

City of Cape Town

INCLUSIONARY HOUSING:

Concept document

Executive Summary

The national Spatial and Land Use Management Act (SPLUMA) introduced several sweeping changes to local government. It required that our professionals within the administration make planning decisions that consider, amongst others, the principle of spatial justice, and the need for inclusionary development.

One mechanism to meeting this inclusionary requirement is inclusionary housing. This is used in many developed countries, requiring large new developments to make some contribution to the provision of affordable housing, usually in cases where developers are applying for additional rights.

The value and desire for additional bulk are often realised because of public investment in key parts of the City has increased the demand for development in some neighbourhoods – the redevelopment of Greenpoint Common or the introduction of MyCiTi to neighbourhoods for example. Inclusionary housing is a way for the public to recover some of their own investment through sharing in the additional value that has been created for the surrounding properties.

As there are no prescribed mechanisms for the implementation of inclusionary housing in South Africa, the City has been engaging with key stakeholders to discuss this topic in reaching consensus on the way forward.

In this process, we have been guided by the best international expertise from the Lincoln Institute of Land Policy, a think tank of senior economists and planners based in the USA that advise cities and countries globally on key planning, finance and land use planning challenges. Councillor Brett Herron, the Mayco member for Transport and Urban Development, was also invited as one of three non-US city representatives to attend their advisory meeting and, since this time, Cape Town has benefitted from this international expertise and guidance made possible through a series of sponsored engagements and dialogues with their experts, local developers, City officials and national treasury representatives.

Through this process the City developed this concept document on possible mechanisms for inclusionary housing in Cape Town. We have adopted this approach because (1) the City is committed to work together our partners - industry leaders, NGOs and international experts – to ensure we develop a practicable policy, and (2) it is faster and more collaborative approach in that we can engage key stakeholders earlier in the process and, through a more consultative engagement approach, we can work towards developing an acceptable draft policy more efficiently than the traditional policy development processes.

Our concept document largely proposes that, if a developer applies for additional rights, and these are approved in terms of the relevant planning processes, then some of this

additional value granted could possibly be required to be shared through inclusion of affordable housing. This may be in form of either:

- **On-site** inclusion of affordable housing within market related development;
- **Off-site** development of affordable housing in a nearby or suitably designated site; or
- As a contribution of **fees in lieu** of one of the above options that must then be invested with a social housing or other affordable housing development.

These concepts, aligned with international best practice, are part of this concept document. It is proposed that inclusionary housing (on-site, off-site or fees in lieu) would be mandatory in key areas of the city – delineated by an inclusionary housing overlay zone – and voluntary in other areas of the city.

Our team is now embarking on a process of direct engagements with industry and civic bodies, following which we will proceed with wider public engagement on the concept document.

Through this process, we expect to develop a draft policy that is workable and is largely endorsed by all stakeholder groups.

In line with the requirements of the Spatial Planning and Land Use Management Act (SPLUMA) and our own promise to build integrated communities, we seek to achieve a feasible and financially viable Inclusionary Housing policy.

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INTRODUCTION

A long-standing concern for the City of Cape Town in the post-apartheid era has been the provision of affordable housing in well-located areas. This challenge has been further exacerbated by rapid urbanisation, population growth, and a consistently high unemployment rate, which has placed strain on the government subsidised housing programmes that currently exist. Simultaneously, the stock of affordable housing in the property market has decreased over time, due to the appreciation of property values. This has left many households in the lower and lower-middle income groups in a precarious position, with many unable to afford the increased property prices and associated rental increases.

In response to this trend, the City of Cape Town initiated research into inclusionary housing as a mechanism to stimulate an increase in stock of affordable housing within the City.

PURPOSE OF THE DOCUMENT

This Discussion Document outlines the key considerations the City of Cape Town will take into account when developing an Inclusionary Housing Policy. The document is informed by international best practice research and has been situated in the local South African, and more specifically Cape Town context.

This document aims to serve as a starting point for a process of engagement both internally and externally on the how Inclusionary Housing would potentially be implemented within the City of Cape Town, before the official policy development process starts. It is envisaged that insight gained from the stakeholder consultation processes will inform the Inclusionary Housing Policy.

CONTEXT

Despite the considerable investment in the creation of housing opportunities through numerous government programmes, there is still a significant housing need across the country – a trend which is also reflected in the Cape Town housing backlog. Currently there are over 358 000 persons who have registered their need for housing on the City's housing database. Many of the government subsidised housing opportunities have been developed on cheaper land parcels, mainly outside of the urban core, further exacerbating apartheid spatial divides. Concerns have also been expressed by the National Treasury and National Department of Human Settlements that the government subsidised housing programme is not financially sustainable in the long term and that alternative interventions should be explored.

