FOR ATTENTION:  Mr C E M Ntsele

THE ALIGNMENT OF THE LAND RESTITUTION PROGRAMME AND THE HOUSING SUBSIDY SCHEME

The above-mentioned matter refers.

A Joint Position between the Department of Housing and the Department of Agriculture and Land Affairs regarding the alignment of the Land Restitution Programme (LRP) and the Housing Subsidy Scheme (HSS) was approved by Housing MINMEC on 5 March 2001. A copy of the Joint Position Policy document is hereto attached as Annexure A. The approval was granted subject to the concurrence of the Minister of Agriculture and Land Affairs and the required concurrence was granted on 20 February 2002. A meeting to discuss the implementation of the Joint Position Policy was held on 10 September 2002 between the Chief Land Claims Commissioner, the nine provincial Land Claims Commissioners and officials of this Department and it was confirmed that
the Implementation Strategy of the Joint Position is contained in the Joint Position Policy document.

The Joint Position on the alignment of the LRP and the HSS provides the following:

1. Beneficiaries of the LRP should not be disqualified from accessing the Housing Subsidy and the beneficiaries of the LRP should be awarded conditional access to the Housing Subsidy Scheme benefits to afford them the opportunity to house themselves. This principle should apply to both previous beneficiaries of the LRP and to persons who might benefit from the LRP in future on condition that they comply with the conditions set out in this document. The criterion of the first time property owners has been relaxed to accommodate people who have acquired property through the LRP.

2. In the event where the LRP beneficiaries have been awarded a state/private sector financed serviced site, they only qualify for the residual of the housing subsidy amount, after the deduction of the cost of providing engineering services to the stand from the housing subsidy amount.

3. The LRP beneficiaries who have been awarded unserviced stands will qualify for the full subsidy amount as determined by their income.

4. Where land belonging to the Provincial Housing Department’s (PHD) or their successors in title has been identified for restitution purposes and is not subject to any contractual commitment, such land be made available to beneficiaries of the LRP at the historical cost of the land plus any subsequent development expenditures that may have occurred. The process of the identification of land that belongs to a PHD or its successor in title will require close cooperation between the Land Claims Court Commissioners and the Provincial Housing Departments.

5. Where serviced stands, registered in the name of the PHD or their successors in title are awarded to a LRP beneficiary such stands shall be made available at the cost price of the stands. In these circumstances beneficiaries will only qualify for
the residual of the subsidy amount available after the deduction of the cost price of the stand.

6. LRP beneficiaries who are granted housing subsidies should be excluded from any further housing assistance provided by the Government. For this purpose all beneficiaries must be registered on the National Housing Subsidy Data Base.

7. The LRP claimants whose income exceeds the amount stipulated in the qualification criteria for housing subsidies and who do not comply with the qualifying criteria in all respects, do not qualify for such subsidies.

The Joint Position will not be applied in retrospect. This implies that, the beneficiaries who benefited from the LRP before the Joint Position came into effect on 20 February 2002, will not be covered by the precepts of this policy position.

It is noted that the alignment of the LRP and HSS programmes should be in line with the current budget allocation and no additional funds, over and above what has been allocated for the current financial year, will be made available for the implementation of the Joint Position. Furthermore, it was agreed that the LRP should take cognisance of approved, finalized township establishment and development planning processes undertaken at provincial and municipal levels when land restitution awards are considered. Likewise, housing subsidies will also be based on the IDPs.

Regards

DIRECTOR-GENERAL
DATE: 9/7/03
DEPARTMENT OF HOUSING


1. Introduction

The Land Restitution Programme (LRP) of the Government as initiated and managed by the Department of Land Affairs through its established institutional framework has gained momentum and a number of people have been assisted to date. In recent cases uprooted communities were granted access to the land they previously occupied which is situated within existing developed townships. A case in point is the Fairview and Salisbury Park areas in the Port Elizabeth region in the Eastern Cape where people were granted restitution and are returning to the land they occupied before being forcefully removed under the previous dispensation legislation.

On the other hand, the housing delivery programme of the Government which is implemented through the National Housing Subsidy Scheme has, since its inception in 1994, progressively gained momentum and has resulted in the provision of housing to the poorest of the poor of our community at scale.

