



Promoting active citizenship and good governance

Land and Settlement Development Research Study

Report on:

Land Data Bases

2013

Prepared by:



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Glossary of Terms

| TERM | DEFINITION |
|----------------------------|---|
| Acquisition | To acquire or obtain rights to land. |
| Cadastre | A cadastre is an up-to-date land information system that has two key components or subsystems: a spatial component, the geometric description of the land parcels linked to the textual component, the records or registers recording the real rights in land parcels such as ownership, bonds (mortgages) and servitudes (easements) |
| Collective rights | Rights held as a result of the collective ownership of a natural resource is where the holders of rights to a given natural resource are clearly defined as a collective group, and where they have the right to exclude third parties from the enjoyment of those rights. |
| Common property | Common property is typically land and other resources in which entitled beneficiaries, whether individual or community defined, have specific common rights to common areas. The community controls the use of the common property and can exclude non-members from using it. |
| Communal land | Land over which a community has rights or access to. The community may or may not have legally recognized ownership over the land. In some cases for instance the State may be considered the owner. |
| Conveyance | The conveyance of land is the actual process of transfer of that land. |
| Deed | Written or printed instrument recording a legal fact, particularly in relation to land or rights in land and usually registered in a deeds registry. |
| Disposition | Arrangement for relinquishment, disposal, assignment or conveyance of rights in property. |
| Expropriation | Expropriation is the act of taking away individuals land or rights to land by the state for a public purpose or in the public interest but subject to respect of procedures provided for by law and subject to payment of fair compensation. |
| Freehold | Freehold is full ownership of land in South African law providing the owner with the largest 'bundle of rights' of ownership. |
| Land administration | The processes of determining, recording and dissemination of information about tenure, value and use of land when implementing land management policies. |
| Land management | The activities associated with the management of land. |
| Land tenure system | A land tenure system comprises a set of formal or informal rules that govern the allocation and security of rights in land, land transactions, and the management and adjudication of disputes regarding land rights boundaries. |
| Municipal land | Land or property where the municipal government or local authority has custodianship. |
| Public land | Public land is the land in the custodianship of the State, municipality, or local authority, as opposed to private land. |
| State land | Property in the custodianship of the Central/National Government. |
| Tenure Upgrading | A mechanism for increasing tenure security by formalizing interest in property in an incremental process. |
| Vesting rights | Right that has accrued, or is secured, to its possessor and is not contingent on any event that may or may not occur. |

1. Purpose of the study

Afesis-corporation appointed CS Consulting to undertake a study that will achieve the following outcomes:

- 1.1 Afesis-corporation (and other civil society organizations – and others) have an understanding of what data bases are available that have information on land in the country (especially state owned land) and understand the procedures for how one can access this information.
- 1.2 Afesis-corporation and others have better insight into what they can do to improve broad public and community access to these data bases.

2. Terms of Reference

The consultant's brief for this assignment is to compile a short basic evaluation report on data bases outlining:

1. What is the existing situation?
 - a) What initiatives there are by government (and others – parastatals, private sector, etc.) to create and maintain land data bases?
 - b) What processes are in place to make information on these data bases available and for communities to get this information?
2. Challenges, opportunities and future plans
 - a) What opportunities are there for improving land data bases?
 - b) What challenges do role-players face developing, maintaining and giving and getting information?
 - c) What recommendations could Afesis-corporation (and other civil society organisations) make to improve the effectiveness of the land data bases. What plans are being developed in relation to developing these and similar land data bases?
 - d) What are the key issues being debated around existing and potential future land data bases?
3. What recommendations could Afesis-corporation (and other civil society organisations) make to improve the effectiveness of the land data bases?
 - a) What gaps are there and how can these be filled?
 - b) How can government and communities work together to create win-win situations?

3. Activities

1. Identify and review literature, and legislation relating to public land data bases

2. Identify and interview key role-players to get their views on data bases (telephone, e-mail).
3. Attend Afesis-corporation seminar on data bases and expropriation.
4. Develop draft Data base report
5. Circulate draft report to an agreed core group of stakeholders for comments and contact these stakeholders to obtain further comments
6. Develop and obtain approval from Afesis-corporation on final report.

4. Overview of the report

This report focuses on who keeps what information in relation to land and how this information can be accessed by the public.

The report does not go into why people would want the information. Possible examples of why a community would want this information are:

- Confirming that information held by government on personal property is correct
- Confirming if information given by government on potential pieces of land for future development is correct by conducting independent investigations (e.g. on ownership, sale prices, and geological conditions, etc.)
- Suggesting alternative portions of land to ones being suggested by government for relocation of informal settlements

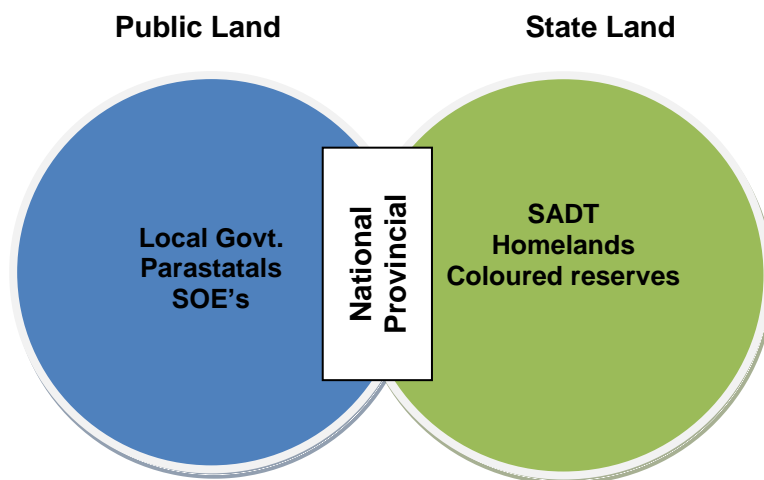
The report starts by defining what constitutes public and private land and outlines the new four tier land tenure system proposed in the Green Paper on Land Reform formulated in 2011. The vision for land in South Africa is also spelt out in the Green Paper. The report goes on to discuss the system of public land management in the country and then highlights the various entities that play a role in creating, maintaining and disseminating information on public land databases in South Africa. Lastly, it outlines how the public can attempt to access these databases through both formal and informal systems of request. It concludes by raising a number of pertinent issues around public land databases and suggests a number of recommendations as to how the public can better access these databases.

5. Definitions of Public and State Land

According to the South African National Government (1997), public land includes land held by provincial and national governments, as well as land owned by local authorities and land belonging to parastatals or other enterprises wholly owned by government. State land is land which is held by the national and provincial governments, but excludes local authority and

parastatal land. State land includes former South African Development Trust land and land already allocated to communities and individuals in the former homelands and former coloured reserves.

Although the ownership and hence the extent of government control over this land varies, public and state land is a national resource, the uses of which should be governed by policy that supports the government's macro-economic, human development and redistribution goals.



6. Public Land management in South Africa

The first White Paper on Land Policy (1997) stated that there were a broad range of policy issues in relation to public and state land. For example, there was concern that the asset should be effectively managed in the public's best interest; that the tenure rights of those who beneficially occupy public land should be secure; and that public and state land should be properly allocated for land reform and for the national development programme.

For many years the White Paper on South African Land Policy (1997) was taken as the overarching framework within which land use and development decisions around public and state land was made. Government's key responsibilities in regard to public and state land included the following:

- i. To ensure the release of state and public land as a resource for sustainable development;

- ii. To create an accessible and accurate and comprehensive information system on public and state land holdings;
- iii. To establish, in consultation with other tiers and departments of government, clear and transparent criteria for the development or disposal of state and public land;
- iv. To establish acceptable mechanisms for public consultation on the use of state and public land;
- v. To clarify the roles and responsibilities of different tiers and departments of government in regard to public and state land

The Green Paper on Land Reform (2011) sets out a new vision for land reform in South Africa:

- A re-configured single, coherent four-tier system of land tenure (see below for an explanation of this), which ensures that all South Africans, particularly rural communities, have reasonable access to land with secure rights, in order to fulfill their basic needs for housing and productive livelihoods.
- Clearly defined property rights, sustained by a fair, equitable and accountable land administration system within an effective judicial and 'governance' system.
- Secure forms of long-term land tenure for resident non-citizens engaged in appropriate investments which enhance food sovereignty and livelihood security, and improved agro-industrial development.
- Effective land use planning and regulatory systems which promote optimal land utilization in all areas and sectors; and, effectively administered rural and urban lands, and sustainable rural production systems.

