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### Acronyms and Definitions

#### ACRONYMS

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<tr>
<td>CAHF</td>
<td>Centre for Affordable Housing Finance</td>
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<tr>
<td>DEA&amp;DP</td>
<td>Department of Environmental Affairs &amp; Development Planning</td>
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<tr>
<td>FLISP</td>
<td>Finance-linked Individual Subsidy Programme</td>
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<td>IDP</td>
<td>Integrated Development Plan</td>
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<td>IH</td>
<td>Inclusionary Housing</td>
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<td>IUDF</td>
<td>Integrated Urban Development Framework</td>
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<tr>
<td>NHRA</td>
<td>National Heritage Resources Act 25 of 1999</td>
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<td>LUPA</td>
<td>Western Cape Land Use Planning Act 3 of 2014</td>
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<td>MPBL</td>
<td>Municipal Planning By-Law</td>
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<td>MSDF</td>
<td>Municipal Spatial Development Framework</td>
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<td>NEMA</td>
<td>National Environmental Management Act 107 of 1998</td>
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<td>PHSHDA</td>
<td>Priority Human Settlement Housing Development Area</td>
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<td>SHI</td>
<td>Social Housing Institution</td>
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<td>SHRA</td>
<td>Social Housing Regulatory Authority</td>
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<tr>
<td>SPLUMA</td>
<td>Spatial Planning and Land Use Management Act No 16 of 2013</td>
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<td>WCG</td>
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#### DEFINITIONS

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<tr>
<th>Term</th>
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<tr>
<td>Affordable Housing</td>
<td>National Government determines that the affordable or “gap” market refers to housing targeted at households earning less than R22,000pm. Affordability can fluctuate dependent on the context (place) in which housing is available (City of Cape Town, 2020) and time (i.e., depending on the supply of housing and the cost).</td>
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<td>Density bonus</td>
<td>Density bonuses are a zoning tool that allows developers to increase height and/or bulk in a project by allowing building heights or Floor Area Ratios greater than the zoned maximum, in exchange for a public or a social good. This tool is used primarily for projects that include the development of housing units. The added density is intended to compensate the developer with additional revenue from the construction of additional dwellings. This recognises the added costs of development or differences in profit margins between market rate units and the inclusion of below-market units or unprofitable amenities. The result is development that provides additional density and public benefits without direct public funding. (Cities Support Programme, 2017).</td>
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<td>Gap Market/ Housing</td>
<td>That portion of the market that (as a household) earns too much to qualify for grant housing assistance (currently &gt; R20k per month) however too little to be able to afford a bond on an available open market unit. This also includes households whose credit worthiness is too poor to qualify for a bond, although partial state assistance may be available.</td>
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<td>Definitions</td>
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<td><strong>Housing/ property ladder</strong></td>
<td>The progressive stages of securing housing. This encompasses moving from informal to formal housing, and within the formal realm, from renting to owning and from owning a small house or flat to owning a larger property.</td>
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<td><strong>Hurdle rate</strong></td>
<td>The minimum acceptable rate of return on a project or investment required by an investor – it describes the appropriate level of compensation for the risk present (Kenton, 2020).</td>
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<td><strong>Key workers</strong></td>
<td>An employee who provides a vital service, typically in the police, health and education sectors (Oxford Languages, 2021).</td>
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<td><strong>Land market</strong></td>
<td>Land markets exist when and wherever it is possible to exchange rights in land for agreed amounts of money or services rendered. The ability and capacity of banks and other financial institutions to lend money is underpinned by an efficient land market, which in turn requires an efficient land administration system (Mahoney, Dale, &amp; McLaren, 2007).</td>
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<td><strong>Land use rights</strong></td>
<td>‘Land use’ means the purpose for which land is or may be used lawfully in terms of the development management scheme.</td>
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<td><strong>Open Market housing</strong></td>
<td>Housing sold or rented on the open market (willing buyer and seller).</td>
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<td><strong>Mixed-market housing</strong></td>
<td>Development projects catering to mixed income groups. Typically, this refers to affordable housing and open market housing developed in partnership between a private sector and affordable housing developer on public land. Government housing, land and infrastructure subsidies are typically used in these developments.</td>
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<td><strong>Mixed-use</strong></td>
<td>Land use where compatible uses are permitted on the same site or in the same building, such as commercial, retail, office and residential.</td>
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<td><strong>Overlay zone</strong></td>
<td>A zoning, in addition to the base zoning, stipulating the purposes for which land may be used and the development rule which may be more or less restrictive than the base zoning (City of Cape Town, 2015).</td>
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<td><strong>Planning Permissions</strong></td>
<td>Authorisations given in response to applications made to municipalities and the provincial government to develop land.</td>
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<td><strong>Residual land value</strong></td>
<td>The development approach to valuation (also known as the residual land value method) is recognised to varying degrees as an acceptable method for valuing properties. The main purpose of this method is to value the potential of land in the absence of comparable sales. In other words, to consider the development that could be developed on a property, and thereby consider the eventual value after the development has been completed. By deducting the cost of such a development, the remaining (or residual) amount is the amount that a developer would be prepared to pay for such a property in order to obtain the development potential. It is therefore the increase in residual land value as a result of increased land use rights, amongst other factors mentioned above, that should be apportioned in favour of inclusionary housing.</td>
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<td><strong>Set-aside requirement</strong></td>
<td>How many inclusionary units or the value of inclusionary housing that must be provided in a development according to the size of the development or in relation to the additional rights given.</td>
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### Definitions

<p>| <strong>Settlement restructuring</strong> | Refers to the need to transform i) the Apartheid form of our urban settlements where the poorest live the furthest away from opportunities - spending the most time and money accessing these opportunities or being caught in spatial poverty traps - and residential areas are defined and separated by class and race; ii) the unsustainable modernist form of our settlements where settlements are designed with the motor car as the main form of movement and land uses are separated out. Typically, settlement restructuring is planned for and implemented through investment in socially integrated, mixed-use infill development on well-located land, along with densification, intensification of land uses, public transport and non-motorised transport and taking high quality facilities and amenities to marginalised township areas. |
| <strong>Smart Partnership Programmes</strong> | Medium term (five year) framework agreements between municipalities and SHIs serving as a municipal registration process where the municipality applies its own criteria in addition to those of the SHRA to satisfy itself on the suitability of a panel of SHIs to act as its delivery agents in the implementation of social housing development projects on municipal land. This ‘pre-qualification approach’ allows the municipality to proceed on a ‘by-invitation’ transaction approach sharpening requirements appropriate to specific sites through successive agreements. |
| <strong>Social housing</strong> | Rental housing targeted at households earning R1,500 – R15,000 per month. Social Housing is governed by the Social Housing Act, 2008 (Act 16 of 2008) and the policy prescripts of the National Housing Code. |
| <strong>Spatial targeting</strong> | A built environment investment prioritisation approach where specific areas are prioritised for investment at a range of geographic scales, within an urban system, to achieve particular development outcomes. Spatial targeting is an approach recommended by the National Development Plan. |
| <strong>Spatial Apartheid Spatial transformation</strong> | The legacy of apartheid – communities segregated from one another based on race (and class) – as well as the impacts of the legacy of the modernist approach to city building based on the automobile and functional separation of land uses. This has left South Africa with cities that are inefficient, inequitably developed and environmentally, socially and fiscally expensive to live in and to manage. The NDP states that a national focus on the spatial transformation of our cities should, by 2030, ensure that a larger proportion of the population should live closer to places of work and that travel distances and costs should be reduced, especially for poor households. Urban systems are key levers to overcome the debilitating impact of distance and separation on the fortunes of the individual, household, business and the state, as well as the environment and the resilience of the system as a whole. These include both hard (physical structures and networks) and soft (such governance systems including urban management and land use management) systems that facilitate and enable compact cities and transformed urban spaces of social and economic inclusion on an equitable basis. The equitable redistribution of resources within cities, as well as building systems that facilitate affordable and safe |</p>
<table>
<thead>
<tr>
<th>DEFINITIONS</th>
<th>Access to the full ambit of resources that makes urban living productive, are critical to spatial transformation (National Treasury, 2017).</th>
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<td><strong>Affordability preservation</strong></td>
<td>The purpose of inclusionary housing is to increase the stock of well-located affordable housing. If such housing is not restricted from being sold or rented in the open market following the first generation of allocation, the purpose is defeated, while public value profits a few (Jacobus, 2015). Preserving the affordability of inclusionary units is therefore a key policy concern.</td>
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<td><strong>Well located areas</strong></td>
<td>Areas (such as suburbs, neighbourhoods, town centres, activity corridors) with good public transport and non-motorised transport access to existing public and private education, health and social facilities, amenities, retail facilities and work opportunities. For the purposes of this Policy Framework, well located areas are identified or designated in MSDFs as priority development areas, integration zones, intensification zones, densification encouragement areas, restructuring zones, urban inner core, and other terms. In the South African context, available land for development is limited in these areas, land prices are high and there is demand for high- and middle-income housing. All of these factors are challenging for the provision of affordable housing.</td>
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1 Introduction

The goal of this provincial Inclusionary Housing Policy Framework is to better enable inclusionary housing as a mechanism to contribute towards spatial transformation in the Western Cape with a focus on its towns and Cape Town. The Western Cape Government’s (WCG) Provincial Strategic Plan 2019 - 2024 identifies the development of an inclusionary housing policy framework as an intervention supporting its focus area of generating more opportunities for people to live in better locations. It does this in terms of one of the Strategic Plan’s five priorities: to promote Mobility and Spatial Transformation. There are four focus areas within this Priority, steering a range of programmes aimed at tackling spatial transformation and improved mobility.

The aims of this Policy Framework are:

i. To further the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) (SPLUMA’s) principles of spatial justice, sustainability and efficiency and its expectation of provincial inclusionary housing policy. It provides a policy rationale for the application of inclusionary housing provisions in land use planning permissions given by municipalities in the Western Cape;

ii. To assist municipalities and promote consistency between municipalities, providing a framework to guide them in developing their own regulatory tools by:

- Providing direction as to the goal, purpose and intended outcomes of inclusionary housing;
- Providing definitional clarity and certainty;
- Providing the legal framework and a policy basis for municipal inclusionary housing policy and regulation
- Identifying the key research required to design a policy;
- Introducing and explaining policy principles;
- Clarifying the context within which inclusionary housing policies would be feasible / appropriate; and
Identifying the policy elements and choices that municipal inclusionary housing policy and regulation will need to determine and their institutional implications.

iii. To build public support for inclusionary housing by being clear about who it aims to benefit, the rationale for inclusionary housing and the approach that should be taken to introducing inclusionary housing provisions. It also aims to promote good governance by contributing to policy consistency and predictability – a key concern and risk for the property development sector – across the Western Cape.

Simply put, this Western Cape Inclusionary Housing Policy Framework document sets out to answer the following questions:

- What is inclusionary housing?
- Why should it be used as a mechanism for spatial transformation?
- On what basis can inclusionary housing be applied in the Western Cape?
- How can inclusionary housing be introduced in municipalities – what should be done first?
- Who should do what?
- What are the policy considerations?

There is no doubt that the introduction of inclusionary housing is a complex and technical task, involving several role-players and stakeholders, variable housing demand, property market intelligence across towns in the province and competencies and capacities that do not currently exist – all coupled with possible consequences which are difficult to predict. There are, as yet, no tried and tested models of inclusionary housing on the ground in South Africa to learn from. The important preparatory steps require expertise, time and resources and the design of an inclusionary housing requires very careful thought.

