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DEPARTMENT OF LAND AFFAIRS

GREEN PAPER ON DEVELOPMENT AND PLANNING

The Green Paper on Development and Planning is hereby published for public comment.

Comments thereon must reach the Department of Land Affairs not later than 23 September 1999, and must be addressed to:

The Director-General
Department of Land Affairs
(For attention : Mr S. Berrisford)
Private Bag X 833
PRETORIA
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Fax number: (012) 3129348
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Minister for Agriculture and Land Affairs

FOREWORD TO THE GREEN PAPER ON DEVELOPMENT AND PLANNING

South Africa has inherited incoherent, racially fragmented, inequitable and cumbersome planning laws and policies which are in urgent need of transformation. The current system has had grave consequences for Government's commitment to reconstruction and integration, housing provision, land reform and environmentally sustainable development.

Together with my colleagues, the Minister of Housing, and the Minister for Provincial Affairs and Constitutional Development, I appointed the Development and Planning Commission, in terms of the Development Facilitation Act, 1995, to advise Government on how to undertake this crucial area of transformation. The Commission was tasked to produce a Draft Green Paper on Development and Planning. This work was handed to me during April 1999.

I am privileged to present this report of the Commission as a Green Paper for public circulation. It is my sincere hope that this document will provide the basis for fruitful engagement between the Department of Land Affairs and the many different organs of Government and civil society who carry an interest and responsibility for development and planning. Once responses have been analysed and assessed, I intend to publish a White Paper in the first half of the year 2000. I therefore urge the people of South Africa to study this Green Paper carefully and to submit their comments to the Department of Land Affairs.

The Development and Planning Commission has made a most valuable contribution to the evolution of post-apartheid planning law and policy through the writing of this Green Paper. This has been no easy task, and I am most grateful for the considerable effort that has gone into its production.

DEREK HANEKOM
May 1999

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NATIONAL DEVELOPMENT AND PLANNING COMMISSION GREEN PAPER ON DEVELOPMENT AND PLANNING

Comments on the Green Paper on Development and Planning should be addressed to:

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Those with access to Internet can find the document at the following address:

http://www.dpc.gov.za

THE CLOSING DATE FOR COMMENTS IS 23 SEPTEMBER 1999.

PREFACE

It gives me great pleasure to present this report of the National Development and Planning Commission, the 'Green Paper on Planning and Development'. The document represents the culmination of a lengthy and challenging process characterised by energetic debate and a great deal of consultation and research. I believe that it represents a key milestone in the development of South Africa's frameworks for land development and planning. Clearly it is not the job of a commission such as the DPC to write final government policy and I trust that the relevant government departments will take up the challenge of developing the document into effective and appropriate policies and laws. I trust too that those policies and laws will in turn lead to real change in the way in which planning and development is carried out in our country. Until we achieve that real change we remain a long way off two key national goals: reversing the divisive and discriminatory legacy of apartheid that remains so evident in the development of our towns, cities and rural areas, and obtaining a sustainable and just future for the people of those same towns, cities and rural areas.

Clearly the development of final government policy and law cannot be done by government alone and I trust that the contents of this document will serve as a useful vehicle for beginning a thorough and meaningful process of public consultation and engagement.

In conclusion, I would like to thank all members of the Commission for the time and effort that they have invested in the work of the Commission over the past 18 months. In particular, I would like to thank Professor Alan Mabin, deputy chairperson of the Commission and convenor of the Task Group that compiled this document and the other Task Group convenors: Professor David Dewar, Ms Erica Emdon and Mr Sandy Lebese.

Ms Pam Yako

Chairperson: Development and Planning Commission.

NATIONAL DEVELOPMENT AND PLANNING COMMISSION GREEN PAPER ON DEVELOPMENT AND PLANNING

EXECUTIVE SUMMARY

When South Africa's first democratically-elected government came into power in 1994 it inherited the fragmented, unequal and incoherent planning systems which developed under apartheid. The Development Facilitation Act no. 67 of 1995 (DFA) was passed to provide the basis for a coherent framework for land development according to a set of binding principles, to speed up the approval of development projects, and to provide for the overhaul of the existing planning framework.

The National Development and Planning Commission was appointed in terms of the DFA to advise the Minister of Land Affairs and the Minister of Housing on planning and development. Among other things, the Commission was requested to prepare a Green Paper on planning which would review and, if necessary, recommend changes to the legislation and process of land development in South Africa. This Green Paper is intended to be an input into a Green Paper to be produced by the Department of Land Affairs during 1999 for public consultation and feedback. The department will then produce a White Paper to spell out its programme for land development planning into the future.

The Commission was requested to focus on the spatial planning system for urban and rural development. It embarked on an extensive process of research and consultation with a wide range of roleplayers to gain an in-depth understanding of the current operation of spatial planning in South Africa, to identify key problems, and to seek innovative approaches to change.

The Green Paper on Development and Planning describes and assesses the historical background to spatial planning in South Africa and the way it has developed since 1994 from a legal, procedural and policy point of view. A key aspect is the Constitution's emphasis on co-operative governance between national, provincial and local spheres of government. While the advent of the DFA and new legislation in several provinces is informed by a new approach to planning, many problems remain. These include a lack of shared vision about what spatial planning should be; a lack of co-ordination between different spheres of government and between different departments; a lack of capacity; a high degree of legal and procedural complexity; and a very slow pace of land development approvals in some areas.

The Commission emphasises the importance of establishing a shared vision and consistent direction for spatial development based on protecting the rights of people and the environment; making efficient use of resources; achieving a high quality of service from the government; co-ordinating public and private investment; setting appropriate priorities; and avoiding duplication. It supports an incremental approach based on a minimum number of government actions, and suggests setting up a departmental 'home' for land development planning in the Department of Land Affairs.

The Commission's recommendations include:

- using the DFA and its principles in an amended form as the basis of national enabling legislation for integrated development planning;

- explaining and educating on the DFA principles so that they can be more widely understood and applied;
- embarking on a campaign to communicate and educate people about the DFA paradigm;
- rationalising the legal framework by assisting provinces to repeal all existing provincial planning legislation and enact a single provincial planning law within a national framework;
- requiring local government do integrated development planning;
- requiring local government to establish land development management systems which support these integrated development plans;
- clarifying the roles of the different spheres of government and the framework for decision making;
- speeding up land development approvals;
- further decentralising decision-making power to local government, within a broader framework of integrated development planning by national and provincial government;
- addressing capacity constraints by monitoring, providing assistance and reviewing technical training acting together with professional institutions.

The paper concludes by spelling out how these recommendations should be implemented. It suggests the Commission should continue to exist in a scaled-down form to assist provincial governments to write new planning laws; to assist the Department of Land Affairs to popularise the DFA principles; to convene a national workshop on planning education curricula; and to facilitate national debate on the Green Paper.

NATIONAL DEVELOPMENT AND PLANNING COMMISSION GREEN PAPER ON DEVELOPMENT AND PLANNING

CONTENTS

1 INTRODUCTION

1.1 Origin of the Commission and its terms of reference

The Development Facilitation Act no. 67 of 1995 (DFA), was the first national planning legislation promulgated after the first democratic elections in 1994. It was passed to begin the process of transforming planning to meet the needs of the new democracy. The DFA made provision for a National Development and Planning Commission (the Commission) which was appointed, after a public nomination process, by the ministers of Land Affairs and Housing in September 1997. The Commission's terms of reference, set out in Section 14 of the DFA, require it to advise the responsible ministers (the ministers of Land Affairs and of Housing) on 'policy and laws' on 'planning development generally, including land development'.

When it began, the Minister of Land Affairs requested the Commission, among other things, to prepare a Green Paper on planning. This paper would review, and if necessary recommend changes, to the legislation and process of land development in South Africa.

1.2 Interpretation of the brief

The Commission interpreted its brief to mean the establishment of an efficient, integrated and equitable land planning and development system in South Africa, because this is essential to meet the needs of the country. This aim is articulated in a number of national policies such as the Urban Development Framework, the Rural Development Framework and the White Paper on Local Government.

The emphasis in the terms of reference on the land planning system gave the Commission cause to debate about how broad or narrow its focus should be. The initial debate within the Commission reflected a wider terminological confusion relating to planning matters within the country and the need to develop a common terminological approach. Recommendations for overcoming this confusion are discussed in Chapter 3.

On the one hand, there was consensus that land planning was just one sub-set of the broader concerns of more holistic development planning. It was recognised that land could not be elevated in status over other (aspatial) development issues, nor could it be pursued in isolation from a broader developmental framework. Indeed, the separation of land from wider planning concerns was characteristic of the apartheid era. This is something which led to widespread suspicion of the field of land development planning in the past.

On the other hand, it was accepted within the Commission that spatial planning is important, in that most development issues have spatial implications. This aspect needs to be addressed to achieve significant improvements to settlement structure and form and improve the quality of life of people living in settlements.

The Commission thus agreed to accept the focus of spatial planning on the clear understanding that developmental spatial planning decisions could not be made without reference to the full range of social, cultural, economic, political, environmental and technological issues which impact upon, and which are affected by, those decisions.

The term 'spatial' is consciously adopted here in place of 'land'. The term 'land planning' evokes an image of systems which sought to plan all land parcels comprehensively. These are historically common, but are now widely discredited. The term 'spatial planning' refers to the organisation of space. It is a much more limited term than 'land planning'.

This Green Paper focuses on the spatial planning system, particularly on the roles of different planning agencies and the relationships between them. It consequently applies equally to rural and urban areas.

It has become clear to the Commission that many of the problems within the spatial planning environment beset all aspects of planning in South Africa. These include the impact of the apartheid legacy – a fragmented set of legal systems and poor co-operation on planning between spheres of government, between government departments, and between governmental and non-governmental players. Spatial planning is the prism through which these wider issues have been identified and possible solutions to problems put forward. It is intended that this Green Paper will be read as an input to addressing planning problems at their most general level, as well as one that offers solutions to the specific difficulties encountered in the relatively restricted arena of spatial planning.

Dramatic improvements in spatial planning are a necessary component of the effort to achieve national government objectives in the arena of economic development, employment creation and poverty relief.

1.3 The methods of the Commission

The Commission sought to gain an in-depth understanding of the current operation of the spatial planning system in South Africa, to identify key problems and to seek innovative approaches and solutions. It did this primarily through a process of consultation and participation with a wide range of public and private roleplayers in planning, as well as through extensive research. More specifically, the Commission has pursued its task in a number of ways, including:

- holding a series of plenary sessions;
- working in smaller task groups to focus on specific issues;
- commissioning research into specific areas such as legal frameworks, international experience and current practices;
- holding structured meetings with government departments;
- running workshops involving stakeholders in spatial planning at national, provincial and local scales;
- calling for and receiving written submissions;
- organising focused Commission workshops.

1.4 The structure of this document

The document is made up of six chapters. Following on the introduction, Chapter 2 provides a broad outline of the history of spatial planning in South Africa, as well as a more detailed assessment of spatial planning practices since 1994. These two sub-sections together represent a contextually-specific problem statement.

Chapter 3 contains an overview of spatial planning and recommendations on this subject. In the first part, a number of central themes, which are cross-cutting in terms of the spheres of government, are identified. These include terminological issues; the need for a common national direction and form of planning; issues relating to co-operative governance and integration; discussion relating to capacity; and the need for simplifying the current legal and procedural complexity. The roles of different spheres are then addressed, with particular attention paid to local government. Local government, while only forming one arena of spatial decision-making, lies at the cutting edge of planning in the sense that it is the focus within which most spatial decisions are appropriately made. It is essential to integrate two interrelated forms of planning (proactive or forward planning and more reactive land management and change) into a cohesive system.

Chapter 4 concentrates on land development and land management with recommendations.

Chapter 5 deals with analysis of the current legal complexity and makes recommendations for simplifying the system.

Chapter 6 provides a 'to-do' list. It summarises the changes which are required in order to make the planning system more efficient, integrated and equitable.

2 PROBLEM STATEMENT

2.1 The spatial planning context

2.1.1 The spatial planning and institutional context before 1994

The planning system which exists in South Africa today in the form of laws, policies, institutions and practices has been shaped by many different governments. Each government responded to the problems which it defined as the most significant at the time. Since all South African governments before 1994 were elected by a minority, the definition of problems and the planning systems created to address them primarily reflected minority interests. The nature of these interests varied regionally so that the planning systems we have today are complex, multiple and contradictory. These systems have had dramatic impacts on urban and rural settlement patterns.

Significant changes to the planning system followed periods of considerable stress and turmoil. A number of milestone periods can be identified in South Africa's planning history.

2.1.1.1 1910 to the 1930s: the spread of British planning influence

Political transformation in this period affected planning through the spread of British planning ideology, approaches and methods following the South African War and intensifying after the First World War. This led to the formulation of land administration mechanisms such as town planning schemes, the introduction of institutional bodies such as township boards, the introduction of public agencies in the housing supply system, and the location of planning administrative and decision making powers within the provincial realm. As a result, strong provincial influence over land and housing markets emerged, together with an increasing tendency to shape human settlement patterns along racial and class lines. The exclusion of African people from urban areas took root during this time.

2.1.1.2 The 1930s, the Second World War, and post-war reconstruction efforts

The Great Depression swept through the global economy bringing about similar conditions of economic hardship in South Africa. This intensified already high levels of poverty. The government of the day responded by implementing new approaches to planning such as slum clearance initiatives, mass government housing; job reservation for poor whites, and the development of rigid and unsustainable 'betterment planning' methods in the rural areas. The idea of 'reconstruction' for the post-war period saw the increasingly enthusiastic acceptance of central precepts of the modernist movement such as the separation of land uses, the concept of the inwardly-oriented neighbourhood unit, and the dominance of the private motor car. These concepts powerfully underpin the mainstream practices of South African spatial planning to this day. This period saw the consolidation of the control-oriented and fragmented approach to planning already in place and laid the basis for apartheid planning.

2.1.1.3 The post-1948 era and grand apartheid

The coming to power of the National Party in 1948 brought previously oppressive features of planning into the systematic formulation and implementation of a racist planning system. This system was a response to government ideology and shifting economic patterns, including the effects of increased urbanisation. Strengthening of the pass laws and exclusion of African people from towns were a central feature of the system. The implementation of the Group Areas Act, giving effect to the ideology of separate development mostly in urban areas, was accompanied by massive forced removal in rural areas. Increasingly inequitable access to urban and rural economic, social, and political resources along racial and ethnic lines was the result, symbolised by rural 'closer settlements' and the characteristic segregated and alienated urban 'township'. All of these activities were accompanied by the rapid growth of planning as a distorted and repressive activity which took political ideology as its starting point, rather than something based on a people-centred and environmental ethic. Within this hostile environment planners motivated by a more just approach did what they could to ameliorate the effects of the government's policies.

2.1.1.4 The period following the Soweto uprising of 1976

The challenges posed to the political and economic control exercised by the minority government by the 1976 Soweto uprising were met with increased control and oppression. The apartheid government dismissed and thwarted demands for change, resulting, in planning terms, in a strengthening of the control-oriented system. The results included rapidly increasing numbers of informal settlements.

2.1.1.5 Post-1985 late apartheid reforms

In the face of increasing internal and international opposition, and the growing economic and political need to accept the permanence of at least an 'insider' African group within towns and cities (as opposed to the majority of African people, kept outside urban areas by influx control laws), the government was confronted with the necessity for change. The civic movement and various non-governmental organisations pressed for change. Policy responses included the relaxation of the Group Areas Act, the recognition of the permanency of African urbanisation, and the official realisation that municipal planning was unable to tackle development needs in its existing fragmented and unrepresentative form. More rapid and consistent urbanisation, unmatched by sufficient housing, land and services delivery, entrenched the significance of informal housing and economic opportunities in the urban context. It also saw the growing acceptance of the need for security of tenure for those Africans who lived in urban areas.

2.1.2 Characteristics of South Africa's planning system

The planning system which has emerged as a consequence of these influences has a number of overriding characteristics.

2.1.2.1 Fragmentation

The planning system is complexly fragmented, along a number of lines:

- *across scales* – national, provincial and local planning systems interpenetrate in complex and different ways;

- *across race groups* – historically, different race groups have operated under different planning systems. For example, African 'locations' or 'townships' never fell under local authority planning systems. Instead, parallel systems (own laws and administrations) for controlling African areas were created. Similarly, a system of 'homeland' areas was designated for African occupation and had their own planning laws and systems;
- *across ethnic lines* – the creation of different ethnic homelands and so-called 'independent states' led to different systems operating in these different areas;
- *across geographic areas* – particularly, urban and rural areas have historically operated under entirely different systems;
- *across provinces* – significant differences existed between provinces;
- *across jurisdictional boundaries* – entirely different land planning and allocation systems operate in areas under traditional and tribal leadership;
- *across sectoral uses* – for example, various line function departments undertook planning independently of one another and different norms and standards prevailed;
- *in terms of jurisdictional instruments* – for example, an important historical planning instrument was title deed restrictions on individual erven. These are still very much in force, despite the fact that they frequently contradict town planning schemes.

2.1.2.2 Control

Although mechanisms for forward planning have long existed, the town planning scheme, imported from the United Kingdom, is at the heart of the town planning system. This is based on the assumption that it is possible, and desirable, to predetermine the use of all land parcels. While this system was strictly enforced in most white, Indian and coloured areas, only simplified versions were later introduced to urban townships, further complicating the land administration system.

2.1.2.3 Modernist influences

The shaping of town planning in the 1930s corresponded with a wide international acceptance of modernism. Most current norms and standards associated with spatial planning were devised to entrench these ideas. The ideals promoted and fostered in the modernist movement have included the concept of the free-standing building within large private green space as the basic building block of settlements; the separation of land uses; the concept of the inwardly-oriented neighbourhood unit; focusing on embedded social facilities; and the dominance of the private motor car. Similarly 'betterment planning', intended to increase efficiency based on the systematic separation of uses, was implemented in rural areas. A prevailing belief underpinning this system was that it was possible and desirable to plan comprehensively – to pre-determine the use of all land parcels in settlements. A number of the precepts of modernism – particularly the emphasis on separation and the idea of self-contained neighbourhoods – accorded neatly with the ideology of apartheid.

2.1.2.4 Some implications

In urban areas influences of apartheid, land market forces and urbanisation have created a pattern of human settlement primarily characterised by racial, socio-

economic and land use segregation. The phenomenon of displaced urbanisation led to the rise of large dormitory towns and other settlements, lacking any functional autonomy and designed to serve as holding areas for people who had been removed from areas designated for white occupation, dammed up behind homeland boundaries. This process also saw the extreme overcrowding of areas with a limited agricultural base with dramatic, negative, environmental consequences. In response, the accelerated 'rationalisation' of agriculture through 'betterment' programmes was intensified. In towns and cities large tracts of the urban fabric were destroyed, frequently under the pretence of slum removal or to consolidate the grand apartheid plan for separate ethnic and racial areas. This resulted in the systematic uprooting of settled communities and the creation of large, alienated islands of poverty.

The physical consequences of these processes are settlement patterns in both urban and rural areas that are often grotesquely distorted. Spatial environments are inconvenient and dysfunctional for the majority of citizens as they generate enormous amounts of movement with great costs in terms of time, money, energy and pollution. Settlement patterns make the provision of efficient and viable public transportation almost impossible, making servicing costly to the public fiscus, and constraining affordability. In addition, large tracts of land with agricultural and amenity potential have been destroyed, poverty and inequality have been aggravated, and opportunities for individual entrepreneurship have been dissipated.

2.1.3 The spatial planning and institutional context since 1994

Wide-reaching changes, with profound implications for planning, were ushered in from 1994.

2.1.3.1 The legal context since 1994

The legal context since 1994 has been influenced by the Constitution, the DFA, new planning laws passed by some of the provinces, and various national pieces of sectoral legislation that have had planning implications.

