BRIDGING DIVIDES
BUILDING AN INCLUSIONARY HOUSING POLICY IN CAPE TOWN
The National Land Value Capture Programme was launched in South Africa in March 2020 and is a tripartite partnership between the Development Action Group (DAG), the Lincoln Institute of Land Policy, and the National Treasury’s Cities Support Programme (CSP). The three-year programme aims to strengthen the capability of metropolitan governments to efficiently and effectively implement innovative Land Value Capture tools and strategies. Simultaneously, the programme seeks to build capacity in built environment practitioners and civic organisations to influence institutional, regulatory, and other procedural changes required to implement these Land Value Capture tools and strategies. The programme is currently at the inception phase which comprises a series of planned activities aimed at defining project scope, key thematic areas, and a detailed implementation plan for the next three years.

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“Cities are a collective creation therefore the benefits and costs must be shared equally by all”

~ Edesio Fernandes
CHAPTER 1

SHARING THE WEALTH

An occasional creak of a chair punctuated the silence in the wood-panelled, wall-to-wall carpeted space that is the Goodwood Council Chambers. Breathing the anodyne air of bureaucracy, the dozen or so people assembled — property developers, planners, and housing activists — waited to hear if the Planning Tribunal would greenlight a disputed multi-million-rand development in the heart of Cape Town.

While not quite the stuff of prime time courtroom drama, the Municipal Planning Tribunal (MPT) in Cape Town has been pulled into some very high-stakes battles in its short existence. A body comprised of experienced spatial planning professionals, the MPT typically weighs in on land-use management issues requiring an extra dose of technical savvy: title deed restriction removals, impact assessment reviews (e.g., environmental, heritage, or transport), and development application objections. While most of the latter are filed on the basis of things like lost views or traffic concerns, in September 2017, Cape Town’s MPT met to hear something new: opposition to a major development on the basis of the principle of spatial justice, as outlined in the national Spatial Planning and Land Use Management (SPLUMA) Act 16 of 2013.

A gamechanger for South African city planners, SPLUMA is the legislation that cedes all planning and land-use management authority to municipalities. It also compels those municipalities to apply principles of spatial justice in their plans and decision making. In other words, SPLUMA makes explicit the connection between planning processes and spatial transformation, and places the responsibility to realize this connection at the feet of local government.

“SPLUMA was the legal framework [for] a new order in terms of planning practice. Its principles and provisions created an expectation that any new package of municipal plans should seriously start to address issues around equality and advancing spatial transformation,” notes Willard Matiashe, a researcher at the Development Action Group (DAG), a Cape Town-based urban land rights NGO.

Enacted in July 2015, SPLUMA is also the legislation that conjured the MPTs into being, specifying that SPLUMA’s “five principles” of spatial justice guide tribunal decisions. Consolidating and giving legal heft to an array of existing tools and policies, SPLUMA’s arrival is seen by many as an inflection point in the larger story of efforts to redress the legacy of spatial apartheid in South Africa.

But how cities can transform these principles into implementable programs and practices — not to mention how to finance such work — and one of the ways in which the City of Cape Town is trying to do just that, is the subject of this story.

LAND VALUE CAPTURE

By the time SPLUMA was unveiled, the right angles of cranes had seemingly become a permanent fixture foregrounding Table Mountain’s iconic skyline. Urban renewal efforts initiated over a decade earlier were bearing fruit. Throughout
Cognitive function, Land Value Capture (or Value Return) is in fact just what it sounds like: a way to recoup value related to public improvements to land. Operating from the premise that public actions can increase the value of nearby land and real estate, LVC is a policy approach that says that such publicly generated windfall should be shared with local governments to help pay for things in the public interest (e.g., transit systems, parks, affordable housing, etc.). While the increased values (or “increments” as they are often called) can be captured by familiar mechanisms such as taxes, they can also be garnered through less obvious means, such as infrastructure or other developments that respond to public-sector needs (see Box 1).

“Land Value Capture is based on a simple core premise: public action should generate public benefit,” says Enrique Silva, Director of International Initiatives at the Lincoln Institute of Land Policy (LILP), an esteemed US-based foundation that seeks to improve quality of life through the effective use, taxation, and stewardship of land.

Around the world, fiscally constrained urban policymakers have made creative and innovative use of LVC to help fund public-sector development needs. Yet the use of LVC’s most efficient and innovative mechanisms in South Africa, while potentially tremendous, remains largely untapped.