Nevertheless, the legislated expectation is clear. The need to transform our cities and towns, beleaguered by the impact of spatial Apartheid, subsequent policy directions and financial constraints that have entrenched these spatial patterns, from a social, economic, environmental and governance perspective, is indisputable. As a result, the Western Cape Government must be brave and bold whilst recognising that designing the perfect policy from the outset is not possible. Through approaching the introduction of inclusionary housing policy in the Western Cape as an incremental exercise with a view to the long term, this initial Policy Framework and any subsequent municipal inclusionary housing policies will evolve and be improved over time. This will occur through learning by doing in the form of frequent review and feedback received as municipalities prepare, launch and apply their own policies or provisions guided by this one. This policy is about getting started. It will look to municipalities, developers, landowners, civil society and organisations to contribute towards its improvement as we build a body of evidence from practicing inclusionary housing and institutionalising monitoring and evaluation. For this reason, it seeks to avoid closing opportunities for developers, municipalities and other parties who are looking to find innovative solutions for inclusionary housing. In so doing, this policy does not try to uncover all the possible permutations that inclusionary housing implementation might take and the guidance that may be required.

1.1 Affordable Housing in the Western Cape

While the state plays a direct role in providing housing assistance to the very poor, it also offers some assistance to households earning above the R3,500 threshold through its Upgrading Informal Settlements Programme (serviced site only), Social Housing Programme, the Finance-Linked Individual Subsidy Programme (FLISP) as well as the WCG’s initiatives including a Housing Voucher Scheme linked to its Credit Readiness Programme, creating more certainty in the FLISP and deferred ownership models. The WCG has also entered into several Land Availability Agreements over the
years enabling the development of mixed open market housing projects, inclusive of Social Housing and FLISP products. Of course, its title deed programmes also contribute to the supply of affordable housing stock through re-sale of subsidised housing. However, state-assisted housing programmes have historically struggled to create better located housing opportunities and contribute to spatially transforming our settlements. This is largely due to the cost of well-located land, as well as fiscal constraints. The State has limited capacity and resources. It cannot provide affordable housing across the spectrum of lower-middle to lower-income households, nor should it. It must seek innovative ways to incentivise the participation of the private sector in the provision of housing to a broader income spectrum, leveraging value appropriately.

Having said that, it is acknowledged that well-located, suitable land in state ownership must also be released as a parallel strategy to deliver affordable housing and promote greater inclusivity in the better performing parts of our cities and towns. For this reason, the WCG has committed itself to doing so and has set precedent in this regard, with the Conradie Better Living Model Project in Cape Town in the implementation stage and the Founders Garden / Artscape Precinct. Importantly, the WCG is committed to facilitating integrated developments in partnership with and creating opportunities for the private sector, including non-profit developers.

It is also acknowledged that ongoing systemic improvements to the efficiency of planning permissions process across national, provincial and local government and a review of the standards applied is essential to ensure that these processes stop being cost drivers in property development. This generally affects viability, supply and affordability, and leads to leaking value that could otherwise be directed towards better, more inclusive urban performance outcomes. This is a fundamental precondition for a policy framework such as this. Efforts are ongoing to improve the WCG’s permissions processes, while also supporting municipalities to improve their own systems and lobbying national government to address its own areas of weakness. Protracted permissions processes, conflicting policies, onerous development rules (such as parking ratios) or conditions, and poor urban management in the precinct within which the development sits are all risks that are priced into the cost of finance for a development which are passed on to the end-user, affecting the affordability of the end product.

Similarly, timeous planning and preparation for infrastructure delivery in areas where we want to enable and attract development in terms of our Spatial Transformation priority focus areas is key to limiting delays and associated costs to developing land. Significant effort on the part of the WCG and its partners is going into supporting municipalities to properly plan, package and explore innovative ways to fund required infrastructure projects.

It is important that our systems efficiently support the overall supply of housing into the market. The need for upper- and middle-income markets must also be met to try and prevent any undesirable exclusionary effects that rampant gentrification may cause. Mitigating the risks in the development of land supported for development in the MSDF through efficient planning permissions processes, maintaining good standards of service delivery and urban management, improving accessibility in terms of public transport provision and creating predictability in terms of infrastructure capacities, are all enabling conditions for land value capture.

How the WCG and the municipalities prioritise and invest effort in interventions such as these to improve the supply of affordable housing in a settlement should be guided by a robust study aimed at understanding housing markets in that settlement. Such a study will allow for a thorough understanding of housing demand and supply, the affordability gap and the cost drivers of residential land development that drive up sales prices or rentals or, at a very basic level, inhibit viability – all of which should be spatialised. Such a study may also shed light on where quite simple interventions might be introduced that could improve overall supply into the residential market.
example, regulatory reforms, affordable finance and communication campaigns could unlock the potential for properties zoned for single dwellings to develop second and third dwellings that could contribute significantly to affordable supply over the long term. Similarly, attention paid to these same areas could enable micro-developers, increasingly active in our lower-middle to low-income suburbs, to scale up their provision of affordable rental housing. The key is to always consider how to ensure these interventions will create opportunities in the right locations to achieve spatial justice. All of these factors need to come together in the municipal Human Settlements Plan.

2 What is Inclusionary Housing?

Inclusionary housing is a spatially targeted mechanism that relies on the regulatory system of planning permissions to oblige property developers to provide affordable housing at prices below those targeted by their development. Inclusionary housing leverages the greater societal role in creating land value, along with the significant increase in the value of land, as a consequence of granting new or additional land use rights.

In other words, in return for additional land use rights, including a greater mix of uses and higher densities that generate significant value, the inclusionary housing mechanism applies a standardised requirement or “set-aside requirement” for developers to include, in their developments, a contribution towards housing that is affordable to lower-middle and lower-income households. The objective is to open up opportunities for more affordable housing in identified areas and to promote more integrated communities in those areas that are less starkly divided by income and race and more inclusive of key workers and young professionals in particular. These additional rights may be proactively granted by a municipality or through the normal development application process. By providing “early warning” of this requirement as it applies to specific areas in a city or town by application of an inclusionary housing policy, and supporting planning instruments such as Municipal Spatial Development Frameworks (discussed further in paragraph 6.1.3), developers can price the cost of meeting this obligation into the price they pay for land. The application of inclusionary housing must be careful not to unduly deter development or undermine the profitability of property development. It is a mechanism that relies on property development to generate the scope for an affordable housing contribution. If there is no demand for property development, there will be no opportunity for such contributions. These contributions share the value in the residual land value as a result of increased land use rights.

Inclusionary housing policies and regulation typically offer flexibility in how this requirement may be met and the basis for agreement on alternative approaches to how the requirement is met. This will be discussed further in this Policy Framework; however, practical considerations and accommodations must always be guided by the purpose of inclusionary housing. For example, if the agreement is that an inclusionary housing requirement may be met off-site, this must result in the construction of affordable housing units in well located areas of the city or town.

The purpose of inclusionary housing is to foster:

- Spatial transformation by addressing the spatial inequities of the past that persist in excluding people from enjoying the best of what is offered in our cities and towns, entrenching spatial poverty traps;
- Spatial justice in our cities and towns through the more equitable distribution of the benefits and burdens of urban growth;

1 Where the developer is not already targeting the defined income group targeted by an inclusionary housing policy or regulation.
c. Social mobility through racially, socially and economically inclusive, integrated
   neighbourhoods in well located areas closer to employment opportunities; and

d. Partnership with the property development sector to contribute to the supply of affordable
   housing stock over the long term in these well-located areas of our cities and towns. It
   achieves this by sharing the land value returns that are, in part, a consequence of the State’s
   planning and investment in infrastructure, facilities, amenities and urban management to the
   benefit of the public.

It seeks to offer an alternative to the poor spatial choices facing our lower-middle to lower-income
households, so aptly described in the USA but all too familiar in South Africa:

   Lower-income residents looking for a new home soon face a choice among several
   undesirable options:
   extreme commute times, overcrowding, substandard housing, or rents or mortgages that are
   so high they deplete resources for other essentials. Displaced families are not the only ones
   who suffer—everyone loses when economic diversity deteriorates. Unequal access to
   housing drives sprawling development patterns; worsens traffic congestion; pollutes air
   quality; increases taxpayer dollars spent on basic infrastructure; and decreases racial,
   cultural, and economic diversity (Ewing, Pendall, and Chen 2003 quoted in (Jacobus, 2015)).

The desired outcome of creating more affordable housing opportunities in well-resourced parts of
our cities and towns moderates the exclusionary impact of rapidly appreciating land prices. As a
consequence, these places will become more socially and economically integrated, providing
broader access to opportunities and a greater sense of socio-spatial justice. Opening possibilities
for household interactions across former apartheid race and class divides may offer healing and
bring benefits of greater social cohesion, leading to a safer society with better educational and
well-being outcomes for future generations.

2.1 Inclusionary Housing as a Land Value Capture Instrument

Inclusionary housing mitigates the tendencies of growing property markets in the more attractive
parts of our cities and towns to reinforce patterns of social exclusion through steadily eroding
affordability for lower-income households. This trend has been exacerbated by a history of distorted
allocations of public expenditure, racial settlement policies and limited public transport options.
Inclusionary housing pursues economic inclusion, sharing the economic gains of increased property
values that are made possible through the granting of additional land use rights and other
improvements made to our urban areas.

The supply of affordable housing is a key concern in the Western Cape. Inclusionary housing is a
minor player in addressing this need, sitting within a broader approach to improving the supply of
affordable housing. The specific focus of inclusionary housing is on where value in land and property
markets can be shared through private sector participation in the provision of affordable housing.
Understanding how and who creates land value and opening the space for a fairer sharing of this
value between the public and private sectors is at the heart of inclusionary housing. It accomplishes
this through the process of granting land use rights to secure affordable housing opportunities to
people who need it in better locations.

It is acknowledged that property prices in our cities and towns are generally higher than elsewhere
in South Africa, particularly and especially in the more attractive areas well served by infrastructure,
business, schools and amenities. In 2020, the average property value in the Western Cape was
R1,366,837. Considering a segmentation of the residential property market, the average property
value in the Western Cape falls within the luxury residential market (Centre for Affordable Housing
Finance in Africa, 2020). These prices are significantly driven by high land values. Land values have little to do with the land owner’s actions and more to do with the particular landscape or location within which our cities, towns and suburbs sit. Additional factors driving this include their heritage, relatively good governance and urban management, historical patterns of social facility and amenity provision, the actions of others in the area and Apartheid and post-Apartheid settlement plans and programmes. This creates a reinforcing cycle of increasing land values, driving development costs up and perpetuating the exclusion of many of our residents from the benefits of living in these areas. As a consequence, it is prohibitive for the state to directly contribute towards the supply of affordable housing in these areas.

Inclusionary housing policy and legislation recognises the broader societal role in creating land value and seeks to capture some of this value back for public good. It is guided by the state’s obligation to pursue a just society and transformed settlements that are sustainable, efficient and resilient – all of which current settlement patterns mitigate against.

### 2.2 Inclusionary Housing Policies in South Africa

An attempt was made in the late 2000s by both the national and Western Cape provincial spheres of government to introduce inclusionary housing policies. A Policy Framework was published by the National Department of Human Settlements. The Provincial Government published a discussion document, having put on hold its own policy development process in order to follow the direction given by the national government. Be that as it may, the national Policy Framework was not taken any further. Concerns that inclusionary housing constituted a tax on developers appeared to be a central reason. Notably, these efforts preceded the SPLUMA. The SPLUMA now indicates an expectation for this provincial inclusionary housing policy framework. Land value capture as a planning instrument to achieve transformation has gained prominence. It has revealed how land use rights can be leveraged to generate value that can be shared within a fair and equitable framework, clearly establishing the basis on which inclusionary housing should not be seen as a tax.

In Gauteng, a policy has been drafted and the Gauteng Provincial Government are looking to publish this in the next year for public comment.

The City of Johannesburg is the first municipality to adopt an inclusionary housing policy, namely “INCLUSIONARY HOUSING Incentives, Regulations and Mechanisms” (2019). This is coupled with a supporting provision in the Municipal Planning By-Law (MPBL).
The City of Cape Town, subsequent to publishing a Concept Document, has a number of investigations underway, including a feasibility analysis, to assist with the formulation of their inclusionary housing policy. They are committed to introducing this, along with an amendment to their MPBL. This feasibility analysis will be a key resource in further developing this Policy Framework and may provide insights relevant to property markets in other Western Cape settlements.

