

Small-scale rental housing

Moving from the low to
the high road



Development Action Group, a leading non-profit organisation, deepens democracy by working as a facilitator of change in South Africa's urban development arena. DAG supports communities in need of adequate housing to lead their own development by enhancing their capacity and resourcefulness. DAG influences state policy and practice through partnerships, research, training and lobbying activities.

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GLOSSARY OF TERMS

Backyard rental housing

Rental housing located on another property, usually government subsidised house or council housing, and typically lower-quality, semi-permanent dwellings made of timber and iron/zinc sheets.

Debt-financed homeowner developer

Similar to incremental developers except that they obtain formal funding from a bank or micro-finance institution (MFI) that is tied to the property asset in some way. The MFI is often actively involved in the planning, construction and management of the rental units.

Formalisation

Under formalisation we refer to public and private efforts to promote full regulatory compliance for rental housing.

Incremental homeowner developer

Owner of property who typically constructs between one and six rental units on their property, or that of a close family member, using a mix of informal and formal financing, none of which is formally tied to the property. Their main motivation is to supplement their household income.

Land value capture

Land value capture refers to a concept that describes several land-based finance tools. The concept is rooted in the premise that public actions drive up real estate values, which are usually accrued by private landowners through no efforts of their own. Land value capture offers an array of policy tools and instruments that recover the publicly generated value increases.

Micro-developers

Micro-developers usually build multiple rental units in the form of medium-density apartment blocks, often on properties bought specifically for this purpose where the previous structures are demolished. Compared to homeowner developers, they invest larger amounts of funding, drawn together from various sources, as part of a growing property development portfolio. They are more entrepreneurial and driven more by the pursuit of profit and wealth.

Overlay zone

A zoning, in addition to the base zoning, stipulating the purposes for which land may be used and the development rules which may be more or less restrictive than the base zoning.

Regularisation

Under broad-based regularisation we refer to public and private awareness raising, training, skills development, knowledge sharing and local support to improve basic conditions within rental units, specifically regarding health and safety, structural integrity, encroachments and landlord-tenant relations.

Regulatory regime

Regulatory regime refers to system of rules in which homeowners and developers operate. We use the term regulatory regime in a holistic sense to refer to formal (local) government regulations, procedures and frameworks but also bureaucratic norms, practices and capacities that influence small-scale rental housing. It includes the legislation and regulations governing small-scale rental flats, specifically land-use management and building regulations, but also the administrative systems and processes required to obtain regulatory approvals, the capacity of district offices and front-line officials to implement the regulations, their values, mindsets and the internal incentives that influence their everyday practices.

Small-scale rental housing

Backyard rental housing but specifically single and multi-storey brick and mortar rental units or flats.

01 Executive Summary

Small-scale rental housing offers wide-ranging public benefits and significant opportunities to spur a post-Covid economic recovery. At the same time, its informal and unregulated character poses health and safety risks, impacts service and infrastructure provision, and inhibits sustainable densification of well-located neighbourhoods. Allowing business as usual risks taking entire areas onto a 'low road' of overcrowding, insecurity and instability. Experts, practitioners and city officials agree that a fundamental change in approach is required.

Recent civil-society and private sector initiatives have started to improve the capacity of the sector, but urgent government action is needed to put small-scale rental housing onto a 'high road' scenario. This report offers new insights into the key barriers as well as the regulatory reforms, financial incentives and public support measures required to grow and formalise these investments. Drawing on rich empirical evidence collected in the latter half of 2021, the report highlights the diversity of small-scale developers, their differentiated needs and capabilities to grow and formalise, and the important role of the state in shaping urban development. We distinguish between incremental homeowners, debt-financed homeowners and micro-developers to demonstrate variations in the way township property developers operate.

Cape Town's current regulatory regime (including land use, building and title deed regulations, institutional-administrative systems and bureaucratic practices) fosters informality and inhibits formal investment in small-scale rental housing. Our analysis highlights the enormous complexity, time and resources involved in getting regulatory approvals. Through a careful financial assessment of three construction scenarios, we demonstrate that the costs of compliance are unaffordable to the incremental homeowner developer and

financially unviable for the debt-financed and micro-developer. Therefore, we propose a two-pronged approach of broad-based regularisation and progressive formalisation to improve material conditions in the sector.

Incremental homeowner developers build with little or no compliance because they lack resources, information and support. Achieving full regulatory compliance would more than double their current development costs. Even with the cost savings from proposed incentives, the gap between their current practices and formal regulatory requirements remains too wide. Recognising that partial informality will persist for the foreseeable future, we recommend 'regularisation' strategies comprising education, awareness raising, active local support and stronger community governance institutions to move towards higher standards of rental housing.

Debt-financed and micro-developers already build at higher quality and with partial compliance, partly because of formal financing requirements and their existing professional networks. We argue that a more supportive regulatory regime – consisting of regulatory reforms, financial incentives and technical assistance elaborated further below – would encourage many of them to fully formalise. From a municipal point of view, formalisation is foundational to render the value of rental properties visible and capture some of it through rates and taxes. Moreover, regularisation and formalisation are critical to building sustainable neighbourhoods and renew the social contract between the state and its citizens, whose social and economic benefits go far beyond monetary considerations.

Regulatory reforms and incentives

Small-scale rental units of a certain density should become a primary land use right to remove the need for time consuming and costly land-use approvals. We recommend the establishment and incremental expansion of an incentive-based overlay zone in spatially targeted areas with adequate infrastructure capacity. The overlay zone should be linked to financial incentives (removal of administrative fees and development contributions for individual applicants), which could be recouped through national grant funding (Urban Settlements Development Grant) and future income from the collection of rates and charges. The possibility should also be explored of the overlay zone being linked to tax rebates and discounts along the lines of those offered through the UDZ in inner-city areas.

At the national level we recommend a review and revision of the National Building Regulations and Building Standards. Our analysis shows that if category 1 buildings could be passed with lower material specifications, while maintaining fire, health and safety protections, the total development costs of fully compliant buildings could be reduced dramatically. Taken together with the overlay zone, reduced administrative fees and prototype plans, these measures would encourage formalisation by reducing compliance costs to a level that is close to current expenses incurred by debt-financed and micro-developers.

The lack of formal title deeds restricts many property owners from formalising their rental



units. There is no consensus about the best way to resolve the title deeds backlog and related problems, but options include case-by-case rectification, some kind of national intervention to resolve systemic backlogs, and de-linking title deeds by developing alternative systems using blockchain technology to grant regulatory approvals.

Administrative reforms and local support

There is also a strong case for reviewing internal municipal procedures to identify bottlenecks and solutions to speed up approval processes. Better management and more transparent procedures would help. New technology could reduce human inputs on basic administrative tasks and free up staff resources to provide hands-on support to applicants.

Prototype plans and building design guidelines should be prepared and made available in different municipal offices. These should be easily accessible to property owners wishing to develop rental units. They would mitigate the need for an architect and reduce the costs and time involved in obtaining building plan approval.

More resources and staff are needed to boost the capacity of district offices to offer support. Stretched municipal resources and the enormous governance challenges in many townships call for more partnerships with private-sector, civil society organisations and community institutions to improve the construction and management of rental housing. It is also vital to strengthen the capacity of local architects, building consultants and other professionals through enterprise funding and business support services.

Neighbourhood support offices and one touch units would improve people's access to information, advice and resources. Civic leaders need to create space and resources for flexible and adaptive practices by front-line officials, rather than traditional bureaucratic responses.

A new social contract

A genuine shift in engagement with communities and local institutional structures is needed to improve local ownership of regularisation and formalisation initiatives and reduce the risks of resistance. Many NGOs have existing networks and trust relationships with communities, which provide a basis for designing successful strategies. Achieving these will require a new social contract between property owners and the City, whereby both parties understand and accept their rights and responsibilities.

Re-imagining the social contract between state and citizens is particularly urgent for public infrastructure and service delivery. Considerable investments will be needed to cater for the growth in rental accommodation. While national and other grants will cover some of these expenses, rates and service charge contributions from those able to pay are vital for long-term sustainability.

Experimentation and further research

Experimentation and learning by doing are vital to answer tough questions about what kinds of informal practices can be legally accommodated, what minimum standards of development must be maintained and whether the proposed reforms and support measures will actually encourage formalisation. Several promising public initiatives and partnerships with private and civil-society actors are currently underway across Cape Town. Further research can help in properly documenting the lessons to share among role-players and enable institutional learning and dissemination of the most effective solutions.

01 Introduction

Brick by brick, homeowners and micro-developers are altering the physical fabric of townships and providing sought-after affordable rental units which neither the public nor the conventional private sector supply

Small-scale rental housing is changing the character of South African cities and helping to solve the crisis of accommodation. Homeowners and micro-developers are investing large sums of money in better quality brick and mortar flats. Brick by brick they are altering the physical fabric of townships and providing sought-after affordable rental units which neither the public nor the conventional private sector supply. Coincidentally, this also contributes to urban densification, income generation and stronger local economies. The small-scale rental sector offers wide-ranging public benefits and opportunities to spur the post-Covid recovery,¹ which are increasingly recognized by the City of Cape Town, other spheres of government and financial institutions.

So far, small-scale rental housing has been predominantly informal and non-compliant with planning and building regulations (DAG 2021; HSRC 2019). Driven by individual homeowners and micro-developers who build without official authorisation, the quality and quantity of flats vary greatly across and within neighbourhoods (Isandla Institute 2021a). The largely unregulated growth of this massive-small transformation² creates health and safety risks, impacts service and infrastructure provision, and creates opportunities for abuse by unscrupulous landlords and developers, who make no increased contribution to municipal rates and taxes. Over time, these cumulative stresses could put neighbourhoods and residents onto a fragile, unsustainable trajectory – a 'low road' of overcrowding, insecurity and instability³ – which ultimately undermines the value of these investments and degrades public assets. Although this pathway is by no means inevitable, there is a great deal at stake and many townships are at a crossroads between getting locked into the low road or progressively moving onto the high road of more dignified, liveable and safe environments.

Experts and practitioners agree that a more enabling and supportive governance approach is required. A growing network of researchers, civil society organisations, municipal officials and private entities, including the Development Action Group's (DAG) Contractor and Developer Academy (CDA), have done pioneering work to improve understanding of the sector, strengthen technical capacity, make connections to micro-finance institutions and press for regulatory changes (DAG 2021; Isandla Institute 2021b; HSRC 2019; Spiropolous 2019). These efforts are beginning to bear fruit. The City of Cape Town's latest Human Settlements Strategy acknowledges the significance of small-scale rental housing and commits to promoting growth and formalisation of the sector, laying the foundation for important partnership initiatives and regulatory reviews (City of Cape Town 2021). Through formalisation the City aims to address health and safety risks, manage densification, promote asset-value

A growing network of researchers, civil society organisations, municipal officials and private entities, including the Development Action Group's (DAG) Contractor and Developer Academy (CDA), have done pioneering work to improve understanding of the sector, strengthen technical capacity, make connections to micro-finance institutions and press for regulatory changes

creation for property owners and bring rental flats into the municipal-administrative system to capture some of the value increments to fund public infrastructure investments.

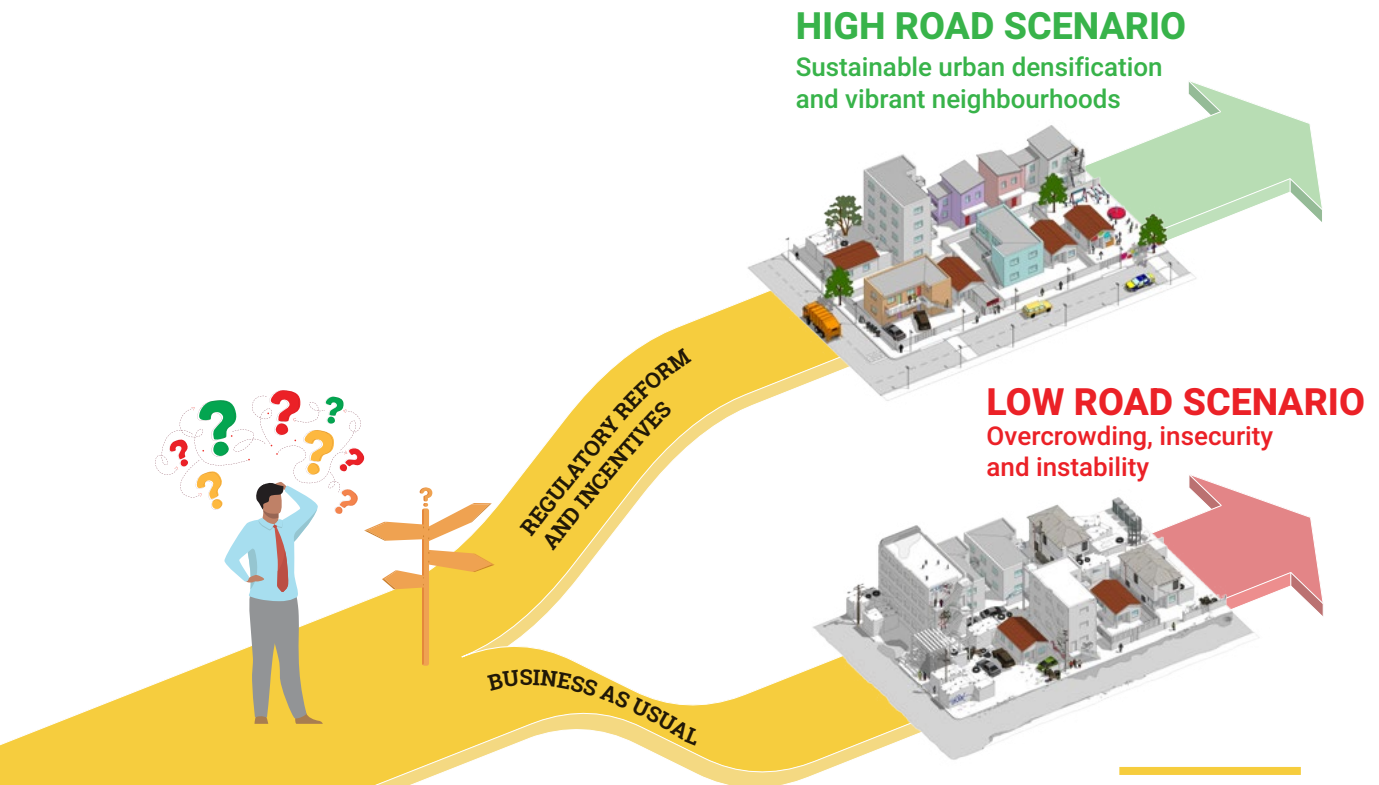
Informed by these developments, DAG commissioned this study to examine whether policy measures and incentives proposed by the City and other stakeholders are sufficient to transition small-scale rental onto a high road scenario. The research also explores what other policy actions, reforms and support are required and what possible impacts and unintended consequences there may be. Based on quantitative and qualitative evidence collected in the latter half of 2021,

the report highlights how current regulations, prohibitive standards and inadequate institutional arrangements actually foster informality and inhibit formal-sector private investment. Taking into account developers' diverse capabilities and needs, it analyses project-level financial data to demonstrate the high costs associated with regulatory compliance and compares them with potential savings from proposed interventions.

Ultimately, we propose a two-pronged strategy of broad-based regularisation and progressive formalisation to improve the sector and its contribution to building sustainable neighbourhoods. While the focus of the analysis is on Cape Town, the findings and lessons are relevant to all cities in South Africa. They highlight the need for collaboration across government and partnerships with other role-layers.

Below: High-read, low-road:

Recent civil-society and private sector initiatives have started to improve the capacity of the micro development sector, but urgent government action is needed to put small-scale rental housing onto a 'high road' scenario.





02 Approach

The distinction between backyard and small-scale rental sectors

We recognise important differences between types of small-scale developers and propose a two-pronged approach to upgrading and enhancing the rental housing sector: broad-based regularisation and progressive formalisation.

Backyard rental housing is a diverse and complex sector involving different kinds of actors, dwelling types and built environment impacts (Isandla Institute 2021a; Scheba and Turok 2020). In the report we distinguish between backyard and small-scale rental housing, and focus on the latter. This includes all single and multi-storey brick and mortar rental units or flats. We exclude conventional backyard shacks or wendy-houses, which are lower-quality, semi-permanent dwellings made of timber and iron/zinc sheets by so-called 'subsistence landlords' (Scheba and Turok, 2020). We follow recent calls by DAG and others to distinguish between the general practice of 'backyarding' and the more formalized, higher quality small-scale rental sector (DAG 2021). We also recognise important differences between types of small-scale developer. Awareness of these differences is important to understand variations in the way they operate, as well as their future growth potential and capacity to formalize.



DAG workstream context

The study is situated at the interface of two important workstreams of DAG: the Contractor and Developer Academy and the Land Value Capture Programme. As part of LVC, it contributes to a better understanding of regulatory instruments to create and capture land value increments. As part of CDA, it assists ongoing efforts to support the small-scale rental sector. Within this context, the report focuses on incentives, policy actions and support measures to scale-up and formalize small-scale rental accommodation in Cape Town's townships. While its focus is thematically and geographically limited, the findings offer important lessons for other cities and government entities in the country.

Left top:

Conventional backyard shacks or wendy-houses, which are lower-quality, semi-permanent dwellings made by so-called 'subsistence landlords'.

Left bottom:

A single mother's property situated in Khayelitsha; she is a Debt-financed homeowner developer.

Incremental homeowner developers typically construct between one and six rental units on their property, or that of a close family member, using a mix of informal and formal financing, none of which is formally tied to the property. Their main motivation is to supplement their household income. Construction usually takes place incrementally, when funds become available, and is guided by informal institutions, norms and standards. They use local unregistered builders to design and construct the dwellings. While these are much cheaper than professional contractors, their quality and reliability are mixed, sometimes causing poor or delayed delivery.⁴ Incremental homeowners generally have fewer resources, face more challenges in obtaining information and training, and consider the benefits of regulatory compliance less attractive than the costs involved. They typically have little or no experience of municipal planning and building regulation procedures.