In the Mother City, even the grittiest industrial neighbourhoods were sprouting new developments from art galleries to luxurious multi-storey apartment blocks. But for every shiny new establishment, dozens of people no longer able to afford what had been the city’s few remaining affordable enclaves were being pushed out.

In spite of the significant strides made since South Africa’s 1994 transition to democracy, backlogs in social service delivery—in particular, a housing backlog that grew from 1.5 million in 1994 to 2.1 million in 2010—remained all too evident, one and even two decades on. At the same time, the residential property market was booming. With house prices increasing by an average of 20% a year from 2000-2005, it was clear to anyone paying attention that land, and particularly the issue of where housing was being built, remained stubbornly at the heart of the country’s growing inequality, urbanization of poverty, and burgeoning informal settlements.

But as much as land posed a problem, it was also viewed by some as fundamental to possible solutions. With its long history working to ensure widespread access to and equitable use of urban land, the Development Action Group (DAG) was firmly in this latter camp, and had begun exploring the then-nascent concept of Land Value Capture (LVC).

Despite being one of those jargon-y terms whose very utterance can seemingly paralyze cognitive function, Land Value Capture (or Value Return) is in fact just what it sounds like: a way to recoup value related to public improvements to land. Operating from the premise that public actions can increase the value of nearby land and real estate, LVC is a policy approach that says that such publicly generated windfall should be shared with local governments to help pay for things in the public interest (e.g., transit systems, parks, affordable housing, etc.). While the increased values (or “increments” as they are often called) can be captured by familiar mechanisms such as taxes, they can also be garnered through less obvious means, such as infrastructure or other developments that respond to public needs (see Box 1).

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**WHAT IS LAND VALUE CAPTURE?**

Land Value Capture (or Value Return) provides fiscally constrained urban policymakers a way to recoup and share with the broader public the increased values that are related to public improvements to land (e.g., changes in land-use regulations, installation of infrastructure).

Operating from the premise that public actions can increase the value of nearby land and real estate, LVC is a policy approach that says that such publicly generated windfall should be shared with local governments to help pay for things in the public interest (e.g., transit systems, parks, affordable housing, etc.). The increased values (or “increments” as they are often called) can be captured by familiar mechanisms such as taxes. But less obvious means, such as infrastructure or other developments that respond to public-sector needs, are another more innovative way of capturing these values.

**BOX 1**

Below:
Different situations, different LVC options

<table>
<thead>
<tr>
<th>Land Use</th>
<th>Existing</th>
<th>New</th>
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<tr>
<td>Property Tax</td>
<td>Sale of Development Rights</td>
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<tr>
<td>Betterment Contribution</td>
<td>Land Readjustment</td>
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“South Africa ought to embrace innovative LVC mechanisms, which have potential to address spatial inequity of our cities by using land-value windfalls to co-finance the construction of affordable housing in well-located areas,” says DAG’s Matiashe, who explains that the limited supply of well-located affordable housing is too-often blamed on resource scarcity.

One of the first NGOs to talk about LVC in South Africa, in 2006 DAG started promoting the concept among policymakers through lobbying, trainings, and sharing global examples (see Box 5). In 2010, after hosting the “Reimagining the City Towards a New Urban Order” conference with LILP, the organization found itself repositioning its own efforts away from individual ad-hoc projects. “We began re-imagining the city in a way that required us to approach our work as a whole plethora of instruments and tools that needed to be packaged together: LVC, medium-density rental housing, municipality-wide planning, informal settlement upgrading. We wanted to be so intentional and focused around land at the centre of it all. And it was obvious that LVC in particular could leverage the value of land,” recalls Helen Rourke, programme manager at DAG.

Meanwhile, the need for sensible policies and feasible programs that could truly drive transformation stood in stark contrast to the still-massive national housing backlog, growth of informal settlements, and inadequacy of basic services, among other land-related issues. SPLUMA’s passage had increased pressure on municipal officials to rethink planning frameworks, and more than a few were exploring integrated strategies like Transport Oriented Development (TOD). But accessing the financing and the land that were both central to such plans remained challenges exacerbated by the property market boom, which was making well-located land even more costly and scarce.

The time had come for South African cities to stop talking about and start applying more innovative LVC mechanisms in response to growing urban pressures. Given the urgency around housing, something called Inclusionary Housing topped that list.

