

## **CHAPTER 3**

### **PUBLIC HOUSING DELIVERY BY THE CITY OF CAPE TOWN MUNICIPALITY: STATUTORY AND REGULATORY FRAMEWORK**

#### **3.1 INTRODUCTION**

This chapter will focus on the statutory and regulatory framework within which the South African Government and in particular the City of Cape Town Municipality should operate in order to provide sufficient public housing opportunities to the poorest citizens in the country. The previous chapter outlined in some detail the challenges which the Municipality experiences as the main reasons for the growing housing backlog.

Countries around the world experience similar housing backlog problems. The concept of urbanisation was discussed in detail in the previous chapter.

It is imperative that the appropriate statutory and regulatory framework is created by Parliament, which will ensure optimal functioning of government according to the voters' mandate. This chapter will investigate if the current statutory and regulatory framework is sufficient to empower government, particularly local government, to deliver on its promises to the people. Since 1994 the South African government has built over 2.7 million homes and more than 13 million people were provided with adequate shelter. During the 2010/11 financial year the government will spend R15 billion on public housing delivery. Houses will be built in 8000 human settlements around the country and the government plans to upgrade many of the 2700 informal settlements in every major city in South Africa (Zuma 2010:1).

Various housing policies were developed by the national Department of Housing (DOH) in support of housing legislation such as the Comprehensive Strategic Housing Plan in 1994, commonly known as the Breaking New Ground (BNG) policy document. The City of Cape Town has also developed its Integrated Development Plan (IDP), the Integrated Housing Plan (IHP), the upgrading of the

informal settlements programme and the Housing Allocation Policy which were discussed in Chapter 3 of the Mini-dissertation.

### **3.2 STATUTORY AND REGULATORY FRAMEWORK GUIDING HOUSING DELIVERY AT LOCAL GOVERNMENT SPHERE**

From the interaction with the City of Cape Town municipal housing officials, including an examination of their official IDP and their IHP, the following pieces of legislation have been identified as having a direct impact on public housing infrastructure delivery:

- The Constitution of the Republic of South Africa Act 108 of 1996
- The Bill of Rights contained in the Constitution, section 26 (1),(2),(3)
- The Housing Act 107 of 1997
- The Social Housing Act 16 of 2008
- The National Housing Code
- The Housing Development Agency Act 23 of 2008
- The Housing Consumers Protection Measures Act 95 of 1998
- The Rental Housing Act 50 of 1999
- Home Loan and Mortgage Disclosure Act 63 of 2000
- Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998.

The above legislation provides local government with a broad guideline on how to achieve the purpose, application and interpretation thereof. Municipalities are placed under obligation by the relevant housing regulatory framework, to formulate legal policies to assist them in achieving the broader housing policy objectives. In order for the City of Cape Town Municipality to achieve these, it is necessary that appropriate housing policies be drafted and approved by the city council. The following ones will also be discussed in brief in this chapter.

- City of Cape Town's 5 year Integrated Development Plan (IDP) – 2007/8 – 2011/12.
- City of Cape Town's 5 year Integrated Housing Plan (IHP) 2010/11 – 2014/15.
- City of Cape Town's strategy for the improvement of Cape Town's informal settlements.

- City of Cape Town's Housing Allocation Policy – Revised June 2009.
- Breaking New Ground housing policy (BNG).

### **3.2.1 Statutory framework**

The Constitution of South Africa addressed the inequalities and underdevelopment especially in housing service delivery. The sections relevant to public housing include the following:

#### **3.2.1.1 *The Constitution of South Africa***

The Constitution can be regarded as the supreme law of the country. Every other piece of legislation has been developed to give effect to the broader policy statements contained in the Constitution.

Chapter 1, section 2 of the Constitution alludes to the supremacy of the Constitution. Any law that is inconsistent with it is deemed to be invalid by the South African legislature. The legislators tried to cover every aspect of life that needs attention from government. The three spheres of South African government, namely local, provincial and national, share responsibility for the adequate delivery of public housing infrastructure. The Constitution makes provision that no person may be evicted from their home, nor have their home demolished, without an order of court made after considering all the relevant circumstances.

It therefore lays a strong foundation for the production of public housing infrastructure and basic service delivery in terms of property and housing in South Africa.

