose of the research and why it is essential for this research to be explored. It starts by defining affordable housing and states why it is a problem to service that market. The affordable housing market is defined with a view to understanding where is itôs origin, what it represents and how land issues influence delivery for that market segment. The three main problems discussed are: The Breaking New Ground (BNG) policy of Department of Housingôs performance in delivery for affordable housing; government and private sector supply of land to meet the demand of affordable housing; and municipal inability to making land available due to many complexities. The research investigates the land availability challenges facing South African local government in delivering affordable housing. The research addresses complexities relating to current systems and mechanisms, regulatory and institutional issues, and further explores how they contribute to the problem of housing in the three major South African urban centres, namely, Cape Town, Johannesburg, and Durban.

### 1.2 Putting Affordable Housing into Context - Definition

Housing ôaffordabilityô is concerned with

> ñsecuring some given standard of housing at a price or rent which does not impose, in the eyes of some third party (usually government) an unreasonable burden on household incomesé é affordability is assessed by the ratio of chosen definition of housing costs to a selected measure of household income in some given periodò (Maclennan and Williams, 1990:9-10).

In Britain, the United States and Canada, a commonly accepted guideline for housing affordability is a housing cost that does not exceed 30% of a householdôs gross income ((Maclennan and Williams, 1990).

The same definition applies within the South African context. For example, the Department of Housing emphasizes that there should be no households which spend more than 30% of their household income on housing (DOH, 2004). A household has to demonstrate that they will be able to afford monthly installments over a certain period, and usually the proportion of the household income required to service the loan is 30% Therefore, affordable housing is

defined in this research as òlow income housing programmes with emphasis on the housing market segment for households earning between R3,500 and R10,000 per month, which is usually referred to as ćthe gap marketò (Rust, 2006) and represents housing opportunities in the price range from R100,000 up to a maximum of R400,000. A recent study by Finmark Trust (cited in Rust, 2004) demonstrates that real gaps in the housing ladder fall within this market, as it has not previously been given attention by government (ABSA, 2007). According to the new subsidy policy (DOH 2004), this housing sector (or the `lower middle classô) is eligible for a deposit subsidy when accessing loan finance for housing.

The shortage in housing in this market segment in South Africa was considered to be approximately 650 000 units, and growing at the rate of 132 000 units per annum, with no delivery of new units, particularly for ownership (Rust, 2006). From Figure 1 below, this research describes the gap market as being households with incomes between R3,500 and R10,000. It demonstrates that housing affordability is limited- a family whose income is R7,500, can only afford monthly re-payments of R1,875. When that repayment is compared with the general housing market, there is no supply, or supply is limited. The same is true for households with incomes of approximately R 3500. .

**Figure 1: Gap housing, affordability and supply**




Source: Adapted from Rust (2006)

### 1.3 The Problem and its Context

A survey by the South African Institute for Race Relations (SAIRR, 2006/2007), demonstrates that there is generally a shortage of housing to meet the current backlog and that the shortage affects the ógap marketô, as there are households which are too rich to qualify for a government subsidy, yet too poor for a conventional housing bond. The banking sector on the other hand, considers that houses are not built at a rate that would meet demand which, , is due to delays by local authorities in providing and proclaiming suitable land, and installing infrastructure, and establishing services *Business Day* (10 July 2006; 20 September 2006).

The shortage of the development of affordable opportunities is noted in this research with concern. This gap in the market is increasing, as the focus of government has been to deliver houses to people currently residing in informal settlements through fully subsidized low cost housing. The private sector concentrates on the higher end of the market. The scarcity and servicing costs of suitable land also contributes significantly to the situation. The effect of this shortage is that a considerable number of families, within the óaffordable marketô segment, find it impossible to procure and own a house, or upgrade from a rental unit to home ownership. This effectively forces many within this income range to remain in rental or subsidized housing units, despite the fact that they can afford and are often keen to upgrade and purchase a home within the affordable market segment (Rust, 2004).

The point of departure of this research is that one of the underlying problems of the housing market is the availability of land to facilitate provision of affordable housing. The problem areas derived from the above observations are summarized below:

1. The Breaking New Ground (BNG) policy (DOH, 2004) has not demonstrated success in terms of changing the status quo in housing delivery in South Africa. BNG has not accelerated housing provision at the rate expected in order to meet the housing backlogs and addressing issues of sustainable human settlements. In the annual report of the DOH, a review of BNG , makes it clear that at this early stage, the policy has not helped in accelerating delivery (NDOH, 2006). For example, the presentation by Chief Director of Department of Housing, Chauke, on the challenges of delivery of the BNG policy indicate the following challenges:

    ñé .slow process of the release of land ï which relates to the identification, acquisition, assembly and release of state-owned and private land in terms of revised

procurement framework has proved to be a slow and complex process; and gaps between the introduction of new policy measures, legislation, guidelines and procedures and their application including a lack of institutional coherence around key aspects such as the introduction of beneficiary contributionsò (DoH, 2007).

2. The gap in the supply, in line with the demand for lower middle income housing, is increasing without the initiatives to address the growing numbers. Landsberg (2005) states that the repeal of the Group Areas Act has increased demand in well located suburbs. However, investment in the middle to lower end property market has declined. This then makes it impossible for the demand to be met. The City of Joburg SDF (CoJ, 2008:38) states that;

   ólow and middle-income housing delivery (credit-linked subsidy and entry-level mortgage housing) has almost disappeared over the four years, decreasing from 5,081 units (63% of total supply) in 2000 to 1,434 (19% of total supply) in 2003. This supports anecdotal evidence that many private sector developers have exited the market in view of its limited profitability-arising both from the limited value of the capital subsidy and general affordability issues (notably the difficult of buyers to access mortgage finance). An additional factor is the lack of available, affordable land within the Cityôs boundaries for larger scale subsidized housing developmentô

   The study by Finmark (Rust, 2006), see also figure 2 below, provides an analysis and indication of factors which contribute to the undersupply of affordable housing.

**Figure 3: An analysis of Affordable housing Supply**




Source: Rust (2006)

3. Municipalities are reluctant to dispose of land for low income housing due to:
    - Difficulties imposed by the legislative framework around procurement of land, the Municipal Finance Management Act (MFMA), and the Provincial Finance Management Act (PFMA).
    - A reluctance to dispose of land at reduced prices for the development of affordable housing, as they would prefer to dispose of land for commercial to increase income. Minister Sisulu, in a recent interview with The Times (2008), stated that:

      ñé despite a massive housing backlog of more than two million units, municipalities are holding on to millions of hectares of prime commonage land which is supposed to be used to assist local residents or have already sold it to private developers despite a countrywide moratorium on such land salesò.

      Minister Sisulu argues that tens of thousands of hectares suitable for affordable housing may have been lost due largely to a combination of soaring land values and dwindling council revenues.
    - The lengthy process related to administrative blockages and red tape to finalise the sale of land to developers and township registration processes.
    - The majority of land is not suitable for housing, as all large and potentially strategic portions of land have already been sold by municipalities.

**1.4 Aim of the Research**

This study seeks to address the problems in the context of metropolitan municipalities in South Africa. The aim of the research is to investigate land and issues related to making it available and ready for the development of affordable housing i.e. acquisition, procurement (legislative issues), and township establishment, selling to the private sector and administrative issues across the spheres of government. These challenges are investigated to understand them clearly and recommend ways of overcoming them.

The research focuses on the ólandô issue and how the actions of metropolitan municipalities impacts on the availability of affordable housing. This, it would appear, is a serious inhibiter to the rationalization and accessibility of the physical platform on which affordable housing can find a foundation. Basically, this research investigates the challenges metropolitan authorities face to provide for affordable housing ion a sustainable manner.

## 1.5 Research Questions

***Primary Research Question:***

What are South Africaôs metropolitan municipalitiesô challenges in making land available for affordable housing?

***Secondary Research Questions:***

- What are the critical aspects which make land for delivery of affordable housing complex?
- What is the position of metropolitan municipalities and what policy strategies or approaches would they adopt in order to overcome the bottlenecks to facilitate the release and preparation of land for affordable housing?
- In what ways should government engage private owners in order to access the private land market for affordable housing?

## 1.6 Proposed Solutions or Hypothesis

The research expected to find that affordable housing is inadequately addressed by both government and the private sector and that there is a lack of collaborative partnership approaches in addressing the challenge of land for housing. The research hypothesis is that the affordable housing market is inadequately addressed due to difficulties experienced by municipalities in making land available for the beneficiary market.

For a holistic, successful and sustainable outcome for affordable housing, municipalities have to consider a diverse range of economic, social, and environmental issues and how these factors interact with each other in a given context. However, it would be beyond the scope of this research to consider all factors at any depth or detail. Therefore, the focus of this research is on determining the challenges related to planning, regulatory and institutional issues, which affect the availability of land for affordable housing.

## 1.7 Research Methodology

It is argued that this research is exploratory in intent. Therefore the methodologies applied are qualitative relying on desktop research for document analysis. Grey literature was reviewed in order to understand municipal processes on issues related to making land available and these issues were further confirmed through interviews.

Secondary data and information was collected from journals, conference proceedings, municipal reports, specialist surveys, expert reports, views and web-based information systems and case studies. Most of the information was obtained from the internet and the university library.

In addition, 16 qualitative interviews were conducted with various institutions, targeting persons in strategic positions who were able to provide relevant information. The majority of interviews (11) were conducted on a one-on-one basis, guided by prepared questions based on the research questions set out in section 1.5 above. Two interviews were conducted by sending a questionnaire, and one interview was telephonic. Table 1 below outlines the target groups interviewed. Appendix 1 provides full details of the interviews. The interviews are analyzed and discussed in chapters 4, 5 and 6 of this report.

**Table 1: Categories of interviews Conducted**

| Categories of interviews | Interviews | Target people (interviewees) |
|---|---|---|
| Government representatives (national and provincials) | 3 | Senior official from Department of Local Government and Traditional Affairs in KZN responsible for land legal matters. |
| | | Department of Land Affairs |
| | | Department of Housing |
| Private sector representatives mainly targeting private developers, housing companies which deliver housing in the affordable market range ï mixed housing developments. | 4 | General Manager, Basil Read-Cosmo City Project |
| | | CEO of SOHCO |
| | | Project Manager of Johannesburg Housing Company |
| | | CEO of Johannesburg, Social Housing Company |
| Housing Financial Institutions | 2 | General Manager of Nedbank Affordable housing Scheme |
| | | Project Manager for gap housing financing, National Housing Finance Coorporation (NHFC) |
| Municipal Officials | 6 | Land Assembly Manager at Ethekweni |
| | | Head of land disposal at City of Cape Town |
| | | Director: Housing Project Support, City of Joburg |
| | | Deputy Director of Land Procurement Legal issues in City of Joburg |
| | | Real Estate Manager at Ethekweni |
| | | City of Joburg, Planning Department |
| Municipal Entities | 1 | Joburg Property Company |

### 1.8 Scope and Limitations of the research

The limitation of this research is that the scope of work did not allow for either an in-depth review of the problems, or for detailed study of all the metropolitan areas. Responses received in the three local authorities did not have the same level in detail, as it was not easy to get the same level of documentation. As a result, the challenges defined are not entirely balanced across the three cities.

In some instances, no comments were given on some of the questions asked during interviews. However, the research sought to draw lessons from different sources, contextualizing these as far as possible.

While the focus of this research is on land for affordable housing, the literature and my personal experience in the housing sector, indicate that the issues raised in most instances relate to housing programmes in general, including housing for the poor. However, I make distinctions in the report on how different challenges are specific issues relating to affordable housing.

This research is relevant as it has drawn on the experiences of the three largest local authorities and contextualized these challenges within the body of literature, to permit a clear understanding of the challenges which South African local authorities face. The research seeks to contribute to existing knowledge that aims to understand these challenges. The research highlights these issues, with the intention of creating an understanding of these challenges and to create a platform for further research into finding solutions.

### 1.9 Outline of the research report

The remainder of this search report is structured as follows:

The second chapter contains the literature review and covers theories, concepts, and approach in relation to the challenges of land. The first group of literature is related to the concept of affordable housing and explaining the challenges. The second group of literature deals with addressing issues of land. This chapter also traces the theories that shed light on the urban land markets. It draws on international case studies and literature that addresses the issues of land and affordable housing conceptually.

Chapter 3 looks at urban land issues in the context of South Africa. It reviews the historical background that has contributed significantly to the current urban land issues. It contextualizes urban land issues within the South African urban environment. It reviews national policies on land as well as legislation and policies relating to land. It defines the role of government in land markets and it reviews current land markets. Finally, the chapter introduces three most important urban centres in South Africa. These are the Johannesburg, eThekwini and Cape Town metropolitan municipalities. The nature of these urban centres is discussed and the issues which present land challenges in each of these cities are highlighted.

The next chapter presents South African regulatory and planning challenges to urban land. It reviews South African literature on planning processes related to land availability, namely, Environmental Impact Assessment and Town Planning Schemes. It also reviews regulations and legislative inconsistencies. The chapter makes reference to how these challenges affect local government in the three metropolitan municipalities, based on responses obtained through interviews, desk-top review and similar analyses.

Chapter 5 looks at South African political and institutional challenges experienced in the three metropolitan municipalities. The chapter captures the South African literature on political processes, the obstructive use of inconsistent legislation or administrative reluctance, the municipal economy and the land market, and institutional disjunctions in dealing with land. The chapter makes reference to how these challenges affect local government in the three mentioned metropolitan municipalities based on information obtained through interviews and desk-top review.

Chapter 6 outlines the emerging solutions based on information obtained during the interviews. The chapter gives an indication of what municipalities can do in dealing with the land availability challenge. It discusses how council can commit itself, policy amendments which may be made, deficiencies in land audits and land registers, the search for infill land, land availability agreements versus the sale of land, ring fencing land for gap housing, land swaps, and land discounts. It also discusses what needs to be done outside government, ncluding providing incentives for the private sector to make land available, the acquisition of land in private ownership, the expropriation of land, and how to deal with the complexities facing the private sector to make projects financially viable.

The final chapter synthesizes the research findings. It provides overall conclusions from each chapter. It refers to the literature review and identifies the significance of the findings and analysis, in relation to the identified challenges. The chapter identified issues which remain key challenges, to create an understanding for players in the sector and possible research which needs to be undertaken in addressing the challenges.

### 1.10 Conclusion

The affordable housing market has been defined as a ógapô market that presents challenges in the delivery of housing for this market range The main research question is ówhat are South African metropolitan municipalitiesô challenges in making land available for affordable housing?ô The research will raise questions and provide answers which aim to aid understanding of the complexities of the delivery of land for affordable housing.

## Chapter Two: Literature Review - Concepts and Debates Relating to Urban Land

### 2.1 Introduction

The objective of this chapter is to review literature on urban land issues internationally. These issues include, but are not limited to, urban land markets, regulatory frameworks, challenges in access to land and competing demands. The purpose of the review is to understand land availability issues internationally with the view to framing the study within the existing body of literature. The study aims to define urban land markets and its dynamics in relation to making land accessible for affordable housing. Embedded land market concepts are described and analyzed. The broad objective is to understand the concepts applied in explaining the land market dynamics in relation to land availability for affordable housing.

### 2.2 Understanding the Urban Land Markets

There is no holistic definition of land markets. Land markets are described as a combination of various human activities and factors. ñA land market is defined as a framework in which those seeking land, and those owning or controlling land, are brought into transaction in order to effect access to land by the land seekersò (Rust et al; 2005). Land markets exist everywhere where there is a need for land. Demand and supply principles of the market exist irrespective of the formality or informality of land markets.

Kironde (2000) defines land market as a framework in which those seeking land, and those owning or controlling land, are brought into transaction in order to affect access to land by the land seekers. The World Bank (2004) expands: ñUrban land markets play a critical role in shaping urban development outcomesð determining the location, density, forms and price of residential, commercial and industrial development. Urban land markets are driven by both demand and supply factors. On the demand side, population growth, income, and level of economic activity determine how much land is demanded to support development. Urban land supply is determined by topography and physical conditions, patterns of land ownership, availability of infrastructureð roads, water, electricityð and government regulationsò.

According to Farvacque and McAuslan (1991, p. 1) as cited by Rust et al (2005), the demand for urban land is affected by household income, capacity for saving, access to credit and the number of people who want to hold land as an investment. The supply is affected by the spatial pattern of infrastructure, topography, the willingness of landowners to make land

available on the market, and government restrictions on the use of land (e.g. zoning). The land market is not homogenous. Actors are diverse and may have conflicting agendas.

Highlighted above is the impact of demand and supply factors influencing global land markets. They also inform the importance of studying and understanding ôurban land marketsô as a concept. The economic forces of supply and demand are dominant features of land markets. These features inform the availability of land for affordable housing. They either promote exclusion, or hinder the inclusion of the poor into urban land markets. *Hanstad et al* (2004) state that, left alone, land sale markets fail to transfer enough land to meet the needs of poor households that have the desire and ability to buy land.

The concept of urban land markets has not received sufficient attention in the analysis of the processes of access to land in Africa and elsewhere (Kironde, 2000). Kironde (2000) further asserts that this is perhaps because both colonial and post-colonial policy makers believed that market transactions in land did not take place within African societies. This is a misleading conceptualization of African land issues. Phillips (1989) as cited by Kironde (2000), states that customary tenure, under which Africans were considered to hold land, was seen by colonialists as the complete negation of freehold or other individual forms of tenure. He further argues that customary tenure was considered to be ôcommunal' or ôtribal', and ôtraditional', that is, non-dynamic. Yet, in actual fact the customary tenure system is a dynamic and an effective system. Armitage (1998), states that in Papua New Guinea customary tenure is a dominant form of tenure, being some 97% of the nationôs land. The corollary is that the 3% of land held in alienated title (freehold and leasehold) is the locus of economic activity and of most urban development.

However, African land markets share similar traits with the international trends in land issues. Kironde (2000) furthermore deals with general understanding of urban markets in Africa. He explores various policy instruments affecting supply and demand of land. These will be discussed later.

Payne (1997) as cited by Kironde (2000), mentions five key instruments affecting supply of land in Africa; property rights, land titling and registration, land use regulations, direct public intervention including land acquisition, and the use of fiscal powers. However, Kironde (2000) argues that the use of these instruments in African cities has largely been seen as a

limiting factor to the supply of land. According to Kironde (2000), a well functioning land market depends on adequate land information, secure tenure arrangements, and an appropriate registration and recording mechanism. Notably, these are some of the characteristics lacking in the African land market environment.

Rakodi (1999) states that in all cities, a dominant factor in residential property markets is the exchange of the existing housing stock, and the purchase of new stock is minimal. However, in most third world cities, rapid population growth necessitates more new housing development, hence land is vital for new building, to cope with urban growth.

It is useful to briefly review the literature on changes in Chinese land markets. Qingshu (1997) discusses the evolution of their urban land use system reform by analyzing the process of reforms and the development of the legal framework relating to land and property markets and identifies the principal issues in the urban land market in China.

Since 1949, the socialist public ownership of land and the system of non-payment for land use was introduced by the nationalization of land and property and the abolition of private ownership. Privately owned land did exist in urban areas but did not dominate the market (Qingshu 1997). Even though some considered the previous urban land use system in China to be fair and accommodative, Li Ning (1992a, p3) argues that major characteristics of the pre-reform ôurban land use systemô can be defined as "non-payment, indefinite and non-flexible systemô which leads to a serious waste of land, extreme inefficiency and a lack of funding for urban infrastructure.

Ghanbari Parsa (1995) and Qingshu (1995b) agree that transformation and economic restructuring towards a free market economy requires a reaffirmation of corporate and individual rights to property. This cannot be achieved without the necessary legal framework, which offers a guarantee of ownership and the necessary contractual security. This factor has been duly recognized in the Chinese land market reform policy. Furthermore, they state that before the amendment of the Chinese Constitution in 1982, there was no legal land market operating in China since the mid-1950s. Needless to say, it was impossible for a land market to operate without the relevant institutional and legislative framework.

Qingshu (1995b) agrees that the analysis of the structure of the urban land market in China is particularly difficult. This is largely due to the fact that there is an emerging urban land market which has progressed rapidly since the start of the urban land reform programme. In the developed and mature land markets in capitalist market conditions, different approaches are available to help analyze the structure of the urban land markets. Qingshu (1995b) attempts to make a linkage between various types of market systems and óurban land marketsô as interrelated. For instance, a capitalist market system did not exist in China and this has an influence on urban land markets.

The Colombian situation offers an insight into various factors influencing land markets and land reform. Deininger, Castagnini and González (2004), in comparing the effectiveness of land markets and land reform in Colombia, found that rental and sales markets were more effective in transferring land to the poor but productive producers, than was administrative land reform. The fact that land transactions were all of a short-term nature and that little land was transferred from very large to small land owners or the landless, suggested that there may be scope for policies both to improve the functioning of land markets and to facilitate greater land access by the most disadvantaged. This assisted in producing an analysis of the factors associated with success in a sample of land transfers from large to small land users. This analysis yielded informed identification of key elements for policies in both respects (Deininger et al 2004).

There are various other factors influencing urban land markets beyond country specific environments. Chiu, Turner and Whitehead (2007) explore the rapidly rising price of urban land globally, the misallocation of land resources arising from constraints relating to title, finance and regulation, the misspecification of prices and therefore opportunity costs resulting in incorrect signals to major actors in development, the overwhelming importance of infrastructure provision in both making land available and in organizing the relationship between urban activities, the lack of potential for capturing land values for development and service provision, and the different mechanisms that could be used in principle and practice to provide the basis for sustained urban growth. They raise some of the critical debates in urban land markets. After considering the above urban land use and market factors, Chiu et al (2007) present the following conclusions:

- urban land systems are inherently inefficient if left entirely to the market ï and these market failures are large scale;

- market failures can in principle be dealt with equally efficiently by regulation, taxation, subsidy or direct intervention ï which is likely to be the more effective, depends on the specifics of the situation and cannot be assessed without examination of the practicalities, and of the ways in which the different interventions interact with one another;
- Interventions have important, and often negative, impacts on the distribution of welfare ï but so do market inefficiencies. Trade-offs always have to be made and measures to improve efficiency may often need to be accompanied by measures to improve distribution.

The supporting argument is that markets often exclude the poor from access to urban land, thus hindering access to affordable housing (Chiu et al (2007).

Even though urban land market issues are often country specific, the factors influencing them can be universal. The market approach of making land available has its shortfalls and is influenced by various market forces such as demand and supply.

**2.3 Urbanisation and Land Markets in Africa**

Urbanization can be defined as the process by which an increased influx of people into urban areas is experienced (Kok and Gelderblom, 1994). Africa, particularly sub-Saharan Africa, is urbanizing fast. While Africa has a long tradition of urbanism which predates the colonial era, colonialism introduced major changes that led to a rapid increase in both urbanization and urban development (Kironde, 2000). The majority of African cities have not been able to deal with this rapid rate of urbanization. The result of this inability of government to cater for all the housing needs as a result of urbanisation, while this need cut across all the housing programmes, the focus here is on affordable housing.

Ling, Ooi and Phua (2007) assert that the formation of slums need not be an inevitable part of rapid urbanization. They agree that such an argument appears to be contradicted by evidence of large slum populations in a large number of developing countries and particularly in rapidly urbanizing regions like Asia. In their discussion it is evident that city authorities faced with rapid urban development lack the capacity to cope with the diverse demands for infrastructural provision to meet economic and social needs. Not only are strategic planning and intervention major issues in any agenda managing rapid urbanization, but city

governments are not effectively linking the economic development trajectory with the implications for urban growth and hence housing needs. In their discussion they present a case study in support of the argument that city governments have first to recognize, and then act to establish the link that is crucial between economic development, urban growth, and housing. This is the agenda that has been largely neglected by city and national governments that have been narrowly focused on economic growth with the consequent proliferation of slum formation as a housing solution. Their argument suggests that unless city and national governments devise a mechanism to deal with rapid urbanisation and poor access to urban land informal settlements will persist.

> ôOne billion people or one third of the worldôs population is estimated to be living in either slum or squatter settlements. The largest proportion of population living in slums in the world is in the Asian region, which is also urbanizing at the fastest rate. In 2001, Asia had 554 million slum dwellers or 60% of the worldôs totalõ (Ling et al, 2007:3).

According to UN-Habitat (2003) within the developing regions, sub-Saharan Africa had the largest proportion of the urban population resident in slums in 2001 (71.9 per cent). The rate of urbanization in Africa alone is alarming. The projected rate of urbanization, in Africa, is estimated to be 47% by 2020 (UN-Habitat, 2003). These statistics raise concerns about access to urban land for affordable housing. If anything, they question the very existence of urban land markets and where they do exist, their effectiveness in ensuring access to affordable housing.

### 2.4 Regulatory Framework Applicable to Land for Affordable Housing

This section defines regulatory frameworks and identifies how they bring about challenges to making land available and states whether they are an issue of concern. In order to understand regulatory issues applicable to land for housing, it is appropriate to first define the concept of regulation, and why there is need for regulatory framework.