**INCLUSIONARY HOUSING**

Employing urban land-use regulations that incentivize (or require) developers to include affordable units, Inclusionary Housing (IH) refers to the resulting affordable units in new developments that would otherwise solely include market-rate housing. Suitable to robust property markets with increased demand for development rights (e.g., greater densities, re-zoning, etc.), this form of IH is based on LVC, in that it leverages a portion of the increased land value associated with public regulatory changes and/or additional development rights to finance the resultant housing. Also a tool for integration, the land-use regulations behind IH make certain types of development conditional on the inclusion of affordable units in areas where the market would otherwise preclude them. By mitigating against the spatial inequality that results from purely market-based planning practice, IH can, over time, also equalize out-of-control land markets (see Box 3). In light of all of this, the relative absence of IH in South Africa—in the form of either policies or actual constructions—appears almost perverse.

In fact, IH has been on the table as a way to address spatial segregation and the need for affordable housing since 2005. Prior to SPLUMA, both the National Department of Housing (now Human Settlements) and the Western Cape provincial government attempted but ultimately...
WHAT IS INCLUSIONARY HOUSING?

Employing urban land-use regulations that incentivize (or require) developers to include affordable units, Inclusionary Housing (IH) refers to the resulting affordable units in new developments that would otherwise solely include market-rate housing. Suited to robust property markets with increased demand for development rights (e.g., greater densities, re-zoning, etc.), IH is based on Land Value Capture, in that it leverages a portion of the increased land value associated with public regulatory changes and/or additional development rights to finance the resultant housing.

Perhaps most significantly, IH can act as a tool for integration. The outcome of land-use regulations that make certain types of development conditional on the inclusion of affordable units in areas where the market would otherwise preclude them, IH has the ability in the long term to ensure that housing for people at the lower end of the market exists, and that diversity is dispersed throughout a geography or jurisdiction.

HOW IH CAN AFFECT LAND VALUES

By mitigating against the spatial inequality that results from purely market-based planning practice, IH can, over time, also equalize out-of-control land markets. In cities with clear IH policies, property developers and land owners alike are aware that development projects meeting policy criteria must factor in costs of IH. As such, a clear IH policy gives property developers a negotiation tool when purchasing land, and can serve to reduce land prices. As a result, IH can help to moderate or equalize property markets that have been thrown out of balance by activities like land speculation and/or international buying. By contrast, the absence of IH policy certainty and clear guidelines stymies correct estimations of total property development project costs at the time of land acquisition.
SHARING THE WEALTH

Mandatory: Where all new developments meeting certain criteria (e.g., over a certain size, or within certain areas) must include IH.

Voluntary: Where only new residential (and possibly commercial) developments applying for additional rights allocate a portion of the area or value of the additional rights to IH.

- Applicable in a context lacking policy certainty and/or basic minimum requirements to determine IH contributions. This option is useful in places where legal concerns complicate the imposition of IH as a condition of any development approval, and assists developers to deliver IH in cases where its inclusion will improve the chances of planning application approval.

Incentive Based: Where IH provision within a specified overlay zone (areas of the city identified to have strong urban land markets) will be incentivized.

- IH policies are effective in strong residential land markets, where residential developments are likely to elicit more value. Hence Overlay Zones align with a city’s stronger land markets.

- This option can pro-actively up-zone development rights to a set threshold above the existing zoning scheme. Thus if a developer uses the additional rights, then a proportion is reserved for affordable housing.

- Other incentives that can be considered in addition to density/additional development rights include reduced parking requirements and fast tracking of approval processes.

Negotiated/Formula: Each application is considered on a case-by-case basis, with a calculation for IH made per development

- Contributions based on a standard formula ("calculator"), determined from residual land value & development costs

SUMMARIZING IH APPROACHES & POLICY ELEMENTS

Although IH has been on the table as a way to address spatial segregation and the need for affordable housing in South Africa since 2005, national or provincial policies have yet to emerge. This is due in part to the fact that IH is an intricate tool with myriad implementation possibilities that must take local contexts into account. In 2015 SPLUMA made municipalities responsible for spatial planning, and thus IH policy. Following are some aspects of the different implementation approaches and policy elements to be considered.

