APPENDIX 2: THE FORMAL RULES OF THE GAME [1]

The table below indicates how the unpacking of the dimensions of urban land was approached. It applied particularly to the formal rules of the game and the organisational framework. The informal rules of the game proved more difficult to consider directly in relation to these dimensions.

	Formal rules	Informal rules	Organisations	Programmes
Land Development				
Planning				
Tenur				
Housing				

A historical route map has been employed as a device to assist with communicating the many laws that affect the urban land issue in simple, concise terms.

[1] The following section is a consolidation of the following sets of research reports:
- A research report undertaken by Development Works (2000) on "Regulatory guidelines for affordable shelter: South African case study- Phase one draft report: review of planning regulations, administrative procedures and standards" comprising an in depth historical perspective of changes and evolution in planning and regulatory environments pertaining to housing and land issues;
- A paper presented by Lauren Royston (1999) "The socio-political dynamics of the urbanisation process and its prospects in South Africa"; at a conference of the Research Group on Law and Urban Space (IRGLUS) titled "South to South: Urban environmental policies and politics in Brazil and South Africa";
- A chapter authored by Lauren Royston (2002) titled "Security of Urban Tenure in South Africa: Overview of Policy and Practice" in Royston and Durand-Lasserve Eds (2002) "Holding their Ground- Secure Land Tenure for the Urban Poor in Developing Countries", Earthscan, London;
- A chapter authored by Lauren Royston 2003a "The plan, the budget and their offspring: a big happy family? Reflections on the role of planning law in democratising access to land and housing in South Africa" in B. Alfonsin and E. Fernandes (eds) Memorias del IX Seminario Internacional "Derecho y Espacio Urbano", IRGLUS and Urban Management Programme, Latin American and Caribbean region.
- A policy assignment undertaken by Development Works for the Decentralised Development Planning Task Team of the department of provincial and local government and GTZ titled "Proposed approach to sector aligment in the IDP process – contributions to the IDP Guide 3" (1999).

Provincial ordinances based on British town planning legislation

The earliest planning laws in South Africa can be traced back to the colonial settlements in the Cape and Natal and the Boer Republics, where in 1830s – 1860s regulations were introduced to control "nuisance" and health. Land survey and deeds registration was initiated very early in South Africa's colonial history. The first deeds registry was established in Cape Town in 1828, although registration of rights predates this. The introduction of restrictions in title deeds, became a common way of controlling the use of land and more particularly the racial ownership of land from the 1880's. This method of determining restrictions on land became widespread and is an important element of South African planning regulation, but has since been de-emphasised with the introduction of town planning schemes. Because of its early origins and its systematic recording of all land, the system of land registration and land surveying that subsequently developed in South Africa is considered to be one of the best in the world, providing protection to holders or rights and land owners. However, this system exists in parallel with inferior land administration systems implemented over black areas rooted in the colonial and apartheid period.

In the late 1800's there was an increase in urbanisation and many farms were subdivided in an uncoordinated way, resulting in the introduction of a number of new laws to regulate land development. The first legislation to set out a development procedure to subdivide land, was introduced in the Orange Free State in 1894. A number of new ordinances were introduced after the turn of the century and the Anglo Boer War. While based on the 1894 Orange Free State Ordinance, the Transvaal Ordinance allowed for regulations to govern the establishment and proclamation of towns and the layout and survey of erven. Through this ordinance, a "Townships Board" was established which introduced a process for hearing applications and this was later extended, by amendment, to allow participation through comments and objections. The institution of Townships Boards lives on to this day where they are still involved in approving applications made at local level.

