



## **RESPONSE TO DRAFT**

### **WESTERN CAPE INCLUSIONARY HOUSING POLICY FRAMEWORK – JULY 2021**

#### **1. Background and Context to comment**

The Western Cape Property Development Forum (WCPDF) is a non-profit organisation acting on behalf of the fixed capital investment industry in the Western Cape. Its constituents include private sector property developers, built environment professionals, civil and building contractors, and a wide variety of other interested parties associated with the fixed capital investment industry.

The WCPDF is a unique entity in that it represents interest groups across the full production cycle of fixed capital investment projects from concept to completion. At a national level, the WCPDF is a founding member of Construction Alliance South Africa (CASA), the largest umbrella organization in the built environment in South Africa.

The WCPDF has a long track record of engaging constructively with the theme of Inclusionary Housing having, inter alia, participated and hosted several events on the topic. These engagements included participation in roundtable discussions with various role players as well as hosting an industry event on the topic on 20 September 2018 at the River Club. In addition, the WCPDF has facilitated engagement with international experts hosted by the Development Action Group (DAG) as well as providing specialist panels for engagement with the City of Cape Town during its drafting of the CoCT Inclusionary Housing Policy. To date, the inputs and practical considerations raised by industry have either not been understood or have fallen on deaf ears.

Although the bulk of the comments contained in this document have been tabled at the various engagements listed, we now find it opportune to formally document the WCPDF's position on this topic.

We record the fact that the WCPDF does not oppose the principle of the need to facilitate access to well-located accommodation for people active in the economy. The WCPDF however opposes the principle that the private sector should be taxed with the task of providing inclusionary housing when all three spheres of government have failed to transform South African cities, have failed to release well-located urban land for inclusionary housing, and have fundamentally failed in facilitating new economic nodes in previously disadvantaged areas.

Unless all three spheres of government acknowledge their respective failures and unless government leads the way in releasing well-located urban land, the intention and content of a policy framework of this nature cannot be taken seriously. The fact that a topic of this magnitude is addressed in isolation and not in an integrated holistic strategy confirms the intent of government to shift its social and constitutional obligations onto the private sector.

The following support our conclusions.

## 2. South Africa as a mixed economy and the role of the private sector

Although many would aspire to a free market economy, the reality is that South Africa is a mixed economy in which there is a substantial private freedom within the context of centralised economic planning and government regulation. The concept of centralised planning and regulation stems, in part, from the need to address historical injustices and social and physical segregation, the intent described in the Constitution (1996).

It is therefore expected that Government would express an opinion on actions required to address historic wrongs and to intervene in the physical realities caused by our past. Not least, one would expect Government to lead the process of actively working towards the removal of physical and social barriers that create separation and remove opportunity.

Unfortunately, very little has been done by the various spheres of government to address historic injustices when it comes to the physical planning and urban quality of South African cities, other than in the provision of basic services and mass housing. The Western Cape Government should however receive acknowledgement for the eventual release of the Conradie Hospital project.

The need for the drafting of the subject policy framework is a direct acknowledgement that the Western Cape Province and various Municipalities in the Western Cape have to date not been able to deal effectively with the legacies of apartheid planning.

At the outset of this comment, it must be acknowledged that the reason for the formulation of this policy framework is due to the ongoing activism of organisations such as Ndifuna Ukwazi and GroundUp who have very successfully launched a Western Cape and Cape Town focused media and activism campaign on the topic. It is fair to argue that the draft policy, which is the subject of this comment, is a reaction to a media campaign rather than one of a Provincial Government having taken the proactive lead in responding to the goals and aims of the Constitution.

Having acknowledged the effective role of these activist organisations, it is necessary to place on record the position that the WCPDF has held throughout the various engagements with these organisations and in engagements with both the Western Cape Provincial Government and the City of Cape Town:

- 2.1 The development and building industries represent one of the largest employment sectors. Construction is not only the quickest way of getting employment activated, but also the easiest and most efficient way of getting money to some of the poorest communities in the country.
- 2.2 This sector, and by implication its beneficiaries, suffer under ever increasing legislation and volumes of policy and regulations generated by all spheres of government, resulting in a direct inflationary impact on the end users of our products.
- 2.3 This sector further suffers directly under the inefficiencies in government which, on the one hand, is incapable of proactively creating infrastructure capacities while on the other suffers from its inability to process the plethora of statutory applications preceding any fixed capital investment.
- 2.4 The private sector has and continues to explore the market opportunity of entry-level housing where land and production costs allow and where market take up either exists or is projected to exist.
- 2.5 In instances where the private sector has attempted to introduce inclusionary housing certain projects have been subject to political veto. Any policy framework such the that being proposed needs to reflect both political and private sector buy-in if it has any chance of having any real impact.

