



Toolkit for the Public Sector

A TOOLKIT FOR SOCIAL HOUSING



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LIST OF ABBREVIATIONS

CRU	Community residential units
EDBS	Extended Discount Benefit Scheme
EIA	Environmental Impact Assessment
HDA	Housing Development Agency
IDP	Integrated Development Plan
RZ	Restructuring Zone
SHI	Social housing institution
SHRA	Social Housing Regulatory Authority

DEFINITION OF TERMS

Here are some definition of terms that occur often in the text of this Toolkit. It is useful to know them so that you are clear about what they mean, how they differ and how they interlink.

Term	Explanation
Phase	One whole series of activities that co-ordinated together achieve an important milestone towards the overall project objectives and outputs.
Process	The series of activity steps that require following in a particular order in order to achieve the suboutputs and full output of a project or programme.
Programme	This is a set of projects that are completed within the framework of the same set of rules and directed at similar objectives and outputs. The delivery of CRU programmes is co-ordinated mainly at a provincial level, but involves engagement with projects across one or more municipalities within the province.
Restructuring Zones	These are the geographical urban areas that are agreed between national province and municipalities that determine where the restructuring grant can be used to financial social housing.

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1. INTRODUCTION

Rental housing is an important form of housing tenure, providing opportunities and choice for households seeking housing. It comes in many forms in both the formal and informal sectors. Some people live their whole lives in rental housing either by choice or because there are no other options. For others, rental accommodation is an alternative they use for a particular period in their lives for a range of different reasons.

The government has recognised the crucial role rental has to play in the housing ladder and supports the development of rental opportunities that can extend the housing choice available to low- and medium-income households. Implementing these government-supported rental programmes requires the proactive and coordinated involvement of all three spheres of government working with other stakeholders. This Toolkit is intended to assist with this.

1.1 Purpose of this Toolkit

The key focus of this Toolkit is on the involvement of provincial and local government in helping to develop the low- and medium-income rental sector, and in so doing help extend the housing choice available to low- and medium-income households.

The purpose of this Toolkit is to enable officials in provinces and municipalities to:

- Explain the respective roles and responsibilities of the different spheres of government in these programmes.
- Help government officials understand the activities that they must undertake to implement the programmes.

- Provide information on the more detailed support documents and tools available to support the activities particularly within the Social Housing programme.

1.2 Target of the Toolkit

The Toolkit is specifically targeted at officials from municipalities and provinces who have direct responsibility for all or part of the rental housing programmes in their areas. It is also intended for other officials whose work involves them in providing different forms of support to the rental housing programmes, e.g. financial management.

More generally it is also useful for other key stakeholders wanting to better understand the rental sector and the role of government within this.

1.3 How to Use the Toolkit

This document has been drafted as an electronic document. It therefore starts with an introductory home page that sets out a brief overview of the contents and clicks down to a range of more detailed documents.

The Toolkit is structured whereby under each section a broad overview of the topic is provided. More detail is provided in drop down boxes, as well as links to a range of documents that have been produced overtime by various SH stakeholders as well as other relevant organisations.

- **Words shown in orange** link to another part of the document so as to provide more information.
- **Words shown in blue** link directly to the source document, also for the purpose of providing more information.

SECTION A:

**PROVINCIAL AND MUNICIPAL INVOLVEMENT IN
RENTAL HOUSING – AN OVERVIEW**

SECTION B:

**INSTITUTIONAL STRUCTURING FOR RENTAL
HOUSING PROGRAMMES**

SECTION C:

PROGRAMME DEVELOPMENT AND PLANNING

SECTION D:

**PROGRAMME & PROJECT IMPLEMENTATION &
MANAGEMENT**

SECTION A

PROVINCIAL AND MUNICIPAL INVOLVEMENT OF PROVINCES AND MUNICIPALITIES - OVERVIEW



This section provides an overview of the key functions that Provinces and municipalities must undertake in order to run successful rental programmes in their areas.

It covers the Social Housing programme, as both the CRU and IS programmes are presently under review. Thus their form in the future is unclear.

1. Key Focus Areas and Activity Clusters

With regards to the Social Housing programme, the actual project delivery is managed through the SHRA. It is governed

by the CCG contract between the SHRA and the relevant Delivery Agent. However, the Provinces and municipalities have crucial roles to play in the overall planning and spatial targeting of SH investments as well as facilitating access to the necessary additional resources required to make the investment successful in terms of the government's socio-economic intent.

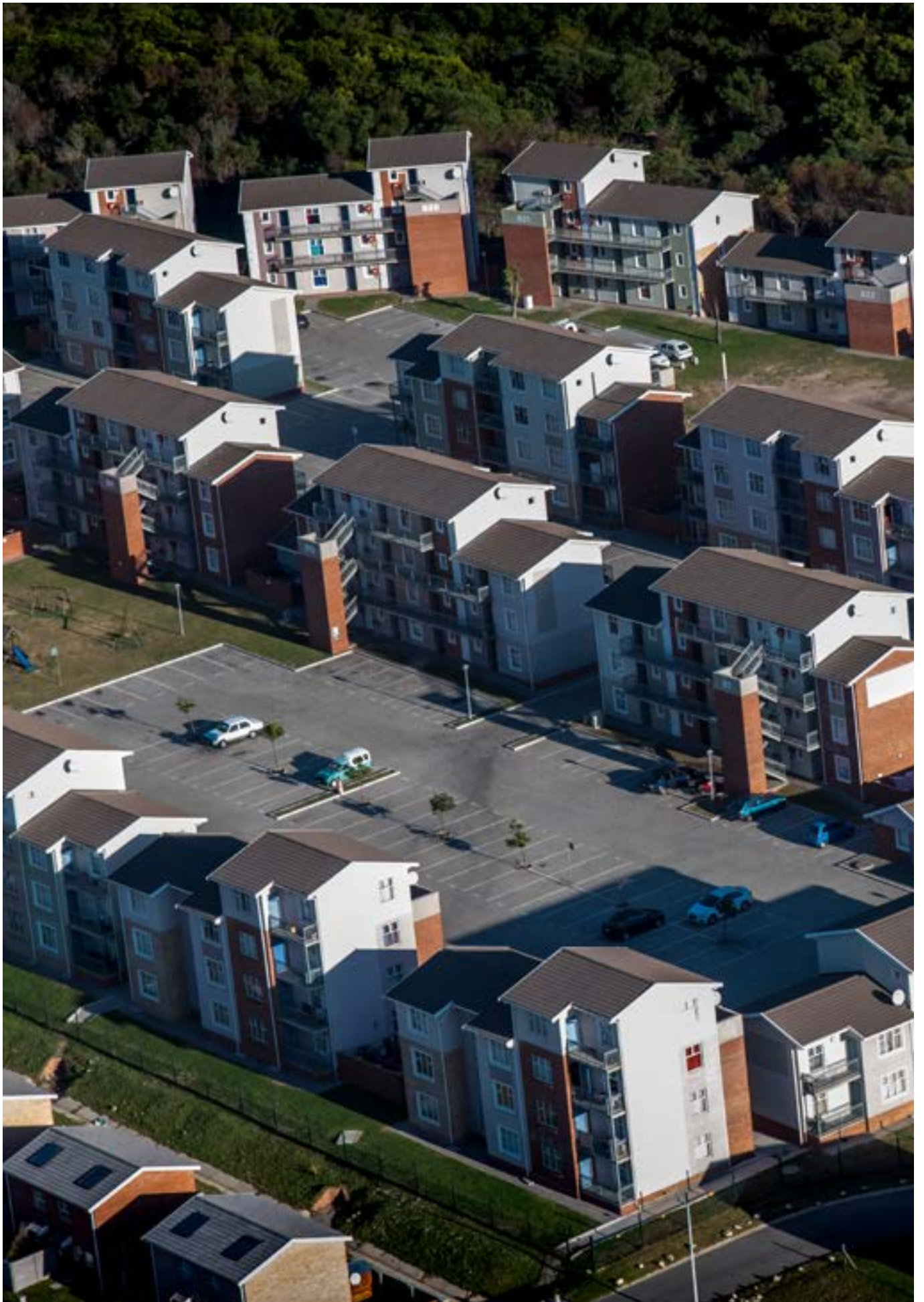
Provinces and municipalities must organise themselves to undertake the key functions as contained in table 2 below.

Table 1: Key Focus Areas and Activity Clusters

Key focus area	Provinces	Municipalities
	Activity clusters	
Organisation/Institutional structuring	Staffing	Staffing
	Institutional arrangements	Institutional arrangements
	Systems	Systems
	Office infrastructure	Office infrastructure
Programme development & planning	Develop:	Develop:
	Rental Housing strategy, plan and budget	Rental Housing strategy, plan & budget
	Rental Housing Policy	Rental Housing Policy
Programme & project implementation & management	Monitor RZs and support Municipalities	RZ management
	Project pipeline management: Track and endorse the pipeline	Project pipeline management: Track and endorse the pipeline
	Support the SHRA with the approval of grants	Delivery capacity: Procurement of Smart partners or establishment of MOE and monitor and management of the above arrangements and agreements
	Institutional arrangements: IGR & sector coordination (related to the pipeline of projects)	Land release and monitor performance of released land
	Housing consumer awareness & education	Project agreements and monitor performance of agreements
	Support to & Capacitation of Municipalities	Review and enhance Incentive package
		Institutional/stakeholder arrangements

Table 2: Typical Activities for Municipalities for the Implementation of SH

Key area	Strategy	Policy	Implementation/M & E
Market & demand analysis	Research into housing market failure, demand for SH & socio economic & demographic analysis	Target market and Product offering: typology, pricing, location	Monitor that the target market and product offering address the demand for SH
Spatial integration	Identification of RZs	Demarcation of RZs	Monitor performance & RZs & make recommendations for removing and adding new zones
Land for SH	Land research/search & identification	Land allocation, release, tenure, pricing policy	Allocation & release of land
Delivery capacity	How much SHI capacity is required	Partnership arrangements and/or MOE	Procurement: Advert, selection, contracting or MOE establishment
	Evaluation of MOE/Partnership options		
Municipal Incentive package	Research into & evaluation of required incentives to make the SH programme affordable to the target market & for SHI sustainability	Policy on incentive package in terms of pricing and concessions	Review of the incentive package to assess whether it is meeting the affordability objectives
Project delivery	Pipeline of projects	Approve land parcels for SH	Call for EOI, adjudication and agreements Monitor delivery of projects



SECTION B

ORGANISATION / INSTITUTIONAL STRUCTURING



In order to properly develop and manage the rental housing programme and projects, both the Province and municipalities need to ensure that the following are in place:

- Suitably able personnel with mandate and authority to deliver.
- Budget allocations for preparation of the programme and also project identification and initial preparation finance.
- Systems to permit them to carry out the key activities.
- Stakeholder co-operation platforms and agreements.

Ensuring that this happens is the responsibility of the senior management staff in the particular sphere of government.

1. Provincial and Municipal Rental Housing Teams

Primary responsibility for the roll-out of the provincial rental programme should rest within a Rental Housing team within the PDoHS. Responsibility for a municipal rental programme rests within the department responsible for housing; but should be either a designated team or at least firmly within the job description of an official with the necessary authority.

1.1 Purpose

- To provide overall co-ordination for the development and implementation of the Rental Housing Programme.
- To be the primary point of reference for interaction with key external stakeholders engaged in the programme.

1.2 Structuring

1.2.1 Province

Such a unit should be structured at least at Directorate level and should have a minimum of three staff, including the Director with unit management and programme co-ordination responsibilities. A second person, at least at Deputy Director level, should have responsibility for pipeline support and housing consumer education. A third post, at least a medium-level administration post, would be required to undertake the administration functions of the unit. In provinces with a large (or potentially large) rental housing programme, more staff would be needed, particularly for project management and support.

Staff should have clear job descriptions linked to the functions within the rental housing programme and have the skills to do the work. In addition, they should have the organisational authority to interact on an equal basis with functional support sections of the department (e.g. finance, contracting).

1.2.2 Municipality

The organising of such a unit within a municipality depends on the size of the rental programme. Municipalities with

larger rental programmes should set up a Rental Housing unit with similar structuring to that in the province. The management arrangements relate to the development of the strategy, policy and planning as well as the management of institutional arrangements with key stakeholders, both internal and external to the municipality. There would be strong reliance on and thus linkages to the land, town planning, engineering, finance, SCM and legal departments within the Municipality.

In municipalities with smaller programmes, the management of the rental programme can be designated through the job descriptions of particular individuals with the necessary authority to undertake programme co-ordination and project management functions on rental stock.

2. Internal Departmental Co-Operation

While a Rental team or designated programme manager can manage and co-ordinate the overall programme, she/he is reliant on co-operative decisions and actions from a range of other sections within the province or municipality including:

- Policy and Strategy.
- Finance and Procurement.
- Spatial planning.
- Land and Services (engineering).
- Project Assessment and Approval.
- Contracting and Contract Management.
- Monitoring and Evaluation.

2.1 Purpose

To ensure that direct management and support sections within the internal departments of both the province and municipalities work together to implement agreed rental housing strategies, programmes and linked projects.