There are several projects that can be considered to be inclusionary – such as large greenfield projects or mixed market projects involving partnership between a Social Housing Institution (SHI) and a developer. Typically, these projects can be characterised as public-private sector partnerships and often receive state investment in infrastructure and top structure subsidies. In that sense, they are different to what is envisaged in this policy, although similar projects could become vehicles for receiving inclusionary housing obligations where these can or should not be met on site by a developer.

All the careful thinking invested into these historic and current processes, and public responses to them\(^2\), have been important informants to the formulation of this Policy Framework.

### 2.3 Where is Inclusionary Housing Policy Appropriate in the Western Cape?

Inclusionary housing is only possible where there is a strong land market; i.e., where there is the appetite to develop property and take up additional land use rights. This refers to areas where there is healthy demand for residential and mixed-use land use and the potential returns from the construction of new development (whether greenfield or redevelopment) exceed the value of the existing property. A residential or mixed-use property development can only contribute to affordable housing if the development is feasible, inclusive of this obligation. If developers aren’t building (and landowners aren’t selling), then there is no opportunity for the realisation of inclusionary housing even if demand may exist.

Inclusionary housing targets unmet need within the gap housing market. If there is no gap market or the gap market’s housing needs are adequately met by the private sector, linked or not linked to state assistance, then this may suggest there is no need for an inclusionary housing policy depending on where this need is being met. **It is critical to remember that the purpose of inclusionary housing is to facilitate access to affordable housing in high value locations and in so doing to promote spatial justice in our cities and towns.** The Integrated Development Plan, the MSDF and the municipal Human Settlements Plan should confirm this, informed by a Housing Market Study, and this position should be reviewed and regularly updated, as these plans are reviewed and subject to public participation\(^3\). This feedback process is especially important given the dynamic nature of property and housing markets.

### 3 Why Should we Introduce an Inclusionary Housing Policy?

#### 3.1.1 The Exclusionary Nature of our Land Markets

South Africa has failed to remedy the legacy of Apartheid in the spatial form of our cities and towns. People have been excluded from areas that are well served by public transport, social facilities, amenities and economic activity based on their race and income. Public schools and healthcare facilities operate on a zoning basis under which individuals living in the area are given priority.

\(^{2}\) Noting specifically SAPOA’s 2018 publication “INCLUSIONARY HOUSING Towards a new vision in the City of Jo’burg and Cape Town Metropolitan Municipalities”

\(^{3}\) It however remains important to ensure that all new development, public or private, is placed to facilitate spatial transformation – to ensure that new development is improving the inclusivity, efficiency and resilience of our settlements and households.
People living outside these zones often cannot access better quality facilities or do so at great cost they cannot afford. These patterns of exclusion have become deeply entrenched as the operation of property and financial markets, public sector regulations (including zoning) and unavailability of under-utilised but well-located state land perpetuate this spatial apartheid, relegating less affluent groups to the urban periphery. Well-located areas are unaffordable for most citizens to live in – even those with stable incomes and professions (such as teachers, nurses, police people and others).

This has resulted in lower-to-middle income households with stable incomes having to spend most of their income and time on travelling to and from work, or school or tertiary education facilities. This limits time and capacity for investing in childcare and supervision or individual betterment, payment of municipal rates and tariffs and adequate nutrition, as well as eating into disposable wealth that could otherwise uplift the household’s circumstances, through moving up the housing ladder for example. It stands to reason that good quality education from a young age impacts on future opportunities for children, implying that exclusionary land markets create structural constraints to social mobility.

The picture in Cape Town is illustrative of this. The maps below illustrate where most people live, shown by means of residential density, and where the economic opportunities are, shown by means of employment density. The higher property values (in red and orange) clearly mirror the employment density map. It is estimated that in Cape Town, households spend up to 40% of their income on transport. For the most part, this is spent getting to and from work (City of Cape Town, 2018). With this kind of spending on transport, norms around spending 25% - 30% on housing costs become unrealistic, and households can realistically spend less on their housing costs.

![Figure 3: Residential and Employment Density in Cape Town (City of Cape Town, 2018)](image-url)
The next set of maps, presented in the Centre for Affordable Housing in Africa (CAHF) CAPE TOWN Housing Market Report – 2020, indicate:

1. The distribution of residential properties in Cape Town by market segment. This clearly indicates the Pendi-all alignment of the high end (pink) and luxury (red) markets with the areas of highest employment density; and

2. The distribution of new residential transactions clearly indicates that entry (green), affordable (blue) and conventional (orange) housing is being delivered on the periphery of the city, exacerbating the pattern of poorer households having to travel the furthest to work.

67% of Cape Town’s residential market sits in the luxury (properties worth over R1.2 million), high end (properties worth R900,000 – R1.2 million) and conventional (properties worth R600,000 – R900,000) markets. The average household income in Cape Town is R23,206. Households earning this income could typically afford a house in the affordable market (R300,000 – R600,000). 73% of Cape Town households earn between R0 and R20,000. 18% of residential properties fit into this market segment in Cape Town currently (CAHF, 2020).
Cape Town is not unique. Our cities and towns consistently demonstrate stark class and racial divisions in space that persist close to 30 years post-Apartheid.

The private sector in the Western Cape has responded to demand primarily in middle-to-upper income markets. However, with every middle-to-upper income household accommodated in an area comes the need for these households to be served by people who can afford less – teachers, care-givers, nurses, policemen and women, municipal workers working in libraries, managing community halls or dealing with waste or the maintenance of roads and utilities, and other professionals.

At the same time, this history of prejudice and the country’s prolonged low economic growth phase has extended the financial and technical capability of the state to provide free housing to those in need to its limits. Owing to these capacity constraints, those entitled to housing assistance or access to land for self-built housing are for the most part limited to households earning R3,500 or less - a figure that has not been adjusted for inflation since its inception in 1994. However, incomes of households have grown beyond this threshold over time but have not grown to the point that they are able to participate in the property market without state assistance. Estimated average household income in 2019 in the Western Cape was R19,491. Households in this bracket require housing in the affordable market segment – properties worth R300,000 – R600,000 (Centre for Affordable Housing Finance in Africa, 2020). The National Department of Human Settlements

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1 Developers active in the affordable market in South Africa have struggled to gain a foothold in Cape Town due to higher development costs, predominantly (but not only) because of high land prices (McHardy, 2020).
defines the “gap housing market”\(^5\), to include households earning up to R15,000 a month in the rental market and buyers up to R22,000 a month. This varies from place to place; for example, in Cape Town households earning up to R30,000 will struggle to acquire housing without state assistance due *inter alia* to limited supply in this market. The 2021 Financial Sector Code Affordable Housing Standards define the affordable housing target market as households earning an upper income limit of R26,100 (rounded) (BASA, 2021).

Publicly owned, well-located land is finite. Resources to secure and develop well-located land for housing by the public sector are limited. This has driven the state’s housing delivery programmes to develop at scale on the peripheries of our towns – exacerbating patterns of spatial exclusion entrenched during Apartheid.

### 3.1.2 The Legal Mandate

The Preamble to the Constitution of the Republic of South Africa, 1996 (“the Constitution”) binds all of government to “heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights” and “improve the quality of life of all citizens and free the potential of each person”. The Bill of Rights requires the state to take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis and to achieve the progressive realisation of the right to adequate housing.

The mandate for this Policy Framework is drawn from the Constitution:

125 (2) The Premier exercises the executive authority, together with the other members of the Executive Council, by-

(d) Developing and implementing provincial policy.

The Housing Act, 1997 (Act 107 of 1997) expects *all of government* to give priority to the needs of the poor in respect of housing development and to ensure that housing development

(i) Provides as wide a choice of tenure options as is reasonably possible

(ii) Is economically, fiscally, socially and financially affordable and sustainable

(iii) Is based on integrated development (s 2(1)(c))

As well as to promote:

- the establishment, development and maintenance of socially and economically viable communities
- the process of racial, social, economic and physical integration in urban and rural areas, and
- the effective functioning of the housing market while levelling the playing fields and taking steps to achieve equitable access for all to that market
- active participation of all relevant stakeholders in housing development (s 2(1)(e)).

More recently the SPLUMA more explicitly places an obligation on all three spheres of government to put in place measures to achieve spatial justice; and, subject to applicable law, anticipates the introduction and application of inclusionary housing policy. It is important to note that all of the other SPLUMA development principles – namely, spatial sustainability, efficiency, spatial resilience and good administration – are supported by the introduction of policy to support well-located affordable housing.

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\(^5\) Defined as the difference between what a homeowner with an average income can afford and the average sales price in the area (Centre for Affordable Housing Finance in Africa, 2020).
The Spatial Planning & Land Use Management Act 2013 (Act 16 of 2013):

- 7. The following principles apply to spatial planning, land development and land use management:
  (a) The principle of spatial justice whereby-
    (i) past spatial and other development imbalances must be redressed through improved access to and use of land;
    (ii) spatial planning mechanisms, including land use schemes, must incorporate provisions that enable redress in access to land by disadvantaged communities and persons; and
    (vi) a Municipal Planning Tribunal considering an application before it, may not be impeded or restricted in the exercise of its discretion solely on the ground that the value of land or property is affected by the outcome of the application;

- 12. (1) Preparation of spatial development frameworks must:
  i. Address historical and spatial imbalances (12(1)(i))

- 21. A municipal spatial development framework must -
  (i) identify the designated areas where a national or provincial inclusionary housing policy may be applicable.

- 24 (2). A land use scheme adopted in terms of subsection (1) must -
  (d) include provisions to promote the inclusion of affordable housing in residential land development
  (e) include land use and development incentives to promote the effective implementation of the spatial development framework and other development policies;
  (f) include land use and development provisions specifically to promote the effective implementation of national and provincial policies;
  (g) give effect to municipal spatial development frameworks and integrated development plans.

- Schedule 1: Matters to be addressed in Provincial Legislation
  Provincial legislation regulating land development, land use management, township establishment, spatial planning, subdivision of land, consolidation of land, the removal of restrictions and other matters related to provincial planning and municipal planning may—
  (h) provide measures related to the approval of a development application which requires the use of land for identified inclusionary residential and economic purposes, and which is subject to any national policy;

3.1.3 Policy Mandate

A cascading set of national and provincial policies and plans establish strong coherence around the need to explore all mechanisms at our disposal to pursue spatial transformation.

The National Development Plan 2030 (2012), in Chapter 8: Transforming human settlement and the national spatial economy, requires that we respond ‘systematically, to entrenched spatial patterns across all geographic scales that exacerbate social inequality and economic inefficiency’. Noting the exclusionary nature of the growth of the property market and the growing gap market, the NDP identifies the need for tools to be developed that empower municipalities to make critical interventions to redress past social segregation and specifically the need to retool the instruments
of land-use management to achieve spatial objectives, incorporating the social value of land imperatives and the fiscal instruments to achieve spatial objectives. The NDP goes on to recommend that private housing developments are incentivised to include a proportion of affordable housing. There is a clear enabling legal and institutional framework across the spheres of government that will allow municipalities with the necessary capacity to introduce value capture instruments to extract a portion of the additional value that accrues to a property, as a result of investment by the state, for the public benefit.

The Integrated Urban Development Framework (IUDF) (2016) is government’s policy position to guide the future growth and management of urban areas. In Policy Lever 3: Integrated Human Settlements, it identifies the need to work in partnership with the private sector and key stakeholders. It further identifies Inclusionary housing policy as a short- to medium-term priority to incentivise property developers to include a level of affordable housing in their developments. Notably, the IUDF identifies the need for inclusionary housing to consider young individuals, female-only households and people with disabilities.