The Cape Town housing market has consistently performed the best in the country, in terms of growth of property value. With these increasing property values, "affordable properties are appreciating out of the lower-value segments", but the supply of additional housing within the affordable segment of the market has not kept up with demand. A Centre for Affordable Housing Finance in Africa report shows that in the six years between 2010 and 2015, the "number of properties in the affordable market have effectively decreased, while the number of properties valued above R1.2 million have increased"¹. This has placed

¹ 'Cape Town's Residential Property Market: Size, Activity, Performance', Centre for Affordable Housing Finance in Africa, February 2018 <https://housingfinanceafrica.org/app/uploads/Cape-Town-Residential-Property-Market-FINAL-REPORT-Feb-2018-2.pdf>

significant strain on the lower- and middle-income residents who find it increasingly difficult to purchase or rent affordable, well-located properties.

As a result of the above trends, it has become apparent that there is a need for creative solutions from the City of Cape Town, to leverage its position as a planning and land use management regulator and land owner, to enable the development of affordable housing by the private sector. It is recognised that housing challenges cannot be addressed by the public sector alone, and thus inclusionary housing prompts the private development sector to extend its role in catering to an affordable housing market.

LAND VALUE SHARING

At the heart of an inclusionary housing policy, lies the concept of 'land value sharing'. Land value sharing acknowledges that the value of privately held land increases as a result of public investments in infrastructure, publicly approved changes in land use, or broader changes in the community. As a result of this, land owners/holders benefit from an increase in value of their property despite no personal investment being made. This includes locational aspects like proximity to public transport (MyCity bus route in Cape Town), schools, and public facilities (the promenade along Sea Point) for example. It can also include approvals for increased density during development application processes.

Inclusionary housing within the context of land value sharing is a mechanism to share the value for land owners created by changes in land use, for public good purposes – in this case the development of affordable housing.

REGULATORY CONTEXT

The ideal sphere of government for the development of an Inclusionary Housing policy is at the City/municipal level, because inclusionary housing relies on local land use planning processes to leverage the production of affordable housing units. This policy intervention is also significantly linked to the performance of local land and property markets, which means that local governments are ideally suited to understand and respond to local conditions to incentivise the production of affordable housing by the private sector.

While there is no national or provincial Inclusionary Housing policy to guide the City in its policy-making process, there are sufficient legislative and policy enablers for the City of Cape Town to develop an Inclusionary Housing policy. The following legislation, policies, and strategic plans all have a direct bearing on the development of an Inclusionary Housing policy:

- Constitution of the Republic of South Africa

Section 26(2) of the Constitution of the Republic of South Africa, 1996, Act 108 of 1996 (the Constitution) states that:

- Everyone has the right to have access to adequate housing
- The state must take reasonable legislative and other measures within its available resources, to achieve the progressive realisation of this right

This suggests that all spheres of government have a shared responsibility to proactively realise the right to housing for all citizens. This includes local government using its responsibility as a land use regulator to incentivise affordable housing development.

- National Development Plan

Chapter 8 of the National Development Plan (NDP) refers to “Transforming human settlements and the national space economy”. This chapter embeds spatial justice as a key concept for future policy, and proposes the development of an Inclusionary Housing Policy that “incentivises property developers to include a level of affordable housing in their developments”. The NDP therefore specifically references to need to create an Inclusionary Housing Policy.

- Spatial Planning and Land Use Management Act

The Spatial Planning and Land Management Act (SPLUMA) embeds the principles of Spatial Transformation, Spatial justice, Spatial sustainability, Efficiency, Spatial resilience, and Good administration in planning and land use decision-making and implementation.

Furthermore, Section 24 of SPLUMA specifically states that land use schemes must “include provisions to promote the inclusion of affordable housing in residential land development”. The requirement for spatial transformation and justice, as well as the direct reference to the need for land use schemes to promote affordable housing provide the City with the legal impetus to develop an Inclusionary Housing Policy.

- Integrated Urban Development Framework

Policy Lever 3 in the IUDF talks to Integrated Sustainable Human Settlements, and states that an Inclusionary Housing Policy should be developed that “incentivizes property developers to include a level of affordable housing in their developments”.

- Integrated Development Plan

The objectives in the City of Cape Town's IDP align with the intended outcome of Inclusionary Housing. The IDP aims to provide: Excellence in basic service delivery; dense and transit oriented growth and development; building integrated communities; as well as operational sustainability. This speaks directly to the principles of inclusionary housing.

- Transit-Oriented Development Strategic Framework

The TOD Strategic Framework outlines a desired outcome of a future City spatial form that is “compact, well-connected, efficient, resilient and conducive to economic efficiency and equality whilst providing cost effective access and mobility with the least possible environmental impact”.

Inclusionary Housing is one of the mechanisms for leveraging private sector investment to achieve this vision.