> ñ*Regulation* can be conceived of as a rule or order of conduct prescribed by an authority, either requiring or prohibiting certain behaviour for various purposes such as health, safety or environmental objectivesò (Payne and Majale; 2004, p25).

Regulations function well when they are developed into a framework of coherent regulations; a ôregulatory frameworkõ. Thus, regulations form a key part of regulatory frameworks. Payne and Majale (2004) state that a regulatory framework has a significant bearing on almost all aspects of urban development. They further assert that under conditions of globalisation, a

regulatory framework is one of the few tools available to governments to influence urban land and housing markets, and the investment decisions of the private-sector developers. The objectives of regulatory frameworks are often seen as instruments for protecting the vulnerable groups in the society or sensitive ôthingsõ.

Payne and Majale (2004); Kironde (2004); Adusumilli and Shakdar (2004), have all intensively discussed regulatory frameworks and agree on their significant contributions to urban development. Their discussions produced the consensus that even though regulatory frameworks are of significant importance, they often have challenges. These challenges are equated to the fact that large portions of legislation, institutional structures, administrative procedures and professional interest in developing countries continue to apply urban planning and development control processes based on their former colonial masters such as Britain and others. Consequently, regulations in developing countries often do not reflect the urban development realities of developing countries. Thus, they lack flexibility and adaptability to the local urban development circumstances. This bears a significant relevance to land and housing markets. Land and housing markets need to have protective but flexible regulations.

The World Bankôs enabling approach to policy holds contrary views to the above in terms of regulating access to land. World Bank policy plays a significant role in shaping international housing and urban policy including that of UNCHS, development arms of western governments and international consultants. The challenge with the World Bankôs enabling approach is that it assumes that all land and housing transactions take place in a formal market environment. However, evidence from many developing countries shows that informal housing and urban land markets are dominant forms of access to urban land for affordable housing.

Lall, Wang and Mata (2000) examined the effects of land use zoning and density regulations on formal housing supply and slum formation across Brazilian cities between 1980 and 2000. They developed a model of formal housing supply and slum formation where population growth was endogenous and household migration decisions were influenced by intercity variations in land regulations. They find that the elasticity of formal housing supply in Brazil is very low, and comparable to those found in Malaysia and South Korea, which have less regulated housing markets. Their analysis of land regulations shows that; (a) general purpose zoning and land use planning improves performance of the housing market and stimulates

formal sector housing response; and (b) lowering minimum lot size regulations increases housing supply but is also accompanied by higher population density. On the other hand, they found that population growth is faster than the formal housing supply response, leading to an increase in slum formation. This suggests that policies that aim to reduce barriers for access to land need to be accompanied by instruments that relax pre-existing distortions in the urban land market. In the absence of these measures, pro-poor land regulations may in fact exacerbate the slum formation problem.

According to Chiu, Turner, and Whitehead (2007) in the context of land use regulation *per se,* there is an acceptance that regulation is necessary to address both market failures and inequities. However, they voice deep concern that existing regulatory frameworks were themselves so inadequate that they were doing more harm than good. In particular:

- There was little evidence of capacity to simplify existing systems and relate them more to local circumstances ï many systems had been transferred from developed countries with little or no changes and so were completely inappropriate in terms of standards, technology, materials, etc. As a result, the vast majority of building was taking place outside the regulatory framework reducing the potential benefits of planning;
- Systems were inflexible with not well defined mechanisms for change ï resulting in out of date regulations which could not readily take account of emerging opportunities;
- Even in countries with apparently strong regulatory frameworks land title and property rights were ill-defined increasing risks and reducing the capacity to invest in the long term physical assets required for effective growth as well as the potential for debt finance;
- There were high costs of enforcement, and inadequate and overstretched administrative systems with little access to funding to develop better arrangements;
- The potential benefits of regulation in providing a framework for taxation of property and development gains, and therefore finance for necessary infrastructure and services, was not being realized;
- Systems tended to reinforce inequalities and exclusion by generating large scale benefits to those able to develop within the formal sector while worsening conditions for those without the resources to benefit;

- It also increased the potential for speculation and manipulation of the regulatory system by those with insider knowledge and adequate resources;
- Regulatory systems tended to be based almost entirely on constraining development rather than providing a positive environment in which the major actors could respond to opportunity.

Highlighted above are some critical challenges posed by regulatory systems in ensuring efficient use of land in urban areas. In most cases, the regulatory systems are too rigid and do not accommodate various stakeholders. Frequently they play a more preventative role rather than a positive and an enabling role.

According to Payne (2000) in India the Urban Land Ceiling and Regulation Act of 1976 sought to bring large vacant private land-holdings under public ownership or control. However, the increased demands that public ownership place upon the state have invariably proved greater than the ability to develop and allocate lands according to needs, so that a substantial proportion of urban populations were forced into the unauthorized settlements that the policy was intended to prevent. Payne (2000), in his attempt to make sense of urban land tenure systems, explores various tenure options available in urban areas. He also discusses the World Bankôs policy on land tenure and property rights. He is critical of the Bankôs Urban Strategy assertions which make limited reference to urban land tenure, except to emphasise the need for óstronger property rightsô in real estate markets and ósecure and clearô tenure in upgrading projects.

Contrary to the above, Bertaud (2002) finds that government intervention ï in the form of regulations, infrastructure investments and taxation ï has a direct negative impact on urban land supply and on the demand for land, and therefore on the price of land and affordable housing. Bertaud too refers to the 1976, Urban Land Ceiling and Regulation Act in India, which introduced and imposed a ceiling on vacant land holdings for individuals and companies. This ceiling was 500 square metres which then required land owners to register their holding of land and surrender excess vacant land to government for compensation at a particular rate. *De facto*, some regulations have the effect of allocating land administratively, ignoring demand and costs and bypassing market mechanisms in allocating resources. Land regulations are necessary to the proper functioning of markets but when poorly designed they

can constitute a serious drag on economic development. Bremnan (1993) discusses India as a case study on how land regulations can lead to negative effects if not properly developed and applied. He also looks at the impact of regulations on the supply and demand for urban land.

The regulatory framework is a significant element where access to land for affordable housing competes with other uses. Access to urban land markets for affordable housing exists within a variety of competing demands. Financially, affordable housing has minimal capacity to access land through unregulated land markets. To maintain a balance between competing demands for urban land for other uses and land for affordable housing, the regulatory framework needs to be developed and implemented. One needs to have an understanding of what these competing demands are, and this is to what I now turn.

**2.5 Competing Demands for Land**

Land is a very important natural resource upon which development occurs. Within the urban setting, land is used for various purposes and functions. Affordable housing is one of many demands for land in urban areas. The obvious competition for urban land is between the private and the public sector. The private sectorôs demand for land is driven by the desire to accumulate profits. The drive is supported by financial capacity, enabling the private sector to access land within the market environment. Market principles often favour the private sector. The private sector, however, is reluctant to participate in the delivery of affordable housing in the developing countries.

Within the urban areas, there exists another dimension of competition for land: lnd for residential use, land for commercial purposes, land for industrial and agricultural purposes, i.e. the competition between different land uses. The example of Fourways in Johannesburg, provides an example. Fourways is a mixed-use area located in northern Sandton. It is one of the fastest growing areas within the Johannesburg metropolitan area. As an affluent area, it is mainly characterized by formal developments such as up-market shopping centres, hotels, low- rise office development, and óluxuryô residential complexes (Silverman and Zack, 2007). There is little space remaining for affordable housing in this area. Land is accessed only by private developers and the property markets dictate that high-income residential development, up-markets shopping centres, office parks and hotels are the prime competitors for urban land. The fact that there are large financial benefits to the private sector from these types of developments creates a skewed competitive demand for urban land. Affordable

housing, with its low financial incentives, does not have a competitive edge (Silverman and Zack, 2007).

Planact (2007) argues that land being used in higher income areas, such as Fourways, for low rise development takes up precious land and reinforces apartheid-era segregation. This is merely a consequence of competitive demand for urban land which works on the basis that whoever has the most money, wins.

Competitive demand for land is often attached to land use priorities and profitability. In the international literature, Dowall (1993) for example, states that developers and landowners seek to maximize their profits by developing land to its maximum possible use, limited only by land use and planning regulations. Frequently, affordable housing does not fit the profile of being a priority. However, Dowall (1993) seems to miss the point when he argues that if developers bid higher prices for land, more parcels will be offered for sale on the market, and gradually the land market will expand to a new level of output meeting the increased demand for housing, commercial or industrial space. If by ôhousingô he is referring to high- income housing, his statement has some degree of validity. However, affordable housing has continuously been the victim of powerful market forces, including property prices and land price speculation.

An argument emanating from the competing demand debate is that private development often does not contribute to public benefits- profit maximisation is the ultimate goal. Planact (2007) argues that currently, the private sector is often able to develop and manage land without regard for the needs of the general public. Local governments are often unable to deal with this problem because the tools to gain concessions from developers to meet social goals in the public interest are inadequately developed.

Another dimension of competing demand exists within urban informal land markets. This is an often forgotten and under-researched segment of land markets. Thirkell (1996) discusses roles of various players in urban informal land markets and looks at the winners and losers within this market segment in Cebu City, Argentina. He finds that increases in urban land prices coupled with the slow delivery of plots through formal channels has made titled property unaffordable to the urban poor and an increasingly less attractive option to middle-income groups in many countries in the developing world. Consequently, informal land

developments for housing in urban areas are gradually being taken up by middle-income households. Low- income households loose out in the purchase and sale of land for housing as a result. Thirkell introduces and describes the ódownward raidingô process as a result of competing demands. The gist of Thirkellôs paper is that within the environment of urban informal land markets, competing demands exist and the poor are often the losers.

In South African cities, the need for land for affordable housing competes with environmental conservation. For example, in eThekwini, ñ land seen as important for inclusion in the Durban Metropolitan Open Space System is frequently the same land that is desired for housing, alternatively, environmentalists are wary of allowing low-cost housing development close to sensitive areas that require preservationò (Todes, 2003:116). Todes (2003) further argues, as do others, that the turn to neo-liberalism or market orientation has placed more emphasis on economic development than on housing. Land which might have been identified for housing is no longer considered, for fear of competing unsuccessfully with economic activities such as tourism.

Finally, competing demand for land is influenced by local governmentôs need to create revenue. In realistic circumstances, affordable housing makes a minimal contribution to local government revenue creation. As a result, local governments are often pushed to allow urban land to be competitively available in the market. As mentioned earlier, affordable housing does not have a competitive edge in urban land uses.

**2.6 Common Obstacles to Land Access**

Access to land is an important step towards sustainable livelihoods for most urban poor in the developing countries. However, there are various obstacles hindering access to land for the urban poor. These obstacles are universal in nature.

ñAccess to serviced land for housing is one of the major problems faced by practically all developing countries. In most cities of developing countries, the urban poor and even the middle-income group often have to step outside the formal land market to gain access to land and housing. Generally, in cities of developing countries the informal land market is much bigger than the formal market. To improve the operation of the formal land marke4t it is necessary to understand the constraints that are preventing it from operating efficiently. It was found that finance; policies, regulation, laws and other instruments formulated to

improve the efficiency of the land market have often themselves become constraints requiring change. It is suggested that to overcome these constraints it will be necessary for governments to recognize the informal market and work with it, rather than ignore or oppose it as at presentò (Sivam, 2002:15).

This paragraph pinpoints the exact obstacles in access to land. Finance, policies, regulations, laws and other instruments constrain access to land. The list of all obstacles hindering access to land in the developing world is by no means exhaustive.

A lack of financial power to access land through the market is one of the most common obstacles particularly for the poor. Rigidity, and sometimes ambiguity, in policies governing land generally exclude the poor from accessing land. According to the World Bank Report (2003) land policies are at the root of social conflicts in countries as diverse as Cambodia and Colombia, Zimbabwe and Cote d'Ivoire. Zimbabweôs current political turmoil is living proof of this. Political controversies, the complexity of land issues, and the fact that the benefits of policy improvements do not accrue to people who are politically hinder reform.

Constraints to access to land can be, and are, country specific. Every developing country has its own obstacles. These obstacles can be physical or practical. For instance, Bertaud (1997) states that topography and land-use regulations severely restrict the land supply of Hong Kong. Delays in clarifying and registering titles are constraints for private sector developers (Kitay,1987). In some urban areas, there are extensive land holdings and government policies have not assisted in dealing with this issue. This is most common in many Asian countries, for example, Malaysia (Evers, 1983). In Pakistan, land conveyancing is the main problem and presents difficulties in relation to establishing title to land, which delays housing developments (Karda, 1991).

While the above demonstrates that common problems are administrative and technical due to gaps created by policies, others argue that the lack of understanding of issues by people in power make the problem considerably more difficult than envisaged. Angel, Archer, Tanphiphat, and Wegelin (1983) state that

> ñthe resistance to act decisively on land issues appears to stem either from the lack of understanding on the part of those in positions of power and influence as to where

action is really needed, or from their pursuit of short-sighted selfish interest while compromising their social responsibilitiesò (Angel et al 1983:533)

Finally, at a seminar of sub-Saharan African countries held in Ghana in 1990, common constraints inhibiting land delivery in the housing sector were classified into four categories as follows:

ña) A long Process of land acquisition leading to frustration and diminution in the real value of development funds. This is due to:

- Over-centralization of land transactions in the national capitals
- The many officials and other operations who need to be involved
- Cumbersome registration and other transition-validation procedures

b) High land prices due to:

- Low land supply
- Near monopoly situation of land owners in the traditional sector
- Qualitative attractiveness of land in the state/formal sector

c) Poor Adjustment in the land market due to:

- The existence of dual land market in many countries in the sub-region; one in both the State and informal sectors
- The low level of land supply in relation to demand
- The existence of non-economic considerations in land market such as traditions beliefs and practices
- Poor documentation of regulations in the land market

d) Title Insecurity as a result of:

- Poor identification of lots
- Uncertainty of titles
- Multiplicity of owners in the land marketò (UNCHS (Habitat), 1991:55).

The above review of literature demonstrates that the obstacles to accessing land for delivery of housing as experienced in different countries, are larger and more complex than was first envisaged. They can be categorised into: administration problems, regulatory problems, planning problems, financial issues, legislative and policy framework, government interventions, and political interventions.

## 2.7 The Role of Government and Interventions in Land Markets

In order to deal properly with land for affordable housing and the role of government, we must look at the general issues of housing the poor in the Third World We also need to look at how government interventions facilitated access to land for affordable housing in other countries.

Angel et al, (1983) propose three ways in which government can intervene and act on housing issues. Firstly, by increasing the supply of land for housing the poor through government policy instruments, This involves; appropriating vacant public land; the compulsory acquisition of land; the exchange of land; the pre-emption of undervalued land; the acquisition of land in lieu of inheritance taxes; the grant of land in lieu of development gains taxes; and the nationalization of land without compensation.

Secondly, government should facilitate access to land through increasing itôs participation in land development, which may include the facilitation of processes to deal with: the appropriation of development gains; combining infrastructure development with land assembly schemes; housing the poor in land pooling and readjustment schemes; and cross subsidies in land development projects. Land adjustment is described by Masser (1987) as a technique which assists in facilitating development; it enables local authorities to provide infrastructure at low cost; and it provides a benefit to landowners who have to give away some of their property. Land re-adjustment has been used successfully in other countries such as Japan and has helped in accommodating high levels or urbanization over the last 30 years (Masser, 1987; Brennan 1993). Brennan (1993) argues that land readjustment is a successful intervention as it involves only short-term public-sector landholding and results in good improvements. The same has been advocated in other countries and has benefits, for example, in Taiwan and in Indonesia, the land pooling has created patterns of land for housing and reshaped the cities (Archer R. in Payne 1999). Figure 3 below demonstrates how land readjustment and pooling assisted in creating more land. For example, on diagram áaô plots were skew and roads were uneven and in diagram ábô, formal roads have been created and assisted in reshaping the parcels of land. This process has proved successful in both Taiwan and Indonesia.

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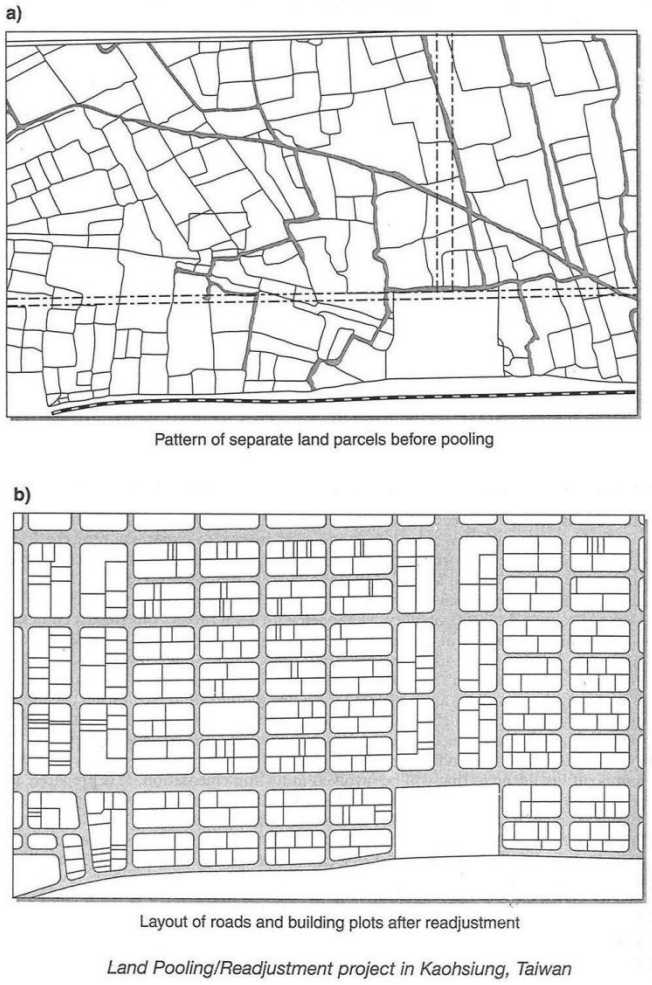
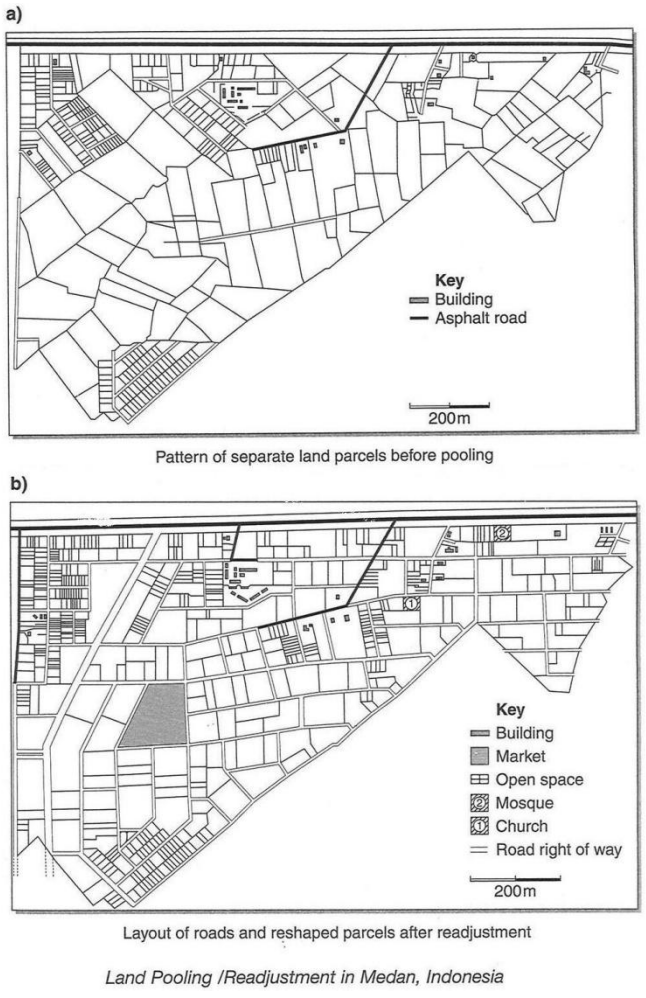
**Figure 3: Pattern of land parcels before pooling and after pooling in Taiwan and |Indonesia.**




Source: (Archer R. 1999, p116-117)

A similar process, which is broader than land readjustment, is the Guided Land Development Programme (GLD) adopted in Jakarta and other Indonesian Cities. The GLD programme assisted in guiding development to the fringe areas by making serviced affordable urban land available to low and middle income households on a large scale. (Brennan, 1993).

Thirdly, government has to develop a good land tenure system. It is argued by Payne (1996) that a good land-tenure system is essential for countries which are committed to providing affordable housing. A good land tenure system will ensure that there is a proper land-surveying and registration system. It is also suggested that government can increase the supply of urban land through the modernization of cadastral and land registration systems (Brennan, 1993). Brennan (1993) argues that one of the reasons why local administrations in most cities do not cope in dealing with growth is because they do not know what occurrs in local land markets.

Fourthly, government should undertake a regular review of land policies and there must be legislation for the acquisition of land to give government the power to utilize land for public purposes ion instances where land owners had not yet taken steps to put it to good use. Rakodi (1999) suggests criteria for assessing land policy on the basis of research which was carried out in Zimbabwe. This research calls for need to apply the following criteria for assessing land policy: (See table 2).

**Table 2: Criteria for assessing land policy**

| | **Efficiency** | **Equity** |
|---|---|---|
| Tenure | Does the system encourage a smoothly functioning and responsive land market in which adequate land is available to accommodate urban growth? | Does the system provide access to land for all income groups and is it able to recapture increments in value when desirable? |
| Land-use planning and regulation | Does the system ensure a supply of land for all urban uses, in appropriate locations at reasonable cost and with necessary services? | Does the regulatory system impose standards or other requirements that inhibit the access of low-income groups to land? |
| | Is adaptable and able to cope with urban growth and change? | Does it provide a non-discriminatory means of resolving conflicts between uses and users of land? |
| Taxation | Does the system generate local revenue for general purpose and/or finance expenditure on particular services? | Does the system reduce inequities in the distribution of benefits from public investment and actions, and increases in land values? |
| | Is this revenue buoyant in relation to growth or population and average income? | |
| | Does the tax structure provide disincentives to speculation and keeping land vacant and incentives for the efficient use of land? | |
| Public participation in the land market | Does public participation the land market result in and improved supply of land for new urban development, generation or revenue to fiancé infrastructure provision and improved land-use planning of newly urbanized land? | Is land subdivided and serviced by public authorities or public/private-sector partnerships equitably distributed to all income groups? |

Source: Rakodi, 1994: p.74)

Fifthly, while the above suggest that government intervene in a more formal way, contrary arguments suggest that government regulatory interventions impede land supply for low income groups and limit the ability of developers to respond to the housing demand (Dowall, 1992). Dowall (1992) argues that governmentôs regulatory intervention brings about complicated approval procedures limiting housing market competition by creating barriers to entry. He suggests that the focus should be on government familiarizing itself with land issues in their own areas, as he argues that those who prepare land use plans normally do not know what is going on in local land markets.

He suggests that governments undertake urban land market assessments (AMA) of major towns to establish whether the supply of serviced land is expanding to meet growing populations. He says there is a need for the following questions to be answered;

- is the supply of urban serviced land expanding to meet the growing population need?
- Which land uses are growing fast?
- Where is urban land conversion taking place?
- Are land prices increasing faster than the overall rate of inflation?
- How much land is being provided with minimum services needed for future urban development?
- Which segment of the population does not have access to housing produced by the formal private sector?
- Are specific public policies or actions constraining the land market?ò (Dowall, 1991:24).

He argues that land market assessments tools could be used as a baseline estimate of future urban land requirements so that governments can intervene in time instead of only focusing on restrictive legislation.

Similarly, Soliman (1987), in a case study of Alexandra which examined land ownership, land market and land acquisition procedures in relation to prices, demonstrates that informal interventions by stakeholders who have a role in the provision of land are the best way of making land available for the poor. This process can also be tested on making land available for the middle -income groups.

Dowall and Clarke (1991) also argue for policy reform with the recommendation that government concentrates on areas which are more critical and appropriate. Dowall and Clarke (1991) argue that existing urban land policies require reform in order to be pro-poor. Among other areas of concentration, they suggest a need for government policies to focus on: decentralizing land management authority; deregulating land; curtaining public land development agencies; and improving the efficiency of land market operations.

Lastly, the Global Strategy for Shelter to the Year 2000 (UNCHS (Habitat), 1991) urges governments to change their approaches which will mobilize the resources of the private and

non-governmental sector. This calls for public-private partnerships in the delivery of land for housing, also been advocated by Payne (1999). In various case studies including two case studies in South Africa, ôDelft and Springfield Terrance in Cape Town, and a case study in Alexandria in Egypt, it has been demonstrated that partnerships have assisted in:

- Increasing the supply of urban land for housing;
- Improved efficiency of urban land markets
- Improved access to land for low-income groups; and
- Providing the basis for a more productive relationship between public, private and third sectors.