After Union in 1910, much of the power lay at the level of the province, a situation that has only very recently come under limited transformation. The 1920s and early 1930s saw the introduction of what can be called the basis of town planning legislation in South Africa. In 1921 the Transvaal Local Government Commission recommended that town planning schemes be adopted to counter what was seen as uncontrolled urban development resulting in overcrowding and housing problems. The Provincial Subsidies and Taxation Powers Amendment Act 46 of 1925 gave the provinces power to draw up town planning legislation. By the mid 1930's most of the provinces had their own town planning ordinance, with the Transvaal being the first and the others were modelled on it. The new Transvaal Ordinance was basically an amended version of the English Town Planning Act of 1925. It was through these ordinances that town planning schemes were introduced along with procedures for developing land or changing land uses. This is still the basis of all town planning administration, procedures and regulations today.

In white areas, progress was slow in developing town planning schemes in terms of the new ordinances, and although Johannesburg and Pretoria had made some progress with this, they were only promulgated in the mid-1940s. The schemes heralded in the cornerstone of land use regulation and control in South Africa and today all former white towns and cities have town planning schemes and many of the former African areas have "watered down" versions of these.

National planning legislation for African areas

The introduction of national planning legislation for African areas left South Africa with one of the most complex regulatory frameworks in the world, characterised by duplicated and overlapping laws, complex,

control-oriented regulations. It entrenched a parallel legal and administrative systems including a spectrum of tenure rights with the lowest forms being available to Africans in rural areas and the highest forms for whites in urban areas. This entailed laws being applicable in a myriad of specific geographic areas, many of which are still applicable today. The outcome of this period encapsulates segregation of racial groups into geographical areas (and even the further delineation of sub-areas within the broad racial groups) each with its own legislation, its own forms of tenure and own administrative systems created complexity far beyond the capacity of a country like South Africa. The application of laws at different tiers of government was another characteristic of this era. National government had a firm grip on legislation governing African areas and Provinces controlling all the former white areas. This created parallel laws, procedures and administrations. It saw the introduction of the infamous Group Areas Act and it was from this time that millions of people were evicted from their homes within the urban areas. Freehold settlements were destroyed to force black residents to move to formal townships on the periphery of the "white" cities and towns. Many hundreds and thousands of black people were evicted from urban areas altogether and removed to bantustans, small areas of mainly rural land set aside for black occupation. Through the introduction of a plethora of laws, the country was balkanised along racial lines with parallel laws and administrations set up to govern separate areas of the country. The apartheid laws during this time resulted in South Africa having four "independent" states with their own planning laws, five "self-governing" territories also with their own planning legislation. The remaining white cities and towns were fragmented along racial lines into Group Areas for whites, Indians and coloureds, each with their own administrations and the urban black areas also with their own legislation and administrations applicable.

A policy on native locations and limitations on access to residential rights were firmly established by Union in 1910. The government of the day was concerned with controlling increasing instability in the towns and countryside, major immigration and unrest which was leading to industrial confrontations, rebellion and violence. The rural areas where most of the African population lived became the subject of the now infamous Land Acts. The Black Land Act of 1913 was the first legislative attempt to define areas of South Africa where Africans could own land. Areas were scheduled for exclusive African ownership, effectively restricting this to around 13% of the land area. Later Land Acts saw greater control over African areas and effectively set up quite separate administrations, resulting in parallel government and administration of these areas.

The government of the day introduced the Natives (Urban Areas) Act of 1923, for urban areas. This Act was used to segregate Africans into "locations" for their exclusive occupation rather than ownership. It also prevented the application of the provincial town planning ordinances in such areas. The 1927 Black Administration Act was promulgated to institute stronger control and management of Black areas. The 1936 Development and Trust Act gave the African 'reserves' more land. So-called Trust Land became an important categorisation of land as the planning and administrative procedures to apply in these areas in later years was achieved through specific regulations applicable in those areas. In the urban areas, stricter laws on slums were introduced, including the 1934 Slums Clearance Act.

The mid to late 1940s were characterised by a housing crisis, with official estimates putting the African population increase in Johannesburg at 68% between 1936 and 1946. In the period leading up to the 1948 election influx control was in ruins, confrontations were occurring over pass laws, many urban African communities were in protest, the urban African population had rocketed, employment opportunities in the cities were increasing and rural poverty was deepening.