The City of Cape Town Municipality lists the following points in its IHP as its constitutional mandate:

- Ensure that the right of access to adequate housing to all its citizens are realised
- The sustainable provision of services
- The promotion of social and economic development
- The promotion of a safe and healthy environment
- Prioritisation of the basic needs of the communities and

- Encouraging the involvement of communities.

(IHP 2010/11 – 2014/15: 49)

### **3.2.1.2      *The Bill of Rights***

Sections 25 and 26 respectively (of the Bill of Rights in Chapter 2) of the *Constitution of the Republic of South Africa Act 108 of 1996* state the following:

### **3.2.1.3      *Property***

- No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.
- The public interest includes the nation's commitment to land reform, and the reforms to bring about equitable access to all South African's natural resources.
- Property is not limited to land.
- 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.
- A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.
- A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.

### **3. 2.1.4      *Housing***

- Everyone has the right to have access to adequate housing.

- The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
- No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

These rights are applicable to all citizens of South Africa.

Section 26 of the Bill of Rights is an important section as it will prevent arbitrary evictions of people and prevent their homes from being demolished by the government or any person or group. This was the practice in the past. Additional laws, policies and business plans were also developed by government to give meaning and effect to the above-mentioned provisions in the Constitution.

### **3. 2.1.5      *The Housing Act 107 of 1997***

Section 2 of the Housing Act of 1997 compels all three spheres of government to give priority to the needs of the poor in respect of housing development (Section 2(1) (a)).

In addition, all three spheres of government must ensure that housing development –

- Provides as wide a choice of housing and tenure options as is reasonably possible
- Is economically, fiscally, socially and financially affordable and sustainable
- Is based on integrated development planning; and
- Is administered in a transparent, accountable and equitable manner, and upholds the practice of good governance (Section 2(1)(c)).

The Housing Act 1997 was drafted by the Government in response to the legislative imperatives as set out in section 26 (2) of the Bill of Rights in the Constitution. This section compels the state to take legislative and other measures to achieve the broad goal of public housing delivery. The City of Cape

Town Municipality also has a responsibility in terms of law to develop major housing developments and to highlight the needs of the poor as paramount.

Section 9 (1) (f) of the Housing Act 1997 also obliges the said municipality to take reasonable steps to initiate, plan, coordinate, facilitate, promote and enable appropriate public housing development in its area of responsibility (IHP, 2010/11 – 2014/15: 49).

### **3.2.1.6      *The National Housing Code***

The City of Cape Town Municipality's housing strategies are guided by the policy framework as contained in the National Housing Code. This is the national government's overall housing vision for SA. For the municipality this is a working document and is altered as and when the policy needs changing (IHP, 2010/11 - 2014/15:49).

According to the National Housing Code (2006:4) the roles of municipalities and their IDPs are clarified in the following way:

- Municipalities are required to take the lead role in negotiating the location of public housing infrastructure delivery to facilitate spatial restructuring;
- They have to build a link between public housing delivery, spatial planning and transportation systems as well as ensure that integrated sustainable housing settlements are included in the municipal IDPs for greater budgetary coherence;
- Municipalities should include planning for public housing infrastructure as part of their IDPs;
- Integrated Development Plans (IDPs) are critical components of South Africa's developmental local government system; and
- According to sections 25 and 26 of the Municipal Systems Act, 32 of 2000 all Municipalities are required to compile IDPs to aid development within their areas of responsibility (NHC, 2006: 8).

The South African National Housing Code lists seven strategies important for housing service delivery:

- stabilising the housing environment;
- mobilising housing credit;
- providing subsidised assistance;
- supporting the people's housing process (PHP);
- rationalising institutional capacity;
- facilitating speedy release and servicing of land; and
- co-ordinating government investment in development.

The City of Cape Town Municipality has adopted these policy guidelines to assist it in this respect. (IHP 2010/11-2014/15: 49)

### **3.2.1.7      *Prevention of Illegal Eviction from Unlawful Occupation of Land Act, 19 of 1998***

This Act provides for the prohibition of unlawful eviction as well as for procedures for the eviction of unlawful occupiers; and is intended to repeal the Prevention of the Illegal Squatting Act, 1951, and other obsolete laws; and to provide for matters incidental thereto.