Policy elements

| Mode of provision: | Refers to how the inclusionary contribution will be made (see Box 6). |
| Affordability definitions: | Refers to how affordability is defined (see Box 7). |
| Affordability mechanism: | Refers to how recipients will benefit. All options have implications related to keeping the units affordable in perpetuity. That is: |
| Ownership: | Use title deed restrictions? How are levy costs handled? |
| Rental: | Who manages? The City? an Agency? Social Housing Institute? And how are levy costs handled? |
| Whether opting for rental or sale, maintenance and operational expenditures must be considered, and the institutional mechanisms also established. |
levels in well-located spaces — and it gives teeth to that. It gives us a way of actually doing that, not just speaking about it,” says Rubin of the significance of having a policy, and what IH could potentially achieve in contrast to other existing affordable housing options.

**MOUNTING PRESSURE**

While Johannesburg was first out of the gate with a policy for IH, the City of Cape Town (CoCT) has hardly been lagging. Engaged in efforts to harness LVC since 2008, the CoCT saw LVC, and IH in particular, as a way to “anchor planning and infrastructure investments in the larger debate about undoing apartheid’s land patterns,” says LILP’s Silva, who has worked with the CoCT on these questions since 2016.

Housed within and intended to correspond to the City’s 2016 TOD strategic framework, the CoCT approached IH very much as a tool of LVC and spatial transformation (versus a housing delivery mechanism). As such, its IH policy had to speak to the complexities of Cape Town’s property market, which had reached new extremes. Although IH can only function in a healthy market, by 2015 Cape Town’s property market, flooded with high-end luxury developments, was affordable to only a fraction of Capetonians. While it was precisely this situation that necessitated a mitigating tool like IH, the reality is that such development projects take years to unfold, and most would not have factored an IH contribution into project calculations when originally acquiring the land for redevelopment (see Box 3). In other words, developers balked at how a new IH requirement could negatively affect the financial feasibility of projects that were themselves driving the need for a tool like IH. Such was the context in which the SPLUMA-based objections mentioned at the start of this story began.

In 2017, the housing activist group Ndifuna Ukwazi (NU), seeking to reverse Cape Town’s increasingly exclusive development landscape, began reviewing all of the land-use applications coming through Cape Town’s Development Management Department. Correlating property market information with data on racial demographics and household incomes, NU sought to objectively demonstrate that the majority of the new, mostly high-end developments being approved in well-located parts of Cape Town contravened the spatial justice directive of SPLUMA, as price points — vastly out of reach for most Capetonians — effectively perpetuated racial segregation in desirable areas.

“What we did was systematically object to as many developments as possible to show the extent of the racial exclusion in private developments, and to propose a constructive condition for the inclusion of affordable housing on that development,” says Jonty Cogger, an attorney at NU’s law centre.

To NU’s great surprise, the MPT that heard the organization’s first major objection agreed, imposing a 20% affordable housing inclusion as a condition on the additional rights requested by the developer in question.

“That set in motion a trajectory for how this journey would play out,” recalls Cogger, referring to the 50-some objections NU would file against developments requesting additional rights without an IH component from late 2017 to 2018.

Fearing the costly delays these objections could trigger, some developers began pre-emptively adding IH components to projects. But in the absence of a policy, there were no clear rules, and the resulting chaos and uncertainty were taking their toll on an industry that was now also suffering a general downturn. While mounting pressure from developers and activists alike pushed IH to the top of the City’s agenda, it also stymied consensus.
GLOBAL EXAMPLES OF INCLUSIONARY HOUSING

Although many countries have some form of policy using IH as a mechanism for Land Value Capture, they differ according to planning and housing contexts. In many European and South American countries, land value increases are seen as resulting largely from society’s efforts; as such, they do not belong to the landowner and should be captured by the public sector. For example, Spain and Brazil have enshrined in their constitutions that land value increments created by public action must be captured for public benefit. The extent to which this belief in the importance of LVC is reflected in public policy varies widely between states and countries.

Leveraging fee-in-lieu funds, Seattle, Washington (USA) produced three times more affordable units than would have been built on-site, all of which were built in the same neighbourhoods.

In Los Angeles, California (USA) voters approved a law in 2016 allowing development projects near public transit to build up to 80% more density if they include 10-25% affordable housing. In the first year, they received applications for 112 projects with 5,571 units (1,145 affordable units).

With historical legal frameworks that offered incentives to private developers who incorporated affordable housing within market-driven developments, São Paulo, Brazil and Bogota, Colombia are both global pioneers when it comes to IH programmes designed to capture land value generated by real estate dynamics.