A single land tenure framework has also been outlined in the Green Paper on Land Reform, integrating the current multiple forms of land ownership - communal, state, public and private - into a single 4-tier tenure system:

- (a) State and public land: Leasehold;
- (b) Privately owned land: Freehold, with limited extent;
- (c) Land owned by Foreigners: Freehold, but Precarious Tenure, with obligations and conditions to comply with; and,
- (d) Communally owned land: Communal Tenure, with institutionalized use rights. (Green Paper on Land Reform, 2011)

Public land management in South Africa has a history of dispossession and restricted access. It was the cornerstone of the apartheid government's attempts to create a racially based society which was socially, economically and spatially divided. The land dynamics are

therefore complex in South Africa, with a vast policy environment and legal framework. Given the short duration of the post-apartheid period, the policy environment is an active one with extensive changes occurring post 1994. Much of this focus has been on redressing the inequalities and inequities in the land systems and many practitioners have supported a pro poor agenda.

As was noted earlier, public land is owned (as custodians) by all three spheres of government, specifically national, provincial and local government. Considerable tracts of land are also owned by State Owned Enterprises such as Transnet and its subsidiaries, Eskom, Airports Company of South Africa (ACSA) and Denel.

To ensure an effective and transparent system of public and state land management in South Africa, it is important to clarify the roles and responsibilities of the different tiers of government, and of other authorities in relation to the administration, planning and disposal of public land. In so doing, a range of factors need to be considered, including relevant constitutional provisions and the establishment of clear mechanisms and procedures to facilitate co-operative governance

The division of state-owned land between national and provincial governments was dealt with by Section 239 of the interim Constitution. Section 239 provided for the classification of state land as national or provincial state land. On 27 April 1994, all state land vested in either the national government or a provincial government, in accordance with the principles set out in section 239. Item 28 of Schedule 6 of the new Constitution re-enacts the previous 'section 239 certificate' provisions of the interim Constitution. As before, certificates are to be issued by a 'competent authority' (currently the Minister for Rural Development and Land Reform) who is responsible for confirming whether the land has vested in national or provincial government.

Within national government, clarity is also required in relation to state land management. At present, the State Land Disposal Act, 48 of 1961, as amended, splits responsibility for this land between the Minister of Public Works and the Minister for Rural Development and Land Reform. The Minister of Public Works is responsible for former RSA land and the Minister for Rural Development and Land Reform, for the former homelands (TBVC states). This division creates substantial administrative difficulties.

7. Entities who compile and maintain land databases

In relation to who keeps what land related data, the following data is kept by the referenced entity on public and private land.

- Ownership (Deeds Registrar)
- Dimensions and coordinates (Surveyor General)
- Property value – including improvements (Municipal valuation rolls – in future Valuer General may play a role)
- Zoning and land use (Municipal Planning Departments)
- Potential future land use (Municipal Planning Departments through Spatial Development Frameworks and Local Spatial Development Frameworks)
- Geological conditions (Municipalities generally, although this information is normally gathered by the relevant professional e.g. soil technician)
- Slope analysis (Municipalities generally, although this information is normally gathered by the relevant professional e.g. land surveyor.)

7.1 The Deeds Office

The Deeds Office is an organ of state in the Department of Land Affairs tasked with the administration and registration of property and all related acts, for example, the registration of mortgage bonds. The South African system of deeds registry is hailed by many as one of the best systems of title registration in the world. The South African Registrar of Deeds is responsible for the national system of deeds offices which, through a juristic foundation and long-standing practices and procedures, has the effect of “guaranteeing” title. The Deeds Registries Act and Sectional Titles Act are applied to regulate the deeds registry system, and form the foundation of land registration in South Africa.

7.1.1 Deeds Office Procedure for Registration

It currently takes approximately seven working days for registration of title in the deeds office which takes the following process:

- Lodgment of deeds
- Deeds to be regulated by lodgment clerks
- Lodgment clerks are responsible for data capturing and linking of deeds (where more than one attorney attends to registration of transfer, registration of a bond and cancellation of a bond.)
- Deeds get send to “dots” where a deed search regarding the property and person will be done.

- Sorting of deeds
- Deeds will be distributed to various examiners for first examination.
- First examination will be done by junior examiners
- Sorting of deeds and distribution to senior level
- Senior examiners and only they may pass or reject deeds.
- Assistant Registrar monitors rejected deeds, they decide whether to pass or reject deeds.
- Reject deeds will go directly to delivery
- Deeds that have been passed will now be send to preparation room (“prep”)
- Preparation of deeds by conveyancers and conveyancing clerks
- This process takes about 3 days
- Final check for interdicts and “black booking”
- Deeds are executed
- After execution, deeds will now be taken to numbering
- Updating of Deed search
- Updating of Registers
- Final Viewing
- Microfilming of deeds
- Delivery

The Registrar of Deeds is encumbered with the duty to see to it that title deeds are properly examined for correctness prior to registration and a host of legislative aspects have to be considered. The Registrar is assisted by Deputies, Assistants, Senior Examiners, Junior Examiners, clerks and other officials. It is amongst others, the duty of the conveyancer, a specialist Attorney, duly admitted as such by the High Court, to see to it that the deeds that are lodged conform to the law, regulations and customs that the parties thereto are duly authorized and the documents properly executed.

Prior to registration thereof, deeds with all the supporting documents are lodged by the conveyancer in the Deeds Office serving the area. The deeds are then examined by the Junior Examiner, the Senior Examiner and the Controlling officer for correctness and compliance with the applicable laws. This process lasts several days, often weeks. Upon completion of the examination process, the deeds are ready for execution, and remain so for three days for the conveyancer to attend to any notes that may have been raised by the examiners, where after the deeds is registered. The deed is then microfilmed and the original is delivered to the conveyancer.

You can access information from the deeds registry with regard to the following:

- the registered owner of a property
- the conditions affecting such property
- interdicts and contracts in respect of the property
- purchase price of the property
- rules of a sectional title scheme
- a copy of an antenuptial contract (ANC), deeds of servitude, mortgage bonds, etc.
- a copy of a sectional title plan or the rules of a Sectional Title Scheme. (Note: this is not a certified copy; merely a copy for information purposes)
- township establishment conditions
- information relating to a property or deed. Information relating to the tracking of a deed through the registration process.

What you should do to access information from the deeds office:

- Before information can be obtained from the deeds registry, you must have the following ready:
 - The full names and/or identity number of the owner of property, or at least his or her date of birth. (In the case of a juristic person, the name and registration number, if available, is necessary)
 - The correct erf number and township or farm name and number, not the street address. (In the case of a sectional title scheme, the section and the scheme name are required.)
- To obtain a copy of a deed or document from a deeds registry, you must
 - go to any deeds office (deeds registries may not give out information acting on a letter or a telephone call)
 - go to the information desk where an official will help you to complete a prescribed form and explain the procedure
 - request a data typist to do a search on the property, and
 - pay the required fee at the cashier's office and take the receipt back to the official at the information desk. The receipt number will be allocated to your copy of title.

7.2 The Surveyor-General

According to the Land Survey Act No.8 of 1997, the Chief Surveyor-General shall be in charge of such cadastral surveying and land information services in the Republic.

The security of title associated with each parcel of land in South Africa has long provided a basis for the private sector to finance physical development. The great advantage of South Africa's cadastral survey system is that it accurately identifies the position of each parcel of land and the extent of rights over it. The offices of the Surveyors-General examine and approve all cadastral surveys for the registration of ownership of property and real rights in land.

There are six Surveyor-Generals who process survey records, including the examination, approval and safe-keeping of all survey records relating to all diagrams, general plans and draft sectional plans for registration purposes, relating to the provinces under their jurisdiction. In addition, general plans depicting thousands of erven surveyed for the former Department of Development Aid are being upgraded so that they may be registered in deeds registries when required. The fact that Surveyor-General's office holds complete records of all cadastral surveys ensures that there is virtually no possibility of properties overlapping and, once registered, little chance of conflicting claims to ownership.