Debt-financed homeowner developers are similar to incremental developers except that they obtain formal funding from a bank or micro-finance institution (MFI) that is tied to the property asset in some way. The MFI is often actively involved in the planning, construction and management of the rental units, as in the case of Bitprop, iBuild and TUHF. The interaction between these developers and MFIs improves their access to information, technical resources and therefore regulatory compliance. Indeed, MFI funding requires at least partial compliance, e.g. title deed, NHBRC accredited builders and/or an approved building plan. The MFI also affords access to their network of professional builders, architects and conveyancers. The MFI typically leads the planning, construction and quality control of the rental units, while the homeowner is trained to manage the property and deal fairly with the tenants (including drawing up proper lease agreements, rent collection and conflict resolution).

Micro-developers usually build multiple rental units in the form of medium-density apartment blocks, often on properties bought specifically for this purpose where the previous structures are demolished. Compared to homeowner developers, they invest larger amounts of funding, drawn together from various sources, as part of

a growing property development portfolio. They are more entrepreneurial and driven more by the pursuit of profit and wealth creation. Micro-developers often have a higher level of education and find it easier to access external resources, knowledge and expertise. Their investment decisions are more calculated and strategic, taking into account financing, location, density and design considerations. Some have more experience than others in property construction, and therefore more knowledge of regulatory requirements and procedures. Since they are bigger investors and face larger potential fines and penalties, their incentives to comply tend to be greater.

Of course, individual developers do not conform quite so neatly to this simple schema in reality. There is a spectrum from the intuitive incremental developer to the more experienced and strategic micro-developer. Individuals may also progress over time through learning from practice and heightened aspirations. Nevertheless, the classification is useful to understand how different factors influence property investment decisions.

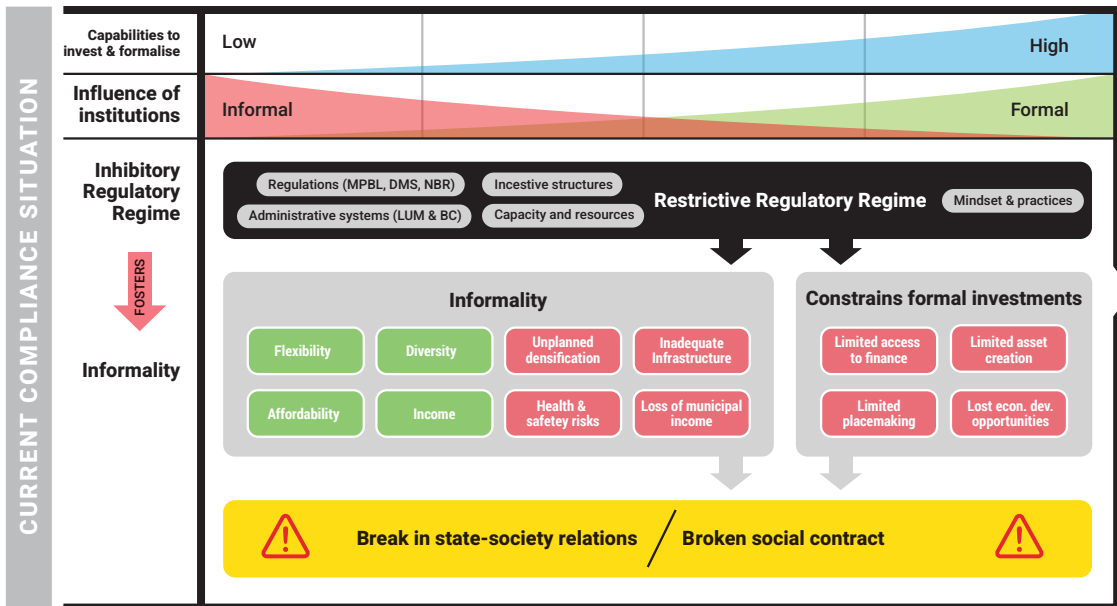
The regulatory regime

The way developers construct and manage rental flats is influenced by the system of rules or 'regulatory regime' in which they operate. We use the term regulatory regime in a holistic sense to refer to (local) government regulations, procedures and frameworks, but also bureaucratic norms, practices and capacities that govern small-scale rental housing.⁵ It includes the codified legislation and regulations governing small-scale rental flats, specifically land-use management and building regulations, but also the administrative systems and processes required to obtain regulatory approvals, the capacity of district offices and front-line officials to implement the regulations, their mindsets, values and the internal incentives that influence their everyday practices. This broad concept of the local governance system recognizes the multi-faceted, heterogenous nature of government and the vital role of front-line officials in negotiating structural and individual forces when making decisions (ODI 2021).

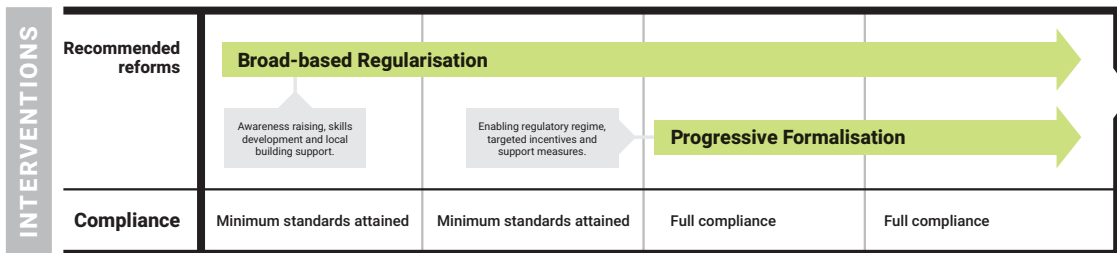
Spectrum of Developers



| | Subsistence Homeowners | Incremental Homeowner Developers | Debt-finance Homeowner Developers | Micro-developers |
|---------|--|--|---|--|
| FACTORS | Personal factors Social and/or economic objectives Necessity driven Primary Property | Personal factors Social and/or economic objectives Primary Property | Personal factors Economic objectives, Primary or additional property | Personal factors Economic objectives, Additional property |
| | Financial considerations Incremental, intuitive | Financial considerations Incremental, intuitive | Financial considerations Calculative Project-based | Financial considerations Calculative Strategic, (portfolio) |
| | Economic ecosystem Personal networks | Economic ecosystem Personal networks | Economic ecosystem Professional networks | Economic ecosystem Professional networks |
| TYPOLGY | Type of development Makeshift structures (shacks, wendy houses) | Type of development Flats (single or double storey) | Type of development Flats (single or double storey) | Type of development Apartment blocks |



LOW ROAD SCENARIO



HIGH ROAD SCENARIO



Top:
The third property of a seasoned micro-developer situated in Delft. The property is comprised of 6 units.

Bottom:
Medium-density apartment blocks in Khayelitsha, Mandalay built by a micro-developer.

Recent studies and stakeholder discussions suggest that Cape Town's current regulatory regime fosters informality and inhibits formal investment in the small-scale rental sector⁶ (DAG 2021; CDE 2020; HSRC 2019). Tolerating informality means greater flexibility and affordability, but it also creates collective risks and potential hazards for health and safety, encroachments on private and public spaces, and overloaded public infrastructure (Isandla Institute 2021a). Failure to comply with regulations depresses the value of asset creation from rental flats and prevents the municipality from collecting additional rates and taxes. Informality generally excludes property owners from accessing secured lending (e.g. mortgages), using the property as collateral and obtaining formal insurance cover (CDE 2020; Spiropolous 2019). An inappropriate regulatory regime may even open the door for corruption and fraud, foster mistrust and social conflict, and therefore weakens the social contract between the state and citizens.

Recent studies have emphasized the intricate and multi-faceted nature of informality, its complex relationship with formality, and the important role of the state in producing different degrees of legal, illegal, legitimate, illegitimate, authorised and unauthorised (Ferrari and Sanyal 2021; Banks et al. 2019). They recognize that informality has both positive and negative dimensions, affecting individuals and groups differently at various levels. This highlights the need for care and sensitivity when formulating proposals for action to regularise and/or formalise informal activity (Isandla Institute 2021b). Following this injunction, we propose a two-pronged approach to upgrading and enhancing the rental housing sector: broad-based regularisation and progressive formalisation.

Regularisation and formalisation

Under broad-based regularisation we refer to public and private awareness raising, training, skills development, knowledge sharing and building support to improve basic conditions within rental units, specifically regarding health and safety, structural integrity, building line encroachments and landlord-tenant relations. The purpose of regularisation is to attain minimum standards, limit negative externalities and decriminalise small-scale rental developments. The aim is not to achieve full regulatory compliance, but to avoid damaging outcomes and prevent costly mistakes. By working with informality, the intention is to progressively improve material conditions. Broad-based regularisation is mainly aimed at subsistence and incremental homeowner developers, who have fewer resources, capabilities and knowledge to pursue complete formalisation.

We refer to formalisation as conferring legitimacy, or "giving (something) legal or formal status, making something official or deciding to arrange it according to a fixed structure" (Iban 2020, p. 2). Under progressive formalisation we refer to public and private efforts to promote full regulatory compliance for rental housing. The emphasis is on creating an enabling regulatory regime (by adjusting standards and procedures to be more realistic) and providing targeted incentives and support measures to assist developers to obtain all regulatory approvals. Given the large extent of informality and differentiated capabilities among homeowners and developers, we recommend targeting formalisation at micro-developers and debt-financed homeowner developers in the first

Recent studies have emphasized the intricate and multi-faceted nature of informality, its complex relationship with formality, and the important role of the state in producing different degrees of legal, illegal, legitimate, illegitimate, authorised and unauthorised

instance, while promoting regularisation across the entire sector. The objective is to target formalisation initially at those who are able to afford it and from there incrementally extend it across the city.

From the municipality's point of view, formalisation is foundational for capturing some of the value generated by public and private investments into small-scale rental housing. Formalisation renders the financial value of rental properties visible and enables the municipality to capture value increments in the form of rates and taxes. The potential income could be substantial but is difficult to assess due to the informal nature of the building activity. Estimates by the valuation department of the City of Cape Town suggest that in former LEFTEA⁷ areas rates worth R10m could be collected annually from multi-storey blocks of flats alone. Formalising these assets would be a first step to bring informal rental properties into the valuation roll and municipal administrative system. However, as examined in this report, the path towards formalisation is wrought with enormous technical, political and financial challenges, including systemic problems



Land Value Capture

Land value capture refers to a concept that describes several land-based finance tools that can help to make South African cities more equitable, productive and inclusive. The concept is rooted in the premise that public action, including changing land use regulation, providing additional development rights or investing in public infrastructure, drive up real estate values. Normally these value increments are accrued by private landowners through no efforts of their own. Land value capture offers an array of policy tools and instruments that recover the publicly generated value increases, through the conversion to public revenue or through the provision of infrastructure for public benefit (www.landvaluecapture.org.za).

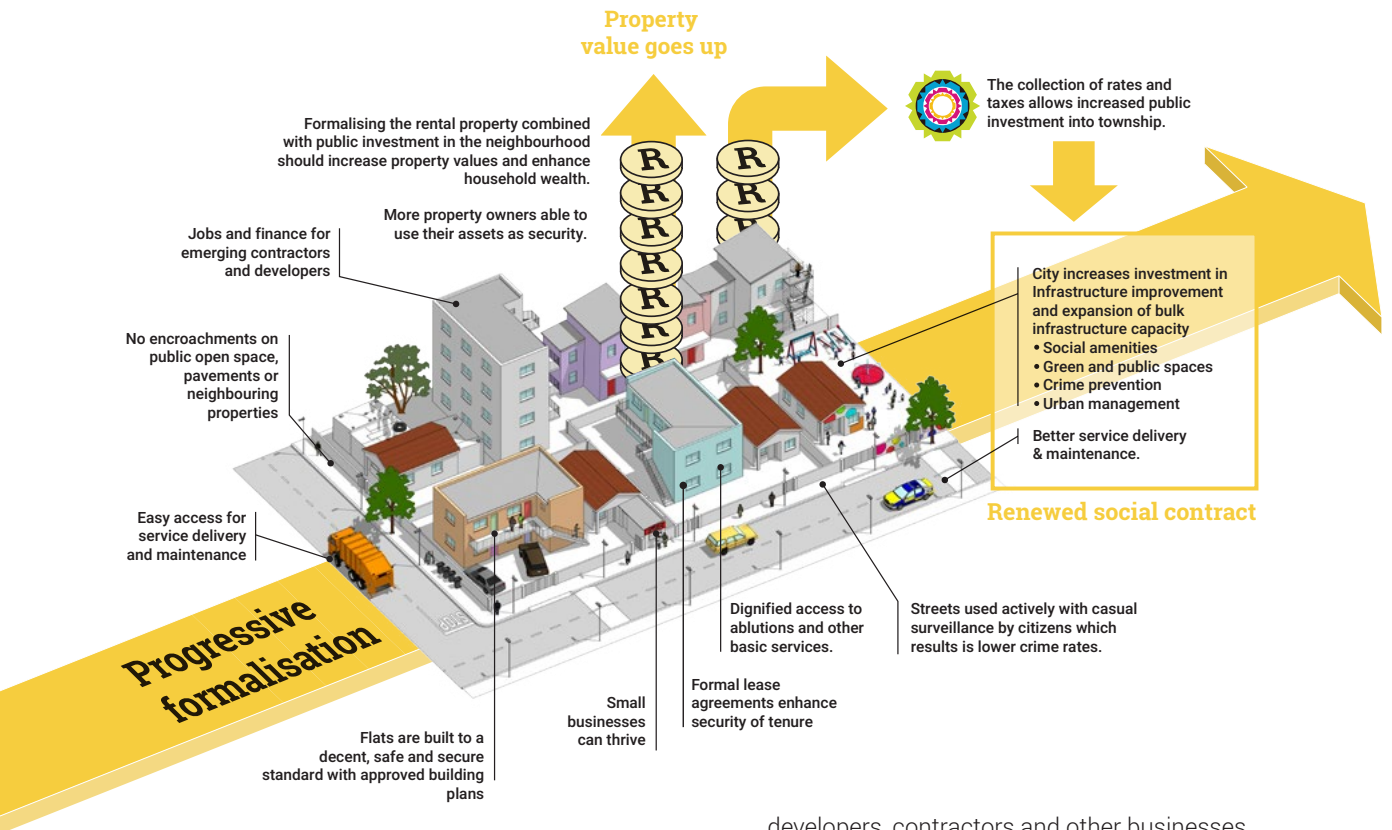
with title deed registration, which is a foundational link between individual property owners and the municipal revenue collection system. Addressing title deed challenges requires multi-level government interventions and reforms, which will be discussed in chapter 3.4.

In a formalised market, changes in land use regulation tend to have a direct influence on real estate values and property investment decisions. However, in spaces of high informality this relationship is less clear. While homeowners and developers operating in townships benefit from additional development rights, which in theory should encourage them to build higher-density rental accommodation, the actual impacts of regulatory changes to property investment decisions remain to be seen. Outcomes will depend on project feasibility and cost-benefit considerations, which will be analysed in chapter 5.

High road scenario

In an ideal scenario, formalisation should produce a whole series of worthwhile economic and social outcomes for the people and places concerned.

Land use management and building approvals should ensure that the flats are built to a decent standard, are safe and secure, and offer dignified access to ablutions and other basic services. There should be no encroachments on public open space, pavements or neighbouring properties, hence mitigating the risk of conflicts and obstruction of public infrastructure. Formal lease agreements should clarify the rights and responsibilities of both landlords and tenants, enhance security of tenure and provide appropriate channels for dispute resolution. Incentives and stronger governance capacity should give the City more scope to shape the urban form and improve placemaking in the neighbourhood. The collection of rates and charges should increase municipal revenues and the City's ability to invest in infrastructure improvements, social amenities, green spaces, crime prevention and urban management. Formalising the rental property combined with public investment in the neighbourhood should increase property values and enhance household



Above: Image 3: High Road Scenario
Sustainable urban densification and vibrant neighbourhoods.

wealth. Land value capture tools could be used to secure some of the additional value created through public action.

Many more property owners would be able to use their assets as security to borrow external finance for investment in additional rental flats, to acquire other properties or to start small trading enterprises. Regulatory compliance should enable owners to obtain insurance cover for their buildings and contents, and protect them from accidents, burglaries and other unexpected losses. Formal property ownership and transfers should offer security against property fraud and manipulation. The involvement of formal financial institutions in the rental sector should enable more and more homeowners to construct flats and boost the supply of affordable accommodation. Higher levels of property construction and management should stimulate local economies, create jobs and improve skills. Emerging

developers, contractors and other businesses would learn from their experiences and expand into other areas of the city and perhaps even other cities. This would accelerate social transformation within the property and real estate sectors.

These developments would tend to reinforce each other in a positive feedback loop, build confidence and trust among the various role-players, and begin to shift the trajectory of the neighbourhoods concerned in constructive and beneficial ways.

Mitigating risks and unintended consequences

The high road trajectory also poses certain risks and could have unintended consequences, especially in the most desirable locations. A major increase in property prices could push up rentals, with knock-on effects for poorer and more vulnerable tenants. With more formal finance entering the sector, developers might be under greater pressure to pay back their debts, resulting in less tolerant relationships with their tenants and more likelihood of evictions. Certain well-located

hotspots might experience unusual increases in land prices with the additional development rights given through the overlay zone, concentrated public investment in infrastructure (e.g. transport hubs) and other incentives. More powerful developers might start to speculate in land by buying-up cheap properties to consolidate their position, which could create an artificial scarcity and jeopardise the prospects for lower income groups.

The chances of these events unfolding are very uncertain. Hopefully the upgrading and upscaling of rental flats will be a measured process so that the hike in rents will be modest and confined. Cheaper backyard accommodation will continue to exist on a fairly large scale for the time being, thereby ensuring plenty of options available. The lacklustre economy should dampen the pressure of demand and avoid excessive imbalances with the level of supply in different market segments. Most townships are so large that there should be plenty of scope for all kinds of rental housing and opportunities for many different kinds of developer to get involved.