The specific commitment to an inclusionary housing policy framework in the Provincial Strategic Plan 2019 – 2024 is underpinned by the Western Cape’s Provincial Spatial Development Framework’s Settlement Policy Objective to support inclusive and sustainable housing. This is underpinned by its Spatial Policies to Promote sustainable, integrated and inclusive housing in formal and informal markets and to specifically promote private sector participation in the gap market to diversify and expand housing delivery options.

This is further supported by the WCG’s Living Cape: A Human Settlements Framework (2019) which states that to maximise urban potential, it is necessary to ensure that investments and contributions made by the state, the private sector and communities work as catalysts for value creation. The framework argues that this value is shared by all those living in the Western Cape, noting an important shift to be made by the state as provider of housing to the state as enabler of housing.

4 Provincial and Municipal Roles in Inclusionary Housing

4.1 The Provincial Role in this Mandate

From a legal perspective, “inclusionary housing must be understood as a planning and land use regulation tool governed by land use regulatory powers” (Pegasys, 2020). These powers sit primarily at municipal level. Section 155(6) of the Constitution determines that “provincial governments have the legislative and executive authority to see to the effective performance by municipalities of their functions in respect of matters listed in Schedules 4 and 5, by regulating the exercise by municipalities of their executive authority referred to in section 156 (1). It is on this authority that provincial government regulates through the Land Use Planning Act, 2014 (Act 3 of 2014) (“LUPA”) how municipalities regulate municipal planning, and this includes guidelines on how conditions should be imposed.

The nature of considerations that input into the development of an inclusionary housing policy ideally require local-level research and feasibility analysis (discussed in paragraph 6.1). Taking cognisance of the limitations of municipal capacity, the WCG will further explore tools, systems and rules to support the implementation of such policy in a standardised way across the Province. It will make provision for adaptations to ensure local relevance through the development of, for example, a contributions calculator. However, the fact that inclusionary housing is leveraged through municipal planning permissions to the benefit of a city or town’s residents in need means that a suite of municipal inclusionary housing mechanisms is required. This Policy Framework is primarily aimed
at supporting the development of those municipal mechanisms, starting with a municipal inclusionary housing policy.

The application of this Policy Framework may reveal the need, in time, for further provincial legislation to pursue inclusionary housing in a fair and consistent manner. For the time being, the intention is to guide and support a policy-led land use management system that allows a degree of flexibility and lessons to be learnt prior to considering a more prescriptive approach.

4.2 The Municipal Mandate

In addition to the general obligation on municipalities to pursue the SPLUMA principles in both spatial planning and land use management, the SPLUMA requires that municipalities designate areas in their Municipal Spatial Development Frameworks (MSDF) for the application of national or provincial inclusionary housing policy. A municipal land use scheme must give effect to and be consistent with the MSDF and determine the use and development of land in order to promote *inter alia* economic growth, social inclusion and efficient land development (SPLUMA s25(1)). In addition to the SPLUMA, the policy and legislative provisions set out in paragraph 3 of this Policy Framework require the municipal land use system to pursue the creation of integrated, inclusive settlements and to leverage land value capture to create affordable opportunities in well located areas.

Inclusionary housing is a land use mechanism and not a housing delivery programme. The powers granted to municipalities under the Constitution to regulate municipal planning provide sufficiently broad authority to impose an inclusionary housing requirement. Similarly, the duties and obligations of municipalities to achieve the purposes set out in the Constitution, the Housing Act and the SPLUMA support their introduction of inclusionary housing requirements. In order to provide further resolution to the matters addressed in this Policy Framework, a municipal inclusionary housing policy must ultimately be determined and adopted at municipal level. This is underpinned by the principle that inclusionary housing is a land use regulation and land use regulation is primarily a municipal mandate (Pegasys, 2020).

In parallel with the introduction of a municipal inclusionary housing policy, it is recommended that the Municipal Planning By-Law be amended to include a specific enabling provision for the municipality to impose an inclusionary housing requirement. This should cross-reference the municipal inclusionary housing policy in terms of when and how this will be done. The implementation of a municipal inclusionary housing policy is not, however, contingent on such an amendment. The existing empowering provisions of municipal planning by-laws with respect to setting conditions may, in principle, be applied in the interim. It is emphasised that, in such instances, the municipality must ensure the legality of its decision with reference to the specific application in question and the empowering provisions of its by-law.

A municipality can incentivise the participation of the private sector in affordable housing provision by proactively providing allowance for a greater mix of land uses or higher densities in designated high-value areas with active land markets, the take up of which is linked to inclusionary housing requirements. This can be done through the existing overlay zone mechanism in the Municipality’s Zoning Scheme By-Law.

The authority to set and amend rights provided in a land use scheme are broad and require only that the changes:

• be in the public interest;
• advance or are in the interest of a disadvantaged community; and
• further the vision and development goals of the municipality (s26).

For as long as municipalities fail to ensure that their MSDFs and land use schemes address the above, municipal planning permissions will be vulnerable to scrutiny and appeal. The consequent delay and associated costs experienced by applicants will create disincentives to development in the
The WCG therefore requires that municipalities pay close attention to ensuring that their by-laws, MSDFs and land use schemes address the requirements set out in the SPLUMA. The application of this Policy Framework and the introduction of their own inclusionary housing policies will assist municipalities in doing so.

**AN INCLUSIONARY HOUSING OVERLAY ZONE**

There are two steps to the introduction of an Inclusionary Housing Overlay Zone.

1. A legislative process is undertaken in terms of the Municipal Systems Act, 2000 (Act 32 of 2000) to amend the municipal Zoning Scheme By-Law to create a particular type of overlay zone – in this case an inclusionary housing overlay zone. This process does not necessarily include the designation of specific areas over which the overlay zone will apply. This is a decision of Council.

2. The application of the overlay zone to specific geographical areas is an administrative process with the decision being made by the Municipal Planning Tribunal or the Council, depending on the provisions in the zoning scheme and land use planning by-law of the specific municipality.

It is recommended that the creation of the overlay zone and the designation of areas over which the overlay would apply are undertaken as one process with Council approval in the case of inclusionary housing, if this is possible in terms of the zoning scheme and land use planning by-law of the specific municipality.

### 5 How is an Inclusionary Housing Requirement Imposed?

i. MSDFs must identify designated areas for inclusionary housing (SPLUMA, s21(i)).

ii. A Municipal Planning Tribunal may not depart from an MSDF, except and only if there are site specific circumstances that justify a departure from the MSDF. If a development application falls within a designated area, the municipal Inclusionary Housing Policy must be applied. In addition, any inclusionary housing overlay zone set out in the municipal Zoning Scheme By-Law must be applied in the assessment and approval of the application.

iii. Within the designated area, Western Cape municipalities should apply inclusionary housing provisions where:

   a. a change to mixed-use or residential land use rights is applied for, or additional rights are applied for in favour of mixed or residential use where this gives significant additional value to the land and the size of the proposed development exceeds the threshold identified in the municipal Inclusionary Housing Policy; or

   b. an application is made to develop property within an Inclusionary Housing Overlay Zone or an area where the municipality has proactively upzoned the land through another regulatory mechanism and has set out the concomitant requirements that must be met if taking up these rights. For example, where additional rights are already permitted subject to the provision of inter alia inclusionary housing.

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4 The rezoning of land to industrial or commercial use also represents an enhancement of land value. As such, commercial and industrial developments could also be argued to generate the need for housing across a range of income groups. In the USA such developments can incur “linkage fees” which are invested in affordable housing developments. It is, however, proposed that inclusionary provisions are not applied to such development applications at this point in time.
iv. A pre-application engagement between the Municipality and the applicant is essential to:
   a. Confirm that the development triggers the application of the Inclusionary Housing Policy and the quantum of the contribution required based on a provincial or municipal inclusionary housing contribution calculator;
   b. Understand the target market of the development (for instance, if the development is already targeting the gap market, the application may be exempted from the provisions of the policy provided that the development assessment and ultimately the permission places this on record for monitoring and compliance processes);
   c. Discuss feasibility constraints and how these might be addressed through measures to offset costs through, for example, shortened procedures, reductions in parking requirements, a density bonus should this be appropriate and other such mechanisms. Such measures are discussed further in paragraph 6.2.5; and
   d. Discuss the feasibility of on-site contributions or whether alternatives, such as off-site or in-lieu contributions must be considered and other options in this regard.

v. An inclusionary housing requirement is imposed as a condition to the approval of a development application. The nature of the requirement is determined in the assessment of the development application by the municipality, informed by the applicable policy and provisions in the municipal planning and zoning scheme by-laws, when these are in place.

vi. In the case of large developments where the applicant is packaging and servicing the land for the purposes of selling on to property developers, conditions of approval must be attached to the land parcels that will be subject to the inclusionary housing requirement. These must require that the inclusionary housing conditions remain applicable with the transfer of these portions of land and must be recorded in the sales agreement.

vii. The planning permission should be accompanied by a concluded Inclusionary Housing Agreement between the applicant (landowner/developer) and the Municipality setting out the basis on which the inclusionary housing contribution will be made in line with the municipal inclusionary housing policy, including inter alia:
   a. Whether the contribution will be met on site, off site or as an in-lieu contribution;
   b. When and where the inclusionary housing units will be constructed;
   c. The number and sizes of units to be provided on site or off site;
   d. How off-site units will be provided;
   e. Whether the units will be rented or sold and the sale price or monthly rental;
   f. How levies will be dealt with in terms of units sold within sectional title schemes;
   g. The income group (or groups within the broader income range) to be targeted to purchase or rent the units as well as other priority groups such as women, the youth or people with disabilities, along with the proportional allocation of units, if relevant;
   h. Who will undertake the screening and allocation process and how this process will be undertaken;
   i. If the rented units will be sold on and to whom;
   j. The quantum of the in-lieu contribution, should this be the case, and to whom, how and when it will be paid. An in-lieu contribution should be paid prior to issue of the occupancy certificate for the development and the issue of such certificate should be conditional on proof of payment;
   k. The reporting requirements to enable the monitoring of affordability of the inclusionary units over time, and to whom reports will be provided; and
I. Title deed restrictions to be introduced on stock for sale to maintain affordability.

viii. Municipalities must maintain a centralised register of these agreements and any amendments thereto to allow for compliance and performance monitoring, evaluation and review over time. This can be an input into and report to Council as part of the annual MSDF performance review.

ix. Failure to comply with the condition and associated agreement attached to the planning permission should be treated as would any other failure to meet the conditions of approval.

x. When categorising applications, municipalities must ensure that where applications motivate for exemption in spite of being subject to the municipal Inclusionary Housing Policy and falling within areas designated in their MSDFs, these decisions must be taken by the Municipal Planning Tribunal.

xi. Municipalities should ensure that an application to amend an inclusionary housing condition is a decision of the Municipal Planning Tribunal.

xii. Municipalities should ensure that an application to amend an inclusionary housing agreement where there is a substantial change to the quantum of the contribution to be made and the income group to benefit is a decision of the Municipal Planning Tribunal.

xiii. The Western Cape Government will apply inclusionary housing provisions, in terms of the applicable inclusionary housing policy, to development applications which fall under section 53 of LUPA, where these fall within the designated area in the applicable MSDF.

6 Guidelines for the Development of a Municipal Inclusionary Housing Policy

6.1 Preparing for a Municipal Inclusionary Housing Policy: Building Blocks

A municipal Inclusionary Housing Policy must decide:

- Who should benefit from the affordable housing opportunities created though the implementation of the policy;
- What quantum of additional land use rights generates sufficient value to trigger a feasible inclusionary housing contribution;
- What the quantum of the required inclusionary housing contribution should be from a development as a percentage of the additional rights requested;
- Where in the city or town an inclusionary housing obligation would be triggered and where alternative options for meeting this obligation should be considered; and
- Where a municipality might want to proactively rezone properties or increase allowable densities to incentivise inclusionary housing obligations to be met on site.