The diagram is the fundamental registerable document prepared by the land surveyor. The essential information shown on a diagram is:

- The unique designation of the property.
- An illustration depicting the property.
- The boundary description listing the corner beacons and the details of any curvilinear boundary.
- A table listing the numerical data of the boundaries.
- The area of the property.

The Surveyor-General gives each diagram a unique reference number. The most common type of diagram is a sub-divisional diagram. This is framed for the purpose of cutting a portion of the parent property. There are other types of diagrams, including:

- Servitude diagrams for registering servitudes over an existing property;
- Lease diagrams for registering long lease over portion of properties;
- Consolidation diagrams when required to consolidate several individual properties into one, taking out certificates of consolidated title;
- Mineral diagrams to register mineral rights separately from the land rights; and

- Mining title diagrams for registering the right to extract minerals from the land.

With the exception of mining title diagrams, which are registered with the Department of Minerals and Energy, these diagrams are registered together with their deeds in a deeds registry.

In case of the subdivision of a piece of land into a number of pieces, the land surveyor usually prepares a general plan instead of individual diagrams. This is a document showing the relative position of two or more pieces of land together with the same essential information in respect of each piece as is required on a diagram. It is also allocated a unique reference number by the Surveyor-General. It is compulsory to prepare a general plan for any subdivision into ten or more pieces of land and when required, in terms of any law, usually for township establishment or the amendment of an existing general plan. General plans may comprise many sheets and depict a very large number of erven (lots).

When submitting the diagrams and general plans framed from his/her survey, a land surveyor is obliged also to lodge the records of that survey with the Surveyor-General. These records are used to support the examination process and are then preserved in the Surveyor-General's office. Land surveyors later refer to these records when relocating or replacing lost beacons and when extending the earlier survey. The principal records kept by the Surveyor-General are:

- The field observation, which are the primary record of the survey,
- A list of co-ordinates of the beacons and reference stations,
- A working plan,
- A plan on which is shown the comparison between the original and the new survey data, and
- The land surveyor's report.

These records are now being captured in the document imaging system (DIS) for easier access and to facilitate the supply of information to land surveyors.

7.3. Local Authorities

Local authorities manage and maintain three critical databases in the form of Municipal valuation rolls which records the value and attributes of every single property in the

Municipal area of jurisdiction, zoning schemes which are town planning records pertaining to the zoning and use of properties and spatial development frameworks which sets out the future use, development and conservation of municipal land.

7.3.1. Municipal valuation rolls

The Municipal Property Rates Act (No 6 of 2004) regulates the power of a municipality to impose rates on properties, makes provision for fair and equitable valuation methods and aims to ensure that municipalities implement a transparent and fair system of exemptions, reductions and rebates. The Act also sets out the way in which people may object and appeal against their property valuation. Importantly, the Act changes the way in which sectional title properties are rated: registered sectional title sections (such as flats, apartments or offices) are now valued and rated individually. Formerly, the local authority would serve one rates bill on the Body Corporate or Sectional Title Scheme, which would then recover the costs through levies. Body Corporate or Sectional Title Scheme managers still require owners to pay levies, but these no longer include municipal rates.

A general valuation roll is a document that contains the municipal valuations of all properties in a local authority. Using the municipal property valuation stipulated in a general valuation roll, the local authority calculates the rates you will pay for your property. A general valuation roll is produced every four years, as stipulated within the Municipal Property Rates Act, no 6 of 2004. The municipal valuer is responsible for producing a general valuations roll, and is assisted by professional valuers, statistical analysts, data collectors and support staff.

If you are not satisfied with your property's valuation as listed on the municipal valuation roll, you may lodge an objection during the formal objection period. An objection must be lodged with the prescribed objection form before the closing date as stipulated by the local authority. You can submit an objection via fax, email, post or at any of the public inspection and objection venues throughout the municipal area of jurisdiction.

The Valuation Department of a local authority is responsible for the production and maintenance of the valuation roll in terms of prescribed legislation.

7.3.2. Municipal Zoning Schemes

Zoning is a method of development management that designates property for a particular development or use category or zone. Within each zone there are provisions and rules setting out the purposes for which property may be used, and the manner in which it may be developed. These rules which include both rights and obligations for property owners, apply to land, buildings and structures. Zoning is different to the spatial development frameworks, structure plans and policy plans associated with forward planning to guide developers and decision makers. "Forward plans" involve planning guidelines for medium and long term development and conservation, but do not allocate or take away rights.

Zoning has a more precise application as the legal statement of rights and obligations for property, although other laws may also apply. Zoning should work in conjunction with, and be linked to, policy plans and other tools in the land use management system to enable Council to manage land and development in the city. The zoning scheme introduces new planning techniques such as the overlay zoning category whereby policy guidelines can be translated to development rules after following a prescribed process.

All properties within a municipal area are allocated a zone. A property is subject to the development rules specified in the zoning scheme for the applicable zone, as well as the general rules and provisions which apply to all zones. If you want to establish the zoning of a property you may inspect the zoning map or obtain a zoning extract or certificate from the Town Planning Department of a local authority.

If you want to establish what the primary use rights or consent use rights are for a property, you need to identify the zoning of that property and the relevant section in the zoning scheme. You may then turn to the section indicated and read the development rules which will apply to the property. Generally speaking one is not permitted to use property for any purpose not specifically allowed in terms of the zoning of the property concerned.

You may find that your property is affected by other legislation, apart from zoning, such as environmental or heritage regulations, traffic impact limitations, agricultural requirements or title deed restrictions. You may also find that you need a license, such as a business license or a liquor license. For advice on these matters it is best to contact the Town Planning Department of the local authority concerned.

You may apply for an approval (such as for rezoning, departure or consent use), in which case you need to make an application to the local authority. You are advised to have a pre-application consultation with the responsible municipal official before you finalize or submit

your application. This pre-application consultation could occur by way of telephone, a meeting or exchange of correspondence, and will help to clarify which regulations and policies are likely to affect your application.

If you are dissatisfied with a decision taken by Council, you may have a right of appeal under national or provincial legislation. Information about appeals can be obtained from the Town Planning Department and will be stipulated in the letter of decision.

An owner of property may submit any one or more of the following types of applications relating to development. These applications are not necessarily made in terms of the planning law or the zoning scheme, but are mentioned here for the sake of completeness. These applications may involve a public consultation process.

(a) Rezoning application

- required to obtain approval for a change of use rights to permit a land use not allowed in terms of the current zoning for a particular land unit.

(b) Departure application

- changes to the zoning provisions or development rules which set out the permitted extent of development on a land unit (such as building lines or coverage), without rezoning the land unit; or
- permission for a temporary use right that is not otherwise provided for in the zone concerned.

(c) Consent use application

- required to obtain approval for a land use listed as a "consent use" in the applicable zone.

(d) Subdivision application

- required to create two or more land units, capable of being registered in the Deeds Registry.

(e) Authorisation in terms of the National Environment Management Act

- required to obtain an environmental permit for activities governed by the provisions of that Act.

(f) Approval is required for specified activities in terms of the National Heritage Resources Act, including demolition and changes to buildings over 60 years old.

(g) Removal or amendment of restrictive title conditions

- required where there is a conflict between title deed conditions and an application under the Planning Law or the zoning scheme.

- (h) Amendment of condition of approval is needed to change a condition or conditions imposed by Council in terms of Planning Law or the zoning scheme.
- (j) Approval or amendment of plans (such as site development plans, precinct plans, structure plans and development frameworks)
 - required in order to obtain approval for applications submitted under Planning Law or the zoning scheme, which require such plans as part of the development management system.
- (k) Other applications may be required to obtain Council's approval for a range of matters provided for in the zoning scheme (such as approval to use property for certain temporary activities).
- (l) Building plan approval
 - in terms of the National Building Regulations and Building Standards Act, is required before construction of buildings is permitted, and Council will not approve building plans that do not comply with the zoning scheme.

7.3.3. Spatial Development Frameworks

Various types of plans, strategies and policies with different levels of detail and areas of application are components of the planning system, including the following:

- (a) Integrated development plan, which amongst other things:
 - refers to a spatial development framework and land use management system;
 - aligns the resources and capacity of the municipality with implementation programmes;
 - provides a policy framework and planning input for annual budgets.
- (b) Spatial development frameworks and plans
 - consists of strategies, guidelines and development goals, indicating spatial implications and proposals for an integrated development plan.