The awarding of restitution claims however necessitated an investigation into its impact on the housing delivery programme and the possible alignment of the LRP and the Housing Subsidy Scheme. The most prominent aspects of concern that were identified are the following:

How does the LRP influence the housing delivery programme?

Does the subsidy scheme require augmentation regarding the qualification criteria for participation in the benefits of the scheme?

Should a clear link be established between the two programmes to avoid a possible situation of double subsidisation; and

Are there any requirements/amendments to the LRP which the continued implementation of the Housing Subsidy Scheme necessitates?

In view of the Government’s approach towards integrated development, the Department of Housing initiated discussions with the Department of Land Affairs and its various role players in an effort to develop a joint position regarding the two programmes.

Housing MINMEC on 5 March 2001, approved the Joint Position subject to the concurrence of the Minister of Agriculture and Land Affairs. The Minister’s written concurrence was granted on 20 February 2002.
2. Discussion

To enable a clear and correct conceptualisation of the relationship between the LRP and the Housing Subsidy Scheme, it is necessary to identify and to understand the two programmes and their respective objectives.

2.1 The Land Restitution Programme

The LRP has been introduced in terms of, and is governed by the provisions of the Restitution of Land Rights Act, 1994, (Act No. 22 of 1994) as amended.

The LRP programme forms part of a comprehensive land reform strategy comprising the LRP, the Land Redistribution Programme, the Land Tenure Reform Programme and the Land Development Programme.

The prime objective of the LRP is that it serves as the Government's instrument to redress injustices committed under the pre 1994 election era. The injustices in summary refer to the dispossession of people of the land they occupied and the resettlement of such persons at alternative locations. Under the previous legislative dispensation, many of our people were not allowed to own property and the now abolished previous legislation was utilised to dispossess and forcefully move thousands of people to alternative locations. The Land Restitution instrument thus aims to restore affected persons into their previous situations or to compensate them for their losses so occurred. To achieve this aim, various options have been developed in terms of which beneficiaries of the programme could be awarded assistance.

2.1.1 The LRP provides for the following assistance options:

a) The land originally occupied by the affected people is returned to them;

b) Where the first option is not feasible, the affected people are offered alternative land;

c) As alternative to the above options financial compensation could be awarded; and

d) In certain cases people could be awarded equitable redress, which could comprise a combination of the above options.

2.1.2 Other grants

The Department of Land Affairs has also introduced grants and services in support of the Land Reform Programme. The grants comprise the following:

- Beneficiaries of the LRP could be awarded additional financial assistance in the form of a R 3 000.00 Restitution Discretionary Grant where the original land is to be restored and/or where compensatory land is to be

2
The urgency of the conclusion of the LRP cannot be overemphasized.
2.2 The Housing Subsidy Scheme

The Housing Subsidy Scheme is designed to assist persons who cannot independently provide for their own housing needs. Housing development within the context of the national housing policy entails the establishment and maintenance of habitable, stable and sustainable public and private residential environments that ensure viable households and communities in areas, allowing convenient access to economic opportunities and to health, educational and social amenities in which all citizens and permanent residents of the Republic will, on a progressive basis, have access to:

a) permanent residential structures with secure tenure, ensuring internal and external privacy and providing adequate protection against the elements; and

b) potable water, adequate sanitary facilities and domestic energy supply.

The Housing Subsidy Scheme was introduced in 1994 and is governed by the directives of the Scheme as introduced by the Minister of Housing. The Scheme comprises various instruments designed to address specific housing needs. Access to the benefits of the Scheme is controlled by a set of qualification criteria.

The Subsidy Scheme is furthermore governed by the National Norms and Standards in respect of Permanent Residential Structures. These Norms and Standards provide prescripts in respect of the application of the housing subsidy funding for basic services as well as the standards for the houses to be constructed. The following is provided:

2.2.1 Municipal services

The internal reticulation services that may be subsidised with the housing subsidy are limited to water, sanitation, roads, stormwater and street lighting, subject to a funding limit of a maximum amount of R9 400.00 for the provision of the services and the acquisition of land. To the extent that a basic level of services is regarded justified by the MEC for Housing of the Province concerned, to spend the maximum amount on the permanent residential structure, the level of service must at least comply with the level indicated in the following table.