Since 1983, Scotland has used Shared Equity Agreements (previously ‘shared ownership’), where the owner or beneficiary of an IH unit pays a share in the property, and the remaining equity is held by the Scottish Government. More specifically:

With a grant from the Scottish Government, Registered Social Landlords (RSLs) build or buy new homes for shared ownership. The RSL markets the properties to priority purchasers (who would otherwise be unable to afford to buy a home), and the household can acquire an equity stake (generally 25%, 50%, or 75%). The purchaser then pays their mortgage costs and/or a reduced rental charge, depending on their equity stake to the RSL. The purchaser owns the property outright, but the interests of the Scottish Government are secured by a mortgage (or standard security) on the property.

Since 2009, the Open Market Shared Equity (OMSE) scheme, which operates on the same principles as the NSSE above, has allowed eligible purchasers to acquire properties on the open market (rather than only through RSLs) across all of Scotland.

In the past, affordable housing in the United Kingdom was produced primarily by the public sector or social housing providers, on land acquired through either the market or the disposition of publicly owned property. That model was radically transformed with the passage of legislation like the Town and Country Planning Act of 1990, which, under section 106, introduced planning obligations (‘developer contributions’) that focused on site specific mitigation of development impact. Mitigation is achieved in two ways:

- Using the development permission system as a means of encouraging developers to include lower-cost units within market housing schemes.
- Creating a subsidy for housing development by granting development permission to “affordable housing” providers on sites that would not normally be released for housing, and which therefore have lower market value. The IH units either become social housing rental stock, or are sold to qualifying beneficiaries.
The scuffle between housing activists, developers, and ratepayers associations throwing their political weight around had obscured the middle path, and highlighted how urgently a policy was needed.
Seagull cries and the kelpy tang of ocean spray are discernible at the bustling Y-junction in Sea Point where Main Road splits into Regent and Kloof. Towering over a block that includes a fire station, medical centre, and numerous multi-storey apartments and shopping centres, the arm of a yellow crane stretches across a building site encircled by a black fence from which the beginnings of a ground floor structure can be glimpsed.

“It was going to be one of the tallest buildings in Sea Point,” says Nigel Burls, the planning consultant appointed to secure the additional building rights desired for “the Fulcrum”.

It was early 2018 when Burls took the project on, and developers seeking additional rights were keenly aware that they excluded IH at their peril. Despite the absence of a policy to require or guide IH, Burls advised the developers to “get ahead of the curve” in a “meaningful” manner.

“It couldn’t be an add-on. The IH residents needed to be part and parcel of the total project, (and) have exactly the same rights and access as the person who’s bought the penthouse,” says Burls. “It was a hard pill for the developer in terms of marketing and selling that penthouse, but [they] bought in,” says Burls with a note of admiration.

Local residents, however, did not. The Sea Point, Fresnaye & Bantry Bay Ratepayers & Residents Association (SFB) galvanized hundreds of objections to the additional development rights, expressing the usual concerns (traffic congestion, strain on infrastructure, etc.), but primarily focusing on the extra height. Given that Sea Point is Cape Town’s one residential suburb where multi-storey buildings are common, Burls felt this objection was, if not specious, then veiling something else.

“I’ve never made an application as a town planner where we didn’t have an objection, but the volume of objections and the underlying tone… I’ve never experienced before,” he recalls.

In spite of that volume, the MPT decided 4-1 in favour of granting the Fulcrum’s additional development rights. However, the City ultimately backed the appeal that followed, with no suggestion of negotiating a reduction in height (which would have meant reducing but maintaining the inclusionary component).

“They just said you’re dead in water. That for me smacks very much of a decision around the inclusionary component, and a pandering to the Sea Point resident base,” says Burls, adding: “If there was a policy in place, and we were addressing inclusionary in terms of that policy, then the council would not have been able to say no.”

Whatever the reason for the rejection, the episode highlights how contentious things had gotten by that time: how the dust kicked up in the scuffle between housing activists, developers, and ratepayers associations throwing their political weight around had obscured the middle path, and how urgently a policy was needed.
FINDING A MIDDLE GROUND

Fortunately, another process that would help clear the air was also underway in early 2018. In partnership with the LILP, DAG had organized a “Land Value Capture Dialogue Series”. Envisioned as a “neutral platform”, the Series allowed 30 key stakeholders — civil society organizations, developers, city officials, politicians, academics, and activists — to meet over four sessions to explore how LVC could best be used in Cape Town.