Credible spatial development frameworks (SDFs) comply with the requirements of the Municipal Systems Act (MSA)(Act 32 of 2000), the National Environmental Management Act (NEMA) (Act 107 of 1998); and reflect and implement the principles for spatial development set out in the Development Facilitation Act (DFA) (Act 67 of 1995) and have the following characteristics:

- is based on an agreed vision and planning principles that promote equity and sustainability
- is aligned with relevant national and provincial policy;
- reflects a clear understanding of the reality of the municipal spatial, environmental, social and economic systems, particularly with regard to urban infrastructure needs and capacity;
- provides sufficient detail to inform Council decisions
- includes an implementation plan, with measurable targets;
- is realistic in terms of growth prospects and the financial and institutional capacity of the municipality to implement the proposals;
- is aligned with the municipal Environmental Management Framework (EMF), where applicable;
- is aligned with any applicable bio-regional plan, a copy of which must be inserted in the relevant section;
- provides guidance for sector plans and development initiatives from all government departments
- provides guidance for the Municipality's Land Use management System (LUMS); and,
- is clear, succinct and accessible to a wide audience.

A series of databases on current, proposed and future land uses and conservation areas are compiled through the formulation of the spatial development framework. These can be accessed on the Municipality's website or through their Town Planning Departments.

7.2 Parastatal land

There are many parastatals in South Africa, each governed by their own founding statute and with differing mandates and responsibilities to government. All of these bodies hold land. In some cases their land holdings are extensive and spread throughout the country in both urban and rural areas. Transnet, for example, owns in excess of 50,000 properties. There is no easy means of accessing information on parastatal land, its location or planned usage. In many cases, parastatals themselves may not be aware of the full extent of their land holdings.

The South African government has proposed that the state land inventory be broadened to become an inventory of public and state land, and that parastatals will enter details of their land-holdings into it. The incorporation of parastatal land into the public land register, as

discussed above, will facilitate public access to a key area of information regarding public land. It will make it easier to identify parastatal land that is not intended for core business purposes and that may be able to be accessed for a range of development purposes, including for land reform purposes.

7.3 The Housing Development Agency (HDA)

The mandate, role and functions of the HDA are defined in the Housing Development Agency Act (Act No 23 of 2008). This Act provides the framework in which the HDA operates, and it makes provision for the HDA to expedite the processes of housing development by overcoming the delivery challenges across all spheres of government. The specific mandate of the HDA is to identify, acquire, and manage the release of land and development of land for human settlement developments.

The HDA provides project delivery services in the form of land acquisition and management, project structuring, project planning, capacity assembly, as well as the management of projects. The type of assistance provided is negotiated and expressed through an Implementation Protocol (IP). Intergovernmental agreements are structured between the Agency and the respective organs of state with a view to ensuring that there is collaboration and intergovernmental and integrated alignment for housing development services.

In general the agreement outlines the framework of cooperation, the areas of activity in both land and building acquisitions, management and project management, and the institutional arrangements, for example, the establishment of a steering committee. Specific project-based agreements are then formulated to guide the overall agreement covering the following key services provided by the HDA:

- Land identification and planning
- Programme and project portfolio planning and management support
- Informal settlement upgrading support
- Emergency housing support
- Land assembly and land acquisition/release support
- Land holding and land holding support
- Land geo-spatial services
- Inter Governmental Relations (IGR) support
- Project technical implementation support
- Section 29 mandated projects where HDA acts as an implementing agent - N2 Gateway and Zanemvula

The HDA have developed a geographical information system called the Land and Property Spatial Information System (LaPsis), which is an easy-to-use online spatial information system to support and capacitate the Provinces and Municipalities. The main objectives of the LaPsis system are the following:

- Spatial tools are made easier to use
- The ability to create maps
- Enable the search for a property which is easy and accurate
- Give access to updated deeds information and Cadastre data
- Provide a cost effective system
- Create a map of all state land/public land (restrictions may be applied to non-government employees)
- Allow the development of trend reports dealing with housing, census related information, property values, cadastre, growth points, alignment and verification reports
- Give access to reports on properties (Afrideed, WinDeed, SG)
- Create a database of all identified properties
- Enable the identified properties from the database to be linked with a map

The HDA has also initiated user forums where they focus on teaching officials on how to use LaPsis, as well as how to use the information that LaPsis produces. They also cover areas such as accuracy of the data, data-sharing, enhancements to be considered, security, and what would be the best strategy in making LaPsis work for both specialists and non-specialists. (HDA website).

LaPsis has different levels of access permissions, depending on the organization the user works for. HDA users have the highest levels of access, whereas public users (private sector) have limited access to the system, data and certain functionalities. Government (National, Provincial, and Local) users have more permissions than public users, because LaPsis was designed specifically for government.

The HDA encourages other organizations to upload their data onto LaPsis, so that they can view their data in conjunction with existing LaPsis datasets. The security of information of organization-specific datasets on LaPsis is restricted to all other users (including HDA users).

The HDA is also not a custodian of all the datasets displayed on LaPsis. It has 3rd party agreements with a number of private, parastatal and government institutions and therefore cannot distribute data displayed on LaPsis to its users. Therefore, for any person to access information about a property, it is suggested that the data owners (e.g. Deeds Office)

8. General obligations

Holding of state land by one Department or tier of government does not mean that other state agencies do not have obligations in relation to it. Responsibilities with regard to the allocation and use of state land are also regulated by public law statute. It is therefore possible for national government to exercise functions in relation to state land which vests with provincial government, or public land which is held by local government. For example, the Upgrading of Land Tenure Rights Act, 112 of 1993, vests with the Minister for Rural Development and Land Reform and applies to townships where land is held by the provincial government. Another example is that of the Development Facilitation Act which lays down uniform norms and standards for land development which is applicable to all public land in the country.

The holding of land on behalf of the state brings with it criminal and civil liabilities and the legal competence to enter into contractual arrangements relating to the land. The holder is also responsible for maintaining an asset register and is accountable to the Auditor General. In view of the legal and practical consequences of holding state land, clear lines of responsibility need to be drawn.

9. Co-ordination of asset registers

Government is trying to coordinate its asset registers. In December 2009, the Office of the Chief Surveyor-General was tasked by the Minister of Rural Development and Land Reform to compile a comprehensive, accurate, complete and reliable database of all land parcels registered in the name of the Government of the Republic of South Africa. The objectives of the exercise were to:

- Create a comprehensive State Land Database that includes:-
 - National Government
 - Provincial Government
 - Municipalities
 - Former TBVC States
 - Parastatals

- Other government entities
- Geo-reference the database

The outcome of this exercise is attached as Annexure A to the report.

10. Public land information

It is clear that the effective implementation of the policy proposals of government rests to a significant extent on the availability and accessibility of information regarding the location, current and potential future uses and value of state and public land. Without such a data base, the current confusion, lack of coordination, and missed opportunities for strategic land use decisions will continue.

A register of state land has being compiled. It draws on information within the Department of Rural Development and Land Reform, including that which can be drawn from the cadaster. It I also includes relevant information that will be collected during the compilation of the Register of State Assets by the Department of Public Works. The development of the DRDLR register of state land is being done in such a way that changes in land use and disposals can be recorded and the database regularly updated.

At present, there is no legislation, apart from the directive in the Restitution of Land Rights Act 22 of 1994, that a register of public land should be established, that requires parastatals and local authorities to publicize information on their land assets and uses.

The level of detail varies greatly across the country – former homelands for example do not have detail with relation to local land holding dimensions or land use.

The security of title associated with each parcel of land in South Africa has long provided a basis for the private sector to finance physical development. The great advantage of South Africa's cadastral survey system is that it accurately identifies the position of each parcel of land and the extent of rights over it. The offices of the Surveyors-General examine and approve all cadastral surveys for the registration of ownership of property and real rights in land. The offices of the Surveyors-General process survey records, including the examination, approval and safe-keeping of all survey records relating to all diagrams, general plans and draft sectional plans for registration purposes, relating to the provinces under their jurisdiction. In addition, general plans depicting thousands of erven surveyed for the former Department of Development Aid are being upgraded so that they may be

registered in deeds registries when required.