<table>
<thead>
<tr>
<th>Type of Service</th>
<th>Minimum Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>Water</td>
<td>Single standpipe per erf (metered)</td>
</tr>
<tr>
<td>Sanitation</td>
<td>VIP per erf</td>
</tr>
<tr>
<td>Roads</td>
<td>Access to each erf with graded or gravel paved road;</td>
</tr>
<tr>
<td>Stormwater:</td>
<td>Lined open channels</td>
</tr>
</tbody>
</table>


| Street lighting | Highmast security lighting for residential purposes where this is feasible and practicable, on condition that such street lighting is not funded from the CMIP initiative or funding available from other resources. |

2.2.2 Norms and standards in respect of permanent residential structures

The minimum size of permanent residential structures to be provided by means of the balance of the housing subsidy after the provision for basic services, as contemplated above, is 30 square metres, (gross floor area) on condition that the Member of the Executive Council responsible for housing, may approve:

the increase of the minimum size where it is feasible to cap the amount in respect of services at a lower level than R 9 400,00 or where construction costs in areas make it practicable; or

the reduction of the minimum size of top structures to 27 square metres in the instance where an additional allowance is deemed necessary in respect of excessive slopes and sandy soil. The MEC may further reduce the minimum size of the permanent residential structure to 24 square metres in instances where the additional allowance in respect of medium dolomite has been approved.

A set of engineering norms and specifications regarding permanent residential structures forms part of the norms and standards regarding permanent residential structures to ensure quality.

2.2.3 The main criteria for participation in the Housing Subsidy Scheme are as follows:

Married or Financial Dependents: he or she is married (in terms of the Civil Law or in terms of a Customary Union) or habitually cohabits with any other person, or he or she has proven financial dependents.

Resident: he or she is lawfully resident in South Africa (i.e. citizen of the Republic of South Africa or in possession of a permanent resident permit).

Competent to contract: he or she is legally competent to contract (i.e. over 21 years of age or married or divorced and of sound mind).

Monthly household income: the gross monthly household income of his or her household does not exceed R3 500.00.

Not yet benefited from government funding: neither that person nor his or her spouse has previously derived benefits from the housing subsidy scheme, or any other state funded or assisted housing subsidy scheme 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, with the exception of the consolidation subsidy, and relocation.
grant. A person who received only a vacant serviced site under the previous dispensation on the basis of ownership, leasehold or deed of grant, however, qualifies for a consolidation subsidy. This criterion is also not applicable to persons who qualify for relocation assistance or disabled persons.

**First time property owner:** he or she is acquiring property for the first time, except in the case of a consolidation subsidy, relocation assistance and/or in the case where he or she has acquired a residential property for the first time without government assistance that does not comply with the National Norms and Standards in respect of Permanent Residential Structures. The property so acquired must be in possession and registered in the name of the potential beneficiary with the Registrar of Deeds. This criterion does not apply to disabled persons.

The Housing delivery process is by and large directed by the formalised township establishment process. This process is mainly undertaken in terms of the Development Facilitation Act mechanisms of Land Development Objectives and Integrated Development Planning to ensure integrated residential planning and development.

### 2.3 Conclusion regarding the two programmes

#### 2.3.1 It is obvious from the foregoing that the two programmes have clearly defined and diversified objectives and aims. The main difference is the fact that the Housing Subsidy Scheme focusses on assisting qualifying beneficiaries in their efforts to house themselves and that the LRP focusses on redressing injustices of the past.

However it is also clear that there is common ground that needs to be addressed to ensure synergy between the two Government programmes. One of the main aspects of concern is the availability and the allocation of state land or land owned by the various Provincial Housing Development Boards, or their successor in title for restitution/redistribution award purposes. The other issue of concern relates to the overlapping objectives of the Settlement and Planning grant and the Housing Subsidy Scheme and the difficulty envisaged for the required alignment of the funding allocations of the two programmes to ensure coordinated planning and development. These issues will be deliberated in the following paragraphs.