Nevertheless, the public sector has an obligation to anticipate the potential negative effects of formalisation and take steps to prevent harm to poorer households. For example, it should not be too difficult to institute lease agreements to protect tenants from unscrupulous landlords and offer legal resort to claim their rights. Perhaps they could be made a requirement in return for developers receiving financial incentives? Voluntary uptake could also be promoted as part of wider regularisation strategies. Interviews suggest that there is already growing acceptance of proper lease agreements among micro-developers and tenants. Another way of supporting tenants is through rental vouchers to boost their effective incomes. This is popular in other countries, although it would be challenging to introduce in South Africa at present. The fiscal pressures, lack of political support and limited governance capacity suggest that vouchers are not feasible currently. Nonetheless, some interviewees advocated their usefulness and recommended keeping the option open for the future.

Special support could be provided to poorer homeowners to avoid the additional burdens

of municipal rates and service charges. Careful targeting of rebates and discounts, with regular updating, could prevent unwarranted and unreasonable financial demands. Ensuring broad access to indigent grants and free basic water and electricity services are important constitutional mandates that need to be extended to eligible tenants. Leveraging public finance via the NHFC or the new Human Settlements Bank, or offering loan guarantees, could assist micro-finance institutions to make affordable finance and technical support available to even the poorest property owners. It is important not to neglect the lower-end of the backyard rental sector by investing in improvements to public infrastructure and essential services for backyarders, and perhaps offering advice and assistance to make their dwellings more safe and secure (also see Isandla Institute 2021b).

Research methods

The report builds on years of experience by the authors, as researchers, policy advisers and practitioners. The content draws on collaborative thinking, research and analysis between the project partners - HSRC, Bitprop and DAG – as well as insights from interviewees and external role-players. The research has benefited from ongoing collaboration with key stakeholders and policy initiatives, particularly 1) the Cities Support Programme 'Township Economic Development' project (led by the Sustainable Livelihoods Foundation), 2) the Cities Support Programme's private rental market study (led by David Gardner) and 3) the Backyard Matters project (led by Isandla Institute in cooperation with DAG). Over the latter half of 2021, extensive qualitative and quantitative data from different sources were collected, predominantly in Cape Town. Due to the coronavirus pandemic, most interviews were conducted virtually or telephonically. Otherwise strict Covid-19 guidelines and protocols were followed. The following diagram gives an overview of the research methods employed, which will be briefly discussed below.

Pre-existing literature and document reviews were updated to include the most recent academic papers, reports, policy documents (especially

METHODS



Above:
Research methods used for this report.

Below:
Homeowner and Micro-developers dialogue on incentives to support scaling-up the delivery of affordable housing.

from the City of Cape Town) and newspaper articles about backyard rental and small-scale rental housing. The review of the secondary literature influenced the framing of the study, the research methods and the analysis of the evidence.

A total of 30 expert interviews were undertaken with senior officials and practitioners from the public, private and civil society sectors. The semi-structured interviews took about an hour on average and covered key issues regarding current and potential government action towards the sector. The anonymized list of interviewees is shown in appendix 1.

In addition, 21 homeowner and micro-developers were interviewed to understand their current practices, barriers to formalisation and their views of proposed incentives and other support measures required. The anonymized list of interviewees is shown in appendix 2.

Drawing on Bitprop's practical experience of rental housing development, three case studies were prepared to elaborate on the financial aspects of regularisation and formalisation. Using rare financial data on small-scale rental property in Cape Town, obtained through Bitprop and verified by the CDA, we estimate the costs and benefits of key incentives proposed by the City.



Two stakeholder workshops were organized in October and November 2021 to share preliminary findings and learn from other experts in the public, private and civil society sectors. Participants included senior public officials, practitioners and researchers with knowledge and experience of small-scale rental housing. The workshops explored various challenges and practical solutions to upgrading and formalisation.



03 The current policy and regulatory regime

Supportive policy but inhibiting regulatory regime

We focus on the two main municipal processes of land use management and building plan approval to demonstrate how the current system fosters informality and restrains homeowners and micro-developers from obtaining official authorisation.

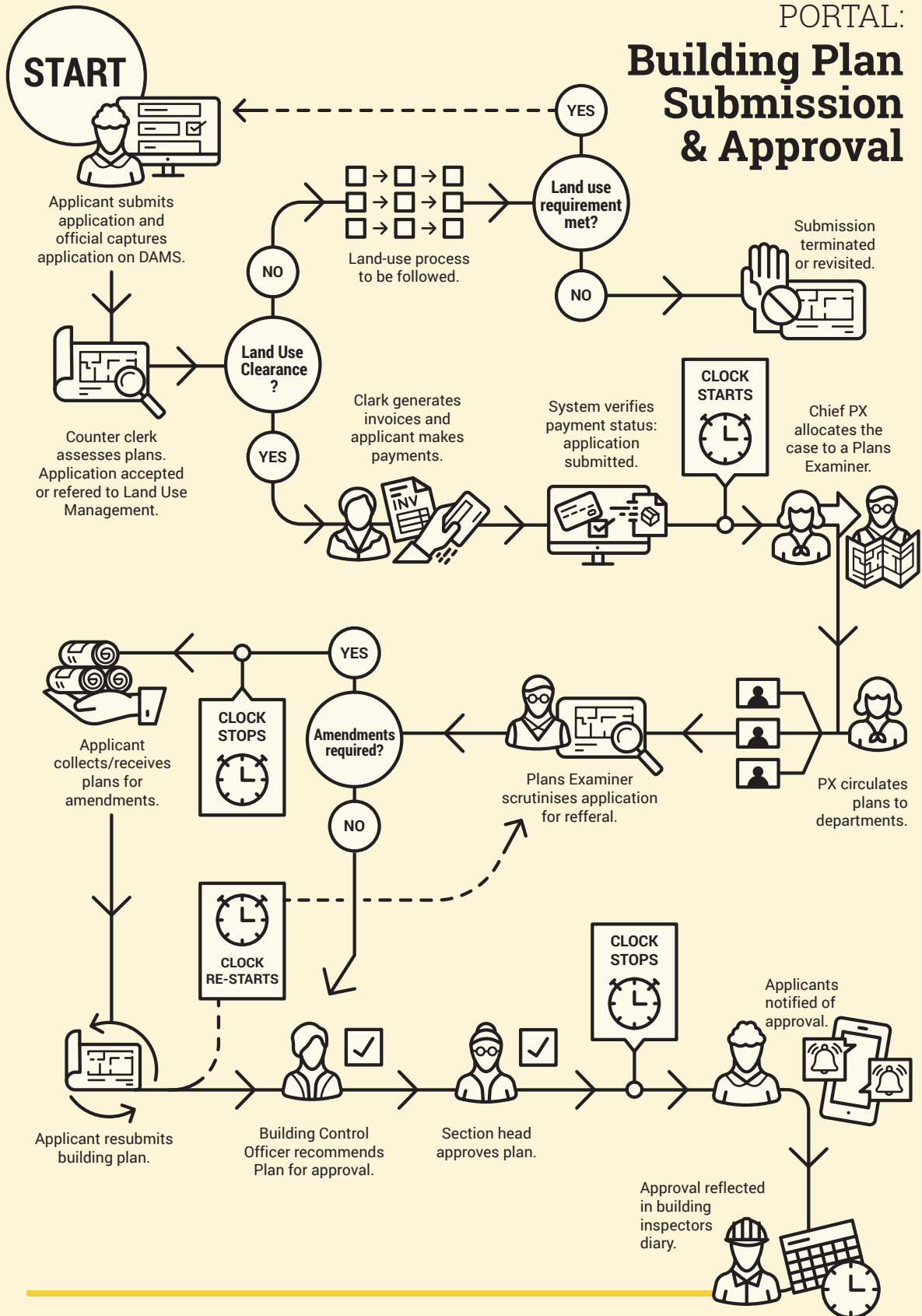
There has been an important policy shift in Cape Town towards small-scale rental housing recently. The new Human Settlements Strategy explicitly recognizes the sector's potential and commits to providing better support to homeowners and micro-developers. It states: "The City sees enormous value in micro-developers being able to supply housing at scale within an affordability bracket not usually targeted by traditional developers" (City of Cape Town 2021, p. 94). The document also acknowledges constraints that inhibit growth and formalisation, including financing arrangements, infrastructure provision, regulations and procedures, and land. Other municipal policies, such as the spatial development framework and local district plans, promote urban densification and land use intensification, which is another benefit of small-scale rental housing. A recent City report titled "Facilitating Small Scale Rental Units in Khayelitsha: Smart Citizen Action Adding Public Value in the Provision of Affordable Rental Units" is the most explicit to embrace small-scale rental development. It was formally approved by Council in October 2020 (item reference C14/10/20). It recommends a series of important reforms to the current regulatory regime and additional support measures (see box below). One recommendation, i.e. exempting small-scale rental housing from building plan application fees, has already been approved by Council.

Before we discuss these proposals in detail, it is important to analyse the current regulatory regime and explain how it constrains formalisation and hinders private-sector investment. We focus on the two main municipal processes of land use management and building plan approval to demonstrate how the current system fosters informality and restrains homeowners and micro-developers from obtaining official authorisation. To initiate the assessment, image 4 outlines some of the main steps involved in getting land use and building plan approvals. The challenges and blockages along this chain are unpacked in the following sections.

Left top:
Debt-financed homeowner developer project in Litha Park, Khayelitsha. consist of 6 units.

Left bottom:
Debt-financed homeowner developer in Litha Park. The development consists of 10 units.

Building Plan Submission & Approval



Land-use management

Single Residential 1 and 2

Every property within the City's boundaries has a specific zoning, which lays out the purpose and specific parameters for which the land may be used (e.g. primary use, density, height, building setbacks and floor area ratios). These rules are determined by the City's land use management system and the Development Management Scheme ("DMS") which forms part of the City's Municipal Planning By-law (2015).⁸ Most township properties are either zoned as Single Residential 1 (SR1) or Single Residential 2 (SR2). SR2 includes most of the former LEFTEA areas, while more established townships (e.g. Mitchell's Plain) are zoned SR1. SR1 covers most residential areas in the city, including the established suburbs and core city. The map on the following page shows the location of SR1 and SR2 areas.

According to the MPBL, properties zoned as SR1 and SR2 are allowed to have a primary, secondary and third dwelling as of right. Hence the owners do not have to apply for 'deviations'

Left:

Land use management and building plan approval in Cape Town. Recreated from source: HSRC (2019, p.19).

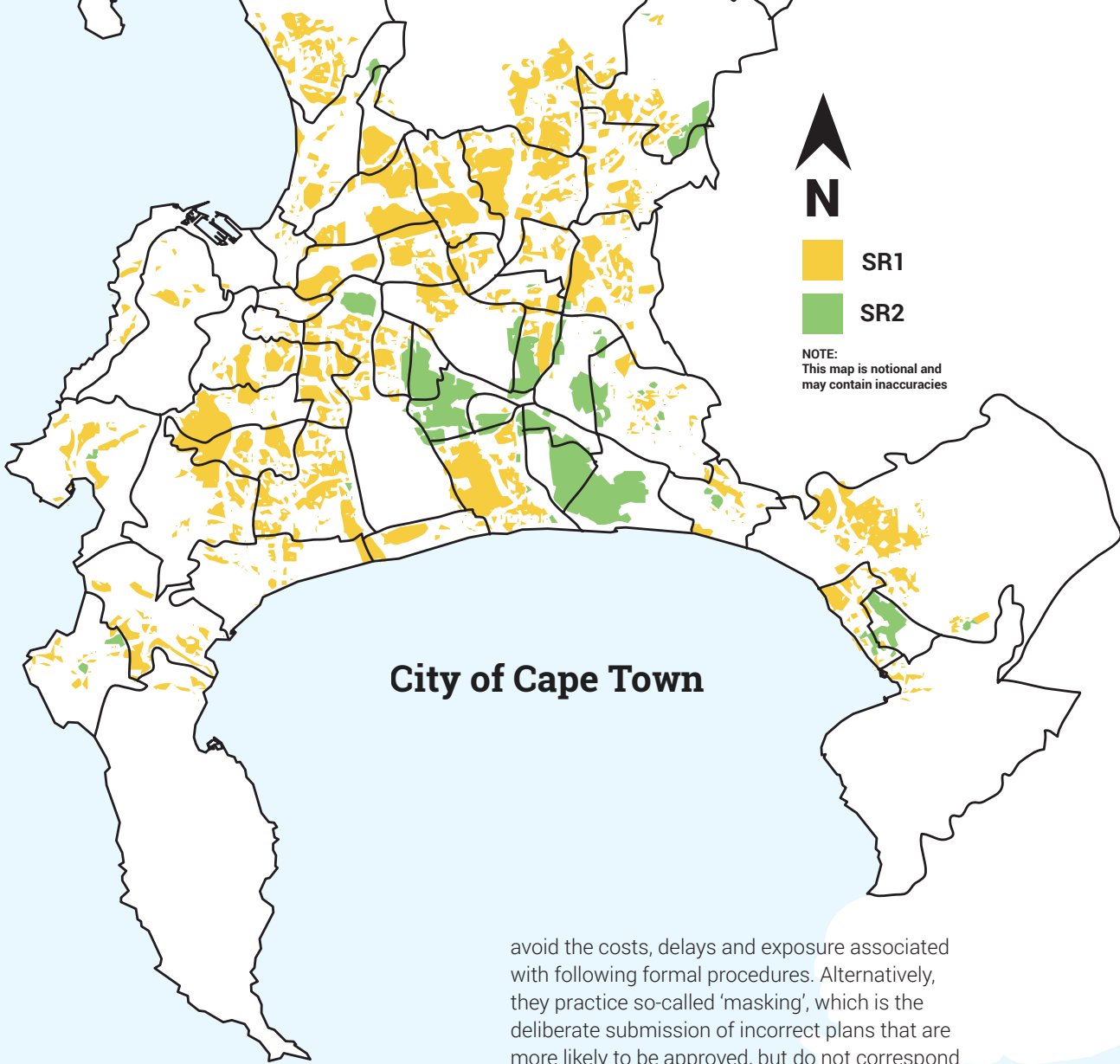
through land-use approval or to rezone the property. They can have a main house and two additional dwellings on their properties, subject to certain conditions (appendix 3). There is no additional development fee for the second dwelling, but development charges do apply for the third dwelling. Properties zoned SR2 have additional rights. This is an attempt to cater for incremental upgrading and formalisation of informal housing that is widespread in these areas.⁹ SR2 allows owners to have 'shelter' as an additional use right, as well as group or boarding house as consent uses, subject to City approval. Further details of the development parameters for SR1 and SR2 are in appendix 4.

Despite the widespread growth of backyard rental accommodation, neither SR1 nor SR2 have 'rental flats' as an explicit use right. With no city-wide guidelines on how to interpret small-scale rental projects, district officials apply land use and development parameters differently. Some are more permissive, flexible and supportive than others. A progressive interpretation of the land use regulation allows homeowners to build up to six additional rental units on SR2 zoned property without rezoning or deviations during land-use approval. Officials adopting this interpretation use terms such as domestic staff quarters, outside bedrooms and outbuildings leniently to push through land-use approval for rental housing. However, this interpretation stretches credibility, as one official explains.



Recommendations for regulatory reform and support measures outlined in City report

- Amending the zoning scheme to encourage affordable rental development by creating overlay zones, or by adding small-scale rental units as an additional use within areas zoned as Single Residential 2: Incremental Housing.
- Creating a menu of proto-typical building plans for small-scale rental units from which the landowner can choose and submit to the City for approval in terms of the National Building Regulations.
- Prioritising the assessment of building plans in these areas, and waving fees subject to the property's rates and payments to the City being up to date.
- Increasing service infrastructure capacity in these areas.
- Establishing a list of accredited small local building contractors.
- Hosting workshops in targeted areas to create awareness and inform property owners of the benefits of small-scale rental units.



You have 6 units, of which you would probably have two being the domestic staff quarters and the second dwelling, and then, in addition to that, would be four outside bedrooms. Now remember outside bedrooms is not indicated as a unit because it hasn't even a kitchen. So, we are skirting on the real edge of interpreting the scheme because we want people firstly to be safe (Int-E4).

Although this kind of discretion is open to all district offices, other officials do not exploit it because they disagree or are concerned about disciplinary action. Young and inexperienced officials seem more hesitant about bending the rules. The uneven approach across district offices creates uncertainty among homeowners and developers, who are inclined to remain informal to

avoid the costs, delays and exposure associated with following formal procedures. Alternatively, they practice so-called 'masking', which is the deliberate submission of incorrect plans that are more likely to be approved, but do not correspond with the actual buildings constructed on the ground.

The outside bedrooms could reach as far as three outside bedrooms without any kitchen, kitchenette facilities on the building plan. I say on the building plan because sometimes things happen off the construction and we give occupancy and then, they might decide to just add the sink, bowl, etc to make a kitchenette, but that is outside of what we have approved (Int-E4).

I think that we've accepted within our city that there's a level of so-called masking. You know when people submit a plan, and say I want to develop six units... while in effect they are intending to develop a ten, twelve units two story thing (Int-E10).

Rezoning or consent use

While a progressive interpretation of SR2 land use and development parameters allows for up to 6 rental units without rezoning in certain contexts (available space, lack of servitudes, etc), it does not allow for medium-density apartment blocks comprising anything more than that. For this kind of development, the property owner must apply for rezoning to GR1 or obtain consent approval to construct a boarding house or group housing on SR2. This requires a pre-consultation meeting with a district official and the submission of the following minimum documents: ¹⁰

- Completed and signed prescribed application form
- Relevant authority in terms of section 71(1)(b) (i-iv) of the MPBL *1
- Proof of payment of all fees
- Record of preapplication consultation *2
- Full copy of the title deed
- Conveyancer's certificate *3
- Locality plan, layout plan or plan depicting the proposed development in its cadastral context
- Copy of the SG diagram or extract from the approved general plan
- Written motivation for the application based on the criteria for decision and information to support such motivation
- Information required in preapplication consultation *2
- Sufficient information as required in terms of the City's approved DC policy *4 ¹¹

Some developments are never approved because of concerns about their impact on the infrastructure and neighbourhood. The actual number or proportion of rejected applications is hard to come by. As one district manager explained:

When I was first approached, I thought that they were talking about 6 to 8 units on a property. Not 23, not 18. In one case there was a request for 56 units. On a 250 square metre property, that's insane. (Int-E4).