In the first year of National Party rule, 1948, the Black Laws Amendment Act was passed that specifically excluded the application of the provincial planning ordinances in the South African Development Trust (SADT) areas. Instead, township establishment and development in the black urban areas were regulated through Proclamation R293 and tenure in the rural areas through Proclamation R188. Proclamation R293 is an important regulation as it formed the main planning legislation in black urban areas and in the former

homeland areas. A number of significant apartheid laws were passed in the 1950s that impacted on planning. In 1950 the first Group Areas legislation was passed, to be firmly cemented in 1966. In 1951 the Prevention of Illegal Squatting Act was passed and permitted the tearing down of unlawful informal settlements. Subsequent amendments in later years allowed for 'transit camps' to be established. This law was employed extensively to remove Africans from shelters they had built in areas that the authorities believed were inconvenient to existing residents or unhealthy or unsafe. Yet, the 1950s were characterised by an increase in African urbanisation and growth in residential areas, despite attempts at influx control through the introduction of the infamous pass system. At the end of the decade the Promotion of Black Self-Government Act of 1959 was enacted enabling the setting up of "independent" homelands and self-governing territories during the 1960s and 1970s. The legal and administrative basis was laid for the government to begin a major spatial restructuring of the country that took place over the next two decades.

The National States Constitution Act of 1971, permitted each of the homeland areas to proclaim their own town planning and township establishment legislation. Many of them did so, but all based the legislation on the laws that were applicable in the areas before independence or self-government. In most instances Proclamation R293 applied for town planning and township establishment in the denser areas and Proclamation R188 applied in the rural areas. Proclamation R293 was a combination of town planning regulations and administrative provisions. This was a characteristic of African legislation, which tended to include both aspects. The town planning provisions established procedures for laying out and surveying plots and handing them over to occupiers that are inferior to those practiced in the former white South Africa.

The aspect of homelands being able to promulgate their own laws also had important consequences for the legal complexity of planning laws, with homelands embarking on separate trajectories from those within white South Africa. This divergence of laws has created a legal complexity that has proven to be almost impossible to unravel in a new unitary South Africa, as altered versions of the same legislation apply in a mosaic of geographical areas across the country.

Physical planning legislation

In the period preceding the coming into power of the National Party, the first attempts at national control of physical planning and economic development of South Africa were legislated with the Natural Resources Development Act of 1947, as a forerunner to the Physical Planning Act of 1967 which introduced Guide Plans, and the establishment of the National Resources Development Council.

The 1960s and 1970s were characterised by strong national and regional planning thrusts. There were two elements to this. The first was the homelands policy which essentially introduced the homelands and self-governing territories. The second pertains to national efforts to ensure systematic and centralized control by the national government of resource and economic development. In 1964 a national Department of Planning was established and the Natural Resources Development Council was variously transformed until in 1967 it became an advisory council to the Prime Minister. The Physical Planning Act was proclaimed later that year. It carried over the provisions of controlled areas previously contained in the Natural Resources Development Act. These were areas where the use of land and resources had to be co-ordinated. A significant inclusion in the Physical Planning Act from the point of view of planning, was that of Guide Plans. These were broad framework plans that co-ordinated planning and policies for land use, transportation and infrastructure for a period of up to 25 years. So the practice of forward planning through rigid blue print planning (based on the British rational comprehensive planning) became entrenched as many areas implemented Guide Plans over the next 20 years.

The town planning ordinances remained more or less intact since their promulgation in the 1930s until the Transvaal and the Orange Free State Ordinances were amended in 1965 and 1969 respectively. The

Transvaal Ordinance was superseded by the Town Planning and Townships Ordinance 15 of 1986, which still remains in place in the area of the former Transvaal. This new ordinance saw a major shift in the devolution of decision-making to municipal level through the introduction of authorised local authorities. The town planning ordinances in South Africa made provision for procedures for township establishment (new subdivisions), for the preparation of land use management schemes in the form of Town Planning Schemes and procedures for changes or amendments to Town Planning Schemes (rezoning applications).

