

**Framework for an
Inclusionary Housing Policy
(IHP) in South Africa**

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1. INTRODUCTION

In September 2005, at a Housing Indaba in Cape Town, government and key players in the private housing development sector (including SAPOA) have signed a Social Contract for Rapid Housing Delivery. The contract basically states that "every commercial development including housing developments that are not directed at those earning R1500 or less, spend a minimum of 20% of project value on the construction of affordable housing (currently defined as housing targeting households earning between R1500 and R8000 per month). No position has however been legislated and no formal national policy framework exists. In the first half of 2006 the NDOH commissioned and reflected on international experience regarding inclusionary housing. Since then the NDOH has been engaging with the private sector to try to find a way of implementing inclusionary housing thinking in way which is appropriate in the South African context and which constitutes a "win-win" scenario for citizens, government and developers. Several options have been presented and the policy framework outlined below has responded to what has been an energetic discourse about sometimes highly controversial issues.

It should be noted that imposing inclusionary requirements outside of a national policy framework is neither illegal in South Africa (unless national legislation and parameters are in fact put in place) or without precedent elsewhere in the world. In the USA for example many local authorities have used the powers implicit in their planning ordinances to require inclusionary provision entirely in the absence of State or National policy or legislation. However fragmented development of inclusionary housing policies has several potential shortcomings;

- Many different policies can cause confusion in the marketplace – both with respect to consumers and suppliers
- Ill-considered/naive policies could potentially lead to developers choosing to exit the market (many localities don't have the capacities to develop appropriate policy)
- Onerous local policies could cause developers to "flee" to other localities.

- Too much "local flexibility" or "local discretion" can provide a breeding ground for corruption / or alternately for capricious and personality dependent coercion.

In South Africa the idea of inclusionary housing has begun to capture the national imagination. Some Provinces, for example Gauteng and W Cape, have formulated draft policies and are beginning to implement them. Moreover many local authorities (for example Johannesburg and Ethekewini) are beginning to require developers to include affordable housing in their projects. The NDOH is concerned that some of the dangers of the fragmented development of inclusionary housing policy mentioned above may already be evident in South Africa and that there is a need to provide guidance and to set parameters regarding inclusionary housing. Thus this document outlines a strategy framework for inclusionary housing in South Africa

2. INTERNATIONAL EXPERIENCE

Inclusionary housing policies can be found in many countries but largely in the developed world and the rapidly developing economies of South and East Asia (e.g. the USA; Ireland; Scotland, England; the Netherlands, Malaysia, China). In virtually all of these countries there is a vigorous private sector property development industry providing housing for the middle and upper income sections of the population. Inclusionary housing policies have been introduced in an attempt to harness the energy of this industry and to leverage "affordable" housing delivery off the delivery of housing for middle and upper segments of the market. Whilst there is a great deal of variation in the kinds of policies used, inclusionary housing generally involves requiring developers of major greenfields project to make a proportion of the units available in the form of affordable housing (a % of the number of units, or a % of the project value, or a % of the bulk/coverage allowances, etc.) The California Inclusionary Housing Reader (2003) notes that in addition to the above, most inclusionary programmes worldwide contain all or some of the following elements:

- An exemption for small projects
- Income or house price affordability criteria
- The provision of incentives by government (usually in the form of density bonuses or tax credit schemes)
- Restrictions on resale of affordable units

It must be stressed however that there is enormous variation from one context to another both with regard to the reasons for and the content of inclusionary housing policies. As far as purpose is concerned in countries such as Malaysia and China the primary purpose has been delivery of affordable housing at scale whereas in contexts such as the USA and the UK, the achievement of greater socio-economic balance and social inclusion has been at least as important as boosting the supply of affordable housing stock. In the USA for example inclusionary housing is also seen as an important tool for achieving greater racial integration and to counter racially exclusive processes of built environment creation.

In some contexts inclusionary housing is tightly linked to government subsidy programmes and involves partnerships between developers and social housing institutions. In other contexts (e.g. the USA) there has been a tendency to avoid the linkage to subsidy as far as possible (in part because social housing institutions have opposed it but also because developers have wanted to avoid having projects held up because they are stuck in subsidy queues). In some contexts inclusionary housing projects are driven centrally via national legislation (Malaysia) whilst in others inclusionary housing is embedded in local planning ordinances. In some contexts inclusionary housing provisions are highly prescriptive and inflexible (China, Malaysia) whilst in others they allow more permissive and allow much more flexibility (e.g. the UK). Whereas in most countries inclusionary housing policies are applied to projects, in some contexts they are applied at the level of towns and cities (e.g. Belgian and Dutch cities are given targets to achieve regarding the provision of affordable housing by private developers).