2.2 Structuring

The co-operation between these departments is strengthened through a strong and agreed **rental housing strategy and action plan** with linkages back to **provincial and municipal budgets and financial allocation**. It also requires the establishment of **mutually agreed and resourced systems** through which all internal departmental staff are able to work to achieve the defined strategic objectives. This should include formalised institutional arrangements, the proper arrangement of meetings and other forums for communication to ensure the co-operative action required. The outputs required, resources to be allocated, as well as the timing and approach to co-operation should be defined within an SLA.

While senior management is ultimately responsible for ensuring this, the Director of the Rental unit or individual staff member responsible for rental housing must drive programme delivery.

3. External Stakeholder Engagement

The building of strong co-operative relationships between key stakeholders is crucial for both the rental programme and specific projects. The **Rental Housing Market & Government Rental Housing Programme Toolkit Section C, chapter 2** deals with the range of roles and responsibilities of key stakeholders. In order to strengthen co-operation, it is important that both province and municipalities structure institutional arrangements for strengthening co-operative engagement. Two important mechanisms through which to do this are explained below. These are:

- **Provincial Steering Committees (PSC's).**
- **National Rental Housing Task Team.**

3.1 Provincial Steering Committees

During the approval process of the 2006 national rental housing strategy, it was decided by MINMEC that the institutional framework needed to include an institutional arrangement led by the PDoHS to bring key stakeholders together to track, advance the delivery of government subsidised rental housing (SH and CRU).

3.1.1 Purpose

- To provide a forum for the key stakeholders in the province to engage together.
- To contribute to the provincial rental housing strategy formulation and review.
- To help develop the rental housing project pipeline.

- To receive information and contribute to policy, procedure and other developments around rental housing programmes.
- To provide feedback on progress with projects which they are involved in.

3.1.2 Structuring

The PSC is set up and coordinated by the province. It must involve municipalities in the province and should also include other key stakeholders, most importantly SHIs, Human Settlements Entities and financing institutions. Generally, it meets every two to three months. More information on the functioning of the PSC is contained in the **Toolkit for the Establishment of an SHI, dropdown box 1**.

3.2 National Rental Housing Task Team

The NRHTT requires provinces and municipalities to contribute towards the rental housing policy debate. These spheres of government bring their “on the ground” experiences with demand for rental, spatial issues, delivery agents and projects to the national debate.

3.3 Peer Learning Forum

The Peer Learning Forum consists of the chairpersons of the PSCs and rotates across provinces, i.e. each province gets a turn to convene a session on a rotational basis. This forum was established to allow for innovation to be shared by the leading provinces and for challenges facing provinces to be discussed and resolved.

INFO BOX



The NRHTT is active as part of the policy and legislative review agenda.

The Peer Learning Forum has not been active. It is however a useful institutional arrangement for capacitation of Provincial PSCs and rental housing departments

4. Systems

All PDoHS and municipalities have particular systems in place. Many of their housing-related systems are dominated by the conditions for the grant allocation in BNG and other ownership programmes. Some of these are adapted to the various policy and implementation frameworks for the Rental Housing Programme while others are not.

It is critical that the department assesses the relevance of existing systems to the roll-out of rental housing programmes, and either adapts the existing system or develops new systems for implementation of rental programmes. This is particularly critical around the activity clusters detailed below. In doing

so it should be mindful of the regulatory role of the SHRA for Social Housing and not duplicate the systems that the SHRA is using.

The sections below will provide a guide on the operating policies and processes required in order to develop and implement a rental housing programme.

Having institutionally structured the arrangements for the rental programme, it is now important to understand the activity clusters required for the development of the programme as well as the related planning. The diagram below provides an overview of the activities and outputs required in this phase.

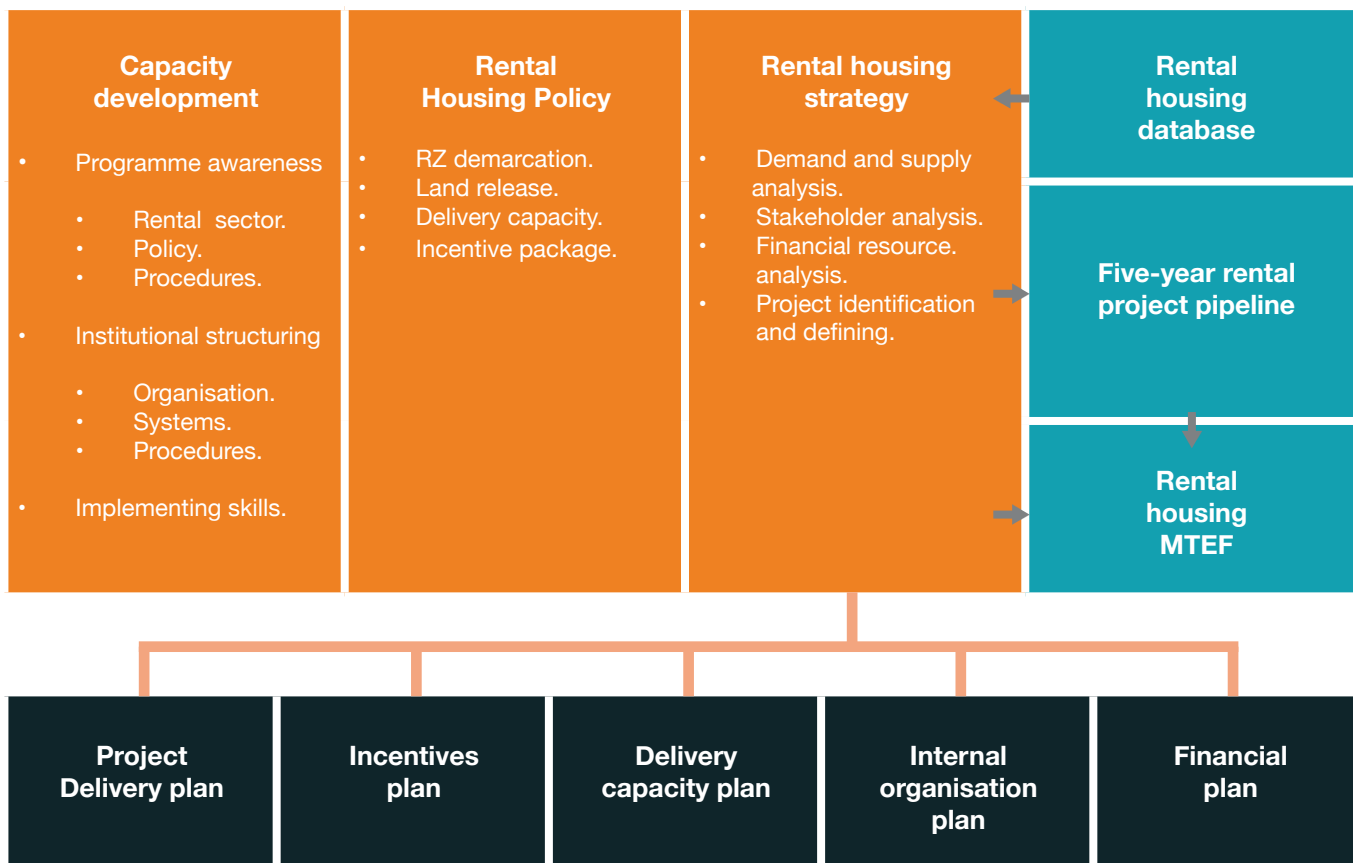


SECTION C

PROGRAMME DEVELOPMENT & PLANNING



Diagram 1: Developing the Rental Housing Programme



1. Developing Awareness Of Rental Housing Programme

1.1 Purpose

To ensure that all key stakeholders have a thorough understanding of rental housing provision and the potential for rental programme delivery in the provincial and municipal areas, it is necessary to:

- Engage key stakeholders in the development and implementing of the programme in the province and relevant municipalities.
- Ensure that all stakeholders are involved in communicating and understanding progress in the sub-sector.

1.2 Arrangements

Rental Housing units in province should work with responsible officials and relevant politicians in municipalities to explain the national policy framework and the approach to programme development in the province.

The municipal official in turn should mobilise understanding and engagement of key stakeholders within the municipality, and more broadly within the area. SALGA has developed a **Municipal Rental Housing Guide for Councillors**.

This should take place in preparation for and during the development of the provincial and municipal rental housing strategies.

1.3 Content

The content focus should be on:

- What is rental, and what is its place in the housing market?
- Government programmes: why have they been introduced and what do they provide?
- Rental strategies and approaches to adopting them.
- Management of the provincial and municipal Rental Housing Programme.
- Financing and Budgets.
- Project identification, and assessment criteria and procedures.
- Developments in the sector relevant to provincial and municipal programmes.
- The programme separation between rental and ownership.

1.4 Forums

- The primary forum is the PSC. It is also possible to use workshops at provincial level or in specific municipalities.

- Engagement between provinces and municipalities in preparing municipal and provincial strategy is also an excellent forum for developing awareness and sharing information.
- The M&E activities should provide information on progress with roll-out of the affordable rental housing programme.
- SHRA Municipal Support Programme.
- NASHO training programme for Municipalities, see the [NASHO Municipal Support Brochure](#).

2. Development of the Policy and Strategic Framework

2.1 Development of a Rental Housing Policy

In preparing a programme it is essential that the Municipality or Province ensures that the relevant rental housing policy is in place. Importantly, such a policy must be properly aligned with other linked policies e.g. land release, procurement of partners, offered incentives. This process must involve primary rental housing policy and then alignment with other relevant municipal and provincial policies.

2.1.1 Purpose

- To ensure that there is a coherent policy that can guide the implementation of the rental housing programme in the municipality and province as smoothly as possible.
- To ensure that the rental housing policy is properly aligned with other relevant policies to achieve a smooth delivery.

2.1.2 Arrangements

First the internal manager of the programme must put in place a policy framework for rental housing. This must involve ensuring that all elements required for the successful delivery of such a programme are defined in a policy that has that has been formally approved by the

municipality or Province. In doing so the responsible official must check alignment with other relevant municipal/provincial policies. Where there is a gap, the official needs to manage an engagement process that aligns these policies either through changing the linked policies or revising the Rental Housing Policy approach. SALGA has developed a [Toolkit for the Development of Municipal Policy, 3rd edition](#).

2.1.3 Overview of the Content of the Affordable Rental Housing Policy

- Purpose.
- Spatial targeting/planning and linkages including RZ demarcation.
- Linkage to other municipal programmes including other housing programmes.
- Municipal land planning and zoning regulations.
- Land allocation and release.
- Other offered incentives including municipal charges
- Delivery Agent partnership – procurement and contracting.
- Financing including linkage with national government financing through SH programme.
- Monitoring and evaluation of programme and projects.

2.1.4 Policy Considerations

The section below consists of a summary of considerations for each key policy imperative.

1. Spatial Planning & Demarcation of RZS

Municipalities are responsible for spatial planning and identifying and demarcating RZs for SH. They are also responsible for zone management and that includes monitoring the performance of existing RZs with the view to deregistering RZs where there is no need for SH any longer and identifying additional zones.



1.1 Purpose

Restructuring via social housing seeks to achieve three main dimensions of restructuring:

- a. Spatial restructuring by bringing lower income (and often disadvantaged) people into areas where there are major urban economic opportunities (both with respect to jobs and consumption) and from which they would otherwise be excluded because of the dynamics of the land market on the one hand and the effects of land use planning instruments such as large-lot zoning (minimum erf sizes). This it should be stressed is the primary meaning of spatial restructuring as it used in social housing policy. Social housing, as understood here, indirectly contributes to spatial restructuring by increasing densities and compacting growth thereby ensuring that the poor are not pushed out to marginal locations at the edge of the city.
- b. Social restructuring by promoting a mix of race and classes.
- c. Economic restructuring by promoting spatial access to economic opportunity and promoting job creation via the multiplier effect associated with building medium density housing stock.

1.2 Content

The primary dimension of the meaning of restructuring is economic opportunity/access. It should be used to open up areas which have major economic opportunities and from which poor people have been excluded or to protect poor people from being displaced from areas with economic opportunity (e.g. inner cities experiencing a revival of property values and where rents are escalating). A restructuring zone should be motivated on the basis that it contributes to all three types of restructuring. The promotion of economic access on its own is however not sufficient motivation. Neither is promoting race and class mix (where social housing brings predominantly lower income people into higher income areas). Restructuring

zones cannot be justified on the basis of spatial morphology alone (i.e. it cannot be solely motivated on the grounds that it contributes to changing the form of urban areas from low density areas with low-rise single unit dwellings to higher density areas with medium-rise buildings).

It is important to distinguish between “regeneration/urban renewal zones” and “restructuring zones”. Many municipalities have identified “regeneration/urban renewal” areas and as a general rule these are poor areas in need of upliftment and investment. They may be areas with significant latent economic potential but often they are not areas from which poor people have been excluded by virtue of the operation of the land market. In a South African context restructuring zones will often coincide with nodes and corridors of economic opportunity. Townships will not be restructuring areas, although almost all will be regeneration areas. There may of course be economic nodes and corridors within or abutting townships which could qualify as restructuring areas.