- 2.6 The introduction of inclusionary housing-related offsets on new development, as proposed by this policy framework, is nothing other than an additional tax on the end users of newly created product, whether it be on products to be sold or leased into the market. The developer is an intermediary who, although initially taxed, passes on all additional costs including surcharges to the end market.
- 2.7 Inclusionary housing looks to the developer to undertake government's responsibly on its behalf: i.e. identifying and providing development opportunity, running the gauntlet of the statutory application processes, sourcing the development capital, providing the development and construction production management, and ultimately carrying the development risk.
- 2.8 Rather than imposing a development tax, government should formally procure the skills and resources that the private sector can and will provide, should it be approached on reasonable market-related terms.
- 2.9 The WCPDF is not averse to the concept of inclusionary housing and sees this sector as a growing and potentially profitable sectors that deserves attention as a new addition to our industry sector. The WCPDF is however concerned that government's approach to this new property category is not considered in detail and does not appreciate the impact that the proposed tax will have, both in terms of development viability.
- 2.10 The limited number of inclusionary housing units, at a disproportionate amount of resource requirement from both public and private sector to produce and manage these limited number of units, confirms the activism underpinning this policy. If the time and cost investment to date by government was directed to the release of government-owned urban land for housing delivery, an exponentially big impact could already have been achieved towards urban housing delivery.
- 2.11 The WCPDF supports the principle that government should lead through example in delivery of well-located land prior to imposing an additional development tax on the private sector.

### **3. Inclusionary housing: Urban context and the tacit acknowledgement of failure by Government**

Urban gentrification, affordability and urban demise is the story of urbanization throughout the history of mankind. The cycle repeats itself following economic cycles and changes in technology. The debate on providing affordable well-located housing is not new and will not be resolved any time soon.

The lens through which one reads the current debate on the need for inclusionary housing is however tainted by the history of South Africa, the impact of Apartheid urban planning, the selective geographic capital investment of the past and the general inability of government to change urban segregation since 1994.

The ever-growing public sector wage bill, the growth in the amount of legislation and regulation, and the drop in capital investment over the last number of years tells the story of a government that has been unable to deal with grassroots changes. Red tape supersedes the importance of delivery. Although this general statement relates to South Africa as a whole, the draft Policy Framework produced by the Western Cape Government forces one to interrogate the Western Cape and the Cape Town specific context, the later being home to approximately 75% of the Western Cape economy and approximately two-thirds of the provincial population.

Land use patterns have not changed substantially over the last 27 years. The economic profiles of residential communities have, in large, maintained their respective functions in the urban economy. Poor communities have remained poor and affluent communities have become richer. Income disparity has grown, thus introducing the need for inclusionary housing.

Looking at people movement, it is fair to argue that nothing has changed in terms of destinations and general movement of people. What has changed is the demise of a once-effective public transport system, built

along the apartheid planning corridors, and the replacement of bus and train networks by an effective private sector taxi industry. Yet the nature and origin of poor communities remains as is.

The WCPDF does not dispute the fact that urban form in the Western Cape has not changed to reflect to the ideals of the Constitution. We do however ask what has government done in the last 27 years to change the status quo? How much government-owned land has been released in existing economic nodes for the delivery of inclusionary housing? How has government performed in managing its existing housing stock?

The answers to these questions should provide the context within which the Provincial Government purports to want to partner with the private sector to address the need of inclusionary housing by proposing incentives.

The partnership being offered by the Western Cape Government is the promise that processes governing the property development industry will be improved and become efficient. The mere fact that such a promise is tabled is an acknowledgement that government processes currently undermine investment. Anything but efficiency is a direct self-criticism. To offer efficiency in lieu of an additional tax is absurd, to say the least.