- Municipal Spatial Development Framework

The recently passed MSDF highlights the following spatial vision for Cape Town: “*The City is intent on building – in collective partnership with the private and public sector - a more inclusive, integrated and vibrant city that addresses the legacies of apartheid, rectifies existing imbalances in the distribution of different types of residential development, and avoids the creation of new structural imbalances in*

the delivery of services. Key to achieving this spatial transformation is transit-oriented development (TOD) and associated densification and diversification of land uses.”

DEFINING INCLUSIONARY HOUSING

Inclusionary housing is a land value sharing mechanism where a City or municipality incentivises the development of affordable housing by requiring developers to reserve a certain percentage of housing units in their market-rate development for low- or moderate-income households or through other means—such as paying a fee in lieu of such development, or developing affordable units in an off-site location.

Rick Jacobus from the Lincoln Institute of Land Policy in the United States of America defines inclusionary housing as “a range of local policies that tap the economic gains from rising real estate values to create affordable housing – tying the creation of homes for low-or moderate-income households to the construction of market-rate residential or commercial development” (Jacobus, 2015:7). Inclusionary housing policies are more specifically “local land use policies that link approvals for market-rate housing to the creation of affordable homes for low- and moderate-income households” (Hickey, Sturtevant, Thaden, 2014). The planning system of a City is therefore central to the effectiveness of inclusionary housing policies, as it provides the framework through which inclusionary housing is facilitated by the regulation of the development of land by private entities.

International inclusionary housing policies have two main goals: firstly, the expansion of the supply of affordable housing; and secondly, the promotion of social and economic integration. These two goals reflect the two significant challenges that Cape Town, and South Africa faces with regards to human settlements – increasing the supply of affordable housing in a context of high unemployment and inequality, and overcoming the social and spatial divides of apartheid through the creation of integrated communities. Case studies from the United States established that inclusionary housing policies ‘locate affordable housing in low-poverty, high-opportunity neighbourhoods more effectively than any other affordable housing programme’ (Hickey, Sturtevant, Thaden, 2014: 5).

International literature shows that inclusionary housing was originally a tool to provide affordable housing and to create mixed-income communities in suburban areas, but later it was also adopted in urban areas where redevelopment, infill and densification and often gentrification took place. Inclusionary housing was therefore a significant, locally based component of an overarching strategy in which the state and private sector has a role to play to create affordable housing to encourage integration.

Proposed City of Cape Town definition: “Inclusionary housing uses the City's development application process for new residential (and at times commercial developments) to incentivise the construction of housing units that are affordable to low-middle income households”.

KEY PRINCIPLES

The City of Cape Town is aware that the implementation of inclusionary housing will not solve the overall housing crises within the City. There are numerous government subsidised housing programmes (as stipulated in the National Housing Code, 2009) that form the basis of the City's housing implementation strategy. However, what the City of Cape Town aims to achieve with the implementation of inclusionary housing is embedded in the following principles:

- Land value sharing to more fairly distribute the benefits of urbanisation within the context of trends within a post-apartheid property market in Cape Town.
- Inclusionary Housing serves as an additional mechanism to provide more well-located, affordable housing in the property market². This will provide an additional avenue for persons to access the property market by incentivising the development of housing products for essentially the lower-middle income households within the City;
- Affordable housing developed as a result of an Inclusionary Housing Policy needs to be well-located and aligned to the City's TOD Strategic Framework and the Municipal Spatial Development Framework (MSDF), as well as in areas with sufficient access to public education, health, and social facilities;
- Inclusionary housing needs to contribute towards the density objectives of the City's TOD Strategic Framework and MSDF;
- Affordable housing created by the Inclusionary Housing Policy should be affordable in perpetuity;
- Through incentivising the development of well-located affordable housing, it aims to create more integrated and inclusive neighbourhoods thereby redressing spatial inequalities caused by apartheid spatial planning;
- Inclusionary housing must promote a partnership approach between the public and private sector towards the development of affordable housing. It is important that inclusionary housing does not act as a disincentive for the private sector to invest in residential (or commercial) development, but it is essential that the public good benefit from value created through local planning and land use incentives is shared.

Inclusionary Housing Outcome:

Inclusionary housing in the context of Cape Town must result in the development of housing that is affordable to lower, and lower middle income households, is well-located, ideally meets the density requirements of the City, and should be affordable in perpetuity.

INCLUSIONARY HOUSING IMPLEMENTATION

The land use management system of the City has the key role of regulating the development of land, and is central to the effectiveness of inclusionary housing implementation. International research and best practice shows that inclusionary housing policies are most effective in strong residential land markets, where residential developments are likely to elicit more value. Inclusionary housing is thus a mechanism to capture the value of this land market.