The fact that the Surveyor-General's office holds complete records of all cadastral surveys ensures that there is virtually no possibility of properties overlapping and, once registered, little chance of conflicting claims to ownership. All land in the country is supposed to be shown on a general plan which includes the co-ordinates of land parcels. Land parcels are normally given a distinct erf number and if information is required on a land parcel, the erf number needs to be quoted. For an example of a General Plan, see Annexure C for more details.

11. Procedures for accessing information on land databases

The procedures for getting information from data bases managed by the different entities listed above are as follows:

- Surveyor- General (A written request or work through a land surveyor)
- For deeds registry (A written request or work through a conveyancer).
- Property values (Municipalities keep property valuation rolls which can readily be accessed)
- Land use or zoning information (Approach the local town planning department)
- Potential future land use (Approach the local town planning department)

In order to access information on the asset registers of government and their departments, one would need to write a letter to the appropriate authority:

- For public and state land – (Minister of Rural Development and Land Reform or the Provincial Offices)
- Parastatal land – (Head of the particular parastatal)
- Municipal land - The Municipal Manager or the Head of Land Administration or the Ward Councillor)

Other methods of accessing information

- Attend public participation meetings and ask for the information
- Use the Promotion of Access to Information Act
- Sign a petition asking for the information to be made available

It is advisable that applications are rather made by organised groups rather than individuals, as this provide the requester with more legitimacy.

A great deal of what's described above is reactive on the part of government in that government reacts to requests from the public to make information on land available. Government is also supposed to be proactive in making land information available without being asked. A great deal of information, for example, municipal property valuation rolls is available on-line. This needs to be supported, but government should also publicise the fact that this information is available on-line.

12. Disposal and allocation procedures

For communities, knowing the details of different pieces of land through databases is usually just the start. Often communities then want that land to be made available for low income housing and/or development purposes (e.g. schools, clinics, halls, etc.). The community group / individual will have to approach the land owner to obtain the land. In relation to state/public land, various procedures are followed for the disposal of this land. As is stressed above, government agencies, as major urban and rural landholders, are in a unique position to make an important contribution to national development by releasing land for social upliftment and economic development. This must be done in a socially responsible and economically sensible manner. Both the need for land, especially for the poor and dispossessed, and the development potential of the land, should be considered when determining its use and allocation.

The different levels of government should have a constructive attitude to the disposal of public land for development, in addition to responding positively to requests for its use. The creation of a governmental capacity to identify potential developments for a particular piece of land within the context of national, provincial and local development plans is a key element of this. The State Land Disposal committees provide the means for a process of land identification and categorization to be undertaken jointly by all three spheres of government.

Within this categorization process to be undertaken by these committees, a prioritization of land uses and hierarchy of needs must be developed to guide decision making. As already stated, the use of land for state domestic purposes, as well as the earmarking of land for restitution - either as land to be returned to claimants, or as compensatory and alternative land - are high priorities. The allocation of land for redistribution purposes has a high priority in the rural context. In an urban context, the use of state land for social infrastructure, including housing programmes, small and medium enterprise development and urban agriculture are priority uses.

Each piece of public and state land should be examined in relation to a hierarchy of needs and uses before any disposal decisions are taken. Consistent with this is a position that the sale and disposal of public and state land on the open market should be considered only if the land is unsuitable for state- assisted development. Furthermore, the funds generated through the disposal of public state land should be used, where possible, in support of further land acquisition for development purposes.

In situations where there is no clearly identified eligible community which might acquire the land, its disposal or allocation should take place through a range of mechanisms, including calls for proposals from the public for the development of the land, open tender and, as a measure of last resort, public auction. In cases where these forms of disposal are chosen, the transparency and legitimacy of the process will depend significantly on the extent to which information is widely disseminated to all interested parties, including the basis on which decisions are to be made.

12. Public consultation processes around the disposal of state land

Clearly structured public participation and consultation is essential for decision making on the allocation and use of public land. Time and resources invested in the process significantly reduces conflicts due to dissatisfaction with decisions. The consultation process, however, does need to be carefully devised, with the roles and expectations of different players, as well as the decision making processes involved, clearly defined from the outset.

In cases where state or public land is allocated as part of land reform programme to qualifying beneficiaries, the land reform services that apply generally would be made available. These include the provision of grants to facilitate community planning for the use of the land and its development.

13. Issues and risk to be considered

There are numerous issues pertaining to land databases and how the public can access these databases. A few of the more pertinent issues have been outlined below bearing in mind that this list is not exhaustive:

In relation to maintaining and accessing data bases:

- A large portion of the country's geographic area data is not available and has not been captured or maintained by any of the government entities
 - For example: detailed data on communal land has not been captured for this category
- In many instances there is no clear policy and regulations governing data ownership, capturing and maintenance between the various government entities
- There is very little evidence of the various spheres of government proactively attempting to integrate their databases into a more coherent format to enable communities/members of the public to access this data
- The pending finalization of the Secrecy Bill will have enormous implications for wanting to know who owns which land as security provisions might override the communities' right to know.
- Land related data which is often gathered at much expense is often not updated and therefore not useful for its purpose when making decisions on land matters
- The state is often reluctant to make land related data publicly available due to the looming spectre of land invasions
- In many cases the owner of public land may not be the same as the developer (especially in the case of housing projects) which inevitably leads to delays
- The owner of land is often different from the entity managing and maintaining the land and this can also create challenges for communities in trying to access land
- The capacity of the different government entities to manage and maintain data bases is often questioned due to the non-availability of certain data sets
- Complexity in vetting and ownership, etc. leads to confusion and officials are scared to take decisions which leads to delays in disposing of the land

Some of these points are elaborated on a bit more below:

The Urban Landmark panel on Public Land Management noted that the challenge in South Africa is not who owns the land but rather how the land is being managed. The challenge tends to lie in the owner and the developer of the land being different entities. For example, local government may have the responsibility for implementing a housing project that is located on provincially owned land. The coordination of efforts requires solid intergovernmental relations and cooperation for the project to be implemented effectively and efficiently. This is not always the case, resulting in unnecessary project implementation delays.

In South Africa, more than 50% of the public land is clearly identified on the ground and mapped. However, this is not the case for approximately 30% of the land on which traditional or rural households reside. It was estimated that there are approximately 20 million land parcels in the communal lands areas, informal settlements and indeed some of the low income housing developments which are yet to be surveyed. However, the outer boundary of the communal land has been surveyed, mapped and can be identified on the ground.

Public land management has both strong administrative and political imperatives. In relation to the latter, land is often used as a political tool or “bargaining chip” in managing the relationships between the different spheres of government. While all government spheres are required to contribute to common development goals, in some instances there is a lack of alignment of strategic plans and different development emphasis. Land earmarked as strategic at local level is not identified as such by provincial or national government.

Constitutionally, local government is mandated to contribute to national and provincial development programmes. Conversely, National Government departments have limited obligation to contribute to the local government strategic planning initiatives. There are cases of land been released by national government for housing but then used by the developing entity for other purposes. This has contributed to the breakdown in trust between the different spheres of government. (Urban Landmark, 2012)

The Departments of Public Works in National and Provincial Governments appear to have sufficient capacity for the management of land assets. However, implementation and the timely release of land and buildings seem to be the key challenges. This is partly linked to the length of the processes and procedures to be followed. In addition, it should be noted that South Africa only has approximately 500 registered land surveyors. The task of physically surveying the estimated 20 million informal sites is unrealistic given the current capacity levels. A digital approach will therefore need to be adopted for the management of this process. (Urban Landmark, 2012)

The split in responsibility for administering state owned land (as per the State Land Disposal Act, 48 of 1961, as amended) between the Minister of Public Works (for former RSA land) and the Minister for Rural Development and Land Reform (for former homelands) creates substantial administrative difficulties.

14. Recommendations

Based on the information outlined in the report above, a set of recommendations have been put forward on public land databases and the role of communities in accessing these. These recommendations are a start and far more attention needs to be given to who would be responsible for what when it comes to implementing these recommendations:

A. Create and maintain a centralized land data base system that is maintained and operated in a decentralized manner

1. As a priority, the national government should develop a single coordinated data base / asset register of all public and state land which must be accessible to the public.
2. The split in responsibility between the Departments of Rural Development and Land Reform and Public Works around the management of land databases should be resolved by allowing the Department of Rural Development and Land Reform to take the lead and co-ordinate all spatial related data in a central repository instead of having spilt responsibilities
3. The proposed National Observatory for Spatial Data Assembly and Analysis as mentioned in the National Development Plan (page 291) needs to be pursued, discussed and established. This facility should deal with all public, state, private and communal land. The recommendations from this paper need to be incorporated into this discussion.
4. Consideration needs to be given to the creation of a Spatial Data Registrar tasked with creating, maintaining, raising awareness of and facilitating analysis of data from this observatory. This is along the lines of a deeds registrar and the proposed valuation registrar.
5. All government departments need to be mandated to link into and add to this data base. The use of this centralized data base should in this way be decentralized.
6. Dedicated funds should be budgeted by national and all spheres of government for the maintenance and updating of this single co-ordinated database.