Partnership approaches resulted in the following: Firstly, in the Egyptian example, informal partnerships showed success in contributing in a sustainable manner to the supply of land . The approach advocates that the public sector adopts informal methods to bypass official procedures relating to regulations, but focus on realities in the communities which then assisted in increasing land on a long-term basis. In Nadi El; ñland was provided by both public and private sectors, but created an efficient layout with a range of housing to suit different needs. Economic activity serving local outside needs has flourished and provided many people with local jobsò (Soliman, 1999:93).

In the Case of the Springfield Terrace project in Cape Town (reported by Dewar, in Payne, 1999), partnerships have assisted in making land markets accessible and accelerated the supply of well located land which provided people the opportunity to live in inner-city land close to employment and other social facilities. The Springfield project was a small but ñefficient use of land and medium densities created affordable housing and attractive environmentò (Dewar, 1999:75)

### 2.8 Urban Land Tenure Relating to Affordable Housing

Urban land tenure is defined as ñthe mode by which land is held or owned, or the set of relationships among people concerning land or its product. Property rights are defined as a recognized interest in land or property vested in an individual or group and can apply separately to land or development on itò (Payne, 2001:416).

In trying to understand urban land tenure for the ógap marketô it is important to look at policy trends relating to urban land elsewhere. Rapid urbanization in most developing countries results in competition for secure, serviced land. As a result, governments are under pressure to formulate policies which will efficiently deal with land use to improve accessibility by the urban poor (Payne 2001).

Recent trends in land tenure policy have demonstrated that national land ownership in many countries is common. It is argued that most countries in sub-Saharan Africa had nationalized all land and eradicated private freehold ownership. In India, urban ceiling land regulations were applied to bring vacant private land holding under public ownership and control (Payne, 1996).

Private land markets are influenced by external factors which make it difficult for them to be self regulatory, for example, rapid urban growth has led to a permanently high level of demand which at the end increases prices of land. Also, because of competing interests for land create pressures which further constrain policy. This makes it difficult for government to offer free- hold title to the beneficiaries of public housing (Payne 2001).

It is argued that land tenure has an impact on land prices. Araby illustrates that land prices vary between different sectors of supply, for example :

> ñprivate freehold land with formal tenure status tends to have the highest prices and suffers the highest level of speculation in the market. Controlled public land has medium prices but with high degree of speculation. Informal-hold land offers the lowest land prices in the marketò (Araby, 2003:454).

On the one hand, it is demonstrated that secure land tenure increases land prices as well as increasing land speculation, as a result, one can conclude that formal land tenure has effect on price increase in land which makes it difficult for the urban poor (Araby, 2003). On the other hand Brennan (1993) argues that legalizing land tenure is a way of helping to increase the urban land supply as lack of tenure security is seen as a major bottleneck in the efficient function of land markets.

Kironde (2000) argues that customary tenure was incorrectly and misleadingly considered non-dynamic. The reactions and perception towards communal tenure systems in South

Africa, particularly in KZN, were no different to this. There are often arguments that this system cannot function under the formal market environment. Bruce (2003) (cited in Kironde (2005) argues that land was bought and sold even in the pre-colonial era. As alluded to in Chapter 2, Mabogunje (1990) (as cited in Kironde (2005)) states that there are records of land sales in many African countries (including Togo, Sierra Leone, Nigeria, Ghana, Madagascar, Ethiopia, Senegal, Dahomey and Zambia) during the pre-colonial era. .

Therefore traditional land tenure systems can function under a market environment. This leads to a suggestion that market rules and regulation need to become more flexible and accommodative. Land policy has made little, if any, effort ,to accommodate traditional tenure systems into the broader market environment.

For purposes of this research the ógap marketô implies secure tenure- essentially freehold or sectional title ownership. It is argued that ñstate agencies seeking to assist the poor need to put in place policies that facilitate their access to land with reasonably secure tenureò (UNCHS (Habitat) 2001 p.85). It is further argued that the state needs to facilitate making available loans for land as a way of creating security. This points to the fact that while it is important to give the poor security of tenure through regulation, formal tenure may further constrainty land accessibility.

## 2.9 Conceptual Framework

### 2.9.1 Introduction of Theoretical Concepts

To conclude this chapter it is imperative that the literature is placed within a relevant conceptual framework. The research will draw on the concepts of ñenablementò and ñnew urban managementò in understanding the role of local government. These two concepts acknowledge that land markets and affordable housing exists within a broader urban spectrum. As cities grow bigger in size and in population there is a greater demand for effective city governing systems.

### 2.9.2 Enablement

The concept of enablement brought a shift away from a focus on production of individual housing and replaced it with a focus on the concept of sustainable shelter which emphasized the establishment of an enabling housing delivery environment (UNCHS (habitat), 1991). Private sector land acquisition, nationalization and development controls have all been tried as a means of stimulating the supply of land for housing and yet there is no city which has been successful in meeting the demand for land for housing in a sustainable manner. Payne (1999) argues that ónablementô looks at public and private sector partnerships in addressing issues of land for housing (Payne, 1999). 16 years ago, the Global Housing Strategies, compiled on the initiative of the United Nations to address sustainable shelter, recognised it was no longer sufficient for the public sector alone to solve the low-income housing problem and a need to encourage partnerships with the private sector toward ñan enabling strategyò postulated (de Loor, 1992).

The concept of enablement focuses on redistributing responsibilities in order to share roles between government and non-governmental sectors for efficiency (UNCHS (Habitat), 1991). The concept of an ónablingô strategy does not mean any diminution of governmental responsibility for housing production and distribution. It is also argued that enabling strategies would have to recognize and support the role of the informal sector and its unique participatory mechanisms in the settlement development process, particularly in developing countries (UNCHS (Habitat), 1987). The enablement approach is not a new concept in urban development.

> ñThe idea of enablement has its derivations in the political economy of liberalismé é liberalism has economic elements based upon principles of market dynamism and efficiency, orthodoxy in macro-economic management, and certain prescriptions in politics of institutional conditions and property rightsò (Pugh, 1994; p.357).

The enablement approach is at the core of Habitat Agenda II shelter policies of United Nations Human Settlement Programme UNCHS (Habitat) (1996). Governments of developing countries are expected to formulate and implement policies that promote an enablement approach for the development, maintenance and rehabilitation of shelter in both rural and urban areas. To achieve enablement, government at all levels should:

- ñEmploy broad-based participatory and consultative mechanisms that involve representatives from public, private, non-governmental, cooperative and community sectors, including representatives of groups that are considered to be living in poverty, at all levels in the policy development process;
- Establish appropriate processes for coordination and decentralization that define clear local-level rights and responsibilities within the policy development process;
- Develop and support adequate institutional frameworks, especially for facilitating investment in the supply of both rural and urban shelter by the private sector;
- Consider establishing priorities for the allocation of natural, human, technical and financial resources;
- Establish and adopt a regulatory framework, and provide institutional support for facilitating participation and partnership arrangements at all levels;
- Review and adjust, when necessary, the legal, fiscal and regulatory framework to respond to the special needs of people living in poverty and low-income people;
- Promote the supply of affordable rental houses and the legal rights and obligations of both tenants and ownersò (UN-Habitat; 1996, p25-28)

The purpose of the enablement guidelines is to ensure that development, particularly in the affordable housing sector and urban land markets, takes place within an environment where communities play vital role. The World Bankôs (1992) ócenabling markets to workô approach is central to the urban land and affordable housing markets.

> ñThe global plan of action's two principal goals can be pursued at the local level through an enabling process in which individuals, families and their communities play a central roleò (UNCHS, 1996:21).

According to Mayo and Angel (1993 as cited by Rust 2005), the enablement approach encourages governments to increase market efficiency and thereby address equity by streamlining regulation and reducing transaction costs.

### 2.9.3 New Urban Management

There are many debates on defining the concept of New Urban Management. A longstanding advocate of urban management, Shabbir Cheema describes urban management as a ñholistic

concept aimed at strengthening the capacity of governmental and nongovernmental organizations to identify policy and programme alternatives and to implement whit with optimal resultsò (Cheema, 2004:17). It is further argued that urban management helps in promoting integration in city development.

The concept of New Urban Management emerged in the mid 1980s. Governments at different levels came with the message which emphasized achieving better value for capital expenditures provide land, infrastructure and services for housing, and ways of dealing with inefficiencies to accelerate the delivery of housing (Jones and Ward, 1994). The concept, actively promoted by the World Bank, suggests a move from óurban projectsô to the New Urban Management programms (Jones and Ward, 1994). The foci are on;ensuring that shelter is made more affordable; ensuring that financing in the form of subsidies and private sector loans is facilitated; emphasis is placed on urban planning for effective approaches to land titling; and, developing land for housing. The role of government, in particular local government, is recognized in infrastructure and housing delivery and the United National saw itself assisting more than 250 decentralization activities in various countries through municipalities, which to a great extent has promoted governance and the participation of civil society (Campbell, 1991).

This concept of new urban management emerged with an increasing awareness for better management of urban development in poor societies. The focus of the concept is on ñhow to achieve better value for capital expenditures in providing urban services, utilities, land and housing and how to cut wastage through removing efficienciesé .ò (Jones and Ward, 1994:8). From this approach, the New Urban Management Programme began in 1986 as a way of raising professionalism in land management in the developing world. The NUMP addresses the complete management of government programmes and is not based only on individual projects. The priority issues emphasize removing constrains from the land market. This coincides with the World Banksô view of land markets, which argues in support of ómanagementô and not administrationô, with an emphasis on institution building (e.g. planning officers and land registers), and the need for a greater regulation of the environment in order to improve control.

New Urban Management is sometimes also referred to as New Public Management (NPM). NMP is not particularly new. It is most commonly associated with the efficiency drive of the

óneo-liberalô approach to governance. Like NUMP, NPM originated during the 1980s in Western countries such as the UK and the USA. The NPM principles are premised on a move to make local government efficient. Hood and Peters (cited by Harrison, 2006), argue that NPM practices were fairly diverse and attention has only recently been given to cross-national differences. They further identify key elements of the NPM approach- professional and flexible top management in public sector bodies; the separation of policy making from operations; the desegregation of public sector departments into corporatized units; the introduction of competition into service delivery; outstanding and competitive tendering; and, an emphasis on output-based performance evaluation (Hood and Peters 2003; 2004). These elements indicate a move towards a business orientated planning environment. However, the early introduction of NPM did not provide a planning-friendly environment. Mainly, the focus was often on short term project-by-project planning, rather than on longer-term strategic planning. NPM has become a particularly important tool in planning and governance at a local government level.

Urban management is a particularly important concept considering challenges in urban centres of the developing world. At least one billion people live in slums, with the highest percentage of them found in Asia, Africa and Latin America, according to a new report by the United Nations Human Settlements Programme (UN-Habitat, 2003). It is therefore evident that urban centres of the developing world, particularly African cities, are unable to accommodate their swelling urban populations. This has necessitated the need for new urban management approaches.

Stren (1992) provides an overview of Africa's urban problems and the urban management approach to dealing with them, and reviews the conventional urban management approach which is promoted as the solution to Africa's urban problems. He draws on a research programme which brought together teams from many different African cities. The research describes the failings of current urban management in the region, and suggests principles to guide future action, including more adaptive and less sectoral urban management, and more decentralized decision-making. The urban management concept has a significant influence on urban land markets and affordable housing. As Stren (1992) puts it, there is a need for local governments to develop new decentralized and city specific urban management approaches.

### 2.9.4 Approaches Applied

It is certain that the issues are revealed as multi-layered and multidimensional. The following section deals with attempts to integrate these aspects to address the primary research question.

The research borrows from an approach proposed by Golland and Blake (2003), which suggests that land availability be dealt with through a focus on deficiencies in the planning system to create a better match between demand and supply, to address land availability on a long term basis.

Jones and Ward (1994) suggest which looks at the issues of land values, with an emphasis on investigating residential land price trends, and to analyse the social structures which drive development. This approach also reviews how state policies could be made flexible in order to deal with issues of land in line with its locational demand. It suggests the intervention of social agents, which in the context of this research, can be tested through determining the roles played by different stakeholders.

Finally, the research draws on Scottôs (2002) approach, which suggests the process of reclaiming property through administrative reform and the promotion of non-discriminatory practices to house the disadvantaged communities. This approach is championed by Scott, as it deals with administrative conflicts and directly addresses the plight of the poor.

## 2.10 Conclusion

The literature presented different trends and aspects of the land issue using various case studies. The consensus in the literature is that urban land markets exist in a complex and competetive environment. This environment is characterized and influenced by a large number of interrelated factors. The literature also raises debates on whether to regulate urban land markets in developing countries, or not. Various viewpoints are raised in this regard. The capacity of the affordable housing sector to bargain is constrained by its weak financial base and competition between it and other sectors.

Finally, the chapter places the literature within a relevant conceptual framework. It attempted to establish a relationship between the `enablement approachô and land markets for affordable housing. Enablement policies have a significant influence on urban land markets and affordable housing in developing countries. Urban management has become an important concept in an attempt to respond to rapid urbanisation, such as informal settlements  These challenges require new approaches to dealing with city management. Urban management approaches play a significant role in making land available for affordable housing and overall city development.

## Chapter Three: Systems and Mechanisms Applicable to Land Availability in South Africa

### 3.1 Introduction

The broad objective of this chapter is to introduce urban land issues in the context of South Africa. It looks at the background that has contributed significantly to the current urban land issues. The contextualization of these issues is done with reference to the current political, social and economic dynamics of the South African urban environment. National policies on land will also be discussed in some depth. Legislation and policies relating to land form part of the urban land environment and need to be understood. The role of these policies and pieces of legislation in land markets is significant. This chapter looks at various current land market trends and types. Finally, the chapter introduces the three most important urban centres; Johannesburg, eThekwini and Cape Town. These cities represent the greatest challenge in regard to urban land markets and the overall land issue in South Africa.

### 3.2 The Apartheid Legacy and how the Land Problem Came About

Current land ownership and development patterns in South Africa are the legacy of the apartheid era. During that era, a number of racially-based land policies, underpinned by legislative schemes, were the cause of the removal, often by force, of non-white South Africans from designated areas. The official statistics of removals are in themselves quite staggering: over three and a half million people were removed from their homes and resettled in inferior areas, sometimes with little or no housing (Dorsett, 1999). One of the most notorious policies and pieces of legislation of apartheid that contributed significantly to the current land challenge include the Group Areas Act of 1950 and Land Act of 1913 (RSA,1913). Futhermore;

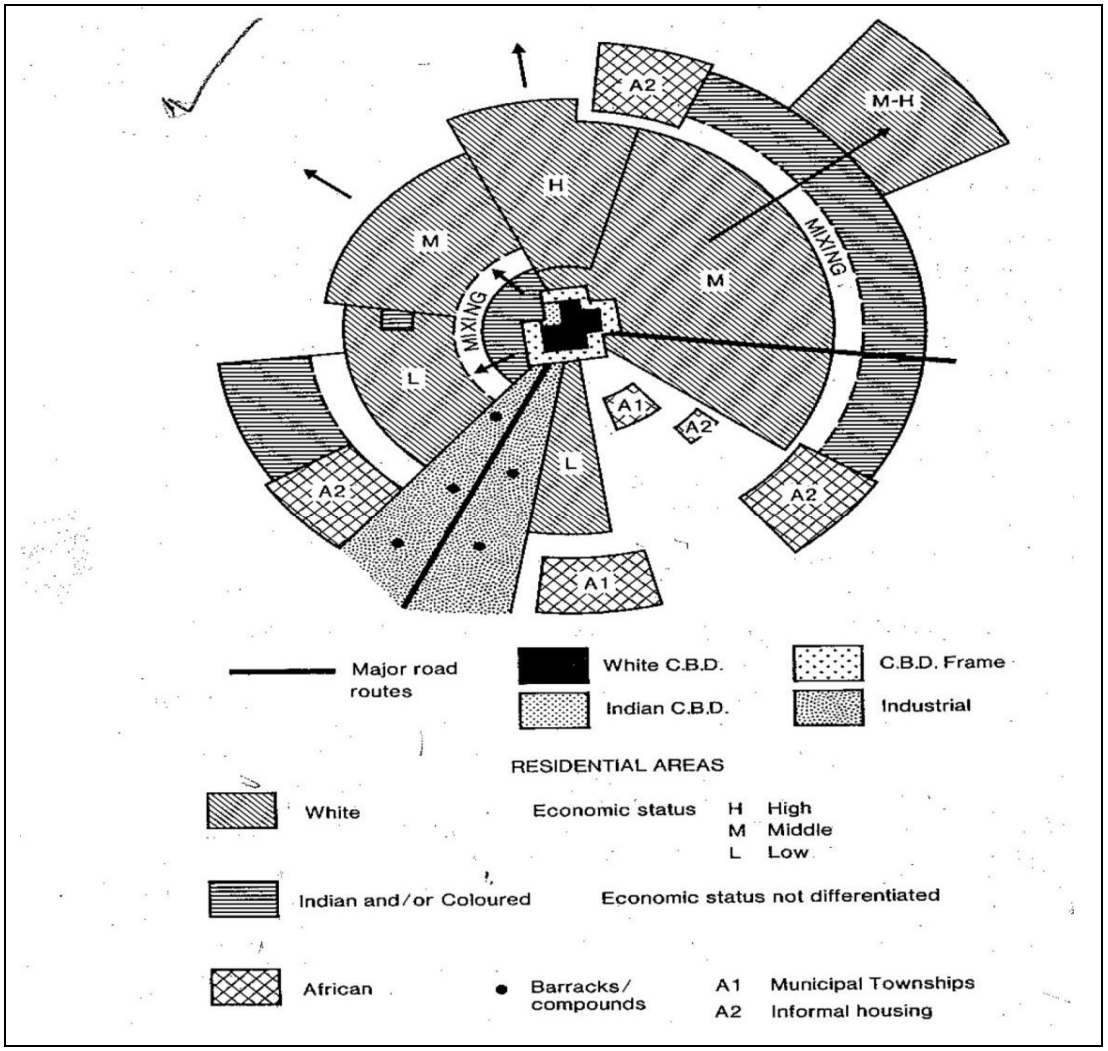
> ñThe **Native (Black) Urban Areas Act No 21 of 1923** (commenced 14 June) divided South Africa into 'prescribed' (urban) and 'non-prescribed' (rural) areas, and strictly controlled the movement of Black males between the two. Each local authority was made responsible for the Blacks in its area and 'Native Advisory Boards' were set up to regulate the inflow of Black workers and to order the removal of 'surplus' Blacks (i.e. those not in employment)ò (African History, 2008).

These acts resulted in the racial segregation of urban areas. This had a huge impact on urban land markets and access to affordable housing. Although this research looks at the lower-middle income sector, it is important to examine how past policies affected housing

programmes as a whole. The growing housing backlog and failure of land and affordable housing markets cannot accommodate the poor population. The land question is the most crucial and sensitive legacy of apartheid (World Bank, 2005).

Figure 4 demonstrates how the geography of apartheid gave physical expression to separate development. It shows that whites lived in low-density neighborhoods close to all socio-economic opportunities with a ôbuffer zoneô of 15 to 40km of very low-intensity land use, separating races. This situation still exists and has become a contributing factor in making land markets difficult to access for the poor, especially the black population.

**Figure 4: The Geography of Apartheid-Spatial Planning for a City**




**Source: Lemon, 1991 p.7**

### 3.3 Contextualizing the Urban Land Market in Contemporary South Africa

To make sense of the urban land context in South Africa, one needs to understand factors contributing to urban migration. Service delivery issues are deeply embedded in urban land challenges and are one of the contributing factors to urban migration. People move from different parts of South Africa in search of a better life and access to urban services. Even though this is not an unusual phenomenon in the cities of the developing countries, the South African context presents unique characteristics.

The social, political and economic background of South Africa, shaped by the apartheid legacy, contributes to the complexity and uniqueness of urban land issues. Cities have often, intentionally or not, socially, politically and economically excluded the poor.

The consequences the urban environment are manifested in various urban challenges. Illegal land occupation and the mushrooming of informal settlements are some of the visible consequences. Thus, land occupation involves a constant struggle for the right to have access to services and housing (Urban LandMark 2007).

In an attempt to redress the past inequalities and normalize the land and housing environment, the South African democratic government introduced various systems and mechanisms. These include policies and legislation framed within broader objectives of the Constitution.

The Constitution of the Republic of South Africa (RSA, 1996) guarantees everyone a right to access land and to adequate housing. This right is echoed by all policies and legislation related to land and housing. The next section will discuss legislation and housing policies relative to access to urban land and affordable housing.

It is critical to understand that the urban land question in South Africa was to be addressed primarily through housing.

> ñIn the South African context, access to urban land was addressed largely within the framework of housing. Specifically, the RDP document explores the need for a range of tenure options including ownership, affordable rental housing, and the transfer of state-owned stock to their long-term residentsò (Rust et al, 2005:3-4).

The housing subsidy scheme was to be the driving force. Despite the progress that has been achieved in the delivery of housing subsidies, urban land issues remain one of the biggest challenges. Rust (et al 2005), admit that eleven years after South Africaôs historic transition to a constitutional democracy, land issues remain highly politicized, complex and nuanced.

Moreover, systems designed to deal with urban land issues are very complex and bureaucratic. ñThe current formal land registration and transfer system is too complex and expensive for the needs of the urban poorò (USN, 2003:18-85).

Mechanisms of dealing with land transfers and registrations are too rigid. They are not flexible enough for the dynamic needs of the urban poor. USN (2003) argues that this system needs to be transformed and made more flexible in order to ensure that poor urban households are able to access formal, documented property rights, which can be defended in court and which, in the case of ownership, can be traded on the property market; and which can be used as collateral for credit.

### 3.4 National Policy on Land

The White Paper on Land (1997) is a significant document governing land issues in South Africa. As mentioned earlier, it is premised on the framework of the Constitution. The introduction of the land policy was aimed at dealing effectively with:

- The injustices of racially-based land dispossession of the past;
- The need for a more equitable distribution of land ownership;
- The need for land reform to reduce poverty and contribute to economic growth;
- Security of tenure for all;
- A system of land management which will support sustainable land use patterns and the rapid release of land for development.(DLA, 1997:1-2)

The principles of the land policy addressed these issues directly by establishing an effective institutional and legislative framework. The White Paper proposed a Land Reform Programme as the instrument for land delivery. There are three elements of this Programme which form the pillar of the land policy in South Africa. They are: Land Redistribution, Land Restitution and Land Tenure Reform (DLA, 1997).

ñ**Redistribution** aims to provide the disadvantaged and poor with access to land for residential and productive purposes. Its scope includes the urban and rural very poor, labour tenants, farm workers and new entrants to agriculture.

ñ**Land Restitution** covers cases of forced removals which took place after 1913. They are being dealt with by a Land Claims Court and Commission, established under the Restitution of Land Rights Act, 22 of 1994.

ñ**Land Tenure Reform** is being addressed through a review of present land policy, administration and legislation to improve the tenure security of all South Africans and to accommodate diverse forms of land tenure, including types of communal tenureò. (DLA, 1997, p4-5)

The above elements of the Land Reform Programme are mechanisms that the government has continually attempted to implement. However, their effectiveness raises many questions.

Access to land remains a huge challenge and an obstacle to service and infrastructure delivery in South African cities. Urban development in general has been hindered by the slow pace of the Land Reform Programme. Even though the policy pronounces on urban land issues, it has failed to meet its objective of ensuring that in an urban landscape, the needs of urban landlessness and homelessness are addressed by directing the development of affordable housing and services to unused or under-used land within urban boundaries and close to employment opportunities (DLA, 1997). There is evidence of continuous óperipheralizationô of low-cost housing in most urban areas.

Land reform does not, by itself, ensure access to land for the poor. Land tenure is an important issue in access to land. It is therefore important to explore various land tenure systems and options available to the poor.

ñSouth Africans currently hold land under a variety of tenure systems, including freehold and customary tenure and various other forms of tenancyò (Royston; undated). There are both traditional and conventional systems. Under the traditional system of land ownership, the communal system is the most common. The Ingonyama Trust Land in KwaZulu-Natal uses mainly the communal land tenure system. Legislation recognises this system of land tenure and makes provision for it within the context of land reform (DLA, 2004). This system is

prevalent in rural and peri-urban areas but what makes it relevant to urban issues is that in some instances, municipal areas include areas under which the system operates (DPLG, 1998).

Conventional land tenure systems entail formal land transactions and registration. Land policy should make provision for such a system to function within the market environment. Land titling ensures that land is registered and may be transferred from one person to another within the principles of the market. One of the objectives of land policy in South Africa is to use land reform to reduce poverty and contribute to economic growth (DLA, 1997). To achieve this, policy conforms to existing market rules of supply and demand. There is nothing wrong with this but the challenge is how informal land markets are incorporated into the mainstream urban land markets. There should be a regulatory framework to ensure that *laizzez faire* behaviour does not disadvantage the poor. Notably, land policy in South Africa ignores informal land tenure systems in urban areas. It is only recently that housing policy, through the informal settlement upgrading programme, deals with leasehold as the preferred tenure systems in informal settlement upgrading (DOH, 2004). However, this has not been implemented.