One of the key choices to make regarding the implementation of inclusionary housing is whether the development of affordable units by the private sector is mandatory, voluntary,

² Research shows that 4000-5000 formal market houses are developed in the City per annum. Some 50% of these are estimated to be single residential units. Therefore, approximately 2500 higher density units may be 'available' for inclusionary housing interventions. Realistically this would only result in the creation of a couple of hundred affordable units each year. (McGaffin: 2018)

or targeted, and whether the programme should accept fees in lieu of developing affordable units, or not.

Mandatory Approach:

The mandatory application of inclusionary housing means that the developer is automatically required to include a proportion of affordable housing units as part of any of their developments. The municipality therefore only grants approval for the development if the developers build a proportion of affordable units.

Voluntary Approach:

Some inclusionary housing programmes take a voluntary approach to implementation, thus requiring affordable housing units only when developers choose to utilise incentives provided by the municipality. Such incentives could include flexible development standards or planning bonuses i.e. density bonuses.

The development of affordable housing units is therefore not compulsory and is based on willing partners that strike a mutually beneficial arrangement which will result in the delivery of affordable housing.

Targeted Approach:

Inclusionary housing programmes can be designed to only apply to targeted areas within a municipality where, for example, zoning has been changed to encourage higher-density development or where there is a strong housing market. The targeted approach is also usually linked to areas earmarked for urban infill development and transit-oriented development.

Inclusionary zoning is a powerful tool utilised to enable the targeted approach. Inclusionary zoning combines housing policy and land-use planning approvals to incentivise private-market development of below market-rate rental and/or ownership housing.

Taking the above mentioned approaches into consideration the initial question for the implementation of inclusionary housing in the City of Cape Town is what factors should trigger inclusionary housing requirements within land use management? The follow up question to this is what determines the contribution toward affordable housing by the developer?

The following implementation options have been identified for the City of Cape Town:

Inclusionary Housing Triggers:

- 1) Voluntary approach: all new developments (residential & possibly commercial) that request extra development rights from the City within their development application across the City;
- 2) Mandatory approach: all new developments are required to contribute a proportion of affordable housing. Up-zoning of development rights can apply within these areas in order to increase the potential value of developments;

- 3) Targeted approach: The inclusionary housing requirement will be mandatory within an inclusionary housing overlay zone where there is automatic up-zoning of development rights, in order to create more value. This suggests that certain rights and incentives will be given within these overlay zones, but in exchange for the provision of affordable housing. A voluntary approach to inclusionary housing can be taken in other areas of the City (outside of the overlay zone), where developers request significant additional bulk rights which will trigger certain incentives and the provision of affordable housing (see below for locational aspects).

Affordable Housing Contribution:

- 1) Set amount: a proportion of the extra development rights granted by the municipality must be set aside as the contribution towards affordable housing (e.g. 30% of bulk departure); OR
- 2) Negotiated: each application is considered on a case-by-case basis, with negotiations taking place based on a standard pro forma (formula) submitted by the developer. This pro forma should take into account the differing land values in each area, as this is a significant cost driver. This pro forma should be able to calculate affordable housing contributions for on-site, off-site, and fees in lieu.

Suggested approach:

- **Targeted approach: mandatory inclusionary housing in an inclusionary housing overlay zone, and voluntary inclusionary housing in other areas across the City.**
- **The affordable housing contribution should be negotiated on a case-by-case basis, based on a formula which take into account the residual land value and development cost.**

Implementing Method, Typology, and Tenure of Affordable Housing Contribution:

The City's Transit Oriented Development (TOD) Strategic Framework requires that certain residential density objectives be met across the City. This means that the affordable housing contributions should ideally be developed in the form of high-rise (multistorey) or three/four-storey walk-up apartments.

It is proposed that there should be three options for the method of affordable housing contribution namely on-site, off-site, and fees in lieu. Within the location parameters that will be defined below, developers have **the choice** as to the option of their contribution towards affordable housing.

On-site contribution: the affordable units are built on-site as part of the market related development i.e. in the same building or on the same land parcel.

Off-site contribution: the affordable units are built off-site (not part of the market related development) on well-located land³ in areas identified by the City. The units can be built on city-owned land, or on land owned by private developers. This method will be advisable for market related developments that are not that well-located, thus capturing the value of the development by re-directing it to a well-located site.

³ Well-located land in this context refers to areas within 500m of a Transit Accessible Precinct, as well as in areas with sufficient public education, health, and social facilities. Specific areas will be spatially identified by the City as being appropriate for off-site inclusionary housing.

Fees in lieu: contribution of the affordable housing units in the form of a cash contribution which is ring-fenced into a municipal fund dedicated to the building of affordable housing by the City. This can either go towards ensuring the financial sustainability of social housing developments, or towards planned off-site development of affordable housing by the City via existing national housing programmes.