According to the preamble of the Act, it reiterates that:

- No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.
- No one may be evicted from their home, or have their home demolished without an order of court made after considering all relevant circumstances.
- It is desirable that the law should regulate the eviction of unlawful occupiers from land in a fair manner, while recognising the right of land owners to apply to court for an eviction order in appropriate circumstances.
- Special consideration should be given to the rights of the elderly, children, disabled persons and particularly households headed by women, and that it should be recognized that the needs of those groups should be considered.

In terms of past discriminatory laws, it was illegal to form a squatter camp or informal housing settlement. This Act prevents Government and lawful land

owners from arbitrarily destroying informal housing as a result of unlawful occupation of land. Both Government and lawful land owners should approach a court for an eviction order giving the local Municipality authority to remove squatters by legal means. The courts will always take the personal circumstances and rights of the unlawful occupiers of land into account, for example the elderly, children, disabled persons and women before evicting unlawful occupiers and/ or destroying informal structures on privately or state owned property (Dolley & Ndewze , 2010:1).

### **3.2.1.8      *Relevant public housing legislation complied with by the City of Cape Town Municipality.***

The City of Cape Town Municipality complies with the following relevant legislation impacting on housing development and administration:

- The Rental Housing Act 50 of 1999
- The Housing Consumers Protection Measures Act 95 of 1999
- The Social Housing Act 16 of 2008
- The Housing Development Agency Act 23 of 2008
- The National Environmental Management Act 62 of 2009
- Home Loan and Mortgage Disclosure Act 63 of 2000
- Municipal Systems Act 32 of 2000
- Municipal Management Finance Act of 2003

The above named legislation is supportive in achieving the City's constitutional mandate to provide for housing development and administration.

## **3.3      REGULATORY HOUSING POLICIES OF THE CITY OF CAPE TOWN MUNICIPALITY**

This section will focus on the relevant policies.

### **3.3.1      Breaking New Ground (BNG) policy**

The Breaking New Ground (BNG) housing policy was introduced to Parliament during 1994 as part of a White Paper policy document on housing delivery. Its prime objective is the eradication or upgrading of all informal settlements in the

country by 2014/15 (DOH, 2007/8:5). It should also ensure that settlements are self sustainable, and habitable in support of the basic goals of delivering affordable housing.

The priorities set out in the BNG housing policy document are:

- To accelerate the delivery of housing within the context of sustainable human settlements;
- The provision of housing within human settlements;
- To provide quality housing to turn homes into assets;
- To create a single, efficient formal housing market; and
- To abolish apartheid spatial planning, thereby restructuring and integrating human settlements.

### **3.3.2 The City of Cape Town's Integrated Development Plan (IDP) 2007/8–2011/12**

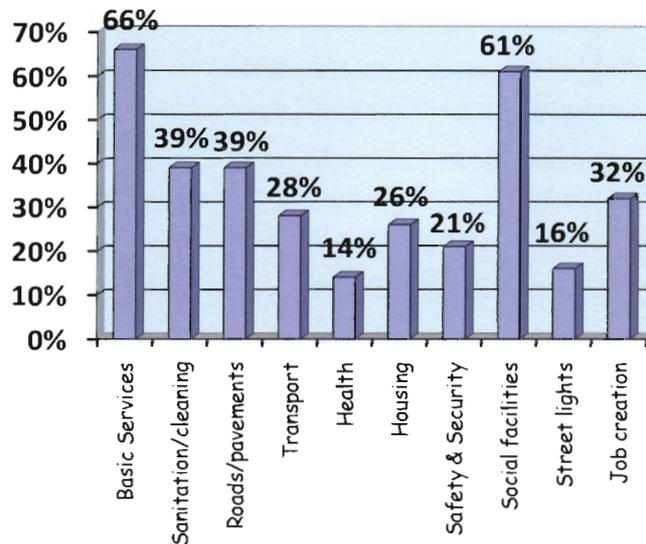
Sections 25 and 26 of the Municipal Systems Act 32 of 2000 require Municipalities to draw up an IDP. The IDP forms the principal planning and implementation document that informs and guides the allocation of financial resources against set key performance indicators. The IDP is a five year strategic document but is reviewed by the municipality on an annual basis to check actual delivery against the plan. This review is in line with the provisions as contained in the Municipal Finance Management Act of 2003 (IDP 2007/8–2011/12:10).