#### 2.3.2 The awarding of assistance in terms of the LRP should in no way disqualify a subsidy beneficiary from accessing the Housing Subsidy Scheme and that the beneficiaries of the LRP should be awarded conditional access to the Housing Subsidy Scheme benefits to afford them the opportunity to house themselves. This principle should apply to both previous beneficiaries of the LRP and to persons who might benefit from the LRP in future on condition that they comply with the conditions set out in this document.
To enable the realisation of this recommendation the Housing Subsidy Scheme will have to be amended to accommodate the specific circumstances of the LRP beneficiaries.

2.3.3 With certain exceptions, beneficiaries of the LRP should not be penalised in respect of the quantum of the subsidy amount allocated to them by the amount of the LRP awards and/or the Discretionary and Settlement and Planning grants.

2.4 Discussion of the grants available under the LRP and the Housing Subsidy Scheme

- **Restitution awards**

  As indicated earlier in the document, restitution awards are focussed on the redressing of the injustices created in the past and that it should be delinked from other State assistance schemes, such as the Housing Subsidy Scheme. The restitution amount awarded to a LRP beneficiary should thus not influence the quantum of the subsidy amount available to such a person.

- **Restitution Discretionary grants**

  In regard to the additional Restitution Discretionary Grants available under the LRP, it should be kept in mind that it is paid in cash to beneficiaries and that the application thereof is totally uncontrolled. The allocation of these grants will be dictated by the circumstances of each individual case and is only considered where the need for such grants can be motivated. Although the grants could also be applied to purchase building material, it should not be considered as housing assistance funding provided by the State. It is proposed that this grant should not be set off against the Housing Subsidy amount.

- **Settlement and Planning grants**

  The Settlement and Planning grant on the other hand will only be allocated where there is an urgent need to appoint consultants to undertake planning and where basic services are required. Where awards under the LRP are linked to housing development initiatives that involve funding from other resources such as the Housing Subsidy Scheme, which will finance the planning and service provision dimensions, such grants will clearly not be considered. The said grant of R1 440,00 is furthermore insufficient to enable the financing of the total cost of the provision of basic services but it is recommended that where this grant funding is in deed applied to provide services that it should be set off against the subsidy amounts applied for in future.

- **Land awards under the LRP**
The unconditional access to housing subsidies by beneficiaries of the LRP could also not be recommended as this will result in the unfair and inequitable application of Housing Subsidy Funding.

Serviced Stands

Where beneficiaries of the LRP are awarded either state financed serviced sites or sites serviced with private sector funding as the case may be, they should only qualify for the residual of the Housing Subsidy amount. The residual amount referred to being the balance of the subsidy amount available after the deduction of the stand price. The services to the sites have already been provided and the housing subsidy should only focus on the provision of houses. Under these circumstances the Department of Land Affairs will be required to either acquire the stands in question or to award financial assistance to the value of the land to the beneficiary to enable him/her to acquire the property. The allocation of the stands and/or the financial award will thus constitute the LRP award and such a beneficiary will have to be assisted to construct his/her house by accessing the residual of the Housing Subsidy amount available to him/her. In cases where privately own serviced stands are allocated in terms of the LRP and the price of such a stand is in access of R9 400,00, the subsidy amount available for the construction of the house will amount to R10 900,00. The abovementioned amounts are based on the current subsidy amount of R20 300,00. The subsidy amount of R9 400,00 is for the provision of the services and the acquisition of land (including township establishment) and the residual amount of the subsidy i.e R10,900,00 is utilised for the construction of the top structure. These figures will vary from year to year depending on the increased subsidy amount;

Unserviced land

Beneficiaries of the LRP who will be awarded unserviced vacant land should qualify for the full subsidy amounts according to their income.

2.5 Discussion on the enhancement/amendment of the Housing subsidy scheme

2.5.1 The Housing Subsidy Scheme qualification criteria should be relaxed in respect of the criterion that applicants of the housing subsidy may not have owned residential property previously and/or may not be the existing owner of a residential property. This will enable persons who were awarded restitution since the inception of the LRP to apply for housing subsidies to improve their housing situation. Access to the Housing Subsidy Scheme benefits in these circumstances must comply to the requirement that PHDB’s must ensure that the subsidy funding is utilise for the acquisition of housing goods and services. The implication of this recommendation is that the beneficiaries of the LRP who wish to apply for housing subsidies will have to comply with the following qualification
criteria:

☐ The gross monthly income of his or her household does not exceed R3 500.00;

☐ He or she is married (in terms of Civil Law or in terms of customary union) or habitually cohabits with any other person or he or she has proven financial dependants;

☐ He/she is lawfully a resident in South Africa;

☐ He/she is legally competent to contract;

☐ Neither that person nor his/her spouse has previously derived benefits from the Housing Subsidy Scheme or any other State funded or State assisted housing subsidy schemes which conferred benefits of ownership, leasehold or deed of grant rights or a right to convert the title obtained to either ownership, leasehold or deed of grant; and

☐ he or she is acquiring property for the first time, except in the case of a consolidation subsidy, relocation assistance, and/or in the case where the applicant has acquired a residential property for the first time without government assistance that does not comply with the National Norms and Standards in respect of Permanent Residential Structures and/or in the case where the property currently owned, comprise a vacant stand that was obtained as part of the benefits derived from the Land Restitution Programme. The property so acquired must be in possession and registered in the name of the potential beneficiary with the Registrar of Deeds. This criterion does not apply to disabled persons.

2.5.3 Beneficiaries of the LRP who are currently owners of fixed residential properties should not qualify for a housing subsidy. The main objective of the Housing Subsidy is to assist the poorest of the poor to access housing opportunities. People whom already own fixed residential properties (other than properties awarded as restitution or acquired with financial assistance, made available under the LRP) are thus excluded from the target group of the Housing Subsidy Scheme. This will for instance apply to a successful beneficiary of the LRP who was dispossessed of his/her property and who was given ownership of a State financed residential property in the form of a complete house. Such a person is judged to have received State housing assistance. It will also apply to a person who, from own resources, obtained ownership of a privately financed fixed residential property. Should such persons wish to resettle to the properties that are the subject of the successful restitution awards, they are in a position to dispose of their current properties and utilise the profit so derived for resettlement and house building purposes. This is in line with the current directives of the Housing Subsidy Scheme namely that existing and previous owners of fixed residential property (excluding those that acquired residential
properties for the first time without government assistance that does not comply with the National Norms and Standards in respect of Permanent Residential Structures, as well as persons who previously accessed State housing assistance, are disqualified from receiving a Housing Subsidy. It should be noted that this proposal should in no way influence the right of a LRP beneficiary to be awarded State owned land or State financed serviced sites under the LRP.

There are however cases where the claimant is awarded restitution but decides to transfer the benefit so obtained to one or more of his family members. Under these circumstances applications for Housing Subsidies will be entertained on condition that the applicants qualify for Housing Subsidies in terms of the normal standard qualification criteria.

2.6 Provincial Housing Development Board (PHDB) Land

Where land, registered in the name of the (PHDB) or its successor in title, is the subject of restitution claims or the land is required for restitution awards as an alternative to the land which is the subject of the claim, and the land in question is in no way affected by contractual commitments regarding housing development initiatives or otherwise, such land should be made available to the beneficiaries of the LRP at the historical cost of the land plus any subsequent expenses that might have realised due to development initiatives. The Housing Act currently provides that where it is not possible to dispose of land at market value, the land must be disposed off in the best interest of the state at a price approved by the MEC for Housing. It is the considered opinion that making the land available at the historic cost thereof, to accommodate LRP beneficiaries under these circumstances, will be in the best interest of the State.

Where the land in question comprise individual vacant serviced stands, such stands should be made available at the cost price thereof. In these circumstances beneficiaries will only qualify for the residual of the subsidy amount available after the deduction of the cost price of the stand. In cases where the cost price of the stand is above R9 400,00 the subsidy amount available for the construction of a house will amount to R10 900,00, equal to the current Consolidation Subsidy amount.

Where the land in question comprise vacant land within a township that have been provided with connector services but the individual sites still require internal reticulation services, such land should also be made available at the cost price thereof and beneficiaries should qualify for the full subsidy amount in terms of their respective income levels. These sites will have to be provided with internal reticulation services and although the internal network, required for connection purposes have been provided, this initiative will require substantial financial input.

The LRP should be awarded preference in the allocation of State land. This will require the timeous identification of State land for restitution purposes and the
reservation of such land for this purpose. The process of the identification of land that belongs to a PHDB or its successor in title will require close cooperation between the Land Claims Court Commissioners and the provincial housing departments.