The basic procedures for township establishment involved making an application to the local authority, submitting a range of technical documents and paying an application fee. The local authority then circulates the application, advertises it and receives comments or objections within a time period. The application is then heard by the local authority's planning tribunal or the Provincial Townships Board (where a local authority is not authorised). It is then approved or rejected, with or without conditions. After approval and if all conditions are met, the Surveyor General and Registrar of Deeds must be notified and the respective General Plan and township register opened. Properties can only be transferred to new owners once a township register is opened. No provision is made for departures from this, for example to upgrade informal settlements where communities engage in development processes in a diametrically opposite way.

Late Apartheid reforms

Internal opposition to apartheid escalated in the late seventies and early eighties. It included a range of diverse community struggles as well as an increasingly coherent urban resistance strategy led by the social movements. Civic organisations were demanding a non-racial and democratic municipality based on a single tax base. Community struggles around issues of housing, evictions and urban access in the eighties were also raising national political issues such as democratic representation and the rights of the homeless and the propertied, the unrepresented, the poor and the unemployed. Faced with increasing opposition and internal contradictions, the apartheid state finally formally and officially recognised African urbanisation. It scrapped the Group Areas Act, abolished the land acts, made provisions for "less formal" township establishment and initiated mass housing schemes, in 1991. While the 1991 reforms could be seen as a minor breakthrough by introducing simplified procedures to promote African housing, they were conceptualised within a very paternalistic and dictatorial paradigm, indicating a need to retain control over African urbanisation. The introduction of capital housing subsidies and site and service schemes were further developments. However, they were really introduced as measures to encourage private sector involvement in housing than primarily addressing the real needs of the poor.

While changes to the status of land rights for Africans in urban areas were slow to materialise, incremental progress saw the extension of leasehold rights from 25-year leasehold rights to 99-year leasehold rights in 1984 and then ownership rights in 1986. The 1980s also saw attempts to promote home ownership as part of a process of establishing a black middle-class. Because the state owned most of the black housing, it became necessary to allow for freehold tenure which required compliance with land survey and deeds registration regulations and the need for mechanisms to convert lesser forms of land tenure. The government embarked on a massive campaign to survey black areas and then advertised the "Grand Sale" in 1983 followed by the introduction of the Black Communities Development Act (BCDA) in 1984 and the Conversion of Certain Rights to Leasehold Act in 1988.

In 1986 the BCDA was amended to include some significant changes in government policy. Firstly, ownership rights could be granted. Secondly, the provisions of the Land Survey Act and the Deeds Registries Act applied, putting legal requirements in white and African areas on an equal footing. A simplified form of a Town Planning Scheme was also included as a mechanism of providing some zoning controls. While some attempt was made to enable economic development on the sites. The development procedures contained in the BCDA were very similar to those already established in the provincial Ordinances. However, one very significant

difference was that the BCDA was national legislation requiring approval by the Minister. Retaining national control over African areas was a reflection of the parallel administrations responsible for white and African areas in operation in South Africa at the time, where African areas were always controlled at the national level. The BCDA was used to establish many black townships within towns in South Africa and did result in greater private sector involvement in housing development in this market. However, the legislation was repealed in 1991 when much of the racially-based legislation was removed from the statute books.

Many of the ideas and procedures from the BCDA were later introduced into amended legislation applicable to black towns that were established and governed in terms of the Black Administration Act of 1927 and the Development and Trust Act of 1936. Proclamation R.1886 was introduced in 1990 by the Department of Development Aid. The procedures outline the formal developmental stages that land would pass through before settlement occurs. While this legislation was being used, mostly by the private sector to deliver housing projects, informal settlements were burgeoning in the African township areas. This informal development process happens in reverse to the formal process and people settle on the land first and secure tenure last. There were few legal development procedures to cater for the informal processes and they remained largely outside of the law. The formal procedures for the development in African areas proved too onerous for the poor, who resorted to informal land development procedures, which provides more rapid access to land.