Identification and demarcation of RZs should as far as possible be based on existing plans. Most of the municipalities have via their IDP processes already identified spatial focus areas which come close to achieving the meaning and intent of restructuring zones. This helps ensure that the initial identification and demarcation process is closely aligned with local government and provincial planning processes. It also means that formal due process (consultation etc.) will have been followed.

Most municipalities have identified nodes and corridors in their planning processes. These are likely to be suitable as restructuring zones because of proximity to both job opportunities and consumption opportunities.

In instances where no suitable existing zones exist; appropriate restructuring zones should be identified and demarcated in uncontested locations (such as inner-city areas) so as to avoid long due process delays.



Demarcation of RZs

Demarcation on maps

- Zones should be spatially referenced and include cadastral boundaries.
- Nodes and corridors are likely to qualify as restructuring zones (relates also to spatial restructuring).
- Areas must be large enough to allow for significant restructuring and warrant zone management.
- Area demarcation must be justified in terms of restructuring and planning logic.
- Attention should be given to the edges of a zone. The environments on either side of the boundaries of the zone should be markedly different (for example the boundary of restructuring zone identified along a high-density corridor should be drawn at a point where there is a sharp drop-off in existing and anticipation densities). Where possible boundaries should have a logic attached to them.

The Key Criteria for Approval

- The provision of a sound restructuring logic in motivating the application. This is the key criterion.
- Clear specification of restructuring outcomes and indicators.
- The satisfactory identification of outputs considered necessary to achieve restructuring outcomes.
- Successful incorporation of Restructuring Zones into the normal planning activities/processes of the applicant municipality.
- The specification of adequate Zone management arrangements.
- Satisfactory execution of due process requirements including consultation with existing/affected residents conducted?

General characteristics for areas to be designated as RZs

- Areas with adequate economic and social infrastructure.
- Areas with potential for economic, spatial and social integration, meaning areas where some or all aspects of such integration are currently lacking.
- Well-located areas where the introduction of social housing would prevent the displacement of poor working-class residents during slum clearance or urban renewal programmes.
- Areas which would not be impossible to zone/re-zone for residential/mixed-use development such as green belts conservation areas; areas below flood lines or with impossible topographic/geotechnical development conditions.
- Areas where the City/Town or government owns vacant land and/or under-utilised/derelict buildings will be at an advantage. This should not however be an absolute requirement, and should not cause the exclusion of areas where no such properties are currently available, but where future opportunities may arise due to changes in the nature of properties.

Alignment, with existing municipal plans

In as much as these espouse the ideals of inclusive cities and restructuring (integration and densification) the process of identifying Restructuring Zones should align as far as possible with the municipality's:

- Spatial development frameworks.
- Transport plans.
- Local economic development plans.
- Housing chapters of IDPs/Housing sector plans.

Access and proximity

- Public transport.
- Jobs and economic opportunities for the self-employed/small entrepreneurs.
- Services such as emergency services, health, safety and security services, education, day-care, welfare, cultural and community facilities.
- Retail shopping facilities.

2. Land Allocation & Release

Well-located land at the right price for low-income rental housing projects is a scarce resource. Government, through its various departments, owns well-located land and buildings which have potential for serving as rental housing. The different spheres of government have the potential to meet some of this supply. Provinces must work with municipalities to identify suitable land and buildings and then ensure that they are made available in a way that secures their long-term use for low-income rental. In doing so municipalities need to develop and manage a land pipeline for rental housing in their areas to achieve their strategy and policy objectives.

The land development process is complex and is governed by many policies and interrelated pieces of legislation with different legislation and ordinances being applied from province to province. In order to secure land and buildings for the Rental Housing Programme it is essential that there is cross-departmental co-operation in the provinces and municipalities, supported by strong technical knowledge of the legislative framework for land acquisition, disposal and use.

2.1 Purpose

To develop a pipeline of municipal or other land and buildings for delivery and that are relevant to help achieve the socio-economic and urban restructuring intent of the municipality.

2.2 Content

a. Land Identification and Packaging for SH

A land study detailing land identification, release and pipeline management must be conducted to identify land and buildings suitable for SH; municipal and state-owned land and buildings must be prioritised for development, as

privately-owned land is a last option due to the cost of the land. The land study must include a feasibility assessment in order to understand the Geotech conditions, town planning and bulk services requirements and indicative costs.

b. Land Allocation

Table 3: Land Allocation Options and Considerations

ALLOCATION	CONSIDERATIONS
Smart Partners and Municipal Entity	<p>Accreditation status with the SHRA</p> <p>Geographical allocation based on location of partner</p> <p>On the basis of project delivery load. Allocation is based on completed projects hence a future allocation of land only happens once the first parcel has been fully constructed.</p> <p>Land released on the basis of: Land Availability Agreement and Development Agreement</p>
ODAs	<p>Project delivery capability</p> <p>Post-delivery arrangements</p>

b. Land release

i. Tenure

Table 4: Tenure Options and Considerations

TENURE	CONSIDERATIONS
Transfer of ownership	<p>Transfer of the asset can take place with an endorsement of the title deed to the ensure that the land remains for the purpose intended</p> <p>The SHI is able to use the property to strengthen its balance sheet and to leverage other funding</p>
Long term Lease	<p>Land remains in the ownership of the municipality</p> <p>As a notarial deed is registered, the process to cancel the lease would be the same as if the property was transferred to the DA</p> <p>The DA would require the municipality's permission when executing an eviction against the tenant; this could delay the eviction process and result in the sustainability of the DA being compromised</p>

ii. Pricing

Table 5: Land Pricing Options and Considerations

PRICING OPTION	BENEFITS
Donation	Contributes towards the sustainability of the SHI
	Creates Equity for the SHI to leverage debt and other funding
	Reduces the cost of the project and that benefit is passed onto the beneficiary
Sale at Nominal Value	Contributes towards the sustainability of the SHI
	Creates Equity for the SHI to leverage debt and other funding
	Reduces the cost of the project and that benefit is passed onto the beneficiary
Sale at Market Value	Asset creation for the SHI
Long term Lease at a nominal fee	A lease longer than 35 years allows the SHI to place it on its balance sheet and thus the benefits of the nominal fee sale applies
	Challenges with this option relate to:
	The SHI having to obtain Council endorsement for each and every eviction
	Tenant perception that the “public” landowner can be used as an excuse not to service rental

3. Delivery and Management Capacity

The SH programme requires an institutionalised form of management for the stock. This is achieved primarily through accredited SHIs, MOEs or by ODAs with accredited projects. SHIs typically take on the role of property owner, developer and SHI Landlords. The management model for SH varies significantly from the unsubsidised private sector property managers in that it caters for poorer, more vulnerable households. It is centred around good communication, education, social facilitation and community development which results in strong relationships with tenants. Refer to the tenant management/community development model for SHIs in the SH Implementation Toolkit to gain a better understanding of the management model for SH.

Municipalities do not have a good track record in developing and managing housing stock and run a high risk of experiencing rental boycotts. Given these challenges and risks, it is in the best interest of the municipality to partner with accredited SHIs and to support ODAs.

3.1 Purpose

To ensure that there is capacity to deliver viable SH projects, as well as management of the stock and tenancies. This in an environment where the DAs are sustainable over the long term.

3.2 Content

Three primary approaches have been developed in structuring the co-operative relations between municipalities and their SH delivery partners. What is best for a particular municipality is dependent upon the context of the municipality and the best way it can manage its risk while achieving the required developmental objectives. The table below highlights the different approaches and gives some of the pros and cons for each.

Table 6: Delivery Agent Options and Considerations

Form	Structure	Pros	Cons
Municipal entity	<p>The municipality sets up a SHI, which, although functioning as an independent entity, is owned by the municipality and bound into its financing and management reporting systems.</p> <p>It is governed by the requirements of the Municipal Structures Act and the Municipal Finance Management Act.</p>	<ul style="list-style-type: none"> • Municipality continues to have direct control on all inputs. • Able to control the detail of the programme. • Continues to own assets through the ownership of the company. • Established and clear procedural processes for releasing assets to municipal entities. 	<ul style="list-style-type: none"> • Municipality must carry full risk. • Danger of “political” interference in social housing business. • Day-to-day business can be adversely affected by the policy and procedures of the municipality. • Could make it difficult to obtain external loan finance without municipal guarantees.
Municipality / SHI partnership	<p>The municipality enters into a partnership agreement with a SHI over a specified period of time. The two “partners” agree on respective functions, and resource exchanges over the period of delivery of a number of projects. The municipality does not control the Board or the overall investments of the SHI. The SHI’s performance in using municipal assets is managed through strong contracts between the SHI and the municipality.</p>	<ul style="list-style-type: none"> • Proactive planning and co-operation over programme. • SHI has certainty about longer-term and resourced co-operation that permits it to develop its business in a planned way. • SHI can function separately as “business”, but municipality can ensure it uses its resources effectively through contracts. • Makes it easier to lease land to SHI within legislative parameters 	<ul style="list-style-type: none"> • Requires long-term commitment between SHI and municipality. • Requires availability of municipal-owned land committed to social housing.
Municipality and SHI - ad hoc project agreements	<p>Municipality and SHI enter into ad hoc arrangements around projects when and if necessary.</p> <p>They may also have a MOU to define their co-operation, but this does not have the same legal force as contractual arrangement.</p>	<ul style="list-style-type: none"> • Is simple to implement within existing policy framework. 	<ul style="list-style-type: none"> • No long-term programme perspective. • Little municipal control over resource flows to SHIs. • Makes transfer of land other than at market value difficult.

Of these delivery agent options, the present experience in South Africa would indicate that where a municipality wishes to run an 'effective and efficient' SH programme over a number of years, rather than a reactive ad hoc project based SH delivery programme, a stronger longer-term contractual partnership is best. **Section D, Chapter 2.1** explains the approach to this as it applies to the City of Cape Town which is referred to as the SH Smart Partnership approach.

4. Incentive Package

The government's rental housing programmes already provide capital subsidies to contribute towards ensuring 'sustainable' social housing projects. However, sometimes this is not enough in some spatial areas with high land values and where there is a particular intent to achieve deeper down reach affordability. In such cases municipalities can offer 'incentives' that will help make SH projects more viable and sustainable while achieving the socio economic and urban restructuring objectives of the programme.

Where such incentives are offered, it must be structured

into the related municipal policies. It also requires assessment against the market rentals in a particular area to show that it is required beyond the national SH subsidy to ensure sustainability and viability.

Municipalities must ensure that delivery agents who access these incentives have costs that are on par with the sector benchmarks in order to ensure that the incentives are passed on to tenants.

The City of Cape Town has developed an **Incentive Policy** for its affordable rental housing programme.

4.1 Purpose

To formally structure agreed particular contributions from the municipality to permit viable and sustainable delivery of SH in targeted areas and ensuring deep down-market reach.

4.2 Content

The possible package of financial incentives includes:

Table 7: Incentive Package Options

ITEM	OPTIONS
CAPITAL INCENTIVE	
1. Urban Development Zones (UDZs)	National tax reduction in defined urban areas for the development including for rental accommodation. This is not a realisable incentive for non-profit SHIs that are exempt from tax.
2. Urban Sector Development Grant (USDG)	A National capital grant for Metros and larger Cities to purchase land and finance infrastructure development to improve housing possibilities for the 'poor' within more socially integrated and denser cities.
3. Land pricing	Donation or rent-free long-term lease
	A percentage of market value or nominal fee
	Reduced cost per m ²
	Reduced below market rentals
4. Development contributions	Percentage reduction or full waiver
5. Town planning approval fees	Percentage reduction or full waiver
6. Building plan approval fees	Percentage reduction or full waiver
OPERATIONAL INCENTIVE	
7. Rates reductions	Set at base rates i.e. for an RDP unit or full waiver for a defined period or on the basis of proof of income of tenants who fall within the municipal indigent policy
8. Indigent subsidies	Existing subsidy provided for utilities to the deep-down market i.e. ±0 to R3 500 income per month, generally it is equivalent to 2 old age pensions

An **Incentives Calculator** is available to undertake scenario modelling for the various options and quantum of reductions. This model then provides a long-term financial result for the municipality. The decision on the financial incentive package must be informed by the municipality's financial ability to provide such incentives set against the need to achieve project feasibility while maintaining affordability for the target market.

There are also non-financial incentives that should be considered. These are:

1. Relaxed parking requirements – this must be informed by a parking usage study as well as assumptions related to the proximity of public transport etc.
2. Relaxed town planning requirements - this should allow for higher densities, especially in CBD's, to maximise the number of units, In very well-located areas this could reduce the cost of the land per unit as well as more efficient usage of the existing bulk infrastructure and reduces the cost of construction as more units can be built.
3. Land packaging support where necessary, i.e. zoning, subdivision, consolidation, EIA's etc. – this can assist the SHI with shortening the period of land packaging whilst land and project procurement and agreements are being addressed.
4. Prioritisation of bulk services budgets for the identified sites and MIG funding for the project pipeline.