Emerging developers and micro-finance institutions expressed frustration over the lack of clarity about the permitted density of rental housing projects. They have found it difficult to understand what development parameters are acceptable and how planning requirements can be met. One complained of an 18-month delay in construction because of such uncertainties, despite repeated conversations with district officials about his objectives. Because of the costs of servicing a sizeable loan, he eventually decided to forge ahead with construction despite not having planning approval, which ultimately resulted in a hefty fine.

I was aware hence, actually, I had delayed the project for almost about 18 months, because I wanted to make sure that I do everything according to the book. So I was aware and attempted to apply for approval (Int-D6).

In addition to the time and costs involved in obtaining all these documents, the process of gaining land-use approval is long, expensive and ridden with obstacles. According to some micro-developers, it can easily take up to 24 months to obtain planning approval for medium-density developments.

It does take time. We have one project, one of the seven projects, we've approved hasn't started construction, and has been waiting for its plans and rezoning applications to be looked at by the City and this is going on now for almost eight months. Another prior experience in Grassy Park was we approved a project but we couldn't start construction or the client couldn't. And by the time he got his approval it was two years later, and the scheme was no longer feasible, and obviously time and costs and materials and labour go up in that time. All the initial assumptions will no longer hold (Int-E10).

I've also heard that even if you go and want to rezone your plot it takes time. And it's expensive. It's really expensive. So it's not helping to improve the process (Int-D4).

Because as we proceeded with that process, it got stuck because I think there were developmental fees or a fee that was about 90 or 100,000 Rand, between 80 and 90,000. When we checked the capital of that time, we felt like we would be over capitalizing, over capitalizing in the area (Int-D2).

In addition to the lengthy timeframes, the costs associated with rezoning, advertising and development charges were viewed as unaffordable by micro-developers. The upfront payment of these expenses compounded the disincentive to formalise. As a result, most micro-developers never apply for land use approval. While some of them submit misleading building plans, pretending to construct something that is more permissible, others do not bother to submit a building plan at all. Either way, they are in contravention of the National Building Regulations and Building Standards, which are discussed in the next section.

Building regulations

The construction of rental units requires a building plan to be approved by the municipality, according to the National Building Regulations and Building Standards Act (Act 103 of 1977) (NBR). The NBR is national legislation created during apartheid. Its main purpose is to ensure safe and healthy buildings. However, most experts agree that its high norms and standards are inappropriate for the township context and out of touch with realities on the ground. Some of the requirements as stated in the NBR SANS 10400, especially

Table 1:
Documents required for building plan application.

| Minimum | If applicable |
|---|---|
| Completed application form (signed by the property owner or his/her authorised representative) | Drainage installation drawings |
| Fully completed SANS 10400 forms (forms 1 and 2, if applicable) | Fire protection plans |
| Power of attorney (if the application is not submitted by the owner, i.e. by the architect or draughtsperson) | Structural engineer's drawings |
| The application fee/receipt | Party wall consent |
| A site plan | A letter of approval for any departure from the development management scheme |
| A layout plan | A consent form from your neighbour/sectional title/homeowners' association/body corporate |
| A copy of the Surveyor-General's diagram/general plan | A zoning certificate |
| A copy of the title deed | A copy of any previously approved building plans held by the City of Cape Town from your local Building Development Management district office. This is usually required in the case of extensions, additions or alterations. ¹³ |
| An architectural compliance certificate | |

regarding access to services, window and fire regulations, maximum occupancy and acceptable building materials can make rental property unaffordable to tenants and unviable to micro-developers.¹²

Nonetheless, district officials are required to apply the NBR when assessing building plan submissions or when considering what to do about unauthorised and informally constructed buildings. According to the building regulations, homeowners and micro-developers ought to submit the several documents prior to any construction.¹⁴ See Table 1 on the previous page.

Many township property owners are either unaware of, or completely intimidated by, these requirements, along with the complexity of the submission procedures and the time and costs involved. Incremental homeowners have least access to information, receive least support and have fewest resources to pay for the services of local architects and municipal fees. They proceed with informal construction because building inspectors rarely enforce the rules or can be bribed if necessary. When asked about her building plan, one homeowner from Delft replied:

"No. I did not submit, because I did not know about building plans and the municipality never educated us" (Int-D15).

Another homeowner from Langa echoed this sentiment:

"The municipality is very slow and this gets people angry. People then decide to go ahead and build anyway and submit building applications later" (Int-D13).

The long delays that some property owners experience with their building plan applications cause enormous dissatisfaction. Many quit the process out of exasperation. Backlogs, inefficient internal systems and staff capacity constraints seem to hamper the turnaround times of district offices. Yet the City is not solely to blame. The extended timeframes are magnified by incomplete submissions or inadequate plans drawn up by architects or other technical advisers.

And then also another struggle that we had was the applicant applying for the plans to be approved by the City. So that took a year, slightly more than

a year. So that delayed us quite significantly, it caused quite a bit of frustration ... I've spoken to other developers in other areas, especially in the townships, apparently a year is like the standard time (Int-D4).

... a lot of the applicant submitting building plans are leaving out basic information. So it's the substandard submission and by the time it gets to the plan's examiner, they ask for off the sizes and all sorts of technical things that should have been on the plan. And then the applicants indicate to the owners that the City wants more information. The City didn't want more information that should have been on the plan in the first place (Int-E4).

Title deeds

Both land use management and building plan applications require property owners to submit copies of formal title deeds to prove ownership. In addition, having the title deed to a property is important for other reasons:

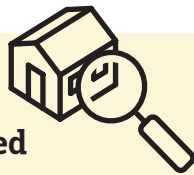
- It is a legal document that proves who owns the house or piece of land;
- It provides security for people buying and selling the property;
- It enables the City to charge the occupier for municipal rates and services provided;
- It can assist the property owner to raise external finance to build rental units or to make other investments.

Unfortunately, many property owners don't possess their title deeds, so they are not the registered owners. CAHF estimate that as many as 1.5 million owners of RDP/BNG houses may not have their title deeds. In some townships at least half the property owners have no title deeds. The three most common reasons for this are as follows (Melzer and Robey 2020). First, some people were never issued with the title deeds by the municipality or province when they were given their homes because the full transfer process was not completed for various reasons. Legal and administrative short-cuts were often taken to expedite the building of the houses (including failure to follow proper township establishment

procedures), so the 'primary transfer' did not take place, or it took place incorrectly (e.g. the wrong person was named on the title deed). Second, some owners don't have the title deeds because they bought the property informally (often paying by cash) without using a conveyancer to register the transaction in the deeds office. Many people buy and sell property informally because the formal procedures are costly, cumbersome and time-consuming. Some government entities and officials consider these households to be criminals for not having followed the formal process and they are unwilling to recognize their ownership under any circumstances. Where

the current owners would not have qualified for a government housing subsidy, some officials recommend that they should be evicted, even though they may have paid a considerable sum of money to buy the property.

Third, many property owners have died without leaving a will to explain how the property should be transferred to other family members. This complicates property transfers out of the deceased estates and leads to long delays in inheriting the property. Another problem with deceased estates is that various fees are charged for handling transfers, which discourages many people from following the official procedure.



Case Study:

Restrictive title deed

Selina Sobhayi of Site B, Khayelitsha, spent decades in her family home, an RDP house given to her mother, Elizabeth Sobhayi, in 1996. The family occupied the house continuously and was known by all in the community as the rightful owners of that property. Selina was an only child. When her mother passed away, she was the rightful and accepted heir to the property. It would have been fairly simple to transfer the house into her name at that stage, since there were no other contenders, even though her mother did not leave a will.

Selina had four children, one of whom contacted Bitprop when the company was founded. In due course Selina was selected as the first Bitprop homeowner. After much excitement, deliberation and planning, construction of 4 bachelor flats got underway on her backyard. Selina was retired and relied on a government pension. Partnering with Bitprop was a way to supplement her income, effectively doubling it through new rental income. It was a good way of helping to look after her children and grandchildren. The Bitprop team that visited Selina weekly during the construction period got to know that her long-term vision was to leave the property to her 14-year-old granddaughter, whose mother had passed away. This was Selina's way of ensuring that her most vulnerable grandchild was secure.

In a sad turn of events, Selina passed away just days after her flats were completed. She never saw her property become a productive, income generating asset, and didn't get to meet her first tenants. Selina also never left a will. This was a more complicated situation because Selina had four children and various grandchildren, so the inheritance of the property was not straightforward from a legal standpoint. While the family agreed on who was supposed to inherit the property (and even who was to maintain it until the granddaughter came of age), the legal view became very involved. Without a will in place, the property was to pass to each of Selina's children. In the case of the deceased child (the mother of the granddaughter that was to inherit the house), the rights to her portion of the estate would pass to the grandchild.

Unfortunately, as the child is underage, she does not have legal capacity and is under the oversight of the High Court. This prevents her from engaging in any form of sale or transfer of portions of the property involving Selina's three surviving children. Various experts have offered advice on the way forward, but all the procedures are prohibitively expensive for a poor family. The property continues to exist under the control of one of Selina's daughters and generates a modest rental income each month. But it remains in the name of Selina's mother with no prospect of ownership transfer to her granddaughter, despite the general consensus that this is what should happen.

As a result, many properties never get formally transferred after people die, so the 'chain of title' gets broken.

All three problems are very difficult to resolve and require painstaking work on a case by case basis to rectify the legal and administrative shortcomings and reinstate the title chain. This includes efforts to trace the original beneficiaries, to investigate and mediate between competing claims to a property where disputes arise, and to ensure there is cooperation between many separate government departments and other parties that have a role to play in validating property ownership. The challenges are compounded by serious delays, inefficiencies and capacity constraints in the deeds registry and Masters Office, which is responsible for administering deceased estates. A City of Cape Town official responsible for tackling the backlog reckons that there can be 25 separate steps involved in regularizing a single property. The cost of doing so may amount to between R35-40,000 per property to cover the charges for lawyers, administrators and fees. Even then some of these efforts prove to be unsuccessful because additional complications or disputes arise which cannot be resolved. Unless the process is greatly simplified, perhaps with the substitution of digital technology for paper-based systems, it is clear that many property owners will never receive their title deeds and the City will never be able to invoice them for rates and service charges.

Yet the title deed is pivotal to the whole process of formalising backyard housing – it is

the precondition for many other elements of the regulatory regime to function. Without their title deeds, property owners can't apply for official permission to extend their homes or to build rental units in their yards. Such households also avoid paying rates and service fees, while the registered owners accumulate sizeable arrears from unpaid bills. Such arrears make it difficult for them to sell their properties legitimately, should they ever want to do so, unless the municipality writes off these arrears. The net result is to obstruct regularisation, to perpetuate informality, to restrain investment in solid rental structures and to dampen the growth in property values in townships where there is a sizeable backlog in title deeds.

Administrative systems and local governance

The current institutional structure and administrative systems of the City of Cape Town do not facilitate formalisation. While the City provides extensive information about the regulatory requirements and procedures on its website, this is not easily accessible or understandable to homeowners and emerging developers. While local district offices are intended to support property owners, they are far from most people's homes and under-capacitated to deal with individual needs. The only experience that many homeowners and micro-developers have with district officials is when they are fined for wrongdoing.

The title deed is pivotal to the whole process of formalising backyard housing – it is the precondition for many other elements of the regulatory regime to function. Without their title deeds, property owners can't apply for official permission to extend their homes or to build rental units in their yards.

The lack of visibility, support and pro-active engagement has led to a governance vacuum that leads down the low road of haphazard, ill-conceived and uncontrolled development.

Currently, you only know when you are getting a fine, that it's not allowed. Not everyone is well informed in the townships. Everyone just wants to build a flat for business, but not knowing the procedure. You only know the procedure if someone is asked to stop. You only know the procedure when someone is asked to demolish, because he built over the boundary lines (Int-D2).

The complexity of the regulatory requirements and administrative procedures encourages property owners who wish to comply to appoint an architect or building consultant to act on their behalf. This is very costly for a small developer operating on narrow and uncertain margins. The quality of the three-way relationship between property owner, architect and district official generally determines the pace and outcome of applications. If they can communicate and produce all the documents on time, the plan can be approved within three months. However, missing information, poor quality plans, difficult building contexts, miscommunication and limited staff capacity can push applications back and forth for years. The coronavirus pandemic has delayed everything because most officials work from home and can only be contacted via email.

The City hasn't been assisting, although they will claim that they asked for certain information. And then they were not forthcoming. When the issues, for instance, in my case, if you look at our paper trail, we submitted everything that they wanted, including structural engineer report, fire engineer, plumbing certificate ... so we did everything according to the books but still they are of the view that they needed to impose a huge penalty (Int-D6).

But now, because they are also working from home, and you can't engage with them and explain some

of these things and explain to you why ... one thing that could have been sorted out in one engagement gets sorted out in 3 or 4 emails sent back and forth (Int-E18).

Several district offices mentioned inadequate capacity delaying the processing of applications and preventing proper support being offered to emerging developers. A senior official working in Khayelitsha admitted that

We're down to the bones of staffing at the moment in Khayelitsha, due to promotions of staff to other districts. So at the moment we don't have the capacity (Int-E4).

This is part of broader governance weaknesses in many townships, where residents feel disgruntled about the quality of service delivery. There was broad agreement among interviewees that poor communities are dissatisfied with the City's approach to managing their areas. The lack of visibility, support and pro-active engagement has led to a governance vacuum that leads down the low road of haphazard, ill-conceived and uncontrolled development.

There's a lot of building that happens with or without the city's approval. And I think that has to do a little bit with the lack of visibility of the city and these developers not really having a platform to engage the city to say guide us to what we can do (Int-E10).

I don't think that the formal system really does offer very much and then it's all circular, so if people are not going to formalise then the city is not going to govern then the financial system won't participate and...you know, you're just gonna have areas of the city that are just ... We just don't change the city. (Int-E27).

04 An enabling regulatory regime: Policy actions and incentives

To promote the formalisation of rental flats and the sustainable development of low-income neighbourhoods, far-reaching reforms of the regulatory regime are required.

Chapter 3 showed how Cape Town's current regulatory regime fosters informality and limits access to formal funding for small-scale rental housing. Vital legislation for the management of land and building activity also has little influence on property owner's investment decisions and practices. So they are not performing their basic function of guiding urban development. To promote the formalisation of rental flats and the sustainable development of low-income neighbourhoods, far-reaching reforms of the regulatory regime are required. The following sections discuss key measures, including those approved by the Mayoral Committee for Spatial Planning and Environment in September 2020, to create a more enabling regime for homeowners and micro-developers.

Land use planning reforms and incentives

The current land use management regulations constrain formalisation of small-scale rental units because the land use rights are too restrictive and rezoning or obtaining consent use approvals are costly and time consuming. Experts agree that homeowners and micro-developers should enjoy more rights to develop rental housing without having to apply for land use approval. Aside from replacing the entire land use management legislation and planning system with something completely different, as recommended by some academics, there are at least three ways to increase development rights within the current approach. The City could i) introduce an entirely new base zone, e.g. SR3, ii) amend current SR1 and/or SR2 zoning schemes or iii) introduce an overlay zone to grant additional rights in spatially target areas.

The first option has not been publicly discussed or put forward as a recommendation by any City official or politician. This is because introducing a new base zone would likely take longer and face more local resistance than the two alternatives. The limited infrastructure capacity coupled with the current smaller plot sizes that are common in many townships pose limitation to increasing density and development rights. Developing a long-term vision for neighbourhoods where rental housing dominates would be difficult in a context where there is little precedent and specifying suitable development parameters would require much new thinking. Observers suggested that the two options below are more feasible.

The second option is to revise the current residential zoning schemes SR1 and/or SR2 to provide more clarity and increase development rights for small-scale rental. Given that the City regularly reviews its zoning schemes (every 5 years), there is an opportunity to make SR1 and/or SR2 more responsive to and supportive of rental housing. Potential reforms could add 'rental flats' as an explicit additional use right and, if required, specify more adequate development parameters, informed by urban typologies and actual practices on the ground, to create more clarity and certainty for developers. Increasing primary rights for small-scale rental housing in both SR2 and SR1 zoning schemes would promote densification across the metro, including suburbs. While this is a stated policy objective, some observers warn that it may be difficult to implement because of resistance from residents living in suburban, leafy areas, which could seriously delay or even halt the public participation process. They therefore

Through an incentive-based overlay zone, additional land use rights to develop small-scale rental units and medium-density apartment blocks could be given to spatially targeted areas subject to certain conditions being met.