As a general rule inclusionary housing programmes are generally considered to have been a success both with respect to promoting affordable housing supply and in promoting social inclusion. In a number of national contexts (and most notably the USA) inclusionary housing legislation and policy has been challenged on constitutional grounds but everywhere it has survived such legal challenges. The real estate financed Urban Land Institute in the USA recently (ULI 2003) researched the impact of inclusionary housing programmes in the USA and concluded that if properly done inclusionary housing did not negatively affect the performance of the real estate industry both with respect to outputs and profits achieved. They also concluded that inclusionary housing had produced substantial social benefits. Of course this is not to say that there are not exceptions to the rule. In Malaysia for example inclusionary housing is prescribed from the centre in a simple way--- 30% of all privately produced housing must be affordable (the meaning of which is strictly prescribed). Whilst this has boosted affordable housing supply, Malaysia is also well known for its "abandoned" housing stock where affordable housing has been provided (in accordance with the 30% prescription) in areas where there is no market demand for it. Moreover there are examples of where property prices and developer participation have been shown to be negatively affected by inclusionary requirements (e.g Scotland).

Whilst the lessons of the international experience are multifold (and applicable at different levels) the following "high level" lessons are worth noting:

- As a general rule inclusionary housing has been successful. Properly designed programmes work while poorly designed programmes can be damaging.
- Inclusionary housing programmes are not common in the developing world largely because of the small size of the private sector property development industry in such countries and the extraordinarily high disparity between the rich and poor in such contexts.
- "One-size fits all" approaches (e.g. Malaysia) should be avoided. Programmes should allow sufficient flexibility to allow varied responses to different challenges.

- Decentralized approaches (within nationally prescribed parameters) tend to work best.
- The contextual realities of any country/locale must be central to any considerations regarding the desirability and form of inclusionary housing

3. KEY CONTEXTUAL CONSIDERATIONS IN SOUTH AFRICA

It is worth noting that the direction of current policy is predicated on three key contextual considerations. The first of these is a recognition that inclusionary housing in South Africa cannot be primarily about trying to leverage scale delivery of affordable housing as a by-product of the production of houses for middle and higher income sectors of the market by big developers. This is because of the limited scale of delivery by private developers overall in responding to what is a relatively small (in proportional terms) market for middle income and up market housing. In the midst of a property boom South Africa has averaged 40 000 private sector delivered units over the past five years and delivery is currently peaking at 60 000 units. Twenty to thirty per cent of these units is a relatively small number of houses when compared to the 150 000 to 200 000 units per annum that government has been providing (RDP housing). But it is an important contribution nonetheless.

The above considerations notwithstanding, it must also be recognized that formal private developers are not the only producers of housing by the private sector. In South Africa's towns and cities it is now quite commonplace to see homeowners responding to newly permitted density bonuses to sub-divide their sites and to put additional housing units in place. Still others are responding to the same new density allowances by providing rental housing. The new density bonuses have been introduced out of a recognition that South Africa's towns and cities are have unusually low densities by international standards and that this leads to many performance inefficiencies. Whilst there is growing energy in this process it is unfortunate that homeowners are being allowed these density bonuses without being required to also contribute to the stock of affordable housing.

In Johannesburg alone if only 50% of the 700 (???) households owning a residential site were to provide one affordable housing opportunity per site then 350 000 such opportunities would be provided (which would more than eliminate the backlog). Moreover such stock would for the most part be provided in already sustainable human settlements. It seems therefore that whilst internationally it is common to exclude smaller subdivisions/projects from inclusionary provisions, in South Africa's low density circumstances their incorporation seems central

The second key contextual consideration is that South Africa has levels of income inequality which are among the highest in the world. In such a context it follows that steep "income cliffs" can be expected between rich and poor and these cliffs are likely to be much steeper in the average inclusionary housing project in South Africa than in the USA or the UK. One consequence of this is that it is harder to achieve inclusionary outcomes and retain project viability in South Africa than elsewhere and that this will have to be taken into account in formulating policy.