The principle approaches in terms of tenure that will be taken for each of the methods are as follows:

- a) If the contribution is on-site, the tenure of the unit should be in line with the tenure of the rest of the market related development.
- b) If the contribution is off-site, then the tenure can be rental or ownership.
- c) The contribution of fees in lieu could go towards leveraging other government subsidized programmes. It is likely that this would focus on rental, however further consideration needs to be given to the use of fees in lieu.

The value of the contribution should be based on a sliding scale to essentially incentivise the provision of affordable housing on-site, thus creating economically integrated buildings in well-located areas. This suggests that there will be a lower contribution required for on-site development of affordable housing units (taking into account the opportunity cost for developers of having vertical integration of affordable housing), an increased value for off-site developments, and the highest contribution value should be given to the fees in lieu option. This sliding scale should be calculated as part of the pro forma (formula) at the pre-development application stage.

The affordable housing units should be integrated into the projects and blend in with the surrounding building. This implies that as far as possible the architectural styles should be similar i.e. tenure blind from the outside, but the interior may differ to enable affordability. Municipalities may specify requirement and standards for these units within their policies and by-laws which could potentially regulate the number of bedrooms, size of units, location of affordable units on a site or within a building or the exterior access to the units. The building standards will still have to apply with NHBRC (National Housing Building Regulatory Council) requirements, but should otherwise not be too stringent, thus allowing the developer to be creative in their execution of inclusionary housing.

Location of Inclusionary Housing:

The Inclusionary Housing Overlay Zone must be determined by an economic analysis to establish the strength of the local land market. Areas with appropriately strong residential land markets will be designated as Inclusionary Housing Overlay Zones.

The way in which inclusionary housing will be triggered across the City aligns with the Municipal Spatial Development Framework in the following ways:

Developments in Inclusionary Housing Overlay Zone: triggered automatically - affordable housing component can be developed on-site, or off-site in the Inclusionary Housing Overlay Zone, or fees in lieu can apply.

Developments in the Urban Inner Core (but outside of Inclusionary Housing Overlay Zone): triggered with asking for additional bulk rights – affordable housing component can be developed on-site, or off-site in Urban Inner Core, or fees in lieu can apply.

Developments in Incremental Growth Areas: triggered when asking for additional bulk rights - affordable housing components must be development off-site within Urban Inner Core, or fees in lieu can apply.

Discouraged Growth Areas: trigger is for any development application for this area – mandatory requirement to contribute to off-site affordable housing in the Urban Inner Core, or fees in lieu. The affordable housing contribution should be highest in this area. This can act as another disincentive towards development in the Discouraged Growth Area.

Affordability:

The definition of affordability within the context of inclusionary housing relates to the profile of the end-user, the housing product type, affordability and availability of financing, as well as the requirement upon the state to use its available resources to progressively realise the right to housing. The definition of affordability should also be informed by the international standard that households should not spend more than 30% (a third) of their income of housing.

Internationally inclusionary housing policies usually refer to affordability as being aligned with a proportion of an areas' median income and below. It is therefore imperative that targeted income groups are based on a proper analysis of income levels across areas. Generally, inclusionary housing programmes tend to serve low-and moderate-income households i.e. those who earn between 60 and 120 percent of the local median income – 60% being the recommended percentage (Jacobus, 2015: 25). In Australia and the United States of America, households below the median household income or households with a monthly income below 50%-80% of the area's median household income are targeted.

The term 'affordable housing' in the local context has traditionally been used to describe the "GAP market". The "GAP market" refers to persons/households who earn in excess of R3 500 monthly household income and can therefore not qualify for a full government housing subsidy, but earn too little to qualify for a mortgage loan to purchase a property. The government ceiling for the "GAP market" is R15 000 monthly household income, while the Financial Sector Charter defines affordable housing as having a threshold of R22 000 monthly household income a month.

Despite the latter definition of affordable housing within the context of the government subsidy regime, it could also be argued that affordable housing should be defined in terms of the realities of the residential property market in different sub-areas of the City.

There is therefore a choice between three approaches to affordability thresholds:

1) Standard definitions of affordability across the City:

This would be defined as a monthly household income of R20 000 and below. This must take into account that housing should not be more than 30% of households' costs. This would mean that rental must not exceed R6 000 per month, and units for ownership must not exceed R600 000. This also aligns with the market realities across the City, as reflected in a study conducted by the Centre for Affordable Housing Finance in Africa which stated that the affordable housing bracket, as defined by properties between R300 000 to R600 000 only accounted for 17% of properties in Cape Town⁴ - the lowest number in a category of housing products. This suggests that affordability is based on household income and housing product price. Having a standard definition of affordability also ensures that the policy benefits those whose housing need is greatest.