The Constitution

The Constitution has a bearing on the planning system in that new constitutional requirements such as co-operative governance, procedural and participatory rights to ensure accountability for decision-making, the promotion of social and economic rights, and the protection of the environment create imperatives that profoundly affect planning. The new constitutional model redefines the relationships between government by replacing the system of a vertical hierarchy of tiers with three overlapping planning processes and sets of plans, each relating to a different sphere of government.

The Constitution provides the legal framework in terms of which the national and provincial spheres can exercise law-making powers. Provincial planning is a functional area of exclusive provincial legislative competence as set out in Part A of Schedule 5. This means that the national Parliament may not pass provincial planning laws unless the purpose of the legislation is to maintain national security, economic unity or essential national standards; to establish minimum standards for the rendering of services, or to prevent a province from taking unreasonable and prejudicial action (Section 44(2) of the Constitution). This is referred to as 'intervention legislation' and it prevails if there is a conflict between a provincial and national law on provincial planning.

Municipal planning and the function of regulating land development and managing land, which can be interpreted as urban and rural development and which are included in Part A of Schedule 4, are both areas of concurrent legislative competence. This means that either national or provincial laws can deal with municipal planning and land development management.

Where both national legislation and a provincial law exist concurrently and where there is a conflict between the provisions of the two, the general rule is that the provincial law prevails. The national law can only prevail in the limited circumstances set out in section 146 of the Constitution. Briefly, these include circumstances where:

- the national legislation deals with a matter that, to be dealt with effectively, requires uniformity across the nation, and the national legislation provides that uniformity by establishing (i) norms and standards; (ii) frameworks; or (iii) national policies.
- the national legislation is necessary for the maintenance of economic unity; the promotion of economic activities across provincial boundaries; or the protection of the environment.

National law can set norms and standards, frameworks and policies in respect of municipal planning and land development management, but cannot regulate the details. The tendency being followed in the provinces – to prepare provincial laws on provincial planning, municipal planning and land development management – is broadly appropriate. As far as provincial planning is concerned, the national power to legislate is very circumscribed.

Normatively based legislation – the Development Facilitation Act

In the planning sphere, legislation has shifted from being control-orientated towards being normatively-based with the passing of the DFA. This means that the law introduces substantive principles (norms) that must guide land development and decision-making. In addition to principles, the DFA introduces the concept of land development objectives (LDOs). These are plans approved by political decision-makers that set their objectives and targets for development and which inform the spatial and developmental imperatives of an area. These policy plans (which will be more clearly defined in this document but which can also be referred to as integrated development plans) are also normative in that they set out desired aims. Normative legislation calls for a proactive planning system which places the emphasis on considered judgements and the discretion of decision makers, as opposed to the application of standardised rules and regulations.

Provincial planning and development laws

Many provinces have been reformulating their planning and development laws in an attempt to create legal uniformity and to redress the legal and administrative chaos of apartheid. KwaZulu-Natal, the Western Cape and the Northern Cape have passed new laws and Gauteng is near to passing one as well. In all four cases, the paradigm ushered in by the DFA of normatively-based legislation has been followed with some provincial differences. The other provinces are all intending to follow suit. The problem with provincially-led law reform processes is that each province is pursuing its processes independently of the others, and in the absence of national guidelines other than the DFA in its current form, certain gaps and inconsistences are inevitably creeping in.

Sectoral laws

A number of new laws have been enacted with powerful implications for planning such as the Local Government Transition Act, the National Environmental and Management Act, the Housing Act, the Water Services Act, and the regulations passed in terms of the Environmental Conservation Act. These superimpose a powerful set of procedural obligations on other spheres of government, especially local government.

2.1.3.2 The policy context since 1994

Since 1994 a significant number of policy initiatives with potential bearing on development and planning have emerged from various government departments.

The White Paper on Local Government

While existing government policy provides a great range of inputs for planning and development, the White Paper on Local Government is critical as it places municipalities at the centre of planning for better human settlements. The new municipal planning system is founded on the concept of 'developmental local government'. It emphasises integrated development planning as a tool for realising the vision of developmental local government.

The Medium Term Expenditure Framework (MTEF)

The MTEF requires the formulation of departmental budgets on a rolling three year basis. This should permit greater levels of predictability, thereby potentially enhancing the planning system. It also provides an important component of a new planning system which ensures that plans and budgets are linked to one another.

The Urban and Rural Development frameworks

The Urban Development Framework (1995) published by the Department of Housing examines the current dilemmas and realities facing South Africa's urban areas. It provides a positive and common vision, albeit at a very general level, of a desired future for South Africa's urban areas in the year 2020. The Rural Development Framework, published by the Department of Land Affairs, describes how government aims to achieve a rapid and sustainable reduction in absolute rural poverty.

Spatial development initiatives (SDIs)

The Department of Trade and Industry's spatial development initiatives (SDIs) and its proposed industrial development zone (IDZ) policy are important national development initiatives with potentially enormous spatial impacts. However, these are generally poorly co-ordinated with local and provincial plans. Their impact on local and provincial planning is profound, often expressing opposing priorities.

Other sectoral policy frameworks

Other national departments, such as Housing, Water Affairs, Transport and Environmental Affairs have developed policies that have spatial impacts and impact on planning and development. Some of these have been expressed in new regulations and legislation referred to above which have significant impact on provincial planning generally and local-scale planning in particular.

Other policy initiatives of relevance

A variety of other policy initiatives also have relevance in the spatial planning context. For example, policy with respect to land tenure will in the long term

greatly affect the security with which land is allocated, occupied and used in large parts of the country. Funding policies for municipal infrastructure and housing have strong impact on settlement planning, and are increasingly being brought into the integrated planning system. Transport subsidy policy has impact on people's choices of residential location, and the Department of Transport aims to alter these policies in order to reduce the costs of transport subsidies to the national treasury. Cabinet has recognised the importance of the spatial implications of various national policies, and has given the Co-ordination and Implementation Unit in the Office of the Executive Deputy President (CIU) the task of developing guidelines for more effective spatial alignment of public programmes and projects.

The Commission is aware of these initiatives, but has not sought to address their implications in detail in this Green Paper. Instead, it has tried to define the elements of improvement in the planning system more generally, with potential implications for the alignment of national policy in the spatial planning field.

2.1.3.3 The institutional context since 1994

Since 1994 important institutional developments have taken place. These changes have had, and will continue to have, an impact on the manner in which the agents of development and planning are defined, and on the nature and scale of their respective functions.

Local government

While the Constitution allocates powers over planning differentially among the three spheres of government, it also insists on national and provincial action where provincial or municipal spheres cannot discharge their responsibilities effectively. There is some confusion around the level of exclusivity of jurisdiction of municipalities with regard to local planning. A significant problem for local government is the lack of a clear definition of roles and responsibilities of different government roleplayers. This gives rise to uncertainty and poor intergovernmental co-ordination and communication.

The DFA tribunals

The DFA provides for the establishment of provincial development tribunals in those provinces which use the Act. Provincial tribunals currently exist in Gauteng, KwaZulu-Natal, North-West, Mpumalanga, the Eastern Cape, the Northern Cape and the Northern Province. No tribunals have been set up in the Western Cape which did not adopt any aspects of the DFA. Even in provinces where they exist, developers can choose whether to use DFA tribunals for approval of a development application or choose another route. This means the significance of the tribunals has not been as great as it could have been, given the wide powers they potentially have to fast track development.

Co-ordination and Implementation Unit (CIU)

The Co-ordination and Implementation Unit (CIU) in the Office of the Executive Deputy President is a national institution with the potential to influence improved planning through co-ordination and communication. However, it does not necessarily have the capacity in terms of person power to play a comprehensive co-ordination role. For this reason the spatial co-ordination role should be allocated to the Department of Land Affairs.

Traditional and tribal leadership

Although the Constitution gives some recognition to the role of traditional leaders, it does not specify the nature and scale of their involvement. This has led to significant uncertainty, confusion and even contest over the decision-making powers of these authorities in development processes.

Traditional and tribal leaders have had powers to allocate resources in rural and informal communities, and have also played an administration role in respect of land use matters. Many of them have real capacity problems and their relationship with local government has been problematic.

The recently published Local Government: Municipal Structures Act recognises that traditional leaders have a role to play in municipal governance, and provides for their participation in local government affairs.

2.2 A national review of spatial planning procedures and practices since 1994

2.2.1 Introduction

As a starting point for its work, the Commission initiated a widespread review of planning practices in South Africa since 1994. The review covered all three spheres of government (national, provincial and local) and involved the full range of methods identified in Section 1.3. While the pattern which emerged varies (there are considerable differences between regions, between spheres of government, between rural and urban authorities and between larger and smaller local authorities), the overall picture is a disturbing one. It is not an overstatement to say that the practice of spatial planning is in considerable disarray. Serious and purposeful revision of the planning system is required for significant improvements to the quality of South African settlements, and to the lives of their inhabitants.

The synthesis of some of the major problems which follows makes no attempt to be comprehensive. It identifies a number of major interrelated problems which occur across spheres of government, although the form of the problem often varies between spheres.

2.2.2 Lack of a shared vision

A common feature is that there is no evidence of a shared vision of what planning should be trying to achieve in the 'new' South Africa.

At a national scale, despite the plethora of policy documents impacting on planning matters, national government has not yet successfully promoted a strong shared vision and direction for planning. This is largely because policy documents have tended to originate from a particular sector, or geographic area, rather than being concerned with the totality.

The two main exceptions to this are the Urban Development Framework and the Rural Development Framework. Both are important documents which contain many valid general insights, but both are very general. They do not say much about how intentions should be achieved and, therefore, what their implications are for planning. Also, neither framework has a departmental 'home' and therefore both lack a powerful political champion. The main business of the Department of Housing includes only a small part of the broader urban issue. In the case of rural development, the disjuncture is even greater. There is little evidence that these

documents are actively informing the work of other departments or the national allocation of resources. Indeed, there are inconsistencies. For example, the Urban Development Framework makes a strong case against urban sprawl. Despite this, provincial housing boards continue to award housing subsidies in outlying areas where the land price is cheaper.

Nationally, the clearest direction given to provincial and local authorities is contained within the Chapter 1 principles of the DFA and the policy approach to planning introduced by the concept of land development objectives (LDOs). All evidence received by the Commission, however, indicates that the principles have had a disappointing impact on planning practice to date, although some provinces have taken the opportunity of re-ordering and, in some cases, re-wording the principles to make them clearer. Further, principle-based planning is not being fully embraced everywhere as a preferred system to conventional approaches to planning, land development and land management.

Those provinces which have adopted and set up DFA tribunals have adopted the idea that land development applications must be compatible with LDOs However, in many cases, the degree of detail in LDOs, or the lack of clarity on their formulation, has been insufficient to inform decision-making properly.

Although the DFA principles and normatively based planning system call for substantively different spatial and procedural outcomes from those of the past, in many local governments it is business as usual and historical practices and procedures continue to apply. There are various reasons for this, but the main ones fall into three classes.

(a) *Lack of knowledge*. In the case of many smaller municipalities, particularly in the rural areas, little is known about the principles, what they are trying to achieve or why they are necessary.

(b) *Difficulties with interpretation*. A great deal of difficulty is being experienced by officials and political decision-makers alike about the interpretation of the principles and the way in which policy-based planning works. For example, in one case brought to the Commission's attention, there was long and intensive debate within a local authority about whether a township application 13km from the existing urban edge constituted 'sprawl'. A recurring theme is that many local authorities are trying to apply the principles on a one-by-one basis, without being informed by their overall intention and spirit. Because some principles potentially conflict with one another, the principles have to be viewed as a totality.

(c) *Wilful recalcitrance*. In some cases, officials are deliberately ignoring or undermining the principles and policies. There appear to be two main reasons for this. The first is ideological – they do not wish to confront change and, sometimes, reject the direction of that change. The second is a rejection of the idea of nationally-standardised principles or politically-approved policy plans.

Coupled with a lack of shared vision about what planning should be trying to achieve, there is no clear, shared understanding about how the planning system should be working in a reinforcing way to achieve desired results.

2.2.3 Lack of inter-governmental co-ordination

There is evidence of considerable confusion about the roles of different spheres of government and their relationship with each other.

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There has been a major attempt at national level to change the dominant planning paradigm from a control-driven one to a more proactive developmental model. However, the significance and the implications of this shift have not been adequately communicated to other spheres of government and, in many places, the shift is being resisted.

The relationship between national and provincial planning is particularly unclear. The DFA is the one major piece of national planning legislation introduced since 1994. It gives some direction in terms of its Chapter 1 principles. However, it fails to provide a clear framework within which provinces can draw up legislation which is provincially specific, but still conforms to national principles.

Further, national planning is unco-ordinated. There is no clarity about what appropriately constitutes national spatial decisions (for example, there is evidence about issues having major impacts on world heritage sites being decided on entirely local, parochial perspectives). Operationally, there is no centralised point where the spatial implications of national policies are articulated and passed down. The role of the CIU which has been established in the office of the Executive Deputy President is still in the process of being defined. National initiatives are frequently not informed by provincial plans and may ride roughshod over them.

Many of these problems are most severe in the rural areas. Historically, these areas have been fairly strongly controlled by national legislation (for example, the Subdivision of Agricultural Land Act). This level of control has now been removed and local government structures are now responsible for the management of land, including agricultural land. However, in many cases they do not yet have the strength, confidence or capacity to play this role.

In terms of the relationship between provincial and local spheres of government, there is also considerable confusion for two reasons:

1. There is no clear conception of what the spatial elements of a provincial development plan should include. Many of the provincial growth and development plans are relatively weak in terms of spatial recommendations. Further, those spatial decisions that have been taken have frequently not been the result of consultation and collaboration with affected local authorities. Certain new provincial bills and acts, such as the KwaZulu-Natal Planning and Development Act and the planning bill for Gauteng, include specific requirements for co-ordination with local plans. In other provinces, this is not the case.

2. There are concerns in local government about the powers of intervention and approval vesting in provincial government, via the responsible MECs. For example, certain laws such as the Less Formal Township Establishment Act (LEFTEA) and the ordinances are seen to give too much power to the MEC. LEFTEA empowers the MEC, rather than an independent body such as a tribunal or local council, to make decisions on proposed development. The townships board, an institution set up by some of the old provincial ordinances, does not have final decision-making powers on new land developments, it must have its decisions confirmed by the MEC. There are feelings in some quarters that new provincial legislation does not go far enough to correct this. For example, the KwaZulu-Natal Planning and Development Act provides for local authorities to undertake their own planning, but gives the MEC the power to intervene if he or she is of the view that a local plan is not in accordance with the principles in the Act, or any provincial policy or any provisions of the Act. Some argue that the intervention powers given to the MEC are so strong as to

effectively remove the constitutional right of municipalities to undertake their own planning. Most local authorities have told the Commission they favour a facilitative, supportive and co-ordinating role for provinces in relation to local government planning, not a controlling and monitoring one.

The constitutional principle of co-operative governance is vital in establishing a positive, reinforcing spatial planning system. Putting it into practice requires reinforcement and support.

2.2.4 Intra-governmental relations

At a national scale, most national government departments (for example, Constitutional Development, Land Affairs, Housing, Transport, Environment and Trade and Industry) have policies which could be described as falling within the spatial planning field. The good news is that there has been enormous enthusiasm, creativity and energy invested in reforming these sectoral areas, reflected in a rash of legislative and policy programmes. The bad news is that these efforts have occurred largely in isolation, with each department understandably placing itself at centre-stage of its programme. There are also disturbing tendencies towards competition for turf, something which has profoundly negative consequences.

All of these things have made the task of producing a coherent policy framework at provincial level extremely difficult. The primary consequence for local government is a plethora of unfunded mandates. Local authorities are required to operate within a variety of laws, reporting procedures and even approval procedures which impose a workload far beyond their capacity to produce. Worse, compliance with these requirements encourages the tendency for sectoral issues to be considered in isolation, outside of any concern for the operation of the settlement as a totality. This makes sound decision-making almost impossible. In some cases it may well even be counter-productive from a sectoral perspective. The separation between spatial development (in the form of integrated development plans – IDPs – or LDOs), transport, water and environmental issues is particularly worrying. There is a real danger, for example, that if environmental issues are considered independently by an environmental agency (considering the issues on narrow sectoral grounds), environmental issues will no longer be considered a factor when town planning approval is sought.

From the perspective of the private sector, unacceptable time delays and, consequently, land holding costs are being incurred. This is a result of new requirements for additional approvals, coupled with decreasing capacity within local authorities and the need to deal with a variety of line-function departments. Many of these line-function departments have their own agendas rather than a common corporate culture. Unless this is changed the potential outcome is that developers will increasingly flout the law by not bothering to seek approvals.

In provincial and local governments, the main intra-governmental problem is that of line-function fragmentation. Provincially, each province tends to have a department that deals with spatial planning, but related and integral planning functions often occur elsewhere in the provincial government structure. This creates competition, severe co-ordination problems and duplication.

The preparation of provincial plans requires the co-ordination of many departmental inputs. Often coherent mechanisms for co-ordination have not been established. The problem of one department trying to co-ordinate all of the others causes problems. All departments have equal status, a status which they jealously defend. Consequently, they do not take the process of co-ordination seriously. This

has led to an increase in the practice of elevating the co-ordination function to a 'higher' level within provincial government (for example, within the Premier's office). This often results in the conceptual separation of strategic policy functions from the implementation function of line departments, to the detriment of both.

Finally, there are important ways in which the lack of co-ordination between department slows down development. Where there is a need for approval from different departments, but no time limits within which those comments must be made, applications often get stuck in a bureaucratic loop.

In local government, similar problems of line-function fragmentation and co-ordination are aggravated by the fact that metropolitan and district councils have the same third-sphere status as the structures of which they are comprised. While the Local Government: Municipal Structures Act sets out the division of powers and functions between local councils and district councils, much work is required to iron out confusion and settle the division of functions more effectively. The Act allows for some degree of negotiation regarding the division of powers.

The problem of inordinately slow decision-making is also experienced in many local authorities. Attempts to speed up decision-making through the ability of DFA tribunals to override restrictive legislation have not yet had a wide impact. There are a number of reasons for this:

- too few applications have been made in terms of the DFA to judge the efficacy of tribunals properly;
- there have been procedural teething problems which have slowed down implementation;
- there is not yet an efficient administrative integration of local authority and tribunal procedures once decisions have been taken;
- the fact that the DFA is an optional route for development applications rather than a mandatory one means the imperative to use them has not been strong.

2.2.5 Issues of capacity

Lack of capacity is one of the most serious issues facing the planning system in South Africa. There are a number of dimensions to the problem. International research has shown that capacity is a key issue in determining the shape of the spatial planning system:

- While being acutely experienced in local and provincial governments, it is by no means confined to them. There are also problems in national government.
- The problem applies to officials and to decision-makers alike. There are a great many decision-makers, particularly in local government, who have had no previous experience in spatial planning-related matters and who are battling to come to terms with the subject matter.
- There are absolute shortages of suitably qualified people in all spheres of government.
- The more discretionary normative planning system ushered in by the DFA in 1995, and reinforced by other subsequent normatively-based legislation, requires a different kind of capacity to that required by the previous more rule-based system. Many officials in the field of spatial planning and development and management are finding their original training inadequate to meet these demands.