The third key contextual consideration, and one that is a major concern for government, is that processes of built environment creation in South Africa are still extremely segregated in race and class terms. Government builds homogeneous RDP housing for the poor (almost exclusively Black) and private sector developers build gated villages for the rich (largely but not exclusively White). Moreover in our larger cities and towns segregated built environment creation is taking on almost regional dimensions. In Durban for example middle and up market residential development is dominating the development of the Northern corridor of the city which also where many economic activities are locating. Affordable housing is however largely concentrated in the South and it is very difficult for aspirant home owners or lower-middle income renters to find housing opportunities that they can afford in the North

Similar broad regional income (and race) polarization is also evident in other major South African cities (the N/S divide in Johannesburg) for example. Such spatial polarization has very negative practical implications for lower income

households but also subverts the very important national process of building a single nation. Of course it needs to be accepted that reconfiguring our existing and emerging spatial realities will require a degree of engineering especially, given the strong spatial footprint inherited from apartheid. Inclusionary housing has the potential to be one of a range of tools used to help address our current highly segregated processes of built environment creation. It has been used with some success to help address racial exclusion in the USA. It cannot be the only tool but it has a place.

4. INCLUSIONARY HOUSING : DEFINITIONS

4.1. Inclusionary Housing

Inclusionary housing in South Africa means the harnessing of private initiative in its pursuit of housing delivery to middle/higher income households to also provide (include) affordable housing opportunities in order to achieve a better socio-economic balance in residential developments and also contribute to the supply of affordable housing.

Private initiative it should be noted includes both large developments and smaller developments (cut-off point specified later in the document).

4.2. Affordable Housing

Specifically for the purposes of inclusionary housing affordable housing is defined both with respect to ownership and rental:

4.2.1 Affordable housing for ownership

Affordable housing for ownership is the **range between the current cost of a fully subsidized RDP house and the top of the "affordable housing range" as defined in the Financial Sector Charter + 40%.**

Currently this would imply the range between R50 000 and R350 000. The range should however be adjusted annually via the mid-point between the building cost index and CPIX. In order to ensure a spread of house prices Local Authorities can, at their discretion, require that **half of the inclusionary requirement** must be below R250 000 (the top of the Finance Charter range).

In the event of a landowner or developer undertaking a subdivision and selling a serviced site to end-users, then the selling price of the site may not exceed one third of the top of the affordable housing range plus 40%. The investment in the top-structure will not be regulated but the incomes of recipients will.

Compliance with inclusionary housing requirements will be audited with reference to prices and incomes of purchasers because of the high potential for downward raiding.

4.2.2. Affordable housing for rental

Affordable housing for rental is the range between the **rent that someone earning R1500 per month can pay** and the rent that someone **earning R7500 per month +20% can pay**.

This implies a range of R600 to R3000 per month. Affordable rents definitions should be revised by CPIX each year. The reason that the factor used to escalate the "top of the Finance Charter range" is lower for rental housing (20% as opposed to 40%) is because rents are currently about 50% to 70% of mortgage repayments.

Compliance will be managed by auditing rents and the incomes of renters (for reasons of the high potential of downward raiding).

5. QUALIFICATION CRITERIA

With the exception of the qualification in terms of the household income, all other qualification criteria applicable to beneficiaries of Government's housing assistance will apply and in addition thereto, beneficiaries who apply for a subsidy in terms of this programme must earn between R1500 -00 to R7000-00 per month and qualify for mortgage finance from a financial institution accredited by the Provincial Housing Department

6. OBJECTIVES OF INCLUSIONARY HOUSING IN SOUTH AFRICA

In the light of the above contextual considerations it follows that the objective of inclusionary housing is primarily to promote greater social inclusion/integration and to break with the highly segregated processes of built environment creation in South Africa. Boosting the supply of affordable housing is a secondary objective but an important one. The key objectives of inclusionary housing in South Africa can be stated as follows

- 6.1. To make a contribution towards achieving a better balance of race and class in new residential developments
- 6.2. To provide accommodation opportunities for low income and lower middle income households in areas from which they might otherwise be excluded because of the dynamics of the land market.
- 6.3. To boost the supply of affordable housing (both for purchase and rental)
- 6.4. To mobilize private sector delivery capacity to provide affordable housing.
- 6.5. To leverage new housing opportunities off existing stock at the same as contributing to the densification of South African cities.
- 6.6. To make better use of existing sustainable human settlements infrastructure.

7. KEY POINTS OF DEPARTURE

Key principles in terms of which policy is formulated are drawn in part from the international literature and practice but also from an analysis of contextual realities in South Africa.