The 1980s were a decade of intense protest from urban Africans against the National Party government. While the legal amendments in the mid-eighties did very little to appease matters by granting land ownership rights on a similar basis as in the white areas, political rights were still withheld. During the 1980s informal settlements continued to burgeon in all township areas, causing concern for the authorities. Based on approaches overseas site and service schemes were introduced, supported largely by the less onerous development procedures in current legislation and the new legislation to be introduced in the reforms of 1991. In addition, the site and service approach was further promoted through the Independent Development Trust (IDT) capital subsidy scheme that was introduced at the turn of the decade. The IDT was granted a lump sum from government to pilot a capital subsidy scheme whereby beneficiaries obtained a site and services to the value of R7 500.00. This was the forerunner to the post transition housing subsidy scheme. By the end of 1992 the IDT announced that it had reached the end of its capital subsidy scheme and that no new projects would be implemented after March 1993.

The 1991 Land Reform White Paper was released amidst much fanfare, largely because it proposed the abolition of racially based land legislation. This meant that the Group Areas Act was to be repealed, along with the abovementioned Black Communities Development Act and many other laws. The government saw these reforms in the context of promoting “orderly urbanisation”. It introduced the Less Formal Township Establishment Act, Act 113 of 1991 (LFTEA), to provide less onerous measures to develop land in formerly African areas. Essentially, the legislation was government’s response to increased calls to accommodate informal housing processes and upgrade inferior and discriminatory land tenure. LFTEA effectively introduced an inferior form of tenure for areas to be developed using this legislation (Certificates of Ownership). This legislation is still in force in South Africa at present. This Act made provision for three types of developments – less formal settlement, less formal township establishment and settlement by indigenous tribes. Chapter II of the Act contained “shortened procedures for less formal township establishment”. This Chapter provided for much speedier procedures, but at the expense of transparency and decentralised decision-making. Many townships were established using this procedure and its provisions are still used in some instances to this day. With permanency now recognised and racial discrimination about to fall off the statute books, upgrading inferior forms of tenure to full ownership became necessary. The Upgrading of Land Tenure Rights Act, Act 112 or 1991 was promulgated to achieve these aims. This Act categorised all rights into two schedules – Schedule 1 related to rights that were granted via complying with some survey and registration requirements (albeit, lesser forms) and applied to deeds of grant, leasehold and quitrent. Schedule 2 related to tenuous

rights granted in the form of permissions to occupy. The legislation made provision for opening township registers and introducing land use conditions in the newly-formalised townships.

The White Paper acknowledged the need for government financial assistance, especially with respect of surveying and opening township registers. It embarked on a mass survey programme, much of which was completed by the late 1990's. However, the opening of registers proved a much more difficult process and this has lagged behind the survey programme.

Interim reforms

In the same year as the White Paper was released, far-reaching processes were already beginning outside of government, that resulted in the establishment of the National Housing Forum. By August 1993, some interim structures were agreed including the National Housing Board and four Regional Housing Boards which were to replace all the existing Boards, previously based on racial lines. It took another year before there was any agreement on the housing subsidy proposals. In order to break through the impasse over the disposal of state land and to speed up housing development, the Development Facilitation Bill was brought to the NHF in the later stages. The NHF was tasked with the preparation of a White Paper on Housing which later became one of the first White Papers of the new government. Of relevance are the workings of the Land and Services Working Group of the NHF. The policy positions adopted by the Working Group formed the basis of the Housing White Paper and the Development Facilitation Act. The key policy issues identified by the Working Group included developing a new planning framework, developing new mechanisms for land development and land use control, reforming land registration and tenure systems and the provision of bulk infrastructure and service standards and tariffs.