“These processes are set up to ask the right questions, build the capacity to articulate the intricate issues, and create a safe space in which people can express pertinent concerns linked to policy options. You’re not trying to answer all the questions, but rather to grapple with them in that process,” explains DAG’s Rourke, who also facilitated the sessions.

Although the Series’ original intent was to discuss LVC more generally, the first session’s key outcome was consensus to focus on the nexus between IH and LVC. And not just focus, but to move as swiftly as possible from ideology to the logistics of applying IH in Cape Town. This meant thrashing out questions around how IH would affect the specifics of Cape Town’s property market and the City’s institutional arrangements, and engaging with the nitty gritty of calculating developer contributions and the mechanics of the model (see Box 6).

Key to the Series’ success was the diversity of people around the table, and their trust in DAG’s facilitation. “I was really impressed by who was in that room… it was one of the most representative gatherings of people I’ve seen in a long time,” says Rob McGaffin of the Urban Real Estate Research Unit (URERU). “But there was also a lot of emotion, you had parties who in the same week were in court with each other. DAG did an exceptionally good job of allowing a practical and pragmatic conversation to take place. As a result, a lot of issues were put on table.”

Top-line issues focused on feasibility and implementation, discussions of which were framed by the questions and choices the City — which was already in the process of drafting a concept note on IH — would need to consider in developing a viable IH policy.

“We literally wouldn’t be here at this stage if DAG hadn’t played the role they did,” says Gail Eddy, a Senior Professional Officer in the CoCT Human Settlements Directorate, referring to the IH feasibility study that she is currently driving for the City.

While the Series’ immediate practical value for policymakers and City officials was undeniable, the softer and longer-term value of nudging polarized sides towards a middle ground where they could meaningfully engage with one another’s challenges, roles, and needs could arguably end up being even more important for the ultimate success of any IH policy that may emerge. This is because IH is a long-term proposition, and mutual understanding and open channels of communication between stakeholders as this unfolds over time could make the difference in implementing what is an inherently complex process.

IH CONTRIBUTION OPTIONS UNDER CONSIDERATION

In Cape Town, the main contribution options currently being considered (and explored in the feasibility study) are:

**On-site contribution:** Where affordable units are built on-site as part of the market-related development.

**Off-site contribution:** Where affordable units are built off-site in well-located areas identified by the City.

**Fees in lieu:** Where the developer makes a cash contribution to the value of the required affordable units. Such funds would be ring-fenced for the development of affordable housing in well-located areas.

Unfortunately, the image contains a blank box labeled “BOX 6” indicating where more information about IH contribution options under consideration might be found. However, the text does not provide additional details about these options.
FEASIBILITY

Indeed, if there is one thing that South African developers cannot tolerate, it is additional risk. “Costs imposed on development in this country are astronomical, and the regulatory burden is at times an impossible cauldron of hoops and obstacles to build even the simplest thing,” says Carel Kleynhans, director of property development at iThemba Property, who attended one of the Dialogue Series sessions.

In this context, the additional risk resulting from the lack of an IH policy or a bad policy, can not only increase costs, but in fact kill project viability, which is the last thing anyone wants. “The private sector already is not developing as many residential units as needed, so you don’t want a policy with requirements so onerous that developers decide not to develop,” explains the City’s Eddy.

Ensuring that IH doesn’t kill a developer’s return on investment means understanding how the incentives offered — things like additional air rights (i.e., greater density), rezoning (e.g., from rural to urban), fast-tracking approvals processes, and reducing existing development contributions, among others — will offset developers’ costs, particularly those attached to the under-market rate units. That is, the incentives must be tailored to local property market realities. The fact is the redevelopment market is not as lucrative as many people assume, meaning there is not a lot of room for error in the calculations. Key to ensuring IH doesn’t kill a developer’s return on investment is a clear understanding of the IH requirements at the time of land acquisition, such that the cost of IH components are factored into land purchasing price. An IH planning condition introduced further down the line (i.e., at the land-use application stage) poses the risk of eroding a developer’s return on investment, and thus adding to existing concerns about the cost of doing business, especially in Cape Town, where land prices are so high and the bureaucratic process is notoriously slow.

“If it’s not like there’s this bottomless pit of money in expensive units that can be scooped off and put into the affordable units. The margins are extremely slim, especially at moment,” Kleynhans remarks, noting that the situation in Cape Town is even more extreme.

