

RURAL HOUSING POLICY

1 PURPOSE

The purpose of this submission is to seek approval for the adoption of the rural subsidy mechanism (RSM) as an instrument to promote housing development. This policy must be read in conjunction with Part 11 of the Implementation Manual “the Manual”.

2. BACKGROUND

- 2.1 The Department of National Housing has recently approved the Guidelines for Rural Subsidies: Informal Rights as Part 11 of the Manual. This policy must be read together with these guidelines.
- 2.2 Rural development in this province will largely take place on tribal land. This land can be situated within the boundaries of local and metropolitan councils. Rural development does not therefore have to take place in areas outside the jurisdiction of regional and district councils.
- 2.3 There seems to exist an unfortunate perception that rural development could not take place unless the Rural Subsidy Mechanism (RSM) was approved by the national department. This is, however, not the case, because when the Institutional Subsidy was approved, it was identified and promoted as a suitable mechanism for rural development.
- 2.4 Rural housing subsidies will be made available to persons who enjoy “informal land rights” (functional security of tenure). Such rights and interests include customary land rights, beneficial occupation of land and rights of access, use or occupation in terms of custom, administrative practice or usage in a particular area or community where land vested in the South African Development Trust or the government of a self-governing territory or the former TBVC states. The Interim Protection of Informal Land Rights Act, 1996 (Act No. 31 of 1996) protects informal rights by prohibiting any deprivation of these rights without the holders consent, except where the deprivation occurs in terms of the Expropriation Act, 1975 (Act No. 63 of 1975) or any other law providing for expropriation of land or rights in land. However the Act does recognize the validity of deprivations of communally held land or rights in land where the deprivation occurs in accordance with the custom or usage of the community in question.

2.5 The RSM is a subsidy of last resort and will only be approved on good cause being

shown why this mechanism is preferred as opposed to any other subsidy mechanism such as the Project Linked Subsidy (PLS) or Institutional.

3. The development of policy on rural development is a dynamic process which will continuously be informed by practical experiences on the ground. Policy will therefore be enhanced over time to reflect these experiences. In the interim period the following guiding principles will apply-

3.1 **Development Rights**

Most of the rural land is tribal land which vests in the Ingonyama Trust or the Department of Land Affairs. A land availability agreement will have to be concluded with these authorities and will serve as sufficient proof of the existence of these rights. The land availability agreement should recognize the likelihood of giving security of tenure by way of long term leases.

3.2 **Tenure**

3.2.1 *Freehold Tenure*

Security of tenure is a fundamental principle upon which the provision of subsidies is based. Rural developments on land other than tribal land will be regulated by the Less Formal Township Establishment Act, 1991 (Act No. 113 of 1993), the Development Facilitation Act, 1995 (Act No.67 of 1995), the Natal Townplanning Ordinance, 27 of 1949, the KwaZulu Land Affairs Act, 1992 (Act No. 11 Of 1992) and other such legislation. In these developments freehold tenure must be passed to the beneficiaries.

3.2.2 *Common Law Long Term Leases*

3.2.2.1 In tribal land it will often be impossible to transfer erven to the beneficiaries. It is proposed that, where development is contemplated in tribal land and township establishment will not be advisable, the granting of long term common law leases will provide sufficient security of tenure to satisfy the requirements of the housing subsidy scheme. Long term leases are contemplated in both the Deeds Registries Act, 1937 (Act No. 1937 and the Land Survey Act, 1997 (Act No. 8 of 1997) and therefore comply with the requirement to provide security of tenure. In this regard the Institutional Subsidy Mechanism (ISM) will be suitable to give effect this option.

3.2.2.2 Long term leases are able to reflect the current tribal custom and management of land allocation by the tribal authority. These leases should be drafted in consultation with the Nkosi and his indunas and this will ensure that the role and status of the traditional authority of the area is not undermined. The terms and provisions of the lease must correctly reflect and encapsulate those customary rules

that have been in existence within the tribal authority.