⁴ Centre for Affordable Housing Finance in Africa, "Cape Town's Residential Property Market: Size, Activity, Performance", February 2018

2) Differentiated definition of affordability across the City (per sub- area):

International best practice in inclusionary housing generally defines affordability differentially, according to sub-areas of the City. Affordable housing in the context of inclusionary housing in Cape Town could be defined as a proportion of the sub-area median income and below or calculated based on average property value per suburb. This approach takes the context of the area into account, and is more aligned to the cost drivers of development although it might not fully address the principle of integrated communities.

3) Location-driven affordability

Affordability could align with the method of the affordable housing contribution. If a development is on-site, a differentiated definition of affordability according to a proportion of sub-area median income and below or a proportion of the average property value, could apply. If the contribution is off-site or fees in lieu, this could go towards households earning R20 000 and less (standard definition).

Affordability Preservation:

Preserving long-term affordability of units produced by inclusionary housing programmes is key to ensuring that lower- and lower-middle income families and individuals are able to benefit from the policy over a significant period of time.

The municipality must therefore set requirements to ensure that units provided through inclusionary housing are maintained as affordable over time. Housing experts argue that ensuring permanent affordability: “assures the highest return on public investment in affordable housing; helps meet the growing affordability challenge facing households; and provides a mechanism by which affordable housing remains affordable when market pressures are increasingly likely to remove them from the affordable housing stock” (Hickey, Sturtevant, Thaden, 2014: 7).

Furthermore, ensuring affordability in perpetuity is key to meeting the spatial transformation agenda of the City. It is suggested that affordable units created by inclusionary housing developments be maintained so in perpetuity. Mechanisms for maintaining affordability in perpetuity are as follow:

Ownership units:

Title deed restrictions are suggested for sale units. Increase in the value of the units should be pegged to the Consumer Price Index (CPI), to ensure that home-owners benefit from price appreciation, while protecting against unaffordable escalation of house prices. Each affordable ownership unit needs to be registered with the City, and approval on resale prices of units needs to be sought from the City before such transaction takes place. Resale should only be to pre-approved buyers that meet the City’s affordability criteria.

Rental units:

Rental is the favoured tenure type for the inclusionary housing policy, as it is much more effective in maintaining long-term affordability. Rental units should be managed by a rental agency or a social housing institution (SHI). Annual increases in rental prices should be aligned to increases in social housing rental prices. Each affordable rental unit needs to be registered with the City, and approval of new tenants should meet the City’s affordability

criteria in the case of rental agency management, or should meet the affordability criteria of the social housing institution in the case of SHI management.

Other affordability mechanisms to be investigated:

- Deeds of Trust: Legal right to the property is transferred to the municipality at point of sale, which holds it as security for the 'debt' that is owed by the inclusionary homebuyer for receiving the property at below market rate. This improves notification of potential illegal resales and improper financing or second loans.
- Pre-emptive Right of Purchase at Resale: By exercising the right to purchase homes at resale, programmes gained greater control and oversight over the resale process by inserting themselves in the chain of sale, or instance to ensure that resale went to a pre-approved pool of eligible households. This also allows a new updated deed covenant to be placed on the inclusionary unit.
- Pre-emptive Right to Cure a Foreclosure/Purchase a Home that has Entered Foreclosure: The jurisdiction has the right to cure first mortgage delinquencies on behalf of the homeowners and the right to purchase homes from the leading institution in the event of foreclosure.
- Participating lender agreements: Participants must seek mortgage loans only from designated lenders.
- Resale formulas: Seek to balance two goals – allowing the homeowner to benefit from some price appreciation in order to accumulate wealth, and keeping resale prices affordable for subsequent low- and moderate-income buyers. A popular approach is to set the resale price equal to the original affordable purchase price plus a set rate of appreciation tied to changes in area median income or the consumer price index.

Allocation:

The broad principle for dealing with allocation is whoever takes development or marketing risk for inclusionary housing may control the allocation of units to the end-users.

The allocation process of affordable housing units in inclusionary housing developments will be different for rental or ownership units. It will also differ depending on whether the developer will do the allocation, or if the City is involved in the allocation process.

One suggestion is that the City oversees the creation and monitoring of a pool of eligible households, and that households in this pool are able to apply to purchase or rent units in inclusionary housing developments. Another suggestion is that the developer manages this process themselves as part of their normal sales or rental process if it is an on-site development of affordable housing. The former might be more effective in ensuring that households with appropriate income levels apply. Creating a pool of eligible applicants will also make resale or rental easier in the long term.

INCENTIVES

The City does not want inclusionary housing to have the perverse outcome of disincentivising residential housing development in Cape Town. As such, incentives are key to ensuring that the affordable housing contribution is not an undue burden, but rather a more accurate reflection of land value sharing principles.