The broad strategic focus of the City of Cape Town Municipality includes:

- Shared economic growth and development
- Sustainable urban infrastructure and services
- Energy efficiency for a sustainable future
- Introduction of public transport systems
- Building integrated human settlements
- The safety and security of the community
- Provisioning of health, social and community development
- Enhancing good governance and regulatory reform.

(IDP 2007/8-2011/12:10)

Integrated human settlements are identified as one of the strategic focus areas. As part of the development of an IDP a public needs survey should be undertaken. The results of such a survey informed the allocation of needed resources to implement public service delivery. The below figure indicates the request for public housing assistance as being at 26% of the respondents.



**Figure 4 City of Cape Town's public needs survey results**

Source: (IDP, 2007/8-2011/12:16)

The above graph supports the Municipality's plans to prioritise its available resources for the said financial year. The upgrade of all council owned housing, as well as all informal settlements and to produce more public housing opportunities are also part of their list of priorities (IDP, 2007/8-2011/12:16).

Chapter 5 of the IDP deals with the issue of integrated human settlements (IDP, 2007/8-2011/12:28).

This includes:

Plans to improve and develop integrated human settlements by implementing the following programmes:

- The quality public spaces programme – upgrade neglected public environments
- The City Spatial Development Framework (SDF)

- The incremental housing programme.

According to its IDP, the City of Cape Town Municipality plans to achieve housing delivering opportunities through the following broad projects and programmes:

- To deliver new housing opportunities
- The rental stock - the Hostel Redevelopment programme
- The land restitution programme
- The social housing (GAP housing) and informal housing improvement programmes.

In the last instance, the said Municipality should provide equitable community facilities and services. In this regard it plans to deliver the following programmes:

- Investment in the community facilities
- Violence prevention through urban upgrade (VPUU) programme
- Implementing the Urban Renewal Programme (URP)
- Improving service delivery standards.

The following Figure 5 depicts the City of Cape Town Municipality's strategic housing delivery targets for 2007 to 2012. This forms part of the IDP and sets the municipal priorities for delivering public housing opportunities within its available budget and over different housing types, as stated. This delivery plan is in line with the public needs survey as depicted in Figure 4 above.

New subsidy/project linked projects (Greenfield and top structure)	5000
Social housing	300
Hostels redevelopment	300
Upgrading of informal settlements + emergency housing	2000
Restitution	200
GAP (Affordable) housing	500
CRU (upgrading of rental stock)	1000

**Figure 5: City of Cape Town's new housing delivery target 2007 – 2012**

(Sources: IDP, 2007/8 – 2011/12: 29)

### **3.4 THE FIVE YEAR INTEGRATED HOUSING PLAN (IHP) OF THE CITY OF CAPE TOWN MUNICIPLAITY**

The next section will deal with the provisions of the municipality's five year IHP. This IHP supports the provisions contained in the IDP relating to the development of Integrated Human Settlements.

#### **3.4.1. The strategic intent of the five-year integrated housing plan (IHP) of the City of Cape Town Municipality**

Chapter 2 of the IHP (2010/11-2014/15:8) outlines the strategic intent and the core focus areas: to harness available resources in a coherent and purposeful manner. The intention is to improve the quality of life of the poorer residents of Cape Town.

The IDP focus on the broader municipal strategic objectives, whilst the IHP specifically focuses on the public housing delivery in Cape Town.

#### **3.4.2 Upgrading of Informal Settlements Policy (UISP)**

The said Municipality confirms that the upgrading of all 223 identified informal settlements will assist in improving the lives of dwellers, while they wait for formal houses to be built. This will however not happen in the near future (Smit, 2007:1). The UISP document makes mention of the following challenges, already noted:

- a lack of basic services;
- environmental hazards; and
- flood & fire risks.

In-situ upgrading is now discussed.

##### **3.4.2.1 *In-situ upgrading***

According to the above named UISP document, in-situ upgrading is still unfamiliar to Cape Town and SA. This policy states that only 89 informal settlements are fit for upgrading where they are located, that is, without the need to be relocated

elsewhere (UISP, 2009:2). In-situ upgrading is thus a process where a settlement is upgraded in its existing location (HAP, 2009:4). The developmental framework for in-situ upgrading of informal settlements includes:

- In-situ upgrading with minimal disruptions of the present social and economic fabric of the settlement
- A community driven development founded on transparency, equity and consensus
- A holistic and integrated approach to human development
- Recognition of an incremental development approach and acceptance of phased development as the most relevant development mechanism

(UISP, 2009: 3)

The guiding principles of the UISP will now be discussed briefly.