#### **4. Need for holistic approach to facilitating private sector participation**

The concept of inclusionary housing is one of many tools that need to be combined into a holistic policy. Such a policy should firstly address the need for economic growth and the active utilisation of government resources to remove investment obstacles and proactive infrastructure investment.

With this, there should be the direction of existing resources to address the growth vision, which should include the facilitation of, inter alia, inclusionary housing. To do this, government should identify all its own well-located land that is prime for housing development.

Government should understand the unique characteristics that the private sector has to offer innovation, delivery emphasis in lieu of profits, access to capital and managerial skills. Government should seek to co-opt these private sector skills and resources to fill the gap left by government's own nature and characteristics.

Only when government understand the contribution and qualities of the private sector can it start to consider the roles and responsibilities of a partnership relationship.

The point of departure of this policy framework is however the concept of land value capture, whereby government is the owner of development rights on behalf of society and can, at price, release such rights to the private sector failing which the private sector will not be allowed to develop.

The concept of land value capture is as old as urbanization. Municipal government dictates who may develop what and where in lieu of ad infinitum rates and taxes income. The concept of urban land market values is directly linked to the supply/demand relationship which only government can release. Arguably, the property values in the Western Cape are the product of a fine-tuned urban land release strategy which guarantees healthy price escalations, not least to local government in the form of rates and taxes.

Irrespective of the social arguments for and against inclusionary housing, the policy framework appears to not have dealt with the strategic source of government revenue, nor has it expressed itself on the strategic reinvestment of this revenue to address historic wrongs.

Lastly, the policy does not appear to have considered most of the urban population who have no wish to relocate - to leave behind social and cultural networks, friends, family and business associates - in searching better-located inclusionary housing opportunities.

The need to create efficient linkages between communities and to decant opportunity from well-located to less well-located areas does not see the light of day in all of this. For these reasons alone it is argued that the proposed Inclusionary Housing Framework continues the tradition of dealing with issues in silos and further enables not having to address the complexities of urban eco systems.

## 5. Intention of Draft Policy

It is argued that the intention of the draft policy framework is to provide context within which municipalities should draft their own respective inclusionary housing policies. It leapfrogs to the conclusions that the logical funding model is that of land value capture as the method of carrying the cost of inclusionary housing.

For some reason, the policy framework elects to ignore the most important point, that local authorities should undertake introspection, question whether their own systems and policies are delivering equitable urbanity and seek to find routes of optimisation to release scarce resources for the purpose of, inter alia, providing inclusionary housing.

It further assumes that society, or at least the immediate open-market tenant or purchaser, can subsidise the proposed surcharge in lieu of development opportunity. It ignores the fact that any additional surcharge facilitates further exclusivity, knowing that a smaller section of the market will be able to pay the additional cost.

Noting that any private sector will only be able to carry the cost of a small number of inclusionary housing units, it should be acknowledged that this policy is not intent to address the mass housing crisis. The miniscule contribution that this policy framework will generate in new housing opportunities speaks to the fact that, at best, this policy will lead to lip service or political window dressing.

## 6. Concept of tax vs selling of development rights

The draft policy framework spends some time arguing that the concept of land value capture is not a tax. To assist in clarifying this point, the definition of tax is noted to be the following:

*"A tax is a compulsory financial charge, or some other type of levy imposed on a taxpayer by a governmental organization in order to fund government spending and various public expenditures."* Wikipedia

*"Tax is a compulsory contribution to state revenue, levied by the government on worker's income and business profits, or added to the cost of some goods, services and transactions."* Google Dictionary

The concept of land value capture is, by implication, transactional in nature. A charge is levied in lieu of a privilege granted to a developer to undertake its business activities.

There can be no doubt that the proposed use of land value capture is a form of levy charged to the developer. There can also be no doubt that this levy is raised to address government's constitutional obligation, i.e. the addressing of historic wrongs and the delivery of housing.

Either the levy constitutes a sales transaction by which a developer and, by implication, its end users pay for the development rights, or alternatively it is a tax on the business activity of the developer.