International best practice shows that offering developers density bonuses or proactive up-zoning, as well as the fast-tracking of development management approvals processes are the two most effective incentives in the context of inclusionary housing.

- Density bonus: Most common form of planning incentive given in inclusionary housing programmes. Allows private developers to provide units in addition to the prescribed land use density.
- Fast-tracking of approval processes by a dedicated project team: This saves time & money. Projects that meet the mandate of the City are “put to the top of the pile” & dealt with by a specialised project team in the pre-application phase. The project team should include a spatial planner, development management, urban design, housing representative which can mitigate the objections and fast track the approval process. Creating an Inclusionary Housing Overlay Zone will also act to speed up the development application process, as it will reduce the appeals process.

Other incentives that can be offered to reduce development costs:

Parking requirements: reducing parking requirements per residential unit, particularly in areas close to public transport routes.

Comprehensive permit: introduce a single comprehensive permit for inclusionary housing programmes - trigger a streamlined review process that also automatically overrides certain local zoning bylaws.

Bulk services contribution: Decrease the monthly bulk services contributions payable by developers for inclusionary housing projects. The more affordable units, the greater the proportionate decreases in bulk services contributions. Provision of services amounts to approximately 29% of overall cost of unit.

Connection time: Decreasing the time it takes to connect a development to bulk services infrastructure. When connection is fast-tracked then there is faster returns on investment can be generated by the developer.

Bulk services infrastructure payment “holiday”: Private developers must pay an initial connection fee as well as a monthly contribution after (to be connected to bulk infrastructure). Delaying bulk payment helps curve the initial expenses of the developer. And an advantage is that municipalities still receive a financial contribution, albeit delayed.

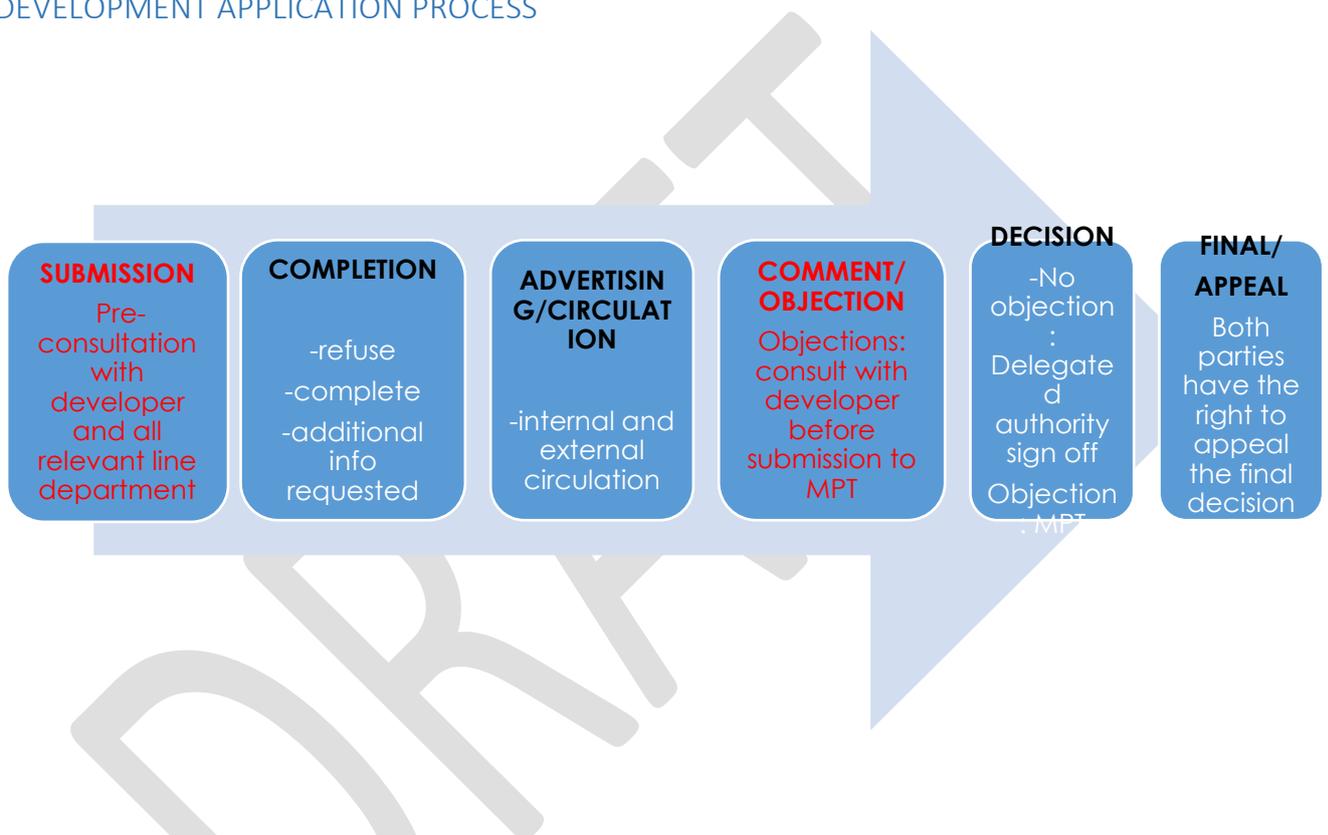
Municipal rates: Consider reducing rates and taxes payable by households living in inclusionary housing.