- 3.2.2.3 Long term leases can also be constructed in a manner that will facilitate the upgrading of such rights to full ownership subject to the approval of Nkosi in conjunction with the tribal authority. It would therefore be prudent that such leases be prepared with reference to a general plan or settlement plan which has been approved in terms of the DFA or other planning legislation.

3.2.3 *Functional Security of Tenure*

- 3.2.3.1 Part 11 of the Implementation Manual (Guidelines) acknowledges the need to extend the access of housing subsidies to persons who enjoy functional security of tenure as opposed to legal security of tenure. At this point the registration of functional security of tenure at the Deeds Office is not envisaged. Research will have to be undertaken to explore the need for the establishment of Local Registration Offices. The RSM determines that the informal rights to land must be uncontested and this will predominately be the position where land vests in the state. Such local registers would aid beneficiaries in discharging the onus of proving their informal land rights.

- 3.2.3.2 Paragraph 9 of Part 11 of the manual sets down the minimum requirements for the identification of land. Whilst the PHDB and the Department is obliged to comply, the practical implementation thereof will unfold as projects are implemented.

3.3. **Planning Authority**

- 3.3.1 Rural development will have to comply with planning legislation in general, but in particular the KwaZulu-Natal Planning and Development Act, 1998 (Act 5 of 1998)(“ the PDA”) determines that no land may be subdivided without prior approval of a responsible authority. Pending the coming into operation of the PDA, rural projects shall obtain their planning authority (in order of preference) via either the DFA, the Provision of Land and Assistance Act,1993 (Act 126 of 1993), LEFTEA or the KwaZulu Land Affairs Act, 1992 (Act No.11 of 1992)

- 3.3.2 Although it is unlikely that projects developed in terms of the RSM will set out to achieve township establishment, it is submitted that the provisions of Chapter 1 of the DFA, the Environmental Conservation Act,1989 (Act No.73 of 1989) and the National Environmental Management Act, 1998 (Act No. 107 of 1998) must be adhered to for such development. Planning authority must be obtained where there is a clear indicator that formalised residential development will be achieved at a future point.

- 3.3.3 The DFA and the DPA set a hierarchy of plans in the context of intergrated development. Rural development should be guided by such plans. The creation of

these plans has been underway for some time but it is far from complete. Project applications must therefore reflect linkages to such plans, where relevant.

3.4 SUBSIDY MECHANISMS

3.4.1 Institutional subsidies

3.4.1.1 In projects where freehold tenure is intended, project linked or institutional subsidies should be the preferred options.

3.4.1.2 In situations where long term leases will be concluded, the institutional subsidy route is the most appropriate route to follow. This subsidy mechanism was specifically designed for circumstances where lease agreements will be concluded. In this regard the prescripts of Part 7 of the Implementation Manual will apply. A section 21 Company is however the most likely legal entity to be preferred as the vehicle to initiate development. An important advantage of the institutional subsidy mechanism is the potential to upgrade the developments tenure if the consent of the Nkosi and traditional authority are obtained at a later stage.

3.4.2 Rural Subsidy Mechanism

3.4.2.1 As stated in paragraph 2.4 above the RSM is based on functional security in respect of state land which must be uncontested. Given the fact that there are no reliable evidentiary sources to prove the issue of PTO's and that the regulations with regard to their issue were not properly implemented, proof of functional security of tenure could be difficult.

3.4.2.2 The implementation agent is required to deal with both the Department of Land Affairs (see paragraph 3.13 of Part 11 of the Manual) and the Department of Housing when utilising the RSM. In addition the implementation manual requires sales administration to be attended to prior to final approval of the project. This sales administration must include proof of informal rights claimed by the potential beneficiaries. Accordingly application forms in respect of the beneficiaries must be submitted with the outline proposal. These application forms will be checked against the national data base.

3.4.2.3 In terms of the RSM subsidies will be paid to a financial agent in a similar way to the Accounts Administrator in the People's Housing Process (PHP). The financial agent must be independent and it is therefore suggested that a municipality, accountant or bank would be the most appropriate. If the implementation agent is the municipality, it may then be possible for that entity to also be the financial agent but such arrangement will be subject to the discretion of the PHDB and paragraph 6.7 of Part 11 of the Manual. The financial agent must open a bank account with a

bank registered in terms of the Banks Act. It must be clear that the municipality has the necessary capacity.