There are three critical pieces of work that need to be undertaken to ensure that an inclusionary housing policy is evidence-led, correctly targeted and feasible to implement. This is also important to mitigate the risk of unintended consequences of the policy.
6.1.1 Determining Who Should Benefit – Housing Market Study

An inclusionary housing policy aims to create affordable housing opportunities to address spatial transformation in a city or town. It focuses on leveraging these opportunities in areas where gap market households would otherwise be excluded or have previously been excluded. While the gap market is generally well defined in South Africa, a municipal or city/town level housing market study is a useful tool to understand the housing market in a municipality. It should determine whether local housing markets are affordable to the people living there as well as the housing gap – what can the average household afford versus the average sales price of a housing unit in the area.

This study will assist to ensure that the Municipality has a solid evidence base to determine the household range to be targeted to benefit from the policy. It also assists in determining the concomitant unit price or rent that would be affordable to this target group, as well as profiling the nature of households in need in the municipality in terms of household size and composition.

Such a study should also track planning permissions granted and property transactions to determine areas of the city or town that represent high value locations with an active property market. Successive municipal valuation rolls are another data source.

This intelligence might also assist the municipality to identify other possible interventions that could enable increased affordable housing supply. This is an essential input into a municipality’s IDP, MSDF and Human Settlements sector plan.

This study would need to be updated on a fairly regular basis to track changes in the housing market and the impact that might have on the policy. For this reason, and given the importance of such research as an ongoing input into broader municipal planning, it is strongly recommended that municipalities subscribe to data sources and develop the internal capacity to track residential market behaviour over time, or assign resources to subscribe to services that assist in this regard.

Such market studies are valuable in and of themselves as they offer market intelligence to the property development sector to inform its identification of opportunities. Such studies, if commissioned by the public sector, should therefore be made publicly available.

6.1.2 Determining What Kind of Development Should Contribute and the Value – Economic/Financial Feasibility Study

Inclusionary housing is only possible if the land price paid and the value of the land use rights are conducive to the developer achieving his/her minimum profitability (the ‘hurdle rate’) and generating sufficient funding to make the required contribution (constructing the units or making an in-lieu cash contribution). An inclusionary housing policy will need to set requirements with confidence that a project can safely support the costs associated with providing affordable housing.

Inclusionary housing policies set a threshold that determines the size of development or the value of additional rights permitted that would trigger an inclusionary housing requirement. Municipal inclusionary housing policies must define this threshold.

In addition to setting the threshold that triggers an inclusionary housing requirement, inclusionary housing policies must set the “set aside requirement” – the proportion of inclusionary housing contribution to be provided relative to the total number of units to be developed and sold or leased on the open market. Alternatively, this can be calculated relative to the additional rights (floor area) granted. This requirement can be expressed as a percentage of the total number of units to be sold.

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7 Examples of housing market studies, as well as such a study for Cape Town, can be found here.
or leased on the open market or as a percentage of the floor area or as a percentage of the value – all of which should be calculated as a proportion of the additional value created through the planning permission.

In order to ensure that:

i. On the one hand, a requirement is not set too high that it compromises the feasibility of development and in turn, disincentivises development, by affecting the land prices or housing values in a manner that defeats the objective of increasing the supply of affordable housing into the market (Jacobus)8;

ii. On the other, a requirement is not set too low, under-valuing the value in land and additional land use rights or density bonuses generated by public actions;

In doing so, it is clearly important to understand land values, land market dynamics and the cost of different typologies of development in a city or town. An economic or financial feasibility study is considered best practice to gain this understanding and to support the determination of the following in an inclusionary housing policy:

- The economic value of development rights;
- What quantum of additional land use rights generates sufficient value to trigger a feasible inclusionary housing contribution;
- What the quantum of the required inclusionary housing contribution should be from a development as a percentage of the additional rights requested;
- Income group targeting within the broadly defined income range for affordable housing, considering affordability over time;
- Test the impact of incentives to offset the costs of meeting an inclusionary housing requirement, for example a reduction in parking ratios or an increase in allowable density, and other measures (see paragraph 6.2.5 for further discussion on incentives). It should also identify other possible opportunities for incentives; and
- A standard calculator for developers to use to determine contributions.

While it is acknowledged that each property development project has its idiosyncrasies, it is possible to make these determinations based on a city or town level study and calculator (Grounded Solutions, 2018). The WCG is further exploring whether it is possible to make these determinations at a provincial scale, allowing for a minimum but appropriate level of local adaptation, while promoting ease of doing business through an appropriate level of standardisation. Negotiations based solely on project-level feasibilities present risks to achieving the purpose of inclusionary housing policy, as well as presenting probity risks, relying heavily on officials who may not have the necessary expertise.

An Economic Feasibility Study will identify a typology of residential and mixed-use developments typically seen in that town/ city (through recent development applications) and research the costs (construction, financing, operating and additional costs) and revenues (sale prices, rental and other revenues) in order to understand the general profitability of these types of property development projects (Grounded Solutions, 2018). A simple guide to best practice in setting the brief for inclusionary housing feasibility studies can be found here.

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8 If developers are disincentivized, the demand for land or the price developers are prepared to pay for land is reduced and landowners may be reluctant to sell their land – limiting land supply and in turn pushing overall land prices up affecting affordability.
DETERMINING THE VALUE OF DEVELOPMENT RIGHTS

There are possibly three different bases for establishing the economic value of the additional development:

(i) The current market rate based on comparative analysis of several similar land parcels with recent sales;
(ii) the valuation rate based on the approved municipal valuation role; or
(iii) if the municipal valuation role is too low compared to the ongoing market rate, the mean of the two (i.e., market rate and the municipal valuation role).

Using the current market rate based on comparative analysis of several similar land parcels with recent sales is the recommended approach.

6.1.3 Determining Where Inclusionary Housing Should be Applied - Spatial Targeting

- It is recommended that the municipality’s designation of areas in terms of the SPLUMA s21(i) is done at town or city level; in other words, the whole urban area within the urban edge is designated as a “trigger” area where inclusionary housing policy will apply. This is important to avoid creating a perverse incentive to develop in areas discouraged for growth in a city or town by releasing such areas of an obligation to make an inclusionary housing contribution.

- Developments of a size above the threshold, seeking to up zone properties or seeking additional density, in this “trigger area” will be required to make an inclusionary housing contribution.

- The MSDF and municipal Inclusionary Housing Policy should then, as a further step, clearly distinguish, within the urban area, where there is a preference for inclusionary housing requirements to be met on site, off site or where in-lieu contributions should be invested.

- In principle, where development falls within the designated areas in terms of section 12(1)(k) and section 21(1)(d) of the SPLUMA, including the Social Housing Act, 2008 (Act 16 of 2008) restructuring zones, an inclusionary housing requirement should be met on site. A development falling outside of these priority areas could meet their obligation off site or in the form of an in-lieu contribution. This off site or in-lieu contribution should be directed to the designated areas. This is explained further as follows:

- SPLUMA requires an MSDF to identify the well-located areas within a city or town. It must:
  a. Provide direction for strategic development, infrastructure investment, promote efficient, sustainable and planned investments by all sectors and indicate priority areas for investment in land development (s12(1) (k)); and
  b. Identify current and future significant structuring and restructuring elements of the spatial form of the municipality, including development corridors, activity spines and economic nodes where public and private investment will be prioritised and facilitated. (s21(1)(d))

- MSDFs in the Western Cape do identify these areas, albeit labelled differently. MSDFs use designations such as: priority development areas, densification encouragement areas, integration zones, intensification zones, restructuring zones and spatial transformation areas.
All of these have a similar purpose – namely, to prioritise investment in these areas to enhance the integration, efficiency and inclusivity of land uses towards spatially transforming the settlement.

- While not a requirement of the SPLUMA, the requirement of municipalities to identify restructuring zones in terms of the Social Housing Act and the stated purpose of these zones to promote spatial, social and economic restructuring (Cadre, 2017) suggests that they play a similar role in guiding the provision of affordable housing – in this case, affordable social rental housing – to more attractive or desirable locations in our cities. For this reason, MSDFs should include these restructuring areas and should seek to align these to the priority areas designated as per the SPLUMA requirements. This is important in order not to preclude the opportunity for partnership between developers and SHIs where development applications fall within priority development areas (identified as the areas where inclusionary housing obligations should preferably be met on site or as “receiving areas” for off-site or in-lieu inclusionary housing obligations)⁹.

- In addition, the recently declared Priority Human Settlement Housing Development Areas (PHSHDA) intend to advance Human Settlements Spatial Transformation and Consolidation. They aim to do this by ensuring that the delivery of housing is used to restructure and revitalise towns and cities, strengthen the livelihood prospects of households and overcome apartheid spatial patterns by fostering integrated urban forms. Ideally, these areas fall within the priority development areas designated by the MSDF. Importantly, these PHSHDAs will determine the flow of public housing funding going forward.

- It is important that these housing specific designations align with the MSDF to ensure that coherent spatial direction is given to investment in affordable housing given that they all share the common objective of spatial redress. The MSDF and the municipal Inclusionary Housing Policy should confirm and clearly articulate the link between these four types of spatial designations.

- Within these designated areas, municipalities should identify where urban land markets are strong and where there is opportunity for introducing additional density or changing land use rights via an overlay zone in the Zoning Scheme By-Law to incentivise the provision of inclusionary housing on site.

- The prioritisation of certain areas for development in an MSDF should guide the prioritisation of infrastructure investment to ensure the infrastructure investment planning is in place and the availability of infrastructure is predictable or better yet, present to support these areas.

- Furthermore, the SPLUMA mandates municipalities to expedite land use procedures in areas targeted to address the municipalities’ policy objectives. Municipalities should ensure that the areas designated by the MSDF where inclusionary housing policy shall apply should be included in the designation of areas in terms of s.21 (l) of the SPLUMA; namely, areas in which – (ii) shortened land use procedures may be applicable and land use schemes may be so amended.

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⁹ SHIs may only benefit from the capital subsidies when developing within gazetted restructuring zones.
6.1.4 Summary of steps to introduce a municipal Inclusionary Housing Policy

**INITIAL MUNICIPAL ACTIONS TO INTRODUCE INCLUSIONARY HOUSING**

1. Define the affordability gap in the residential market and areas where these opportunities should be provided to promote spatial transformation (which household incomes should be targeted by an IH Policy)

2. Undertake feasibility study to understand the profitability of residential development typologies in the area (% the cost drivers of residential development) & test the viability of a % IH contribution

3. Draft, consult & approve Inclusionary Housing Policy & calculator

3. Designate whole urban area of city/town as IH “trigger area” and “priority areas for investment in land development/restructuring” as IH “receiving areas” and where there is preference for on site provision in MSDF via compilation/amendment

4. Apply Inclusionary Housing Policy

6.2 Inclusionary Housing Policy Elements

6.2.1 Who Does Inclusionary Housing Aim to Benefit?

6.2.1.1 Income

- This policy aims to benefit employed households earning stable incomes that fall within the affordable housing market. These are households that fall between the cracks of the state-assisted housing delivery programmes, which are primarily targeted at households earning R3,500 a month or less, and those households that qualify for a bond with a bank (these households typically earn R22,000 or more) or can rent accommodation privately (these households typically earn R15,000 or more). This income range will need to be adjusted on a regular basis to consider effects of inflation on income and building costs, along with other factors. The Financial Services Sector, in terms of the Financial Sector Code, revise their target market definition for affordable housing on an annual basis using the midpoint between the Consumer Price Index and Building Cost Index (BASA, 2021).