#### **3.4.2.2      *Guiding principles of the UISP***

These are summarised below:

- The mandate for dealing with the housing dilemma is derived from people's constitutional rights;
- Access to essential services for all must be ensured;
- Resettlement land to be sought for relocation of those on unsuitable land;
- There should be a fair, transparent and equitable prioritisation model;
- Housing opportunities first allocated to those who have been longest on the database (waiting list) inclusive of backyarders;
- Clear understanding that Greenfields housing developments are not exclusively for surrounding informal settlements;
- Zero tolerance to land invasion to be adopted;
- Socio-economic progression should be enabled and encouraged; and
- Informal settlements development should form part of integrated development through the City in line with the Land Use Planning principles.

(UISP 2009:3)

### **3.4.3 The MANCOM Strategy to improve the Informal Settlements in Cape Town**

In order to give effect to the four phased plan for the upgrading of informal settlements in Cape Town, the Housing Management Committee (MANCOM) of the City of Cape Town, has drafted the key deliverable elements of this improvement plan which were mentioned earlier.

With this strategy the City of Cape Town's housing directorate, hopes to improve informal settlements on a holistic basis (Mancom, 2009:2 & Mkhwanazi, 2009:5).

### **3.4.4 Housing allocation policy of the City of Cape Town Municipality**

The Housing Allocation Policy of the City of Cape Town (revised 19 June 2009) embraces the following guiding principles:

- **Equity:** all persons must have equal opportunity in applying for housing assistance;
- **Transparency:** any person must be able to have reasonable access to the allocation policy and the process in selecting and ranking applicants for a housing opportunity;
- **Functionality:** the policy must be practical and understandable;
- **Social cohesion:** the spirit of the policy must be applied to enhance easier access to housing opportunities; and
- **Integration:** The allocation policy should be implemented in a manner that promotes integration into the City.

(HAP, 2009: 6)

The selection of beneficiaries for new public housing opportunities is highlighted in the revised allocation policy. The main points are hereby summarised:

- Beneficiaries of housing projects – a definite split between informal settlement and backyard dwellers (70/30%) exists and people in overcrowded conditions will also be considered as a matter of priority;
- The housing allocation criteria of the national department of housing (DOH) will apply;
- Once percentage splits for informal, backyard dwellers and those in overcrowded conditions have been determined, sub-splits are proposed:

- *Priority for those applicants that are in a determined radius of development and have been on housing waiting list for the longest time; and*
  - *Applicants that fall outside the radius, but who have been longer on the list than the above category.*
- Special consideration will be given to vulnerable groups and special needs cases;
  - Applicants on housing database selected according to date of application;
  - Details of selected beneficiaries will appear on the national department of housing's "national housing database";
  - The list of approved beneficiaries must be made public in the affected community for comments and participation, before submission to provincial government for approval; and
  - Applicants on the current database may appeal their omission if due process was not followed. The City Manager will deal with such appeals in terms of Section 62 of the Municipal Systems Act No 32 of 2000.

(HAP, 2009: 12)

### **3.5 CONCLUSION**

From the aforementioned it can be deduced that the South African Government is serious about addressing the public housing delivery backlogs. Public housing delivery is not a simple matter to deal with. Various laws governing this arena were promulgated by the legislature: the most important guiding policy is the Constitution. From this, various other laws were promulgated to rectify the discrimination of the past. This showed the serious intent of the Government to provide for the needs of the very poor and the marginalised in SA. Various policies which guide the housing allocation process were subsequently developed by the City of Cape Town Municipality. These will give effect to the strategic policy direction in a fair and equitable manner.

Coming from its history of a repressive regime, it is understandable why SA does not pass laws or policies preventing movement of citizens between provinces and cities. These freedoms have been protected in the Constitution of the country.

The free movement and in-migration of people in search of economic opportunities, are nonetheless causing housing backlogs in the major CBDs in SA.

Chapter 4 of this study will focus on the empirical findings of the public housing challenges faced by the said Municipality. The challenges faced by informal settlement and backyard dwellers are also discussed in this chapter.