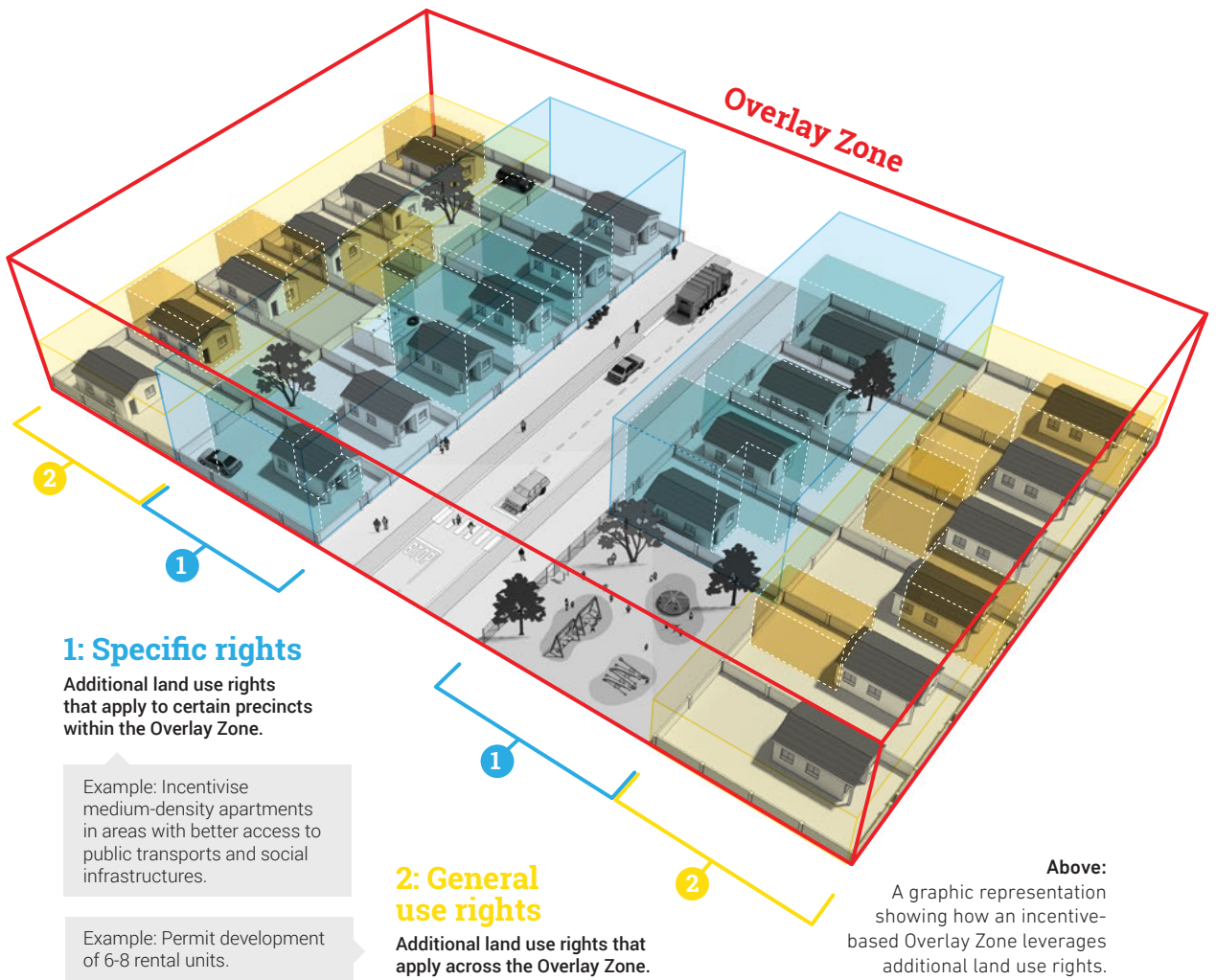
suggest focusing on SR2, at least initially, which may be easier because it comprises mostly of neighbourhoods that already experience high levels of backyard- and small-scale rental housing. However, limiting reforms to SR2 areas would exclude important neighbourhoods with high levels of (potential) investments in rental accommodation, e.g. in Mitchell's Plain and parts of Delft. Experts have therefore suggested implementing an incentive-based overlay zone, which is a more flexible yet spatially targeted approach.

Incentive-based overlay zone

Through an incentive-based overlay zone, additional land use rights to develop small-scale rental units and medium-density apartment blocks could be given to spatially targeted areas subject to certain conditions being met. Property owners would not have to apply for additional land use planning approvals and pay for all the associated costs. Within the overlay zone, a distinction can be made between general use rights – that apply across the overlay zone – and specific rights that apply to certain precincts only. For instance, the development of up to six or eight rental units could be permitted as of right across the overlay zone – thereby legitimising the stock built by homeowner developers - while the development of medium-density apartments could be incentivised in areas with better access to public transport and social infrastructure. Homeowners and developers wanting to invest in the overlay zone

could be provided with financial and non-financial incentives, which are linked to a set of conditions that must be fulfilled. The overlay zone could be launched in certain areas and expanded incrementally across large parts of the metro over time. Investments into bulk infrastructure and social amenities have to go along with the expansion to cater for the increased population densities.

Defining adequate land use rights and development parameters for the overlay zone is of utmost



1: Specific rights

Additional land use rights that apply to certain precincts within the Overlay Zone.

Example: Incentivise medium-density apartments in areas with better access to public transports and social infrastructures.

Example: Permit development of 6-8 rental units.

2: General use rights

Additional land use rights that apply across the Overlay Zone.

Above:
A graphic representation showing how an incentive-based Overlay Zone leverages additional land use rights.

importance. While considerable progress has already been made in this regard, more evidence and data are required to feed into this process, which should be flexible enough to accommodate changing dynamics and innovation on the ground. Understanding the different urban typologies of small-scale rental that currently exist, as well as their actual amount of service consumption, is critical to inform land use and development parameters. Important lessons can be learnt from the experiences of the Khayelitsha district office and private sector initiatives.

Coupling the overlay zone to specific financial incentives, such as reduced or deferred development contributions, would add further cost savings and make formalisation more attractive. While experts suggest that it is not legally possible to delink development contributions for small-scale rental development within an overlay zone,

a more appropriate payment scheme could be developed based on actual impact on service consumption. Furthermore, work is currently underway to explore the possibility to use national grant funding, specifically the Urban Settlement Development Grant (USDG), to pay for development contributions. By transferring USDG money into a development contributions fund from which infrastructure investments related to small-scale rental developments will be financed, local government could absolve the individual homeowner or developer from these costs. It would essentially collectivise the costs of financing necessary infrastructure investments in densifying neighbourhoods.

An important feature of the overlay zone is the ability to target selected areas based on various factors such as the existence of sufficient infrastructure capacity, environmental



Above: On-site technical support from the CDA is an integral part of skills transfer and quality assurance.

sustainability and access to amenities. The target areas could be informed by existing experience as well as the municipal spatial development framework, infrastructure investment plans, district frameworks and local area plans. The likely effects of an overlay zone could be tested in pilot areas, and the lessons used to refine the conditions and provisions, before being rolled out on a larger scale, subject to availability of bulk infrastructure. It could be tested in areas with a large existing stock of rental flats and apartments to encourage formalisation.

Commencing the overlay zone in areas with sufficient infrastructure capacity is important from a strategic spatial perspective, although excluding other areas may create opposition and misunderstanding from residents. Without an effective communication strategy, residents may interpret spatial targeting as politically motivated and question the criteria for inclusion and exclusion. Perceptions of unfairness and injustice will make enforcement of the overlay zone even more challenging. Given the current realities of informality and the lack of trust between local government and many citizens, the importance of pursuing a bottom-up and participatory approach when introducing an overlay zone cannot be emphasised enough.

Building control reform and incentives

The current procedure for submitting building plans is both cumbersome and expensive. Constructing buildings that meet the minimum statutory requirements is much more costly than less formal methods of construction. There are three potential ways of reforming building control so as to simplify the system and encourage developers to comply with zoning and building standards regulations.

- 1.** Prototype building plans and design guidelines
- 2.** NBR reform, exemption, municipal building by-law
- 3.** One-touch unit

Prototype building plans and design guidelines

Prototype building plans refers to a set of predesigned and partially approved council submission drawings, which would be made

available to the public through the municipality. The intention would be to have a number of easily adaptable unit options that developers could easily manipulate appropriately for individual sites. These plans would be 'partially approved' as they will have been created within the City with all the correct information needed for building plans submissions and often left off causing delays in approval times. Through the provision of such plans, the building control procedure could be dramatically streamlined thereby making it more attractive and accessible to various developers.

A suite of prototypical plans in addition to a set of design guidelines would be available to homeowners wanting to develop simple rental units on their property and would reduce the need and cost of hiring an architect or draftsman to draw a set of council submission plans from scratch.

These prototype plans would be made available through district offices, local support centres and the City's website. There could be several options to cover different housing models and design configurations. The plans would need to be adaptable, since no two sites are identical in terms of orientation, existing buildings, site access and size. The draft plans would have all the necessary information to pass through the plans scrutiny process without being returned for amendments owing to careless or incomplete submissions. Homeowner developers would simply need to approach the City with proof of ownership and submit an application with their preferred layout.

Prototype plans would enable property owners to obtain professional building plans quickly and at a fraction of the usual cost. This would ensure that rental developments would be built within the critical building and zoning regulations making them both safer for tenants and positive contributors to the urban fabric. The plans would enable the City to monitor and have a more accurate understanding of what is being built on the ground and therefore prepare for essential infrastructure and public services upgrades.

A potential bottleneck may be created in that each plan would need to be adjusted to its specific site.

While this could be done by staff within district offices, the potential to adopt a more tech-based solution, thereby reducing the 'human' element of editing the prototype plans exists. The development of an app created with the design guidelines and building regulations as parameters could dramatically reduce the time taken to applying prototype plans to individual sites.

In addition to the set of prototype building plans, a set of clear and informative design guidelines for rental buildings should be developed. These guidelines would provide a checklist of important considerations for both the individual rental units as well as design parameters to ensure individual developments contribute to the urban neighbourhood as a whole. Finally these guidelines would also provide an explicit check list of what submission drawings need to include in order to streamline the plans scrutiny process.

The careful design, development and provision of partially approved prototypical plans and design guidelines would help to streamline the approval procedure, reduce general uncertainty and misinformation, and ultimately save time and costs for both developers and the municipality.

NBR reform

The National Building Regulations and Building Standards (NBR) have been in place since the 1970s. They exist to provide uniform rules about the construction of buildings, partly for health and safety reasons. Changing these national

The careful design, development and provision of partially approved prototypical plans and design guidelines would help to streamline the approval procedure, reduce general uncertainty and misinformation, and ultimately save time and costs for both developers and the municipality.

regulations is complicated and time-consuming. However, a draft chapter of the NBR is currently being developed that would allow certain types of buildings (Category 1) to be exempt from certain older, more restrictive regulations. Currently social housing schemes fall into this category and the potential exists for small scale rental schemes to be included. The revised regulations would not compromise on fire safety or occupational health and safety, but they seek to remove unnecessary material requirements and design regulations which add to the construction cost without significant benefits. Allowing small scale rental to be classified as Category 1 buildings would reduce development costs while protecting reasonable minimum standards for human habitation. It would be worthwhile for the City to keep track of the proposed reforms and to make appropriate representations when opportunities emerge.

One-touch unit

The final component of the building control reform and incentives is the establishment of a cross-cutting unit within the City would help to streamline administrative procedures and create an enabling environment for the development of formal small scale rental units.

The unit would act as a central hub where developers would be able to easily access and gain assistance with land use management (LUM), building and development management (BDM), professional services, and construction inspection. The prototypical plans and design guidelines would be made accessible through and promoted by this unit.

The focus of the one-touch unit would be progress-chasing and problem-solving rather than punitive. Part of its mandate would be to seek out ways of reducing the amount of current red tape and paperwork relating to private building activity that needs to be processed by the City. A 'one-touch' unit of this kind could also be tasked with adapting and processing the prototype plans. It could be home to building inspectors equipped to troubleshoot on site, and not merely issuing orders for building work to stop. Unit staff should be approachable, flexible, solutions-driven and creative, not simply bureaucratic and rule-bound.

There is some support from practitioners for exempting the developers of single storey rental projects from having to apply for building approval at all. Their argument is that the safety

Below: Micro-developers contribute to the local economy by contracting NHBRC accredited contractors to implement affordable rental projects.



risks are much lower than those of multi-storey buildings. However, there is also strong resistance from others on the grounds that unregulated development of any kind can create various hazards, generate eyesores and generally perpetuate the low-road trajectory of a haphazard and poorly conceived built environment.

Title deed reforms

The lack of formal title deed restricts many property owners from formalising their rental units, as explained earlier. There is no consensus about the best way to resolve the title deeds backlog and related problems. Some experts argue that the property registration and transfer system is sound and there is no alternative but to work case-by-case to rectify the legal and administrative obstacles to transfer. This includes mediating between potential beneficiaries where the chain of title has been broken and there are disputes about the legitimate owner. However, this process is extremely costly and requires many additional staff to administer. Individual case work is part of the solution to missing title deeds, but it is insufficient. It will still leave many cases unresolved because of underlying problems and the overcomplicated system.

Another way forward is for national government to simplify the process of rectifying title deeds, including granting an amnesty to people who have undertaken informal sales and purchases. This would recognize realities on the ground. The government could also appoint commissioners to adjudicate disputes case-by-case and cut through the red tape. Operation Vulindlela in the Presidency is currently exploring this possibility. The City could also help by writing off arrears in rates and charges above a certain amount where this prevents legitimate property sales.

Yet, the onerous nature of the property transfer system remains a problem, especially for poor households. This includes the cost of conveyancing, the complex documentation and the delays in buying and selling through the formal channels. Legislative and procedural changes are required, including better coordination between the entities that administer the system.

Another way forward is for national government to simplify the process of rectifying title deeds, including granting an amnesty to people who have undertaken informal sales and purchases.

In the interim there may be scope to introduce alternative systems that are simpler and quicker, but that still provide protection for those involved. For example, many low-income households use signed affidavits to verify property sales, endorsed by local street committees or police stations. This system is cheap, quick and works reasonably well in limiting disputes and enabling transactions, but it does not help the City to levy rates and charges, and it does not provide sufficient proof to enable the owner to apply for planning or building approvals. It also exposes property buyers to some risk of fraud.

It would benefit the City to 'delink' the formal title deed from other regulatory procedures and introduce a simpler mechanism to enable people to submit building plans and start paying rates and charges. The City could introduce its own document to recognize the occupier of a particular property as the rightful owner. It could issue this to people who can show reasonable proof that they acquired the property, have lived there for some time and no-one else is disputing its ownership. Affidavits could do this, subject to basic rules about their content and endorsement to ensure they provide sufficient legitimacy and can't be falsified. The City's Human Settlements Strategy suggests offering a long-term lease to such households, which would serve a similar purpose (City of Cape Town 2021).

This could be done on an experimental basis within a specific locality in order to investigate its feasibility and any unintended consequences. It could be an interim arrangement pending



Above:
Photos from the CDA Joburg Exchange.
Viewing developments financed by
uMastandi and Indlu Living.

improvements in the national process of property registration/transfer. If administered within specific communities alongside additional staff appointments and meaningful efforts to raise awareness about the importance of formal property registration and sales, it would gain credibility, strengthen trust and encourage property owners to cooperate.

The City has already piloted ‘tenure certificates’ for settlements undergoing reblocking through the Informal Settlements Upgrading Programme (City of Cape Town 2021). These give residents greater security of tenure for their site without actually constituting a title deed. Some problems have been created by multiple certificates being issued for the same sites over time, leading to competing claims. The City will need to avoid something similar happening if this approach is used in townships and other formal settlements. Using a digital platform such as blockchain technology could be a secure and transparent way to document the history of each property and prevent duplication of certificates. The data could be shared across different government entities to ensure their cooperation in enabling transactions efficiently. The platform could store copies of household information, such as IDs, marriage certificates and wills. A digital system would be more efficient and affordable than a paper system, lowering the fee for households.

Additional fiscal incentives - Municipal rates and service charges

Informal rental developments do not pay municipal rates or service charges because the properties are not registered and do not officially exist, so billing is not possible. This is an obvious cost saving for small scale developers and landlords, but a problem for the municipality because of the revenue foregone. In fact, the burgeoning growth of informal rental units puts an escalating financial burden on the City because it increases the demands placed on municipal services without any corresponding income from rates or service charges.

Formalisation would result in many properties having to pay service charges for water, sewerage, electricity and refuse collection. Properties above a certain threshold (currently R300,000) would have to pay municipal rates. At the upper end of the spectrum, larger properties (apartment blocks) valued at R2 million would have to pay nearly R1,000 per month in rates. Rental properties occupied by 8-10 households would have to pay considerably more than this in fees for the combined package of electricity, water, sewerage and waste collection services. The cost to residents would be set against the improved services that would be delivered if rental flats were properly connected to the municipal infrastructure, rather than obtaining indirect access through connections from the main house.

It is uncertain whether the prospect of paying rates and service charges acts as a significant disincentive to formalisation. Evidence from the interviews with developers and other actors is mixed. Some observers suggest that “no-one likes paying municipal rates”. Any recurrent costs are bound to be a deterrent to small-scale developers with slim and uncertain margins. Other observers suggest that rates are a minor cost item in the overall scheme of things and that some developers would prefer to pay if that meant that their relationship with the City became lawful and above board. Paying rates of R1,000 a month on a block of 12 small units worth R2 million would amount to only a small fraction of the rental income generated (roughly between 2-4%). Service charges are a different matter, partly because the costs are higher and because other issues are involved. For example, many landlords profit from controlling the supply of services to tenants by charging more than it costs them, especially for electricity, so they may not want the municipality to start supplying services directly to tenants.

Further research would be helpful to clarify these issues before firm recommendations are made. If the evidence shows that rates and service charges are modest compared with the benefits derived by developers and landlords, then this could be used to raise awareness and persuade them

that they should be willing to pay. City finance officials do not believe that rates and charges are major disincentives, at least not compared with development charges, building fees and interest payments on commercial loans to fund rental projects. Many developers also seem to understand that they would be in a stronger position to demand superior services if they paid for them, and they could perhaps pass on the costs to their tenants. To help overcome the initial psychological hurdle of starting to pay their full rates and service fees, the City should consider introducing a staggered rate of payment with a gradual build up to the full cost. This would make it easier for developers to accept the principle of payment, starting at a reduced rate and phased in over time. It could perhaps take 2-3 years to get to 100%. This would also give developers/landlords time to find reliable tenants and to make appropriate adjustments to their rentals so as to avoid sudden reductions in their own incomes or increases in tenant costs.

An alternative or additional incentive worth considering is to write off the arrears facing many landlords and developers for accumulated non-payments of rates and charges. This would avoid what is bound to be a major deterrent to formalisation. Various rules and guidelines would need to be devised to regulate this in the interests of consistency and to avoid creating perverse incentives. In most cases, writing off arrears is bound to be worthwhile compared with the status quo of non-payment, considering the ongoing revenues that would be generated into the future.

Formalisation would result in many properties having to pay service charges for water, sewerage, electricity and refuse collection. [...] The cost to residents would be set against the improved services that would be delivered if rental flats were properly connected to the municipal infrastructure, rather than obtaining indirect access through connections from the main house.

It is not simply the level of rates and service charges that is important. Many developers complain about the reliability and responsiveness of municipal service delivery in the townships. This includes frequent interruptions to water and electricity supply, blocked drains, difficulties communicating faults to the City and dissatisfaction with the billing system (such as large bills suddenly arriving unexpectedly). Some observers suggest that many City officials appear to have written-off selected townships as a drain on municipal resources because they don't believe they will ever raise significant revenues from these areas. Yet the successful regularisation of small-scale rental housing offers considerable potential for revenue generation. These landlords and developers could afford to pay for rates and charges and there is a compelling case for arguing they ought to pay because they are earning reasonable incomes from rentals and are making sizeable demands on municipal services.