INFO BOX



Facilitating Projects that can Reduce the Cost of SH Delivery

In addition to direct incentives there are also Municipal related initiatives that can facilitate the provision of SH projects that can reduce the costs or increase investment in SH viability and sustainability. This is dependent upon whether these are in place in a municipality but should be considered.

From NASHO study in Affordable Rental Incentives for the City of Cape Town

FACILITATING PROJECTS	DESCRIPTION
Social Housing Programme	Consolidate the City's social housing programme and the City's partnership with SHIs to more effectively achieve the social developmental returns on govt. investment in SH.
'Bad to Better Buildings'	Use enforcement, and if necessary, acquisition, to force landlords not meeting by law requirements to improve the conditions or provide buildings for affordable rental opportunities.
Precinct Based Implementation	Use of a strategic approach to precinct development using municipal, and other government resources to achieve its city and developmental objectives and improve conditions for private investment.
CID – Ekhaya Area Management Programmes	Improved local area management systems to improve the quality of life in precincts and to encourage further capital investment.

5. Approval of policy

The rental housing staff will have to prepare and present a comprehensive report to Council or the MEC to seek

approval for the SH programme elements, i.e. the strategy, policy, plans and budgets. The report should include the following:

Table 8: Council Report Framework

No	Key Issue
1.	Introduction and purpose of the report
2.	Strategic intent
3.	Executive summary
4.	Content: SH Strategy, policy, SHI Partnerships, Land pipeline or release, project agreements etc.
5.	Constitutional and policy implications
6.	Sustainability implications
7.	Legal implications
8.	Staffing implications
9.	Other services consulted
10.	Financial implications
11.	Recommendations

Adapted from the CoCT Council report

There are precedents for two approaches in seeking Council approval;

1. A piecemeal approach is used to get the individual approvals in place, for example, the strategy then the partnership arrangement, then the land release and the project agreements or
2. The land release, smartpartnership arrangements, project agreements and incentive package is taken to Council as a holistic affordable rental housing policy

The internal administrative approvals are best sought in an environment where a presentation is made to the various departments that must endorse it before it is presented to Council or its committees. This allows for engagement around issues of concern and those requiring clarity.

6. Development of the Rental Housing Strategy and Plan

Government policy requires that both provincial and municipalities prepare **housing strategies and plans** that should inform the **MTEF and budgeting processes** for the provision of housing to meet the housing need and demand in their areas. Such strategies and plans should include a section that deals specifically with rental housing. It must be informed by and linked to the infrastructure, LED and SDF. It should also be reflected in the provincial department's business plan and in the Housing Chapter of the annual IDP of the municipality. The municipality should also develop an annual action plan to guide its delivery of the programme in each financial year.

6.1 Purpose

To ensure that at provincial and municipal levels there are agreed plans linked to proper resourcing to guide the roll-out of rental housing in the respective areas.

6.2 Arrangements

These are coordinated by the provincial Rental Housing unit for the province and the officials in municipalities responsible for rental housing.

The approach can use a number of different methods including desktop information gathering, interviews with key informants, workshops and regular forums (e.g. the PSC).

The process should involve:

- Information gathering.
- Analysis and prioritising.
- Synthesis.
- Linkage to MTEF and budgets.
- Agreement between key stakeholders.
- Formal approval.

One approach is for the province to liaise closely with those municipalities with potential for social housing and work with them to prepare a rental database. In the process they can jointly identify demand, supply, priority projects and key issues. These can then be integrated into the municipal strategy and also that of the province.

Larger municipalities should prepare such strategies and plans but ensure that they engage with the Province in the process of doing this.

6.3 Contents of the Rental Housing Strategy

The rental housing strategy and plan should include the following:

Table 9: Overview of the Key Component of a Municipal Social Housing Strategy

Research & Analysis	Housing Market & demand for SH	Demographic and socio-economic study. Rental housing market analysis. Use results to inform assumptions around demand for SH.
	Supply study	RZ study to identify where SH development should take place. Land and buildings study to identify land and buildings for SH development.
	Policy and legislative	The legislation that impacts and affects the development of SH is contained in section B above.
	Stakeholder	<p>PROVINCE: Support to develop the SH programme at a municipal level & capacity building support</p> <p>SHRA: Support to develop the SH programme & capacity building support</p> <p>HDA: For land and land packaging support</p> <p>NASHO: Capacity support, spatial planning support</p> <p>SHIs/ODAs: SH Development and management of stock</p> <p>Private property owners & developers: Land & buildings and SH developments</p> <p>Universities and research agencies: Demand and supply studies & spatial studies</p>
	SWOT & PESTLE	Factors that will have an impact on the successful implementation of the rental housing programme
	Risk	Key risks relate to the availability of well-located land, bulk infrastructure availability, economic situation, capacity and resources for SH
	Internal organisation	Partners/stakeholders, internal staffing capacity, systems capacity and office infrastructure including technology/MIS to support the programme

The results of the above analysis must be used to inform the strategic goals, objectives and programmes for the Municipality. The strategic framework must include a rental housing vision, mission and strategic goals that must be aligned to the broader strategic framework of the municipality/province and contribute towards the overall municipal/provincial objectives.

Strategic Framework	Vision & Mission	Should provide a clear statement on the spatial, social and economic integration of the municipality contributing to inclusive and compact municipalities
	Strategic goals	The strategic goals should include delivery targets and institutional capacity and resourcing to deliver SH
	KPI's and thresholds	The strategic goals must be results based and it must be measurable i.e. there must be KPI's with set benchmarks, as this creates the framework for the programme performance management system.

The above strategic goals must be unpacked into the below plans and budgets.

Delivery Plan – Pipeline of Projects	SH Spatial plan	Spatial planning including identification and management of RZs
	Pipeline of projects	Land and buildings Infrastructure provision Pipeline of projects Land packaging Project agreements
Incentives Plan	Capital incentives	Reduced: developments contributions, land release and town planning and building plan fees
	Operational incentives	Reduced: rates
Delivery Capacity Plan	SHI and ODA capacity	Municipal SHI Incubation of SHIs Smart partner agreements with SHIs and ODAs
Internal Organization Plan	Staffing	Add SH functions to housing staff and provide training. Functions relate to spatial planning, zone management, land packaging, smart-partner agreements and project agreements, programme planning and M & E
	Systems	Operating systems for development monitoring the project pipeline, smart-partner and project delivery agreements
	Office infrastructure	Office space and equipment
	Institutional arrangements	Institutional arrangements with key stakeholders and attendance of all SH fora such as PSC.
	Programme performance management	Spatial transformation targets Project agreements: Number of units delivered Smart-partner agreements: Performance of SHIs or ODAs
Financial Plan	CAPEX – capital funding requirements OPEX – operating income & expenditure	The strategic goals must be unpacked into plans with budgets as required by the Municipal Systems Act, No. 32 of 2000 (MSA). CAPEX: Capital expenditure contributions e.g. bulk services, sale of land OPEX: The budget requirements relate to the income derived from the land release, incentives etc and operating costs

CHALLENGE BOX

Should Consultants Prepare the Strategy and Action Plan?

Provinces and municipalities often outsource such planning to external consultants. The consultants often prepare a strategy that is very coherent as a document but has little engagement and buy-in from the Provinces and municipalities responsible for the delivery. Many such documents end up placed on document shelves but are never implemented.

It is very important that the strategy preparation and action plans preparation are managed internally. It might be necessary to engage external consultants on some aspects. However, they should work in close conjunction with relevant officials. The internal manager has a responsibility to ensure that the engagement in the preparation results in buy-in and commitment to the strategy by the Province or municipality concerned

Successful strategies and action plans are those that are developed and owned by the municipality or Province.



SECTION D

PROGRAMME & PROJECT IMPLEMENTATION & MANAGEMENT



1. Overview

This section demonstrates how to establish the system for the identification and assessment of land and buildings, RZ and project pipeline management, delivery capacity and land release. Although it is mainly for municipalities, this section is relevant for provinces which want to be involved in supporting delivery of SH. The overlapping items relate

to RZ and project pipeline management and these are relevant to both municipalities and provinces. In the case of provinces, this section includes additional province specific items related to municipal capacity building and housing consumer education.

The figure below provides an overview of the implementation framework for municipalities.

Diagram 2: Implementation Framework for Municipalities



Source: WC Leader town rental housing programme

2. Delivery Capacity & Project Pipeline Management

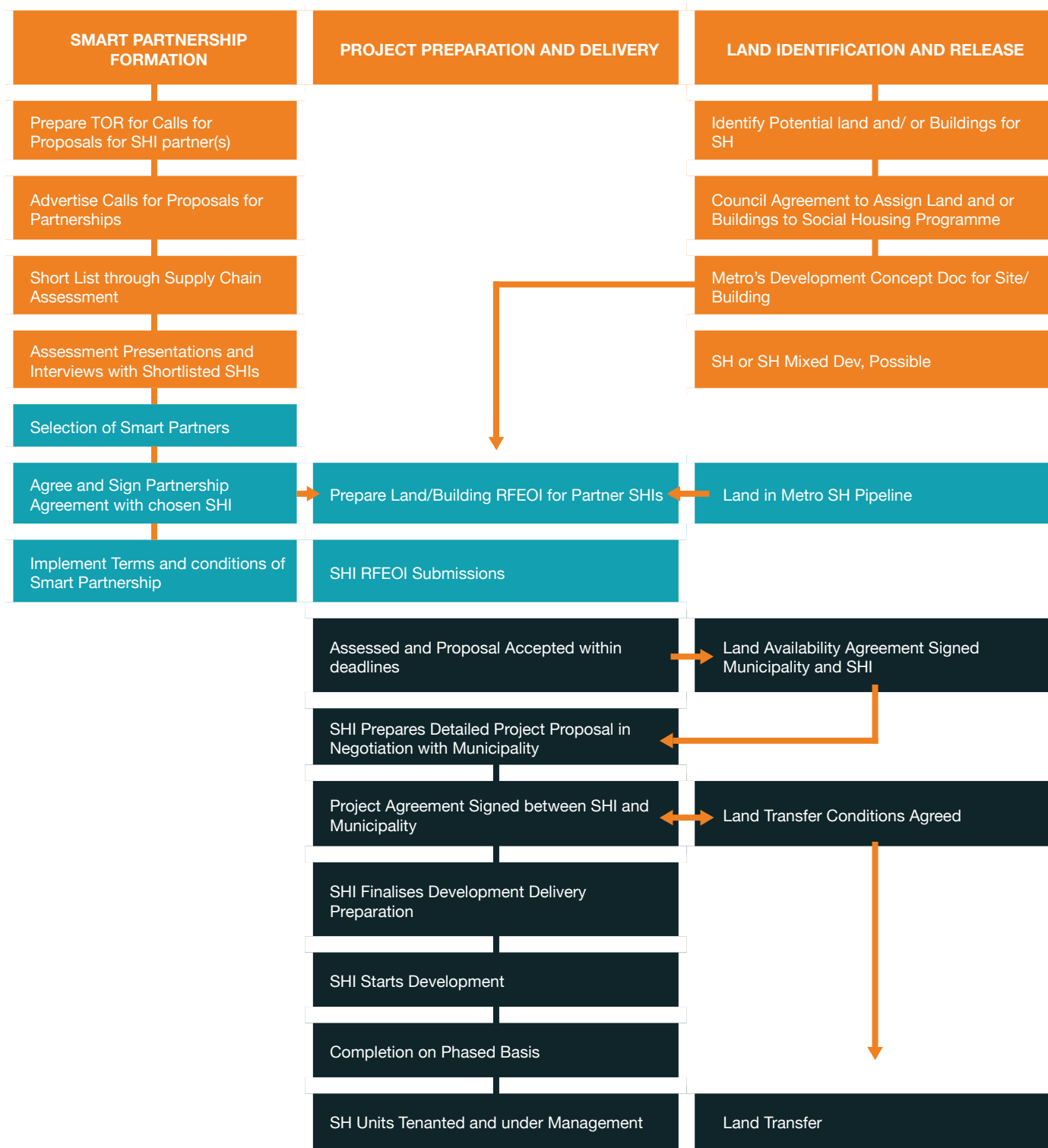
This section includes the arrangements for ensuring that:

1. Delivery capacity is in place
2. Identification of land and buildings, a prefeasibility assessment, the preparation for release

3. The release of the land and buildings
4. Project delivery

Diagram 3 below provides an overview of the framework of this section.

Diagram 3: Smart Partnership, Project Preparation and Land Release



Source: WC Leader town rental housing programme

2.1 Delivery Agent Capacity – Smart Partner Arrangements with SHIs

This section addresses the partnership arrangement options with accredited SHIs. Should the municipality decide on the establishment of an MOE then it must use the Toolkit for the Establishment of SH.

The provision of rental housing requires a structured arrangement between the municipality and the delivery agents tasked with delivery through the SH policy and legislation and particularly with accredited SHIs. In the past insufficient attention was given to the proper structuring

of the relationship between the municipality and such partners. This resulted in poor streaming and control of resources and often resulted in failed projects that did not meet the prioritised developmental objectives of the municipality.