- The problem of planning demands being made by other spheres of government, particularly in local government, is compounding the problem. Many local authorities are simply unable to meet the demands being made on them and have nowhere to turn for assistance.
- The capacity problem is leading to a serious increase in backlogs of developmental applications in both large and small municipalities. In many cases, time delays have reached unacceptable proportions. The Commission has before it evidence of minor non-contentious approvals taking over two years to be granted. The private development sector is understandably extremely worried about the situation, which is being exacerbated by new approvals routes, such as environmental impact assessments (EIAs), being required. A further exacerbating factor is the inability of many local authorities to meet the requirements for more public participation in decisions. The tension between the need for participation and the need for speedy decision-making is far from being resolved in most local authorities.

In the face of their inability to deal with their forward planning and development application assessment duties, many municipalities are adopting fall-back positions. Two of these are common, especially amongst smaller municipalities. The one is to fall back on historical instruments (such as master plans and guide plans) which were drawn up to achieve objectives diametrically opposed to those required by the Chapter 1 principles of the DFA, and to call them LDOs or IDPs. The other is to place the forward planning affairs of the local authority in the (relatively unsupervised) hands of consultants who make no efforts aimed at building local capacity. Many of these consultants, championed by apartheid bureaucrats, are precisely the same ones who thrived on drafting instruments of apartheid, churning out standardised products with little developmental meaning, at considerable cost. This is the classic case of the 'tyranny of the unscrupulous consultant'.

2.2.6 Legal and procedural complexity

The current situation is characterised by a high degree of legal complexity which has generated considerable, and confusing, procedural complexity.

Nationally, the coming into being of a new government in 1994 did not wipe the slate clean and usher in a new set of laws for the new democracy. The 1993 interim Constitution and the final 1996 Constitution both provided that all laws would continue to apply in the areas where they were applicable before these constitutions came into effect. Many of the national laws relating to planning are still in existence and the new national sectoral laws referred to in Section 2.1.3.1 also deal with planning matters.

In many provinces the legal complexity is even greater. In each of the pre-1994 provinces (Cape Province, Natal, Orange Free State and Transvaal), a town planning ordinance existed which governed land use management and new land development in the 'white' areas. Proclamations R188 of 1969 and R293 of 1962 regulated land use and ownership in the former 'homelands' otherwise known as 'self-governing territories'. R188 dealt with land allocation and other related matters in the rural areas and R293 was used for planning and land use management in the urban areas. After the nominal independence of Transkei, Ciskei, Venda and Bophuthatswana (the TBVC states), application of R293 and R188 became very complex. As each of these territories obtained 'independence', they acquired legislative powers in respect of land and other matters. From the date

of 'independence' they were entitled to amend and repeal planning laws inherited from South Africa and to promulgate their own laws. Each of the TBVC states developed their own versions of R293 and R188 while South Africa amended R293, so that a different version of it applied to the self-governing territories. The situation is so complex that in parts of the country it is almost impossible to know what land-related laws take precedence.

The confusion caused by the multiplicity of legislation is also considerable in peripheral areas of the former white South Africa, where the absence of town planning schemes and the applicability of the relevant ordinance resulted in little effective land use planning control. Similarly, different laws applied in areas reserved for 'coloured' people. The system also resulted in considerable administrative and procedural confusion. After 1994, when the boundaries of the new provinces came into effect, the administration of these laws changed. From 1 July 1994 the power to administer the former TBVC states and self-governing territories resided with the President who delegated some of the powers to the Minister of Land Affairs. This minister, in turn, reassigned some of the powers to the provinces. However, historical laws of the former independent states (for example, R293) contained provisions relating to planning and local governance which are the responsibility of different ministers in the new dispensation. This requires different ministers to assign parts of laws to other spheres of government. The process of assigning powers has not been even, resulting in confusion.

Similarly, in local government, there is legal confusion. For example, a number of the major tools of management and control (such as zoning, the removal of title deed restrictions and building regulations) derive their powers from different legislation. Procedurally, many of the complexities created through national and provincial legislation are played out in this sphere. Only a few of these are mentioned here.

Firstly, there are a range of planning instruments created historically (such as guide plans, master plans, structure plans and town planning schemes) which are still in existence and which have a different legal status. The distinction between these has become increasingly blurred. This confusion has been compounded in recent years by the introduction of LDOs in terms of the DFA and IDPs in terms of the Transitional Local Government Act. This has caused great confusion and many local authorities are unsure of the distinction between them.

In addition, transportation plans, environmental plans, and water plans have independent reporting routes and, in the case of environmental legislation, different approval processes from the processes established in terms of the old provincial ordinances.

In terms of the DFA, it is no longer necessary for developers to follow the approval route laid down in the ordinances. An alternative route exists in the form of an application to a DFA tribunal.

In some of the ex-homeland areas, perhaps the most powerful arena of procedural and approval confusion lies in the (unresolved) relationship between traditional and tribal leaders and the newly-established local authorities.

2.3 Some conclusions

A number of broad conclusions can be drawn from the previous two sections, in the form of a general problem statement:

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1. South African settlements in both urban and rural areas are generally inefficient, fragmented, inconvenient and massively wasteful in terms of both publicly- and privately-controlled resources. For many they are hostile places in which to live, offering few economic, social, cultural, environmental or recreational opportunities. In large part, this is the result of the interplay between historical spatial planning policies and practices and the implementation of the ideology of apartheid. Despite this, there are few signs that significant and wide- reaching improvements have been set in place since 1994. To this extent, the planning system must be judged to be ineffective.

2. The spatial planning system in South Africa is currently under severe strain. Some of the problems may be ascribed to teething problems associated with political transition and the establishment of a new political dispensation and developmental direction. Others, however, are structural.

These are:

- there is no strong, relatively standardised planning system in place which is clear but flexible enough to allow for local variation;
- large parts of settlements are largely unaffected in any positive way by the benefits of a spatial planning system. In particular, they receive little or no protection from the law in land-related matters;
- a reinforcing system of co-operative governance between spheres of government is essential for effectiveness, but operationally this is not yet in place;
- the legislative and procedural framework of planning is extremely complex;
- there are severe problems of capacity among officials and decision-makers in all spheres of government;
- land development approval procedures are excessively slow and cumbersome, to the extent that the economics of land development is being compromised and the private-sector development community is losing faith and patience with the system. In particular, there is no single, simple route for land-related applications.

3 THE PROPOSED SPATIAL PLANNING SYSTEM IN SOUTH AFRICA

This section outlines and discusses the main recommendations of the Commission regarding the nature of the spatial planning system in South Africa.

3.1 The importance of the spatial planning system

The Commission believes that the function of spatial planning is of considerable national importance. The failure of the planning system to protect the rights and to meet the needs of the majority of South Africans as described in Chapter 2 is not a case for abandoning spatial planning. Indeed, positive, creative planning is now more necessary than ever. The current distorted settlement pattern found in many places will not correct itself automatically, nor will it be addressed by default. The development of more efficient and enabling settlement systems, which is necessary to improve the quality of life of all South Africans, requires creative thought and bold, purposeful action.

A positive planning system is necessary for a number of reasons:

1. To provide vision and consistent direction, as well as a strategic assessment not only of what is desirable, but what is possible in various contexts.
2. To protect the rights of people. Once people gain access to land, in effect they obtain certain rights and obligations. It is necessary to manage change in such a way that those rights and obligations are respected.
3. To protect natural systems. Natural systems have their own operational requirements which must be respected if long-term sustainable human development is to be achieved and if large-scale environment degradation is to be avoided or at least minimised.
4. To make efficient use of resources. Resources, such as land, water, energy, finance, building materials, skills and so on are in short supply. Those that are available must, in all contexts, be used wisely to ensure that maximum benefit is obtained from them.
5. To achieve a higher quality of service delivery by all spheres of government.
6. To co-ordinate actions and investments to ensure maximum positive impact from the investment of resources, it is necessary to co-ordinate actions and investments in time and space. This co-ordination is of two kinds: the co-ordination of different forms of public authority actions and investments, and a greater co-ordination between public and private actions.
7. To set priorities. To enable significant inroads to be made into meeting the developmental needs of the country in a fair way, it is necessary to provide a rational basis for prioritisation, and to manage and direct resources to where they are needed most.

8. To avoid duplication of effort by different departments and spheres of government.

To perform its function properly, however, spatial planning must be viewed, and must operate, as a synthesising holistic practice. There is a disturbing tendency, for example, to view it as a separated sectoral function, equivalent to, and on a par with, 'environmental planning', 'transport planning' and the like. A similar position, for example, has crept in in the United Kingdom over the last decade. It is now increasingly recognised in that context that the environmental consequences of this practice have been appalling. The primary role of spatial planning is to integrate different sectoral elements creatively.

3.2 The shape of the spatial planning system

The Commission believes that the current three-sphere spatial planning system should be continued. National, provincial and local spheres of government are all legitimate and important arenas of spatial decision-making. The Commission believes, however, that the local government sphere should be the cutting edge of the system, in the sense that most spatial decisions should appropriately be made in this sphere. However, such planning must be contextualised. For this to happen, local planning must be informed by both provincial and national spatial priorities and plans. The principles for determining the locus of decision-making, and the practical formulation of these principles in the sense of ascribing roles, are discussed below.

There is a world-wide trend to decentralise most spatial planning functions to local governments. It must be emphasised, however, that this is by no means universal. In some countries (such as Cuba and Iraq), there is not the political will to do so. In others (such as Botswana and Kenya) there is not the capacity. In these countries, one planning agency does all of the planning at local, regional/provincial, state and national levels. It is believed that South Africa has the political will and the capacity to embrace decentralisation confidently.

3.3 Terminological standardisation

The Commission has been struck by the considerable terminological confusion which surrounds the arena of spatial planning in South Africa, some of which has already been mentioned in Section 1.2. It believes it is important to adopt a single standard system of terminology. The confusion exists at two levels.

The first is at the level of spatial planning as an activity. This commonly takes the form of the interchangeable use of terms such as 'spatial planning', 'land planning', 'land use planning', 'settlement planning' and 'physical planning', as well as common terms with multiple meanings such as the ubiquitous 'township'.

The terms 'land planning' and 'land use planning' have connotations of comprehensive planning relating to land, an approach that is now widely discredited. The term 'physical planning', as well as having similar connotations, blurs human actions on the landscape and natural systems. For these reasons, it is proposed that the term 'spatial planning' be uniformly accepted when referring to the organisation of space. It is fully recognised that this, too, has historically negative connotations – it was used in the apartheid era to describe a sphere of activity which was purportedly 'neutral' and 'technical' but which in practice was a powerful instrument of separate development and social control. Despite this,

spatial planning remains a more accurate term when referring to broader spatial organisation and is most commonly used internationally.

Spatial planning, as discussed in this Green Paper, is a public sector activity which creates a public investment and regulatory framework within which private sector decision-making and investment occurs. The public sector activity of spatial planning has two broad dimensions: proactive planning, which defines desirable directions, actions and outcomes; and land development and management, which is concerned essentially with regulating land use change (driven, usually, by private sector initiatives), and with protecting individual and group rights in relation to land.

The term 'settlement planning' should only be used to describe the act of designing more detailed layouts, or 'township establishment'. The term 'land planning' should only be used in relation to the land development and management system which deals with specific parcels of land.

The second type of confusion relates to the form of plans. Here, a wide range of terms are used loosely, sometimes interchangeably, and almost always in a non-defined way. Frequently, too, these plans have a different legal status. Terms of this kind include master plans, guide plans, strategic plans, structure plans, town planning schemes, development plans and so on. This confusion has been compounded in recent years by the introduction of land development objectives (LDOs) under the DFA, and of integrated development plans (IDPs) under the Local Government Transition Act. There is an overlap between the strategic, proactive, forward-looking intentions of these two types of plans, although they have different legal effect. In generalising LDOs, their spatial planning components have been diluted.

The Commission believes that all spheres of government should engage in development planning conducted in an integrated way. In particular, the Commission proposes that a single comprehensive term be adopted to describe plans produced by or for public authorities. This is the term 'integrated development plan'. All spheres of government should produce such a plan.

Integrated development planning has a number of dimensions. The term 'integrated' implies that it pulls together social, economic, environmental, spatial, cultural and political concerns into a single set of processes, in which the relationship between these concerns is considered. The term 'integrated' also implies the integration of implementation and directional issues and the alignment of internal corporate management issues with external influences. The term 'development' is holistic. The 'spatial plan' of a sphere of government, therefore, is only one, but an important aspect of the broader integrated development planning process. The spatial plan can only be responsibly drafted in the considered understanding of the social, economic, environmental, cultural and political implications of its proposals. The spatial dimension of integrated development planning is the focus of this Green Paper.

3.4 A broadly common direction and form of planning in South Africa

The Commission supports the view that there should be a broadly common direction for, and form or system of, spatial planning in South Africa at this moment in its history when relatively radical changes to settlement forms are required. After critical review, it finds its starting points for this in a number of sources.

3.4.1 The Constitution

The Constitution replaces historical hierarchical tiers of government with more equal 'spheres'. It requires co-operative governance amongst the three spheres of government and allocates powers over planning to them differentially. It requires national and provincial action where provincial and municipal spheres cannot discharge their responsibilities; provides for national norms and standards to be set; calls for the protection of healthy environments and the right to property; requires the promotion of social and economic rights in a non-discriminatory way; and demands open and accountable governance.

3.4.2 The Development Facilitation Act (DFA)

The DFA introduced a number of far-reaching changes to the planning system as mentioned in Chapter 2.

3.4.2.1 Principles

Firstly, the DFA sought to place a set of principles, central to the planning system, which gave a common national direction. The Chapter 1 principles apply to all land development and spatial planning in South Africa. They are intended to bring about radical changes to the characteristic form and structure of South African settlements. They represent an outright rejection of the low density, sprawling, fragmented and largely monofunctional forms of development which resulted under apartheid in both urban and rural areas. They call for more compact, integrated and mixed-used settlement forms. The principles require that there is a harmonious relationship between settlements and the natural environment and emphasise the importance of environmental sustainability. They promote security of tenure, the use of land development to promote human development, the maximum use of public participation and conflict resolution.

The Commission feels that these principles in combination constitute an appropriated vision for what spatial planning should be seeking to achieve in South Africa, particularly given the fact that in terms of the legislation both national ministers and the provincial Premiers are enabled (and encouraged) to add to the principles in order to maximise their impact and the make them more specific to local conditions.

The Commission considers it unfortunate that, to date, little has been added to the principles by the provinces. In most cases where provincially-specific planning bills or acts have been promulgated, the principles have merely been reworded or re-ordered to give them greater clarity. The one exception is the KwaZulu-Natal Planning and Development Act which contains an entirely new section on principles. The new principles primarily address the process of planning (they

require that it is enabling and developmentally-orientated; that it is people centred; that it consistently deals with proactive planning as well as land management in an integrated way; that it is interactive, allowing wide opportunities for participation; and that it is accountable). The principles also assign a limited role to provinces relative to local authorities. (In terms of this, provincial responsibility for planning development and resource conservation should be limited to the formulation of policies; setting norms and standards; the setting of regional developmental, planning and environmental goals; co-ordination of regional and local processes; ensuring adherence to fair and open procedures; and appeal and review functions.) The Act asserts that provincial government must only execute planning and development functions where there is no other subordinate authority with the necessary ability.

Finally, it calls for the promotion of an environmental ethic and emphasises the relationship between environmental quality and survival in rural areas. It stresses the importance of being sensitive to, working through, and strengthening rural social dynamics and institutions.

The Commission is of the view that all provinces should make use of the opportunity to expand the DFA principles to mould them closely to local conditions.

The Commission's investigation into spatial planning practices nationally since 1994 revealed that the principles have not yet had a major impact on the planning products which have emerged. The reasons for this are numerous but two of the most common are a lack of knowledge and difficulties of interpretation of the principles. To this end, the Commission has produced two documents – a manual, which interprets the meaning of the principles and the reasons why they were promulgated, and a resource document which provides a more technical interpretation of the principles and their implications for spatial planning. It is the Commission's view that a vigorous communication and education initiative should be launched around these instruments in order to make the principles far more effective in the short term. This is discussed further in Section 3.9.2.

Finally, the Commission recommends that the DFA principles should be reworded, reordered and expanded to make them more understandable. Suggestions in this regard have been submitted to the Minister of Land Affairs.

3.4.2.2 Planning paradigm

The DFA also sought to introduce a form of planning which was substantially different from that which had prevailed in the past, although evidence before the Commission indicates the significance of this has not been widely recognised. In those provinces that have been through the process of preparing LDOs and administering tribunals, there has been considerably more buy-in and understanding of the DFA paradigm. The proposed system has a number of characteristics:

- It firmly establishes spatial planning as a public sector activity. It requires public agencies to give strong direction to changing settlement forms in their areas of jurisdiction.
- It is normatively-based – that is, it is based on principles and policies, not on standardised rules and regulations. This requires much greater use of local judgements and local creativity.

- It creates the imperative in local government for politicians to drive the process of policy setting.
- It requires the production of plans to translate national principles into contextually-specific proposals. The production of these plans must be based on wide public participation and on political buy-in.
- It views land development management (the change in the use of land) as something which must take place within the context of politically developed policies and plans. It introduces the separation of decision-making regarding policies and plans, which must be undertaken by elected representatives, and decision-making about land development applications which must be taken by technical experts informed by the plans. Appeals also lie in the hands of technical experts.
- It requires rapid decision-making, particularly in relation to projects affecting historically-disadvantaged communities, and provides sweeping powers to override historical legal impediments to this.

After critical reflection, the Commission regards the central precepts of this system as correct and important. The implementation of the DFA has been the chief impetus to the reform of planning. The Commission recognises that the system is more difficult to implement (in the sense that it requires more local judgements) than a rule-based system, but feels that this is both desirable and inevitable. Principle- and policy-based decision-making will become easier with more experience. The Commission therefore believes that the central elements of the DFA (as opposed to all of its details) have provided, and continue to provide, an appropriate starting point for a new planning system.

Improvement requires, in the first instance, some certainty being provided in national legislation that will guide legal reform. The DFA ushered in a system which, if refined and amended, could assist in creating legal certainty. It is useful and necessary to have one national planning law that sets norms and standards that are applicable across the country and throughout the spheres. The DFA offers a springboard to this. The nine provincial acts that will eventually be passed and the DFA should ultimately be the only spatial planning and development laws in the country. While there may be provincial differences in approach and detail, they should all adhere to a similar model of planning and be bound by similar national norms and standards.

More detail on the manner in which this should be done is provided in Chapter 5.

3.4.3 Incrementalism

It is believed that, in moving towards a strong, integrated, planning system, the correct approach to change is one of incrementalism. All spheres of government have been through fairly radical processes of transformation and restructuring over the last five years. What is now required is a period of consolidation and the incremental alignment of different parts of the planning system to achieve synergy. The Green Paper therefore makes no attempt to develop a blueprint. Rather, it advances a series of recommendations which, if implemented, the Commission feels will set spatial planning on a positive path of change.

International research has shown that the first lesson to be learnt (and perhaps the most important) is that appropriate planning systems evolve. They cannot, and should not, be copied. Internationally, there are almost as many planning systems

as there are countries and all have their strengths and weaknesses. The correct approach is to build on strengths and strengthen weaknesses.

3.4.4 Minimalism

The Commission believes that it is important to apply the concept of minimalism to spatial planning at all scales. The concept does not mean that government has no role to play in planning to change our settlements. Rather, it is concerned with doing less to achieve more, and has a number of dimensions.

Firstly, it recognises that spatial plans should not attempt to be comprehensive but should take the form of frameworks of public actions and investments. These frameworks (made up of the integrated public elements of green space, movement, public facilities and institutions, hard open space, and utility and emergency services) should define the minimum public actions necessary to achieve the goals and objectives of the plan. By doing this, the minimalist approach seeks to create maximum space for the energy and initiative of NGOs, communities and the private sector. Obviously, judgements are required about what constitutes the minimum necessary public actions. At times, it may be necessary to go quite far, at others, actions should be far more strategic. At all times, however, the plan should contain sufficient clarity of logic and detail to guide decision makers when they are confronted with land development applications.