Furthermore, within the conventional land tenure systems, there are various types of tenure options. The legislative framework to which I turn next, establishes an enabling environment for these tenure options. They exist under the guidance of the land policy provisions.

### 3.5 Legislation on Land

The land question is a cross-sectoral challenge. As a result, it is dealt with through various policies and pieces legislation from different government departments. The Departments of Housing and Land Affairs are the two most important of these in relation to the delivery of land and housing. Their common objective is to ensure access to land and housing for the poor.

The Housing White Paper acknowledged the constraints of land availability for housing. The policy identified the following as contributing factors to land unavailability:

- ñLack of coherent policy on land: no clear outline of responsibilities for the identification, assembly, planning and release of land for low-income housing and

inconsistent positions between different government departments and tiers of government;

- Land identification: previous racial zoning practises, reluctance of certain authorities to accept responsibility for low-income housing, resistance of many existing communities and various legislative constraints have impeded the identification of sufficient, suitable land for low-income housing;
- Constraints to land assembly: due to legislative controls and the fact that land was previously assembled according to ability to pay rather than need, insufficient land has been assembled for low-income housing;
- Land planning: present planning legislation and approaches are burdensome, inappropriate in the South African context and resource-intensive;
- Land invasions: increases in informal land invasions hamper efforts to timeously release adequate, suitable land for human settlement in a planned manner, and may result in certain people attempting to jump the housing / subsidy queue; and
- Land title: the many different tenure arrangement (many of which are not officially recognized) complicate the registration of secure tenure. Furthermore, notwithstanding the sophistication of South Africa's land registration system, most citizens are forced to acquire accommodation outside this formal system.ò (DoH, 1994:13).

These constraints arguably still underpin the current urban land problem. It is these constraints that the housing legislative and policy framework attempts to address, but with limited success. Beyond the policy formulation process, its implementation to a large extent resulted in the peripheralization of low-cost housing. However, this should not belittle the achievements of the Housing White Paper in relation to the ówidthô aspect of housing delivery. Khan and Thurman (2001) argue that, having based the programme on supply, decreasing budgets and the preference for width over depth has made entry into the low-income housing markets by developers less attractive. Nevertheless, the Housing Policy was seen to be perpetuating the exclusion of the poor from urban life as a result of the spatial peripherilisation of new housing developments.

In recognition of this challenge, the government introduced the óBreaking New Groundô (*A Comprehensive Plan for Sustainable Human Settlements*) (BNG) policy document (DOH,

2004). It could hardly be called a policy in the sense of having an independent status. It is merely an implementation document aimed at rectifying the shortfalls of the housing delivery system and still rests on the foundations of the 1994 Housing White Paper and 1997 Housing Act. BNG adopts strategies to fast track land identification and release for affordable housing (DoH, 2004). It begins to conceptualise housing within the broader urban development process. It introduces informal settlement upgrading along with other instruments. The acquisition of private land for housing is also highlighted as the main objective and principle of this document (DoH, 2004).

There are various pieces legislation responsible for dealing with the land issue in South Africa.

The National Housing Code (2000) is one of the most important set of rules responsible for facilitating and speeding up access to land for housing. It sets out the national norms and standards on how government subsidised housing projects should be implemented.

The Development Facilitation Act, 1995 (RSA, 1995) (the DFA) was introduced to establish extraordinary measures to facilitate and speed up the implementation of Reconstruction and Development Programmes projects in relation to land. The DFA was initiated to address the spatial distortions of the past apartheid panning. It lays down general principles governing the land development process. Originally, its objective was to accelerate and control the processes of the RDP housing programme. However, the provisions of the DFA allow for it to be used for all development applications. Some private developers take advantage of the procedural advantages of the Act, in preference to other development legislation, such as the Provincial Ordinances. This has indirectly created an unfair competition for land between low cost housing development and private development, in as much as the administration of land development applications in terms of the DFA includes many which do not focus on subsidy-linked or affordable housing schemes. The fragmented nature of planning legislation in South Africa allows for DFA to be exploited by private developers.

> ñSomewhat unusually, however, the DFA operates in parallel to other laws. The applicant for planning permission to proceed with a land development project has the option either to follow the conventional route (i.e., the town-planning ordinance) or to apply to the Development Tribunals specially set up in terms of the DFAò (DFA, 1995 [Latsky-commentary on the Act]).

The Housing Act of 1997 (DoH, 1997) outlines the institutional arrangements and the administrative systems needed to plan, manage and monitor the implementation of the National Housing Policy. The Act sets out institutional responsibilities related to housing and land acquisition.

Other legislation such as Municipal Finance Management Act of 2003 (MFMA) (RSA, 2003) and the Public Finance Management Act of 1999 (PFMA), (RSA, 1999), set out rules for the release and disposal of publicly owned land for housing. The MFMA provides that public land may be disposed of only if it is not required to provide a minimum level of basic service. The PFMA, on the other hand, requires rules to be created for regulation of disposal of state assets by public entities (Treasury, 2003).

There is often confusion within local authorities on how to apply these Acts. Frequently, the land disposal process becomes extremely slow because of this confusion, thus affecting housing delivery process.

### 3.6 The Role of South African Different Spheres of Government in Urban Land

Chapter 2 broadly reviewed government interventions at different levels and mechanisms which are used and those which are required to facilitate access to urban land. In the coming chapters, the research will outline how some of the mechanisms can be applied to the South African situation. In this section the current roles played by different spheres of government in land are described.

Broadly speaking, a three sphere system of government applies in South Africa. Each sphere of government has some form of land holdings and has its specific function in the area of land management. In their respective roles, each sphere is governed by different policies. The first sphere is the national government which is responsible for policy formulation. Various national departments have a role in issues affecting land planning, regulation, release of land and access of affordable housing, for example, the National Departments of Housing (NDOH), Land Affairs (NDLA), Planning and Local Government (NDPLG), and Treasury are the main players at the national level.

The second sphere is the provincial level. Each province develops an implementation plan around issues of land and housing. According to the Gauteng Department of Local Government and Housing (DLGH, 1995), local government has the responsibility for the identification and acquisition of land whether government or privately owned, which may be made available for housing, while provincial government has the responsibility to develop policy guidelines to ensure that proposed use of large scale vacant land will not conflict with the long term planning vision of the province.

The third sphere is local government. This falls under the national Department of Planning and Local Government (NDPLG), and currently local authorities are responsible for land use administration including land procurement, and disposal of land for housing. (DLG, 1995)

In Chapter two, I reviewed various authorsô recommendations on ways in which government could intervene in dealing with land including, land reform policy reviews, land pooling/readjustment, review of regulations, management of land assessment, efficient land use management and planning. As my research in Chapters 4 and 5 will show, the major challenges for local government in South Africa remains that existing land procurement and disposal process is complicated due to administration, and the political and legislative process around land within local authorities.

Further role players in land markets are the state owned enterprises. They are government affiliated and also have land holdings. They include: Transnet, South African Airways, Eskom, and the Airports Company of South Africa. As will be indicated in Chapters 4, and 5, it seems that there is no effective mechanism through which government can ensure that state organizations are effectively engaged in making land available for affordable housing.

### 3.7 The SA Urban Land Market Today

There are at least six key issues considered crucial to current debates regarding urban land markets in South Africa. The attempt to understand urban land markets depends on credible and coherent engagement with these issues. The following issues form the core of urban land markets in South Africa:

- The cost of land
- The persistence of informal settlements
- The land poor and urban/ rural linkages

- Legislative and regulatory issues
- The intention for sustainable human settlements (Rust *et al; 2005*)

It has become evident that the housing subsidy allocations are too low to meet the price of reasonably located land. Within competitive urban land markets the subsidy is unable to cover the cost of land and at the same time produce a reasonable quality of affordable housing. In the context of an overwhelming need and a comparatively limited state capacity to deliver, households and individuals solve their own problems within the framework of their own resources (Royston, 2002; LEAP, 2005). Under these circumstances, informal land markets become the only means for the poor to access land. Informal land markets are particularly persistent in Johannesburg, Cape Town and eThekwini. This will be explored in the following section when these cities are introduced.

Rust *et al* (2005) explore the challenge of informal-settlement residents who do not qualify for housing subsidy. These residents are continuously excluded from access to land and housing. The criteria for subsidy allocation has been criticised for being stringent and lacking in flexibility where it is required.

Rust *et al* (2005) acknowledge that various studies have shown that there is an inevitable link between urban and rural land. The linkage relates to land tenure choices and attitudes towards land markets. The choices and attitudes are based on existing tenure practices in rural areas. Land transactions in rural areas are based predominantly on social relationships and trust. Informal access to land in urban areas tends to employ similar principles. Even though the national Department of Housing (NDOH) understands the urban/rural linkages within the framework of housing, it is still yet to understand its impact on urban land markets.

The origin of the urban land situation in exclusionary apartheid legislation, continues to be an issue, notwithstanding considerable legislative change and the constitutional enshrinement of land rights (Rust *et al, 2005*). The current planning legislation has been seen to perpetuate exclusion of the poor from access to urban land and housing (Rust *et al,* 2005). The introduction of the Development Facilitation Act (1995) was aimed at speeding up the assembly of land for housing development but its success remains questionable. It has not replaced the laws it was supposed to replace. This provides private developers with the option of switching between different pieces of legislations to suit their needs. This complex

disjuncture affects urban land markets and perpetuates a fragmented use system. Thus the observation:

> ñThe spatial dysfunctionality of the apartheid city has not been fundamentally addressed in the past eleven years, notwithstanding the amalgamation of previously racially-defined local governments and the combining of tax bases. With well-located land becoming even more expensive, it has become even more difficult to overcome this legacyò (Rust *et al* 2005:10*)*

This trend has seen further exclusion of the poor from access to land markets. The introduction of policies and regulation does not seem to have had a necessary impact in transforming the urban land markets.

The above shows that urban land markets are influenced by a variety of factors. Historical and current factors shape urban land markets. Policy and legislative environment informs urban land markets and how they function for poor.

### 3.8 Introduction to Land Issues in the Major Urban Areas of SA

This research looks at land issues in three major cities in South Africa, namely, City of Joburg, City of Cape Town and ethekweni Metropolitan Municipalities. According to the South African City Network (SACN, 2006), these cities are described as functional urban areas as identified by National Spatial Development Programme (NSDP) (SACN, 2006) and are referred to as core urban regions. They are further described as experiencing major housing challenges due to many factors including urbanization (SACN, 2006).

Due to the apartheid era, South African cities experience rapid changes due to growing pressures (Lemon, 1991). They face considerable pressure of availability of appropriate land for low and middle income residential developments. It is also argued that globalization is a contributing factor to the urban land problem in major cities; òé without institutional intervention, globalization appears to increase the probability of land speculation and, therefore, of increased land prices, thus causing greater difficulties for the urban poorô (UNCHS (Habitat), 2001:82). Pillay argues that South Africa is one of the most urbanized countries in Africa and is experiencing rapid urbanization which is shaped by a large fragmented and polarized urban structure. He states that

> óSouth African cities are faced with particular challenges linked to the legacy of apartheid, delayed urbanization and politician transformation. South African cities have inherited a dysfunctional urban environment with skewed settlement patterns that are functionally inefficient and costly, and huge service infrastructure backlog in historically undeveloped areasò (Pillay, 2004:348).

South Africaôs major cities are now faced with what Pillay calls the inability to manage the problems of spatial fragmentation and displaced urbanization which, among others, contributes to poorly functioning land and housing markets, urban sprawl and uneven land use development (Pillay, 2004).

### 3.8.1 City of Johannesburg

Johannesburg was declared a city in 1928, 42 years after 1886, when Paul Kruger declared the area open for public digging, under the leadership of Carl Von Brandis. The discovery of gold caused the creation of the Johannesburg mining camp at that time (Beavon, 2004). The city grew quickly, from a tent town to wood and iron shacks, to brick buildings and by 1895, it was considered the largest urban place in Africa south of the equator with an estimated population of 80,000. By 2000 Johannesburg had swelled from a minersô camp of 3000 diggers to a city with an approximate population of 3,2 million and increased from 12,9$km^2$ in 1898 to 1, 644$km^2$ in area (Beavon,2004). During apartheid, Johannesburg was divided into 11 local authorities, seven white and four black. In the first ten years of democracy, the Johannesburg municipality went through a series of administrative transformations. In May 2001, the Greater Johannesburg Metropolitan Council came into being, organized around a central administration headed by an Executive Mayor (Landsberg, 2005).

The land challenges in the City of Joburg are related to the following issues:

Firstly, Joburg is the fastest growing city in South Africa (Landsberg, 2005) with the highest economic growth and urbanization. It has the average population density of 1,962 people per $km^2$ (CoJ, 2008). In comparison to most international cities, Joburgôs population continues to expand (Beall, Crankshwaw, and Parnell, 2002). Because the city is a cosmopolitan centre, it continually experiences pressure of urbanization and is not able to respond to residential land demand for housing its population. The City is considered to be fastest growing urban place

in Africa south of Sahara, with its population almost eclipsing that of Cape Town, which was established 244 years before Johannesburg.

Secondly, the City of Joburgôs Land Use Management System (CoJ, 2003) states that the cityconsists only low densities buildings. This presents a problem as available residential land is not used effectively through medium density, which would create more pockets of land.

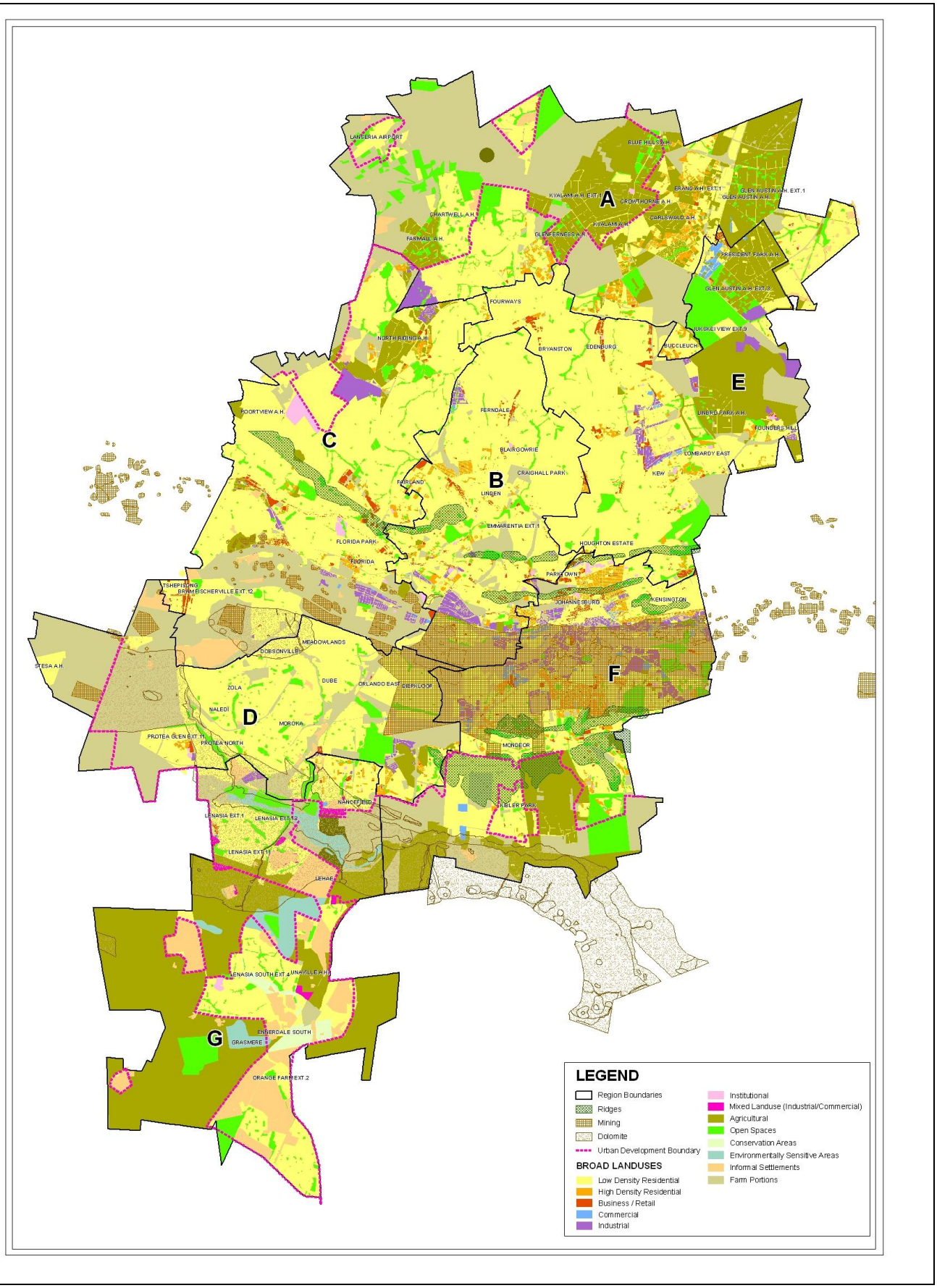
Thirdly, according to the City of Joburgôs Spatial Development Framework (SDF) (CoJ, 2003; 2006), in most parts of the city, the municipality has been inconsistent in its management of urban spaces. In townships such as Soweto, there are problems surrounding vacant land, especially parks and open spaces, which are now being addressed through Joburg Property Company. The problem is that most of vacant land is zoned as open spaces, which however, are not used as open spaces.

Lastly, geotechnical conditions are constraints as most of the cityôs vacant land is on the mining belt or on dolomite. Consequently, the larger part of the city cannot be zoned for residential housing. The recent report óJoburg Spatial Development Framework (SDF) 2008-2008, state the restrictions posed by the geotechnical conditions and mining belt.

- The mining belt which runs through most areas within the city with prevalence of dolomite. This affects the potential growth of most of the areas in City of Joburg (see figure 5)
- Large areas of land are still protected and reserved for future mining operations.

It is clear that the dolomite areas present severe geotechnical problems preventing or significantly constraining their development potential which adds to the problem of land for affordable areas. As seen from Figure 5 below, most of the areas affected represent areas where the target market for affordable housing is emerging from.

**Figure 5: Geotechnical Constraints and Broad Land Uses**




Source: CoJ, 2008

### 3.8.2 City of Cape Town

Cape Town was declared a city following the formation of the Union of South Africa in 1910 and it remains the location of the nationôs legislature. Cape Town was formally known as ôTavern of the Seasô and is built around sloping mountains (Dewar, 2000). The mountain slopes became leafy ñwhite suburbsò while the townships on the sandy plain were variously designated for ñcoloredò and ñblackò people.

The racial division of the suburbs was formally lifted, but racial and socio-economic differences between areas remain marked. A huge migration of black people followed the easing of racial laws and the city has grown vastly in the last decade and is now one third Xhosa. The total population of City of Cape Town is 2 893 246 representing 788 517 households in the total area of 2 398 (SAIRR, 2006).

The following issues contribute to the land challenge in City of Cape Town:

- The cityôs Land Use Plan demonstrates that there is huge vacant or under-utilized land especially the publicly owned land (Cape Metropolitan Council, 1996). Figure 6 shows vacant land in the city, however, most of the land is not suitable for housing development due to geotechnical conditions mostly high water levels.

- As stated by Huchzermeyer, the land challenge affects the poor who are not given an opportunity to participate in urban land markets since ôRDPô housing is located on the periphery of Cape Town. Huchzermeyer argues that ñfreehold titling of the individual plots, thus the commodification of such peripheral land, is based neither on an understanding or the functioning of land markets, nor on an understanding of urban poverty in South Africaò. (Huchzermeyer,2003:131)

- The majority of vacant land is agriculturally based and used for wine farming, which places pressure on urban spaces.

- In the CBD area, the sea was reclaimed in order to create land opportunities which are, however not attractive to housing because of soil conditions.

- The most attractive land is around the mountains, which only attracts rich people because of the high land values associated with topography (see figure 8). The metropolitan sub region (shown in Figure 7) is characteristised by the following:
    - within established suburban areas which correspond largely to the City and the Southern and Tygerberg Arms, there are currently no opportunities for affordable housing with access to urban amenities;

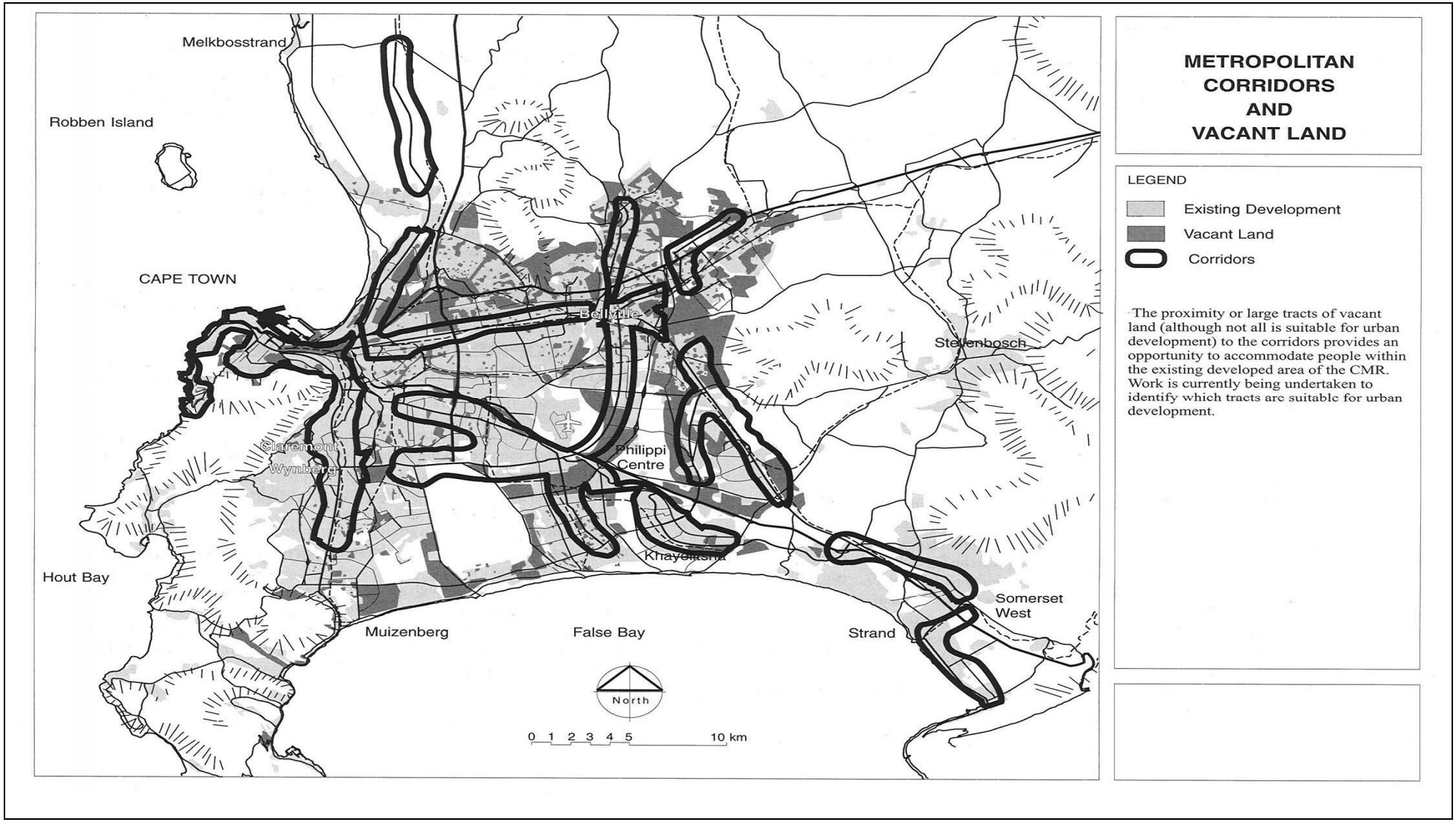
    - There is no dense low to middle income housing related to access to public transportation or work opportunities;

    - There is currently no integration of urban land uses, for example residential areas are separated according to income groups. Informal settlements are isolated.

    - There is plenty of vacant land which is not being utilised in order to achieve integration and possibly address housing for the gap market.