Participants in the NHF reached consensus on the principles needing to be reflected in a new approach to planning, including the need to redress the impacts of segregationist apartheid planning, the promotion of efficient and better functioning cities, the provision of a framework to mobilise investment into development and alignment with the Reconstruction and Development Programme (RDP) that the government had introduced to redress social inequalities. There was also a strong concern that any new planning system be more participative. With respect to the regulatory framework for land development, some far-reaching proposals were made in the Working Group. It called on a new regulatory framework, aspects of which later gained recognition in the Development Facilitation Act. The Working Group also tackled the thorny issue of land tenure as it related to housing and proposed that inferior and parallel systems be unified, that inferior forms be upgraded and that staged tenure be introduced through the concept of "initial ownership" which is fully upgradeable to ownership over time. Most of the land policy positions were carried over into the Housing White Paper, but more importantly into legislation, through the Development Facilitation Act and in fact, represented the kernel of the new planning paradigm that was introduced in 1995.

Democratic era reform and new legislation

In April 1994, elections were held and a new democracy was heralded in. The ANC won a majority in government and the stage was set for a new era of policy development and implementation. Since the first democratic elections, a host of new national laws and policies have been enacted and developed. It is within the policies emanating from the departments of housing and of land affairs that national policy guidelines for land are to be found. Over and above these, however, the paradigmatic basis for land matters can be found in the provisions of the Constitution (Act 108 of 1996), specifically in the Bill of Rights (Chapter 2) dealing with both property and housing. Sub-sections 25 (1) and 25 (4) specifies that no law may permit arbitrary deprivation of property and property may only be expropriated for a public purpose or in the public interest and subject to compensation, which includes land reform and reforms to bring about equitable access to South Africa's natural resources. The constitution also establishes that the state must take reasonable legislative and

other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis (section 25 [5] and that a person or community whose tenure of land is legally insecure as a result of past racially discriminatory practice is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress (section 25 [6]). Subsection [9] requires that parliament has a duty to enact such legislation. Section 26 establishes that everyone has the right to have access to adequate housing (subsection [1]) and that the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right (subsection [2]) and goes on to establish that no-one may be evicted from their home without an order of court made after considering all the relevant circumstances, and that no legislation shall permit arbitrary evictions (subsection [3]).

Since 1994 key pieces of tenure legislation have been passed which are directed at securing tenure for vulnerable occupiers. These include The Restitution of Land Rights Act, the Development Facilitation Act (67 of 1995), new provincial planning laws and the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (19 0f 1998). The Restitution of Land Rights Act, applicable in both rural and urban areas, addresses the restitution of land rights lost by any South African as the result of racially discriminatory laws passed since 1913. It provides three forms of redress for people who can demonstrate a right to restitution: restoration of land lost; an award of alternative state owned land, or financial compensation. The Development Facilitation Act (DFA) was seen as an interim measure to establish and test a series of changes to the system of land development and planning. Important characteristics of the law are 'fast track' procedures administered by provincial development tribunals for dealing speedily with important development projects and nationally binding principles to guide land development. Several provinces have begun to draft their own planning laws. Legal rationalisation, the management of land use and development and the determination of roles and responsibilities at the three spheres of government, are among the issues addressed in these laws. The law reform challenge arises from the numerous overlapping and contradictory laws still in place in each province. Although planning and development control laws and regulations in bantustans and urban black townships were only minimally effective, their links with land tenure and land administration make it extremely difficult to simply repeal them. The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act introduces procedures for dealing with illegal occupation of land that are 'just and equitable' and aims to ensure that eviction takes place in accordance with the law. It also outlaws the practice of individuals charging landless people a fee for the opportunity to settle on land that is not that individual's land to offer.

Urban land reform is a much less politicised issue than rural land and is treated as a technical, developmental matter of urban planning within the ambit of housing development. The following thus explores both types of legal reform introduced since 1994.