Lending rates: Establish a relationship between financial institutions & private developers to ensure favourable lending rates to developers providing inclusionary housing. Could be

piloted through a specific project that has both the private developer and financial institution on board.

Alternative Development Standards: Are flexible planning and engineering standards that provide a range of alternatives to the current standards used for design and construction. This can include categories such as planning standards (i.e. reduced setbacks, narrower lot sizes) and engineering standards (i.e. reduced road allowance and on-street parking). Applying alternative development standards can result in a net cost reduction per dwelling unit due to the lower construction costs and more efficient use of land.

DEVELOPMENT APPLICATION PROCESS



Key stages of the Development Applications process for inclusionary housing

- 1) **Pre-consultation phase:** pre-consultation guidelines for inclusionary housing should be created for developers to ensure that their development application complies with the inclusionary housing requirements if applicable. Their development application should include reference to their inclusionary housing contribution amongst others. This process needs to be transparent, easy to comply with, and time sensitive.
- 2) **Comments/Objections phase:** need to ensure that the comments/objections follow through with inclusionary housing requirements.

INSTITUTIONAL REQUIREMENTS

Role and Responsibilities:

Development Management Department

- Key responsibility for negotiating with developer
- Negotiating parameters needs to be informed by Guidelines for pre-consultation
- Should ensure that agreements made in pre-consultation phase are upheld throughout the development applications process

Possible Project Team

- Development management, spatial planner, urban design, housing representative
- Provide advice during pre-consultation meeting, and ensure that inclusionary housing requirements are followed through, with final approval depending on the delivery of the affordable units

Municipal Planning Tribunal

- Make decision based on Inclusionary Housing Guidelines

LEGAL AND INSTITUTIONAL CHALLENGES

On-site option:

Sectional title related to the for sale units: how will levies impact on affordability, and how should this be managed?

The management of affordable rental units: will rental agencies manage this according to the affordability thresholds set by the City?

Off-site:

Section 100 (1) of Municipal Planning By-Law & LUPA (provincial legislation) will both have to be amended.

Municipal Asset Transfer Regulations – requires a competitive tender process for developing city-owned land.

Project packaging capacity – need pipeline of land ready for development. This has significant implications for the City's internal capacity to project package land.

Complexities around how to manage and streamline development when a developers' contribution only takes up part of an identified site.

Fees in lieu:

Can this ring-fenced fund operate outside of a budget cycle process to allow for flexible use of funds as and when projects are conceptualized?

Financial modelling:

A financial model to calculate the value of affordable housing contribution is being developed.

Institutional requirements:

This policy will have implications for the City's institutional structure. Further work is needed on roles and responsibilities in implementing this Policy.

PHASED-IN APPROACH

It is likely that this policy will have to be phased-in, as the legal and institutional challenges highlighted above are systematically dealt with.

The initial inclusionary housing overlay zone will require amendments to the municipal planning by-law. The area of the inclusionary housing overlay zone will be determined by an economic analysis of the strength of the residential land market still to be conducted.

The inclusionary housing overlay zone will create value through up-zoning above the existing rights.

Fees in lieu will be implemented as the first mechanism that would contribute towards affordable housing. The value of this contribution will be calculated through a financial model/pro forma.

Fees in lieu can be used to improve the financial sustainability of well-located social housing projects; towards other government housing programmes; or towards affordability preservation. Further work on the role of the ring-fenced affordable housing fund will be completed.

The legal, management and institutional challenges around on-site and off-site affordable housing contributions developments will be pro-actively resolved and phased in to the policy.

BIBLIOGRAPHY

Centre for Affordable Housing Finance in Africa, 'Cape Town's Residential Property Market: Size, Activity, Performance', February 2018

Hickey,R, Sturtevant, L, Thaden, E.2014.*Achieving Lasting Affordability through Inclusionary Housing*.Working Paper. Cambridge, MA: Lincoln Institute of Land Policy.

Jacobus, R. 2015. *Inclusionary Housing: Creating and Maintaining Equitable Communities*.Cambridge. Lincoln Institute of Land Policy.

McGaffin, R. 'Housing in Cape Town in 2018: A Draft Discussion Document', Urban Real Estate Unit, University of Cape Town