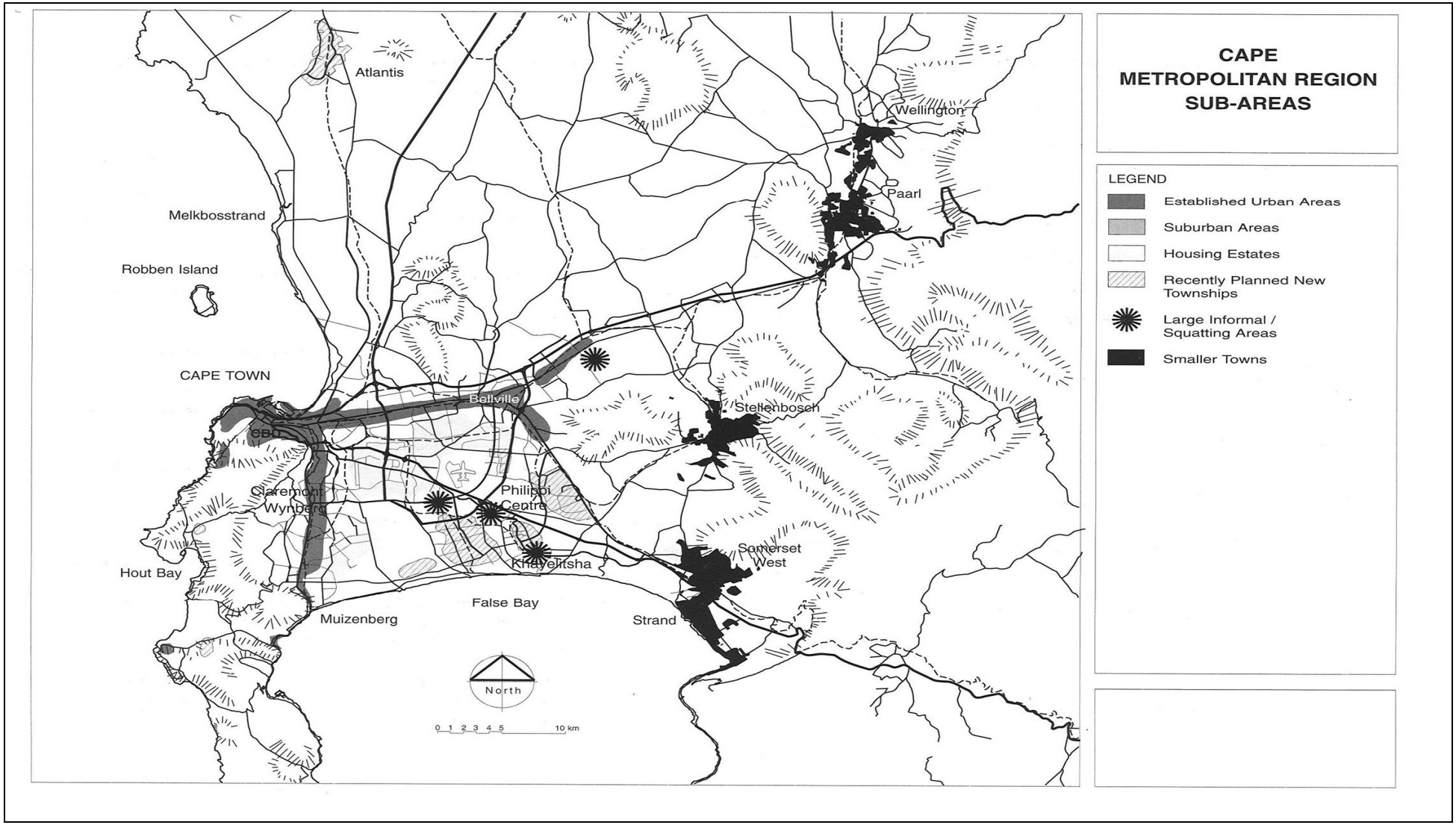
- Lastly, there is a high demand for land in the city because of the job opportunities, and also because Cape Town is a major tourism node.

**Figure 6: Spatial form and land issues in City of Cape Town**



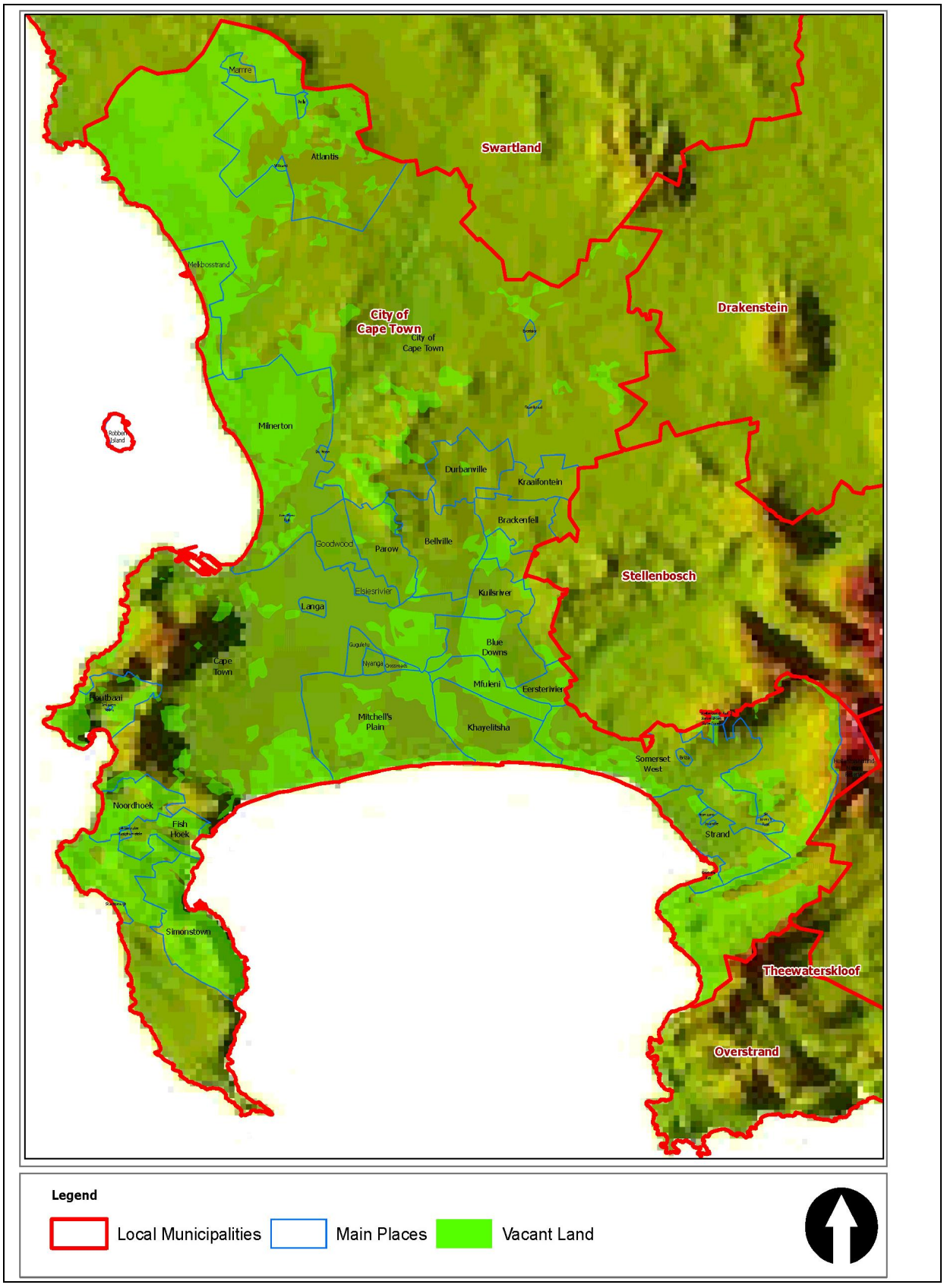

Source: (Cape Metropolitan Council (April 1996 pp.84)

**Figure 7: Vacant Land in Relation to Sub-Areas**




Source: (Cape Metropolitan Council (April 1996 pp.86)

**Figure 8: Vacant Land Vs Slopes and Geotechnical Constrains**




Source: City of Cape Town (2008)

### 3.8.3 eThekwini Municipality

The municipality is located in KwaZulu-Natal Province and it is South Africaôs major port city and the countryôs second largest industrial hub, after Gauteng. Durban is the main economic region in the province and has a total population of 3,090 122 with 824, 371 households living in a total area of 2139 $km^2$ (SAIRR, 2006). Durban was declared a city in the early in $19^{th}$ century. It is predominately an Indian city and one of the cities with deep race, class and gender divisions as well as social, cultural, ethnic and language diversity (Hindson, King and Peart, 1996). In responding to the need to address the breakdown in local government and administration in the black area, six local authorities were amalgamated into local councils including a metropolitan council in 1996 (Todes, 2003). In addressing issues of integration, in 2000, a Unicity was created resulting in the later formation of eThekweni Metropolitan Municipality.

The urban form of the city is fragmented, racially structured, with poor or periphery and affluent in core (Hindson, King and Peart, 1996). The urban form however consists of a well developed built system in the core city and suburban areas with opportunities for corridor development and densification. There are also significant areas of open land for environmental and development uses. The scale of homelessness and housing need is less than previously thought (Todes, 2003). The following issues contribute to the land challenge in EThekwini:

- ñA considerable amount of well-located vacant land is subject to land claimsò (Todes, 2003:116).

- There are competing demands for land in particular, an emphasis on environmental conservation (Todes, 2003).

- According to the study conducted in Durban Metro in 1996 on the state of the environment and development of Durban Metropolitan Area, a large portion of land is reserved for natural environment (Hindson, King and Peart, 1996). This will have impact on making land available for housing and those who are concerned about natural environment will be strict on the EIA process.

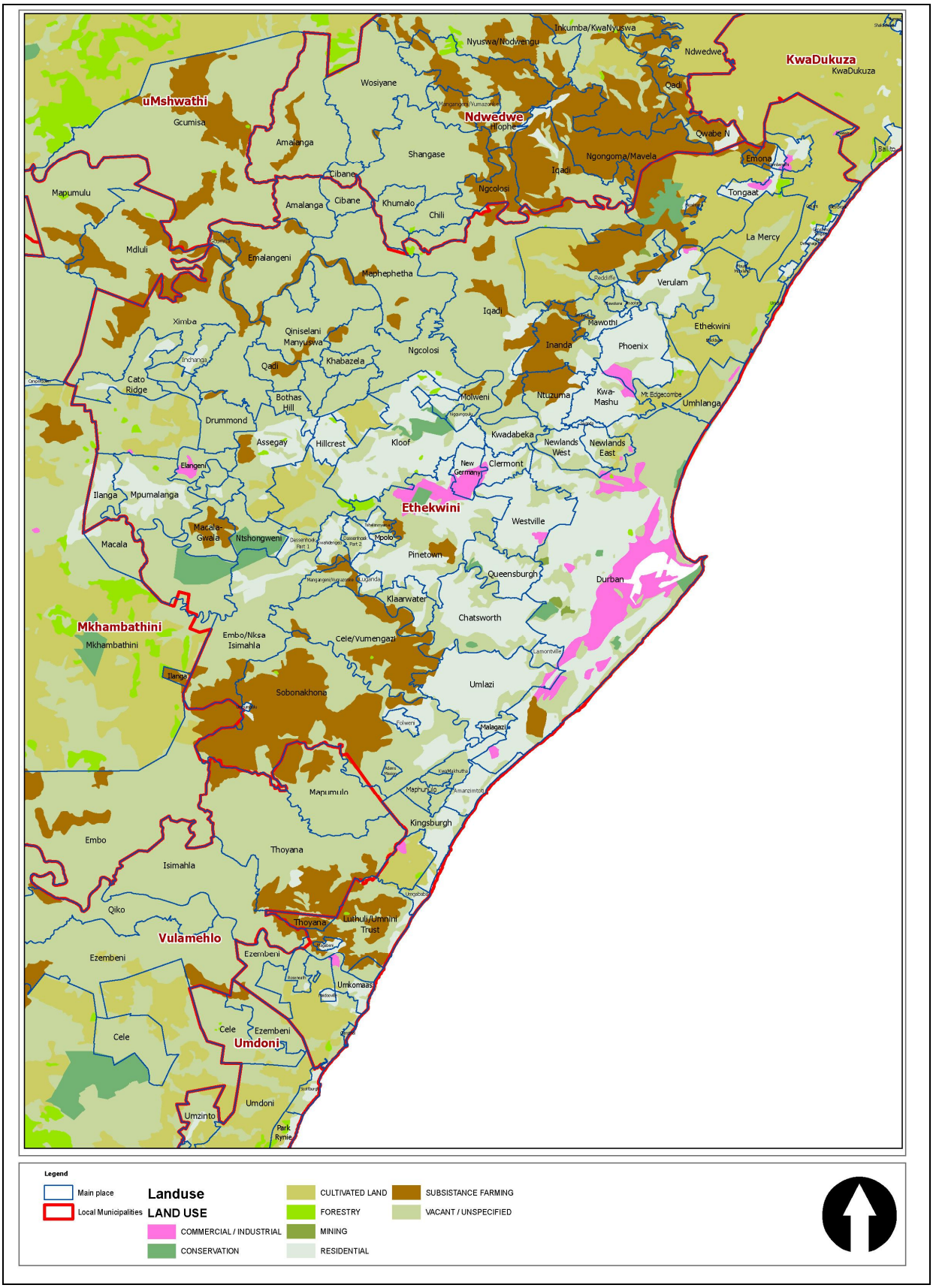
- Commercial agriculture, although mostly in the peripheries has had the most extensive physical impact. Figure 9 below demonstrates the land use and the tracts of land occupied by commercial agriculture.

- A substantial part of the city consists of land which is undevelopable because of physical constraints. This is mainly due to the fact that many areas are topographically undevelopable, for example gorges and river valleys (see figure 10).

- eThekwini, like Joburg, is growing fast and experiencing a changing landscape with its urban edges pushed to the outside.

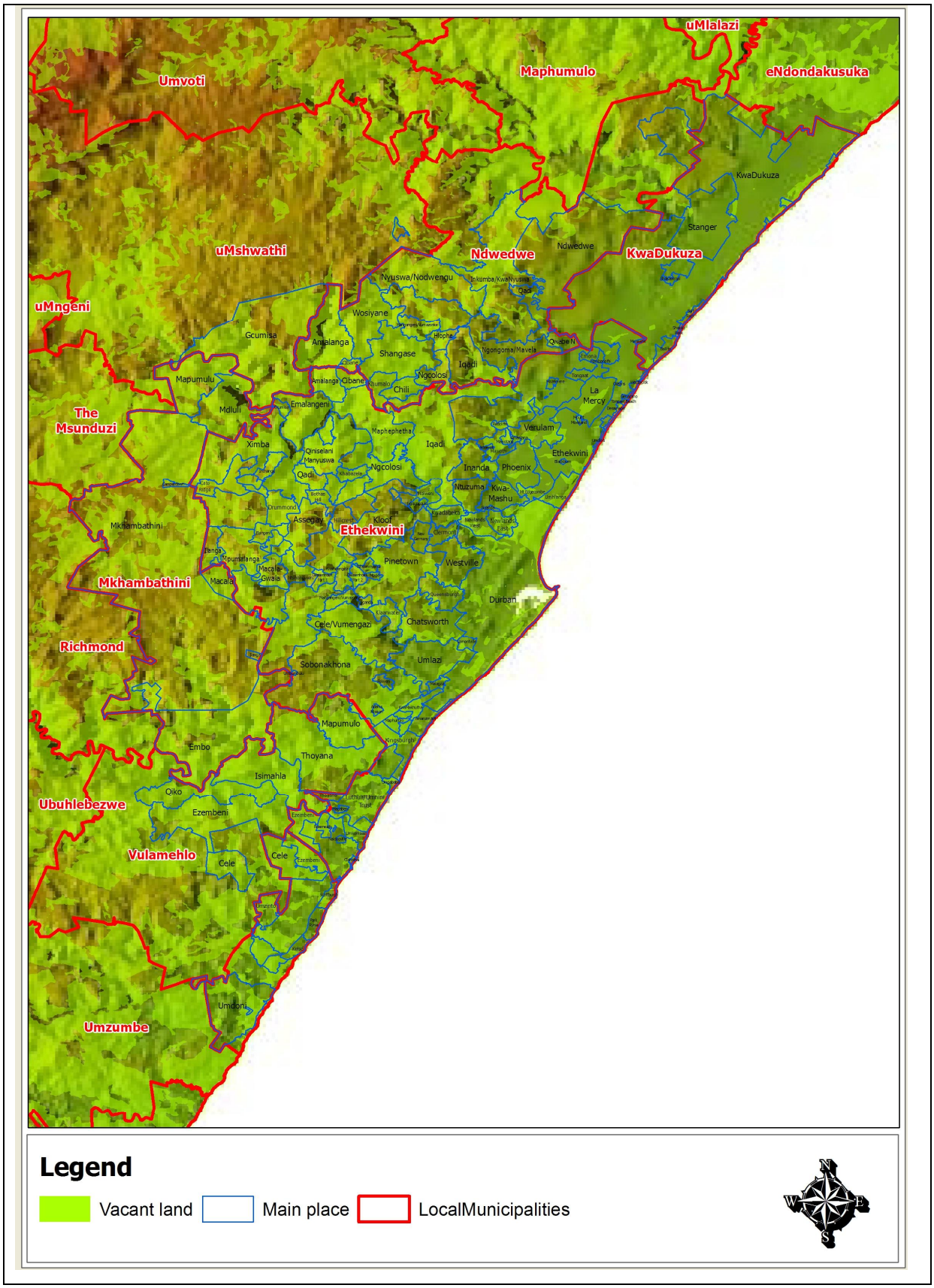
- In the same way as Joburg and Cape Town, there is a high demand for land in the city because of the job opportunities.

**Figure 9: Urban Land use in Ethekweni**




Source: (Ethekweni Municipality, 2008)

**Figure 10: Undeveloped Land-Slopes, Valleys, Geotechnical Conditions**




Source: Ethekweni Municipality (2008)

### 3.9 Conclusion

Urban land issues are a complex subject in South Africa. There are numerous factors that one needs to consider when trying to rationalise the land question. The background and history of South Africa is an important factor, as it places the land issue into a specific perspective. Contextualising land issues ensures that country specific aspects of land are considered and appraised using reasonable parameters.

The land question is dealt with in this chapter under the framework of policy and legislation. It is therefore imperative that legislation and policies are discussed and understood. Current market trends should be dealt with and understood under the above context. It is important to understand that urban land markets for affordable housing are not independent entities. They should be understood within the broader land issue context. This chapter acknowledges that the land issue is not exhaustive but has a dynamic character.

## Chapter Four: Regulatory and Planning Challenges to Urban Land Availability

### 4.1 Introduction

The challenges of administering land are often related to the implementation of regulations controlling access to, and the development of, land. In discussing these challenges, various environmental and town planning laws and regulations are examined. In order to achieve sustainable development these issues need to be understood and dealt with accordingly.

As mentioned in Chapter Three, land for affordable housing should take into consideration town planning and environmental issues to achieve the criterion of sustainability. It has been pointed out that legislative inconsistencies do exist and impact on the accessibility of land for affordable housing. These inconsistencies should be analyzed and understood within the framework of land for affordable housing. Various sections of this chapter deal with each of the above issues in the land development process. I analyse literature relating to the three major South African Cities, as well as interviews with relevant role players on this subject.

### 4.2 Planning Challenges

In essence, town planning processes should take into account environmental issues as the two issues are intertwined. Town planning regulations make provision for EIAôs to occur. EIAôs on the other hand, ensure that town planning occurs in an environmentally sustainable manner. However, there are a number of challenges facing both town planning and EIAôs in the land development process.

#### 4.2.1 Environmental Impact Assessments (EIAs)

In discussing EIAôs, continual reference will be made to town planning processes, as the two are related. The section also attempts to define the meaning of EIAs and its importance, although it later discusses how this has become a critical challenge to the land availability process.

The requirement for EIAôs emanates from the Constitutional right of access to a ôhealthyô environment (RSA, 1996). Therefore it is the duty of the state to ensure that this right is adhered to. Land development has an inevitable impact on the environment and it is necessary that this be assessed and minimised as far as possible. The principles and

procedures of EIA are contained in the National Environmental Management Act of 1998 (RSA, 1998).

Maidin (2006) asserts that the role of the environmental impact assessment process in promoting sustainable land development has been widely acknowledged globally. He states that environmental impact assessment is essentially a tool formulated and developed for assisting the decision-making process of a particular development activity. Environmental impact assessment enables environmental considerations to be taken into account at both the planning and implementation stages of a development project, in order to strike a balance between the need for development and the conservation of the environment in a sustainable manner.

The Egyptian Environmental Affairs Agency (2005) outlines the broad global aim of the EIA. The aim of Environmental Impact Assessment (EIA) is to enable the approving authority, the public, local and national government, and the developer, to properly consider the potential environmental consequences of a proposal, and to make recommendations to reduce the environmental consequences if necessary.

Odendal and Benson, both of whom work in municipalities in land assembly and forward planning, argue that municipalities do not have the capacity to monitor EIA regulations, and guidelines are mostly not adhered to. The speed of land delivery for affordable housing, or any development for that matter, is hampered. (Benson, personal communication, Odendaal, personal communication) The main question is how EIAôs can be carried out without a compromise to the speed of land delivery for affordable housing?

The disadvantage of affordable housing is that it has to be driven by the public sector, which often lacks the required institutional capacity. Private developers are able to ensure that EIAôs are fast-tracked, if there is a benefit in so doing. Benson (personal communication) states that ñlack of adequate resource in a broader state level, i.e. DEAEò is a contributing factor. She further alludes to the fact that the changes in environmental regulations have been obstacles in some of the pilot projects which were implemented in eThekwini.

Others indicated that the EIA process entails long and bureaucratic procedures. These procedures often create many challenges for local authorities. These challenges have a direct

impact on the pace of land delivery and accessibility for affordable housing. For example in Joburg; , ñthe EIA process is deemed to be long and at times unnecessaryò Sotomi (personal communication). Sotomi also argues that the latitude is given to the presiding officers who will often exercise choice on projects. If they donôt like a particular project they recommend a full-blown impact study, whereas if they like a project they may only recommend a scoping exercise or a report. This indicates that there are no proper checks and balances in this process.

Interviewees also mentioned that EIAôs have an effect on the cost of housing. For example, ñmunicipalities are faced with very onerous environmental and planning and development legislation which impacts on the affordability and adds to the costs in respect of developmentò Odendal (personal communication).

Lastly the intention of the EIA process is to ensure that the environment is not tampered with. While that intention has to be fulfilled, unfortunately it brings about complex legislative requirements. It is also argued that, at times, the legislative requirements are not necessary; òunnecessary legislative requirements within the EIA processes remain a challenge to planning for making housing availableò (Benson, personal communication).

Maxwell (personal communication) stated that from the private developerôs perspective, EIAs contribute to making the development process risky. For example, in an average project for affordable housing implemented for the Social Housing Company (SOHCO), the EIA process took an average of 14 months. Another contributing factor is that EIAôs are handled by the environmental department of the province. As a result of these complexities, potential beneficiaries of affordable housing projects find it difficult to understand and tolerate the EIA process.

### 4.2.2 Town Planning Issues

Town planning is a critical part of housing delivery. It plays a big role in allocation of resources. Through town planning, the spatial reform of South African cities can potentially occur. However, town planning policies have continually perpetuated the social and economic exclusion of the poor from urban centres. Town planning also has an influence on land prices and the accessibility of land for affordable housing. For example, the mushrooming of up-market residential and commercial developments in the Northern part of

eThekwini has a negative impact on land prices for affordable housing. This trend is perpetuated by weak town planning legislation, particularly in KZN (Kuhn, personal communication).

Town planning can broadly be divided into two main categories, namely strategic planning (planning done by provincial and local governments, at the macro and micro levels) and land use management (land uses that may be exercised on an erf with municipal permission, in accordance with town-planning schemes).

Interviews with officials who deal with land and housing indicate that the main town planning challenges revolve around its legislative framework. It is clear that the main town planning complexity in South Africa lies in its fragmented legislation. Benson (personal communication) stated that ñthere are different township establishment legislation used in various areas, hence old and archaic procedures are to be followed. Also with current changes to consolidate same, there is confusion as to the effective implementation thereofò.

Added to this, is the fact that there is differing provincial planning legislation. For example the Town Planning and Townships Ordinance (Transvaal), Ordinance 15 of 1986, is a provincial law dating back to the apartheid era, enacted in 1987. Despite the post-1994 enactment of the DFA, , the Ordinance continues to have legal effect in the Provinces that previously constituted the Transvaal, although each province does choose whether its provisions are still relevant- the North-West Province for example, recognises only applications made in terms of the DFA.

The second common procedure is the Development Facilitation Act. Each province has control over this and might establish its own Development Tribunal, which is a body made up of government officials and private sector representatives and decides on land development applications. The use of the DFA varies between provinces. The Free State, for example, does not use the DFA at all, and relies on the Removal of Restrictions Act, 1967to deal with development applications.

The DFA was designed as a temporary measure, and government anticipated the formulation of new, comprehensive legislation to repeal all other planning legislation. The National Land Use Management Bill (the successor to the DFA) is still in the process of preparation.