Secondly, the form of the plan will not be the same from circumstance to circumstance. For example, in large local authorities, the plan (or system of plans) will necessarily be quite complex in form to meet management requirements. In very small local authorities management issues may be simpler and a much simpler form of plan, placing far less strain on capacity, will suffice. Local judgements need to be brought to bear on what is necessary.

Thirdly, it emphasises the importance of prioritisation. Authorities at all scales should be seeking to apply the '80%–20% principle' – the recognition that frequently 80% of the benefit can be achieved through the first (strategic) 20% investment in time, energy and resources. The plan should primarily be seen as an instrument to define the actions which generate maximum impact.

3.5 Promoting co-operative governance and integration between and within spheres of government

3.5.1 International experience

International precedent shows that successful co-ordination and integration of clearly-allocated functions across spheres of government is a key success factor in achieving positive planning outcomes. Co-operation and integration is required both between and within spheres of government. The analysis of the local context (Chapter 2) indicates that there are currently considerable problems in this regard in South Africa.

In contexts where multi-layered spatial planning systems apply, a number of initiatives have commonly been applied internationally to promote greater co-operation and integration:

- Larger scale plans bind smaller scale plans. Vertical top-down planning is a powerful and common instrument for integrating plans and planning activity. The Danish system is an example of such an approach.
- Smaller scale plans feed into larger scale plans, involving some type of conversation between planners and sometimes politicians at different scales. The planning systems of India, Zimbabwe and the Philippines, for example, are designed to function from the bottom up. The success of this approach in practice is not yet proven.
- Larger spheres of government must approve lower level plans. Australia, Germany, Netherlands and Ghana, for example, require this. Its great advantage is that it achieves 'buy-in' and gives the plan status. However, the South African Constitution requires a different set of relationships among the spheres of government.
- Cross-acceptance of local and wider scale plans ensures coherence. In the state of New Jersey in the United States, neither larger nor smaller levels of government can adopt their plans until statutory procedures to ensure mutual compatability of both have been followed. This is perhaps the most advanced institutionalisation of the 'conversation' between state or provincial planning on one side, and local planning on the other.
- The power to 'call-in' plans and decisions is necessary. This power, which allows 'higher' levels of government to initiate reviews of plans and decisions adopted at 'lower' levels, exists, for example, in Denmark, Australia and New Zealand.
- Integrated planning legislation underpins the system. The New Zealand Resource and Management Act of 1994 is one of the best known examples such legislation. The Act created a single planning process for a wide range of activities that in most countries are governed by separate, often contradictory, legislation and procedures. These include coastal management, hazardous substances, transport planning, soil conservation, water quality, natural hazards, historical places and many more. While having enormous and obvious advantages, it does not remove all problems. One major difficulty in New Zealand, for example, is that the system prioritises environmental protection to the virtual exclusion of other vital settlement concerns.
- Overriding national planning goals have an important role. The New Zealand Resource and Management Act is one example of this. Similarly, Section 1 of the German Federal Building Code sets out a set of principles to guide spatial planning.
- Legislation sets out the format of plans and procedures for decision-making. France, China, India and Ghana provide examples of this. The converse is represented by countries such as India and Japan, which specify neither the form nor content of plans. There is a middle ground (for example, New Zealand and the UK) where legislation broadly outlines the processes and issues to be covered in different types of planning and plans, but leaves the plan structure to be determined by local agencies.
- Linking-pin systems are a possible mechanism. Here co-ordination is provided through common decision-makers at different levels of government. Zimbabwe is an example of this. In this case local councillors are represented on district councils which in turn have representation on provincial councils.

- Joint planning approaches help to build capacity. In this, inter-departmental teams from all levels of government prepare plans at a local level. Indonesia is an example of this. The programme in Indonesia also allows for central government to second staff to assist local government in a structured manner. The system has limitations in terms of scale and scope, but it has important advantages in terms of capacity building.

3.6 Co-operative governance and planning

Co-operative governance and integration should be vigorously pursued both between and within spheres of government. International research shows that a key success factor in determining the efficacy of public spatial planning initiatives is co-ordination and integration between public agencies. Indeed, its importance is such that it has been argued that the lack of co-ordination and integration has been one of the main reasons for a lack of progress in the eradication of poverty in South America in recent years. The Commission considers that the following measures are necessary to improve the situation in South Africa.

3.6.1 A departmental home for spatial planning

The first of these measures is that effective planning for development requires a departmental home for spatial planning.

Better performing settlements, the achievement of which is the *raison d'etre* of a spatial planning system, will not come about automatically, or as the cumulative result of different sectoral initiatives. Spatial planning requires a political champion. A lack of an integrative focus in South Africa is commonly held to be a major reason for the ineffectiveness of the Urban and Rural Development frameworks.

In a more sectoral alignment, there are numerous possibilities for the locus of spatial planning – the departments of Environment Affairs and Tourism, Transport, Housing, Land Affairs and Constitutional Development are all contenders.

After reflection, the Commission believes that the Department of Land Affairs is the most appropriate 'home', since its sectoral focus (land) is less specialised than the others and more closely encompasses the concerns of spatial planning. It should be the responsibility of this department to vigorously pursue the transformation of South African settlements and actively to promote co-operation and integration between and within spheres of government in the field of spatial planning. Implementing this recommendation may have some legislative consequences. For example, in terms of Section 22 (1) of the Environmental Conservation Act, the Minister of Environmental Affairs and Tourism is required to authorise certain activities identified in Section 21 of the Act. One of these is land use and transformation. It is not sensible to have two functionaries for the same purpose. The Ministry of Environmental Affairs and Tourism should certainly be required to make an input into land use applications, but not to authorise them.

3.6.2 Clarity of roles between spheres

The second requirement is that of clarifying planning roles and relationships between spheres of government.

Spatial planning legitimately needs to occur at all spheres of government. A major problem which exists at present is that there is a lack of clarity about decision-

making responsibilities between spheres. This is particularly true with respect to provincial and national spheres.

The Commission believes that the guiding principle should be that decisions should be taken at the smallest scale compatible with the decision being considered holistically. Planning frameworks at 'larger scale' (provincial and national) spheres of government therefore should be informed by the following criteria:

- when an issue can best be considered holistically at a larger scale of totality (for example, river catchment management);
- when the spatial element being considered crosses jurisdictional boundaries (for example, provincial or national roads);
- when the impact of decisions transcends jurisdictional boundaries (for example, sources of air pollution);
- when a spatial element or area is so unique that it takes on provincial or national significance (for example, national parks);

The appropriate functions for each sphere are dealt with in Section 3.7, using these criteria, by applying the principles outlined in Section 3.6.3.

3.6.3 Principles for the relationships between spheres

3.6.3.1 Limited approval by larger scale authorities of smaller scale plans

The Constitution establishes spheres, as opposed to hierarchical tiers, of governance, each of which covers a different scale. For reasons of co-ordination and effective performance of government, the Commission recommends a process of formal plan approval: national government should review and approve provincial plans, and provinces should review and approve local plans. The reason for this recommendation is that in functional planning terms there is a need for 'central' authorities to ensure that standards of performance are met, and that co-ordination is achieved. For example, decisions relating to the routing of a provincial road must be based on considerations which necessarily go beyond the territory of a local government. The process of approval also ensures that national and provincial governments are fully appraised of initiatives at smaller scales.

In making this recommendation, the Commission is fully aware of a strong feeling in many local authority circles, in particular, that provinces should only have a facilitative role, rather than an approval role in relation to local authority plans.

The process of approval however, should not be wilful – national and provincial authorities should not simply seek to impose their will over local decisions. Assessment should mainly occur on the basis of:

- compliance with larger scale needs and priorities and the alignment of decisions;
- co-ordination with adjacent authorities within the same area of jurisdiction;
- the alignment of budgets;
- engagement with the DFA principles;
- adding value, by assessing plans on the basis of constructive co-operation.
- full compliance with procedures prescribed in national and provincial law, for example, those relating to public participation.

There should not be a need for national government to approve local government plans because the co-ordination role should really lie with provincial governments. However, there may be a similar need for national government to 'approve' provincial plans, particularly as they relate to the spatial alignment of spending under nationally-funded programmes. There also needs to be a 'conversation' between national, provincial and local government and a forum should be created to facilitate this.

3.6.3.2 Co-operative decision-making

This is arguably the most powerful mechanism to promote co-operative governance. Decisions contained in provincial and national plans should be made in conjunction with local authorities and provinces affected by those decisions. In the event of unresolvable conflicts, formal conflict resolution procedures should be initiated. Local plans should in turn be informed by provincial and national priorities.

3.6.3.3 National goals contained within national legislation

In effect, the Chapter 1 principles of the DFA currently perform this function. These principles should be made dynamic through an ongoing process of adaptation and addition at both national and provincial scales.

3.6.3.4 Integrated legislation

A single law, which incorporates all dimensions of spatial planning and which, particularly, integrates spatial planning, the environment and transportation, remains first prize. After careful consideration, however, the Commission believes that this is not the appropriate time to proceed with this. The last four years have seen a vigorous period of drafting legislation and have resulted in considerable sectoral legislative improvements. The Commission believes that a period of consolidation is required. In the short term, ways should be sought to achieve greater tangency and integration between existing laws, particularly by evaluating whether to use amendments to the DFA as the tool.

3.6.3.5 The power to 'call in' plans by provincial and national governments

The Commission believes that this power should exist but should only be used in extreme cases – in the face of wilful recalcitrance or an absolute lack of capacity. The latter case, the power should only be mobilised on request and officials and decision-makers of the more local area of jurisdiction should be fully involved in the plan-making process.

3.6.3.6 Joint management approaches

While the Commission is aware of the serious capacity constraints existing in all spheres of government, it feels there is considerable mileage in the concept of national and provincial officials with particular skills being seconded for short periods to work with local officials on processes of plan formulation. The potential of initiatives of this kind in two-way capacity building is considerable. In the short term, assistance to district councils should be a priority.

3.6.3.7 The need for inter-sectoral integration

Government in all spheres is commonly divided into units (departments) which have responsibilities for different sectors – housing, education, transport, land and so on. One reason for this division is that the management of different sectors frequently requires specialist knowledge. While sectoral divisions are perhaps inevitable to deal with ongoing operational issues, the danger, particularly in relation to planning, is that different sectoral divisions pursue their own agendas: each seeks to maximise their arena of sectoral specialisation, without fully understanding the role of that sectoral element in the operation of the settlement as a whole. Achieving integration – the development of a common definition of a problem and a vision about the way forward – is therefore essential. The emphasis should thus be on developing inter-disciplinary, as opposed to multi-disciplinary, approaches. (Interdisciplinary approaches bring different sectoral knowledge to bear on a shared objective; multi-disciplinary approaches pursue their own sectoral objectives.) An important realisation is that attempts, to optimise one sector over others, however well-meaning, are likely to undermine the operation of the settlement, because compromises are required.

There are a number of routes through which greater sectoral integration can be pursued. Within a governmental context, the need is for effective processes of negotiation and interaction, and the establishment of institutions able to manage this. Listed below are some suggestions as to how greater integration can be achieved. They are not mutually exclusive and can occur at different stages:

- the establishment of procedures to facilitate information sharing between line function structures in order to improve sectoral decision-making;
- appropriately defining the location of responsibility for spatial planning within governmental spheres;
- streamlining and co-ordinating planning time frames between sectors;
- standardising spatial units for sectoral information collection;
- linking integrated development plans to budgets within all spheres of government;
- developing inter-sectoral planning processes.

The last two approaches are the most important and potentially powerful.

3.6.3.8 Aligning spatial planning and budgeting

Public sector budgets are singly the most powerful mechanisms for implementing spatial plans. An important dimension of the new planning paradigm ushered in by the DFA is that public investment, as opposed to legal control, becomes the primary instrument for achieving spatial change. Accordingly, any successful development planning framework needs to be integrally linked to budgetary and financial planning cycles. Government currently has various budgetary cycles, including the three-year Medium Term Expenditure Framework (MTEF), the annual budgetary cycles of national and provincial governments, which cover the same financial year; and the municipal budgetary year, which currently lags three months behind the national cycle.

For integrated development planning to be effective, the planning process must develop points of contact with these different cycles and with the political life of decision-making institutions. The Commission recommends that the work already

undertaken in this respect by the Department of Finance should be extended, and brought into contact with the necessities of planning for the 'external' environment particularly at local scale.

A word of caution is, however, necessary. Significant spatial initiatives frequently require a longer term financial commitment than one budgeting cycle, if their full potential is to be realised and if significant spatial restructuring, as opposed to mere fiddling, is to occur. The danger is that if budgetary cycles are slavishly followed, it is precisely the most important projects which will be shelved indefinitely. In strategic and carefully considered cases, decision-making bodies must be prepared to commit finances for periods longer that their immediate political life.

3.6.3.9 Inter-sectoral planning processes

One of the most effective ways to promote integration within governmental institutions is to create inter-sectoral, inter-disciplinary (and inter-cultural) teams – if necessary reinforced from the private-sector – to undertake complex projects relating to spatial restructuring and integration. In this way, a common interpretation of the problem is engendered and ideas become collectively owned. This sharing promotes the development of a common corporate culture which is injected into line-function operations by the individuals concerned.

3.7 Clarity on planning functions of the three spheres

3.7.1 National functions

3.7.1.1 The establishment of an enabling legislative framework

This is discussed in Chapter 5.

3.7.1.2 Co-ordination of the spatial decision of different national departments

At the present time, far-reaching spatial planning occurs within sectoral departments and there is little co-ordination between these. It is the Commission's view that one agency in national government should be identified to co-ordinate inter-departmentally, by identifying sectoral points of tangency between programmes, analysing spatial effects of policies and prioritising actions to accomplish spatial and temporal alignment. The Co-ordination and Implementation Unit in the Office of the Deputy President (CIU) has begun to play elements of this role and may be an appropriate vehicle for the role. If sufficient capacity does not exist within this unit, the task should be undertaken by the Department of Land Affairs.

3.7.1.3 The establishment of norms and standards

At present, these primarily take the form of the Chapter 1 principles of the DFA. These should not be seen as static but should be strengthened and expanded on an ongoing basis as new circumstances arise. There should also be national guidelines set in respect of key aspects of the planning system so that there are national norms and standards that are common throughout the country. For example, these could include that planning should be policy-led; that the spatial element of locally formulated integrated development plans should inform decisions regarding land

development; and that land development management must be uniformly applied within a municipality's boundaries.

3.7.1.4 Support and advice

National government has a responsibility to develop the means of supporting provinces which have difficulties in achieving national norms and standards in planning through providing support and assisting in building capacity.

3.7.1.5 Co-ordination with other spheres

National government must have routes open which give it the means to liaise with other spheres of government. Effective co-ordination does not only result from institutional mechanisms, it results from a complex lattice of formal and informal working arrangements and it needs to be consciously pursued on an ongoing basis. Nevertheless, shared information is a necessary, but not sufficient, condition for this. It is therefore necessary to establish an institution which facilitates the sharing of information about spatial planning issues between national, provincial and local spheres of government on a regular basis, and which has the ability to secure necessary inputs from other line function departments as and when necessary. It should bring together the senior technical officials and political leadership necessary to obtain political buy-in. Attendance at meetings should be compulsory and the agendas should be carefully set to further the cause of spatial planning and settlement restructuring. All spheres should have a role in setting the agenda and the body should report directly to Cabinet.

The Forum for Effective Planning and Development (FEPD), while admirable in intention, has not proved effective. It should be the responsibility of the Department of Land Affairs to establish a new body for this purpose.

It is important to emphasise that promoting co-ordination and vertical integration requires all spheres of government engage in integrated development planning processes.

3.7.1.6 Monitoring

The focus of national monitoring needs to be the DFA principles. If the principles are to become central to the spatial planning system in South Africa, it is clearly necessary to monitor their application at all scales of planning. It is clear, however, that given resource and capacity constraints, particularly in local government, the monitoring system must be direct, useful and relatively simple to apply.

Monitoring can take many forms. The articulation of the most appropriate form and criteria depends on the purpose/s for which monitoring is being applied. At least four potential purposes can be identified.

1. *Punitive*. Higher authority may wish to identify whether public authorities are being consistently (and perhaps deliberately) recalcitrant in applying the principles. This would require the development of nationally standardised criteria and the rigorous comprehensive application of these – a massive task.
2. *Facilitative*. The main purpose of monitoring could be to assist higher authorities in identifying obstacles impeding the applications of the principles (for example, high land prices), in order to develop ways of intervening. The purpose would require regular audits of the problems being experienced by the authorities charged with applying the principles.

3. *Educative*. Potentially, setting up a monitoring system has an important educative role. By having to set up a system of measurement, authorities which work with the principles on a day-to-day basis would be forced to grapples with their meanings and, ultimately, to operationalise them.

4. *External involvement*. By emphasising the importance of monitoring, and by setting up receiving systems for complaints and comments, external organisations and individuals (for example, concerned citizens, developmentally-orientated NGOs and so on) could be encouraged to play a 'watch-dog' role in relation to decisions taken by authorities.

There is also a time dimension to the issue. Both the purpose and the form of the monitoring system could, and probably should, change over time as the system matures.

It is the opinion of the Commission that the dominant purposes at this time should be educative and facilitative. The monitoring programme should therefore link into an educative and communication campaign around the principles. Further, it feels that the issue of lack of capacity in all spheres of government cannot be over-emphasised – the system should not place further pressure on already overloaded institutions.

A simple system is therefore proposed:

- The Department of Land Affairs should require a two yearly national audit. This should take the form of a sample of different spheres of government and should involve a review of plans and decisions taken and discussions with officials to identify blockages and obstacles. If a standing planning commission is established, this could be the receiving body of the audit report and could forward recommendations to the Minister. Failing this, a small unit should be established within the Department to consider the audit and make recommendations to the Minister. Both the audit and ensuing comments and recommendations to the Minister should be passed on to provincial planning commissions or similar bodies.

- Planning and appeal tribunals, as well as mediation and conflict resolution organisations, should be required to provide a short synopsis of reasons for decisions on a case-by-case basis, with specific reference to the way in which the DFA principles have informed outcomes. These should be routinely forwarded to the planning commission or core principles unit within the Department of Land Affairs. Similarly, the planning commission or core unit should gather court decisions on land-related cases and review these in terms of the principles. These sources should also inform the report to the Minister. In this way, a system of case studies should be built up which can be used as a reference point by planning decision-making bodies.

- The South African Council of Town and Regional Planners should be statutorily required, on a two-yearly basis, to report to the Minister of Land Affairs on progress made in implementing the principles. In this way it should monitor the professions for which it is statutorily responsible and actively assist in making the DFA principles central to the national planning system.

- The Department of Constitutional Development should be requested to include monitoring of the DFA principles as part of its broader function of monitoring local authorities. Officials of this department should be required to report to the standing planning commission or core unit on a two-yearly basis or sooner if,

in their discretion, it is necessary to do so, in order that the report can inform the two yearly report to the Minister.

- In order to facilitate voluntary two-way reporting, the standing planning commission or core unit should be required to give attention to reports relating to the principles from planning decision-making bodies.

3.7.1.7 A national spatial planning function

The Commission is of the view that a national spatial planning function should be a limited one and should primarily result from the necessary national activities of sectoral line function departments. All national line function departments should be required to:

- overtly articulate the spatial planning implications of their policies and investment programmes;
- review these for consistency with the DFA principles as well as with additional principles established provincially;
- assess development opportunities which may potentially be generated, directly or indirectly, through their investment programmes and, where necessary, co-ordinate with other departments to mobilise these.

The spatial implications of new policies should also be routinely assessed for consistency with the DFA principles by the planning co-ordination committee established by the Department of Land Affairs.