The Development Facilitation Act promulgated on 4 October1995 shifted the planning paradigm to a normative one, based on policies and principles. It also incorporated the expression of a number of other policies of the new government, including fair and open decision-making, speedy development procedures, public participation and access to information, accountability for performance, strong policy making by local politicians. It is set to be amended but its essence will remain on. It will also remain on in new provincial planning legislation. The DFA established new ways of doing planning which are still being integrated in current approaches, for example, it was through this process that integrated development planning was conceptualised. The main objectives of the DFA are to create a new policy framework away from the control-oriented approaches of the past to an approach based on norms and standards, policies and principles (a normative planning approach, based on a right-based culture), to create a common national development procedure for all areas and to fast-track development procedures. The new planning approach was supported by the introduction of principles to guide all decision-making in relation to development and plan making. It was also supported by the introduction of Land Development Objectives (LDOs). This was the policy link where local authorities were urged to become more performance oriented and accountable for how their decisions

shape development. While the (LDOs) had a housing bias, they became the new planning instrument for local authorities to determine their vision, goals and objectives for development of their areas– which became particularly important after local government elections and the drawing up of new, integrated local government areas. Given the strong need to move towards a unitary planning system and have one procedure that could apply in every part of South Africa, it was not surprising that the DFA included a new planning procedure whose overarching goal was to cut through bureaucratic log jams to develop low income housing more efficiently.

The Minister of Land Affairs, the Department responsible for spatial planning, established and tasked a Development Planning Commission to prepare a Green Paper on Development and Planning. It achieved this objective in May 1999. The Green Paper focused on spatial planning as a sector of broader integrated development planning. It endorsed the paradigm of the DFA and supported a minimalist approach to planning. It clarified the roles of government in the new dispensation of spheres of government and co-operative governance. National government should confine itself to co-ordination, support and monitoring and establishing national norms and standards. For provinces, the ability to draft their own provincial planning laws was established. At local sphere, it supported integrated development planning and urged a strong spatial planning component. With respect to land use management, the Green Paper made some important policy statements that are intended to shape a new land management system, to be policy led and be consistent with the DFA principles and the municipally articulated priorities and strategies. The Green Paper proposals regarding the speeding up of land development included establishing a single approval route for applications that includes sector approval requirements and setting a firm time limit on decision-making, introducing a staged approval process for large applications and giving applicants and objectors a fair hearing. The Green Paper process has also given rise to the formulation of a Land Use Management Bill which encapsulates its land use management elements.

Some provinces have already prepared new Provincial legislation within this new framework and others have drafted bills. The new Provincial Acts are essentially “mini” DFAs with strong land management content to replace the current provincial Ordinances. One of the biggest challenges facing the new provincial Acts is how best to deal with the introduction of unitary systems for land management. While the new Provincial Acts wish to extend land use management systems to former black areas, the development rights conferred on land through zoning are at variance in any use zone.

As the housing process was the most advanced due to the NHF’s activities, new legislation and policy related to housing was the first to be introduced by the new government. The housing policy has evolved over time and has broadened to include a range of subsidy types. The Housing Amendment Act of 1994 formalised the National Housing Board and the four Provincial Housing Boards, introduced by the NHF’s recommendations. In October 1994 a National Housing Summit took place in Botshabelo. The approach to housing in the Housing White Paper comprised of stabilising the housing environment, institutional support, mobilising savings and housing credit, providing subsidies and facilitating the speedy release of land. The most well known of all the policies was the introduction of the housing capital subsidy scheme for low income beneficiaries. The policy is based very much on the IDT subsidy scheme, including the introduction of a once-off capital amount towards the land services and house of qualifying beneficiaries. The government developed criteria for subsidy qualification, based largely on income. The subsidy has enabled over million beneficiaries to obtain a serviced site and a modest structure, since its inception but has largely been developed within the framework of promoting more private sector involvement in low-income housing delivery. Housing projects have been developer-driven, with developers choosing land and designing projects, whose spatial location perpetuated the apartheid spatial form of the past, with housing being established long distances from economic centres. The implementation of the subsidy has emphasised ownership forms of tenure over other forms. The registration requirements are also quite burdensome and have relatively higher associated costs. In acknowledgement of the problematic aspects of the implementation results, the policy and its implementation

instruments have been continually evolving since the publication of the White Paper and the passage of the Housing Act. Officially, the process is termed "policy enhancement". Issues currently under consideration for housing policy enhancement include beneficiary contributions to housing, the promotion of medium density housing and the people's housing process. Emergency housing, a new approach to procurement, the widespread application of the homebuilding warranty scheme, and merging the subsidy bands are also on the agenda. The procedures for identifying land and projects has been reframed to give municipalities the responsibility for identifying land an co-ordinating the procurement process, to align with the municipal planning process, through which Integrated Development Plans are produced.