The third procedure is The Less Formal Township Establishment Act, 1991, Act 113 of 1991 (LeFTEA) (RSA, 1991). This law was approved during apartheid government to expedite land delivery and was seen as a replacement to and improvement to the Black Communities Development Act, 1984, (Act 4 of 1984). The law provides for minimal community participation and gives officers discretion to approve or disapprove township establishment irrespective of minimum acceptable stands and environmental considerations. Its sister law is the Upgrading of Land Tenure Rights Act, 1991 (Act 112 of 1991) (ULTRA), which provides for the formal registration of housing (i.e. freehold tenure) in favour of occupants exercising a leasehold ownership.

### 4.3 Regulatory Challenges

#### 4.3.1 Regulations and framework applicable to land for housing

In Chapter Two, the literature defined the challenges of regulatory frameworks. On the one hand it demonstrated the need for regulation in order to ensure that all sectors of the market, particularly the vulnerable, are catered for. On the other hand, it demonstrated that in some instances, regulations make access to land markets and housing difficult for the lower income sectors of the population. The literature confirms that legislative frameworks create challenges related to institutional structures, administrative procedures, and complex development control processes.

Officials involved in land for housing in municipalities have differing views. For example, Sotomi from the City of Joburg, cited that some of the regulations such as the óAccess to Information Act No. 2 of 2000, the Town-planning and Townships Ordinance Act No.15 of 1986, the National Environment Management Act, the latest Treasury regulations to MFMA, require community participation, which at times becomes a hindrance to speeding up the delivery of land for housing. The Doornkop project, which is the partnership project between Gauteng Province, City of Joburg, and the private sector, 80 parcels of land were negotiated and made available. This required compliance with different legislation, for example; the EIA process; providing services; and legislation which deals with amalgamating land owned by different people. Some of the land is in the category of óvested landô which means the legal framework on how to deal with vested land must also be complied with (Sotomi, personal communication).

The lack of skilled staff to deal with the necessary town planning procedures was indicated as a problem in the three municipalities.

It was stated that in some instances, applications for township establishment are stuck in an administrative process where staff members are given long time frames to deal with just one aspect of the application and therefore cannot pass it through (Sotomi, 2008, personal communication)

The issue of community resistance has also been mentioned as a blockage in the ôPhoenix Infillô project in eThekweni (Benson, personal communication).

Complying with the Supply Chain Policy, in keeping with the Supply Chain Management Regulations (GN868 in GG of 30 May 2005) and the MFMA for the release of land, has been seen as a demanding process. The MFMA requires that there be various teams to fulfill the requirements, and various committees must perform different activities. This is confirmed by ñthe fact that municipalities do not have capacity to fulfill requirements for bid committeesò (Benson; Odendal personal communication).

While this is an issue, others are of the view that the Supply Chain Policy and MFMA are not an obstacle to disposal of land and that, ñif municipalities comply with requirements stated within MFMA framework and follow the checks and balances, they will be able to dispose of landò (Sotomi, personal communication).

The same view is held by Kuhn who states that regulatory frameworks are required to regulate transactions related to land. Kuhnôs view, based on working with municipalities, is that ñmunicipalities need to prepare detailed land disposal policy frameworks, which they identify both the process to dispose or municipal land, as provided for in Regulation 40 (2) of the Municipal Supply Chain Management Regulations, published in the Government Gazette as GNR.868 of 30 May 2005, and the occasion when land may be disposed below market valueò (Kuhn, personal communication)

### 4.3.2 Legislative Inconsistency

Various departments are responsible for dealing with and legislating land issues. Land management in South Africa is the responsibility of a number of departments, which include the Departments of the Treasury, Public Works, Housing and Land Affairs. Seemingly, there is no integration or proper communication between departments which often results in legislative inconsistencies (Botha, 2008). It is against this background that this section will identify and discuss these inconsistencies. However, the Department of Land Affairs (DLA) has taken this up and currently working with the Department of Housing (DOH) through its new policy ódand acquisition for sustainable settlementô (LASS) (DLA, 2008) which is to address the issues of making land available to municipalities to address human settlements needs (Botha, personal communication).

The release of public land for affordable housing is at the core of these inconsistencies. The Public Finance Management Act requires that ñthe letting of immovable state property (excluding state housing for officials and political office bearers) must be at market-related tariffs, unless the relevant treasury approves otherwise. No state property may be let free of charge without the prior approval of the relevant treasuryò (Treasury; 1999). Contrary to this the Housing Act requires;

> ñmunicipalities have a duty to ensure that the inhabitants of their areas of jurisdiction have access to suitable land for residential purposes - land that is favourably located in relation to employment opportunities and provides convenient access to a full range of social facilities and amenities, such as, schools, primary health care facilities and parks and other recreational amenitiesò (Mthembi-Mahanyele; 2000).

The market driven principles of the MFMA state that public land should be disposed of within the market enviroment; it ignores the limitations of the housing budget and the absence of a competitive edge of this sector. Government has struggled to acquire land through the commercial market. The Housing Act of 1997 (RSA, 1997), as the main law governing housing, was introduced to ensure that land for housing is prioritized and can be accessed below market prices.

Local government frequently finds itself trapped between a rock, and a hard place in terms of being able to make land available for housing. If public land is made available on the basis of market related prices, affordable housing is guaranteed to be on the losing side. Commercial

developments have a competitive edge and consequently, well located land is either taken by private developers or its disposal for housing takes an unreasonably long time, slowing housing delivery.

Mthembi-Mahanyele (2000) states that where municipalities are unable to acquire suitable land for housing development at a reasonable price, they are empowered, in terms of the Housing Act of 1997, to resort to expropriation, subject to authorisation by the MEC for Housing. The question that arises is whether land owned by another state organ should be expropriated by a municipality. In terms of the Intergovernmental Relation Framework Act of 2005, state organs should avoid conflicts with one another (RSA, 2005). It might be inappropriate for a local authority to declare any dispute in relation to land release for housing. However, the Act makes provision for the establishment of implementation protocols between organs of state to deal with legislative or policy conflicts.

Other elements add to the confusion and relate to the differences between spheres of government responsible for the administration of legislation. ñThe new legislation has been overlaid onto the pre-existing lattice of land legislation and regulation that has not yet been taken off the books e.g. Annexure F of the Black Communities Development Act (1984); the Town Planning Ordinance 15 of 1986; the Johannesburg Town Planning Scheme (1979) and the City Of Johannesburgôs by-lawsò (Kihato and Berrisford, 2006:15).

This is seen by officials in government departments and in municipalities as an element of frustration. Kuhn (personal communication) states that

> ñthe onerous requirements imposed on a Municipality by the (National) Local Government: Municipal Finance Management Act, 2003, prevent a Municipality from disposing of land without following lengthy processes, contrary to the provisions of the (Provincial) Local Authorities Ordinance, 1994, which provided for simplified procedures in certain circumstancesò.

There are three sectors involved in the process of making land available. This process involves more than five government departments and private entities with more than ten pieces of legislation which are often contrary to each other. This adds up to the lengthy process which in some instances takes more than 2 years for land transaction to be concluded (see Table 3 and further discussion in chapter 5)

**Table 3: Legislative compliance and inconsistencies**

| Department | Sector and legislation | Minimum time needed |
|---|---|---|
| **Environment** | | |
| Gauteng Department of Agriculture, Conservation and Environment | National Environment Management Act, 107 of 1998 | The new regulations have notably put ceilings on some departmental response times. At best, the application will take **6 months**[20] |
| SA Heritage Authority | National Heritage Resources Act, 25 of 1999 | Heritage impact assessment is often linked to the broader EIA |
| Gauteng Department of Agriculture, Conservation and Environment | Environmental Conservation Act, 73 of 1989 | These EIA provisions have been repealed. However, in previous applications, typically the **minimum time is 6 months** where the application:<br>o Is uncomplicated, for instance the specialist studies are straightforward and raise few objections from neighbors<br>o Provides sufficient information upfront |
| **Development planning** | | |
| The Ministry of Agriculture & Land Affairs | Subdivision of Agricultural Land Act, 70 of 1970 | Generally, no response time ceilings required of authorities for responding to various applications. However, on average 2 months for best-case scenarios |
| Gauteng Department of Development Planning & Local Government | Town Planning and Townships Ordinance, 15 of 1986 (the ordinance) | Minimum 6 months. Generally no time limits for authorities to respond |
| Gauteng Department of Finance & Economic Affairs | The Less Formal Township Establishment Act, 113 of 1991 (LeFTEA) | Minimum 4 months. Generally, no time limits for authorities to respond |
| Provincial Development Tribunals | Development Facilitation Act, 67 of 1995 (DFA) | At best 4 months |
| Mogale City[21] Local Municipality | Gauteng Removal of Restrictions Act, 3 of 1996 | At best 3 months. Generally no time limits for authorities to respond. Often linked to Town Planning establishment |
| **Land reform** | | |
| National Department of Land Affairs | The Provision of Land and Assistance Act, 126 of 1993 | At best 2 months |
| National Department of Land Affairs | Land Survey Act, 8 of 1997 | In a best-case scenario, 1 month |

Source: (World Bank, 2007)

In the case of eThekweni, five major projects (Mount Royal, Barcelona 2, eTafuleni, Sim Place, and aMaoti State Land) all in excess of 50 000 square metres of land, have been blocked due to bottlenecks arising from of legal land issues and legislative inconsistencies. The complications are in the following categories:

- ñThe unknown relevant state department vested with ownership of the all encompassing phraseology of RSA land;
- The vesting ownership in terms of the general Power of Attorney and the Item 28 (1) certificates issues in terms of the constitution;
- Release of land by para-statal Departments and the complication of inter-departmental control release.

- The release mechanisms for provincial land through the complication of the State Land Disposal Committee.
- The inability to consolidate land required as a project footprint when the landowners are defined as State but in essence are multiple landowners with bureaucratic process limited the possibility since ownership required for consolidationò (eThekweni Municipality, October 2008).

On the other hand, Benson states that ñthe issue of inconsistency should also be looked at differentlyò. In her view, ñthe complexity revolves less around inconsistency as opposed to the plethora one is required to work around and also current changesò (Benson, personal communication). Benson further argues that legislation should not be used to fix problems but rather to formulate policy, whereas case law and procedures should deal with problems arising as a result of inconsistent legislation.

**4.4 Conclusion**

Previous chapters of the research confronted the issues concerning the availability of urban land for affordable housing. This chapter focused on the numerous and complex regulatory and planning challenges. Affordable housing requires the resolution of environmental issues- environmental impact assessment is not only mandatory but is a challenge to local authorities who experience pressure to deliver housing. Strategic planning and land use management are a set of planning tools that are clear on their own, but are procedurally frustrating in the execution of new township developments. The roots of regulatory challenges lie in their colonial bias that is still the basis of legislation, institutional structures, administrative procedures and professional focus. These challenges do not reflect reality nor prioritise the need on the ground.

The chapter also pointed out that despite advances made in South Africaôs legislative framework, there is inconsistency which needs to be addressed. The chapter has also demonstrated how legal issues have become constraints to a number of projects implemented by municipalities. While some interviewees emphasised the frustrations brought about by the regulatory framework, others argued that if the various pieces of legislation were streamlined in the relevant institutions, they would make a better framework to make land available for the implementation of affordable housing projects.

## Chapter 5: Political and Institutional Challenges to Urban Land Availability

### 5.1 Introduction

The aim of this chapter is to discuss various political and institutional issues influencing the accessibility of land for affordable housing, with a view to understanding local government constraints in making land available. Political issues and processes are identified but not dealt with in detail due to a limitation in information. The focus will be on the institutional issues and will cover the choice of legislative implementation; municipal economic objectives relating to land markets; and the institutional disjunctions which play a major role in the land issue. The objective is to explore all these factors within the framework of land for affordable housing in the context of Johannesburg, Cape Town, and eThekwini.

### 5.2 Political Process

The process of identification, acquisition, and disposal of land is a critical step in affordable housing, yet it is one which is highly politicised. For example, land reform is embedded in a political process. ñIt is through a political process that the ónewô South Africa set out to redress the injustices of apartheid and, by redistributing land to black South Africans [*previously disadvantaged groups*], to transform the structural basis of racial inequalityò (Hall, 2004).

Firstly, through the political process, policies and legislation are formulated to establish the institutional framework. The main objective is to normalise the land and housing environment in South Africa. In a perfect democratic environment, the political process allows society to participate in decision-making.

Secondly, political processes can have a negative impact on land issues. In most cases the lack of political will to prioritise land accessibility for housing is a major challenge. A contrary dimension is that uncontrolled political interference in land issues can have detrimental effects on accessibility of both land and housing markets (Hall, 2004).

The nature of land reform is informed by political pressure. The failure of land reform to make land available for affordable housing can be explained by political policy choices made by the state. ñPolitical pressures on government serve to reinforce the neo-liberal preferences expressed in macro-economic and sectoral policies. There is a belief in some circles that the

ANC-in-government harbours radical sentiments on the land questions which are not supported by the statements or actions of the party since coming to power, and if it does, these sentiments are clearly outweighed by the strong commitment to private property and the free market. Given the vast economic and political pressure for a cautious approach to reform, and the clear preferences shown by government to date, a dramatic shift in either economic or political conditions would be required in order to bring about a major change in current policiesò (Lahiff, 2002:1).

Moreover, the challenge for local authorities is that the political mandate to make land available for affordable housing take largely ignores the neo-liberal trend. My personal observation, explained below, is that there is also political pressure for local governments to deliver housing at scale and within the expectations of their ópolitical principalsô. More often than not, these expectations exceed policy and legislative capacities.

Most of the officials in the different municipalities are clear that politics play a critical role in the making land available for affordable housing. In Cape Town a ñlack of political willò is the hindering factor, which is also linked to competing demands, for example; ñthe many competing mandates facing metropolitan municipalities, i.e. how can it be justified making land available for the gap market housing while there is a shortage of land for state subsidy housing?ò (Odendal, 2007,personal communication). In eThekwini, it seems that the problem is that there is no political mandate for dealing with land for housing. In the City of Joburg, political processes are not viewed as a hindrance. For example, land for housing the óthe poor, low and middle incomeô is facilitated through the mayoral committee as the highest authority to make recommendations for land which can be ring-fenced for housing developments. This has been successful and facilitated delivery of the cityôs massive mixed development projects mainly Pennyvilleand Doornkop in Johannesburg (Sotomi, personal communication).

In other instances, it is not clear whose role it is to service the gap housing market. ñ[T]he perception [is] that the servicing of the ógap marketô is the responsibility of the private sector exclusively. This in itself makes it difficult and politicians often have no pressure to prioritize land for this housing marketò Odendal (personal communication).

### 5.3 Obstructive use of Inconsistent Legislation or Administrative Reluctance

#### 5.3.1 Use of Legislation

Even though land and housing legislation is formulated with specific objectives and principles, it is often used obstructively and sometimes not used at all. At times legislation itself leaves room for exploitation; gaps are often exploited to the benefit of certain institutions or people. This can have significant impact on the achievement of objectives of this legislation. In previous chapters, it has also been discussed how other legislation such as the DFA has been misused and exploited for personal interests.

According to the recent study in performed by The World Bank in Gauteng on the Ethembalethu housing project, the lessons which emerged show that there are too many laws which need to be rationalized in order to establish a coherent and efficient relationship between planning authorities (World Bank, 2007). Such rationalisation is in line with the new urban management approach which places emphasis on government working efficiently to deliver development projects. The case study demonstrates that parallel and overlapping laws dealing with township establishment and EIA create confusion with stakeholders and officials, as well as overwhelming officials. It also points to the failure of laws to acknowledge other, parallel and sometimes conflicting laws, making coordinated implementation virtually impossible.

The fact that there are different spheres of government responsible for the implementation of laws, creates difficulties, as the checklist for land for a housing project is not consolidated into one procedure (World Bank, 2007). Table 4 shows the range of laws that have to be complied with in making land available and the number of different departments involved.

In my discussion with officials in KZN, the same experience was cited: ñThere are too many pieces of legislation involved in the acquisition and disposal of land processò (Kuhn, personal communication).

At best, the process of township approval takes about one year (see table 4 below).

**Table 4: Best case of time lines for application of township establishment**

| Time-line (months) | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
|---|---|---|---|---|---|---|---|---|---|
| Land allocation from government (provision of Land Assistance Act) | | | | | | | | | |
| Environmental Impact Assessement (ECA, NEMA Heritage, Transport Acts) | | | | | | | | | |
| Town planning establishment (Ordinance, DFA, or LeFTEA) | | | | | | | | | |
| Removal of restrictions (Gauteng Removal of Restrictions Act) | | | | | | | | | |
| Division of agricultural land (subdivision of Agricultural Land) | | | | | | | | | |
| Land Registration (Land Survey Act) | | | | | | | | | |

Source: The World Bank, 2007 p.38

### 5.3.2 Application of Legislation and processes followed in Municipalities

Municipalities were asked in my interviews to outline typical steps involved and how long it takes to acquire, procure and dispose land for affordable housing. The process and complexities differ, based on local institutional arrangements which seem to play the main role.

However, across all the municipalities, the common challenge is that both acquisition and disposal of land processes have an enormous number of steps and takes a very long time. In the view of officials from different departments, in most instances some of the steps are not necessary.

It must also be emphasised that the legislative framework leads to delays and lengthy processes. Odendal indicated that ñthe fact that land disposal policies and procedures are informed and guided mainly by legal advisors and national treasury rules, results in a narrow interpretation of MFMA and land regulations, which in turn affects the tender process as bid committees end up only focusing on the priceò (Odendal, personal communication).

During my interviews, I was able to obtain process steps from eThekwini and from the City of Joburg, but could not succeed in obtaining the process steps applied in Cape Town, although I managed to gain a general view on how the challenges face the Cape Town. The City of Joburg and eThekweniôs process are discussed below.

#### 5.3.2.1 City of Joburg Process

In the City of Joburg, both land acquisition and disposal is centralised and is managed by its municipal entity, Joburg Property Company (JPC). Like other municipal entities, JPC has to follow both the supply chain and MFMA framework in the release of land for housing (Davis, 2008, personal communication). The CoJ instructs JPC to acquire land for the city in the event that there is need for housing developments. The disposal of land is done through open tender or lease. However, it is indicated that there is generally a staff capacity challenge in monitoring land availability agreements. Within the current land acquisition and disposal process, it is estimated that it takes 52 months to conclude a transaction (see figure 11).

When housing officials were asked how they are dealing with current bottlenecks and complexities in particular relating to process steps and length of time for a transaction to go through, its was acknowledged that the process is long, however, the Municipal Housing Unit has developed an approach whereby identified sites for mixed income are taken to the executive director to hold them and are ring-fenced It is estimated that to have land available for such development would take about 4 months (Sotomi, personal communication).

**Figure 11: Process followed by JPC for Leasing and Selling Council Properties**



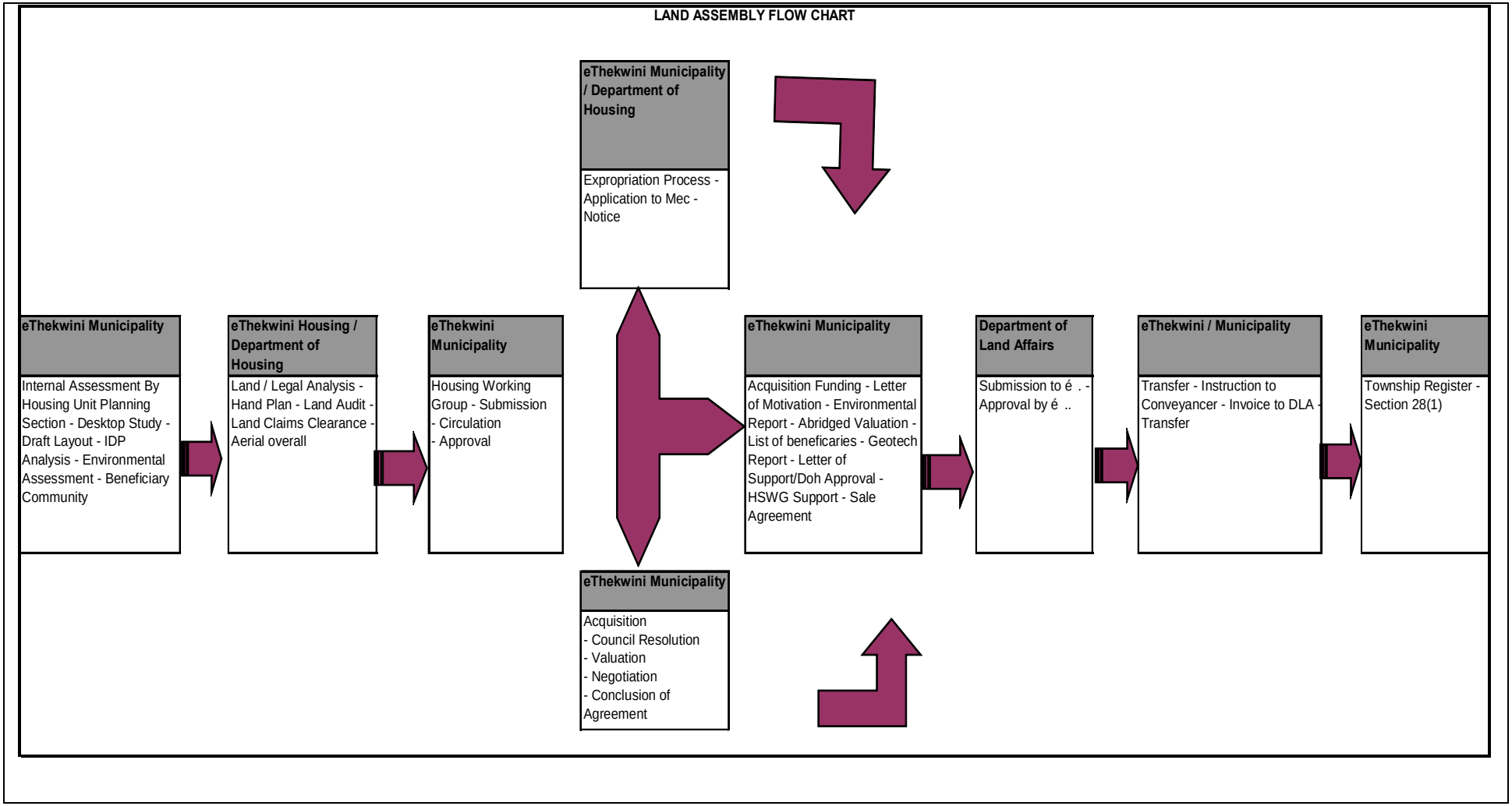

Source: (JPC, undated)

### 5.3.2.2 EThekwini Process

In the case of eThekwini, the process of making land available for housing is dealt with by two divisions. This in itself creates a challenge. The land assembly department deals with acquisition of land, and the real estate department deals with the disposal of land. However, for housing purposes, the Housing Unit has a Land Sales Section which deals with the disposal of land for housing purposes (Benson personal communication).

The Real Estate Unit uses the Municipal Finance Management Act and the Supply Chain Management Regulation to sell land. In dealing with this, the Housing Unit disposes of land by allocation and private treaty to specific people selected in terms of their needs analysis criteria (Makhetha, personal communication). According to information obtained from eThekwini Real Estate Unit, the ñmunicipality can only dispose of land which is surplus to its requirements, which means all land applications must be referred to all service units to determine whether or not is not required and the process is long and can take up to 3 years to finaliseò [see appendix 2]. Typical steps followed by the land assembly unit are highlighted in Figure 12 below. It is estimated that the process may take about 12 months (Benson, personal communication).

**Figure 12: EThekwini housing land assembly process**




Source: Land Assembly flow chart, Benson, 2008

**5.3.2.3 Can Municipalities Overcome the Process and time Challenges?**

While the process challenges have been acknowledged in both municipalities, it is noted that some officials dealing with housing have been able to act proactively in coming up with approaches to make land available within the existing framework. This still requires effort to make the systems work. Other players in the affordable housing market share frustrations concerning the reluctance from municipalities in facilitating land availability. For example, ñsmall issues such as clearance certificates take a very long time to obtain, councilôs reluctance to apply section 118 to write off old outstanding rates takes foreverò De Wit (personal communication).

Some projects implemented by the Social Housing Company (SOHCO), took up to 12 months just for zoning to be approved, which contributes to further delays in getting projects to be completed Maxwell (personal communication). The same experience has been alluded to by the National Housing Finance Corporation (NHFC) with reference to two gap housing projects in Polokwane and Cape Town, both costing approximately R20 million to deliver about 1000 units. The main challenge is rezoning land from agriculture to residential use which is taking time and delaying the project (Ndaba, personal communication).

In my view, there is a need to apply the concept of enablement by getting different government departments to work in partnership. I would also implement the concept of new urban management; there is the need for efficiency by way of encouraging government to develop a single comprehensive process which combines different legal procedures and checklists.