The different key stakeholders responsible for the development and long-term management of stock, its grants financing, and land provision may choose to formalise their relationship through contracted Partnership Agreements (PAs) or formal but less binding SLAs. This is particularly so between municipalities and SHIs functioning in their areas but can also occur between SHIs and provinces.

INFO BOX



Partnership Contract or SLA?

An SLA is an agreement between 2 partners or more of their intent to co-operate together, the basis of the co-operation and what is expected of each partner, what each partner will contribute and the defined shared outputs. However, without a stronger contractual arrangement an SLA is embedded in voluntary compliance. It has no legal enforceability. Therefore, it is best used where the co-operation is voluntary, the objectives between partners are shared and each party is deeply committed to using it to guide their actions.

A Partnership Contract can contain all the content aspects of an SLA but it is legally more binding and involves statements of exchange of assets and conditions linked to this. In this way it provides partners with firmer grounds to ensure compliance but also the protection of each partner's interests particularly where asset exchange is involved.

The section on Smart Partnerships (see below) will better explain how a set of contractual arrangements can give greater certainty to partnerships and help each to protect individual interests and investments in a programme and project.

2.1.1 Social Housing Smart Partnership Agreement

The primary partnership agreement needs to exist between the municipality and the delivery agent, a primarily SHRA accredited SHI. This partnership is important as it must deliver on the municipality's socio-economic objectives over a long period and protect the invested government resources. It is therefore crucial that the agreement between the municipality and the SHI can meet the following conditions:

- Provide for long term partnership stability that protects the investment of both parties against socio – economic intent.
- Provides the potential for longer term stable investment that produces increased opportunities for project and programme sustainability while increasing the ability of the SHI to undertake longer term business planning.

2.1.1.1 Purpose

- a. To provide a structured set of legal agreements between the municipality and an accredited SHI to permit the municipality to use the SHI to deliver on the socio – economic mandate of the municipality using the policy and regulations of the national SH programme.
- b. In order to do this to provide a legal framework which:

- Permits a long-term stable partnership.
- Promotes the exchange of resources while protecting their specific long term use for socio-economic objectives.
- Gives environmental certainties that permit a municipality to plan and manage its SH business and the partner to consider the long-term development of their business within the SH framework.
- Structured within the national policy and legislative framework for the release and use of government assets.

2.1.1.2 Structuring

The partnerships are structured through a set of related contractual steps with agreements that link the municipality's SH Partnership agreement with its release of land and provision of other incentives for the sustainable SH delivery.

Diagram 4 below shows the structuring of the contractual relationship between the municipality and the SHI. It links the SH partnership agreements with 2.2 below on municipal land release which are supported by a set of contractual agreements to protect the interest of both parties and particularly the use of invested government assets. The full set of templates for contractual agreements are available from the NASHO website, www.nasho.org.za/resources/tools.

Diagram 4: Structuring of SH Smart Partnerships



Source: WC Leader town rental housing programme

The diagram above shows how the Smart Partnership arrangements links on a process basis with project preparation and land release.

This approach to SMART Partners was initially particularly structured to accredited SHIs with proven track records in delivery. The approach is now extended to Conditionally Accredited SHIs without any projects under management to permit them to receive land from the municipality on a 'conditional' basis to do their first project. The contractual agreements linked to this can also be accessed from the NASHO website, www.nasho.org.za/resources/tools.

2. Land Identification, Preparation for Release, Release and M & E Post Release

Well-located land at the right price for low-income rental housing projects is a scarce resource. Government, through its various departments, owns well-located land and buildings which have potential for serving as rental housing. The different spheres of government have the potential to meet some of this supply. Provinces must work with municipalities to identify suitable land and buildings and then ensure that they are made available in a way that secures their long-term use for low-income rental. In doing

so municipalities need to develop and manage a land pipeline for rental housing in their areas to achieve their strategy and policy objectives.

The land development process is complex and is governed by many policies and interrelated pieces of legislation with different legislation and ordinances being applied from province to province. In order to secure land and buildings for the Rental Housing Programme it is essential that there is cross-departmental co-operation in the provinces and municipalities, supported by strong technical knowledge of the legislative framework for land acquisition, disposal and use.

2.2.1 Purpose

To develop a pipeline of municipal or state land and buildings that are relevant to help achieve the socio-economic and urban restructuring intent of the municipality.

2.2.2 Steps in Managing a Land Pipeline for Government Assisted Rental Housing

The municipality needs to ensure that it has the capacity, including staff, finances, and policy alignment, to undertake the following steps:

Table 10: Steps in Managing Land/Building Pipeline

STEP	ACTION	PURPOSE	OUTPUT
1	Identify government-owned land and buildings relevant to the government's Rental Programmes	To assess available land and building assets against criteria of the affordable rental programmes of Govt.	Land and buildings identified on a continuing basis for appropriate use in the affordable rental housing programmes
2	Initial feasibility	To undertake scoping feasibility on the viability of land and buildings for use in government affordable rental programmes.	Land and buildings identified as suitable for incorporation into the affordable rental programme with indication of best programme and project usage
3	Placing on pipeline	Incorporation into the programme with assessment of best use in affordable rental programme.	Municipal pipeline of land and buildings for release for affordable rentals with defined programme and development type and prioritising for release
4	Preparation for Release	To undertake whatever preparation appropriate before release including land planning applications, geo-technical and initial project planning.	Completed preparation for land/building release to projects having completed any pre development preparation that facilitates the effective and efficient delivery of project.
5	Structured Release of land for Development	Ensure the release of the land/buildings to the delivery agent under contractual	Release of asset to developer and long-term manager through structured contractual agreements to ensure the most effective and efficient use of the asset within the programme objectives.
6	Monitoring of Asset development	Ensure that the physical development of site is done in accordance with agreement with the site developer.	Completed project that adheres to the requirements of the government assisted rental programmes and any other the municipality required within land release.
7	Monitoring of Effective use of asset	Ensure that the development on released sites is used to supply rental opportunities in accordance with the conditions of the government programme and any other conditions stipulated by municipality.	Successfully managed rental projects in accordance with the government policy intent or remedial action to rectify any variation.

This is not a one-off process and requires continuous management by the designated personnel within the municipality and is influenced by the scale of the programme and the availability of government land and building assets in the area.

The **identification, allocation and release of land** is the most critical phase in the overall property development process and has the potential for long delays because this is the phase where most of the politics of competing interests is played out.

2.2.3 Steps 1, 2 and 3: Identifying Land & Initial Feasibility on Suitability and Placement on the Project Pipeline

2.2.3.1 Purpose

To identify appropriate land and buildings for incorporation into the rental housing strategy and programme that can make rental for low-income people viable and sustainable.

2.2.3.1 Arrangements

Province and municipalities should work together in identifying land suitable for low-income rental. This can be done by the development of a land and building database that can identify the relevant land and buildings owned by the government that are either presently used for residential rental or could be so used in the future. Such land and buildings are then evaluated according to assessment criteria including:

- Geotechnical suitability.
- Town planning suitability.
- Suitability of location—close to key socio-economic nodes and efficient public transport.
- In the case of social housing, this evaluation

involves ensuring that such land and buildings are part of Restructuring Zones or could be gazetted as RZs if they meet the requisite criteria.

Once identified and assessed a decision on whether to place the land or buildings into the pipeline or to return them to the general pool must be made.

Once in the pipeline it is necessary to prioritise the use of this land and/or buildings:

- By programme type: CRU, FLISP, social housing; mixed CRU and social housing or SH on its own.
- Within the five-year project pipelines, depending upon resource availability.

INFO BOX



Who Decides Which Land is Available for Rental Housing?

This is a difficult issue. Provinces and municipalities are governed by national legislation concerning the conditions for the use and disposal of their assets.

Usually in the province much of the administrative control over land rests within the Department of Public Works. However, some line departments (e.g. DoHS) might own their own land or buildings. In the former case the DoHS needs to engage the Department of Public Works to identify and then gain access to suitable land. This is usually done within the broader provincial policy and procedures defining use of its assets.

The final decision on the long-term use of any asset is determined at a political level through the provincial legislature. The DoHS must ensure that land use for rental housing and relevant building requirements are incorporated within broader policy and procedures for provincial government asset control.

In municipalities a similar system usually applies with a property development unit managing most of the municipality's land and building assets, with some held by individual line departments. Here, again, those responsible for the rental housing delivery need to engage to ensure that the needs and criteria for land use for the programme are built into the municipality's asset release policy and procedures.

Provinces and municipalities may also enter into agreements with the HDA for the acquisition or transfer of land for affordable rental housing delivery.

2.2.4 Steps 4: Preparation for Release

Municipalities may package the land and ensure that the bulk infrastructure is in place before it releases land, alternatively it may identify land and release it immediately and the delivery agent takes on the responsibility of packaging the land. The approach is usually informed by the internal capacity the municipality holds to undertake the town planning functions.

2.2.3.1 Purpose

To undertake the required preparatory work needed to ensure the efficient and effective release of land and buildings.

2.2.4.2 Content

Undertake any of the following that will increase the speed and efficiency of the development once land is released, including:

- Zoning and planning permissions.
- Subdivisions.
- Geo technical and environmental assessments.
- More detailed project planning related to bulk allowable.
- Preparation of necessary bulk infrastructure.

CONSIDERATION BOX



How Much Work to do Before Release?

Once a land/building asset is in the pipeline it is essential that the municipality considers what parts of the project preparation they should do before the release of the asset for development.

The guiding principle must be what is most effective and efficient for the delivery of the intended project and who will do this best within the time span for the delivery; is it the delivery agent or the municipality? This will depend on whether the asset is ready for release, when the municipality wishes to release it, and the relative speed at which the municipality or delivery agent can complete these preparations for the most rapid delivery of the project.

2.2.5 Step 5: Release of Land for Rental Housing Development

Where municipalities contribute land and buildings to low-income rental housing projects, they are required to ensure that such land and buildings are used specifically to achieve the developmental objectives of the low-income rental housing projects, particularly if it is made available

for this purpose at below the market cost of the land or buildings.

In releasing land/buildings for affordable rental it is critical that the municipality has in place a system and process to do this which is supported by its policy within the legislated framework for the release of municipal assets.

INFO BOX



The MFMA and Land Transfer for Low-Income Rental Housing

Provinces and municipalities are particularly sensitive about the transfer of land preferentially as well as at below market cost. In most cases this is necessary to achieve affordability for the target market. There is particular concern about the prescripts of the MFMA.

Within the terms of the MFMA this can be achieved through the following mechanisms:

- Transferring the land to a properly established municipal entity owned by the municipality.
- With provincial land, provinces can transfer this land to municipalities for them to transfer to their entities.
- Through entering into partnerships with SHIs through proper tendering procedures and then allocating land to these institutions on a leasehold basis specifically for social housing.
- Through open tender on a project by project basis.

It is important that the municipality structure any such “transfer” arrangement to ensure that if the receiving SHI does not fulfill its obligations to use the land or buildings in order to provide rental housing in accordance with the national policy and any local agreements, that the land and buildings can be forfeited to the municipality. This requires that the municipality sets in place the necessary capacity to monitor whether the SHI adheres to the terms for the lease of the land or buildings during the entire lease period or registered in the title deed.

2.2.5.1 Purpose

To release the land in a way that meets government policy and legislation and secures long-term use for rental housing for low-income households.

2.2.5.2 Arrangements

The ownership sphere of government must organise the release of the property for development.

For social housing the property needs to be transferred to the SHI responsible for the project. The preferred route would be identification, pre-assessment, allocation and release on the municipality's initiative via leasehold or direct sale to SHIs at nominal fee or at no cost on the basis that it is in the public interest and for alleviation of the plight of the poor. It is suggested that municipalities are often far too conservative around this issue, fearing they may fall foul of the law (the MFMA).

2.2.5.3 Forms of Transfer

There are three broad forms of transfer that the municipality can use in releasing land to SHIs:

- Outright Ownership (OO)

Ownership of land is passed to the SHI with no conditions registered in the deed of transfer. Conditions must be contained in a separate contract between the municipality and SHI and must be able to override the ownership right if the contract is not adhered to by the SHI. In this form control of the land rests with the SHI, which can choose to use the land for other purposes unless the contractual agreement on the land is strong enough to prevent it from doing so. Even if there is a strong contract, it is always possible for a dispute to arise and tie the parties up in protracted and costly litigation. Also, in the extreme case of the municipality having to take back the land, a reverse deed transfer with all the concomitant costs would be required.

- Conditional Ownership (CO)

Here ownership and conditions on long-term disposal are linked to stated conditions registered on title deeds. It would usually also involve a further contract on the conditions and use of the land by the SHI. Legally the SHI can go to

court to have conditions in deed suspended or altered. This would usually (but not necessarily) involve the consent of the municipality. The same risks with regard to litigation and re-possession as in the case of Outright Ownership above would apply.