Emphasis should be on encouraging landlords and developers to pay rates and charges as part of the process of 'normalising' their relationship with the City. This would help to strengthen mutual accountability and improve governance in townships. It is part of the process of shifting their trajectory onto the high road.

All things considered, we do not recommend using rates and service charges to incentivise formalisation. Rather the emphasis should be on encouraging landlords and developers to pay rates and charges as part of the process of 'normalising' their relationship with the City. This would help to strengthen mutual accountability and improve governance in townships. It is part of the process of shifting their trajectory onto the high road.

Certain exceptions seem appropriate, such as a phased-in approach to the payment of rates and

waiving arrears to make it easier for landlords and developers to accept the principle of payment. The City should also explore ways of ensuring that eligible tenants (i.e. those that are indigent) are able to qualify for the free basic services that they are entitled to under the law.

Urban Development Zone Incentives?

Some observers have suggested that Urban Development Zones (UDZs) be established in selected localities within townships to provide additional incentives for property developers. The UDZ is a tax incentive administered by SARS on behalf of National Treasury. It provides an accelerated depreciation allowance for developers on the costs of buildings erected, extended or improved within the designated areas. This includes the costs of demolition, refurbishment, architects' fees, construction work, security features and the provision of water, drainage, electricity and road access. UDZs were originally introduced in 2004 to tackle physical decay and dereliction within inner cities by encouraging investment in certain types of commercial and residential property. New and refurbished buildings must have a floor area of at least 1000m². The UDZ guidance specifically mentions low cost residential property as a desirable output because of the demand for affordable accommodation close to jobs in the urban core. Until recently, Cape Town's UDZ was restricted to older parts of the CBD, the Main Road Corridor through Salt River/ Woodstock and the Klipfontein Road Corridor. An extension to include the Voortrekker Road Corridor was added in 2016 after a special request from the City to National Treasury. This was not straightforward.

In principle, any financial incentive that might attract private investment into township housing is worth further investigation. This should include analysis by a tax accountant to assess the real value of the incentive to different kinds of developers and investors. There is also a good case for securing additional national resources to

address Cape Town's serious housing shortfall. However, there are some question marks about whether the UDZ idea deserves special consideration. First, the impact of UDZs in the past has been very uneven between cities. During the first five years, the CBDs in four largest metros attracted more than 90% of private investment (Demacon, 2013). Keys to their success were a deeper turnaround in the perceptions of CBDs among developers and investors, coupled with energetic municipal efforts to invest in the public realm and to tackle crime and grime in these places (Todes and Turok, 2018). The existence of the UDZ incentive did not seem to be sufficient on its own to change investor behaviour. For UDZs in the townships to have any prospect of success the City would need to target a small number of tightly defined areas for dedicated attention through investment in enhanced infrastructure and intense urban management. It is uncertain whether the appetite exists for this at present.

Second, the UDZ tax incentive is generous for developers with sizeable tax liabilities because it reduces their taxable income. It is bound to be less attractive to emerging developers with modest profits. The procedures to apply for UDZ tax incentives are also complicated and require specialist assistance from accountants. Third, the UDZs are due to expire in 2022, having been extended in 2014 for six years and then extended again in 2020 for another two years. There is unlikely to be much appetite at national level to extend the UDZs again, especially since the additional spending demands imposed on the public purse by the pandemic. One observer said "UDZs are likely to be phased out and replaced by Special Rating Areas. These have become more popular because they cost the Treasury nothing." SRAs are zones in which property owners

UDZ is a tax incentive administered by SARS on behalf of National Treasury. It provides an accelerated depreciation allowance for developers on the costs of buildings erected, extended or improved within the designated areas.

contribute additional rates to fund 'top up' services for that area. Fourth, a compelling case would have to be made for extending the UDZ scheme into the townships. The government would obviously be concerned about setting a precedent that other cities might seek to pursue, especially at a time of fiscal restraint. All things considered, UDZ tax incentives appear to be a rather blunt instrument to promote affordable rental housing and there are likely to be more cost-effective mechanisms for doing so.

Streamlined systems and local support

Regularisation and formalisation require a more responsive and supportive institutional and administrative environment. There are several things that the City of Cape Town could do to make regularisation and formalisation easier and quicker.

Education and information

Information about regulatory requirements and procedures could be made more accessible and legible. While much information is currently available on the City's website, additional communication channels should be used to reach township developers. These could include regular posts and information sessions in local newspapers, social media, local radio stations, roadshows and using new app-based, data-free technologies for smartphones and mobile phones. These channels could be used to explain the importance of safe building practices and the basics of how to engage in regulatory procedures. Dedicated resources like proto-type plans should be made available via the website and mobile apps. Disseminating information via mobile phones offers great potential, as the following quote from a practitioner illustrates.

They used USSD which is short code for cell phones ... So we created a learning program. And I was blown away by the number of people that within a couple of months we reached. We reached in a matter of months almost 120,000 people (Int-E15).



Above:

CDA hosted breakfast session with micro-developers to strengthen their capacity and establish a forum for collective bargaining.

Local support offices

While greater digital and media activity will help to raise awareness, having a local physical presence where people can access information and get specific advice is critical. Lessons learnt by micro-finance institutions and local building consultants show the significance of providing hands-on support to small scale developers, guiding them through the process of property development and management. Establishing local planning support offices would be a useful step to bring more people into the formal system. With dedicated professional staff, local support offices could become focal points for anyone wanting to build rental flats. They could offer information, resources, advice and support regarding the construction process, regulatory compliance, financing and so on. They could also connect developers to micro-finance institutions, savings clubs, housing support clubs, conveyancers, building material suppliers, building consultants

and architects. Existing physical facilities such as municipal offices or post offices could be used initially to save costs. These local centres could become dynamic hubs where developers meet among themselves and with professionals, students, volunteers, contractors and civil society actors to exchange ideas and learn from each other. They could build on and expand the existing informal networks within communities.

There are people that come and ask for advice. How did you build yourself such a beautiful structure? And what did it take and how long it takes you to do it? And I have no reason not to share knowledge (Int-D6).

Enterprise development

The City should enter into partnerships with civil society and private-sector organisations, such as CDA, to strengthen the capacity of local builders, developers, architects, designers and conveyancers. Enterprise development funding could be used to finance programmes targeted at supporting businesses in the property development value chain. Internship and mentorship programmes

could be developed to provide homeowners and developers with access to professional support. Voucher systems, similar to NYDA's business development programme, could be introduced to make professional services available to first time developers. Strengthening the capacity of local architects, building consultants, builders and other actors in the value chain is critical to promote formalisation. They are the conduits between developers and the City. As one building consultant explains:

I advise a homeowner and sit her down; make her understand. I try to understand what is it that you want to do? Explain, elaborate. What the law requires: if you want to do this, yes, it's acceptable, you can have this done or you cannot have this done. So it's only then when you sit and elaborate the processes that needs to be followed, one gets to understand (Int-E18).

Streamlined administrative processes

Streamlining internal systems and procedures to achieve quicker turn-around times by district offices is necessary to encourage formalisation. There is widespread support for a review of municipal procedures to identify bottlenecks and solutions to expedite decision-making. Although the current development management system seems to allow for parallel processing of land use and building plan applications, some observers suggest that the system is not adequately managed, which creates unnecessary delays. Increasing the transparency of the application process by allowing all parties – homeowner, applicant, district official – to oversee it is therefore very important. Managing these systems more efficiently and transparently could reduce bureaucratic tasks and free up staff to provide more valuable and better-quality hands-on support to homeowners and developers.

Right:

CDA facilitating an information session with local contractors. The technical skills training was organised by the Western Cape government's department Human settlements.



Right:

CDA in partnership with uMastandi, a financial institution hosted and engagements with various built environment professionals to discuss their role in scaling the delivery of affordable rental accommodation.



I think a majority of the time that has taken is at the city. Or certainly in our experience, and I think a large part of the problem comes when it has to go to different departments to be signed off. So, you know, roads agency is taking a while. Water is taking a while, and city power is taking a while, and I think it all just compounds, and then you add on to that, you know, inefficiencies in the office, bureaucratic processes, and compliance that they have to go through and you end up with just an incredibly length of time (Int-E10).

So I think it's important to map out chain, determine which ones are necessarily sequential, and then absolutely I think. Parallel approvals is definitely one mechanism and also are they all necessary? So I mean we have an incredibly onerous set of approvals that are required for things that might not even need it, right? (Int-E1).

Below:

A recently built multi-storey residential development by a seasoned entrepreneurial micro-developer in Khayelitsha.

Improved local governance

Measures to improve institutional systems should be accompanied by concerted efforts to improve local governance in the townships. Evidence suggests that formalisation has a political dimension because it alters state-citizen relationships and practices. Extending regulatory compliance will, in effect, require a new social contract between property owners and the City, whereby both parties understand and accept their rights and responsibilities. To succeed with this social contract, the municipality will need to change its approach and become more visible in local communities and actively harness the resources of local institutions – such as street, block and ward committees, local leaders and community-based organisations – to promote meaningful changes on the ground.

We talk about transformation all the time. I don't know what it means any longer. Our institutions remain exactly the same. I want to argue that if we are not going to rethink our institutions and what is actually the behaviour of staff, what are expecting? We will continue talking and we simply will achieve very little (Int-E2).



05 Compliance costs and benefits analysis

A simple financial model was developed to explore the key variables, points of leverage and financial incentives created by the various policy reforms suggested in this report.

The previous section explored various ways of creating an enabling environment for rental housing in the townships. There are various costs and benefits for the City (such as loss of revenue from not charging administrative fees or waiving development contributions) and various other costs and benefits for local developers. To get a better grasp of these trade-offs for developers contemplating complying with the regulations, and the City foregoing some of its fees and charges, a simple financial model was developed to explore the key variables, points of leverage and financial incentives created by the various policy reforms suggested in the report. The model is indicative rather than definitive because of the need for it to be clear, accessible and uncomplicated.

The figures for the various costs and expected rentals are drawn from the practical experience of real projects undertaken by the CDA and Bitprop in recent years: The model makes several critical assumptions:

- Three development scenarios are explored, each with a different level of adherence to the current regulations. They are called *Limited, Partial and Full Compliance*. Details about the costs associated with each scenario are discussed below.
 - The cost of land is not included in these scenarios because it is the same in all cases.
 - The time for approval is assumed to be between 6-9 months. A mid-range timeframe of 7.5 months is used here.
 - Each scenario has a different build cost, relating to the quality of materials, fixtures and finishes and adherence to building standards. These costs are based on up to date data drawn from actual examples of buildings developed by the CDA and Bitprop.
 - The 'repayment' calculations are based on a typical mortgage structure with a 10% interest rate. It is based on Bitprop's current conversations with South African banks regarding mortgages for this market.
 - To keep the analysis straightforward, no allowance is made for vacancy rates, long term maintenance costs, or adjusted municipal rates in these development costs.
-

The three compliance scenarios

The model revolves around three construction scenarios, which loosely correspond to the three types of developers discussed in this report. Each scenario has a different building cost because each type of developer would go about procuring professional services differently, use materials of various quality different quality materials, and different types of building contractor.

1 The **limited compliance scenario** assumes that a draftsperson is used to draw up plans and submit them to the City. This is not a full architectural service.¹⁵ Payment for a draftsperson is typically at a fixed price per room. 'Bakkie' or informal builders are commonly used, who do not have professional accreditation or insurance to cover things going wrong. Building costs are kept low by not meeting the minimum NBR standards. Builders may save money by using concrete blocks with a lower compression strength, reducing the pitch of the roof, buying thinner roof sheeting and lower quality sanitaryware, fixtures and fittings. At worst they may cut corners with the foundations, the concrete slab or first floor structure, staircases and roof supports. There is a price to pay for some of these savings because there is a low cap on the rental that can be charged and significant maintenance and replacement costs are bound to be incurred in due course. Projects within this scenario are likely to be funded through personal loans, savings and/or family loans because they lack official authorisation and would be considered too risky for formal lenders.

2 The **partial compliance** model uses an architectural technician to draft and submit plans, without the full architectural service. Here the fee is calculated per square metre. The partial compliance design still works within the bounds of the SR2 zoning scheme to avoid paying development charges or rezoning fees. However, this scenario does involve paying Eskom for a second dwelling connection, registering the site with the NHBC, and paying for the correct JBCC building contracts, all of which reduce

the risks of things going wrong. An engineer is also employed to ensure that the foundations are correctly designed, the concrete slab is thick enough and the roof structure is sufficient and the roofing material is properly attached. Construction meets the minimum NBR requirements, but building costs are kept down by selecting average quality finishes. Partial compliance can secure City approval for the structural integrity of the buildings, so projects can be funded by micro-finance lenders, which lowers the cost of capital.

3 The **full compliance** scenario involves regulations being met fully throughout the design, planning and construction phases. A full architectural service is used, a rezoning fee is included, and a R35,000 development charge is paid for each rental unit. These provide further safeguards for the developer and avoid any chance of a fine being incurred for not conforming to the rules. For the sake of simplicity, this scenario does not take into account the longer timeframe that might be needed for the rezoning application, although this is likely to add to the development costs in practice.

Table 2 compares the different costs associated with constructing six rental units at limited, partial and full compliance.

Table 2 shows that full compliance is 2.5 times more expensive than limited compliance. This is a very important finding that helps to explain why most emerging developers adopt informal methods and steer clear of the formal rules and procedures. Informality makes complete sense for fledgling developers determined to squeeze construction costs, especially because the rental that can be charged for full compliance units is not 2.5 more than limited compliance units. Of course, the costing in table 2 is only part of the picture in that it relates to the upfront development costs. Yet these are bound to be at the forefront of the minds of budding developers, who have limited capital of their own and limited borrowing capacity. They are also aware of the restricted rents that local tenants can ultimately afford to pay. Developers are desperate to contain their expenses and can ill afford to take a broader or longer-term perspective.

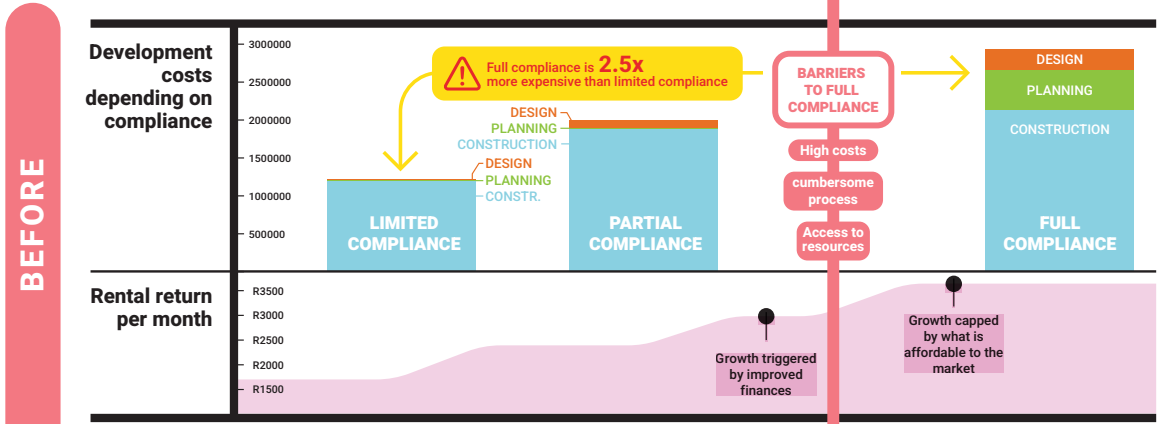
Case Study

12 Unit block
Ilitha Park
Khayelitsha

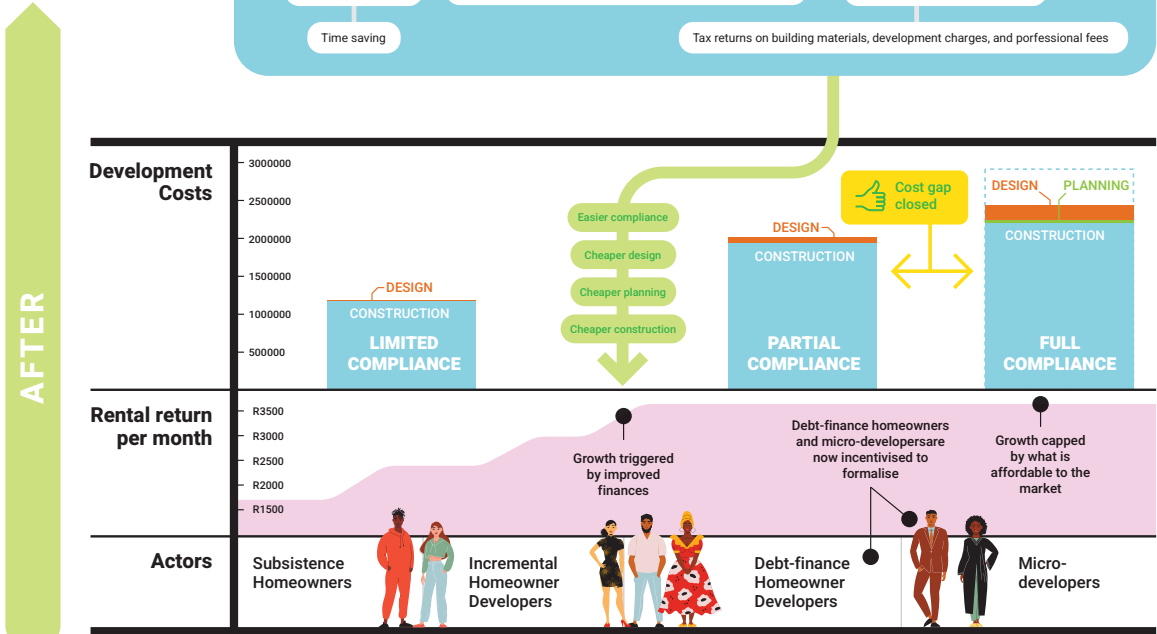
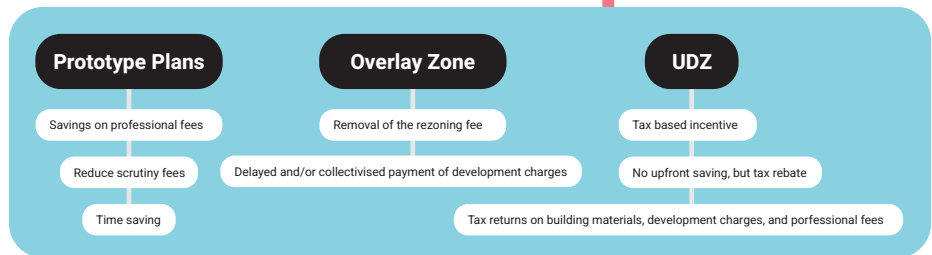


Micro developers

Strategic development on separate property, financed using professional networks



City-level interventions



| | Limited Compliance | Partial Compliance | Full Compliance |
|--|--------------------|--------------------|-----------------|
| Architectural Fee | R750/room | R150/sqm | 10% build cost |
| Per square meter build cost | R3500 | R5500 | R6250 |
| Design Stage | | | |
| Professional Fees - architect | R4 500,00 | R22 500,00 | R105 000,00 |
| Professional Fees - planner | R0,00 | R0,00 | R21 000,00 |
| Technical specifications | | | |
| Professional Fees - Engineer | R0,00 | R24 750,00 | R28 125,00 |
| Planning Application | | | |
| Development Charges | R0,00 | R0,00 | R210 000,00 |
| Rezoning Fees | R0,00 | R0,00 | R18 350,00 |
| Scrutiny Fee | R5 250,00 | R8 250,00 | R9 375,00 |
| Construction Phase | | | |
| Eskom second dwelling connection | R0,00 | R10 000,00 | R10 000,00 |
| Registration of the property with NHBRC | R0,00 | R4 990 | R4 990 |
| JBCC contract | R0,00 | R510 | R510 |
| Building Costs | R525 000,00 | R825 000,00 | R937 500,00 |
| P&G's | R63 000,00 | R99 000,00 | R112 500,00 |
| Total Development Cost | R597 750,00 | R995 000,00 | R1 457 350,00 |
| Typical Rental Per Rental Unit | R1700 - R2000 | R2500 - R3200 | R3000 - R 3600 |

Table 2:
Compliance cost
comparison (6 rental units).