Integrated development plans (IDPs) were introduced in 1996 with the Local Government Transition (LGTA) Second Amendment Act, and specified as tools of developmental local government in 1998 with the Local Government White Paper. The 2000 Municipal Systems Act set out the method, outputs and status of the process. Chapter 5 of the Municipal Systems Act, Section 23 (1) states that "a municipality must undertake developmentally oriented planning so as to ensure that it (a) strives to achieve the objects of local government set out in … the Constitution; (b) gives effect to its developmental duties…" Section 26 (c) of the Act goes on to specify that an integrated development plan must reflect, amongst other things, "the council's development priorities and objectives for its elected term …". IDPs are the principal planning instrument for all planning, development and management decisions in the municipality. Section 35 (a) of the Municipal Systems Act provides that, once adopted by the municipality, the IDP, "is the principal strategic planning instrument which guides and informs all planning and development, and all decisions with regard to planning, management and development in the municipality". DPLG's guidelines on sector alignment proposed IDPs as the spine of the municipal planning process, while the sector requirements are being promoted in most cases as being incorporated into it where appropriate or undertaken in a parallel but aligned fashion. IDPs are intended to guide housing development: the general principles applicable to housing development provide that national, provincial and local spheres of government must ensure that housing development is based on integrated development planning.

There are at least five other national sector departments, besides the Department of Provincial and Local Government (responsible for the LGTA and Municipal Systems Act), whose legislation requires municipal planning to be undertaken to inform their programmes and budgets- and in turn impact on land and housing delivery (Development Works, 2001). For example, the Water Services Act requires that water services authorities prepare Water Services Development Plans (WSDPs). A WSDP should form part of an IDP. Another example is the Housing Act which requires that the municipality must, as part of IDP process, within the framework of national and provincial housing legislation and policy, prepare a local housing strategy and set housing delivery targets. Similarly, municipalities are required to include a Spatial Development Framework as part of their IDP, which includes the identification of land for development and the locally articulated parameters for establishing a municipal land use management system. Moreover, to comply with the requirements of the National Environmental Management Act and the Regulations to the Municipal Systems Act, municipalities are now required to include a Strategic Environmental Assessment in the Spatial Development Framework. Whilst the inclusion of land matters as part of the municipal plan amounts to elevating the impact of locally articulated priorities, strategies and projects on land delivery and administration, the layering of other sector planning requirements as part of the IDP also risks crowding out land matters.

In addition to the municipal requirements reported previously, the National Housing Act requires that national and provincial government prepare and maintain a multi-year national plan and multi-year provincial plans in respect of housing development. The objectives of the provincial multi-year housing development plans are to align provincial programmes with national housing policy and programmes, ensure coordinated, integrated and well-planned housing development and facilitate alignment with the Medium Term Expenditure Framework (MTEF). In turn, this is meant to assist in the development of budget projections for the allocation of funds required by the Public Finance Management Act and contribute to the National Housing Development Plan.

Longer term legal reform

New legal processes are also under way in respect of the taxation dispensation pertaining to land. The new dispensation is set to extend taxability throughout the territory of the country through areas previously exempt from taxation. This move is being championed by the Department of Provincial and Local Government as a means to enhance the fiscal viability of municipalities, and together with the introduction of a national spatial planning legislation, in the shape of the Land Use Management Bill (and subsequent legal developments), could substantially affect the manner in which land is held, valued and accessed. Furthermore, the Department of Provincial and Local Government has recently embarked on a policy process in respect of urban development and urbanisation, the details of which are not yet clear, but which is likely to also affect land matters in the medium to long term.