- Long-Term Leasehold (LTL)

In this form of transfer the municipality enters into a leasehold agreement that permits the SHI to develop and manage stock on the site over a specified period. However, the municipality retains ownership of the land or any assets built upon it. The municipality can also terminate the lease because of non-adherence to the conditions of the contract on the land. Land should be leased to the SHI on a basis that ensures its profitability and sustainability.

Which form to use depends upon the context of the municipality and capacity of the SHI operating within the project locality. Choice by the municipality should be governed by the form that best ensures that the asset is used effectively, efficiently and sustainably for the longer-term developmental objectives for which it is intended

The table below highlights the risks that management should consider when deciding which route to follow.

Table 11: Forms of Transfer and Risk Protection

Principles and Issues	Outright Ownership	Conditional Ownership	Long-term Leasehold
Protection of land from moving into speculative market	Very little protection or recourse as dependent upon contractual agreements that are generally weaker and more difficult to enforce than land rights.	Provides protection that prevents selling except under conditions or with explicit agreement of the municipality.	Prevents any selling at all without the express agreement of the municipality
Rent-to-buy	No protection for the city against decision by SHI to revert it to this.	Could only revert it if agreement with the city is obtained.	Could only revert if agreement with the municipality is obtained.
Effect on transfer cost of land	Would require market-related sale, as it cannot protect the future use of asset.	Gives some basis for arguing "community benefit" in setting price lower than market but this needs proper legal advice.	Can permit consideration of community benefit as asset remains in long-term ownership of municipality. Therefore it is possible to transfer at less than market cost and also use land as municipal equity investment.
Availability of bank loan finance	Provides the bank with simple mechanism for "bonding" but does not necessarily cover the other important risk factors.	Could inhibit willingness to finance if lending institution assesses that conditions in sales deed lessen its value in case of default.	Does not protect the bank without additional back-to-back arrangement with municipality; otherwise municipality could veto the banks on sale to recoup any losses. However, banks do increasingly assess on basis of viability of project rather than predominantly on ability to repossess property.
Return on investment and financial cash flows of SHI	Places full capital accumulation and return on investment with SHI; which could maximise this to the detriment of developmental objectives, or choose to use in a way that does not further developmental objectives.	Places full capital accumulation and return on investment with SHI, which could use as chooses and not direct to city objectives unless possible to write some conditions into deed.	Allows city to accrue a share of the long-term asset accumulation rather than only a one-off raw land cost. Properly structured makes possible for the SHI to make return and to build reserves. Negatively affects SHI's ability to loan against their portfolio. Also affects the SHIs financial as must write off asset over the period of lease.

In deciding on the best form of release it is critical that the municipality considers their own risk exposure and the long-term business viability of their partner in delivery. Experience suggest that for the SHI the best form of transfer

is freehold ownership where a land lease agreement, a 50-year lease or more, provides the basic financial viability for delivery partners.

INFO BOX

Protecting Municipal Land and Buildings: Assets Released for Social Housing

Municipalities are often justifiably concerned that if they release assets at below market price to Social Housing Institutions, they have no control of the use of the asset in the longer term. They therefore often resort to a lease arrangement to ensure that they can control longer-term use of the asset in the future.

However, now they can use a different protection facility. Any SH project subsidised using the CCG has a contractual obligation to the SHRA for its use for social housing. The government legislation explicitly requires that the SHRA undertakes the regulation of such projects and the SHIs delivering them. This requires that if there are valid grounds for the disposal or transfer of ownership of such schemes that they must be transferred for continued use for SH provision except in exceptional circumstances where disposal or alternative use must be determined by the SHRA in terms of the SH legislation and regulations.

This provides the municipality with substantial protection around long-term asset use in accordance with the programme. It is also possible for the municipality to enter an agreement with the SHRA to ensure reporting on the performance of any SH project on municipal released land and involvement in any decision making on the use and disposal of municipal land for SH where there are breaches in the conditions for the use of the land.

2.2.5.4 Contracting for Land Release

In addition to the overall form of the final release there are a number of contractual arrangements that a municipality might take leading to the final release that serves to protect their interests in ensuring the correct use of the land in terms of the SH programme and any reasonably required conditions of the municipality. Following these arrangements can give additional risk protection and security to the municipality.

The model developed by NASHO/Equal Spaces below shows possible structuring that ensures that in all steps of the process the municipality and the delivery partner structure the eventual release based on the municipality's objectives linked to the requirements of the National Social Housing Programme. This is particularly pertinent to the delivery partner arrangements dealt with above in 2.1. The diagrams in this section also highlight the key contractual steps necessary before land release. More details on the contract forms and the approach are available from the NASHO website, www.nasho.org.za/resources/tools.

The intention is to ensure a strong practical agreement that ties the SHI into a development that incorporates the City's vision and intent with the practical realities of the SH norm, standards and financial arrangements.

2.2.6 Step 6: Monitoring of Asset Development

Once land is released for development the municipality has the responsibility for ensuring that the development meets the requirements of the contractual agreement for the development of the land. The approach to the monitoring of this will vary dependent upon the government programme linked to the intended development.

2.2.6.1 Purpose

To ensure that the development of the project on the government released land/buildings is delivered in terms of the contractual agreements.

2.2.6.2 Arrangements

The responsibility for the monitoring of the delivery of Social Housing projects rests with the SHRA in terms of the delivery agent's contract with the SHRA. In such instances the municipality and the province need to ensure that it has a co-operative arrangement to receive reports on progress and quality issues with the SHRA. For provinces, this is achieved by way of the performance agreements with the SHRA; see chapter 10 for more detail on the performance agreements.

2.2.7 Step 7: Monitoring of Effective Use of Asset

Since this investment applies to rental housing it is not just necessary that the municipality monitors the delivery of the physical product but also its long-term use in accordance with the relevant government programme. The approach to this will vary as per the relevant programmes to which the overall land/building asset for which it was released.

2.2.7.1 Purpose

To ensure that the developed asset and government investment is used in the most effective and efficient manner to achieve the objectives of the government programme.

2.2.7.2 Arrangements

The responsibility for regulation of SH institutions and its projects rests with the SHRA. In terms of its compliance monitoring, the SHRA monitors on a quarterly basis the performance of SH projects and, in the instance of SHI, on their overall business performance. For such projects it is not necessary for the municipality to structure a monitoring and evaluation system. Rather it is important to have an agreement from the SHRA to receive reports on projects developed and on government land and building assets. The agreement will also provide for the municipality to contribute to plans for remedial action where the projects are not meeting the programme and municipal requirements.

2.2.7.3 Content

The municipality should have a structured agreement with the SHRA to receive regular reports on the management performance of the project in relation to the norms and standards and KPIs of the SHRA and how these relate to the municipality's release of the land.

The SHRAs KPIs for SH can help a municipality or Province to structure their criteria for monitoring and evaluation.

2.2.8 Additional Project Pipeline Responsibilities of Provinces

The PSC has amongst other tasks, the responsibility of tracking the state of readiness of the pipeline of projects and to facilitate support where it is needed. It does this by way of a tracking tool which is aligned to the QS B; SHIs provide evidence of the progress of each project at each session. All stakeholders are present so that delays or challenges can be assigned to the relevant stakeholder for fast tracking purposes.

The Province also has the responsibility of endorsing projects and to provide inputs at the project approval processes administered by the SHRA. Provinces are required to attend the technical evaluation meetings of SHRA, as this is where recommendations are made for the approval of CCG.

3. Release of Abandoned and Hijacked Buildings for Social Housing

The onset of democracy in 1994 set the stage for policy makers to commence the mammoth task of overhauling the social, political, economic and cultural stage of South Africa. South African cities and towns have been plagued with an apartheid urban planning and development legacy. At all levels of government, managers, politicians and urban planners have been faced with the task of reconstructing, redeveloping and remodelling the spatially segregated, highly fragmented and dispersed urban society.

After 26 years of democracy, the spatial challenges currently still prevalent are the restructuring, transforming, reconstructing, and integrating separate and divided cities. Many cities within South Africa are faced with the problem of inner city decline due to an influx of people into the cities in search of better opportunities. This has resulted in various socio-economic challenges, such as increased demand for living space, increased crime, uncontrolled vending, and the lack of proper management of these central business districts by municipalities. This has resulted in an exodus of large corporations, major retail outlets and even municipal offices from the city centre to the periphery of urban centres and suburban areas.

This flight has left a glut of high-rise office buildings with low occupancy rates and poor economic prospects for owners. The knock-on effect has been years of neglect by owner and this has often created opportunities for developers to

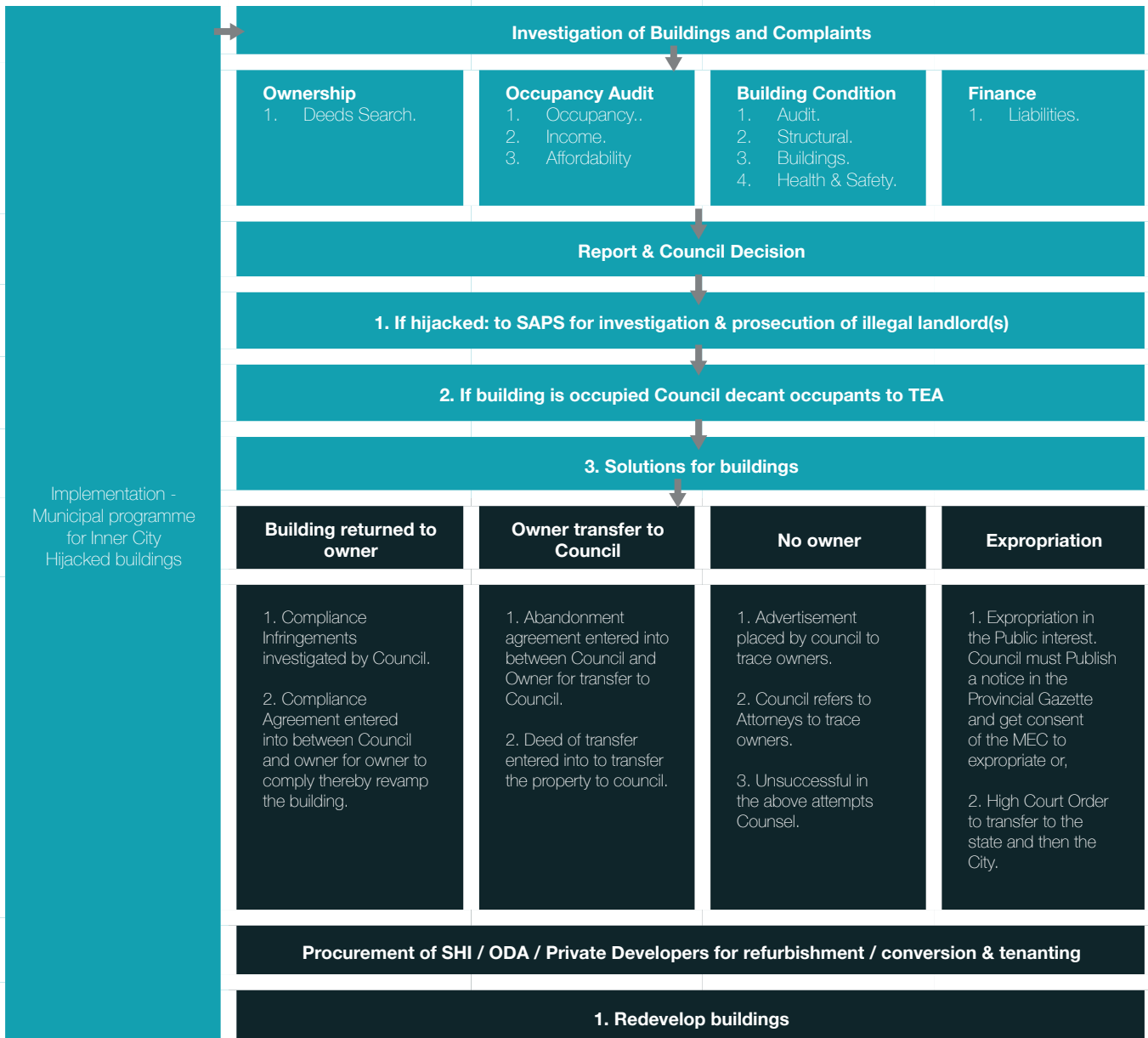
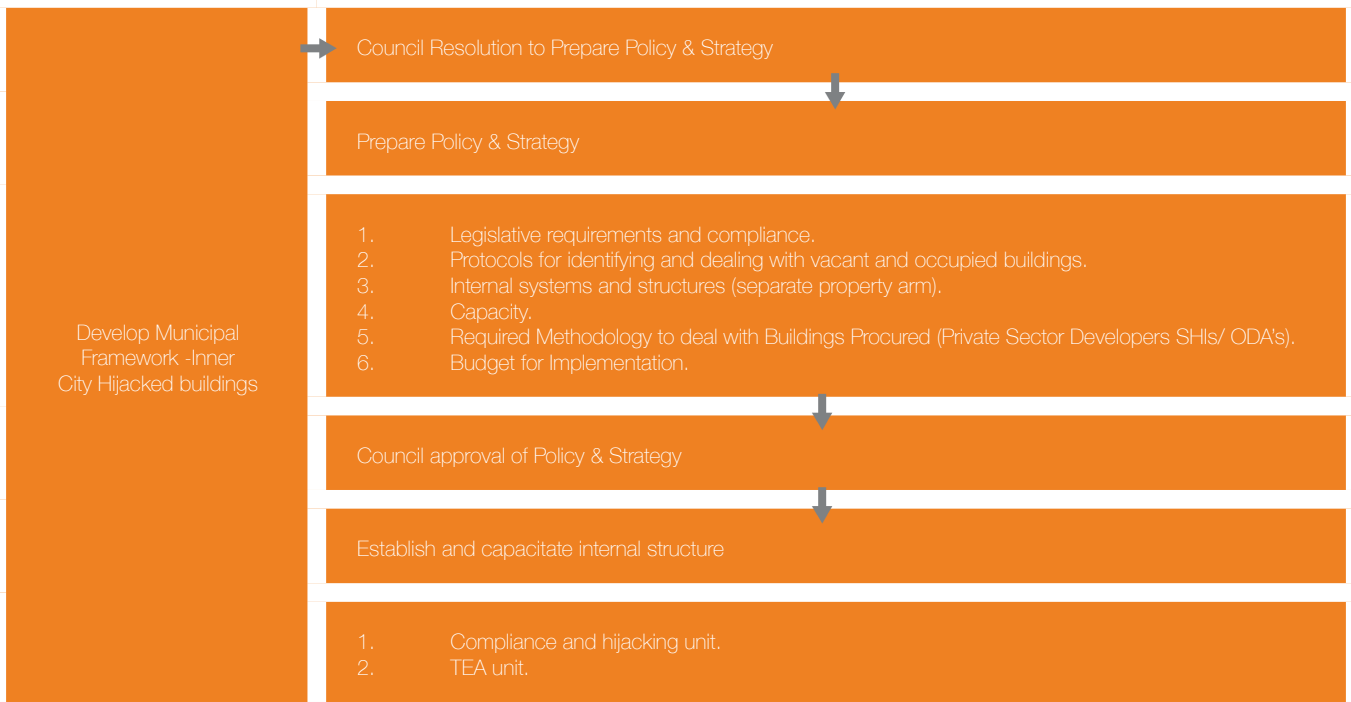
buy buildings for extremely low values in major cities across the country. In Johannesburg, buildings were often bought for very low prices. This has presented good opportunities for private sector developers to convert these buildings at low risk and with prudent management many have become very lucrative residential rental properties.