B. Build capacity to manage land data bases

7. A comprehensive capacity building and training programme needs to be developed for officials tasked with managing spatial databases at all spheres of government including parastatals to ensure uniformity in approach.
8. More research needs to be done in how the integrity of such centralized data bases can be ensured and maintained, making it difficult for information to be altered without

proper authority. Serious disincentives and enforcement needs to be created and implemented to deal with illegal tampering of these data bases.

9. Research needs to be conducted looking at how parallel records and data sets can be created, maintained and kept so that there is a record and paper trail of all changes made to information on this centralized data base.

C. Create and maintain alternative methods to collect and register information relating to land data

10. Conduct research to consider how 'locally administered' land registration processes can be linked and coordinated with more formal land registration systems that make use of land surveyors. One example of how this could be done is to develop an approach along the lines of the Namibian Flexible Land Tenure Act (Act 4 of 2012). This will contribute towards addressing challenges with land registration resulting from the scarcity of professional land surveyors in the country. Land surveyors with lower qualifications could, in this instance, take responsibility for surveying land within designated areas.
11. Civil society should explore bottom up approaches for collecting, storing and maintaining data bases. This includes for example local community asset mapping exercises, community enumeration surveys, random spot checks conducted by the public on land data base information. Community land surveyors could be trained and used for more 'locally administered' land management systems as described above.
12. The concept of communities contributing to the development of their own data requirements should be further explored. (e.g. Enumeration in informal settlements being one by structures affiliated to Shack/ Slum Dwellers International). This information needs to be linked to the centralized data base other data platforms like municipal housing data bases.
13. A system needs to be developed that allows land data information to be kept relating to communal land. For example, plots in communal areas can still be surveyed (and dimensions kept) even if a township register is not opened.

D. Open up and raise awareness of public access to all data base information

14. The public should have free access to the centralized data base so as to have oversight in terms of what is contained in this data base.
15. All spheres of government must improve the methods of making known what land related information it has through better marketing and communication and how the public can access this information and what the steps are that need to be followed.

16. Government needs to be pro-active in putting information into the public domain relating to land data bases and not always waiting for communities and the public to come forward asking for the information.
17. NGO's and government itself needs to draw attention to instances where the state is not making information available and not responding as required to requests for data and information.
18. More research needs to be given to using smart phone location facilities linked to data bases, which allow for example communities with access to smart phone technology to use their GPS features to identify the owner and development plans for a given piece of land.
19. Explore what impact the new Secrecy Bill would have on the move towards more freely accessible land databases from central government.
20. NGO's should become more familiar with what data bases are available and develop programmes to promote access to this information and support communities to access this data. They should also innovate in how data can be maintained and utilized.
21. The public should be able to request information from this data base in hard (as opposed to soft electronic form). This is to accommodate people who are unable to access the data digitally.

E. Improve the way that data is presented and analyzed making it easier to understand and more relevant to people needs

22. NGO's must find ways to help analyze and simplify the data making it more relevant for communities. The new "fact check" series being developed by PLAAS is just a start of what can and needs to be done.
<http://us2.campaign-archive1.com/?u=1ef2bf75c99750631a09a7141&id=49d9a3d121&e=ce1195e4f8>)
23. Civil societies and NGO's should explore how to make better use of information and communication technology such as Data base mining software, to make it easier to start to identify trends, patterns, and other information hidden in large data sets, that is relevant to low income housing and land access.

E. Establish platforms where the issue of improving quality of and access to land related data bases and information

24. Establish a national (and possibly provincial) multi stakeholder forums and task teams to discuss these and other recommendations and develop and monitor plans for their

implementation. Consider linking such platforms to existing and/or proposed forums like those being promoted by the Department of Human settlements and local government and traditional affairs relating to the “National Forum on Human Settlements and urban development” and the “Integrated urban Development Framework”.

25. Establish a web based platform where people can find information on data bases and engage in discussions with other people who are interested on how to improve land related information and access to such information.

15. Proposed way forward

The following are actions for Afesis-corplan and other civil society organizations to consider as a way forward:

1. Share the research report and discuss these recommendations with other civil society organizations through the LAND first Network and the Good Governance Learning Network.
2. Open up discussions with organisations like the Open Democracy Advice Centre that are already dealing with the issue of land data bases and access to inform and find ways that they can collaborate
3. Prioritise engagement with the Housing Development Agency to share this research and discuss how some of the recommendations can be picked up on.
4. Make this research report available to the public through the Afesis-corplan website.
5. Consideration needs to be given to developing information pamphlets that can be distributed to draw attention of the public to what existing data bases exists and how the public can access this information.
6. Afesis-corplan needs to review the recommendations made and identify which areas they would like to pursue, such as 1) lobbying for a national land observatory, 2) piloting innovative community based data gathering systems, 3) lobbying for a Flexible Land Tenure System type Act, 4) analyzing data bases to identify trends and other findings and simplifying this information in a way that is accessible to the public.
7. What are additional areas that would need more research in creating a policy change in government?

16. References

- City of Cape Town website
- Green Paper on Land Reform (2011)
- HDA website
- Municipal Finance Management Act, Act. 56 of 2003
- Municipal Finance Management Act Regulations: Gnr.868 of 30 May 2005: Municipal Supply Chain Management Regulations
- Municipal Finance Management Act Regulations: Gnr.878 of 22 August 2008: Municipal Asset Transfer Regulations
- Municipal Systems Act, Act 32 of 2000
- Preferential Procurement Policy Framework Act, Act 5 of 2000
- Report on the Assessment of Public Participation Practices in the Public Service: Public Service Commission (2009)
- White Paper on South African Land Policy: Department of Land Affairs (1997)

ANNEXURE A: STATE LAND AUDIT REPORT

In December 2009, the Office of the Chief Surveyor-General was tasked by the Minister of Rural Development and Land Reform to compile a comprehensive, accurate, complete and reliable database of all land parcels registered in the name of the Government of the Republic of South Africa. The objectives of the exercise were to:

- Create a comprehensive State Land Database that includes:-
 - National Government
 - Provincial Government
 - Municipalities
 - Former TBVC States
 - Parastatals
 - Other government entities
- Geo-reference the database

The results of the state land audit report are outlined below:

Total Private Land

| Property type | Number of parcels | Percentage % |
|---------------|-------------------|--------------|
| Even/urban | 4,441,745 | 92% |
| Farm | 332,908 | 7% |
| Holding | 42,788 | 1% |
| Total | 4,817,441 | 100% |

Private land – Erven

| Province | Erven |
|----------|-----------|
| EC | 511,357 |
| FS | 390,464 |
| GP | 1,336,647 |
| KZN | 686,581 |
| LMP | 171,859 |
| MPU | 297,848 |
| NC | 153,607 |
| NW | 289,621 |
| WC | 603,761 |

| | |
|--------------|------------------|
| TOTAL | 4,441,745 |
|--------------|------------------|

Private land – Farms

| Province | Farm |
|--------------|----------------|
| EC | 36,499 |
| FS | 43,541 |
| GP | 37,344 |
| KZN | 47,587 |
| LMP | 33,723 |
| MPU | 29,144 |
| NC | 19,280 |
| NW | 41,334 |
| WC | 44,457 |
| TOTAL | 332,908 |

Private land – Holdings

| Province | Holdings |
|--------------|---------------|
| FS | 5,402 |
| GP | 26,358 |
| LMP | 834 |
| MPU | 2,834 |
| NC | 3,459 |
| NW | 3,901 |
| TOTAL | 42,788 |

Total State Land

| Parcel Type | Parcels | Percentage % |
|--------------|------------------|--------------|
| ERVEN/URBAN | 1,085,084 | 93.9% |
| FARM | 64,976 | 5.6% |
| HOLDING | 5,448 | 0.5% |
| TOTAL | 1,155,508 | 100% |