3.7.2 Provincial functions

3.7.2.1 Co-ordination of line function activities

All provinces should appoint a core spatial planning team to develop and manage a provincial spatial plan and to co-ordinate the spatial outcomes of line-function activities. This team should report directly to the executive council.

3.7.2.2 Co-ordination with national government

Provincial government could play a role in co-ordinating sectoral national priorities with their own plans and those of local government. Participation in the national planning co-ordination forum to be established by the Department of Land Affairs potentially plays an important role in achieving this.

3.7.2.3 Enabling legislation

A single piece of legislation that is comprehensive enough to cover all planning functions should be drafted for each province. It falls within the constitutional competency of provinces to do this. This should remove the duplication of legislation and the conflict between the different pieces of legislation created by the previous political dispensation. It must also ensure that planning legislation promotes clarity, consistency and development. The content of this legislation is covered in Chapter 5 of this document.

3.7.2.4 Establishing norms and standards

Provincial authorities should be responsible for translating national norms and standards into provincially specific forms both in law, as discussed in Chapter 5, and also by playing a monitoring and co-ordination role. The process of

establishing norms and standards should involve a two-way process in which provinces establish options for consideration by affected communities. There is evidence, for example, that some communities may prefer facilities of a lower standard sooner rather than having to wait longer for facilities of a higher standard.

3.7.2.5 Local government support and co-ordination

The role of provincial government in respect of local government should be:

- to provide support in the form of capacity building, training, guidance, explanations of legislation and so on;
- to support local authorities in undertaking their planning responsibilities. This should not be a role without direction. An important way in which provinces should support local authorities in their planning is to obtain the information on local priorities and needs necessary for its own departments to budget and align their priorities successfully. Additionally, it is necessary to ensure that the alignment of plans between neighbouring local authorities can take place;
- to monitor implementation of plans in order to provide implementation support;
- to manage resources in the province and to inform local government of the available resources (both from province and national government) and how they will be allocated;
- to identify resource constraints facing local government, especially in rural areas, and to engage with all spheres of government to address those constraints;
- to provide information to local government that it can use in its planning (for example, where province intends to invest its resources, where national priorities are and so on);
- to deal with conflict resolution between authorities in the province (for example, between traditional and local authorities);
- to set provincial frameworks and guidelines for local planning;
- to undertake local government planning on its behalf where it fails to do so.

3.7.2.6 Monitoring

Ongoing monitoring of progress towards achieving more integrated, equitable and efficient settlements is essential if provinces are to identify where support and assistance is required. Where provincial planning commissions exist, these should be charged with the ongoing assessment of progress. In other cases, this responsibility should rest on the core spatial planning unit within the office of the executive head of provincial government.

All provinces should be required to establish a local government forum, with representation in the form of senior official responsible for spatial planning from all local authorities, which meets bi-annually to discuss progress and problems.

3.7.2.7 A spatial planning function

Provinces should be required to prepare a provincial spatial plan which is one component of the provincial development plan, the latter being (as is occurring in most provinces) a development of the work already done on provincial growth and development strategies (PGDSs). The purpose of provincial spatial planning is to

accomplish a greater convergence among sectors and spheres of government of decision making about where public investment occurs. The minimum content of such a provincial spatial plan should include:

- the identification of areas of provincial significance which require preservation or protection (for example, provincial parks, water sources, provincial spatial implications of national coastal policy, major place-defining elements);
- identification of areas of provincially significant recreational potential;
- identification of settlements with unique qualities which require special attention at a provincial scale;
- catchment management of provincially significant rivers that cross local authority boundaries;
- identification of resources which have a potential future value;
- identification of the alignment of elements of infrastructure which transcend local authority boundaries (for example, provincial roads);
- identification of provincially-significant infrastructure (for example, provincial airports);
- identification of provincially significant social and institutional infrastructure (for example, regional hospitals);
- identification of potential sources of pollution which transcend local authority boundaries;
- settlements with significant growth potential which may be released through provincial investment;
- the spatial implications of provincial sectoral policies and the testing of the implications of these against other policies and imperatives, including spatial imperatives and the DFA principles;
- identification of areas already identified as a priority at national level, for example by the SDI programme.

3.7.2.8 Regional planning

Not all necessary spatial decision-making, at a scale which transcends local authority boundaries, can be appropriately taken at the scale of a provincial plan. It should be the responsibility of provincial government to undertake, where appropriate, regional planning. Regional plans may be necessary to develop strategies for geographic areas which:

- have particular potentials;
- represent pressing problems;
- require holistic consideration and management but which transcend local authority or provincial boundaries (for example, river basins).

The designation of the boundaries of the regional planning areas must be carefully considered and must be determined on the basis of the purpose of the plan. In all cases, the planning process should be undertaken co-operatively with affected local and provincial authorities.

3.7.3 Local government functions

Since the local scale represents the 'cutting-edge' of the spatial planning system, the spatial planning functions of local authorities are discussed in greater detail in Section 3.8 below. There are three forms of authority, however, which are special cases and require specific comment – metropolitan councils, district councils and traditional authorities.

3.7.3.1 Metropolitan and district councils

The Local Government: Municipal Structures Act provides that metropolitan councils are Category A municipalities. This means they have exclusive jurisdiction in their areas. They no longer share their executive and legislative authority with local councils. This will hopefully improve what has been a problem in the past few years, while the division of powers was largely negotiated. The spin-off from a planning and development perspective is that there will be greater certainty regarding roles.

The Local Government: Municipal Structures Act also tries to bring about more certainty in respect of the role of district councils *vis-a-vis* local councils in their areas. The Act sets out the functions of district councils with some specificity and expands their role to some extent. District councils must, among other things, undertake:

- integrated development planning for the district as a whole, as well as providing a spatial framework for municipalities within the district;
- provision of bulk water, electricity, sewage and solid waste removal;
- provision of municipal roads that are an integral part of the area as a whole;
- regulation of passenger transport services;
- the promotion of tourism in the district.

Local councils have all other powers and functions given to municipalities in sections 156 and 229 of the Constitution (including what is contained in the schedules). In other words, other than the powers explicitly given to district councils in the Act, all other powers fall to local councils. The Act also provides that the MEC may adjust the powers between local councils and district councils. This is largely based on the inability, because of capacity problems, of many local councils to perform their duties.

These provisions are extremely important to the improvement of development planning, as a great many rural councils have no capacity to undertake planning nor do they have control over resources of sufficient scale to impact on the quality of life of their inhabitants. This situation is unlikely to change significantly within the foreseeable future.

The Commission is of the view that this reality needs to be acknowledged. The district councils should become the primary instruments of rural planning, except in those cases where there is demonstrated capacity at a local council level. The issue of developing strong planning processes in the rural areas is particularly important for a number of reasons. Firstly, the development problem is commonly severe in these areas and considerable urgency is required to allocate resources in ways which have significant impact. Secondly, the human capacity to participate in conventional participatory processes is often weak and innovative ways need to be found to ensure effective participation. Thirdly, the social impact of large projects

is frequently greatest in these areas. Fourthly, the repeal of the Subdivision of Agricultural Land Act has left many rural areas vulnerable and their protection is dependent on the production and implementation of good plans.

Incapacitated local rural councils should be involved in planning processes undertaken by district councils but their primary functions should be consultative (they should carry local perspectives and priorities to district council), advisory and implementational only with respect to limited functions. This situation should be periodically assessed. Local areas which can demonstrate viability and capacity should be granted greater authority on an exception basis by the MECs.

This proposal has two implementation consequences. Firstly, MECs should assess planning capacity at rural and district council levels as a matter of urgency and make proposals to improve capacity. It should be a primary provincial function to bolster capacity and provide support at the district council level. Secondly, boundary delimitation should ensure that the areas of district councils are appropriate to integrated development planning.

3.7.3.2 Traditional and tribal authorities

Large amounts of land, particularly in rural areas, fall under the effective control of traditional or tribal authorities. In most cases, the state is the legal owner of the land and the Minister of Land Affairs is the trustee with fiduciary trusteeship obligations. However, the people themselves (tribal members) are the *de facto* owners and are to be recognised as such in the White Paper on South African Land Policy. A key policy approach with regard to tenure reform is to separate the functions of ownership from those of governance.

From a spatial planning perspective, the key problem is that tribal authorities control land allocations and thus, effectively, sub-division. This is frequently done without any reference to planning principles relating to efficiency or, indeed, to any larger spatial organisational system. The result is settlement forms which are highly inefficient, wasteful in terms of land and almost impossible to service effectively. For example, the peri-urban area around Umtata (effectively an area of urban sprawl), extends over 60km from the town itself and contains almost none of the opportunities of either urban or rural living. The problem is compounded by the fact that the performance of the traditional or tribal leaders, as *de facto* settlement managers, is highly variable – some are concerned and developmentally motivated; others are not.

In principle, in terms of planning, there is no reason why these areas should be treated differently from the rest of the country. Effective planning is necessary to ensure viable settlements and the elected authority should be responsible for that function. The Local Government: Municipal Structures Act reflects this. It does not however, exclude traditional or tribal leaders from the process. It provides that these leaders may participate in municipal councils and that before a municipality takes a decision which directly affects an area of a traditional or tribal authority, it must give the leader of the authority an opportunity to make an input. Achieving co-operation will make planning more effective. The Act also provides for the MEC to make regulations dealing with the role of traditional or tribal leaders in municipal matters. When preparing such regulations, MECs need to consider carefully what an appropriate role should be. For instance, their participation could start at the consultation level where needs are identified.

The Commission supports the thrust of the Local Government: Municipal Structures Act, and believes that in each province the MECs should create an

appropriate role for traditional and tribal leaders to participate in planning. Where necessary, appropriate training to strengthen settlement management skills should be provided by provincial authorities.

3.8 The proactive spatial planning system in local government

This section focuses on the spatial planning system in local government. There are two reasons for this. The first is that local government is, in a sense, the cutting edge of the spatial planning system: most spatial planning decisions appropriately should be made in this sphere by elected representatives, or those to whom they delegate authority. The second is to emphasise the relationship between the forward-planning system and the regulatory or land development management planning system.

The spatial planning system in local government has two broad dimensions: a proactive or forward planning system and a decision-making land management system. The more regulatory and land management aspect is dealt with in Chapter 4. The final point of reference for all spatial planning decisions are the DFA principles. These in turn are expressed through the dimensions of the integrated development planning process, as outlined below.

3.8.1 Purpose

All local authorities, whether in urban or in rural contexts, are required to engage in integrated development planning for their areas of jurisdiction, as defined in Section 3.7.3. All local authorities should be required to include a proactive spatial component in their integrated development plans. The primary purpose of the plan should be to move towards the emergence of more integrated, equitable, efficient and sustainable settlements. Specifically the spatial elements of the plan should:

- develop an argument or approach to the development of the area of jurisdiction which is clear enough to allow decision-makers to deal with the unexpected (for example, applications from the private sector);
- develop a spatial logic which guides private sector investment. This logic primarily relates to establishing a clear hierarchy of accessibility;
- ensure the social, economic and environmental sustainability of the area;
- establish priorities in terms of public sector development;
- identify spatial priorities and the places where public-private partnerships are a possibility.

The plan should not attempt to be comprehensive. It should take the form of a broad framework which identifies the minimum public actions necessary to achieve the direction of the plan. The spatial dimension must have sufficient clarity of logic to guide decision-makers in respect of development applications.

In rural contexts the plan should deal with all key aspect of land development, including strategic environmental impact assessments. Also, issues such as resolution of land rights, tenure issues, natural resource development, local institutions and rules should be addressed.

In those provinces where planning has been done in terms of the DFA, LDOs that are already in place should be enhanced and developed where appropriate.

3.8.2 Direction

The Chapter 1 principles of the DFA should be central to the entire planning system. These principles should centrally inform the proactive integrated development plan that is drawn up and approved by local politicians in a participatory process. These together should provide the primary criteria against which applications for land use change should be assessed. The local plan essentially should give contextually-specific form to DFA principles. Provinces' legal frameworks for local planning, in most cases the provincial LDO regulations, provide a basis for this. However, these frameworks will have to be enhanced and developed to give municipalities greater guidance in this regard.

3.8.3 Components of the plan

The plan should consist of four major components.

1. *Objectives*: These should clearly state what the plan is trying to achieve and identify quantitative programmes, targets and policies necessary to achieve these. These have implications for spatial structure but do not at this stage take spatial form. They should be drawn up with consideration of the DFA principles in mind.
2. *Spatial dimensions*: The spatial plan should commonly have two dimensions: statutory and indicative ones. Statutory backing to spatial decisions should be used sparingly. Implementation of the plan should primarily be budget-led. The backing of the law should primarily be used to entrench desired long-term spatial relationships (for example, the relationship between the built and green environments) and to protect resources perceived to be of societal value. Indicative dimensions are intended to provide the public at large with a clear indication of the local authority's intentions and priorities, in order to enable people to co-ordinate their decisions with these.
3. *Priorities*: These identify priorities in terms of public investment and should be linked to budgets.
4. *Instruments*: These identify the range of mechanisms to be used to achieve the proposals of the plan. Spatial planning objectives are commonly achieved internationally through five categories of planning instruments, used in various combinations: shared information; voluntary agreements between stakeholders; public expenditure; economic instruments and policies; and regulatory measures (development control). International precedent clearly indicates that of these voluntary agreements, public expenditure and economic instruments and policies are the most powerful and effective. It is widely accepted that development control (land development management) is an essential instrument of good governance (in the sense that it regulates behaviour between neighbours) and that it should be informed by broader planning objectives. Its primary importance, however, is as a regulator of rights. Its weakness as an instrument to achieve planning objectives is that it can *prevent* activities from occurring in space but it cannot *cause* them to do so.

The international success record of different planning instruments underscores three points:

1. Achieving a broad public 'buy in' to the plan is essential. Broad participation is a key success factor. In South Africa, it is required by the DFA.

2. The importance of economic instrument (particularly the use of various forms of incentives and the linking of the award of development rights to negotiated public good objectives) requires strong public leadership in local government and a more entrepreneurial style of management than has been the case historically in South Africa. It also emphasises the fact that public-private partnerships, both formal and informal, must become an important style of operation.

3. The budget – the pattern and prioritisation of public expenditure – is a key planning instrument and the anatomy or shape of the budget is a central political decision. Commonly, four forms of budgetary allocation are necessary in South Africa: productive investment (capitalising local assets in order to generate long term returns); basic needs investment (ensuring adequate service levels to deal with issues of public health and increasing convenience); remedial investment (improving the quality of life of people, particularly in historically disadvantaged areas); and quick-response allocations (allocations, particularly in terms of services, to reinforce positive private sector initiatives and to enter into public private partnerships which will further the public interest). All are necessary but they are not directly comparable. Commonly, any one could absorb the entire budget. Determining allocation priorities is therefore a key strategic decision.

There is no consensus internationally about whether such instruments should be prescribed. Some federal nations such as Germany have uniform planning systems – a plan looks the same and operates in a broadly similar manner in every part of the country. Other federal nations, such as Australia, Brazil and the United States, allow states and even local authorities to write their own laws and regulations.

The Commission believes that there are advantages in having a broadly similar spatial planning system nationally (particularly from the perspective of large developers and technical exchange) while still allowing for local variation and innovation. The national framework should only set minimum requirements, for elaboration according to regional and local needs and conditions.

3.8.4 Content of the plan

The primary public spatial elements which need to be co-ordinated and brought into a synergistic relationship with each other are the green system (places where built development should not be allowed); movement; hard public space (open urban spaces such as squares and other forms and public space which accommodate the informal activities which occur within settlements); social facilities; and utility and emergency services.

At minimum, the plan should identify the following:

- the open space system, including both green and urban space – the identification of areas where development will not be allowed or will be more tightly controlled (for a variety of reasons, including ecological, hazards, production, recreation and place-making reasons);
- the planned patterns of public investment in terms of public space, movement, social services and utility and emergency services;
- defined areas where greater intensification and mixed use will be encouraged;

- conservation areas, if applicable, or areas requiring special control, if applicable;
- areas for more noxious (nuisance-creating) activities, if applicable;
- areas where special problems are to be resolved such as where tenure, restitution and land rights issues pertain;
- areas requiring special services, if applicable;
- special project areas (for example, public housing schemes).

All land development decisions and land use change decisions made by the relevant bodies should be made to conform to the strategic spatial plan. More detail could be given in provincial laws and regulations regarding the content of the plan than is given here. All that is suggested is that this list should constitute the minimum content.

3.8.5 Adoption of the plan

The Commission believes that participation in the plan-making process, and ultimately the approval of such plans, is a primary responsibility of politically-elected representatives. They should also become a key conduit of information in matters relating to the plan between the plan-making process and their constituents, although direct participation of affected parties is an essential ingredient of the plan formulation process.

3.9 Issues relating to capacity

Inadequate capacity relative to emerging developmental demands is arguably the most serious issue facing the planning system, and thus facing the challenge of creating more integrated, efficient and liveable urban and rural settlements in South Africa. The issue is both quantitative (an absolute shortage of people) and qualitative (a lack of adequate skills). The problem exists at all spheres of government and it relates to both officials and decision-makers.

There is no short-term solution to the problem. There are, however, steps that should be implemented as a matter of urgency. These fall into two categories: supply-side actions (actions designed to increase capacity), and demand-side actions (actions designed to decrease the demands being place on governmental planning systems). Demand-side actions are addressed in the sections of this Green Paper dealing with spatial planning and decision making in local government, particularly Section 3.8 and Chapter 4.

3.9.1 Review technical training

Although there are numerous training courses in the field of urban and regional planning in South Africa, there is cause for concern about the outputs from some of these. A number of these institutions train people in terms of standardised rules, rather than teaching them to think creatively about issues and, thus, developing capacity to deal with new circumstances. Many of 'rules' that are being passed on were produced to support a planning philosophy which is diametrically opposed to that which the DFA and recent policy documents seek to introduce. Further, there is little clarity about the role of, and the relationship between, different types of educational institutions (for example, universities, technikons, community colleges) in the field of planning.

The Commission suggests that a national workshop on planning education be convened by the Department of Land Affairs, where issues of curricula and the relationship between educational and training institutions can be resolved and an educational strategy developed.

3.9.2 Communication and education campaign around the DFA

The principles

It is apparent from evidence before the Commission that to date the DFA principles have only weakly informed planning and land-related decision-making in South Africa. If this is to change and, as is the intention, the principles are to become central to spatial planning at all scales, a major educational and communication campaign about the meaning of the principles and their implications in practice must be mounted as a matter of priority. The campaign should be targeted at the full range of players concerned with major land-related decisions: the professions concerned with the built environment; government officials; councillors and other political decision makers; people engaged in mediation and in conflict resolution; developers; and so on. It is clear that different groups would need to be targeted in different ways – a multi-pronged campaign is required.

The Commission has already produced two documents relating to the interpretation of the DFA principles – a resource document and a manual – which can form the substantive focus of the campaign. It is the Commission's recommendation that a variety of other inter-related forms of communication should be used. These should include:

- use of the web site;
- development of electronic packages;
- development of television programmes;
- compulsory inserting of principles into academic curricula and short courses;
- the development of a 'best practice' manual;
- workshops targeting officials and decision makers;
- a national conference.

Such a campaign needs to be carefully co-ordinated and driven. The Commission recommends that the Department of Land Affairs appoint a communication expert to design and spearhead the strategy, once the main work of the Commission has been completed. If a standing planning commission is established, the communications expert should work closely with this body, as well as with the departments of Land Affairs, Environmental Affairs and Tourism and Constitutional Development, the South African Council and Town and Regional Planners, other land related professional associations, and the South African Local Government Association (SALGA).