- This gap may differ across towns. As discussed in paragraph 6.1.1, it is advisable to verify this gap at municipal level based on median income, building costs and housing affordability across a town or city. Median income across the urban area should be used to define the target market\(^\text{10}\).
• Municipalities should consider breaking up the affordable market income range and set out the proportional allocation of inclusionary housing units per segment within the range, in order to avoid all units being made available to households in the upper segment of this range, for example between R20,000 and R22,000. On site inclusionary housing is likely to deliver opportunities to households on the upper end of the R3,501 – R15,000/ R22,000 range if a municipality does not prescribe the distribution of units according to income. Municipalities should be cautious, however, not to undermine development feasibility in doing so. Off-site contributions where developers partner with SHIs or where in-lieu contributions are made that can be invested into projects on state land, for example, are likely to achieve deeper reach within this range. However, municipal incentives could facilitate deeper reach for on-site inclusionary housing contributions through lowering development costs.

• From the WCG’s perspective, many of its employees fall into this gap and fall prey to the consequences of living in economically segregated cities and towns, with long travel distances to work and the costs and risks that accompany this. Career progression and talent retention is compromised by the difficulty of finding affordable accommodation close to work. Young professionals feel excluded from the cities and towns they live in because there are no options to live where they might aspire to live. Teacher’s and nurse’s salaries typically range between R20,000 and R30,000 a month, and social workers and policemen and women typically earn at the bottom of this range. Inclusionary housing targeted at the gap market presents an opportunity to empower these households to climb the housing/property ladder over time as they are able to save (or rehabilitate debt) by reducing travelling costs and investing saved time in household advancement.

• A general guideline in considering qualifying households is that households should not pay more than 1/3 of their income on household expenses (rent/mortgage, utilities, rates, levies, insurance, and other expenses). However, in South Africa this threshold may be as low as 15% - 25% due to other costs, especially transport (Gallows, Eliason, & Shonfeld, 2011). If a household pays more than this on housing-related expenses, then it is overburdened and has less money to spend on other essentials. The household’s resilience in the face of year on year increases in costs is also compromised.

• The determination of the household incomes that will qualify for inclusionary housing units arising from a particular development will therefore need to be confirmed at project level in the case where such an obligation is to be met on the site of that development or off site in another development, within the parameters set by this Policy Framework and a municipal policy.

• This gap does include state programmes that offer partial assistance to households earning up to R22,000 through the FLISP, or through access to social rental housing for households earning up to R15,000 per month. However, opportunities for households to benefit from the FLISP or social rental housing are limited by the extent to which there are products on offer – the availability of such products is dependent on access to affordable finance, affordable land and in the case of social rental, affordable well-located land, as well as the predictability of the subsidies. There are therefore potential opportunities for the expansion of these programmes in partnership with the private sector, in the implementation of inclusionary housing.

11 In South Africa, this is reflected in the Social Housing Programme and its regulations which use this as an affordability threshold for intended beneficiaries (Ndifuna Ukwazi, 2020)

12 Although the well-located nature of inclusionary housing should relieve this transport cost burden.
• Excepting where state-assisted housing programmes may get involved, households need not be excluded from benefitting from an inclusionary housing unit on the basis that they have been the beneficiary of a state subsidy. Inclusionary housing is focused on unlocking affordable opportunities in better locations and facilitating greater mobility in the affordable housing market.

6.2.1.2 Diversity

• Ensuring a fair, or better, a pro-poor, distribution of units across income bands within the affordable housing target range is important for ensuring a diverse range of beneficiaries who are representative of groups historically and presently marginalised from living in the better located parts of our cities and towns. Consideration should also be given to local households currently being pushed out of gentrifying areas.

• Similarly, inclusionary housing presents an opportunity to address the need for gender equity and secure tenure and safer housing opportunities for women and women-headed households. Development opportunities that ensure a deliberate focus on how women benefit show greater benefit to households as whole (National Planning Commission, 2021).

• Vulnerable groups such as youth and people living with disabilities may also be given preference within the allocation of affordable housing units. Accommodation for the elderly and people living with disabilities requires adaptation and greater cost. This is a consideration when trading off the number of inclusionary units with who will benefit.

• Variety in household composition is also an important consideration. While small units creating better located, affordable accommodation opportunities for young professionals have merit, so too does creating diversity in unit sizes to accommodate a variety of households, allowing, for example, families with children to benefit from better access to educational facilities, safer public spaces and amenities with the attendant benefits to wellbeing outcomes for children and families. In the USA there is evidence that children who have moved from worse to better neighbourhoods were able to earn more in later life (Chetty and Hendren 2015 quoted in (Jacobus, 2015)).

6.2.1.3 Who Should Identify Beneficiaries?

• A municipal policy must set out clearly who should benefit from the application of the policy. In the case of inclusionary housing this entails setting out the principles or criteria developers should apply when planning, designing and allocating inclusionary units, including the income range of households that can qualify and the appropriate distribution of inclusionary housing units within this income range (specifying the number of units to be targeted at the lower end, the middle and upper end of the income range). Additional considerations include the variety of household composition that should be accommodated and in what proportion, gender criteria and any other specific criteria or principle responding to the need for that municipality. This would be further refined or a specific development application in the inclusionary housing agreement attached to the planning permission.

13 Consider the legacy of forced removals from areas of now high property values. For example, District Six, Constantia, Claremont and Harfield Village in Cape Town are all instances of this, which has meant that those families were prevented from realising the benefits of home ownership in well-located areas over generations.
• It is critical that whomever screens and qualifies applicants does so through a transparent process. The allocation of units can be a process vulnerable to unethical practices. The practices of SHIs may offer lessons.

• Within the criteria set out in this Policy Framework and that of a municipal policy and a subsequent condition or agreement attached to the planning permission, and/or the FLISP or Social Housing regulations should these apply, the identification of beneficiaries should, in the first instance, be the responsibility of the developer, in the case of an inclusionary unit to be owned, and with the landlord in the case of a rented unit. This is an important principle as landlords take on the risk associated with having a tenant and the developer/ financiers/ body corporates take on the risk in the case of an owned unit.

• Prospective beneficiaries should voluntarily apply to take up the affordable units on offer and independently qualify in terms of the criteria set out.

• Qualifying beneficiaries of rented inclusionary units will need to understand that regular income certification will be required to ensure ongoing qualification for these affordable units. This must be built into the lease agreement. Qualifying income levels must be expressed in a manner that allows for an increase in income over time to accommodate inflation, nominal increases in income and relative to rising rents in the surrounding area, recognising that a substantial increase in income may still not allow for that household to live in an open market residential opportunity in that area.

• In the process of marketing such units, a municipality may make available its waiting list to the developer/ landlord for marketing purposes but should not interfere in the allocation process.

• Developers may partner with companies with employee housing assistance programmes, in which case the beneficiaries would be identified through these programmes if they meet the income and diversity criteria set out by the municipality and in this Policy Framework. This is to ensure an integrated and inclusive development.

• Excepting where inclusionary stock is to be owned, allocated and managed by a SHI, municipalities would need to play a monitoring and compliance role via an initial report submitted by the developer, landlord or managing institution on the allocation of the units. This report should include evidence of the qualifying households meeting the agreed criteria as set out in the inclusionary housing agreement attached to the planning permission. Further reporting agreed to in the inclusionary housing agreement may also be required to ensure that subsequent tenants or owners continue to meet the criteria. The WCG or municipalities should ground-truth such reports from time to time on a sample basis to oversee compliance. Sale and lease agreements should allow for such checks to be conducted.

• Such initial and any ongoing reporting requirements, and provision for the auditing of such reports, must be included in the agreement between the municipality and the applicant planning permission’s inclusionary housing conditions associated with such a condition.
6.2.2 Options for Providing Inclusionary Housing: On Site, Off Site and In Lieu

- Where inclusionary housing requirements are built on the site of the development for which planning permission is sought, and this site is well located, inclusionary housing is fulfilling its role of leveraging private sector capacity to deliver more integrated, inclusive communities.

- It is recognised that it may not always be viable, practical or appropriate to accommodate the inclusionary housing provision on site, under circumstances linked specifically to the local context, such as the following:
  
  - The development triggering the inclusionary housing requirement may not be well located and on-site provision would not serve the purpose of promoting spatial transformation.
  - The erf which is to be developed may not be big enough to accommodate a separate building of inclusionary units or if the development is a single building, the expense of running the building may preclude the long-term affordability for households occupying inclusionary units or the sustainability of cross-subsidisation by the Body Corporate.
  - The number of units generated would be too small, making management of the building, as well as oversight by the municipality more challenging.
  - Greater value for money could be achieved.

In such instances, an inclusionary housing requirement may be met off site or an in-lieu contribution may be made. There should be this flexibility in the municipal application of inclusionary housing within careful parameters to ensure that the objective of inclusionary housing – to realise housing opportunities in high value, well located locations in our cities and towns where middle-to-low-income households would otherwise be excluded based on affordability constraints – is still met.

- Municipalities should determine suitable options in the context and the basis on which each option is appropriate to be applied.

- The requirements to operationalise inclusionary housing, particularly from the perspective of putting in place the systems to ensure tenure preservation, discussed further in paragraph 6.2.3, are intricate and extensive. It is acknowledged that, practically, it may be more effective in the short term to allow in-lieu payments that are invested in existing affordable or social housing projects which meet the spatial transformation objectives of this Policy Framework and a municipal Inclusionary Housing Policy.

6.2.2.1 Off Site

- Off-site contributions would need to be on an alternative site secured by the developer, or a site made available by the municipality or another state partner or perhaps on a site under development by a SHI or another developer for affordable housing.

- This alternative site must be within the area designated by the MSDF as a priority development area with the purpose of restructuring or transforming the settlement and/or within an inclusionary housing overlay zone as discussed in paragraph 6.1.3.

- At a minimum, the off-site contribution should be equal to the value of what the on-site provision would have been.
• The Developer of the development for which permission is given would be responsible for the development of the off-site units, unless agreement is reached otherwise with the municipality.

• The same consideration would need to be given to all the matters identified for inclusion in the inclusionary housing agreement, as listed in paragraph 5 vii.

• If public land is used to receive an off-site contribution, then that contribution must leverage more than what would have been provided on-site.

6.2.2.2 In Lieu

• An in-lieu contribution is a “financial contribution” paid as an alternative, functional equivalent to providing the required units on site or on an alternative site (off-site).

• There is precedent for such an alternative method of contribution in the form of in-lieu fees for parks and open spaces authorised by the SPLUMA (Pegasys, 2020) and LUPA.

• An in-lieu contribution must be used to fund the provision of affordable housing units in the MSDF designated “receiving area” for inclusionary housing and for the benefit of households in the income range targeted by this Policy Framework and/or a municipal inclusionary housing policy. It therefore must be ring-fenced or earmarked.

• These funds should be used to enable the feasibility of a well-located affordable housing project, to enable more affordable units to be built in such developments, to enable higher densities (playing the role of a ‘densification grant’, for example) and/or to enable the units being provided to be affordable to more households at the lower end of the affordability range (to achieve ‘deeper reach’).

• The feasibility study (paragraph 6.1.2) undertaken by the municipality to guide the formulation of its Inclusionary Housing Policy should advise on a suitable method to calculate an in-lieu contribution and indexing to account for annual changes to the costs of construction and land values.

• In some cases, abroad, in-lieu fees are set higher than the cost of on-site or off-site provision in order to dis-incentivise developers from going this route. However, there will be instances where an in-lieu fee is the most appropriate way forward. At the same time, it should be borne in mind that land cost in “receiving areas” areas will likely be higher.

• An in-lieu contribution will, in most instances, be a consequence of a municipal planning permission and in pursuit of the objectives of a municipal policy. For these reasons, the contribution should be paid to the municipality, provided that:
  - The funds are accounted for separately. A ring-fenced municipal fund is legally possible.
  - Capacity is established to manage and use the funds.
  - The funds are used to:
    i. Establish capacity, systems and tools to run the Inclusionary Housing Programme;
    ii. fund the acquisition and/or assembly and/or packaging of well-located land to be developed for affordable housing; or
    iii. the construction of affordable housing on such land; or
iv. to offset costs payable to the municipality that a Social Housing or affordable housing project might incur, such as land costs or Development Contributions, where it may not otherwise be affordable for a municipality to discount these costs; or
v. to secure feasibility, scale/ density or deeper reach of such a development.
- There are clear performance requirements and timeframes within which the funds must be invested.
- Publicly available annual reports are prepared and submitted to Council, reporting on the funds collected, their use and/or plans for their use in terms of clearly set out programmes.
- The funds may not be utilised to subsidise functions the municipality is required to perform outside of this policy.