Table 2 excludes the maintenance costs and the intangible benefits from formalisation that cannot be assigned a value, such as the quality of the living environment and protection from municipal fines.¹⁶ The limited compliance model involves single skin block walls, which, in addition to poor thermal performance, are susceptible to water ingress and mould growth during winter. Full compliance is much more expensive, but larger and more experienced developers would consider this a long-term investment since it enhances the ultimate value of the asset and its resale potential. It is not just about short-term costs. A City policy to encourage formalisation should include educating and raising awareness among developers of the full costs and benefits of different approaches.

In addition to cost considerations are the time and accessibility considerations for the different architectural services. The architectural options used by developers in the partial and limited compliance are both easily accessible and construction drawings



Above:
Delft property with kitchenettes that have additional space for a washing machine and includes a stove. The rental price is R3300.

are produced in a shorter time period. There is also less contract administration, so the process of using drafts-people results in a faster turnaround time allowing the developer to start renting out much sooner.

Finally, table 2 highlights the rental potential of each scenario. While limited and partial compliance capital costs may be attractive to small scale developers, these options limit the amount one can charge for a rental unit. The Bitprop and CDA data indicates that in the same location typical limited compliance units can be rented for R1700 – R2000 per month, partial compliance units between R2500 – R3200 and fully compliant units from R3000 – R3600. Currently R3600 is the highest rental recorded and are units developed in a fully compliant manner, with a number of value adds such as DSTV and wifi connections.

Cost reductions by proposed reforms and incentives

Table 3 estimates the cost reductions associated with the various policy reforms and incentives outlined earlier. The base case is the full compliance model and the results are very encouraging. Prototype plans reduce the total development cost by pruning or eliminating the architectural and other professional service fees. This turns out to be a valuable saving. The scrutiny fee is also waived because the prototype plans are pre-approved by the City. In addition, the prototype plans expedite the approval decision, so the time cost of the approval is also deducted from the development cost.

The overlay zone produces a dramatic cost saving by removing the cost of professional fees for the planner, the fees associated with rezoning and the scrutiny fee. Furthermore, if individual developers can be absolved from paying development contributions the cost reductions will be even more significant. Altogether, this produces a much bigger cost saving than the prototype plans. This appears to be a very valuable incentive to offer developers.

The UDZ is rather different in that it does not provide the developer with any upfront cost savings. It is still a financial incentive, but in the form of a tax rebate which will need to be applied for. Developers with sizeable tax liabilities can achieve significant tax reductions in due course on their building material expenses, development charges and professional fees.

It is encouraging to see that these proposals help to reduce the costs of compliance quite considerably. Because most of the incentives remove similar things, one cannot simply add up the cost savings to get a combined amount. The combined row at the bottom of table 3 avoids double counting. It indicates that if all three reforms were fully instituted, the total development costs of the full compliance model would be reduced by more than a quarter (27%). The total development cost is still much more than that of the informal model (limited compliance), suggesting that these savings will not be sufficient to persuade incremental homeowner-developers

| | Partial | Cost Saving | Full Compliance | Cost Saving |
|---|----------------|--------------------|------------------------|--------------------|
| | R1 974 500,00 | | R2 912 500,00 | |
| Prototype Plans | R1 855 631,53 | R118 868,47 | R2 672 086,13 | R240 413,87 |
| Overlay Zone | R1 921 781,53 | R52 718,47 | R2 375 861,13 | R536 638,87 |
| UDZ | R1 754 300,00 | R220 200,00 | R2 528 100,00 | R384 400,00 |
| COMBINATION PP + Overlay + UDZ | R1 829 199,74 | R147 610,26 | R2 202 086,13 | R710 413,87 |

Above: Table 3: Cost savings .

to formalise. Full compliance remains a step too far. The focus for them will have to be on gradual regularisation, perhaps with a longer-term goal of formalisation.

The savings in Table 3 show that the gap to the partial compliance model has narrowed much more significantly (Full compliance with incentives is now R1 067 000 compared to partial compliance development cost of R995 000). This might make it possible to start talking seriously to the category of intermediate developers that we have labelled ‘debt-financed and micro-developers’ about the value of full compliance. There appears to be a real opportunity for them to formalise fully if these policy reforms can be introduced successfully. This is likely to depend on the long-term benefits of formalisation being explained to them in a clear and compelling way, as well as on the provision of effective local advice and support, and administrative systems being streamlined to accelerate turnaround times for approvals. Table 4 illustrates a second example which tests the scenarios and policy reforms on a hypothetical development of 12 units rather than 6. The average approval time is extended to 12-18 months because of the greater complexity of the project, the required rezoning notice periods and its environmental implications. The development cost calculation does not include the additional cost of finance and loss of rental revenue incurred through the extended time for approvals. The overall findings emerging from this example are quite similar to those in table 3, and again it is evident that the financial incentives are able to reduce the cost of the Full Compliance scenario to a figure much closer to the partial compliance scenario.

| | Total Cost | Cost Saving |
|---|-------------------|--------------------|
| Full Compliance | R1 457 350,00 | |
| Prototype Plans | R1 330 667,18 | R126 682,82 |
| Overlay Zone | R1 189 204,68 | R268 145,32 |
| UDZ | R1 266 480,00 | R190 870,00 |
| COMBINATION PP + Overlay + UDZ | R1 067 239,68 | R390 110,32 |

Table 4: Development of 12 units with an average approval time of 12-18 months.

The final potential incentive discussed in this report is NBR reform. If category 1 buildings could be passed with lower material specifications while maintaining fire, health and safety protections, the total development costs of fully compliant buildings could be dramatically reduced. Table 5 demonstrates these cost savings. Here we see how by simply reducing the required material specification, the cost of developing 12 fully compliant units is reduced by R291 240 without applying any of the additional financial incentives stemming from regulatory reform. Including these results in an overall cost saving of approximately R1 million for the development of 12 units. This is a very substantial saving and provides a strong incentive to follow the fully compliant route.

| | Full Compliance | Cost Saving |
|--------------------|------------------------|--------------------|
| | R2 912 500,00 | |
| NBR Reform | R2 621 260,00 | R291 240,00 |
| Combination | R1 938 898,12 | R973 510,87 |

Table 5: Impact of NBR reform on the development of 12 units with an average approval time of 12-18 months

Rentals and Returns

In their first year of operation (2019) Bitprop developed rental units on a property in Ilitha Park – a popular neighbourhood in Khayelitsha. Here rental units are in high demand, properties are typically larger and thus the rental returns are some of the highest in Cape Town’s township rental market. Owing to Bitprop’s infancy, these units were constructed with a lower specification for the fixtures and finishes in an attempt to reduce construction costs and improve financial viability. The simple kitchenettes have a basin with cupboard below, the bathroom has a bath and no shower, and the walls are bagged and skimmed rather than plastered. In addition to finishes within the individual units, the construction method used timber beams for the first floor, which were left exposed on the underside of the walkways. The units are a good size, and allow for a double bed and small lounge area. The building as a whole is presentable – it looks like almost every other rental block in the neighbourhood, and yields similar rentals: R2800 – R3000 per unit. This build can be categorised as ‘partial compliance’

as described earlier owing to the professional team used, the cost of construction and the level of council compliance. Two years later (2021) Bitprop built a ‘full compliance’ block in the same street of Ilitha Park. The rooms are roughly the same size, but the kitchenettes now have additional space for a washing machine, a longer counter and shelving. The redesign includes a built-in cupboard and the bathrooms are designed with a service core, so externally there are no plumbing pipes visible. In addition to the prepaid electricity meters in all Bitprop units, these units have prepaid water meters, they include a DSTV connection and individual internet connections. The eaves are closed off with external ceilings, and the buildings now include small architectural features which distinguish the flats from those around them. These full compliance flats used a full architectural service, the material specification is much higher, and so is the final construction cost. And while the units are able to fetch a higher monthly rental – between R3200 and R3500 per unit – the increased construction cost reduces the return on the initial capital investment.

Without regulatory reforms and financial incentives, full compliance is too expensive and therefore not an attractive investment option. However, the development cost savings provided through implementing the various incentives and policy mechanisms would allow developers to build rental units of a higher quality with better amenities for tenants and still offer them a higher return on investment. This higher return could be captured by the City through increased property rates – which would be easier to monitor, adjust, and collect through the one-touch unit.

| Compliance | Limited | Partial | Full | Full, with incentive cost savings |
|--|----------------|----------------|-------------|--|
| Rental per unit | R 2000 | R 3000 | R 3600 | R 3600 |
| Monthly profit for all 6 units | R 6231,58 | R 8398,03 | R 7536,26 | R 11 622,08 |
| Internal Rate of Return on investment | 4,59% | 3,53% | 1,08% | 4,96% |

Table 6: Rentals vs returns per unit (based on 6 unit developments over a 20 year mortgage period).



Top:
A development of eight units in Delft with rental prices of R3000 with WIFI and DSTV connection.

Bottom:
A mixed-use development of thirty-five residential and nine commercial units in Khayelitsha.

06

Conclusions and recommendations

A fundamental change in approach is required to improve living conditions, restore the dignity of communities and build a new social contract with citizens.

Two-pronged approach: broad-based regularisation and progressive formalisation

Small-scale rental housing is growing and evolving rapidly. More and more homeowners and micro-developers are investing in brick and mortar flats, thereby providing important public benefits in terms of affordable rental housing, urban densification and local economic development. Yet, the haphazard and poorly conceived nature of some of this activity poses risks and hazards for these places and their residents. Allowing business as usual could mean that these cumulative stresses push neighbourhoods onto a 'low road' of overcrowding, insecurity and instability, thereby increasing human vulnerabilities, undermining people's property investments and degrading public assets. There is growing recognition by the City of Cape Town¹⁷ and other government entities that a fundamental change in approach is required to improve living conditions, restore the dignity of communities and build a new social contract with citizens.

This report offers new insights into the policy reforms and support measures needed to assist local developers to formalise and expand rental housing. Drawing on diverse evidence and conceptual analysis, the study reveals how important it is to distinguish between different types of developer when intervening in the sector. At one end of the spectrum, incremental homeowner developers lack sufficient resources and capacities to grow and formalize. At the other end, micro-developers are much better equipped to follow the formal rules and procedures. Debt-financed homeowner developers fall somewhere in between.

Our recommendations follow logically from this differentiated analysis, including a two-pronged approach to improve the overall performance of the sector: broad-based regularisation and progressive formalisation. This schema is tentative and put forward as a simple way of aligning potential policy reforms with the realities of small-scale developers on the ground. This is important to avoid unrealistic expectations of the scope for formalisation and complete compliance with the rules.

Formalisation is understood to mean that small-scale rental housing obtains full regulatory compliance. This outcome should be targeted first and foremost at micro-developers and at debt-financed homeowner developers. Our financial analysis suggests that both types should be capable of partial compliance, partly because of formal financing requirements and their existing professional networks. They are more likely to appreciate the benefits of formalisation and the importance of asset creation, which should make them more willing to incur the costs of compliance. A more supportive regulatory regime with fewer hurdles and simpler procedures could perhaps spur the shift to full compliance.

Broad-based regularisation is defined as raising the overall quality of the built environment, mitigating major risks and hazards, and creating the foundation for universal formalisation at some point in the future. It requires extensive education, awareness raising, active building support and regulatory changes to upgrade norms and standards in the sector towards some minimum level of attainment that is broadly acceptable, while recognising that partial informality will persist for the foreseeable future. This is especially important for incremental homeowner developers, who are unlikely to have the resources, motivation and capabilities required to fully formalise.

The City's Finance Department has done a great deal of preparatory work on how to regularise informal building activity in selected townships. These ideas should be shared with external stakeholders for further refinement and incremental implementation. The next step might be to begin working on individual cases, site-by-site, with owners who want to regularise their property. Experimentation and learning by doing would generate valuable lessons for HOW to resolve many of the challenges surrounding missing title deeds, encroachments, and lack of building plans and planning permission. This would help to answer tough questions about what kinds of informal practices can be accommodated, what minimum standards of development must be maintained and what kinds of support measures are required to assist homeowners. Such lessons need to be properly documented and shared among role-players to strengthen institutional learning and to scale-up effective solutions.

Experimentation and learning by doing would generate valuable lessons for HOW to resolve many of the challenges surrounding missing title deeds, encroachments, and lack of building plans and planning permission. This would help to answer tough questions about what kinds of informal practices can be accommodated, what minimum standards of development must be maintained and what kinds of support measures are required to assist homeowners.

Regulatory reforms and incentives

Several initiatives, partnerships and policy review processes regarding small-scale rental housing are currently underway within the City of Cape Town. A considerable amount of work has been done by senior officials in various departments to identify new ways of dealing with unregulated developments. Several of them have shared their knowledge and provided important inputs into this study. Based on our analysis, we propose the following policy reforms and actions, financial incentives and support measures.

Small-scale rental units of a certain density should become a primary right to remove the need for time consuming and costly land use approvals. We recommend the establishment and incremental expansion of an incentive-based overlay zone in spatially targeted areas with adequate infrastructure capacity. While the overlay zone should be targeted at certain areas first, it should be expanded across large parts of the metro in due course. Investments into bulk infrastructure and social amenities have to go along with the expansion to cater for the increased population densities. The overlay zone should be linked to financial incentives (removal/reduction of administrative fees and development contributions to individual homeowners), which could be recouped through USDG funding and future income from the collection of rates and charges. The possibility should also be explored of the overlay zone being linked to tax rebates and discounts along the lines of those offered via the UDZ in inner-city areas.

At the national level we recommend a review and revision of the National Building Regulations and Building Standards. Our analysis shows that if category 1 buildings could be passed with lower material specifications, while maintaining fire, health and safety protections, the total development costs of fully compliant buildings could be reduced dramatically. Taken together with overlay zone, prototype plans and reduced administrative fees, these measures would encourage formalisation by reducing compliance costs to a level that is close to current expenses incurred by debt-financed and micro-developers.

The lack of formal title deeds restricts many property owners from formalising their rental units. There is no consensus about the best way to resolve the title deeds backlog and related problems, but options include case-by-case rectification, some kind of national intervention to resolve systemic backlogs, and de-linking title deeds by developing alternative systems using blockchain technology to grant regulatory approvals.

Administrative reforms and local support

There is a strong case for reviewing internal municipal procedures to identify bottlenecks and solutions to speed up approval processes. Better management and more transparent procedures would squeeze the timeframes. New technology could reduce human inputs on administrative tasks and free up staff resources to provide hands-on support to applicants.

Prototype plans and building design guidelines should be prepared and made available in the different districts. These should be easily accessible to property owners wishing to develop rental units. They would mitigate the need for an architect and reduce the costs and time involved in obtaining building plan approval. Plans should be made available with various options and adaptations to individual sites. More resources and staff are needed for district offices to boost their capacity to offer support. Internship and mentorship programs could be tapped to increase staff resources. It is also vital to strengthen the capacity of local architects, building consultants and other professionals. Enterprise funding could be used in combination with innovative partnerships with the private and civil society sectors. Neighbourhood support offices and one touch units would boost people's access to information, advice and resources.

Civic leaders need to create space and resources for flexible and adaptive practices by front-line officials. They need to provide a supportive political and institutional environment that allows for greater autonomy and professional judgement within certain limits and based on a

shared vision. This top-down support will be vital for front-line officials when making decisions in complex township environments, experimenting with different approaches and techniques, and gaining the trust of local residents.

A new social contract

Regularisation and formalisation require a new social contract between the state and citizens, especially property owners and the City. A genuine shift in engagement with communities and local institutional structures is needed to improve local ownership of such initiatives and reduce the risks of resistance. Many NGOs have existing networks and trust relationships with communities, which provide a basis for designing regularisation and formalisation strategies. Stretched municipal resources and the enormous governance challenges in many townships compel new forms of collaboration and co-production.

Re-imagining the social contract is particularly urgent for public infrastructure and service delivery. Considerable investments will be needed to cater for the growth in rental accommodation. While national and other grants will cover some of these expenses, rates and service charge contributions from those able to pay are vital for long-term sustainability.