In other instances, municipalities have been proactive to find ways of working within these complex lengthy processes. For example in the City of Joburg, a strategy of ring-fencing land targeted for mixed development housing was adopted and the process takes about four months. In eThekweni, land is disposed on by means of private treaty to short-cut the process.

**5.3.3 Is land Available? (Land registers, locations)**

My interactions with government officials indicated that even where land might be available, there are few municipalities which have accurate land registers. Where there are land registers, their accuracy is questionable. In essence, this shows gaps in the ability of

municipalities to conduct land audits and to update their records. The main challenges are ñ(i) the absence of a Land Disposal Policy Framework; (ii) the absence of a Municipal Asset Register.(iii) the absence of a Register of private land suitable for affordable housingò (Kuhn, personal communication). He indicated that several municipalities have prepared Land Disposal Policy Frameworks, although the implementation thereof has been problematic in the absence of a Municipal Asset Register and a Register of private land suitable for affordable housing. The availability of land registers is therefore a key issue.

Another official stated that these problems and complexities are not just about regulation, but in fact there is a shortage of developable land (Odendal 2008). He stated that there is no more undeveloped municipal land in Cape Town. The last undeveloped municipal land was the land belonging to state institutions and other departments. This brings about the complexities of institutional disjuncture, which I discuss in section 5.5 below. Odendal also stated that the ñhigh cost of land within metropolitan areasò is a contributing factor to the complexities. It is generally indicated that where land is available, it is often on the peripheries.

The issue of shortage of land was also highlighted as the main problem by private developers. For example, Basil Read, one of the big developers in the affordable housing market, indicated that challenge for private developers is ñto have large enough portion of land in order to cross subsidizeò (Hughes, personal communication). Having land in growth areas was the second key challenge. This is because in most instances, available municipal land is often on the city peripheries. It was also stated that the success of an affordable housing project depends on getting land at a location which attracts employed people, such as in Cosmo City Project. NHFC is also of the same view, stating that ñthe size of land made available is the big determinate of whether you can deliver for gap market through cross-subsidizationsò. Ndaba, further confirms what Hughes said above; ñif you are to succeed in delivery of ógap housingô scale for cross subsidization, is essential as it is a numbers gameò (Ndaba, personal communication). It has been indicated that to achieve reach success through cross-subsidisation a project is required with a minimum area of 50 hectares and deliver a minimum of 1000 units

### 5.4 Municipal Economy and the Land Market

In this section, the research explores the requirement that municipalities must collect revenue and fear that forgoing income to favour certain projects adds challenges to making land available for affordable housing. The fear of income foregone contributes to competition in the demand for land between land uses. Financial challenges put pressure on municipalities to create and utilise revenue sources. A municipalityôs constitutional mandate requires it to deliver basic services and infrastructure to citizens. Financial capacity is required to meet this mandate yet enough municipalities struggle to create revenue sources.

According to Slack (2002), property tax is an important source of revenue to local governments, accounting for 21 percent of revenues. Non-property tax revenues include gross utility fees from trading services (surcharges on specific municipal services such as electricity, water, sewerage, and refuse removal, with electricity making up the largest share). Land taxes also form part of revenue source for local governments. Therefore, municipalities feel the need to permit the development of properties with a high tax value to collect substantial revenue.

The above has a considerable impact on land markets. Commercial and upper-income residential developments are potentially large sources of revenue for municipalities. Affordable housing development is not considered a large revenue source. Economic logic therefore forces municipalities to prioritize developments which will allow for the collection of substantial revenue and the prioritization of up-market developments has left affordable housing stranded.

According to the study done by World Bank cited above, the key reason for the reluctance by municipalities to dispose of land for low income housing programmes is ñfear of income forgone from óhigh-endô land developmentò (World Bank, 2007:27). In booming speculative land markets, promoting high-end land development which caters for the high-income market, is a lucrative option and a crucial source of income for municipalities. This might even be stated in some municipal IDPôs. (World Bank, 2007).

Different officials employed in different spheres of government have confirmed the view relating to municipalitiesô focus on increasing revenue. The view of the KZN Department of Local Government is ; ñthe private market is solely concerned with maximising capital gain,

as against the collective role of the Municipality in acting in the best interest of its citizens, and the Municipality accordingly cannot follow the processes and values of the private marketò (Kuhn, personal communication). Kuhn also confirms what is already emphasised- that affordable housing initiatives and projects are forced to compete with private sector, up-market developments for land availability. He states; ñMunicipalities require funding to perform their municipal functions, and accordingly attempt to supplement their income by way of the sale of municipal land at market related prices rather than to provide housing for the poor or for the ógap marketôò (Kuhn, personal communication).

From the City of Joburg, Sotomi indicated that, while there is need for land for housing, it is noted that land in core areas is expensive. However, it needs to be acknowledged that it cannot just be given for free, particularly to private developers (Sotomi, personal communication).

In this regard, the land market has tended to favour high end developments. The MFMA requirements contribute to competing demands for land in a negative way, for example, according to De Wit, private developers servicing the lower end of the market, such as Johannesburg Housing Company, are forced to compete for land with ónormalô (for profit) companies in the open market. It is also acknowledged that developable, serviced land is in demand all over (De Wit, 2008, personal communication). Consequently, land available for affordable housing is compromised.

On the other hand, competition is also for low to middle income housing projects. Most municipalities find themselves at times caught up in competition, at times brought about by political interests- for example, the pressure faced by municipalities to deliver to the poorest of the poor. Odendal states that;

> ñThe massive housing need and backlog in respect of low cost housing delivery is so overwhelming that very few local authorities see the release of land to this market as being a priority. Also once the land is made available for this purpose some level of monitoring and control is required to be exercised in order to ensure that the target market benefits from the project. Most Metropolitan Local Authorities simply do not have such capacity often resulting in land made available for such housing products not serving the target marketò (Odendal, personal communication).

Finally, land markets are volatile and can be easily manipulated. As the pressure increases for municipalities to become financially sustainable and deliver services in their areas of jurisdiction, they are coerced into making economic choices. These choices may not often be in the public interest. The mushrooming of gated communities, up-market office parks and malls is an indication of the economic choice that big metropolitan municipalities have made.

**5.5 Institutional Disjunctions and Dealing with Land Issues**

In this section, the research deals with challenges around institutional disjunctions as they affect delivery of land for housing. It looks at institutional arrangements as they relate to housing and land. In addition to a review of literature, mainly from DOH and DLA, housing officials and land officials were asked to highlight challenges relating to the fact that land is dealt with by departments other than Housing, or other entities, and they were asked to indicate the implication of that for delivery of affordable housing.

Central to complexities around institutional arrangements, interactions with those involved identified three key issues which are problematic.

Firstly that land for housing is not dealt with by the housing section, but instead handled by other departments, for example in the case of Johannesburg, JPC. While the purpose of JPC was to smooth processes, the city itself and those interested in delivery housing for the poor compete with private developers (Sotomi, personal communication). In eThekweni, where land is dealt with by Land Assembly Section, Real Estate and Housing, one pilot project ôPhoenix Infillô was compromised by a lack of participation and buy in from other departments (Benson, personal communication).

Secondly, there are there are many interests which have to be served and for example, JPC has to fulfill a mandate of revenue creation. In this case, it remains to be seen whether the public interest or the commercial interest will be served as these entitiesô mandates often focus only on maximising financial returns, which then create a bias in favour of commercial and upmarket residential developments, which provide high value returns to municipalities (Odendal, personal communication).

Thirdly, the fact that in eThekwini, the majority of land is with state departments and not necessarily with the municipality, was stated as the major problem. Benson mentions that

ñThe eThekwini municipality has effectively dealt with this problem by strong council leadership recognising the need to provide ógap housingô and setting aside all land for this purpose, however, the problem arise within the state departments and various bureaucratic process to vest land where neededò (Benson, personal communication).

Fourthly, for land in the ownership of the city, the cumbersome development process stifles delivery. The fact is there are different teams dealing with land even in one department. This is a limitation as it is desirable to vest all resources under one team, i.e. service and infrastructure, planning and land acquisition (Benson, personal communication)

Lastly, the question of role confusion and capacity in government in general is addressed. This is dealt with in the section which follows.

### 5.6 Capacity in municipalities to deal with issues of land

Often, serious capacity weaknesses undermine housing delivery. It is against this background that the idea of the Housing Development Agency (HDA) was initiated by DOH. The agency is envisaged to facilitate the identification, acquisition, management and release of land for human settlement purposes, augmenting the capacities of municipalities and provincial departments, and collaborating with the departments of Land Affairs, Public Works and Provincial and Local Government (DoH, 2008, Chauke, personal communication). However, this could also be seen as an added institutional disjunction to the already complicated environment.

It is still not yet clear what the role and responsibilities of municipalities will be after the HDA is established. In interacting with government on this issue, it also became clear that many national departments work in one way or another to address the issue of land. In addition to the implementation of proactive land acquisition by the state for targeted groups in the land market (DLA, 2006); the National Department of Land Affairs has taken a new move in addressing issues of land for human settlements. They have developed a new policy which provides incentives for municipalities and incentives by directly making funding available to them for acquisition of land for housing (Botha, personal communication). The policy also brings DOH to work with DLA and promotes issue of integration through using

the grant to acquire land including fees and taxes related to purchase of land for residential purpose and for mixed land use settlements projects (DLA, July 2008).

Generally, all people interviewed are of the feeling that both administrative and legislative processes create the need for highly skilled people to deal with the transactions involved, as some are very technical. In other cases, it has been indicated that the issue of capacity in the municipalities to deal with various complexities on making land available is a constraint. Odendal (personal communication) stated that ñlack of expertise at local government level with regard to the release of land outside of the normal procurement processò is a problem. This issue of capacity seems to be common as it was also stated by Benson (2008, personal communication) as a concern that there is lack of skilled staff in municipalities to deal with procedures as stipulated through different pieces of legislation-as a result work gets stuck somewhere and delays the process.

**5.7 Complexities that the private sector faces in making projects economically viable**

While accepting the planning, regulatory, and administrative bottlenecks to delivery experienced by the public sector, the private sector faces five more challenges. Fundamentally the challenge is to make óaffordableô housing affordable. The private sector was asked whether there are methods of working with municipalities on specific projects to deliver ógap housingô and whether the land price is a contributing factor in the delivery for this market.

Firstly, the general view from the private sector is that the product price for gap market housing is the main challenge and the land price is not really a big issue (Maxwell personal communication; Ndaba personal communication; Gallocher personal communication). The product price is problematic because of high building costs, and the cost of development which includes numerous elements. The development costs include: land, building, finishes, marketing profit margin and marketing risk (Maxwell, personal communication). In essence, the land cost represents on average, only 10% of the total development costs. From the developerôs and financierôs perspectives, even if land is acquired at a nominal value, it is still not possible to deliver for the ógap marketô (Maxwell, personal communication; Mbowe, personal communication). Linked to this is the issue of development cost versus affordability for the target market. Various financial models have demonstrated that for an average product of R170,000, the break-even household income needs to be at least R8,553

(Maxwell, 2008, personal communication). Mbowe (personal communication) stated that, for households with income less than R10, 000, it is almost impossible to deliver housing for that market.

Secondly, the issue of services and infrastructure is the main challenge (Hughes, Maxwell; Ndaba; Mbowe, personal communication). The general argument is that it is easy for municipalities to make land available. However there is difficulty in servicing land where there is no established infrastructure, and municipalities cannot necessarily afford these costs. As a result the developers are required to finance infrastructure, which increases project costs. The procedural time lag also has an effect on the final product price as the price of materials and building costs in general change during the duration of a project (Mbowe, personal communication). Existing infrastructure is overstretched (Hughes, personal communication).

Thirdly, there are always upfront professional fees which have to be paid for land preparation. These include feasibility studies and pre-project professional fees (Ndaba, personal communication). It is clear that the issue is not just about making land available, but is making serviced and developable land available. (Ndaba; Maxwell, personal communications).

Fourthly, the issue of partnerships between the public and private sectors affects end-users. According to de Wit (personal communication), the complexities of servicing the gap market relate to sustainability which means finding ways of making projects as economic as possible to accommodate the affordable market. In the Cosmo City experience, where JHC was involved, issues of institutional arrangements and partnerships have been seen from the low-income developerôs perspective as negative. For example, in the Cosmos City project, the City of Joburg entered a development partnership agreement with property development company Basil Read. The City made land available. A joint venture company (CODEVDO) provided services for the end user on behalf of the City and Basil Read. Although the City initially made land available at a good price, other companies seeking to service the affordable market are required to pay three times the original land price. JHC have had to buy land for their affordable rental housing at three times the original value.

Lastly, because of the failure on the part of municipalities to secure signed land availability agreements, banks are unable to advance loans as a result of the constraints of the financial services charter and the extension of credit. Banks can only lend where there is the potential for the municipality to cede the right to land to developer (Mboweni, personal communication). Land availability agreements may be used as an instrument of security on loans. They are the only instrument which can be used as security at the early stages of a project, because land would not as yet been transferred. (Ndaba, personal communication).

## 5.8 Conclusion

This chapter has identified elements of the political process which impact on land and housing issues, but has not dealt with it in more detail due to a limitation in information from the respondents. As a result, more focus was on institutional issues. Obstructive use of legislation and a reluctance to implement are also significant factors in the land and housing development processes.

Metropolitan municipalities are the major role players. A mandate for municipalities to deliver basic services and infrastructure requires some level of financial capacity. Municipalities are required to establish and utilise their sources of revenue and ultimately, are forced to pay attention to revenue making strategies. The economic choices they make impact on land markets. This chapter has engaged in discussions relating to this challenge.

## Chapter Six: Emerging Solutions to Land Availability for Affordable Housing

### 6.1 Introduction

The objective of this chapter is to highlight solutions emerging from interactions with people involved in land for housing. The chapter indicates emerging solutions to the challenges identified in Chapters Four and Five and identifies key issues which both municipalities and the private sector need to address to facilitate delivery. While the research focused on identifying the challenges, respondents identified the challenges and suggested possible or what might be done. In other instances, respondents chose only to indicate actions that might address land availability for affordable housing. Interventions are needed both at municipal and private sector level. It is generally recommended that local authorities must take a more pro active role.

### 6.2 What needs to be done by municipalities to facilitate land for affordable housing?

Respondents provided suggestions in relation to what local authorities need to do in addressing challenges of land for affordable housing. They include; commitment by council, policy amendment, performing land audits and updating of land registers, search for infill land, promoting the process of land availability agreements versus the sale of land, ring fencing land for gap housing through mixed income housing programmes, partnerships including land swaps, land discount, and inclusionary housing. These suggestions are discussed in more detail below.

#### 6.2.1 Commitment by council

Officials believe that commitment has to start with municipalities defining their role and making political commitments to deliver gap market housing to force them to unblock the challenges for this sector.

> ñThe Council would need to accept that it has an important role to play with regard to facilitating housing delivery to this market segment. Even in this regard it is considered to be essential that the facilitation of housing delivery in the GAP market be included as one of the housing initiatives by a Local Authority. The focus is often only and singular with regard to servicing low cost housingò (Odendal, personal communication).

This view was also emphasized by Kuhn who stated that;

> ñ(i) the ógap marketô needs to be addressed specifically, as there are no operational interventions that are aimed at this market. The entry price for housing has risen

dramatically, and first-time buyers find that they are unable to enter the property market due to the high prices. (ii) Government must consider incentives to owners who dispose of their property below market value, such as tax incentives, or to offer them alternative state land that is not suitable for development of affordable or rental housingò (Kuhn, personal communication)

### 6.2.2 Policy amendment

Most officials indicated need for drafting policies or amending policies in order to deal with the complexities mentioned. By way of example;

> ñThe policy would also need to be amended to provide for and facilitate the release of land directly to and at cost or below cost to developers in this market as opposed to via a public tender process to the highest bidder. Many Local Authorities choose to interpret the legislation (MFMA) as prohibiting such method of release thereby effectively excluding land for such affordable housing developmentò (Odendal, personal communication).

In order to deal with land administration issues;

> ñIt is suggested that Municipalities prepare detailed Land Disposal Policy Frameworks, in which they identify both the process to dispose of municipal land, as provided for in Regulation 40(2) of the Municipal Supply Chain Management Regulations, published in the Government Gazette as GNR.868 of 30 May 2005, and the occasions when land may be disposed of below market valueò. (Kuhn, personal communication)

### 6.2.3 Land audits and registers

Once municipalities have put in place land disposal policy framework, it is recommended that there be proper land registers based on recent land audits. Kuhn recommends that;

> ñi) Municipalities must also, as a matter of urgency, prepare a comprehensive municipal asset register, as that is the only manner in which Municipalities will be able to identify municipal land suitable for affordable housing. (ii) In addition to the abovementioned, Municipalities should also perform an audit of private land suitable for affordable housing within its area of jurisdiction, and then commence negotiations with the land owners to acquire the land, whether by purchase or by way of expropriationò (Kuhn, personal communication).

### 6.2.4 Search for Infill Land

The general view is that new (ógreenfieldô) land brings creates more complexities. Technical issues, including geotechnical and the availability of services, must be dealt with. As a result it was suggested that perhaps looking at infill as opposed greenfield sites is ideal.

> ñThe release of infill as opposed to greenfield sites within developed areas would also serve to facilitate such development as such land parcels area generally close to bulk connection services and established infrastructure. This inevitably impacts on the cost and affordability of the product. The ñNimbyò [not in my backyard] attitude and response to such release and development however often delay or undermine the use of such land for the development of affordable housingò (Odendal 2008, personal communication).

### 6.2.5 Land Availability agreements Vs Sale of Land

Generally, the process steps outlined in section 5.4 are time consuming and create legal and capacity constraints. It has been suggested that land availability agreements as opposed to the sale of land could be an option.

> ñLocal Authorities could also facilitate the development of GAP housing through the release of land to developers in this market segment by way of Land Availability Agreement as opposed to the sale of the land to developers. This methodology contributes to the affordability of the housing to be developed as it reduces the impact of holding cost while it also provided for the local authority to monitor and ensure that there is not profit or speculation in the land price component of the development. This methodology offer the added benefit of being able to ensure and monitor that the target income group of between R3 500 and R7 000in fact benefits from the developmentò (Odendal, 2008, personal communication).

In the City of Cape Town, this has been applied and the benefit of that methodology is that council remains the owner of the serviced erven, and passes transfer to a beneficiary meeting the qualifying criteria, only once the house is completed. On transfer, the council receives the purchase price of the serviced land and the successful proponent/developer receives payment for the top structure. Through this process the Council is able to monitor the price of the end product and ensure that the specific target market benefits from the development and there are no holding costs in respect of the land on the part of the successful proponent/developer. An added benefit to the council is that whatever serviced erven remain

undeveloped after the expiry of land availability agreement remains in the ownership of the developer to deal with as it sees fit (Odendal, personal communication).

In the case of eThekweni, it has also been recommended that sale by private treaty will help facilitate the procurement process (Maxwell, personal communication)

### 6.2.6 Ring Fencing land for gap housing through mixed income housing programmes

In Johannesburg, an approach adopted is that of rolling out mixed income housing development, which has proved to be a successful programme. Council is requested to ring-fence identified portions of land as part and parcel of the City in the Growth Summit Strategy (CoJ Mayoral Report, 2008) in terms of which the City committed to deliver 50,000 mixed income housing of which 30,000 are CBP/PHP units, 15,000 affordable rental units, and 5,000 upgrades. Seven projects in this programme have been identified and they include (Fleerhof, Lehae Phase 2, Pennyville, Doornkop, Klipspurit Hostel, Westbury, and South Hill). These project will be delivered through partnerships between the city and private sector (Sotomi, personal communication; CoJ Mayoral report, 2008)

### 6.2.7 Partnerships - Land Swops and land discount, inclusionary housing

Partnerships are possible to release land for identified markets and are based on land swops or conditionally discounting the price of land released for development.. The land swop approach has been applied in the City of Joburg. For the land portions owned by the City, The Housing Unit (in consultation with JPC) leverages additional land through land swops, either in the form of a monetary offset or a physical land swop. Such transactions are formalized via MoU. For example, in the Pennyville Project in New Canada, the city swopped land with private developers and offered them land in Riverlea (Sotomi, personal communication; Gallocher, personal communication).

The second approach adopted is that of land discount. In CoJ, the city negotiated with JPC for discounting the land price for the ñJerusalemò site. JPC set a price and the city provided land to developer at a certain set cost which was then discounted. The discount was calculated by taking the value of the entire land potion and a condition set that a minimum of 30% of the land would be developed for affordable housing i.e. ógap marketô. This called for financial structuring which resulted in lowering the percentage of the land for the gap market (Gallocher, personal communication).

### 6.3 Involvement of the Private Sector

Respondents provided suggestions in relation to what private and individual land owners can do. The suggestions offered include: determining incentives for private sector to make land available; approaching private land owners; and the expropriation of land. These suggestions are discussed in more detail below.

#### 6.3.1 Incentives for private sector to make land available

Different views were stated by municipal officials and the private sector (mainly the developers and financiers). From a municipal perspective, it was stated that

> ñthere are in my view currently no incentives for developers to service this market while the risks are generally high given the uncertain interest rate climate and spiraling development costs. Added to this is the very onerous environmental and planning and development legislation which impacts on the affordability and adds to the costs in respect of development. Government should consider the introduction of tax incentives or rebates for developers in this market which would serve to encourage development for this market or reduce the risks for such developersò (Odendal, personal communication).

A capital subsidy of say R20 000 per housing unit within this market segment could also be considered. The introduction of a points system for developers who serve this market which could count towards tender preference in respect of say state land could also be considered as an incentive to developers to serve or make land available for this target market (Odendal, personal communication).

If private developers are to be involved, there is need for commitment by government to promote inclusionary housing and high volume developments. For example, Cosmo City has been successful because of high volumes (Hughes, 2008, personal communication). In this project, there has been the maximum use of land which is not expensive. High volumes will help in delivery of gap market housing as firstly, it creates platform to cross-subsidize (Hughes, personal communication), secondly, designs are standard, which saves costs on professional fees and thirdly, charges for consumers are lower as units are small (Gallocher, personal communication).

### 6.3.2 Land in private ownership

Government officials were asked to establish in which ways government should engage private sector owners in order to access the private land market. The responses show that government is urged to approach individual owners but need to be mindful of the complexities surrounding that.

> ñ(a) In general private owners are not willing to dispose of their land below market value, as that would be prejudicial to their financial status. As the ownership of land is guaranteed in the Constitution, this issue will remain problematic, especially whilst the property prices remain elevated. (b) An option for Government would be to offer incentives to owners who dispose of their property below market value, such as tax incentives, or to offer them alternative state land that is not suitable for development of affordable housingò (Kuhn, personal communication).

However the funding of the acquisition of privately owned land is a cumbersome process. At present, the Department of Land Affairs (DLA) requires the following documentation before it is willing to consider funding land acquisition: motivation; valuation report not less than 6 months old; current geotechnical report; current EIA clearance (Benson personal communication; Ethekweni, 2008). It is a complex process to obtain these documents- often they would not be readily available, defeating the ability to fast track the acquisition process and limiting the ability to bank land defined on the preliminary sweep as being suitable for development (Benson, personal communication).

### 6.3.3 Expropriation of land

The expropriation of private land, even subsequent to the proposed amendments to the Expropriation Act, will remain an emotional issue, and will lead to a plethora of legal challenges if Government proceeds as it has publicly announced recently. Lastly,

> ñthe adoption of an appropriate land disposal policy framework, which enables municipalities to dispose of municipal land in the interests of the community or the plight of the poor. (a) the identification of suitable land, whether municipal or private, and a strategy in terms of the policy framework to utilize such land for housing. (b) the expropriation of suitable private land.ò. (Kuhn, personal communication).

Land expropriation might be used in instances of large, undeveloped tracts of suitably located land are in the ownership of absentee landlords and might be initiated on the basis of ñuse it or lose itò.

## 6.4 Conclusion

While previous chapters have emphasised the complexities relating to making land for affordable housing, in this chapter, emerging solutions are suggested by both municipal officials and private sector role players of how various bottle necks relating to making land available for affordable housing can be overcome.

The suggestions do not call for changes to the legal framework but rather making use of simple processes which are easy to implement both within and outside government. From the side of municipalities, this involves the key process of getting council to politically commit to the delivery of affordable housing. Existing policies such as those of the MFMA, often seen by municipalities either as reason to not implement delivery, or simply as an insurmountable procedural complications, could be amended. The need to perform land audits and update land registers will allow municipalities to determine whether they have land available for affordable housing. Infill land has been suggested as way of fast-tracking delivery, as it often has fewer complexities. It has also been suggested that land availability agreements could facilitate the release of land, since the process is simpler, compared to the release of land through outright sale. Ring fencing land parcels for gap market has also worked well in within the City of Joburg and can be replicated across other municipalities. Partnerships to make land available have also been explored, and in the Pennyville project, we have seen how the use of land swops and discounts made the project a success.