• The municipality may enter into an agency agreement where the funds are paid to the WCG, a SHI, a developer or another implementing agent who is able to invest the funds in the preparation or construction of affordable housing units within the spatially designated priority area. It is possible for the WCG to set up a dedicated fund which would allow for transfer payments to projects within the municipalities where the funds originated from.

• In-lieu contributions may not be used to replace state subsidies nor to subsidise another private sector developer.

• Municipalities should put in place the capacity to prepare and implement land assembly plans and land and project preparation programmes that can be recipients of an in-lieu contribution such as Smart Partnership Programmes (discussed in more detail in Paragraph 7.2) or projects with SHIs.

6.2.3 Affordability Preservation

• Inclusionary housing can take the form of rented units or owned units. In either case, the units must be provided in such a way as to ensure that they are secured as affordable housing stock over the long term, if not in perpetuity. The ‘long term’ will need to be clearly defined by the municipality.

• While asset creation is a legitimate policy objective, the effort and expense involved in securing inclusionary housing units would be wasted if this stock is lost to the open market, which could happen within a short period of time. Restrictions must be effective over the long term, to ensure that affordable housing units are not rapidly sold or leased on to households that fall outside of the targeted income range (down raiding).

• Municipal rates and tariffs will need to be adapted to ensure that affordable housing units are able to benefit from rebates where applicable, in order that the municipality’s own policies do not undermine affordability.

• Failure to comply with the condition and associated agreement over the long term should result in a penalty, with rates due on units meant as inclusionary housing units, calculated for the whole period when units were supposed to be affordable and were not.
6.2.3.1 Rental Inclusionary Units

- Developers/landowners may choose to retain the inclusionary housing units in their ownership and rent them to households that fall within the agreed targeted income range and meet the criteria discussed above, along with any additional criteria introduced by a municipal policy. In this instance, the landowner will need to put in place the necessary capacity to market and manage the allocation process over successive generations of tenants and conduct regular income certification, as well as providing the normal services of a landlord, as with any tenant.

- Rents charged must remain within the affordability threshold – which would need to be reviewed annually to accommodate inflation and its impact on maintenance costs, as well as changes in the affordability dynamics in the housing market and changes to income categories in amendments to the municipal inclusionary housing policy. At the same time, lease agreements would need to ensure that the tenants are subject to regular income certification to ensure that inclusionary units remain as allocated and available to the intended income group. This must include allowance for some income growth over time. Successive tenants would pay the rental as adjusted for inflation at the time of occupation (i.e., rental would not revert to the original rental payable when the unit was first allocated).

- The municipality will need to establish the mechanisms, systems and capacity to publish applicable rentals on an annual basis and monitor compliance over time to ensure that tenant households meet and continue to meet the allocation criteria for inclusionary housing. This could be aided by an annual report submitted by the landlords, as a condition of approval, and overseen by the municipality.

- A developer may choose to build the inclusionary units and hand them over to a SHI to manage them. This approach has significant practical benefits in that the SHIs are specifically established to provide rental housing to the market targeted by inclusionary housing policy in perpetuity and they have established tenant identification, screening, selection, management systems and capacity. SHIs are monitored and overseen by the Social Housing Regulatory Authority (SHRA) and so the municipality is relieved of the need to oversee compliance for the inclusionary units once they are built. Where projects are funded independently of the SHRA, SHIs are not subject to its oversight. A municipality could, however, enter into an agreement with the SHRA to exercise oversight in this instance. SHIs do require a certain scale to be operationally viable.

- Partnering with SHIs where it is expected that the SHI bring in a capital subsidy – administered by the SHRA - is limited in that under the current social housing regulatory framework, social housing projects using this capital grant cannot sit on the same erf as the units sold or rented on the open market. This is because social housing projects require a notarial deed of restriction. This limitation may change over time and the WCG will engage with the SHRA in this regard. At present, a development meeting an inclusionary housing obligation on site would therefore need to be big enough to enable a subdivision to make partnering with a SHI possible. The use of a capital subsidy from the state must demonstrably enhance the size of the inclusionary component of the development.

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14 The SHRA’s concern is that SH units might be the minority on a Body Corporate and whilst they can vote, might always be outvoted on the decision to increase levies, which will create animosity amongst occupants of the apartment block and compromise affordability.
• A development that provides an off-site or in-lieu obligation may well partner with a SHI to provide this contribution. Established Municipal – SHI Partnerships are a critical enabling condition in this regard. These are discussed further in paragraph 7.27.2.

6.2.3.2 Inclusionary Units for Ownership

• Making inclusionary units available to qualifying households on an ownership basis could take several routes:
  - A developer could sell a unit outright to a qualifying household. That household would independently secure finance from a bank and may qualify for and make use of the FLISP subsidy.\(^{15}\)
  - A developer could run an instalment sale or lease with an option to buy programme.

• The sales price of inclusionary housing units for sale must be stipulated in the Inclusionary Housing Agreement tied to the planning permission with a view to ensuring this is clearly tailored to the gap housing market.

• The municipality must ensure that these units are appropriately “tagged” to ensure that the valuations process recognises their status as inclusionary units and as such should not be valued (and taxed or rated accordingly) as neighbouring open market units might be valued. Precedent exists for this in terms of how erven which carry social housing developments are valued and taxed accordingly.

• The challenge is to ensure that this investment into well located affordable housing is not lost in the short term but rather that successive generations of owners also fit within the affordability range targeted by this and a municipal inclusionary housing policy. It is important to clarify that it is not the intention to prevent a household from selling a unit when circumstances necessitate this, but to ensure that when it is sold, it is sold to another household falling within the household income range targeted by the relevant inclusionary housing policy and that this is adjusted over time to take into consideration inflation and other variables.

• There is an absence of existing institutional mechanisms to monitor and control the selling-on process. These mechanisms are needed to ensure that successive households meet the criteria for inclusionary housing while accommodating scope for returns to be earned by the original owner to promote asset care and wealth creation for the household. Such measures could be based on an allowance for year-on-year CPI increases but capped to ensure affordability preservation, for example. The burden would fall to the municipality to put these systems in place. While this is more complicated to implement in the South African context, currently, it is not impossible.

• Price restrictions on the resale of owned units can provide for equity accumulation and preserve affordability (Jacobus, 2015)

• Developers can be required to put in place measures such as title deed restrictions to restrict how the selling-on of a unit may take place. The municipality would need to put in place the

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\(^{15}\) The FLISP is a housing subsidy for first-time home buyers to assist with purchasing a home. The subsidy is paid to your bank or financial institution and will reduce your monthly loan instalments, making it more affordable to purchase a home. Households with an income between R3 501 to R22 000 may qualify for the FLISP subsidy if they meet all the criteria. The subsidy amount depends on the income of the applicant and ranges between R27 960 – R121 626. (Western Cape Government, 2020)
capacity, policy and systems to set out the process and criteria by which it vets the new owner in order to allow the sale to proceed.

- Property development institutions that run instalment sales or “lease with an option to buy” affordable housing programmes and partnerships with employer assisted housing programmes may present opportunities to implement and retain affordable inclusionary housing over the long term on an ownership basis.

- Owned inclusionary units within sectional title developments owned and run by Home-Owners Associations or Body Corporates will require significant external monitoring, organisational and social support. Broader social buy-in to the need for inclusionary housing is an important precondition for this to work and is going to take some time to establish. Levies and special levies would have to remain affordable for households living in inclusionary units over the long term, which would require cross-subsidisation. However, this may not be feasible, and it is not legally permissible to impose requirements or limitations regarding levies on Body Corporates.

- This may mean that ownership options target the upper threshold of the income group targeted by an inclusionary housing policy for practical reasons.

- When levies make an otherwise affordable unit unaffordable, off site or in-lieu contributions on the part of a developer may be the best way forward in the short term. Precedent does, however, exist in South Africa where education and capacitation programmes, levy, rates and tariff payment management, and Body Corporate participation is managed to support new homeowners of affordable housing stock16.

### 6.2.4 What Should Inclusionary Housing Look Like?

- On-site inclusionary housing should be reasonably ‘tenure blind’. In other words, the differences in the income between households living in a flat or development next door to one another may not be discernible from the outside appearance of the unit or building.

- It may be that inclusionary units have a lower specification of internal decoration and fittings to assist with the feasibility of including these units in the development. However, minimum standards must be met regarding bathroom and kitchen area and fittings and the quality of these facilities must avoid higher maintenance costs. It is proposed that the Social Housing norms and standards are used as a benchmark in this regard.

- While unit size should be determined by the municipal policy based on the profile of households in need of affordable housing opportunities and the development feasibility, there should as a principle be a mix of studio, one-bedroom and two-bedroom units in order to respond to different family composition. The reviewed optimum unit sizes proposed for social rental stock is a useful guideline:

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16 See https://chartwellgroup.co.za/
### Unit Size Range per unit type and occupancy

<table>
<thead>
<tr>
<th>Type of Unit</th>
<th>Optimum Size (m²)</th>
<th>Minimum size</th>
<th>Occupancy *</th>
</tr>
</thead>
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<td>Room</td>
<td>12</td>
<td>10</td>
<td>1b1p</td>
</tr>
<tr>
<td>Bachelor / Studio</td>
<td>25</td>
<td>18</td>
<td>1b2p</td>
</tr>
<tr>
<td>1 Bedroom</td>
<td>35</td>
<td>25</td>
<td>1b2p / 2b3p</td>
</tr>
<tr>
<td>2 Bedroom</td>
<td>48</td>
<td>42</td>
<td>3b3p / 4b4p</td>
</tr>
<tr>
<td>3 Bedroom</td>
<td>60</td>
<td>52</td>
<td>3b4p / 5b6p</td>
</tr>
</tbody>
</table>

*Table 1: Proposed Unit Sizes - Draft SH Norms and Standards (SHRA, 2020) (b=bed; p=person)*

### 6.2.5 Incentives

- The primary incentive to enable inclusionary housing is in the additional land use rights granted.

- Further incentives offered to a particular development should be considered necessary to further offset costs to secure the inclusionary housing provision or serve to expand the provision of inclusionary housing, in terms of the quantum of units provided or the deeper-down reach of such provision to lower-income households. They should not place a cost burden on the municipality to the extent that it amounts to a hidden subsidy and is not sustainable for the municipality. Removing or reducing planning requirements, such as parking requirements, or discounting or deferring the payment of Development Contributions for the affordable component of the development, are examples of possible incentives a municipality may consider.

#### 6.2.5.1 De-risking Development/ Reducing Holding Costs

- Holding costs (made up of, for example, interest payments, security costs, rates and taxes) are one of the foremost cost drivers for prospective developers. A primary contributor to these holding costs is the time it takes for a developer to obtain the necessary planning permissions. This risk is in turn factored into the cost of money. The overall importance of efficient planning permissions process is discussed in paragraph 1.1 of this Framework.

- An overlay zone that introduces additional land use rights subject to meeting inclusionary housing provisions is an important contribution to streamlining permissions processes. The process of putting in place the overlay zone will include public participation and internal municipal sector consultations and should remove or streamline the need for this in the actual assessment of the development application.

- Planning for and securing the availability of infrastructure is also an important part of minimising delays to a developer being able to proceed with the construction and hand over of a development.