Noting that SPLUMA does not allow the sale of development rights, we give the benefit of the doubt to the drafters that it is not their intention to equate land value capture as a sales transaction. The only alternative description for the concept of land value capture can therefore be that it is a taxation of property development.

Noting that a developer will pass on all taxes to the end users, the proposed land value capture methodology is therefore not dissimilar to the concept of value-added tax.

We call on the drafters of this policy framework to acknowledge that the proposed policy framework is, by implication, promoting the raising of additional taxes on the end users of residential property development products.

## **7. Proposed alternative focus in redrafting the policy framework**

The argument presented leads one to conclude that a fundamental redraft of the policy framework is required. The following structure and areas of focus are proposed:

- 7.1 Acknowledge the failure of government to address social integration.
- 7.2 Acknowledge government's lack of socially integrated housing stock.
- 7.3 Acknowledge government's inability to manage its own housing stock on an ongoing basis.
- 7.4 Understand the private sector in term of its attributes, its abilities and the risk context which it can or cannot tolerate.
- 7.5 Co-opt the private sector into a partnership to strategize a viable and feasible policy framework.
- 7.6 Recognise the need for socially integrated housing stock for the following purposes:
  - 7.6.1 Create economic opportunity for all.
  - 7.6.2 Recognise the need to break down anonymity between various groupings in South Africa.
  - 7.6.3 Identify the opportunities that complex urban societies offer to all role players.
  - 7.6.4 Recognise the need of employers to have strategic staff living close to their place of opportunity and define the possible role of employers in the provision of inclusionary housing.
  - 7.6.5 Recognise the sharing of resources such as education, social facilities, and business networks, and what new opportunities such networks can provide.
- 7.7 In context of the previous points, consider resources currently available prior to attempting to tax the private sector:
  - 7.7.1 Identify and release underutilised public sector land for inclusionary housing.
  - 7.7.2 Package public sector land and release this to the private sector to develop for inclusionary housing.
  - 7.7.3 Optimise government resources in the form of public-sector salaries and wages and redirect underspent capital budget savings towards inclusionary housing.
  - 7.7.4 Optimize existing statutory processes to facilitate higher levels of private sector investment, thereby generating more income in rates and taxes which in turn can be utilised for inclusionary

housing. Once a process of optimisation has been concluded, a phased approach to the provision of inclusionary housing should be implemented:

7.7.4.1 **Phase One:** Lead by example. Develop state-owned land directly or in partnership with the private sector.

7.7.4.2 **Phase Two:** Explore relationships between employer and employee. The opportunity exists for employers to engage on behalf of employees and to provide bridging funding or surety for employees to enter the formal housing sector. In this instance, the use of well-located public-sector land at subsidised rates is critical.

7.7.4.3 **Phase Three:** Incentivise the private sector to also provide inclusionary housing through tax rebates and financial incentives.

7.7.4.4 **Phase Four:** Tax the private sector only as a last resort.

## 8. Conclusion and way forward

This comment has illustrated how the Western Cape Inclusionary Housing Framework Draft has not explored the practical impacts that a broad-brush stroke approach will have on the property market. It has also not considered a constructive and phased approach whereby government can create confidence by leading by example. It has elected to look outwards to the private sector before spending sufficient time doing introspection on its own failures, on the one hand, the optimisation of resources already available.

The draft policy has, under the provocation of various activist groups, elected to focus on the concept of land value capture and to resultant taxation of property development.

The policy has not acknowledged the failure of government to address the required social restructuring envisaged in the Constitution.

The policy framework has not unpacked the real attributes that the private sector naturally brings to the table, nor has it elected to collaborate with the private sector in drafting the policy framework.

The WCPDF repeats its position that it is not opposed to the concept of inclusionary housing. It is fundamentally opposed the concept of taxation when alternative funding options are patently clear.

It also questions the Provincial Government's intention of disguising the need to fix existing inefficient processes and costly delays under the guise of incentivisation.

The WCPDF remains committed to the concept of inclusionary housing and repeats its offer to work with government to identify and strategize on methods by which quality and effective inclusionary housing can be delivered. This will however require a fundamental mind shift on the part of all parties and will require innovative thinking.

We trust that the comments made will be given due consideration. We look forward to the collaborate drafting of a new draft policy framework.

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**Chairperson: WCPDF**

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