There are also those buildings that have fallen victim to abandonment or hijacking due to absentee property owners. The excessive cost of keeping these buildings in good condition in the face of not having economically viable tenants has been one of the major factors contributing to buildings falling to ruin. In these instances, the municipality faces ever-increasing unpaid rates bills and the theft of electricity and water by people who have occupied these buildings for residential purposes. Many of these buildings have become unsafe for human habitation and degenerated into slums and safe havens for criminals and drug dealers.

These buildings pose a severe problem for municipalities for a variety of reasons. They do not generate any returns in rates revenue and cost these municipalities vast amounts of money due to the illegal use of services. They have become hot spots for various criminal activities and a threat to life, as they are no longer safe for occupation.

The city of Johannesburg (CoJ) has embarked on a programme to reclaim these buildings and make them available to satisfy the insatiable demand for centrally located lower to middle-income housing in South Africa's economic powerhouse. **A case study of how the CoJ** went about this process is located in **Drop Down Box 1** as well as diagram 5 on the next page. The case study provides a basis for municipalities to prepare a strategy for the reclamation of abandoned and hijacked buildings for the provision of Social Housing in South Africa.

Diagram 5: High Level Process for Dealing with Hijacked Buildings





4. RZ Management

Restructuring zone management includes the evaluation and review of the performance of existing RZs as well as the demarcation of new RZs in line with local spatial planning frameworks. Where there is sufficient SH in a zone, this should be deregistered; and where there is a need within a new node, new zones should be demarcated. Changes in demand for SH also influence where RZs are required. The Municipal SH policy should at least make provision for an evaluation and revision on a 5-yearly basis. An example of the **Drakenstein Municipality RZ demarcation template**, used to identify and demarcate RZs, is attached as a guide for municipalities.

5. Incentives Management

The assessment of whether the financial incentive package is in fact serving its intended purpose of making the rentals more affordable to the target market can be undertaken by way of reviewing studies undertaken by the SHRA. For the financial incentives these are:

- Annual State of the Social Housing Sector report.
- Tenancy Audits.

These will provide an indication of the target market housed and affordability of the product

For the non-financial incentives, the intended purpose to assist the DA in fast-tracking delivery as well as achieving greater cost efficiencies. The assessment should include:

- The turnover times for municipal approvals as well as the turnover times from project concept to project delivery.
- The impact of reduced parking requirements; this would entail the DA providing parking usage reports.
- Reports from NGOs servicing the DAs on neighbourhood improvement.

The results of the above assessments should inform the Municipality whether a revision of the incentive package is required.

6. Support for SHIs

Generally, SHIs require support in fast tracking municipal approvals and prioritizing bulk services. There may also be the need for municipal support post-occupancy of the SH stock; this can relate to municipal services, security or greening and tenant education initiatives.

7. Programme Monitoring & Evaluation

The municipality must monitor the performance of the municipal SH programme, especially as it relates to set targets and Smart partner, land and project agreements. It must also evaluate its SH package with a view to updating it. The results of M & E must feed into strategic planning for SH.

8. Housing Consumer Awareness & Education

Provinces have the responsibility of creating awareness of the SH programme as well as for housing consumer education. A media awareness programme and a consumer education programme that educate consumers on what the SH programme provides must be created. The said awareness initiatives must highlight that the programme is for rental purposes only and caters for households that have a fixed income, are mobile, cannot afford to purchase a house, and would like to live close to work opportunities and social amenities.

9. Municipal Capacitation and Support

The Provinces' responsibilities towards capacitating municipalities include the following:

1. Methodology for demand and supply side studies.
2. Spatial planning in the context of demarcating RZs.
3. Methodology for developing policy and strategy.
4. Operating systems development i.e. policies and procedures.
5. Skills transfer to management and staff.

10. Performance Agreement Framework

The SH Act makes provision for formal agreements between key stakeholders in order to achieve greater alignment and efficiencies within the sector. Specifically, the Act makes provision for the following:

Table 12: Overview of Performance Agreement Framework

PERFORMANCE AGREEMENTS	INTENTION/ASSUMED INTENTION
SHRA and Provinces	Set out roles and responsibilities
	Specify proposed RZs
	Specify the process to approve, allocate and administer capital grants as per the SH investment plan
	Provide for regular monitoring of projects
SHRA and NHFC	Set out roles and responsibilities
	Specify eligibility criteria for loan funding
	Specify terms and conditions of loan funding
	Specify the process to approve, allocate and administer such loan funding
	Provide for monitoring of loan performance
Municipalities and SHIs	Delivery targets
	Management of stock performance

The intention of the SH Act is to ensure the coordinated exercise of powers between the parties.

INFO BOX



What is the Document / Template and Tools List?

This is a list of documents, templates and tools that can help government officials and other stakeholders to prepare and deliver rental housing programmes. The documents and templates are available on the SHRA website: www.shra.org.za/. On the list, find the document number that you want, click on it and it will hyperlink you to the relevant document or template.

The list gives the following information:

- Category no: This broadly places the document/template into a functional cluster.
- Document no: This gives the document/template a number within that cluster.
- Documents, templates and tools: This gives the name of the document/template.
- Year: This is the year in which the document/template was prepared.
- Programme: This highlights to which programme it is most applicable:
- SH – Social Housing.
- CRU – Community Residential Programme.
- PVT – Private Sector Rental and Informal Rental.
- GEN – Generic (applicable to more than one programme).
- Source: The organisations under whose auspices the document was prepared.

This list is the source of the information in the document and template tables in each section of this Toolkit.

Dropdown Box 1: The Methodology to Recover and Develop Hijacked Buildings for Affordable Rental Housing

A. INTRODUCTION

The Johannesburg inner city has witnessed gold rushes, building booms and more recently, decline and capital flight. Service levels, maintenance and facilities have not kept pace with the enormous change that has occurred in the inner city. The decline has been characterised by, amongst other things, crime; drugs; abandoned or hijacked buildings; and syndicates that exact unlawful payments in the form of 'rentals' from tenants.

This chapter will focus at a high level on the City of Johannesburg's efforts to recover and develop hijacked buildings and other properties for affordable rental housing. It will broadly consider the legal framework; strategy; process of recovering and acquiring properties; built form; and removing and re-housing occupiers or evictees.

B. THE LEGAL FRAMEWORK

Procedural Requirements for Eviction

The Constitution of the Republic of South Africa, 1996 is the driving force that is to create a society based on democratic values, social justice and fundamental human rights. Section 26 (1) of the Constitution gives to everyone the right to have access to adequate housing. Section 26 (3) and the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998, known as the PIE Act, provide numerous procedural protections to unlawful occupiers who face evictions. Section 26 (3) provides that no one may be evicted from their home or have their home demolished without a court order authorising the eviction after having considered all the "relevant circumstances". The PIE Act gives content to this requirement by providing that a court may not grant an eviction order unless the eviction sought would be "just and equitable". This requires a court to consider numerous factors, such as the availability of alternative accommodation or the state provision of alternative accommodation where occupiers are unable to obtain alternative accommodation on their own. The courts are empowered to compel municipalities to be joined to litigation to provide information concerning alternative accommodation and the municipalities' ability to provide it to occupiers who need it.

Obligations of municipalities concerning evictions

Several other rights enshrined in the Bill of Rights in the Constitution affect the right to have access to adequate housing. For example, section 9 (1) provides that everyone is equal before the law. Section 10 gives to everyone the right to have their dignity respected and protected. There is the right to freedom and security of the person in section 12; and the right to privacy in section 12. Section 27 (1)



(c) provides that everyone has the right to have access to social security, including, if they are unable to support themselves and their dependents, appropriate social assistance. Section 28 (1) (c) gives to every child the right to basic nutrition, shelter, basic health care services and social services. Moreover, section 41 (1) (h) (iii) requires all spheres of government to co-operate with one another by coordinating their actions and legislation with one another.

Section 4 (1) of the Housing Act, 1997 requires the Minister of Human Settlements to publish the National Housing Code. In terms of section 4 (2) of the Housing Act the Code must contain national housing policy and may after consultation with every MEC and national organisation representing municipalities include administrative and procedural guidelines concerning the effective implementation of national housing policy. In terms of section 4 (6) the Code is binding on the provincial and local spheres of government.

Section 9 (1) (a) (i) and (ii) of the Housing Act requires municipalities to take all reasonable steps within the framework of national and provincial housing legislation to ensure that the inhabitants within their areas of jurisdiction have access to adequate housing on a progressive basis; and that conditions which are not conducive to the health and safety of the inhabitants are prevented or removed.

Bearing these rights and obligations in mind, the courts have clarified the obligations of municipalities concerning evictions. They may be summarised as follows:

- o Municipalities must adopt a reasonable housing policy that provides for permanent housing solutions and the provision of adequate alternative accommodation for persons who are rendered homeless due to an eviction.
- o Municipalities must meaningfully engage with the parties to eviction proceedings.
- o Municipalities may be joined to eviction proceedings where the occupiers that face eviction could be rendered homeless due to an eviction.
- o Municipalities must place sufficient information before a court for the court to make a just and equitable decision having considered all the relevant circumstances. This information must specifically provide information about the municipality's housing policy and how it would provide alternative accommodation to those who require it upon eviction.
- o Municipalities must provide access to adequate alternative accommodation to occupiers who are evicted from their homes and would otherwise be rendered homeless due to the evictions.
- o Municipalities must budget for all categories of persons in desperate or emergency need of housing and, if necessary, municipalities must leverage provincial and/or national funding to do so.

C. STRATEGY AND APPROACH

The Inner-City Transformation Roadmap and the Inner-City Housing Implementation Plan

The City has developed the Inner-City Transformation Roadmap to transform the inner city into a well governed, clean, safe, sustainable, productive and inclusive space. The Roadmap includes an Inner-City Housing Implementation Plan. The overall aim of the Plan is to make the housing market in the inner city work better for the poor. The Plan's short-term outputs include programmes for effective regulation; sourcing buildings and land for housing development; emergency, special needs shelters and transitional housing; upgrading hostels and informal settlements; and support for sectional title properties.

The City has identified about 500 properties that are either hijacked or abandoned. It aims to begin meeting the housing backlog by housing people in these properties at affordable monthly rates of between R800.00 and R1 000.00. The first phase of the plan saw the City release 13 properties. The second phase includes 84 properties, which the City intends to release on long leases to the private sector and social housing partners for mixed-use developments and small businesses.

The Property Hijacking and Compliance Investigation Unit

The City has also established a dedicated unit, known as the Property Hijacking and Compliance Investigation Unit that reports to the Group Head: Group Forensic

and Investigation Service, who in turn reports to the City Manager.