Further research and experimentation

Making progress with the proposed reforms requires further experimentation, research and knowledge production. The most pressing issues to be resolved include:

- Analysis of current typologies of rental housing to inform land use rights and development parameters for the overlay-zone.
- Analysis of actual service consumption of different rental housing typologies to inform infrastructure requirements and investment plans.
- Analysis of existing and potential infrastructure capacity to inform the overlay zone.
- Identifying alternative and more innovative ways of providing services as part of regularisation strategies, including adapting municipal infrastructure to existing built environment.
- Development and testing of proto-type plans and design guidelines.
- Strengthen and grow enterprise development programmes for businesses operating in the construction and property value chain.
- Analysis of internal municipal processes to reduce bottlenecks.
- Development of regularisation techniques in case study sites to learn from experience.
- Development of standard operating procedures to inform regularisation and formalisation strategies.
- Develop, implement and evaluate workflow programme to strengthen transversal funding and administrative support for regularisation and formalisation.
- Development of a small-scale rental policy.
- Researching ways of de-linking formal title deeds from building plan approvals.
- Scalable solutions and national actions to address systemic title deed problems.

They key actors for the various tasks are described on the right:

KEY ACTORS

City level

- Overlay zone
- Proto-type plans
- Policy development
- Bulk infrastructure analysis



Actors:

- City of Cape Town
- Cities Support Programme
- Consultants

District level

- Streamlined administrative processes & systems
- Guidelines
- Supportive officials



Actors:

- City of Cape Town
- District Office

Neighbourhood/precinct

- Local support centres
- Enterprise and skills development
- Strengthened urban management



Actors:

- Civil society sector
- Community institutions
- Local leaders

Site

- Homeowner and micro-developer capacity
- Access to information
- Education & training
- Local support
- Financial incentives



Actors:

- CDA
- Micro-finance institutions
- Civil society organisation

Appendix 1: List of expert interviews

| Int-E# | Institution | Stakeholder group | Date of interview |
|--------|-----------------------------------|-----------------------------------|-------------------|
| 1 | Independent consultancy | Consultant/Practitioner | September 2021 |
| 2 | City of Cape Town | Senior official | September 2021 |
| 3 | District manager | Local government - district level | September 2021 |
| 4 | District manager | Local government - district level | September 2021 |
| 5 | District manager | Local government - district level | September 2021 |
| 6 | District manager | Local government - district level | August 2021 |
| 7 | CAHF - Transaction Support Centre | Consultant/Practitioner | September 2021 |
| 8 | UCT | Researcher | September 2021 |
| 9 | consultant for NASHO | Consultant/Practitioner | September 2021 |
| 10 | TUHF | Private sector | September 2021 |
| 11 | DAG | NGO | September 2021 |
| 12 | Isandla | NGO | September 2021 |
| 13 | PDG | Consultant/Practitioner | September 2021 |
| 14 | UFS | Academic | August 2021 |
| 15 | Xtenda Housing Finance | Private sector | August 2021 |
| 16 | City of Cape Town | Local Government | September 2021 |
| 17 | CSIR | Academic/consultant | September 2021 |
| 18 | Building Consultant | Private sector | September 2021 |
| 19 | Architectural services | Private sector | September 2021 |
| 20 | Architectural services | Private sector | September 2021 |
| 21 | University of Cambridge | Academic | September 2021 |
| 22 | University of Witwatersrand | Academic | September 2021 |
| 23 | Isiduli | Private sector | September 2021 |
| 24 | NHFC | DFI | September 2021 |
| 25 | City of Cape Town | Local government | September 2021 |
| 26 | City of Cape Town, Urban Designer | Local government | September 2021 |
| 27 | Transaction Support Centre | Consultant/Practitioner | September 2021 |
| 28 | City of Cape Town | Local government | October 2021 |
| 29 | City of Cape Town | Local government | November 2021 |
| 30 | City of Cape Town | Local government | December 2021 |

Appendix 2:

List of interviews with homeowners/micro-developers

| Int-D# | Type | Date of interview |
|--------|---------------------|-------------------|
| 1 | Micro-developer | August 2021 |
| 2 | Micro-developer | August 2021 |
| 3 | Micro-developer | August 2021 |
| 4 | Micro-developer | August 2021 |
| 5 | Micro-developer | August 2021 |
| 6 | Micro-developer | September 2021 |
| 7 | Micro-developer | September 2021 |
| 8 | Micro-developer | September 2021 |
| 9 | Homeowner developer | September 2021 |
| 10 | Homeowner developer | September 2021 |
| 11 | Homeowner developer | September 2021 |
| 12 | Homeowner developer | September 2021 |
| 13 | Homeowner developer | September 2021 |
| 14 | Homeowner developer | September 2021 |
| 15 | Homeowner developer | September 2021 |
| 16 | Homeowner developer | September 2021 |
| 17 | Homeowner developer | September 2021 |
| 18 | Homeowner developer | September 2021 |
| 19 | Homeowner developer | September 2021 |
| 20 | Micro-developer | September 2021 |
| 21 | Homeowner developer | September 2021 |

Appendix 3:

Conditions for second/third dwellings

The following conditions shall apply to a second dwelling:

- a.** The total floor space of a second dwelling may not exceed the total floor space of the main dwelling unit without the approval of the City. The floor space of ancillary buildings is excluded from this provision;
- b.** The City may require that a second dwelling be constructed in a style that is similar to the architecture of the main dwelling house;
- c.** A second dwelling that is a separate structure to a main dwelling house shall not exceed a height of 6 m measured from existing ground level to the wall plate and 8 m to the top of the roof;
- d.** A second dwelling contained within the same building as a main dwelling house must be designed so that the building appears as a single dwelling house; both units may have a ground floor, or one unit may be on the ground floor and the other unit above;
- e.** The existence of a second dwelling shall not in itself be sufficient reason for the City to grant an application in terms of this By-Law to subdivide the land unit containing the dwelling units;
- f.** The construction of a second dwelling is subject to the certification by all relevant municipal service department Directors, or their delegates, that capacity is available on the services network in the specific area.

The following conditions shall apply to a third dwelling:

- a.** The total floor space of a third dwelling may not exceed the total floor space of the main dwelling without the approval of the City. The floor space of ancillary buildings is excluded from this provision;
- b.** The City may require that a third dwelling be constructed in a style that is similar to the architecture of the main dwelling house;
- c.** A third dwelling that is a separate structure to a main or second dwelling shall not exceed a height of 6 m measured from existing ground level to the wall plate and 8 m to the top of the roof;
- d.** A third dwelling contained within the same building as a main dwelling or second dwelling must be designed so that the building appears as a single dwelling house; all units may have a ground floor, or one unit may be on the ground floor and the other units above;
- e.** The existence of a third dwelling shall not in itself be sufficient reason for the City to grant an application in terms of this By-Law to subdivide the land unit containing the dwelling units;
- f.** The construction of a third dwelling is subject to the certification by all relevant municipal service department Directors, or their delegates, that capacity is available on the services network in the specific area.”.

Appendix 4: Development parameters for SR1 and SR2

Below: Summary of the zonings and development rules described in the City of Cape Town's Municipal Planning Amendment By-Law, 2019.

| SINGLE RESIDENTIAL ZONINGS | LAND UNIT AREA (m ²) | FLOOR FACTOR | MAXIMUM FLOOR SPACE | COVERAGE | MAXIMUM HEIGHT ABOVE [BASE] EXISTING GROUND LEVEL | | BUILDING LINES | | STREET CENTRELINE SETBACK | OTHER PROVISIONS |
|--|----------------------------------|---------------------|----------------------|----------------------------|---|------------------------|-----------------------------|--|---------------------------|---|
| | | | | | To wallplate | To top of roof | Street boundary | Common boundaries | | |
| SINGLE RESIDENTIAL ZONING 1: CONVENTIONAL HOUSING (SR1) PRIMARY USES Dwelling house, private road and additional use rights ADDITIONAL USE RIGHTS Second dwelling; <u>third dwelling</u> ; Home occupation or bed and breakfast establishment or home child care CONSENT USES Utility services, place of instruction, place of worship, house shop, institution, guest house, <u>minor rooftop base telecommunication station</u> , rooftop base telecommunication station, wind turbine infrastructure, open space, urban agriculture, halfway house and veterinary practice | >2 000 | N/a | 1 500 m ² | <u>N/a</u> | 9,0 m | 11,0 m | 6,0 m | 6,0 m | N/a | Window and door placement Garages, carports and outbuildings Parking and access Additional use rights – home occupation, bed and breakfast establishment, <u>second dwelling</u> , <u>third dwelling</u> and home child care |
| | >1 000 up to 2 000 | N/a | 1 500 m ² | <u>N/a</u> | 9,0 m | 11,0 m | 4,5 m | 3,0 m | | |
| | >650 up to 1 000 | N/a | 1 500 m ² | <u>N/a</u> | 9,0 m | 11,0 m | 3,5 m | 3,0 m | | |
| | >350 up to 650 | 1,0 | N/a | <u>N/a</u> | 8,0 m | 10,0 m | 3,5 m | 0,0 m (12,0 m from street and 60%) and 3,0 m rest | | |
| >200 up to 350 | 1,0 | N/a | <u>75%</u> | <u>75%</u> | 8,0 m | 10,0 m | [3,5] 1,5 m | 0,0 m [(12,0 m from street and 60%) and 3,0 m rest] | | |
| ≤200 | 1,0 | N/a | <u>75%</u> | <u>75%</u> | 8,0 m | 10,0 m | 1,0 m | 0,0 m [(12,0 m from street and 60%) and 3,0 m rest] | | |
| | | Refer to item 22(a) | Refer to item 22(b) | <u>Refer to item 22(h)</u> | Refer to item 22(c) | Refer to item 22(c) | Refer to item 22(d) & 22(e) | Refer to item 22(d) & 22(e) | | |
| SINGLE RESIDENTIAL ZONING 2: INCREMENTAL HOUSING (SR2) PRIMARY USES Dwelling house, second dwelling, utility service, private road, urban agriculture, open space and additional use rights ADDITIONAL USE RIGHTS Shelter, house shop, home occupation, bed and breakfast establishment, home child care, informal trading, <u>third dwelling</u> and any educational, religious, occupational or business purpose subject to conditions CONSENT USES Group housing, boarding house, place of worship, institution, clinic, place of assembly, place of instruction, office, restaurant, guest house, place of entertainment, service trade, authority use, <u>minor rooftop base telecommunication station</u> , rooftop base telecommunication station, wind turbine infrastructure, halfway house and veterinary practice | | 1,0 | N/a | <u>N/a</u> | 6,0 m dwelling units; | 8,0 m dwelling units; | Formal township: 1,0 m | Formal township: 0,0 m for 60% and 1,0 m for remainder; 2,5 m between shelters and other buildings | N/a | Parking and access House shop Shelter Informal trading <u>Third dwelling</u> Land constructed as or identified for roads Land used as or identified for firebreaks Approval of building plans |
| | | Refer to item 27(a) | | | 8,0 m other buildings | 10,0 m other buildings | No formal township: 1,0 m | No formal township: 3,0 m on perimeter; 2,5 m between shelters and other buildings | | |
| | | | | | Refer to item 27(b) | Refer to item 27(b) | Refer to item 27(c) & 27(d) | Refer to item 27(c) & 27(d) | | |

References

- Banks, N., Lombard, M. and Mitlin, D. 2019. Urban Informality as a Site of Critical Analysis. *The Journal of Development Studies*. Vol 56(2), pp 223-238
- Centre for Development and Enterprise (CDE). 2020. *Building Better Cities: A new approach to housing and urban development*. Johannesburg: CDE
- City of Cape Town. 2020. *Facilitating Small Scale Rental Units in Khayelitsha: Smart Citizen Action Adding Public Value in the Provision of Affordable Rental Units*.
- City of Cape Town. 2021. *New Human Settlements Strategy*. Council approved version. May 2021
- Demacon (2013) *UDZ impact assessment. Market research findings and recommendations*. Pretoria: Demacon.
- Development Action Group (DAG). 2021. *Enabling Affordable Rental Housing: Interplay of finance and planning policy*. Cape Town: Development Action Group
- HSRC 2019. *Backyard rental housing: Dynamic but neglected*. Final report. Cape Town: Human Sciences Research Council
- Iban, M.C. 2020. *Lessons from approaches to informal housing and non-compliant development in Turkey: An in-depth policy analysis with a historical framework*. Land Use Policy. Online version, September 2020
- Isandla Institute. 2020. *Backyarding: Affordability, dignified shelter and Covid-19*. Cape Town: Isandla Institute
- Isandla Institute. 2021a. *Backyarding: Understanding backyard rental markets: A synthesis of research findings in eight neighbourhoods in Cape Town*. Cape Town: Isandla Institute
- Isandla Institute. 2021b. *Informal Backyard Rental Housing: Policy options and a delineation of responsibility*. Cape Town: Isandla Institute
- Ferreri, M. and Sanyal, R. 2021. *Digital informalization: rental housing, platforms, and the management of risk*. *Housing Studies*. Online version
- Melzer, I. and Robey, J. 2020. *The Transaction Support Sector: Lessons learned*. Centre for Affordable Housing Finance in Africa and 71point4
- Overseas Development Institute (ODI). 2021. *Adaptive bureaucracies? Enabling adaptation in public bureaucracies*. Working paper 604.
- Scheba, A. and Turok, I. 2020. *Informal rental housing in the South: dynamic but neglected*. *Environment & Urbanization*. Vol 32(1), pp. 109-132.
- Social Housing Regulatory Authority (SHRA) and National Department of Human Settlements (NDHS). 2019. *Norms and Standards for Backyard Rental*. RebelGroup South Africa: Johannesburg
- Spiropoulos, J. 2019. *Financing Micro-Developments of Residential Rental Stock: Case Studies of Seven Small-Scale Landlords in Cape Town*. Case Study Series 14. Centre for Affordable Housing Finance in Africa.
- Todes, A. and Turok, I. (2018) 'Spatial Inequalities and Policies in South Africa: Place-based or People-centred?', *Progress in Planning*, 123 (pp.1-32). <http://dx.doi.org/10.1016/j.progress.2017.03.001>

Endnotes

- 1 While the economic fallout from the pandemic has had serious adverse impacts on tenants and landlords in the sector, leading to evictions, reduced rentals and higher vacancy rates, the consequences have been uneven across neighbourhoods, with better located areas experiencing continued investment in rental flats.
- 2 Massive-small refers to small increments of grassroots spatial transformation that, when viewed collectively, creates a substantial impact on cities (www.massivesmall.org).
- 3 There are already several notorious examples of townships that have become crisis prone as a result of these cumulative stresses.
- 4 Other problems caused by informal builders sometimes include poor quality workmanship, disappearance with the money, and misinformation regarding official regulations and requirements.
- 5 While we recognize that the regulatory regime covers different spheres of government and their interlinkages, the report focuses on local government in Cape Town.

- 6** Evidence from several interviewees suggests that MFIs have millions of rands available to invest in the sector in Cape Town, which they are unable to deploy because of the inhibiting regulatory regime.
- 7** LEFTEA: The Less Formal Township Establishment Act (No. 113 of 1991), commonly referred to as LEFTEA, was passed to simplify the approval process in selected areas so as to expedite housing delivery. LEFTEA was used by the City to exempt households from having to submit building plans. It was repealed in 2015. The City is currently exploring ways of upgrading and regularising former LEFTEA areas to create safer and more dignified living environments and to safeguard the municipal infrastructure (City of Cape Town Human Settlements Strategy 2021)
- 8** MPBL: In 2015, the City approved the Municipal Planning By-law (MPBL) in order to give effect to the Constitutional competence for land-use planning and management. The MPBL outlines the planning processes that all physical developments must adhere to when undergoing development planning and implementation. For housing developers, it represents the 'rules of the game' within Cape Town (City of Cape Town Human Settlements Strategy 2021).
- 9** SR2 was introduced as a temporary zone, especially to cover former LEFTEA areas, which were expected to be transformed into SR1 in future.
- 10** For further information see <https://www.capetown.gov.za/City-Connect/Apply/Planning-building-and-development/Land-use-applications/Apply-for-land-use>
- 11** (*1) Unless applicant is registered owner. (*2) If application did require pre-application consultation as prescribed by the City Manager, or if pre-application consultation has taken place on request. (*3) If prescribed/required by the City Manager or his/her delegate. (*4) If development contributions (DCs) will be/are required.
- 12** For further details on the applicability of NBR norms and standards to small-scale rental housing please refer to a recent document by SHRA and NDHS (2019).
- 13** No copies of building plans will be provided without the authorisation of the registered property owner. Once you have obtained this authorisation you will need to complete a special application for copies of the building plans, the form is available from your local district office, and include the authorisation plus the relevant fee.
- 14** For further information see <https://www.capetown.gov.za/City-Connect/Apply/Planning-building-and-development/Building-plan-applications/Apply-for-a-building-plan>
- 15** A full architectural service here refers to the South African Council for the Architectural Profession's definition of the architectural service which comprises of 6 stages. Council submission plans is only Stage 4 of the process.
- 16** One of the risks involved in not complying with the building regulations and planning procedures is receiving a penalty. In a prominent recent case, albeit quite rare, the City's municipal planning tribunal issued the developer of 23 rental units with a R230 000 fine (R10k per unit) for building without official approval. Another risk is being unable to insure the building without approvals and an occupancy certificate
- 17** A recent internal directive calls for new approaches to regularise informal development in former LEFTEA areas so as to bring dignity to residents, protect public infrastructure and service delivery, and bring properties into the municipal rates base. This follows a legal opinion which states that the repeal of LEFTEA by SPLUMA from 2015 requires all property developments to prepare building plans and comply with the Building Standards Act. The City is currently exploring ways of regularising unauthorised buildings, improving services and promoting a safe and healthy living environment.

**The Contractor and Developer Academy
is a recognition that government alone cannot
deliver on its mandate of housing and economic
transformation. In fact, only through appropriate
support for emerging entrepreneurs and
businesses, can we realise a complete rethink of
the economy and ultimately the housing crisis.**



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