From the private sectorôs side, it has been suggested that there is need for; incentives, such tax rebates to reduce the risk of developers; promoting inclusionary housing; high volume developments; and local authorities committing to make available serviced land. To deal with land in private ownership which is targeted for affordable housing, government will have to design incentives to offer alternative land or monetary compensation. Expropriation is a final suggestion.

In the light of the above issues, it is meaningful to emphasize the need for public-private partnerships. The ideal objective of managing the public-private partnership will be to ensure that housing policies and legislation are implemented properly The implementation of projects should contribute to the broader objectives of the housing policy and the Constitution.

## Chapter 7: Conclusions

### 7.1 Introduction

This study sought to identify the problems municipalities face in making land available for affordable housing and were derived from information obtained from Johannesburg, eThekwini and Cape Town metropolitan municipalities. Identified issues included; land acquisition; procurement in terms of legislative issues, and township establishment; land disposal to the private sector; administrative matters across the spheres of government; and political matters.

This concluding chapter responds to the primary and secondary research questions. It reviews the hypothesis and comments on the conceptual framework, drawing conclusions on the challenges identified based on the conceptual framework, international literature, and findings from interactions with the relevant stakeholders.

Although the purpose of this research was to qualitatively understand the challenges, as opposed to making firm recommendations, interaction with stakeholders revealed possible solutions. This chapter therefore includes preliminary recommendations for further research and suggests how municipalities might deal with existing bottlenecks in making land available.

### 7.2 Response to the primary research question

The Primary Research Question of the dissertation was `What are South Africaôs metropolitan municipalitiesôchallenges in making land available for affordable housing?

The research has demonstrated that the challenges are in six main categories.

Firstly, the regulatory framework around planning and implementation is complex and rigid and involves satisfying numerous pieces of legislation and town planning processes which are often contradictory.

Secondly, the institutional arrangements and the administration and implementation of policy as the administrative and political processes involved often hinder the process of making land available.

Thirdly, the obstructive use of inconsistent legislation and the reluctance of municipalities to make land available for affordable housing.,

Fourthly, the fact the municipalities have to collect revenue means that land for affordable housing which must compete with higher revenue generating land uses, such as commercial developments or upper income housing.

Fifthly, institutional arrangements within municipalities mean that land is commonly administered outside the department directly responsible for housing, whose mandates are often not to only deliver lower and middle income housing, but to collect revenue for the municipality.

Lastly, the fact that municipalities cannot make available serviced land increases the cost to the private developer in delivering affordable housing projects.

**7.3 Responses to the Secondary Research Questions**

The first secondary research questions was; `What are the critical aspects which make land for delivery of affordable housing complex?ô

The administration of legislated policies such as the MFMA, and the Supply Chain Management Policy are hindered by an identified lack of skilled capacity within municipalities.

Secondly, compliance with the town planning and EIA processes causes delays arising from zoning approvals and township establishment. The confirmation of land availability is compromised as a result.

Thirdly, political and administrative issues within the municipality affect delivery.

Lastly, the priorities of the municipality often create competition between land uses.

The second secondary research question was; `What is the position of metropolitan municipalities and what policy strategies or approaches would they adopt in order to

overcome the bottlenecks to facilitate the release and preparation of land for affordable housing?ô

Municipalities must work with national land policy makers and the private sector to free land for development. They must deal with all the obstacles mentioned above. It has been demonstrated in this research that where the private and public sectors form partnerships, there potential for the delivery of land for affordable housing is increased.

What is required across all municipalities is a land disposal framework with clearly articulated processes without following lengthy and frustrating procedures. In addition, a commitment by the municipal council to making available specific pieces of land over defined periods will improve delivery.

The research also highlighted issues which need to be prioritised to resolve the challenges posed by these questions. The urban management approach raised a need to identify and rectify constraints, and institutions and instruments to support land markets need to be streamlined. These include: the role of land registration, information management, urban planning and informal land management administrative practices (World Bank, 1990).

Solutions offered in this regard include:

- Finding ways of shortening the process steps involved in the procurement and acquisition of land. This can be done through getting the highest authority in the municipality to ring-fence land for affordable housing;
- Updating land registers and identifying available land;
- Obtaining the political commitment to prioritise affordable housing. It seems it is not within government priority to deliver for this market;
- Amending policy to ensure there are clear land disposal frameworks within municipalities;
- Identifying infill land sites as they are easier to deal with as since there are fewer procedural complications;
- Promoting the use of land availability agreements compared with the outright sale of land;
- Creating partnerships to enable land swops and land discount agreements;

- Making serviced land available;
- Providing incentives for private developers; and
- Providing incentives for private land owners.

The third secondary research question read `in which ways should government engage private owners in order to access the private land market for affordable housing?

This research has emphasized municipalities working with the private sector. The research also suggested land expropriation where there is need. However, emphasis has been placed on public private partnerships to make land available.

International literature reviewed in this research has demonstrated that public-private initiatives facilitate the release of land. For example, informal partnerships in the case of Egypt, discussed in Chapter Two, and discussions on the Springfield Case Study in Cape Town (Dewar, 1991) have demonstrated how partnerships used for land efficiently and created medium densities for affordable housing in urban areas.

Land development is the first line of contact between the public and private sectors because of the interests of the private sector in developing the city. There might be a mutual benefit between the sectors in addressing the delivery of affordable housing. Similarly, absentee landowners with large and suitably located land parcels that are unused might be approached on a policy basis of `use itô or `lose itû Such an approach would be confrontational but could be commercially viable or incentivising.

Land owners could be offered rental agreements or favorable purchase prices, where land is communally owned.

In answering how private owners might be engaged the research found that there are a number of alternatives:

- Creating incentives for the private sector to make land available by offering tax incentives and rebates through inclusionary housing;
- For land in private ownership negotiating and offering incentives;
- The expropriation of land;

- Land pooling and land readjustment as discussed in Chapter Two, may be considered; and
- Land discounts and swops for developers in the affordable housing market as was been applied in the case of Pennyville, Johannesburg;

In dealing with whether government policies address issues of land identification and disposal for facilitation of affordable housing, I focused on the ñBreaking New Ground policyò and the following observations and conclusions may be made:

At this early stage of the implementation of the BNG policy, it has not been possible for this research to evaluate its successes in making land available. However, personal communication with DOH confirmed that the department has adopted multiple mechanisms in dealing with this. Chauke (personal communication) mentioned that; firstly, DOH has appointed Servcon to purchase land which will be used for many housing programmes including affordable housing from Transnet; secondly, DOH has engaged the Department of Public Works and there is agreement and land can be made available, and lastly, DOH has finalised and is in the processing of establishing the Housing Development Agency, which according to the Minister of housing, will pave way for DOH to buy and sell, hold, and expropriate land for housing development (The Times, 2008).

Policy initiatives other than BNG were reviewed. On the basis of information from the three major cities, it is clear that metropolitan municipalities have not been closely involved in policy making, which has largely been a function of national government. It is only in the last ten years that there has been devolution of powers to the provinces. The metropolitan municipalities could benefit from being able to give input to policy making. This process has met with obstacles relating to skills shortages and the politicization of professional activity.

New initiatives by the National Departments of Land Affairs and Housing have demonstrated a move towards resolving the issue of land.

Firstly, by implementing the proactive land acquisition strategy, introduced in May 2006, started the creation of a legislative framework which allows the Ministry to make available

money for the acquisition of land for housing the poor and other affordable housing programmes.

Secondly, the new policy of the National Department of Land Affairs approved, in July 2008, emphasises the principles of intergovernmental cooperation for the acquisition of land for sustainable human settlements, and further makes a commitment to making funding available to local authorities for the acquisition of land for human settlement.

### 7.4 Hypothesis

The research hypothesis states that `the affordable housing market is inadequately addressed due to difficulties experienced by municipalities in making land available for the beneficiary marketô

The research hypothesis was largely confirmed as the following challenges were found as contributing to the inadequacy of making land available for affordable housing:

- Planning challenges, in particular EIAs and township establishment. The EIA process has deemed to be complicated and time consuming and in most instances there is no capacity to effectively deal with it. The township establishment process brings challenges of zoning, and in particular what is more complex is the different laws which have to be adhered to;
- Legislative inconsistency is the main issue. It has been proven in this research that various sectors are responsible and get involved at different levels and there are too many pieces of legislation to be applied in concluding on transaction of land;
- Political processes either hinder or facilitate the process - it often depends on whether the municipality has a mandate to make land available;
- Interactions with municipalities show that the process of making land available is cumbersome; on average it takes about two years for a transaction to be concluded;
- Added to the above, institutional disjunctures including the fact that land is dealt with by departments other than housing, or by other municipal entities, at times created problems;
- A lack of skills in municipalities to implement the steps outlined by the legislative framework;

- The fact that in most municipalities there is no land available, or where its available land audits have not been performed, or land registers are not accurate makes it difficult for a municipality to actually know if there is a supply of land;
- The fact that municipalities are tasked to collect revenue for effective functioning of municipalities makes it difficult to justify making land available for affordable housing,;
- The competition for land between low cost housing (as a political mandate of government) commercial uses often affects priorities in municipalities

### 7.5 Recommendations for further research

The intention of this research was to understand the challenges municipalities face. The challenges are enormous and require a lot of effort if they are to be addressed.

It is therefore recommended, that further research be carried out in the following areas.

Firstly to evaluate the success of government policies in particular the BNG policy and its ability to make land available for accelerating affordable housing delivery, and whether the establishment of HDA to facilitate the process of making land available for affordable housing is feasible.

Secondly, to address the key challenges of

i) regulatory frameworks of planning and implementation;
ii) institutional arrangements and the administration and implementation of policy;
iii) administrative and political processes involved which often hinder the process of making land available;
iv) the obstructive use of inconsistent legislation and the reluctance from municipalities to make land available for affordable housing;
v) the fact the municipalities have to collect revenue brings about competition for land for affordable housing;
vi) the involvement of private land owners; and
vii) finally, addressing capacity within local authorities.

Lastly, the research highlighted emerging solutions which include,

i) finding ways of shortening the process steps involved in the procurement and acquisition of land;
ii) ring-fencing land for affordable housing;
iii) conducting land audits and updating of land registers;
iv) a political commitment to mandate for and prioritize making land available for affordable housing;
v) putting in place a clear framework for land disposal;
vi) the identification of infill land;
vii) the promotion of the issues of land availability agreements; and
viii) lastly, the involvement of private sector. There is need for further research to test if the solutions offered can be applied or piloted in one of the local authorities.

## 7.6 Conclusion

The aim of this research was to investigate the challenges metropolitan municipalities face in making land available for affordable housing. It has been able to identify the challenges for land availability by examining the current systems and mechanisms applicable to land availability and it confirmed the need to address the challenges of regulatory and planning frameworks and the political and institutional arrangements which affect urban land availability. These challenges remain important in making land available for affordable housing.

The research further confirms the hypothesis, which is that affordable housing is inadequately addressed, in particular by government, due to a lack of collaborative partnership approaches and as a result of difficulties experienced by municipalities in making land available to beneficiary market.

The research makes recommendations for further study. Firstly, to come up with solutions for identified complexities; secondly, to investigate if the HDA will be able address issues of land availability; thirdly, to evaluate if the BNG policy will assist in making land available; and fourthly, to test the application of emerging solutions in municipalities in South Africa.

Based on the emerging solutions offered in this report, the research also shows that it is possible to address the challenges of land availability for affordable housing.

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**Appendix 1: List of people interviewed and who provided information**

| Name of Person | Company | Position and Area of Responsibility | Place of Interview/Method of obtaining information | Date |
|---|---|---|---|---|
| Benson Belinda | Ethekweni Municipality | Manager, Land Assembly | Ethekweni Municipality offices, Durban | 17 January 2008; 3rd October 2008 |
| Botha Alax | Department of Land Affairs | Deputy Director, Public Support Services, State Land Administration Policy and Procedures | Telephonic interview | 12 December 2007; 17 December 2008 |
| Chauke Phillip | Department of Housing | Chief Director, BNG ï Monitoring and Evaluation | BNG challenges slides presentation and telephone interview | June 2007; 17 December 2008 |
| Davis Charles | JPC | Project Manager for Procurement of Land for Housing | JPC Offices, Braamfontein | 4th January 2008 |
| De Wit Carel | Johannesburg Housing Company (JHC) | New Development Manager | Telephonic interview and exchange of information by email | 11 November 2008 |
| Gallocher Rory | Johannesburg Social Housing Company (JOSCHCO) | Chief Executive Officer | JOSCHO Offices, Doornfontein | 10 October 2008 |
| Hughes Dez | Bazil Read | General Manager and Cosmo City Projects | Telephonic interview | 12 December 2008 |
| Kuhn Karl-Heinz | Department of Local Government | Manager ï Housing Legal Service | Pietermaritzburg, DPLG, KZN offices, Pietermaritzburg | 25 October 2007; 17th January 2008 |
| Makhetha Dumi | Ethekweni Municipality | Manager, Real Estate, Disposal of Land | Telephonic and exchange of information by email | 22 November 2008 |
| Maledzani Justice | City of Joburg | Deputy Director-responsible for procurement of land vested in provinces | CoJ Offices, Braamfontein | 14th January 2008 |
| Maxwell Heather | Social Housing Company (SOHCO) | Managing Director | Durban at SOHCO offices | 3rd October 2008 |
| Mbowe Lindiwe | Nedbank | General Manager, Affordable Housing | Sandton; and Telephonic interview | 14 December 2007 |
| Ndaba Thanda | National Housing Finance Corporation | Programme Manager-Gap Housing Financing | NHFC Offices, Parktown | 18 November 2008 |
| Odendal Marlize | City of Cape Town | Head of Division, Housing Land and Forward Planning | Cape Town, Cityô offices | 14 Dec 2007; 18 January 2008; 1 February 2008 |
| Sotomi Manny | City of Joburg (Housing) | Director: Housing Project Support | CoJ Offices, Johannesburg | 5 December 2008 |

## Appendix 2: Land Legal Process in eThekwini

**PART A : LAND ASSEMBLY**

**1. LAND/LEGAL ANALYSIS**

Interrogate and investigate land identified as the project footprint for potential housing use by:

- Obtaining copies of the relevant title deeds, diagrams and related documentation of component land comprising the project footprint and any determined extension thereof
- Perusing and analysing the Title Deeds, Diagrams and related documentation in respect of the properties to be developed for housing including identifying restrictive conditions, servitudes and/or endorsements and specifically verifying the existence any land claims which may be gazetted over the property.
- Conducting inspections on land identified for housing development purposes.
- Analysing the technical assessments and advising on the appropriate mechanism for securing tenure rights to the property for the project.
- Advising the Housing Unit on legal consequences specific to this housing project. May be required to liaise with Legal Services Unit and the Real Estate Unit where appropriate.
- Providing a Land Audit Report on the component properties for the Housing Unit
- Forecasting a programme for completion of land assembly process.

**2. ACQUISITION OF IMMOVABLE PROPERTY OR RIGHTS THERETO**

Implement the acquisition of component portions of immovable property or securing rights thereto by:

- Ensuring all valuations and acquisitions for the Housing Unit are efficiently and timeously concluded by planning, directing, co-ordinating and controlling the valuation and acquisition of property and/or property rights in terms of the Housing Unitôs requirements in consultation with the appointed Professional Valuer/s
- Liaising closely with the relevant departments within the Housing Unit in terms of fulfilling all necessary land related requests relative to the project
- Drafting the appropriate Offers to Purchase/Sale Agreements/Donation Agreements or Land Availability Agreements and / or Development Rights Agreement.
- Obtaining approval thereof from the appropriate municipal official.
- Consulting the affected landowners and other parties having a direct interest in the matter.
- Ensuring the appropriate Sale Agreements /Donation Agreement or Land Availability Agreement and / or Development Rights Agreement are concluded between the appropriate parties, including but not limited to any Powers of Attorney and consents that may be required.
- Compiling applications for Premierôs consent or Ministerial approval as the case may be, with supporting documents.
- Initiating expropriation proceedings where necessary to acquire immovable property, including the drafting of the Notices of Intention to Expropriate and the Intention to Expropriate and arranging for signature of the documentation and any publication thereof together with the serving of same on affected parties.
- Attending to queries, facilitating the resolution of expropriation proceeding and ensuring compliance with all legislative requirements .
- Preparing reports to Head : Housing as directed . This may be extended to providing input for reports to various Committees and Council.
- Ensuring compliance with council and departmental policies and procedures.

**3. REGISTRATION OF RIGHTS, TRANSFERS AND OTHER CONVEYANCING ASPECTS**

- Ensuring compliance with the terms and conditions of the sale agreements, Land Availability Agreements and / or Development Rights Agreements
- Interacting with municipal units to ensure fulfillment of conditions in respect of the aforementioned agreements.
- Instructing for the payment of the purchase price and/or other costs.
- Attending to all pre-conveyancing matters and drafting documents relating thereto, including but not limited to the obtaining of any original documentation and deeds.
- Attending to cancellation of sales where necessary.
- Drafting and Attending to applications for extensions or amendments as directed.
- Identifying conditions to be removed and in terms of Removal of Restrictive Conditions in terms of Act if required and advise as to the removal thereof.
- Attending to the registration of transfer of ownership to the eThekwini Municipality and other ancillary transactions including but not limited to the registration of Certificates of Registered Title, Certificates of Consolidated Title and the registration/cancellation of servitudes.
- Recording payment and registration of transfer of ownership and disseminating such information to relevant municipal departments.

**PART B TOWNSHIP ESTABLISHMENT PROCEDURES**

**1. TOWNSHIP ESABLISHMENT**

Attend to the post - acquisition process and the final stages of the land assembly process by attending to the registration of the township in the Deeds Registry by :

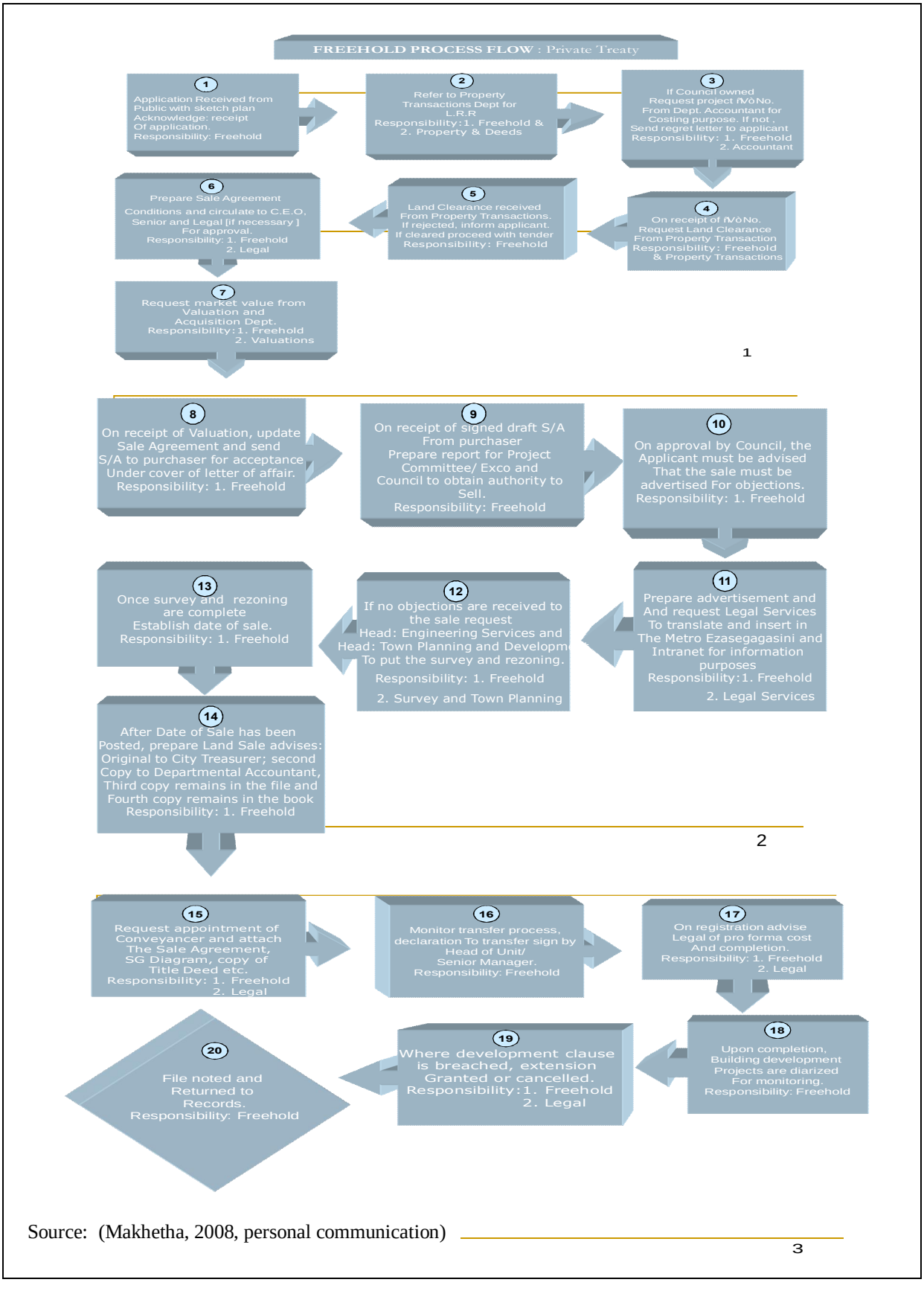
- Evaluating the requisite township establishment application and commenting thereon in respect of the land ï legal aspects thereof to ensure compliance with the requirements of the Deeds Registry.
- Facilitating the approval of the township establishment application and Conditions of Establishment if required.
- Collating all requisite documentation pertaining to the registration of the township in the Deeds Registry [opening of the township register(s)].
- Drafting the appropriate documentation for lodgement in the Deeds Registry and ensuring registration thereof.
- Disseminating the township titles with supporting documentation to the appropriate municipal department.
- Obtaining the relevant approvals/certificates from the Province/government department or appropriate body to ensure individual erven are registrable in the Deeds Registry i.e Section 28 (1) Certificate if applicable.

**PART C : SALES ADMINSITRATION AND TRANSFER OF INDIVIDUAL ERVEN TO BENEFICAIRES OF THE HOUSING PROJECT**

- return transfers of pre-allocated sites
- non residential sites, remainders, roads and pos

Source: Benson (personal communication)

## Appendix 3: Free Hold Land Disposal Process in EThekwini




Source: (Makhetha, 2008, personal communication)

3

## Appendix 4: Time Frames of the Steps Taken in the Free Hold Process in eThekweni

| DATE | WORK PROCESS | TIME FRAME |
|---|---|---|
| | Application or clearance received with file | 1 Day |
| | Acknowledge receipt | 1 Day |
| | Request land record report from Land Transaction Dept (Property & Deeds) | ½ Day |
| | Receive land records report- check ownership | 3 Days |
| | Å Acknowledge application if privately owned advice purchaser<br>Å Receive land record report from admin<br>Å Request project no from Acc. Department<br>Å Request clearance from land transactions | 3 Days |
| | Receive clearance, file clearance and dispatch clearance (Record Department do this) | 1 Day |
| | Receive and assess clearance conditions | ½ Day |
| | Draft and circulate sale document (tender doc, condition of sale) for vetting | 10 Days |
| | Request valuation | ½ Day |
| | Valuation (Inspection by sales officer and value -if possible) | 8 Weeks |
| | Receive valuation | 2 Days |
| | Draft report, update conditions and tender docs and deal with queries and amendments | 5 Days |
| | Approval by RE Projects Committee | 2 Weeks |
| | Submit to Tender Bid Specification Committee for approval | 4 Weeks |
| | Receive committee approval through decision notice | 1 Week |
| | Draft advert and cover letter to Tender Section (SCM) | |
| | Check publication and wait for closing date of tender for tenders | 2 Weeks |
| | Receive certificate from secretariat re objections | 5-7 Days |
| | Draft notice and cover letter to city to advertise tender invite | |
| | Confirm with city secretariat that ñInvite to tenderò can be published | 1 Week |
| | Tender published and open for offers | 5 Weeks |
| | Collect tender documents from city admin | 1-3 Days |
| | Receive tender documents from city admin via messenger direct | |
| | Scrutinize tenders for validity | 1-5 Days |
| | Deposit cheques for (valid) tenders | 2 Days |
| | Adjudicate successful tender according to new policy and prepare report | 5 Days |
| | Submit to SCM for verification | 2 Days |
| | Submit Tender Report to Bid Evaluation for approval | 5 Days |
| | Advice unsuccessful tenders of award and appeal process | 2 Weeks |
| | Process any appeal on the award | 2 Weeks |
| | Submit to Tender Appeal Committee for decision | 2 Days |
| | Letter of award issued to successful tenderer | 5 Days |
| | Å Receive committee approval<br>Å Do LSA<br>Å Allocate to sales officer for refund | 2 Days |
| Total | | 35 weeks |

Source : Makhetha (personal communication)