The planning paradigm

The planning paradigm ushered in by the DFA is not yet fully understood or supported. Local politicians have not yet seen the benefit or the importance of playing a central role in forward planning, particularly regarding space. Developers are not yet fully aware of how important it is for them to engage in the integraetd development planning process so that they inform, and are informed by, development priorities set by local authorities. Officials who are used to

administering a different system of planning that is far more control-orientated than discretionary are, in many cases, not clear about how to administer the new systems.

Within this context, it is recommended that the same kinds of information systems be used to educate all key roleplayers on normative planning.

The problem does not only exist in relation to local government. Much work is needed to train provincial politicians and officials around how integrated development planning at local scale should intersect with provincial planning. In addition, national government needs to understand the centrality of local integrated development plans, and work iteratively with both provincial and local government when undertaking its own planning.

3.9.3 Promotion of mid-career education

Tertiary education institutions should be requested to offer mid-career training courses which are geared to grappling with the emerging planning and developmental issues facing South Africa. Similarly, practitioners (both in the public and private sectors) should be required to attend such courses, in order to retain professional accreditation.

3.9.4 Internships

The practicalities of introducing a system of internships, where advanced students and/or new graduates in town and regional planning are channelled into areas which have limited planning capacity for a limited period (18 months–2 years), should be investigated.

4 MANAGING LAND DEVELOPMENT

4.1 Terminology

In Chapter 3, the discussion focused on the proactive, forward planning aspect of local government planning. The focus has been on the spatial element of integrated development planning.

The limited statutory status of the spatial element has been stressed, as it is this statutory status that begins to define which land developments are acceptable and which are not. In other words, once the political development objectives are set out in integrated development plans and the spatial component is complete, clear parameters have been set for land development.

Because policy-based planning is undertaken by politicians, they can influence how their areas should look spatially and, in particular, deal with inequities that arose from past planning policies. The approach can now promote and facilitate development through setting priorities in the integrated development plans, especially in previously disadvantaged areas.

The spatial aspect of integrated development planning allows for the management of land use and new developments. This is why the Commission uses the terms 'land use' and 'land development management' to refer to the role of making broad spatial strategic plans.

Because policy-based planning of this trend is directed by politically-elected decision makers who have final approval over the plan, they can influence how their areas should look spatially and, in particular, redress inequities that have arisen from past planning policies.

However, public responsibility does not end there. Public authorities also have the responsibility of managing the use and development of land with their area of jurisdiction.

Managing the use and development of land has two main aspects:

- the management of the development of vacant or open land, generally involving the improvement and sub-division of that land and the construction of buildings on it; and
- the management of ongoing changes to existing land use – this includes changes in the activities carried out on land, the size and coverage of buildings and the density or intensity of land use.

In this chapter the Commission treats these two aspects as essentially similar. The recommendations that the Commission makes would ensure that the same laws, principles, planning institutions, and procedures would generally apply to both aspects.

The DFA defines 'land development' as 'any procedure aimed at changing the use of land for the purpose of using the land for residential, industrial, business, small-scale farming, community or similar purposes'. The term thus covers both the aspects of land development and land use change referred to in Section 3.3. For the sake of convenience, the DFA definition is used in this sub-section. Thus the term

'land development management' refers to the management of new land development and that of a change of existing land use. The essential difference between this management function and the form of planning discussed in the previous sub-section is that the management function, as a public sector activity, is more reactive to private sector initiatives.

4.2 Starting points for managing land development

South African law grants no one an absolute right to develop and use land. Any person who wants to develop or use land can do so only subject to the law's restrictions. Ideally the law should only regulate those aspects of land development and use necessary either to achieve particular strategic objectives or to minimise the negative impacts of land development and use changes on neighbours and the public in general. It is only through pursuing such an approach that government – with its limited resources – will be able to provide equal levels of protection and service delivery to all South Africans, regardless of whether they live in a township, a suburb or a village.

The private sector will appropriately continue to be the major force in the development of land. While land management systems in South Africa remain incoherent, unclear, cumbersome and contradictory, the private sector cannot operate with certainty and assurance in the land market and is frequently able to develop land without any regard for the needs of the general public. In order to remedy this situation two requirements are essential. Firstly, the DFA principles, as expressed in plans drawn up by local councils, should be central to public consideration of development proposals. Developers should be required to motivate and justify change in terms these. Permissions should not be granted if proposals are in conflict with plans which have statutory effect. Plans have to be spelt out and policy has to be spatially specific.

Secondly, an effective and efficient system must be devised to provide certainty and security both to the private sector involved in land development as well as to the people affected by their developments. Certainty can be achieved if the integrated development plans are clearly known, and are drawn up in an inclusive fashion.

Decisions around land development and land use change, therefore, should not be taken in a vacuum. They should be informed by a proactive plan formulated by the appropriate authority which provides sufficient guidance to the decision-makers charged with considering individual applications for land development and land use change. The plan, therefore, while not being able to cover all contingencies, should provide decision-makers with a way of thinking which allows them to deal with the unexpected. At least this degree of specificity is required.

Key disputes around land management often arise where settlement, rapid urbanisation and large scale investments are involved and where rights in land are disputed. These occur in both urban and rural areas.

In respect of land development, municipalities have a key role to play. The Commission's view is that decisions with respect to land development and use should be made locally, except in cases where wider interests – for example, crossing municipality boundaries or issues which are province-wide or national in scope – are at issue. The vexed question of who should make such decisions at a local scale is discussed in Section 4.6.4.

Currently, there is a wide gap between different experiences of South Africans in terms of land development management. On the one hand are the experiences of people living in the previously 'white' centres and in the suburbs of the larger towns. Land use changes there are generally channelled through formal processes with reasonable opportunities for comment and participation by people likely to be affected by the decisions. This position must be contrasted with that of people living in 'townships', as well as those living in rural areas. In both these cases land development is only minimally regulated, if at all.

In principle, land development opportunities should be available to all citizens and the benefits of land use management systems should be equitably spread. Everyone within the jurisdiction of a municipality should be equally protected from the adverse impacts of land development changes, and should have an opportunity to be heard in relation to these.

4.3 Purpose of land development management

Land management has two key goals. The first of these is that it must provide effective protection to both the natural environment and members of the public from negative impacts of land development and land use change. It should also attempt to ensure a continually improving spatial environment, particularly in terms of the quality of the public space. The second is that it must provide a reliable degree of certainty to developers, members of the public and all spheres of government so that there is a shared and consistent understanding of the scale, extent and nature of permissible land development and use within a specified time period. Both of these goals are essential for the operation of an efficient and fair land market.

The manner in which a land development management system achieves these goals is through the determination, allocation and restriction of rights to use and develop land. These rights can be used in two important ways. Firstly they provide a basis for the public sector to negotiate with developers of all types, as well as individuals, to achieve land use and development outcomes that will promote social, economic or environmental benefits. Secondly they provide a basis for the relevant authority to value land and so to determine an appropriate rating of the land.

What has been introduced by the DFA-induced paradigm of planning is the concept that rights to the use of land should be consistent with the policies and priorities of the municipality.

In the past these rights have been regarded as being granted in perpetuity. This undermines the government's ability to use land development and use rights as a means of implementing and realising strategic plans. As soon as rights are allocated in perpetuity it becomes almost impossible for the relevant authority to formulate different development plans. This greatly hampers the authority's ability to adapt and shape its plans to meet the constantly changing needs of society.

4.4 Background to land development management in South Africa

During the apartheid era, different groups, on the basis of their race, had entirely unequal access to land for residential and economic purposes. In addition to this racial fragmentation, in different areas, different laws and systems of tenure applied. In many former white areas land was managed by means of town-planning or zoning schemes. The schemes aimed at establishing and protecting very high standards of environmental amenity in white areas. A high level of resources is required to administer those schemes.

Different land use management systems applied in the former self-governing territories and so-called TBVC states. These were far less sophisticated than the town-planning or zoning schemes that operated in white areas. They offered far less participation and protection of rights, and were generally very rudimentary.

Since 1994 municipalities have begun to include areas that are an amalgamation of a number of former racially-defined areas. Commonly there is still an inordinately high proportion of any municipality's planning staff tied up in administering schemes which essentially maintain white suburban environmental amenity, while very little capacity is left for the planning and development management of historically disadvantaged areas.

Land use management and control in former white South Africa has a long history. Prior to the advent of zoning, the form of development and, not uncommonly, who could occupy land, occurred via restrictions on title deeds, established when townships were formally registered. This system of control continues to operate in tandem with zoning schemes today in many older areas.

Zoning was 'imported' on a widespread basis from the UK in the 1930s. It is the legal declaration of what use land can be placed under and, via set-backs, height-restrictions and bulk factors, the maximum intensity of use which would be allowed. It is firmly based on the principle of the separation of major land use classes (work, live, play and move) to prevent conflict, which was a central plank of the modernist paradigm.

These schemes, which have been the central instrument of land use management in white South Africa, have therefore generally separated different land uses and densities from one another. They have also promoted high (and expensive) space standards in terms of street widths, building setbacks, and other aspects of layout. The result has been the division of urban space into sets of mono-functional and relatively uniform built environments.

Local government bodies in white areas played a central role in land development management, preparing zoning schemes and making decisions about land use. In certain parts of the country, especially outside of the larger towns, provincial government has also played this role. Zoning was seen as a proactive planning tool insofar as it predetermined the use of each land parcel within an area.

The effectiveness of zoning systems has been severely reduced in many areas over the last decade. One contributing factor has been the amalgamation of municipalities, with the shrinking capacity in municipal and provincial planning departments; another has been the rapid pace of land development in urban areas.

A number of changes that have had implications on the old zoning systems have been introduced since 1994.

National government introduced the DFA, which created a new approach to the management of land development (involving general principles for land development, land development objectives and development tribunals with new procedures for land development). The philosophical starting point of this legislation is that the use of each parcel of land should be considered within a broader context, defined by the strategic spatial policy of the area.

Several provincial governments have also initiated change in the land development and use systems which apply in their provinces, through the formulation of new provincial legislation. In all cases, the main thrust of their proposals lies in bringing the management of land development and use within a single provincial system. New provincial laws have all followed the general direction of the DFA in as much as they have created an imperative for policy or strategic plans to inform land use and development.

Recently, a number of municipalities have made efforts to reduce the confusion and complexity which surrounds the existence of multiple systems and schemes in their areas of jurisdiction. Most municipalities confront myriad schemes and systems as a result of different legal frameworks governing land development operating in the different racial zones of apartheid. The Commission has investigated some of the measures adopted to address these difficulties. Most of them revolve around extending schemes and procedures adopted under pre-1994 provincial ordinances (historically which applied exclusively to 'white' municipality areas) to substitute for other systems (such as those created under the Black Communities Development Act) in former 'black municipality' areas. In some cases, changes also include simplifying the rules and procedures, though there are situations (particularly in former townships) where the opposite is the case. In some cases, municipalities have been limited in what they can achieve by the framework of existing law.

The Commission's view is that these efforts to reform existing systems by provinces and municipalities should be supported and facilitated, as well as channelled in appropriate directions – in particular, in the direction of accomplishing the principles and paradigm of the DFA. It also believes that the national framework that has been referred to should set broad guidelines or principles which should inform how such efforts to reform zoning schemes takes place.

4.5 The law relating to land development management

Currently, the law regulating land development management is diverse. In each of the provinces that have not passed their own development and planning laws, old ordinances that used to apply in white areas prevail, alongside apartheid regulations that applied in African areas. There are also other laws at a national level that impact on land development management such as the Less Formal Townships Establishment Act, the Removal of Restrictions Act, the Physical Planning Act. The ordinances set out the legal basis for zoning and town planning schemes and dealt with both drafting of schemes, the amendment of schemes and procedures for new developments.

The DFA introduced a system of land development linked to provincially-created tribunals which provided an alternative route for land development applications. The aim was to speed up land development and allow tribunals to override laws from the old order which impeded positive land development. Chapters 5 and 6 of the Act defined procedures for this.

The provinces that have passed their own new legislation have tried to create one set of procedures to deal with new land development and land management, yet in some cases have retained the DFA as an alternative route.

4.5.1 The distribution of legislative powers in relation to land development management

The Commission's view is that national legislation relating to land development management should be limited and focused. It should not do more than strive to achieve an appropriate level of uniformity across the nation. This it should do through the establishment of national norms and standards, the provision of a basic national framework for land development and the empowering of a national minister to establish national policies. The nuts and bolts of land development management should be dealt with in provincial legislation that should accommodate the very different needs of each of the nine provinces.

Currently the national legislation is inconsistent with this position, especially insofar as the continued existence of the Physical Planning Act and the Less Formal Townships Development Acts are concerned. Certain aspects of the DFA also deviate from the constitutional ideal described above. National government should move swiftly to clarify and reshape the legislative position at a national level. Until this is done, the efforts of provinces to draft their own legislation are inevitably subject to a degree of uncertainty. Those provinces that have not yet finalised their legislation on land development would be well advised to wait for the national framework to be drawn up. Where, however, the need for new legislation within a province is very pressing, provincial government obviously cannot be prevented from drafting its own legislation. Waiting for national legislation would however obviate the need for later amendments, should they prove to be necessary. In cases where a province does proceed with the formulation of legislation, it should do so in close consultation with national government and national government should provide the necessary assistance where this is required.

In this context there are other laws which need to be addressed. In particular if the above approach is adopted, there will inevitably be the need to bring historical use rights which have been inappropriately granted into line with new integrated spatial development plans. This will require public authorities to deal with issues such as compensation.

4.5.2 The property clause in the Constitution

The Constitution's property clause (Section 25) may introduce a right to compensation for land use and development changes that lead to a diminution of value to the property owner. It clearly introduces such a right where an entire piece of land is expropriated (that is, where the owner is left with no rights in the land whatsoever), but is less clear on a situation where the owner is simply prevented from exercising one or two of his or her options. This is an area of law fraught with difficulty and complexity across the world. Clearly government cannot operate effectively where every move that it takes which might detract from one or other use or development right will require payment of compensation. This does not

mean that government can act with complete impunity. No right can be diminished without proper notice and an opportunity to argue against the diminution. Payment of compensation however is only payable in certain extreme circumstances where so many rights are lost that it is equivalent to having the entire property expropriated.

The Commission is of the view that in order to achieve real justice as well as sustainable development, the provisions of the property clause must be understood to empower local government to change the spatial distribution of rights, where these are inappropriate in order to bring them into line with new policy plans and spatial priorities. Obviously this power has to be exercised responsibly and fairly.

4.6 Mechanisms for land development management

The complexity and range of existing legal mechanisms for managing land development and the often extraordinary complexities of reforming them makes it very difficult for the Commission to make detailed recommendations about the precise nature of the mechanism that should be used in each province (and indeed in each municipality). The wide range of different development needs, resources and capacity would also render such precise prescriptions worthless.

The Commission does however have strong views on certain underlying and crucial requirements that must be met in any new system of land development management mechanisms. These requirements are set out below.

4.6.1 The nature of the management system

The management system needs to be policy-led in the first instance. The DFA principles and the new paradigm that it introduced require substantial changes to the structure and form of settlements. The spatial dimension of IDPs should aim to accomplish this purpose. Land use management should broadly have to be aligned with such plans.

Within the parameters of the policy framework, there are good reasons for a system of land development management to retard or promote rights which are defined at the level of the erf. However, a number of improvements need to made to current practices:

- Many areas within local authorities gave their citizens no legal protection from unreasonable interference with their rights. This was because zoning schemes or other land use management systems did not apply in those areas. This is inequitable: in practice, land use management systems should apply equitably to all people in municipal areas. There are clearly difficulties in implementing this and it may take considerable time to achieve. The principle, however, remains.
- When owners or users wish to change the land use of an erf, decision-makers should assess change in terms of the priorities and policies as reflected in the spatial element of IDPs that have been adopted by the local authority.
- Future legislation should provide that when rights are awarded they should be exercised within a set time. Historically, the advance awarding of rights has created serious problems in terms of speculation.
- Legal mechanisms should be sought for rectifying without compensation historical award of rights which have not been taken up within a reasonable

period and which are, in the light of current knowledge, patently not in the public interest or clearly inconsistent with IDPs.

Ultimately, the decision as to how to deal with these dilemmas should be dealt with in provincial legislation which itself should leave the detail to local authorities: what is possible and desirable will not be the same from place to place and the law should allow for local discretion.

When determining how to deal with land development management issues, local authorities should consider the following points:

- All owners and occupiers of buildings, whether within a zoned area or not, or whether within a formal or informal area, should be able to object to relevant decision-making bodies about land developments which they feel infringe unfairly on their rights. Concomitant with this, the person undergoing a change in use or improvements to property should be required to canvass this with neighbours.
- Decision-making bodies should make delegations to professionals in the field of the built environment to approve certain land use changes, if these fall within existing regulations and there are no objections. In cases of fraud or negligence, the professionals should assume legal liability.
- All changes which do not have larger settlement impacts and which have the written approval of neighbours should be automatically approved.
- Civic organisations should be able to apply for certification from local authorities on the basis of decision-making expertise amongst members and, if certified, should be empowered to allow changes if there are no objections.
- Alterations within private units should not require public approval if there are no objections from neighbours. Only public buildings (shops, offices, factories, public facilities) should require a full range of approvals, including approvals in terms of building regulations. If necessary, the law should be changed to enable this to occur.

When provinces enact their laws, they should suggest that the following principles be adhered to in respect of land use management:

- One uniform system of land use management should be created to cover the area of jurisdiction of a municipality, even if this is done incrementally and transitional arrangements are put in place.
- Rights to object, to be heard, and to be protected from unacceptable infringements by neighbours should be assured.
- Land development management regulations should be compatible with the DFA principles and should enhance integration.

4.6.2 Innovative instruments

The Commission believes that local authorities should be encouraged to introduce new management instruments to deal with locally-specific problems. A relatively widespread problem, for example, is that of inappropriate allocation of development rights historically. There are many cases where rights have been awarded in place where it is apparent, in the light of subsequent more sophisticated knowledge, that the taking up of these rights would have seriously detrimental environmental consequences. Local authorities should be encouraged to rectify these. The transfer of development rights is one instrument which would seem to

hold considerable potential in this regard. The Commission is aware of potential problems in the use of this, if it becomes a widespread private sector trading mechanism. The instrument should remain firmly in public control.

4.6.3 Speeding up land development

The regulatory system should be streamlined. Many local authorities throughout the country are facing two interrelated problems. Firstly, they do not have the capacity to deal timeously with the flood of development applications they are receiving. Backlogs are increasing, with very negative consequences for holding costs for private sector developers. This is being aggravated by different approval routes required by different national legislation. In places, the situation has reached crisis point and delays of over two years, for relatively minor applications, are not uncommon. It must be emphasised that the Commission's research indicates that this is not universally true. The worst situations pertain in the larger municipalities, particularly in Greater Cape Town and Johannesburg.

Secondly, within municipalities, officials are required to spend almost as much time on relatively minor issues (such as the erection of carports, internal alterations and the like) as they do on large, complex applications.

Decision-making should be streamlined and speeded up. Developers are entitled to speedy consideration of applications. To this end the following recommendations are made:

- A single approval route, incorporating planning, environmental, transport and all other permissions should be established. Land is one of several closely regulated aspects of development. When a new land development or land use is proposed it has to be assessed in terms of a range of other development impacts such as those on the natural environment, transportation systems, infrastructure provision and so on. This can often lead to a person who wants to develop land or to change its use having to seek permission to do so from a number of different agencies, in different spheres of government. The regulation of development should, over time, be brought into a single system, so that the energy of developers is not dissipated in seeking multiple permissions through diverse processes. This would result in a more efficient system that would not only be easier for the developer to use, but would also be easier for members of the public to understand, and challenge where this is necessary. The legal basis for this should be contained in the provincial laws and regulations.
- A legal time limit on decision-making should be specified. Failure to meet the deadline should result in automatic approval. Not only will this have the benefit of speeding up the land development process, but it will also force planning authorities to take the issue of prioritising applications seriously.
- In the case of large projects, local authorities should adopt a sequential system of approvals, which enables an ongoing 'conversation' between developers and local authorities, as opposed to a simple 'yes/no' decision at the end of a long process. Commonly, these would have at least three stages.