3.4.2.4 The implementation of the payment system in terms of the RMS will be similar to that of the PHP.

3.4.2.5 The RMS may be most appropriate in circumstances where partial development only will occur with the intention of concluding the development at a later stage. This will be similar to the concept of developing a land release area.

3.5 Level of Services

There will be greater flexibility with regard to the type and level of services to be installed in the case of rural developments and much will depend on what already exists in the project area. The national minimum norms and standards are not applicable to the RMS, however, it still remains a subsidy for housing purposes and acceptable top-structures and services must be the product of rural development.

3.6 Municipal Involvement or Approval

According to the Habitat II document produced in January 1996, "local government is the most appropriate level of government to handle land management in favour of the local population". Accordingly, the active participation by the relevant forms of local government as determined by the Local Government Municipal Structures Act, 1998 (Act No.117 of 1998), is a pre-requisite for project approval.

3.7 Municipal Services

The upgrading of this programme for rural development will assist with the implementation of rural development.

3.8 Top Structure Design

Due to the nature of rural development the top structure design will have to be flexible to accommodate the rural style of housing. Given that in many instances substantial structures already exist, it will only be desired that materials for expansion by the beneficiary himself be provided. In this regard the policy with regard to the supply of building materials must be complied with.

3.9 Social Compact

The social compact is of extreme importance in rural development. It must reflect in clear and unambiguous terms, all the elements of the envisaged development. There must be no confusion with regard to the tenure arrangements that will be

applicable in the project.

3.10 Intergrated Rural Development

3.10.1. An intergrated approach to rural development makes it imperative that applications for the RSM must reflect some co-ordination with the following departments:

3.10.1.1. Department of Agriculture

Agricultural activity is fundamental to the achievement of sustainable rural development. The Department of Agriculture plays a pivitol role in providing several programmes designed to mentor and provide credit to rural farmers. The intergation of such programmes must be demonstrated in rural project applications.

3.10.1.2. Department of Traditional Affairs

The active participation of the Department of Traditional Affairs in rural development on tribal land is paramount. The project application must demonstrate acceptance by the said department insofar as tenure options are concerned.

3.10.1.3. The Provincial and National Departments of Transport

All project applications must clearly reflect that there has been close liason with the Provincial and National Department of Transport to ensure that there are linkages to their planning which will results in rural development being undertaken in a coordinated manner.

3.10.1.4. The Department of Environmental Affairs

All applications in terms of DFA require a scoping report in order to comply with the requirements of the Department of Environmental Affairs.

3.10.1.5. The Department of Land Affairs

In the event of a Communal Property Association being the entity that will undertake a development utilising the institutional subsidy mechanism, the role of the Department of Land Affairs will be essential.

3.10.1.6. The Department of Water Affairs

Rural communities have a fundamental need for adequate water supply. Consultation with this department must be demonstrated in project applications.

3.11 Beneficiary qualification criteria

3.11.1. A person shall qualify for a rural subsidy if-

3.11.1.1.he or she is lawfully resident in South Africa;

3.11.1.2.he or she is legally competent to contract;

3.11.1.3.the gross monthly income of his or her house-hold does not exceed R3500,00 (Three Thousand Five Hundred Rands);

3.11.1.4.neither that person nor his or her spouse has previously derived benefits from the Housing Subsidy Scheme(including the Capital Subsidy Scheme implemented by the Independent Development Trust) which conferred benefits of ownership, leasehold or deed of grant or the right to convert the title obtained to either ownership, leasehold or deed of grant;

3.11.1.5.the person must provide proof in the form required by paragraph 3.8 & 3.9 of Part 11 of the Manual to the satisfaction of the Board that-

3.11.1.6.he or she holds an informal right to land, of the nature set out in paragraph 3.6 of Part 11 of the Manual

3.12 Polygamous Unions

3.12.1 An applicant who is party to a polygamous union will qualify for a rural subsidy if-

3.12.1.1.he or she holds informal rights(of the nature recognized in paragraph 2.8.2 of Part 11 of the Manual) in respect of a particular allotment;

3.12.1.2.that allotment is physically occupied by a person to whom he or she is married by virtue of a polygamous union, and/or the children of such polygamous union.