State land – Erven

| Province | Parcels |
|-----------------|------------------|
| EC | 104,834 |
| FS | 157,020 |
| GP | 235,734 |
| KZN | 137,310 |
| LMP | 46,146 |
| MPU | 107,855 |
| NC | 53,396 |
| NW | 132,454 |
| WC | 110,335 |
| TOTAL | 1,085,084 |

State land – Farms

| Province | Parcels |
|-----------------|----------------|
| EC | 8,361 |
| FS | 5,435 |
| GP | 9,976 |
| KZN | 11,646 |
| LMP | 6,261 |
| MPU | 7,56 |
| NC | 2,390 |
| NW | 6,559 |
| WC | 7,192 |
| TOTAL | 64,976 |

State land – Holdings

| Province | Parcels |
|-----------------|----------------|
| FS | 557 |
| GP | 3,347 |
| LMP | 796 |
| MPU | 2,834 |
| NC | 98 |
| NW | 477 |

| | |
|--------------|--------------|
| TOTAL | 5,448 |
|--------------|--------------|

LMP parcel distribution

| Parcel type | Private | State |
|--------------------|----------------|--------------|
| ERVEN/URBAN | 171,859 | 46,146 |
| FARM | 33,723 | 6,261 |
| HOLDING | 834 | 796 |

FS parcel distribution

| Parcel type | Private | State |
|--------------------|----------------|--------------|
| ERVEN/URBAN | 390,464 | 157,020 |
| FARM | 43,541 | 5,435 |
| HOLDING | 5,402 | 557 |

MP parcel distribution

| Parcel type | Private | State |
|--------------------|----------------|--------------|
| ERVEN/URBAN | 297,848 | 107,855 |
| FARM | 29,144 | 7,156 |
| HOLDING | 2,834 | 98 |

NW parcel distribution

| Parcel type | Private | State |
|--------------------|----------------|--------------|
| ERVEN/URBAN | 289,621 | 132,454 |
| FARM | 41,334 | 6,559 |
| HOLDING | 3,901 | 173 |

NC parcel distribution

| Parcel type | Private | State |
|--------------------|----------------|--------------|
| ERVEN/URBAN | 153,607 | 53,396 |
| FARM | 19,280 | 2,390 |
| HOLDING | 3,459 | 477 |

EC parcel distribution

| Parcel type | Private | State |
|-------------|---------|---------|
| ERVEN/URBAN | 511,357 | 104,834 |
| FARM | 36,499 | 8,361 |

KZN parcel distribution

| Parcel type | Private | State |
|-------------|---------|---------|
| ERVEN/URBAN | 686,581 | 137,310 |
| FARM | 47,587 | 11,646 |

Database linkage with Cadastral

This process facilitated the geo-referencing of the state land database. The common denominator of the Land Parcel Indicator (LPI) was used during the process. Of the total deeds data of 5,972,949 land parcels, 1,016,390 were spatially unmatched against 7,560,616 spatial data units, which constituted 24% on state land and 17% on private land.

Unmatched State Land

| Province | State Land | Not Linked | % Not Linked |
|---------------|------------------|----------------|--------------|
| Eastern Cape | 113,195 | 17,289 | 15% |
| Free State | 163,012 | 16,464 | 10% |
| Gauteng | 249,057 | 110,276 | 44% |
| Kwazulu-Natal | 148,956 | 22,520 | 15% |
| Limpopo | 53,203 | 12,604 | 24% |
| Mpumalanga | 115,109 | 31,855 | 28% |
| Northern cape | 56,263 | 6,577 | 12% |
| North-West | 139,186 | 32,465 | 23% |
| Western Cape | 117,527 | 15,496 | 13% |
| TOTAL | 1,155,508 | 265,546 | 24% |

Unmatched Private Land

| Province | State Land | Not Linked | % Not Linked |
|----------|------------|------------|--------------|
|----------|------------|------------|--------------|

| | | | |
|---------------|------------------|----------------|------------|
| Eastern Cape | 547,856 | 119,079 | 22% |
| Free State | 439,407 | 15,652 | 4% |
| Gauteng | 1,400,348 | 346,917 | 25% |
| Kwazulu-Natal | 734,168 | 42,413 | 6% |
| Limpopo | 206,416 | 27,721 | 13% |
| Mpumalanga | 329,826 | 68,478 | 21% |
| Northern cape | 176,346 | 8,259 | 5% |
| North-West | 334,856 | 69,130 | 21% |
| Western Cape | 648,218 | 53,195 | 8% |
| TOTAL | 4,576,734 | 750,844 | 16% |

ANNEXURE B: PROVINCIAL AND MUNICIPAL ASSET MANAGEMENT

A. Provincial asset management

Background

In line with good financial management in the public sector, National Treasury has directed that best practices be designed and implemented to manage government assets including land and buildings. To this effect, Provincial Government departments, in fulfillment of the Public Finance Management Act, 1999 and its regulations, have developed policies to guide the way assets are evaluated, acquired, managed and accounted for. Accounting in the public service is to move towards greater transparency and accountability towards the public at large in the utilization of public funds. Government has taken initiatives to ensure that fixed assets are acquired, managed and utilized optimally to ensure the prime objectives of service delivery are achieved at the optimum level of investment.

Asset definition

An asset is a resource controlled by a Department as a result of past events and from which future economic benefits or service potential is expected to flow to the Department. This definition has three (3) elements, which must all be satisfied for it to be qualified as an asset in an accounting sense. They are relevant to all forms of assets and are listed below:

- The asset has service potential or future economic benefit for the Department;
- The Department has the capacity to control the service potential or future economic benefits of the asset; and
- The service potential or future economic benefits arose from past transactions or events (i.e. future assets cannot be recognized in the financial statements).

In order to ensure that assets are managed and accounted for in a consistent pattern, the following asset classifications have been developed in line with National Treasury asset guidelines:

- Current-and non-current assets;
- Tangible-and intangible assets;
- Movable-and immovable assets;
- Financial-and non-financial assets
- Primary and secondary assets.

Immovable assets consist of:

- All non-produced, non-financial tangible assets (land, water resources):
- Some fixed tangible assets, namely fixed structures(bridges, houses); and

- Tangible movable or immovable (water, land) and intangible (patents, leases and goodwill).

Asset strategy

An integrated approach towards asset planning and management will enable the Departments to deliver quality, asset-based services efficiently and effectively. By integrating asset planning with its overall planning processes, the Departments are better able to make the most appropriate decisions about the asset profile, particularly when responding to such factors as:

- new or changing service delivery requirements;
- different methods of service delivery, and
- evolving technology i.e. Information Technology equipment

Proper planning will provide a comparison between the assets required to support program delivery and those assets currently available and/or programmed for acquisition. In this manner the Departments are able to identify:

- existing assets that are required and are presently capable of servicing program delivery needs;
- existing assets that are required but are below the necessary standard and need
- refurbishment to meet program delivery needs;
- assets which are surplus to program delivery needs and can be disposed of; and
- assets which must be acquired to meet program delivery needs.

Asset register

This register will form the sub-ledger for the asset value disclosed in the general ledger. On a monthly basis, the asset register is to be reconciled to the general ledger. The register must be sufficiently detailed to provide an adequate trail of the asset through its useful lifespan. Fully depreciated assets must be retained within the register until disposal thereof.

The asset register is the asset database that provides the basis for the figures in the financial statements. It includes information on asset purchase prices, asset condition and expected life. All assets should be recorded in the asset register, regardless of the funding source. The asset register should contain non-financial data necessary to discharge statutory obligations.

The asset register shall include:

- Structuring to allow the different classification of assets to be distinguished;

- Financial data on assets that is maintained down to the level which is important to decision makers;
- A clear identification of the user, programme or unit, responsible for the asset; and
- Asset data that is:
 - Updated as transactions and events occur (on an accrual basis);
 - Regularly reconciled with acquisition data and the general ledger.

Land normally has an unlimited life and, therefore is not depreciated.