    1. *Approval in principle:* Here the developer approaches the authority with a concept motivated, *inter alia*, in terms of the Chapter 1 principles of the DFA and the spatial dimension of the integrated development plan. If the project is not acceptable on public good grounds, the developer need not waste time and finance in pursuing the project. If the project is acceptable in principle, the local authority should produce a short 'contextual

framework' which outlines the authority's requirements in terms of the project. This becomes the basis of negotiation in which the local authority seeks to maximise public good benefits.

2. *Approval of a developmental framework:* This relates to the layout of the site as a whole. Issues of efficiency, spatial quality and public health and safety are central in assessing these.

3. *Approval of building plans:* Health and safety considerations, as well as the reasonable protection of the rights of neighbours are central in these approvals. In the case of very complex and large projects, a more complex process of approval may be necessary. The agreed process should result from negotiations between the developer and the local authority, once approval in principle has been granted.

By adopting this system, it is also possible to treat steps within these stages as a process. Issues such as traffic impact analyses, environmental impact assessments and so on should be called for within the process only if and when required. In terms of the current procedures of many local authorities, a full range of back-up information is required before an application can be lodged. This frequently results in unnecessary costs to developers.

In the interests of fairness and transparency, no negative decisions on applications should be made without hearing the applicant, if the applicant wishes to make representations.

4.6.4 Decision making: political or technical?

The issue here is who should make decisions on land development issues. Pre-1994 legislation allocated land development decision-making responsibilities exclusively to elected representatives. The introduction of the DFA challenged this.

That legislation sought to establish a clear division between policy-making and implementation and decision-making power. It introduced a system whereby elected representatives approve policies and plans and officials and others with technical skills interpret and apply these.

The issue is a thorny one. Protagonists or the 'elected representative' school argue that land development is inherently a political process and should be treated as such. Without political buy-in, decisions would not be implemented. They further argue that there are serious cost implications in buying in capacity in the form of 'experts' from outside government and there are commonly issues of self-interest, and conflict of interest, particularly in smaller communities.

Supporters of the DFA position argue that, in principle, the skills and capacities of elected representatives should be directed towards formulating and approving policies and plans which establish principles and affect broader communities. Day-to-day decisions arising around the implementation of these should be objectively assessed on technical and conformance grounds and should be taken by a panel of appropriately skilled professionals, appointed by the elected representatives and drawn from within the public sector and without. Those decisions, it is argued, should not be subjected to the possibility of a veto on political, as opposed to technical, grounds.

The majority view within the Commission, although not unanimous, supported the latter argument. There was consensus, however, that all decisions should be taken in the light of the policies and plans drawn up through the integrated development planning process and should be capable of being defended on those grounds.

4.6.5 The future of the provincial tribunals

The DFA introduced the possibility of establishing provincial tribunals as an alternative approval route for land development proposals. The primary purpose of this was to speed up decision-making processes, particularly in relation to reconstruction and development projects. To this end, the tribunals were given extraordinary powers to override legislation which unreasonably fettered projects considered desirable.

The Commission believes that in principle it is desirable to have a single approval route in local government. However, it recognises the importance of retaining the extraordinary powers in order to bring about substantial improvements to the structure and form of South African settlements. It also recognises that too wide a distribution of extraordinary powers (for example, by allocating them to local authorities) could cause serious problems.

It therefore recommends that the provincial tribunals be retained but that only particular types of projects (for example, reconstruction and development projects that have large impact or those which are particularly complex) should be allowed to pursue the tribunal routes. Provincial legislation should stipulate qualifying criteria.

4.6.6 Appeals

It is recommended that each province should appoint a development appeal board which should serve as the single point in the province for the hearing of all land development and land use-related appeals. The appeal board should consist of professionals from appropriate disciplines, appointed by the MEC after a broad consultation process.

4.6.7 Financial mechanisms

Land development and use decisions by authorities have financial implications both for governments and the private sector. The imposition of new restrictions can reduce the value of land, giving rise to possible claims for compensation by landowners against authorities. The removal of restrictions on development may enrich property owners, impose costs of servicing on local governments, and at the same time negatively affect neighbours to a new development. Both government and some private sector actors may feel entitled to a claim against those enriched.

There are various approaches to recapturing the enhanced value of land resulting from an extension of use and development rights. These should be agreed upon in consultation with the Department of Finance. Such agreement should be subject to the following overriding principles: firstly, the cost of administering the approach should not outweigh the financial benefits; and secondly the enhanced value should only be captured once. This will require careful consideration of the relationships between the land development management system and the property tax system – and the effects of both on the land market.

4.6.8 Public participation and transparency

A constant danger in land development management is that of corruption. This can take two forms. In one, officials take bribes in return for the granting or facilitation of certain development permissions. In the second decision-making processes are dominated by certain groups (often with the assistance of officials) at the expense

of other groups or individuals affected by the decision. This occurs especially where the dominant group is better resourced and more familiar with the workings of the land development management system.

In order to minimise these two dangers there must be the highest level of transparency in land development decision making. There can be no provision for in camera decision making. All people passing judgements about a decision who may have a material interest in the outcome must recuse themselves from all deliberations relating to the development.

The notification of all affected parties of an application for land development or land use change is a crucial step in ensuring that there is adequate public participation in the decision-making process. The South African context requires a particularly thoughtful and thorough type of public participation in land development decision-making. Illiteracy is widespread, many people are unfamiliar with the workings of a land development management system in particular, and administrative processes in general, and the capacity of many people to dedicate themselves to community affairs is severely compromised by poverty. This is particularly, although not exclusively, true in rural areas. Thus, special care has to be taken to ensure that all affected parties are fully informed of the implications of a proposed development or land use change, as well as informed of their rights in the adjudication process. It is unrealistic and inappropriate to foist that entire responsibility onto the local municipality. It is therefore proposed that every applicant be under the obligation to undertake a public notification and participation process under the guidance, and subject to the approval, of the municipality.

4.7 Transitional arrangements

Managing the transition towards new frameworks for land development management is not straightforward. This applies equally to situations where there is already a system (or many systems) in place, as well to those where there is none.

An essential requirement for an effective transition is that there be national legislation providing both clear guidance – especially on constitutional questions – and strong support to municipalities and provinces running the transition processes. Effective transition will require government to take decisions that may well provoke strong opposition and it is important that the protagonists of change have strong legal support for their actions. In those cases where local and provincial government is reluctant to implement change, pressure from national legislation will be equally important.

Change in land development management cannot be achieved overnight. There should thus be a fixed time period within which land development management systems need to be changed. The Commissions suggests a time period of five years. This should enable careful consideration to be given to the details of the systems as well as ensuring that they adequately reflect the contents of locally developed plans and policies.

5 RATIONALISING THE LEGAL SYSTEM FOR PLANNING

5.1 The Development Facilitation Act and rationalising the legal system

The DFA should provide the basis of a national legislative framework. This requires certain changes to the Act.

The amended Act should set out principles for land development and decision making as the DFA currently does. These principles should be re-ordered, reworded and expanded to make them clearer and more useful. Proposals to this effect have already been made by the Commission. The amended Act should also set out principles dealing with land use management. In particular, the amended DFA should set out principles applying when provinces deal with land use management in their laws. These principles should deal with how land use management in an area must be made compatible with the spatial dimension of the IDP. They should stipulate that land use management systems should be applicable throughout the entire area of jurisdiction of a municipality. The national framework should disallow systems of land use management that create special codes for particular areas such as informal settlements or former homeland areas, as this perpetuates land division and discrimination.

The amended DFA should set out, as the present Act does, the basis for policy-led planning. However, it should be clear that it is regulating only the spatial and land development aspects of policy planning. The amended Act should set out what the subject matter of the spatial and land aspect of integrated development plans should be. It should do so in broad terms, so that provinces can take the provisions further in their own laws and regulations. It should also refer to the spatial and land-related aspect of IDPs at local council, metropolitan council and district council scale. It should provide that all primary local authorities, metropolitan and district councils, and provinces should develop spatial policy plans as an aspect of their IDP process.

These amendments require a redrafting of Chapter IV of the DFA which deals with land development objectives, so that the new planning system is given greater clarity. The rewritten Chapter IV should tighten up the requirements for LDOs and provide greater clarity about them. They should be redefined as the spatial element of IDPs.

The amended DFA should also seek to clarify the framework for land development decision-making. It should provide for decision-making on land development applications to take place in local government. It should provide that local-scale decision-making bodies should be made up of experts and officials who should be bound to make decisions within politically approved policies and plans. Chapters III, V and VI should be amended but broadly retained as they create the legal basis for the special powers necessary for speeding up decision making via the tribunal process.

The amended DFA should stipulate that each province must create independent appeal tribunals that have the final decision on appeals from other land development decision-making bodies (with appeal to the courts as provided for in the existing Act).

Finally, the amended DFA should encourage and assist each province to repeal all legislation that has been inherited from the previous era so that national uniformity and certainty can be established.

5.2 Repeal of laws beyond provincial competence

Each province when reforming its laws must rely on national government to repeal laws that lie outside their competence. This means that the law reform process that takes place in each province should be driven by each province in co-operation and collaboration with some kind of national task team charged with aligning repeals and amendments. When each province passes its own law, national government should, through appropriate legislation, repeal and amend the corresponding national laws that apply in the province.

5.3 The scope and direction of provincial planning law

The Commission believes that each province should develop its own planning law, along the lines generally set out below, and appropriate to its own material situation, needs and capacities. The Commission recognises, however, that some provinces may experience great difficulty in doing so, and that the possible expense of repeating this endeavour could become wasteful. To assist in this matter, the Commission recommends that the national department responsible for spatial planning be required to provide assistance to all provinces requesting help in the development of their own planning law.

To date, three provinces (the Western Cape, Northern Cape and KwaZulu-Natal) have passed their own new development and planning legislation, and certain others are following. Each of the three laws broadly follow the approach to planning initiated in the DFA, but in differing ways. Ideally, the provincial laws should be prepared after the national framework has been developed so that broad consistency exists.

The new legislation in each province should encompass the issues set out below.

5.3.1 Principles

Provincial law should provide principles relating to land development and decision-making. These could either be the DFA principles or the DFA principles as amplified in provincial legislation (as KwaZulu-Natal has done). They could also be a new set of principles altogether, although they would need to be substantially similar to and compatible with the DFA principles, as the DFA principles would prevail in the event of a conflict.

5.3.2 Provincial commissions

The National Development and Planning Commission believes that provincial commissions should be established to monitor, and to assist, the creation and

implementation of the new planning and land management system. Provincial laws could give provincial commissions other functions such as:

- an advisory role to the MEC on planning-related matters;
- co-ordinating functions;
- technical, research or educative functions.

5.3.3 Spatial aspects of integrated development planning

Provincial planning laws must deal with the spatial aspect of integrated development planning in relation to both provincial and local authorities. The law should identify the minimum contents of these plans, in relation to the roles of provincial government, district, metropolitan and local councils. The focus in provincial laws on development and planning should be to give content and to regulate the spatial dimension of IDPs.

The provincial laws should deal with the status of the spatial dimension of IDPs and identify how these relate to and determine the adjudication of land development applications. In doing so it will be important that they retain the DFA's principle that these applications should be considered on the basis of policy and principle rather than rules and regulations alone.

Provincial laws should give clear guidance to local authorities regarding the spatial aspect of the planning requirements imposed by national sectoral laws. Local authorities have recently been required to prepare transportation plans and water plans, both of which have their own reporting routes. Provincial legislation should stipulate that one integrated development planning process which meets the different requirements of the various national sectoral laws should take place. Provincial laws should also give clarity to requirements to undertake integrated development planning in terms of national local government legislation. It should attempt to align the requirements of the spatial aspect of IDPs, which is their focus, with sectoral national legislation so that there is clarity of content and consistency of process between them.

As the final provincial law is passed, these laws should replace Chapter IV of the DFA which deals with the spatial aspect of IDPs referred to above. The effect of the provincial law reform process should be to replace historical planning instruments with the spatial integrated development plans.

5.3.4 Approval of plans

The provincial laws should deal with the role of the MEC in approving and supporting IDPs. The Commission supports an approval (mainly for alignment purposes), monitoring, co-ordination and support role for province in respect of local planning. The laws should spell out precisely how this should take place.

5.3.5 Land development procedures

Each provincial law should articulate how land development management should proceed. It should set out streamlined, efficient and clear land development procedures that should apply to the development of all land in the province. There should not be different systems and procedures for different areas, or different types of development. For instance the Less Formal Townships Development Act creates a system of land development that is primarily for low-income housing development, and does not allow for proper participation by interested parties. All

such acts should be repealed, and all developers wishing to make any change to land, or undertake a development, should be required to follow the same approval route as any other to develop land. Land development procedures must be transparent and allow for interested parties to object, make comments and be heard.

Land development procedures must set time limits within which public authorities must respond so that development is expedited. The law should also stipulate criteria for applications being heard in tribunals.

5.3.6 Status of spatial aspect of development plans in respect of land development applications

The bodies that make decisions regarding land development applications must be able to use the spatial aspect of IDPs as the framework and basis of decision-making. The regulations that define what should be contained in the spatial aspect of IDPs must therefore be clear and give local authorities guidance. This is similar to the way in which DFA tribunals are bound by LDOs when making decisions.

5.3.7 Management of land use change

Each provincial law should have sections that deal with the management of land at the level of individual erven by local authorities. The management of land complements land development. In other words, land development takes place in accordance with policy parameters that are set out in IDPs. Land use management systems must be aligned to such policies, and must be used in conjunction with them. Provincial legislation should also encompass the full range of land management instruments (for example, zoning, title deed restrictions, building regulations) within a single law.

5.3.8 Transition

Provincial laws should not only state how land should be managed, and how individuals should exercise their rights in accordance with the land use management system, but should also direct the transformation of existing land use management systems, such as town planning schemes and land use law (for example, zoning) under one piece of legislation. This requires adoption of a set of principles, for example:

- that transformation should aim to create one form of land use management in each municipal area;
- that land use management reform should aim at integrating each municipal area.

The law should create an imperative for reform to bring these areas into one broadly applicable land use system on an incremental basis.

5.3.9 Appeal bodies

Provincial laws should establish independent appeal tribunals or boards that have the final decision on appeals. These should comprise people selected for their technical and professional skills in areas relevant to land development. They should be appointed by the MEC for a fixed period, following a broad and transparent nomination and selection process.

6 HOW TO IMPLEMENT THE RECOMMENDATIONS

This Chapter proposes the means towards implementation of the recommendations made in Chapters 3, 4 and 5. In the process these recommendations are ordered into a number of themes and made somewhat more specific, in order to indicate how they may be implemented.

This Green Paper, produced by the Commission, is intended to form the basis for a Green Paper to be published by the Department of Land Affairs in mid-1999. Thereafter, it is the Commission's view that a period of discussion and debate should follow. To support that discussion and debate, it is envisaged that a variety of programmes – educational, informational and discursive – should take place. At the end of that period, and informed by the debate, it is anticipated that the Department will draft a White Paper on planning, for adoption by national government in March 2000. New national legislation would then follow the White Paper.

Meanwhile, it is anticipated that many of the provinces will continue to develop their own planning frameworks. The Commission believes that publication of the Green Paper will contribute to such developments. In the provinces in which planning legislation has not yet been developed, the Commission will be available to assist in the process over the next year.

Change in planning is ongoing. The Commission hopes that the national discussion which will be launched by the publication of the Green Paper will broaden and deepen understanding of the new planning paradigm introduced by the DFA, and accelerate the introduction of specific measures designed to take change in the planning system forward.

6.1 Common approach, vision, paradigm and terminology

Investigations by the Commission have revealed a spatial planning system which is fragmented, confused and devoid of a common vision and approach. It also faces severe structural problems in all spheres of government.

The Commission believes that the role of a reformed spatial planning system is of great importance to the country as it faces up to the challenge of restructuring the legacy of fragmented, inconvenient, frequently hostile, highly inefficient settlement forms in both urban and rural areas. The recommendations outlined in this Green Paper are aimed at reforming the spatial planning system.

The approach to change adopted in this document is incremental. The country has been through a period of radical restructuring over the past five years and a period of consolidation, while still managing meaningful change, is required.

It is recommended that the planning paradigm which was ushered in by the DFA in 1995, albeit imperfectly, should be the starting point of a reformed planning system. The paradigm has a number of characteristics:

- It gives national government the responsibility for developing and guiding the national approach to spatial planning; it gives provincial government the responsibility for developing the spatial framework within which local spatial planning and land development decision-making will occur; and it gives local authorities the responsibility of preparing and adopting their own plans and policies.
- It moves away from a control-dominated system to one which is based on overt normative principles and politically-approved policies and plans.
- It is primarily led through a strong linkage between public budgets and public plans.
- It establishes through law a national system of normative principles which must form the basis of all plan- and policy-making.
- It gives provincial ministries the ability to expand these principles to meet contextually-specific conditions.
- It places the principles central to, and therefore linking, both the proactive forward planning system and the land management development system.
- It clearly separates political decision-making, which relates to the formulation and approval of policies and plans, from administrative decisions relating to land development.
- It requires day-to-day decisions on land development proposals to be taken on objective technical grounds within the strong context of politically-approved policies and plans.
- It establishes a special system, including provincial tribunals, to speed up land development decision-making.
- It clearly separates the appeal process from political decision-making.

A number of specific proposals flow from this. Some of these are set out below.

6.1.1 The Act

The DFA needs to be substantially redrafted and made clearer:

- its principles should be re-orderered, reworded and expanded to make them clearer and more useful;
- it should include principles dealing with how land use management must be made compatible with the spatial dimension of integrated development planning;
- it should regulate only the spatial and land development aspects of policy planning;
- it should set out what the subject matter of the spatial and land aspect of integrated development plans should be in broad terms, so that provinces can take the provisions further in their own laws and regulations;
- it should provide that all primary local authorities, metropolitan councils, district councils and provinces should develop spatial policy plans as an aspect of their integrated development planning process;
- it should clarify the framework for land decision-making and provide for decisions to be taken at local government level by bodies made up of experts

and officials who should be bound to make decisions within politically approved policies and plans;

- it should stipulate that each province must create independent appeal tribunals that have the final decision on appeals from other land development decision-making bodies (with appeal to the courts as provided for in the existing Act).

6.1.2 Terminology

Terminological confusions relating to planning products and processes should be replaced by single terms: integrated development planning processes producing integrated development plans. These plans always have a spatial dimension.

6.1.3 Plan formulation

All spheres of government should be required to produce integrated development plans, the spatial component of which must translate the DFA principles into contextually-specific proposals and these plans should be closely tied to budgets. Plan formulation should occur on the basis of co-operative governance and, wherever appropriate, joint decision-making. The cutting edge of the public spatial planning system is seen to be local government.

6.1.4 The principles

The Commission found that the principles are not clearly or widely understood. To this end it proposes:

- That the principles in the DFA be reordered, reworded and expanded to make them clearer. Recommendations in this regard have been made to the Minister of Land Affairs.
- A major ongoing educational and communication programme will be launched by the Department of Land Affairs in conjunction with the Commission, about the meaning of the principles and how they can inform practice.