- 7.1 In principle there should be no mandatory inclusionary requirement unless this is supported by reasonably proportional incentives. This is important to establish the "win-win" outcome that government wants.
- 7.2 Circumstances in residential development projects are highly varied. Allowance for flexibility is as a consequence essential.
- 7.3 The best place for judgments to be applied about the extent of the incentive to be provided and the proportional inclusionary requirement is at the local level.
- 7.4 Whilst flexibility and local nuance is highly desirable all inclusionary housing activity should take place in terms of the principles outlined here and in terms of the general parameters specified in subsequent sections. Whilst the detail of specific inclusionary arrangements are likely to vary from circumstance to circumstance they should all be derived via a common approach and process. This is to avoid the kind of fragmentation and confusion associated with different authorities taking different approaches (referred to in the introductory section (Section 1) of this document).
- 7.5 Existing development/use rights are protected by law and need to be treated with respect.
- 7.6 Due process will need to be followed in the pursuit of all objectives which potentially impinge on existing development/use rights.

It is perhaps necessary to elaborate why flexibility and locally nuanced application of policy is necessary (as opposed to blanket prescription from National or Provincial Government). Two examples are presented.

In some parts of bigger cities or towns existing infrastructure would not be able to sustain density bonuses which in turn would be required to incentivise/compensate for imposing inclusionary requirements. It follows therefore that if no other incentives/compensation can be offered then less demanding inclusionary requirements are appropriate.

A second example concerns the availability of facilities (particularly social infrastructure used by lower income individuals). In some areas, especially near the urban periphery, new up market delivery often occurs without the provision of requisite infrastructure (e.g. schools, shopping centres etc.). Rich households solve this by virtue of high mobility - they are able to solve the problem by traveling and the associated transport costs are easily absorbed. For lower income households transport costs can be crippling and lead to their disempowerment. It follows therefore that in such circumstances arrangements have to be made to ensure that lower income households do have affordable access to necessary infrastructure or inclusionary requirements should not be imposed.

8. THE ESSENCE OF THE POLICY PROPOSAL

This section attempts a succinct description of the essence of the policy proposal. A layered approach will be followed in terms of which all spheres of government will have clearly defined roles and responsibilities. Whilst the details of the institutional architecture will be outlined in a later section, in essence National government will articulate desired outcomes, set direction, provide certain incentives and specify certain key parameters which are aimed at ensuring that whilst inclusionary housing requirements will of necessity vary, a similar basic logic is followed uniformly across the country and that certain key guidelines and parameters are observed. Crucially National government will also require (via legislation) that Local Governments draw up **inclusionary housing plans** observing the parameters set by National (and Provinces where the latter choose to further develop policy for the provincial arena but still within National parameters). Local Governments will largely be responsible for the

implementation of inclusionary housing plans but Provinces and National may also contribute to delivery in a variety of ways (to be specified below)

Inclusionary housing plans drawn up at a local level will be based on careful assessment of current realities across various areas in the locality. Some areas may be particularly suited for inclusionary housing whilst others may be less so. Suitable areas with good potential for providing incentives may have proportionately substantial inclusionary requirements. Others may be entirely unsuitable and have no inclusionary requirements or proportionally smaller requirements.

As previously noted a key principle in terms of which policy is formulated is that as far as possible a "win-win" outcome should be achieved. This is to be pursued via the simultaneous implementation of **two distinct but complementary component strategies**. These two primary components of inclusionary housing strategy are:

- A voluntary pro-active deal-driven component
- Compulsory but incentive-linked regulation-based component.

8.1. The Voluntary Pro-Active Deal-Driven (VPADD) Component

What characterizes this approach is that there is no compulsion. Willing partners find each other and strike a mutually beneficial arrangement the outcome of which is the delivery of a housing environment which is socio-economically more inclusive. It follows therefore that this component is project-driven (as opposed to being area based). At present there are several examples across the country of projects that are attempting to achieve inclusionary outcomes which have been negotiated without compulsion between willing partners.

What will distinguish VPADD component from current initiatives is the degree of pro-activity in the process. In short as part of their inclusionary housing plans, local authorities will identify projects that they wish to actively pursue with private sector partners. Typically local governments will bring local government-owned

land to the process as well as guarantees of quick development application processing times. In return they will generally require the provision of a substantial proportion of the units as affordable stock (this will however vary depending on the extent of the incentives provided and what a mixed income project will tolerate in externality terms before it becomes unviable). Private sector partners will also be encouraged to be pro-active and to approach local authorities with specific project-partnerships in mind. The emphasis will be on structuring viable "win-win" propositions.