The Unit's express purpose is to restore lawfulness to the properties and thereby contribute to inner-city regeneration and economic growth. The Unit therefore works closely with the Inner-City Office that the City has established to oversee the strategic implementation of projects in the inner city. The mayor has established the regeneration of the inner city as one of the City's legacy projects.

The Unit comprises two components, being the property hijacking component, which deals with criminal violations; and the compliance component, which deals with by law contraventions.

D. PROCESS OF RECOVERING PROPERTIES

The Property Hijacking Component and Criminal Violations

The City has established a database of apparent hijacked and abandoned properties. The property hijacking component investigates owners' complaints that their properties have been hijacked. The investigation includes title deeds searches, interviews with the complainants and occupants, and gathering documentary evidence, such as leases. If the investigation concludes that there appears to be a case of hijacking, then the matter is referred to the South African Police Service.

The SAPS has collaborated with the City and appointed dedicated detectives to investigate hijacked property complaints. The SAPS investigation includes obtaining warrants to obtain documents from financial institutions; and statements under oath from deeds office officials to ensure that title deeds are authentic, and the complainants are the rightful owners of the hijacked properties.

The SAPS then refer the matters to the National Prosecuting Authority to decide whether to institute criminal proceedings. If the Authority decides to do so, it will issue warrants to arrest the perpetrators, who are charged with fraud and violating section 3 (1) of the PIE Act. That section prohibits a person from receiving or soliciting payment of money or other consideration as a fee or charge for arranging or permitting a person to occupy land without the consent of the owner or person in charge of that land.

The perpetrators tend to withdraw from the properties following their arrest. The properties are then returned to the owners, who take back control of the properties; and the matters are referred to the compliance component.

The Compliance Component and byLaw Enforcement

The compliance component investigates possible bylaw contraventions and generally concludes compliance agreements with the owners of properties that have been

returned to them. The agreements set out clear and reasonable timeframes for the owners to comply with the bylaws and thereby rejuvenate the properties.

The matters are referred directly to the compliance component if the criminal investigations are unable to trace the owners. The compliance component will then investigate bylaw contraventions and compile investigation reports. The reports will include determinations whether there are outstanding revenues due to the City.

The compliance component will also refer the matters to the City's attorneys to trace the owners. If the owners cannot be traced, then the compliance component will instruct the attorneys to launch applications in the courts for substituted service. These are applications where the courts permit service of documents by methods other than the usual methods of service. This may include placing an advertisement in the newspaper calling on the owner and any person known to the owner to present themselves to the City to address bylaw contraventions. The compliance component will conclude a compliance agreement if the owner responds to the advertisement. If the owner does not do so, then the City will consider acquiring the property.

E. PROCESS OF ACQUIRING PROPERTIES

Criteria to Acquire Properties

The City's property arm, the City of Johannesburg Property Company, oversees the process of acquiring the properties. The City considers criterion such as the value of the property; whether the property is occupied; the

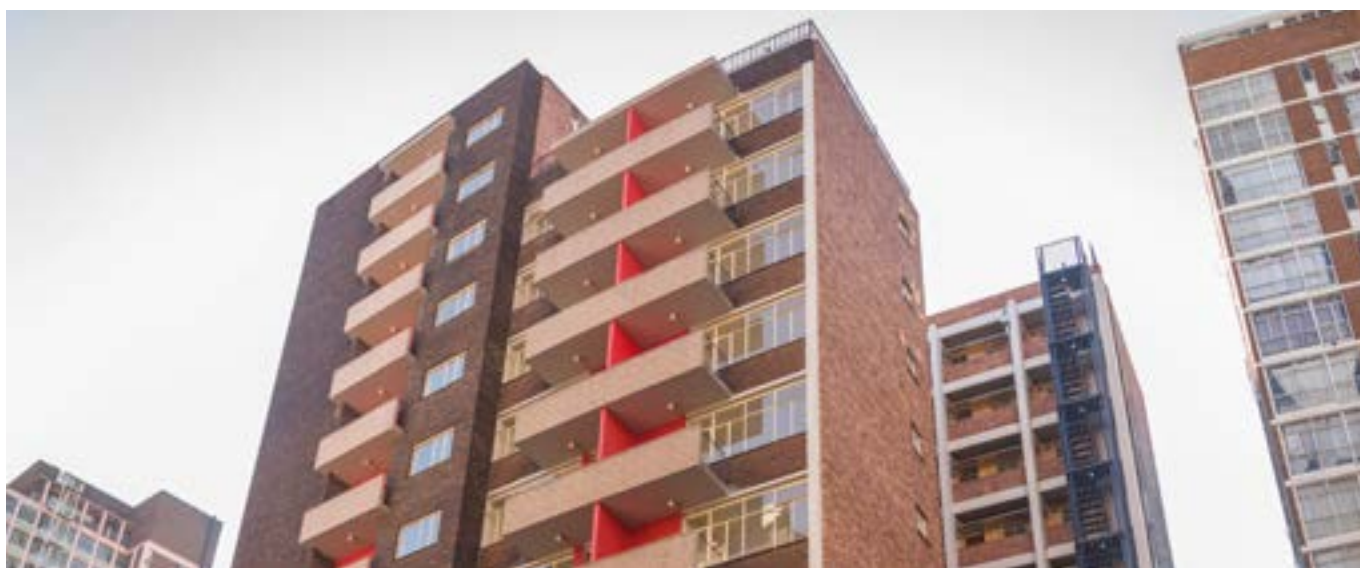
profile of the occupants; and the property's location when preparing its report to obtain the City Council's approval to acquire the property. The property's location is the most important criterion because one of the objectives of regenerating the inner city is to cater for low-cost housing and student accommodation.

Methods to Acquire Properties

The City may acquire the properties through abandonment agreements; sales in execution, expropriation and declaratory orders.

The City concludes abandonment agreements with owners who agree to abandon their properties to the City. The City acquires ownership by deed of transfer. The City is bound to follow the normal court processes to attach and acquire properties in execution to recover outstanding revenues. If the City elects to expropriate a property for a public purpose or in the public interest, then it must comply with the Constitution, Expropriation Act, 1975 and section (9) (3) of the National Housing Act, 1997. Section (9) (3) requires municipalities to at least publish notices in the Provincial Gazette and obtain the permission of the MEC to expropriate such land.

The term bona vacantia has its origins in English law. It is a legal concept where property that is left without a clear or apparent owner automatically passes to the state. In South Africa the property accrues to the head of the National Treasury and can be conveyed from one person to another only by means of a deed of transfer. This requires the City to first obtain the head of the National Treasury's consent to transfer the property to the City. The City's practice is to



then obtain an order in the High Court declaring that the property may be transferred to the state and subsequently to the City, as the case may be.

F. CONVERSION

Tender Processes

The City through its tender processes offers the properties to the private sector and social housing partners to develop lower income housing and affordable student accommodation in mixed use developments. The tenders set out the relevant specifications. The affordable housing component generally comprises about 30% of the development. It is left to the bidders to assess the technical and legislative built requirements; and to factor such costs into their bids. The bidders are also required to provide alternative accommodation to occupiers who are entitled to it. The City evaluates, adjudicates and awards the tenders to successful bidders on long leases that may range from 30 to 50 years.

The Toolkit for the **Development of SH, dropdown box 13** which looks at the approaches to identifying existing buildings for use for rental housing can be consulted for detailed information on rehabilitation, take on and conversion of existing stock and buildings.

Timing and Expenditure Frameworks

The timing of the conversion process is important. The projects are multi-layered. The leased properties may have to be rezoned; building and other contracts must be concluded; and the developer must comply with a raft of legislative and regulatory obligations. The projects are also multi-year. It is therefore important to be aware of the expenditure frameworks and to be "shovel ready" once the funds are released. The alternative accommodation should also be in place to enable the conversion to commence timeously.

G. BUILT ENVIRONMENT

City of Johannesburg By-laws on Problem Properties, 2014

The City has attempted to deal holistically with problem properties. It has developed categories of problem buildings. It has also developed the City of Johannesburg: By-laws on Problem Properties, 2014 that aims to identify problem properties and ensure they comply with relevant legislation. These bylaws provide that:

- o An authorised City official may enter and inspect buildings or properties and declare them problem

properties if the buildings appear to have been abandoned by the registered owners; do not comply with existing legislation; are not maintained in accordance with the health, fire-safety, town planning and building control bylaws; are overcrowded, unhealthy, insanitary, unsightly or objectionable; do not have electricity or water supply; have illegal connections to sewer mains or blocked sewer drains; are subject to complaints of criminal activities such as drug dealings, prostitution and money laundering; are occupied illegally; are partially completed and the responsible persons have not complied with a notice in terms of section 11 of the National Building Regulations and Building Standards Act, 1977 that orders the owner of the property to complete the erection of the building within a specified time; are structurally unsound; or are a threat or danger to the safety of the occupiers, registered owners or the general public.

- o The official must serve written notices on the persons responsible for the buildings that the buildings have been declared problem properties and requiring those persons to comply with the problem property bylaws and any other relevant legislation within specified times.
- o The official may immediately take steps to alleviate a condition in a building to protect the health and safety of persons or property without serving such a notice on the responsible person.
- o The notice may also include ordering the responsible person to remove persons occupying or operating on the problem property; and order any other person occupying or operating from a problem property to vacate the problem property.
- o The City may apply to the courts to appoint an administrator to administer a building or property that has been declared a problem property.
- o The City and the authorised City official may also impose spot fines. Failure to comply with a notice may result in criminal prosecution, and upon conviction a person may become liable for a fine of up to R300 000.00 or imprisonment.
- o The City may proceed with a civil action against the responsible person or a person who contravenes the problem property by laws.

H. REMOVING AND REHOUSING ILLEGAL OCCUPIERS OR EVICTEES

The Duty of Municipalities to Provide Alternative Accommodation

The courts have ruled that municipalities are obliged to provide alternative accommodation to persons who

are evicted from their homes and rendered homeless. The alternative accommodation is known as temporary emergency accommodation (TEA). Municipalities are obliged to provide alternative accommodation where they are joined in private sector court applications for eviction and where municipalities obtain court orders to evict persons who occupy properties that belong to municipalities.

The City's process to remove the illegal occupiers

The City generally follows the following process to remove illegal occupiers or evictees:

- o In its own properties the City will as a first step attempt to meaningfully engage the occupiers and negotiate or mediate their departure voluntarily.
- o If meaningful engagement fails, then the City will approach the courts to obtain an order to evict the occupiers.
- o Whether meaningfully negotiating with the occupiers or joined in private court applications for eviction, the City will conduct an occupancy audit to ascertain, amongst other things, the number of occupiers on the property; whether they are South African citizens or foreigners; and other information such as their ages, gender, employment history, income, marital status, length of time on the property, if and to whom rental is paid, and disability.
- o The City then analyses the data obtained from the occupancy audit and channels the occupiers to alternative accommodation options for permanent housing, such as RDP houses, affordable rental or social housing options.
- o In most instances the City's legal representatives will negotiate with the occupiers' legal representatives

concerning relocating the occupiers to the TEA facility.

- o The negotiations concern securing the occupiers' agreement to comply with the TEA Facility Rules (which are also known as conduct rules); and consulting with the receiving ward councillor and receiving committee residents.
- o Upon securing the necessary agreement and the occupiers signing the TEA Facility Rules and allocation documents the City will hand over possession of the TEA facility to the occupiers.
- o The TEA facility is rotational and provided on a temporary basis for between six and 12 months. The duration of the occupiers' occupation of the TEA facility may be extended upon the occupiers' showing good cause in a written application to the City setting out all the relevant facts, which must include the occupiers' consistent efforts to secure alternative accommodation.
- o If necessary, the City will on an agreed date provide the occupiers with transport (and security protection if required) to the TEA facility.

The people who are housed in a TEA facility are not all low income or unemployed, a sizeable number do have an income and are employed but due to low levels of disposable income cannot afford to rent from the formal rental market. This presents an opportunity to Developers who have been successful in acquiring development right from the City to accommodate people who meet the criteria for Social Housing within re-developed buildings. The [Toolkit for the Management of Social Housing, Section A, Chapter 4.7](#) deals with the tenant regularisation process.

Management of TEA Facilities

The municipalities must ensure that they are equipped to manage TEA facilities. Good management is important in the context of securing the occupiers' exit at the conclusion of the envisaged a 12- month period or extended period. This begs the question whether there is a role for social housing institutions and private developments to manage TEA facilities.

I. CONCLUDING COMMENTS

The City is seeking to bridge South Africa's past and present to enhance the right under section 26 (3) of the Constitution to have access to adequate housing. The City's Inner-City Transformation Roadmap and its Inner-City Housing Implementation Plan have the potential to materially affect the provision of social housing and contribute towards the establishment of stable conditions within which healthy communities can be established in the inner city. It is important to bear in mind that sustainable human settlements require facilities such as schools, crèches, park spaces and early childhood development centres. However, not all these facilities fall within the municipalities' competencies. It is therefore important that the different spheres of government work together and sites are allocated with sustainable human settlements in mind.