2.6.2 Land made available by the Department of Agriculture and Land Affairs

The possibility exist that land for restitution purposes may be made available by the Department of Agriculture and Land Affairs. The impact of allocating State land to beneficiaries of the LRP that will apply for housing subsidies has not been investigated to date. The Department of Housing is of the opinion that this issue should be investigated as a matter of urgency.

2.7 Alignment of the two Programmes

The need for the alignment of the two programmes to ensure coordinated planning and development processes was identified. It is for instance of the utmost importance that the LRP should take cognisance of approved or finalised township establishment and development planning processes undertaken at provincial and municipal levels when land for restitution awards is considered. This will avoid the situation that people are awarded access to land where no infrastructure is available, and/or are not planned to be provided in the near future. It is however recognised that the said objectives may not be attainable under all circumstances. Various reasons for this exist for instance beneficiaries of the LRP might be resettled to their land of origin which is not subject to coordinated development planning.

2.8 Other land reform programmes

It is acknowledged that the other land reform programmes currently being implemented by the Government also impact on the Housing Subsidy Scheme and may require a similar alignment programme. These programmes include the Truth and Reconciliation Commission initiative that in certain cases recommends the allocation of land to victims and the Land Redistribution Programme of the Department of Land Affairs in terms of which land for settlement purposes is allocated to people. In this regard it is recommended that the Department of Housing be mandated to investigate the alignment of the Housing Subsidy Scheme with the said programmes and to formulate proposals on the matter.

3. RECOMMENDATIONS

1. The beneficiaries of the LRP should not be disqualified from accessing the Housing Subsidy should they comply with the relaxed qualification criteria. Initially, such beneficiaries have been excluded on the basis of their restitution right. Such relaxation may only take place on condition that funds allocated from the grant funding available from the Department of Agriculture and Land Affairs that are used to provide engineering services or to undertake detailed planning
and/or related housing development initiatives, be set off against the subsidy amount applied for.

2. The criterion of the First time property owners was waived to accommodate people who have acquired property through the LRP.

3. In the event where the LRP beneficiaries have been awarded state/private sector financed serviced site they only qualify for the residual of the Housing Subsidy amount, after the deduction of the cost of providing engineering services to the stand from the housing subsidy amount. In cases where the engineering services cost and/or stand price is higher than R9 400,00, the subsidy amount that will be available will amount to R10 900,00 for the provision of a house;

4. The LRP beneficiaries who have been awarded unserviced stands, qualify for the full subsidy amount as determined by their income (unserviced land refers to land that is not serviced as contemplated by the National Norms and Standards in respect of Permanent Residential Structures).

5. Where land belonging to the Provincial Housing Department's (PHD) or their successors in title has been identified for restitution purposes and is not subject to any contractual commitment, such land be available to beneficiaries of the LRP at the historical cost of the land plus any subsequent development expenditures that may have occurred. The process of the identification of land that belongs to a PHD or its successor in title will require close cooperation between the Land Claims Court Commissioners and the provincial housing departments.

6. Where serviced stands, registered in the name of the PHD or their successors in title are awarded to a LRP beneficiary such stands be made available at the cost price of the stands;

7. LRP beneficiaries who are granted housing subsidies should be excluded from any further housing assistance provided by the Government. For this purpose all beneficiaries must be registered on the National Housing Subsidy Data Base.

8. The LRP claimants whose income exceeds the amount stipulated in the qualification criteria for housing subsidies and who do not comply with the qualifying criteria in all respects, do not qualify for such subsidies. The intention of the Joint Position is not to benefit people who have already benefited from the state subsidies.

The Joint Position will not be applied in retrospect. This implies that the beneficiaries who benefited from the LRP before the Joint Position came into effect on 20 February 2002 will not be covered by the precepts of this Position. The alignment of the two Programmes should be in line with the current budget allocation. No additional funds over and above to what has been allocated to provinces for the current financial year, will be made available for the implementation of the Joint Position. The LRP should take cognizance of
approved, finalized township establishment and development planning processes undertaken at provincial and municipal levels when land restitution awards are considered. Likewise, housing subsidies will also be based on the IDPs.