It should be noted that in terms of VPADD both National and Provincial Governments may become directly involved in pro-actively pursuing partnerships with private sector partners. As a general rule local authorities will also be part of such partnerships but the nature of their role is likely to vary from project to project. The NDOH is for example setting up a special purpose vehicle to assemble state owned land for housing purposes. Such land will in many instances be brought into partnerships aimed at producing inclusionary housing. Provinces too can similarly develop plans for pro-actively making inclusionary housing projects a reality and incentivise them largely through the provision of land and other benefits.

8.2. The TOWN PLANNING COMPLIANT (TPC) Component

The Town Planning Compliant Component attempts to achieve a "win-win" outcome by trying to ensure that mandatory requirements are off-set as far as possible by appropriate incentives. The key instruments used in the application of TPC are those that relate to the overall land use planning and development control processes. Such instruments include *inter alia* procedures for township establishment, local planning ordinances, town planning schemes, zoning/rezoning, development approval processes and subdivision approval processes. Since such instruments are applied mainly by local authorities TPC is largely a local business which is driven and implemented locally. Particularly **important levers are township establishment procedures, rezonings and subdivision approval processes**. In short the principle of TPC is that development permission rezoning or subdivision approval is made contingent on

meeting specified inclusionary requirements in return for being awarded certain development rights

It should be noted that planning and development control mechanisms and processes vary from province to province and between towns and cities. It should be expected therefore that the opportunities and mechanisms for applying inclusionary measures will vary.

The use rights and development rights of landowners are however generally encoded in the zoning provisions of town planning schemes. Such rights generally entail the specification of use type (e.g. residential 1) and of development parameters (height, bulk, coverage and set back controls). Some zoning types might even allow the development of multiple units for sectional title or share block arrangements but this is not that usual.

Whether or not inclusionary requirements can be imposed on the existing owner of such rights is at this stage needing to be explored further - but we have already indicated that respect for existing rights is a founding principle of the policy and so too is the notion that inclusionary imposition must be off-set by offering other advantages. However what is more typical is that when developers or individual owners want to tackle a multi-unit project they need to apply for either a rezoning or get permission to sub-divide. In short new rights have to be applied for and considered, not just in relation to the policy intentions of the local authority but also in relation to the rights of other right holders who may be affected via externality impacts. Because the award of such rights involves the consideration of *inter alia* the public interest, the opportunity arises to introduce inclusionary requirements and to compensate/reward the owner via the granting of **density bonuses** or other use rights (in the case of rezoning). There is also the opportunity to use public investment in bulk and connector infrastructure as an incentive.

As a general rule when township establishment, rezoning and subdivision applications are made they are considered in relation to prevailing locality development strategy, specific circumstances in the area and impacts on third

parties (externality impacts). Locality development strategy will generally be articulated in key planning and policy documents of the locality. The locality's Inclusionary Housing Plan will become one of these documents. Inclusionary housing intentions should also be incorporated into other key strategy documents such as the Integrated Development Plans (IDPs) and, where they are present, the Spatial Development Frameworks. Once locality strategy indicates a commitment to inclusionary provisions it makes it possible to consider such applications with reference to inclusionary intentions and to attach inclusionary conditions. It also sends out a message to the public at large that township establishment, rezoning and subdivision applications are likely to succeed if they include inclusionary intentions.

The approach could be taken a step further by formally amending town planning schemes on an area by area basis and introducing/substituting new zoning categories. For example residential zoning types could be linked to different density and use allowances in away which correspond with different inclusionary requirements. Thus at one extreme Residential Zoning Type 1 may only allow very low development densities and no other uses but may also have no inclusionary requirement. Residential Zoning Type 10 on the other hand could allow for multi-story units and some commercial rights but may require that 30% of the units in the project must be affordable.

The different zoning types could then be linked to the various inclusionary housing areas that are identified in the Inclusionary Housing Plan by the locality. Thus in Inclusionary Housing Area 4, for example, only Residential Zoning Types 1 and 3 (each with modest development rights awards and modest inclusionary requirements) may be possible because the infrastructure is not there to support higher densities.

On the other hand in Inclusionary Housing Area 7, only Residential Zoning Types 5,6 and 7 (which all provide significant additional development rights and have significant inclusionary requirements) will be considered for rezoning applications because the area is particularly suitable for pursuing inclusionary requirements.