4 Project Applications

4.1 An implementation agent who identifies a project for which rural subsidies will be sought, must prepare and submit to the PHDB an outline proposal which contains the following-

4.1.1 the names and identity numbers of the qualifying beneficiaries who will participate in the proposed project;

4.1.2 the support of the owner of the land, i.e proof of development rights such as land availability agreement and where applicable the approval of the Land Minister;

- 4.1.3 details of land identified in terms of paragraph 9 of Part 11 of the manual indicating the allotments in respect of which the project will be undertaken, and the nature of the informal rights held by the beneficiaries in respect of those allotments;
- 4.1.4 proof in the appropriate form of informal rights held by the prospective beneficiaries;
- 4.1.4 a copy of the written agreement concluded between the beneficiaries and the implementation agent, which must, to the satisfaction of the PHDB be fair and transparent;
- 4.1.5 details of the amount of the subsidy for which application is made, and the manner in which the amount of those subsidies will be applied;
- 4.1.6 if engineering services are to be provided, a copy of the agreement concluded with the service provider, which makes provision for the maintenance of those services as well as evidence of liaison with other organs of state e.g. Department of Water Affairs;
- 4.1.7 if the beneficiaries will make use of credit, details of the credit provider concerned, and the terms and conditions on which credit will be made available.
- 4.2 If the PHDB accepts the outline proposal, it shall advise the implementation agent and shall inform the implementation agent of further steps which it requires in order to plan the project in detail. The Implementation agent shall thereafter undertake the detailed planning and shall submit a detailed project proposal to the PHDB.

4.3 National Database

- 4.3.1 Before finally approving any particular project the PHDB will require the implementation agent to deliver to it an application form in respect of each beneficiary who will participate in the project.
- 4.3.2 The PHDB must satisfy itself that the beneficiaries in question are entitled to receive a subsidy, by causing searches of the National Database and of all deeds registries in the Republic of South Africa to be undertaken.
- 4.3.3 If any prospective beneficiary does not qualify, the PHDB shall-
 - 4.3.3.1 advise the implementation agent;
 - 4.3.3.2 require the implementation agent either to substitute that beneficiary with a person who qualifies, or to amend the project proposal accordingly.
- 4.3.2 In finally approving any particular project the PHDB shall finally approve the

participation of a specific list of beneficiaries in that project. The names of the approved beneficiaries must be captured on the National Database.

4.4 Detailed Proposal

4.4.1 Without limiting the discretion of the PHDB the detailed proposal shall contain:

4.4.1.1 the name, experience and contact details of the proposed financial agent;

4.4.1.2 a programme of the implementation of the proposed project;

4.4.1.3 a cash flow projection reflecting the anticipated dates on which the subsidies for which application is made will be paid to the financial agent;

4.4.1.4 the milestones at which payment of the subsidies for which application is made will be payable to persons who provide goods and/or services to the project;

4.4.1.5 the proof that must be delivered to the financial agent of any particular milestone before the financial agent will be entitled to pay the amount linked to that milestone to the provider of the goods and/or services concerned;

4.4.1.6 the times at which the implementation agent's fee will be payable and the proof to be delivered by the implementation agent to the financial agent or the fact that it has become entitled to those fees;

4.4.1.7 all and any other matters of detailed planning required by the PHDB

4.4.2 The PHDB must consider any detailed proposal and must as soon as may be reasonable in the circumstances, either approve that proposal (with or without amendments) or reject it. The PHDB must in writing advise the implementation agent of its decision as soon as may be reasonably possible after that decision has been made.

4.4.3 If the PHDB accepts the detailed proposal, the implementation agent and the PHDB must enter into an agreement for the implementation of the project.