- The capacity of officials to engage actively, promptly and confidently with development applications in terms of the Inclusionary Housing Policy is also an important basic element to put in place. A predictable, standardised approach to calculating inclusionary housing
contributions where project-level negotiations are the exception, not the rule, will also contribute in this regard.

6.2.5.2 Subsidies

- Inclusionary housing is intended to leverage the residual value of land for affordable housing to be supplied into the gap market in high value areas where land prices otherwise exclude these households. Inclusionary housing is not intended as a subsidised programme, as this would be unsustainable.

- However, there may be instances where developers bring in SHIs as partners to deliver and/or operate an inclusionary housing component of a development. Such institutions bring with them the opportunity to apply for capital subsidies. In such instances, subsidies should enable the inclusionary housing to achieve either higher densities, a deeper reach to lower-income households than would otherwise be possible, or both, and this should be demonstrated.

- Developers may choose to target their inclusionary units to households who may qualify for the FLISP subsidy. The WCG’s Credit Readiness and Housing Voucher Programmes have the potential to assist with improving certainty for potential FLISP beneficiaries, developers and financiers alike.

7 Supporting Programmes/Actions

There are several supporting activities that the WCG and municipalities can put in place to support the successful application of inclusionary housing in a city or town.

7.1 Land Assembly

- While inclusionary housing is primarily focused on leveraging private sector participation in the affordable housing market towards better-located affordable housing, the flexibility built into the approach to allow for off-site or in-lieu contributions under appropriate circumstances will require land to “host” or “receive” these kinds of contributions. The Municipality has a duty to identify its own land, along with land owned by other spheres of government and state-owned enterprises, that is under-utilised, well located and should be released for inclusive, equitable development, in order to create opportunities for spatial transformation or settlement restructuring. Typically, MSDFs do identify this portfolio of land and the implementation of these MSDF proposals requires an implementation programme to be resourced within the municipality.

- It is critical that municipalities take this forward and develop a land assembly programme and start to commit resources to the packaging and preparation of land for inclusive development while engaging with the other public sector stakeholders to unlock their land. Municipalities should lead by example and ensure that their land is optimally used to achieve spatial justice. For this reason, well-located municipal land released for development to the market – where the nature and type of development can largely be determined by the market and is likely to be mixed-use, residential or commercial – must be made available.

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17 The National Treasury Cities Support Programme’s Catalytic Land Development Guideline provides useful guidance.

18 The National Department of Human Settlements and Housing Development Agency’s draft Land Assembly Policy requires municipalities to prepare Land Assembly Plans led by their MSDFs.

19 This may take the form of the sale of a long-term lease, provided the term of the lease is conducive to private financing and overall feasibility considerations.
conditional on the provision of inclusionary housing at a higher percentage than might be required of the private sector.

- A pipeline of well-located land under preparation for development or ready for development is a vehicle for hosting the off-site provision of inclusionary units or receiving in-lieu contributions. This will ensure that there is a short-term output stemming from the implementation of the municipal Inclusionary Housing Policy and will mitigate against mistrust or suspicion that contributions are unaccounted for and promote the credibility of the municipality’s Inclusionary Housing Programme.

- The WCG has pioneered the release of well-located state land for mixed market development, with a target of 50% of the site’s residential yield to go towards affordable housing. The WCG is committed to reviewing government property for well-located land for affordable housing across the province, and to developing an associated land release programme that will continue to target at least 50% of the yield for affordable housing.

7.2 Partnerships

- In addition to putting in place a pipeline of well-located land for development that is inclusive of affordable housing, municipalities can enter into partnerships with affordable housing providers such as SHIs. Smart Partnerships with SHIs can assist in putting in place a programme in the municipality for affordable housing delivery by matching land to SHIs and creating opportunities for in-lieu inclusionary housing contributions. These contributions are to be invested into social rental stock, meeting the needs of more households and poorer households in well-located areas.

- Municipalities can also enter into partnerships with other developers who can offer a range of affordable housing products on well-located sites – similarly in-lieu inclusionary housing contributions can contribute to increased densities or more products achieving a deeper reach to poorer households.

7.3 Municipal Support Programme

The municipal resource (financial and human) requirements could be significant for a smaller municipality with limited human and financial resources and expertise. The WCG acknowledges the extensive enabling, capacity building and support role it will need to play. However, given the likely scale of provision outside the metropolitan municipality, this is unlikely to be unmanageable if the WCG, municipalities and other stakeholders such as the SHRA and SHIs work together.

A programme is needed to support municipalities, on an ongoing basis, to put in place the building blocks, draft a policy and implement it. This programme will need to include the following activities:

- Technical assistance to put in place a municipal programme to develop an inclusionary housing policy.
- Standard scopes of work for Housing Market Studies, Economic Feasibility Studies and technical assistance with briefing and oversight.
- Explanatory notes on valuation techniques and monitoring local land markets to understand the value of land use increments.
- Possibly drafting a model municipal inclusionary housing policy.
- Advisory assistance with the assessment of development applications.
- Facilitation of peer sharing and learning.
• Networking and capacity building with development partners such as developers and SHIs.
• Support with MSDF amendments to meet the requirements of the SPLUMA s21.
• Model overlay zone.
• Assistance with the review, identification of opportunities and implementation of expedited procedures in terms of the SPLUMA s21(l).
• Model planning permission conditions and/or inclusionary housing agreement with developers.
• Engagement with developers and employer-assisted housing programmes.
• Guides to in-lieu contribution calculation.
• Standard operating procedures for recording inclusionary housing provisions in planning permissions to enable monitoring over time.
• Guidance on operational matters associated with compliance monitoring and affordability preservation, along with recommended approaches.
• Building a Monitoring and evaluation framework and associated data standards.
• Land assembly and preparation of off-site or in-lieu receiving projects.
• Undertaking or commissioning monitoring and evaluation of the implementation of Inclusionary Housing Policies.

7.4 Expediting Planning Permissions

As discussed in paragraph 1.1, efficient planning permissions processes are a critical pre-condition for thriving land markets and housing supply more generally, as well as more affordable housing supply. Extended, inefficient planning permissions process can increase costs and leak value from property economies. If this function is performed well, the state can build investor confidence and reduce the costs of doing business – costs that are passed on to the end user.

• The WCG plays a key role in supporting, monitoring and overseeing the work of municipalities in spatial planning, land use management and regulation, in addition to its more direct role in human settlements planning and delivery and the management of land owned by the WCG.

• Further, the WCG also plays a direct role in the planning permissions process where the National Environmental Management Act 1998 (Act 107 of 1998) (NEMA), the National Heritage Resources Act, 1999 (Act 25 of 1999) (NHRA) or LUPA s53 are triggered.

• Permissions required in terms of NEMA and the NHRA will be made as efficiently as possible, within prescribed timeframes, in order to minimise the risks such permissions processes might present to development.

• Municipalities are supported and encouraged to follow integrated decision-making processes where multiple permissions are required in terms of different pieces of legislation relating to land development21.

• At the same time, opportunities are being sought to put in place the upfront planning to guide where exemption from section 34 of the NHRA may be applied for to allow developers to alter, improve and demolish buildings older than 60 years; and/or, where urban areas may be declared in terms of NEMA to exclude certain listed activities, so as to streamline planning permissions processes as far as possible. This is particularly important in removing unnecessary

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20 LUPA s53 requires WCG approval of land development that will have a substantial effect on (a) the orderly coordinated or harmonious development of a region or the Province; (b) the general welfare of the inhabitants of a region or the Province; or (c) agriculture due to - (i) the nature or scale of the proposed land use; or (ii) the cumulative effect of multiple developments.

21 Note DEA&DP Circular No 0026/2020.
impediments to development in designated priority areas for development identified in MSDFs.

8 Application of this Policy Framework

- Further to paragraph 2.3, and informed by the findings of the Growth Potential of Towns Study 2018, as a first step, municipalities will be encouraged and supported to undertake housing market studies as outlined in paragraph 6.1.1 to determine the scope for the application of an inclusionary housing policy, with a focus on the City of Cape Town and the intermediate cities and towns with high-value property economies.

- Should the findings of the Housing Market Study and the Municipal Council support the introduction of an inclusionary housing policy, relevant municipalities will be supported to undertake a Feasibility Study or to consider the relevance of the findings of the City of Cape Town’s Feasibility Study and any progress made on a provincial calculator and the opportunity to adapt and/or build on this work for that municipality.

- At the same time, municipalities should ensure that their MSDFs that are to be tabled for adoption by the new Councils in 2022 include the designation of areas for the application of an inclusionary housing policy as proposed in paragraph 6.1.3.

8.1 Future Provincial Legislation/ Regulation

Provincial legislation or regulation may be considered necessary in time to support the implementation of this Policy Framework and mitigate against the risks of inconsistent application of inclusionary housing requirements across the Province that may put certain municipalities at a comparative disadvantage.

At this point in time, however, the intention is to start with this Policy Framework and to further develop it as it is tested in practice, prior to determining what might be necessary in law.

Amendments to LUPA will be sought to improve enabling provisions associated with setting conditions and providing for inclusionary housing in-lieu contributions to be made.

A Provincial Act will be required should the WCG, on the request of, or with the agreement of, the municipalities, set up a mechanism for receiving and disbursing in-lieu contributions in terms of the Public Finance Management Act, 1999 (Act 1 of 1999) and Schedule 2 of the annual Western Cape Appropriations Act.

9 Policy Monitoring, Evaluation and Review

- It is important that a framework for the monitoring and evaluation of this Policy Framework is put in place, which will also be a test for a suitable approach to the monitoring and evaluation of municipal policies.

- Monitoring and evaluation will need to consider several matters over the short and long term with an increasing focus on outcomes and impact over the long term, including:
  - Progress in the take up by municipalities of the guidance set out in this Policy Framework.
  - Progress in the implementation of the Municipal Support Programme.
- The number of municipalities successfully adopting inclusionary housing policies.
- What is working and what is not in attempts to implement this and municipal policy.
- Monitoring and Evaluating the Impact of implementation of inclusionary housing policies in terms of:
  
  o Output:
    o Number of inclusionary housing agreements entered into;
    o agreements complied with;
    o number of applications exempted from the policy on the basis of their addressing the target market anyway;
    o the quantum of contributions agreed;
    o number of units delivered;
    o the timing of delivery of the units or in-lieu fees paid;
    o compliance with the conditions associated with an inclusionary housing requirement;
    o the location of the units;
    o typology of units delivered;
    o profile of beneficiary households in terms of income and diversity; and
    o where in-lieu fees are paid and invested and the outputs of these investments
  
  o Impact on market behaviour and land prices
  o Performance in respect of tenure preservation
  o Outcomes:
    o Improvements in household performance, for example
    o educational outcomes;
    o income improvement at household level;
    o churn as households progress up the housing ladder;
    o debt rehabilitation;
    o and other outcomes.

• Government, academic and research institutions will need to play a key role in monitoring the implementation and effectiveness of inclusionary housing policy in the Western Cape facilitated by the WCG.

• In the short term, this Policy Framework will be reviewed on a bi-annual basis (every two years), and amended if need be following annual reports on the progress being made in the institutionalisation and implementation of this Policy Framework and the interim measures, challenges and opportunities identified, as well as trends measured.

• This review process should be supported by an annual report compiled by municipalities that have adopted inclusionary housing policies reporting on the planning permissions granted with inclusionary housing conditions and the status of compliance with these conditions. This should include where in-lieu contributions have been made and how these have been invested, as well as picking up any implementation challenges and policy adjustments needed. This can be integrated with the annual performance review of MSDFs.

• Municipal policies should aim to be reviewed every two years to start with, to ensure that lessons learnt in the application of the policy, with implications for the policy provisions are considered and taken on board where appropriate.
10 References and Resources


Cadre. (2017). Assessment of the implementation of Restructuring Zones and the effectiveness thereof as an urban restructuring tool.


Ndifuna Ukwazi. (2020). Erf 35418, 40 old Oak Road, Belville Objection.