In this campaign:

- the Commission's resource document and manual on the Chapter 1 principles of the DFA will be widely circulated;
- a website will be used;
- electronic packages on the principles will be developed;
- television programmes may be developed;
- formal planning education institutions will be urged to include the principles in their curricula;
- a 'best practices' manual will be developed;
- workshops will be held for officials and decision-makers;
- a national conference will be held.

6.1.5 Monitoring

There should be ongoing monitoring of the DFA by the Department of Land Affairs. Proposals are set out in some detail in Section 3.7.1.6. They involve:

- a two yearly audit by the DLA;
- making it peremptory that records of reasons of decision making bodies be kept, to evaluate whether decisions were informed by DFA principles;
- making sure the South African Council of Town and Regional Planners reports every two years on progress being made by the profession to implement the principles;
- ensuring the Department of Constitutional Development, when monitoring local government, monitors the DFA principles and reporting on them;
- a unit in the Department of Land Affairs should monitor reports on the DFA principles and report regularly to the Minister of Land Affairs.

The Commission believes that most of these recommendations can be implemented immediately, although they may also imply legislative change in the medium term.

6.1.6 The DFA planning paradigm

It is also recommended that a similarly vigorous campaign to that described in relation to the DFA principles be launched regarding the DFA paradigm. As yet, no manual or publication has been prepared that sets out the basis of a normatively based planning system, the role of policy plans, and so on. The Commission, together with the Department of Land Affairs will prepare and undertake these activities as soon as possible, together with, or in parallel to, the campaign with respect to the principles.

6.2 Roles of spheres

International precedent shows that a key success factor in achieving positive planning is clarity on roles between spheres of government. The Green Paper makes specific recommendations regarding the roles of the spheres of government in Chapters 3 and 4.

A summary of the different roles is set out below following the recommendations of Chapter 3, with suggestions on measures towards implementation.

6.2.1 National government

The role of national government should be to:

- establish an enabling legislative framework – the national discussion on the Green Paper during 1999 should inform the drafting of a White Paper from which the necessary legislative changes should flow;
- establish norms and standards – the development of appropriate national norms and standards for planning should proceed immediately, for inclusion in national legislation following the adoption of the White Paper in 2000;

- co-ordinate spatial decisions of different departments – this role should be adopted by a single department. The Commission recommends the Department of Land Affairs as the most appropriate organ for this;
- provide support and advice by extending the capacity of the DLA to advise provinces and where appropriate other actors in further development of the planning system – the Commission will be able to assist over the next year with this role;
- play a monitoring role – the DLA can immediately begin to extend its monitoring role with respect in particular to the application of the principles of the DFA;
- overtly assess the spatial implications of national policies in terms of the DFA principles.

6.2.2 Provincial governments

Provincial governments can play an immediate further role in the development of the planning system through the following:

- developing the means to monitor the application of the principles of the DFA within the framework developed by DLA nationally;
- further developing their abilities to co-ordinate of their major line function activities;
- continue the preparation of planning and development laws and the means for their implementation, or (with the support of DLA and the Commission where necessary) initiate the research and drafting necessary to commence or develop the legislative process;
- develop the means to provide planning support to local government, and find the means to co-ordinate the potential impacts of local government plans;
- prepare a provincial spatial plan as a means to assisting in co-ordinating the spatial impacts of the activities of provincial departments and of local governments;
- appoint provincial commissions to advise and assist in entrenching a more effective spatial planning system.

6.2.3 Local government

In a context in which local governments are devoting increasing attention to integrated development planning, the Commission believes that they can immediately engage in:

- preparing spatial plans as part of IDP process;
- ensuring that decisions regarding land development applications are informed by the DFA principles with support from national government and the Commission's campaign on the DFA principles;
- ensuring development applications are processed quickly;
- continuing to, or beginning to, prepare and administer fair and equitable land management systems in place of the inequitable systems of the past, ensuring

as they do so that the development of new national and provincial law is taken into account;

- continuing to identify needs through participatory planning;
- co-ordinating their planning with neighbouring local authorities within developing provincial contexts.

6.2.4 Further action on planning roles of the spheres of government

- The constitutional position about the roles of the spheres of government should be interpreted and popularised. All role players should be aware of the basic roles given to their spheres by the Constitution. This awareness should be enhanced by other laws that define roles.
- Specific suggestions regarding the roles of spheres made in the Green Paper should be tested in workshops and discussions during the comment period, firmed up and set out in publications that will become more widely distributed. The Commission believes that this role could best be given to the Commission itself, supported by the national department in which the spatial planning function resides.

6.3 Co-ordination and integration

International precedent suggests that a key success factor in achieving successful planning is co-ordination and integration between and within spheres of government:

- a single home – at a national level, there should be a common home for spatial planning. It is recommended that this should be the Department of Land Affairs. At provincial and local levels spatial planning departments should have direct access to the executive head of government;
- approval by larger-scale authorities of smaller scale plans – this is necessary but should not take the form of the superimposition of the will of larger authorities over smaller ones. The primary purpose of the approval process is alignment;
- facilitating information flow between spheres – the Department of Land Affairs should convene a co-ordinating committee of MECs and national ministers (Minmec) involving all spheres of government. Attendance should be compulsory. The agenda should be aimed at promoting the cause of better spatial planning; and the committee should report directly to Cabinet;
- co-operative and joint decision-making between spheres – this should be promoted to the greatest degree possible;
- aligning spatial planning and budgeting;
- promoting inter-sectoral decision-making within spheres;
- the establishment of procedures to facilitate information sharing between line function structures;
- appropriately defining the location of responsibility for spatial planning within government spheres;

- streamlining and co-ordinating planning time frames between sectors;
- standardising spatial units for sectoral information collection;
- linking integrated development plans to budgets;
- developing inter-sectoral planning processes.
- expanding national planning norms;
- the selective use of joint management approaches.

6.4 Capacity

The Green Paper makes a number of recommendations regarding capacity, which it identifies as a major problem. The issue of inadequate capacity has both quantitative and qualitative dimensions and relates to officials, private practitioners and decision-makers.

Recommendations include:

- national assistance to provinces in drafting enabling legislation and repealing inappropriate legislation;
- a nationally co-ordinated comprehensive education campaign around the DFA principles and paradigm;
- the use of joint management approaches, involving collaboration between officials in particular areas. In the short term this is particularly important at a district council level;
- achieving focus – MECs should be asked to assess capacity in rural council and small municipality areas as a matter of urgency and make proposals to improve the capacity which exists. If necessary, planning responsibility for these areas should be assigned to district councils and capacity support provided;
- the review of educational and training courses in planning in order to achieve greater clarity about roles and curricula. The Department of Land Affairs should promote a national education planning conference to spearhead this;
- the vigorous promotion of mid-career education;
- further investigation into the logistics of a system of internship for newly-qualified planners, working under supervision, in under-capacitated areas;
- allowing local authorities which are unable to process the demand for approvals being made upon them to reduce their loads by removing legal impediments.

The Commission urges local authorities to consider adopting the following measures:

- delegating approval authority to professionals in the field of the built environment in relation to certain land use changes, if these fall within existing regulations. In cases of fraud or negligence, professionals should assume liability;
- automatically approving all changes which do not have large settlement impacts and which have written approval of neighbours;

- enabling civic organisations to apply for certification to approve applications if there are no objections on the basis of decision-making expertise amongst members;
- building alterations within private buildings could be exempt from public approval, if there is professional certification that they do not represent health or fire threats. Full approval processes could then be reserved for buildings used more broadly by the public (shops, offices, factories, community facilities and so on).

6.5 Speeding up development processes

- The system of provincial tribunals introduced by the DFA, as well as the extraordinary powers given to them, should be retained but criteria for the projects which are entitled to follow this route should be identified in provincial legislation.
- Improving the capacity of local authorities (outlined in Section 6.4)
- Establishing single approval routes, covering all the nationally-mandated processes, at local authority level
- Adopting a sequential system of approvals and introducing a more negotiated style of approval once approvals in principles have been established.
- Within approval stages, treating approvals as part of the process, only calling for technical inputs from developers as and when required.

6.6 Improving the land development management system

- All authorities must accept the principle that the same protection of law should apply to all land owners and occupiers within their area of jurisdiction, even if this cannot be achieved in the short term. In the short term, any person who feels that his or her rights have been infringed by a land development should be entitled to appeal to the relevant authority and to be given a ruling.
- Policy and plan formulation and approval should be the responsibility of elected representatives. Day-to-day land development decisions should be taken on technical grounds by officials and other technical people.
- Appeals should be heard and resolved by an independent panel of people selected for their technical expertise after a broad and transparent technical process. Each provinces should appoint an appeal tribunal or board.
- A legal investigation into finding ways of removing historically awarded rights which patently do not accord with the proposals and spirit of IDPs without compensation should be initiated by the Department of Land Affairs.

6.7 Legal and procedural certainty

The main thrust of the Green Paper's recommendations regarding legal reform revolves around creating ten acts that deal with planning and development. These should be the DFA and nine provincial laws. The DFA should essentially set national norms and standards, policies and frameworks, and the provincial laws should deal with details.

The DFA should do the following, leading up to and following the proposed White Paper on Planning:

- set out national principles for land development, decision-making and transformation of land use management systems;
- set out the framework for policy-based planning. This should involve setting out the requirement for local authorities to undertake policy planning and to prepare IDPs. It should set out the minimum content of the spatial element of IDPs. It should provide for the status of the spatial elements of IDPs. This requires re-writing Chapter IV of the existing DFA;
- set out broad principles and norms and standards that should guide provinces in relation to land development management. The provincial tribunals should be retained only to allow a special route to development where it is necessary to override laws;
- set out guidelines on decision-making stipulating that this should be depoliticised;
- require that independent appeal bodies be set up in the provinces.

The Green Paper proposes that the task of reformulating the DFA should be undertaken by the Department of Land Affairs. The Commission will assist in this task to the extent that it is called upon to do so.

The Green Paper makes recommendations regarding what should be covered in the provincial laws. The issues are:

- principles;
- integrated development planning at provincial, district, metropolitan and local council scale, and in particular the spatial components of such development planning;
- the status of IDPs in relation to land development decision making;
- the subject matter of the spatial dimension of IDPs;
- the role of the MEC in approving the spatial element of local government IDPs;
- public participation in setting the spatial dimension of IDPs;
- co-ordination of local IDPs and provincial spatial development plans;
- how local authorities should meet the requirements of national departments stipulations regarding spatial plans;
- land development procedures;
- decision-making;

- land development management. Here provinces should adhere to national principles regarding the reform of land use management systems to ensure an outcome of integration and equity;
- appeals;
- repeals.

Where provinces request assistance with the task of this legislative reform, the Commission will assist.

6.8 Summary of the Commission's future role

In summary, it is proposed that the Development and Planning Commission should:

- be extended until March 2000, but in a scaled-down form;
- provide assistance to provincial governments in the writing of their own new planning law, if requested to do so;
- with the assistance of the Department of Land Affairs, conduct a campaign to popularise the paradigm and principles introduced in planning generally, and spatial planning in particular, by the DFA, and support the development of capacity to undertake appropriate planning (for example in district councils),
- convene a national workshop on planning education, where issues of curricula and the relationship between educational and training institutions are resolved and an educational strategy developed;
- assist in the process of facilitating national debate around the Green Paper to transform it into a Department of Land Affairs Green Paper and then into a White Paper;
- assist the Department of Land Affairs to make the necessary amendments to the DFA.

GLOSSARY

CIU	Co-ordination and Implementation Unit in the Office of the Executive Deputy President
DFA	Development Facilitation Act no. 67 of 1995
DLA	Department of Land Affairs
DPC	National Development and Planning Commission
EIA	Environmental impact assessment
FEPD	Forum for Effective Planning and Development
IDP	Integrated development plan
LDO	Land development objective in terms of the Development Facilitation Act no. 67 of 1995
Local authority	A synonym of municipality and local government
Local government	A synonym of municipality and local authority
MEC	Member of the Executive Council – the provincial equivalent of a Cabinet minister
MTEF	The Medium Term Expenditure Framework which requires the formulation of departmental budgets on a rolling three-year basis
Municipality	A synonym of local authority and local government
NGO	Non-governmental organisation
Normative	Based on principles and policies, not on standardised rules and regulations
PGDS	Provincial growth and development strategy
R188	Proclamation R188 of 1969 in terms of the Bantu Administration Act no. 38 of 1927.
R293	Proclamation R293 of 1962 in terms of the Bantu Trust and Land Act no. 18 of 1936 and the Bantu Administration Act no. 38 of 1927.
SALGA	South African Local Government Association
SDI	Spatial development initiative
Spatial planning	The organisation of space, rather than land planning which sought to plan all land parcels comprehensively
TBVC	Transkei, Bophuthatswana, Venda and Ciskei

REFERENCES

Black Communities Development Act no. 4 of 1984.

Constitution of the Republic of South Africa. Act no. 108 of 1996.

Development Facilitation Act no. 67 of 1995.

Environmental Conservation Act no. 73 of 1989.

Housing Act no. 107 of 1997.

KwaZulu-Natal Planning and Development Act no. 5 of 1998

Less Formal Township Establishment Act no. 113 of 1991.

Local Government Transition Act no. 200 of 1993.

Local Government: Municipal Structures Act no. 117 of 1998.

National Environmental and Management Act no. 107 of 1998.

Physical Planning Act no. 104 of 1991.

Proclamation R188 of 1969 in terms of the Bantu Administration Act no. 38 of 1927.

Proclamation R293 of 1962 in terms of the Bantu Trust and Land Act no. 18 of 1936 and the Bantu Administration Act no. 38 of 1927.

Removal of Restrictions Act no. 84 of 1967.

Rural Development Framework. 1997. Pretoria: Rural Development Task Team & Department of Land Affairs.

Subdivision of Agricultural Land Act no. 70 of 1970

Urban Development Framework. 1995. Pretoria: Department of Housing.

Water Services Act no. 108 of 1997.

White Paper on Local Government. Government Gazette 18739, 13 March 1998. Pretoria: Department of Constitutional Development.

White Paper on South Africa Land Policy. 1997. Pretoria: Department of Land Affairs.

APPENDIX: DEVELOPMENT AND PLANNING COMMISSION MEMBERS

Current members

Chairperson: Ms PB Yako

Vice-chairperson: Prof A Mabin

Mrs DM Balatseng

Mr RG Barry

Prof D Dewar

Ms EA Emdon

Mr JE Greig

Mr PG Grobler

Mr J Latsky

Mr OS Lebese

Dr NP Makgalamele

Ms S Mayet

Mr MR Mogale

Ms G Moloi

Mr DW Perkins

Mr M Ralekhetho

Prof DP Smit

Mr HJ Smith

Ms J Strelitz

Ms K van Deventer

Mr JGM van Straten

Ms VN Vedalankar

Ms J Yawitch

Previous members

Mr IM Jonker (September 1997–March 1998)

Mr DP Msibi (September 1997–January 1999)

Mr JM Rantete (September 1997–November 1998)

Mr T Tolmay (March 1998–January 1999)

APPENDIX: SELECTIVE LIST OF COMMISSION DOCUMENTS

Commission documents on the DFA Chapter 1 principles

These documents are produced by the Principles Task Group.

1. *A resource document relating to the Chapter One Principles of the DFA 1995* by David Dewar. DPC document 19/98.
   (Drafted by Prof David Dewar and amended by him taking Principles Task Group and Commission responses into account. Adopted as a Commission position, used as the basis for a plain language Manual and a simpler version of the Resource Document.)
2. *Report on the DFA Chapter 1 Principles* by Lauren Royston, January 1998. DPC document 4/98.
   (A report consolidating Commission workshop outcomes, used as input to the Resource Document.)
3. *The Chapter 1 principles: practical experiences* by Les Oakenfull, June 1998. DPC document 67/98.
   (Consultant's report, amended on the basis of Principle Task Group input, used by the Commission in drafting the Green Paper and the Resource Document.)
4. *Resource document on the Chapter 1 principles of the Development Facilitation Act 1995*, edited by Stephen Heyns, February 1999. DPC document 27/99.
   (An edited and simplified version of the Resource Document.)
5. *A manual on the Chapter 1 Principles of the Development Facilitation Act, 1995* by Stephen Heyns, February 1999. DPC document 28/99.
   (A plain language guide to the DFA principles.)

Commission documents on municipal planning

These are mostly products of the Local Government Task Group.

1. *Discussion document on IDPs and LDOs for the preparation of DPC opinion* by Lauren Royston, April 1998. DPC document 23/98.
   (Consultant's contribution for discussion.)
2. *A discussion document on municipal planning* by Josh Nkosi, SJN Consultants, August 1998. DPC document:48/98.
   (Consultant's report, amended on the basis of comments received, distributed to facilitation consultants and used as an input to the Green Paper.)

3. Reports on the local government workshops held in the nine provinces by the five facilitation consultants, August–September 1998.
(Consultants' reports on outcomes of local government workshops in the provinces, used as base information for the consolidation report and input to the Green Paper.)

4. *Synthesis report on municipal planning* by Amanda Younge, October 1998. DPC document 82/98.
(Consultant's report synthesising workshop results and proposing content for the municipal planning sections of the Green Paper.)

5. *The content of local plans* by Dave Dewar and Dan Smit, January 1999. DPC document 3/99.
(Commissioners' contribution to the municipal planning content of the Green Paper)

Commission documents on provincial planning

These documents are products of the Provincial Government Task Group.

1. *Summary of opinion: DFA powers of provinces regarding planning and development legislation and constitutionality of Section 4(2)(b)* by Erica Emdon, September 1998. DPC document 69/98.
(Commissioner's summary of legal opinion, to assist the Commission's response to the two issues.)

2. *Analysis of planning bills and acts* by Erica Emdon, October/November 1998. DPC document 103/98.
(Commissioner's report to assist in drafting the Green Paper)

3. Two reports on broad strategic provincial planning by Gemey Abrahams and Cecil Madell, September/October 1998. DPC documents 83/98 and 84/98.

4. *An investigation and evaluation of the development tribunals Parts 1 and 2* by Les Oakenfull. DPC document 127/98.
(Consultant's report, information for the Green Paper.)

Commission documents on national planning

These are products of the Green Paper Task Group.

1. *Discursive report on submissions by national departments to the DPC hearings* by Mark Oranje, August 1998. DPC document: 48/98.
(Consultant's report – a consolidation of information gleaned from the national hearings process used as input to the Green Paper.)

2. *Analytical report on issues identified through engagement with national government departments which must be addressed in the Green Paper* by Alan Mabin, August 1998. DPC document 61/98.
(Commissioner's report which analyses information for the Green Paper.)

NATIONAL DEVELOPMENT AND PLANNING COMMISSION GREEN PAPER ON DEVELOPMENT AND PLANNING

Specific, issue-based documents

These documents were requested to assist the Green Paper process by providing information on a particular issue. They comprise research reports, memoranda and notes.

1. *Issues paper on the role of traditional leaders in land development decisions* by McIntosh Xaba and Associates, October 1998. DPC document 81/98.
2. *Designing planning systems: notes from international precedent* by the Palmer Development Group, October 1998. DPC document 102/97.
3. *Memorandum on land use management* by Alan Mabin, August 1998. DPC document 88/98.
4. *Draft report on experiences with land use management* by Josh Nkosi, January 1999. DPC document 11/99.
5. *The Moving South Africa project strategy with reference to land use and land management issues* by Lize Coetzee, Department of Transport, November 1998. DPC document 101/98.
6. *Private sector participation in strategic land planning and associated processes* by the South African Property Owners' Association, November 1998. DPC document 107/98.

Commission communication and consultation reports

1. *Report on submissions received in response to the Commission: the advertisement and requests* by Alan Mabin, September 1998. DPC document 80/98.
   (Report compiled to communicate submissions on planning, used in the Green Paper process.)

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