B. Municipal asset management

The legislative and policy framework for the management of a Municipality's asset portfolio is contained in the following pieces of legislation:

- The Local Government: Municipal Finance Management Act, Act 56 of 2003;
- The Local Government: Municipal Finance Management Act Regulations:
 - GNR.868 of 30 May 2005: Municipal Supply Chain Management Regulations; and
 - GNR.878 of 22 August 2008: Municipal Asset Transfer Regulations;
- The Local Government: Municipal Systems Act, Act 32 of 2000; and
- The Preferential Procurement Policy Framework Act, Act 5 of 2000.

These pieces of legislation in broad terms dictate how the asset management system is established and how same is to be implemented for the purposes of demand, acquisition and disposal, the responsible officials in relation to asset management and maintenance and key governing principles.

It is important to note, despite conventional thought, the Government Immovable Asset Management Act, Act 19 of 2007, will not be considered as same is not of application in this instance. The said Act specifically provides that it does not apply to administration in the local sphere of government (municipalities).

Local Government: Municipal Finance Management Act, Act. 56 of 2003 (MFMA)

The MFMA has been enacted to fulfill the following objectives:

- to secure sound and sustainable management of the financial affairs of municipalities and other institutions in the local sphere of government;
- to establish treasury norms and standards for the local sphere of government; and
- to provide for matters connected therewith.

The MFMA contains a number of provisions which must be considered in relation to the management and maintenance of assets.

In terms of section 14, a Municipality may not transfer ownership or permanently dispose of a capital asset which is needed to provide the minimum level of basic municipal services.

A “capital asset” is defined in the Municipal Asset Transfer Regulations as:

- any immovable asset such as land, property or buildings; or
- any movable asset that can be used continuously or repeatedly for more than one year in the production or supply of goods or services, for rental to others or for administrative purposes, and from which future economic or social benefit can be derived, such as plant, machinery and equipment

A municipality may however transfer ownership or dispose of any other capital asset if the municipal council (or the accounting officer if such power has been delegated) has conducted an open public meeting where after it has (a) decided on reasonable grounds that the asset is no longer needed to provide the minimum level of basic municipal services and (b) considered the fair market value of the asset and the economic and community value to be received in exchange

Such transfer must be fair, equitable, transparent, competitive and consistent with the Supply Chain Management policy of the Municipality. (read with section 111). For transfer to other municipalities, municipal entities or national/provincial organs of state, section 14 does not apply. Instead, the prescribed frameworks must be followed.

Where assets have been disposed of in terms of section 14 (2) or (4) during the previous quarter the accounting officer must place on the municipal website an information statement containing a list of assets over a prescribed value that have been disposed of. This list must be placed on the website no later than five days after its tabling in the council or on the date on which it must be made public, whichever occurs first.

In executing his responsibilities, the accounting officer must ensure that:

- the municipality has and maintains a management, accounting and information system that accounts for the municipal assets,
- the municipality’s assets are valued in accordance with standards of generally recognized accounting practice; and
- the municipality has and maintains a system of internal control of assets, including an asset register.

The accounting officer may delegate any of these powers assigned to him in terms of section 79.

In terms of Section 78, all municipal senior managers and those officials exercising financial management responsibilities must, subject to the directions of the accounting officer, take all reasonable steps to ensure that the assets and liabilities of the municipality are managed effectively and that assets are safeguarded and maintained to the extent necessary;

Sections 110 to 119 deal comprehensively with the supply chain management ("SCM") requirements for the procurement and disposal of assets by a municipality. The notable tenants are as follows:

- Each municipality must have and implement a SCM policy;
- The SCM policy must be fair, equitable, transparent, competitive and cost effective and comply with the prescribed regulatory framework; and
- The municipal accounting officer is responsible for the implementation of the SCM policy.

Local Government: Municipal Finance Management Act Regulations: Gnr.868 of 30 May 2005: Municipal Supply Chain Regulations

The Supply Chain Management Regulations has been created in terms of Section 168 of the MFMA to essentially govern the establishment and implementation of the supply chain management policy every municipality is required to have in terms of section 111 of the MFMA for inter alia the procurement of goods and services and the disposal of goods no longer required. The entire set of regulations are relevant for the purposes of asset management and maintenance as these require that effective systems are put in place for demand, acquisition, logistic, disposal, risk and performance management.

Disposal management (regulation 40); provides for the disposal or letting of assets, including unserviceable, redundant or obsolete assets, subject to section 14 of the MFMA.

In this respect, a SCM policy must specify the ways in which assets may be disposed of and stipulates:

- immovable property may be sold only at market related prices except when the public interest or the plight of the poor demands otherwise;
- movable assets may be sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous to the municipality or municipal entity;

- immovable property is let at market related rates except when the public interest or the plight of the poor demands otherwise; and

Local Government: Municipal Finance Management Act Regulations: Gnr.878 of 22 August 2008: Municipal Asset Transfer Regulations ("MATR")

The MATR has been created in terms of section 168 of the MFMA. The MATR apply to:

- The transfer and disposal of capital assets by municipalities and
- The granting by municipalities of rights to use, control or manage capital assets.

Chapter 2 regulates the transfer by municipalities of non-exempted capital assets either to private sector parties or organs of state and the permanent disposal by municipalities of non-exempted capital assets. Thus, Chapter 2 facilitates the enforcement and application of section 14(2) of the MFMA, i.e. in relation to those assets which the municipal council (or the accounting officer if such power has been delegated) has decided on reasonable grounds that a particular asset is not needed to provide the minimum level of basic municipal services.

If a high value asset is to be transferred or disposed of or if the combined value of any capital assets a municipality intends to transfer or dispose of in any financial year exceeds five per cent of the total value of its assets, then the accounting officer must conduct a public participation process to facilitate the determinations the municipal council is to make in terms of sections 14(2) (a) and (b) of the MFMA.

“high value”, in relation to a capital asset of a municipality or municipal entity, means that the fair market value of the capital asset exceeds any of the following amounts:

- R50 million;
- one per cent of the total value of the capital assets of the municipality or municipal entity, as determined from the latest available audited annual financial statements of the municipality or entity;
- an amount determined by resolution of the council of the municipality or of the parent municipality of the municipal entity which is less than (a) or (b);

The municipal council must consider the following, when considering any proposed transfer or disposal of a non-exempted capital asset:

- whether the capital asset may be required for the municipality’s own use at a later date
- the expected loss or gain that is expected to result from the proposed transfer or disposal;

- the extent to which any compensation to be received in respect of the proposed transfer or disposal will result in a significant economic or financial cost or benefit to the municipality;
- the risks and rewards associated with the operation or control of the capital asset that is to be transferred or disposed of in relation to the municipality's interests;
- the effect that the proposed transfer or disposal will have on the credit rating of the municipality, its ability to raise long-term or short-term borrowings in the future and its financial position and cash flow;
- any limitations or conditions attached to the capital asset or the transfer or disposal of the asset, and the consequences of any potential non-compliance with those conditions;
- the estimated cost of the proposed transfer or disposal;
- the transfer of any liabilities and reserve funds associated with the capital asset;
- any comments or representations on the proposed transfer or disposal received from the local community and other interested persons;
- any written views and recommendations on the proposed transfer or disposal by the National Treasury and the relevant provincial treasury;
- the interests of any affected organ of state, the municipality's own strategic, legal and economic interests and the interests of the local community; and
- compliance with the legislative regime applicable to the proposed transfer or disposal.

A disposal may be approved in principle and subject to conditions.

- The disposal must be in terms of the Municipality's disposal management system.
- The transfer of an asset must be formalized in a written transfer agreement concluded between the transferring municipality or entity and the receiving private sector party or organ of state.

The regulations are to be governed and implemented in accordance with the following principles, as per regulation 3:

- Valuation principle, i.e. the need to attach a value to the transfer or disposal of a municipal capital asset, in order to ensure that the interests of the municipality and of its stakeholders are not prejudiced by the transfer or disposal.
- Continuity of service principle, i.e. the need to ensure the uninterrupted continuance of a municipal service when a municipal capital asset that is being used in the delivery

of that service, is transferred or disposed of, particularly when the asset is used in the provision of the minimum level of basic municipal services.

- Risk transfer principle, i.e. the need to transfer the risk relating to a municipal capital asset in conjunction with the transfer of the asset.
- Asset preservation principle, i.e. the need to prevent the indiscriminate or unsustainable transfer or disposal of a municipal capital asset in order not to undermine the ability of the municipality to render or expand municipal services in the longer term.

ANNEXURE C: EXAMPLE OF A GENERAL PLAN