Rob McGaffin agrees, pointing to an excessively complicated land production process in which land acquisition, onerous design specifications, and processes around infrastructure and development rights can result in a two- to four-year timeframe to “get a piece of land to the point where you can put a brick on the ground.”

To ensure that whatever IH policy it develops has grappled with these issues, the CoCT in May 2020 initiated a feasibility study. Picking up where the Dialogue Series and the City’s September 2018 Concept Note on Inclusionary Housing left off, the study is being conducted from August 2020 to May 2021. An established international best practice for successful IH programs, the feasibility study is examining which incentives are most attractive to developers, analysing the implications of granting those incentives, calculating how different proportions of IH will affect project feasibility, and also considering various spatial dimensions (property markets in different geographic areas) and affordability targeting (what proportion of contributions will target which income groups).

“If the incentives aren’t attractive enough, you might end up with developers not wanting to use those additional rights that trigger the requirement of including affordable housing. We have to understand the economics so we can target the policy effectively and generate the units at the end of the day,” asserts Eddy.

While getting the numbers right is clearly important, many stakeholders caution against overworking the policy’s technical aspects. “One of the biggest problems is they are trying to make it all encompassing. It should be one page long. Simple, simple, simple,” says Burls, who thinks the policy should make IH a condition of development approval, put the onus on developers to prove why they cannot include it, and leave the details to be thrashed out in practice.

Whatever comes out of this process, no one disputes the need for a policy, the value of which may be as much about ideology as it is the technical details. This is seen in the CoJ’s IH policy, which, whatever one may think of it, has been a pivot point. “It’s essentially asserted in an incredible way the ability and responsibility of the City of Johannesburg to say ‘This is something we should and can say, and we are going to start asserting ourselves in this realm, and here’s the first

Incentives must be tailored to local property market realities.
Above:
At DAG’s 2015 Change by Design Workshop civic leaders and residents from Woodstock & Salt River designed a set of inclusive principles for their neighbourhoods. Photo by Paul Grendon.

Johannesburg, the politicians took a brave choice to say ‘let’s go on a limb and try,’’ says the CoJ’s Weakley. “We had the [political] support to be able to say everyone agrees on the need for IH and the concept and idea — we are never going to get anywhere unless we try.”

**SHARING IS CARING**

Back at the Fulcrum — the City’s denial of additional density rights and a global pandemic notwithstanding — masked workers have returned to site, where, brick by brick, a second storey is emerging.

In thinking about how to “embed” whatever IH policy is developed and how to manage the human relationships that really are at the centre of this process, it becomes clear that as much as City departments need to embrace and own the policy, so do Capetonians at large. “At the end of day, it’s going to live or die by local authorities wanting to embrace it or not. When I say local authorities, I’m also talking about the communities, because at the moment, a local government politician’s biggest fear is the NIMBY anti-vote,” says van Zyl.

At the end of the day, all Capetonians who claim to care about transformation, equality, and social justice need to find it within themselves to make more space in their neighbourhoods for others.
This is an enormously important point. Because even though you would be hard pressed to find a South African who would openly deny the need for more affordable housing in good urban locations, it becomes a different conversation when those units are placed on that person’s street, or when the existence of an inclusionary housing policy affects their land values (see Box 3).

Namon Freeman, a senior policy specialist at Grounded Solutions Network (GSN) and technical expert for an IH technical workshop organized by DAG in 2019, identifies two major barriers to the success of an IH policy in Cape Town. “One, is getting people on the far left to compromise and understand that financial feasibility is necessary. The other piece will be getting the more conservative constituents to allow density changes through. In more affluent neighbourhoods, or where they have no interest in seeing affordable housing or more diverse residents, that will be the biggest issue,” Freeman says.

The NIMBY vote is not just about being anti-diversity or anti-affordable housing or precious about one’s view of the mountain; there are also cultural heritage-related reasons for objecting to development that can be seen as a Trojan Horse opening the gates to gentrification. However, at the end of the day, all Capetonians who claim to care about transformation, equality, and social justice need to find it within themselves to make more space in their neighbourhoods for others.

“...I think the average person has no idea how complicit they are with the housing problem. I’ve seen civil society in poor, rich, and middle-class areas, mobilizing different stand-in arguments to stop any and all building in their backyard,” notes Julian Sendin, a spatial planner and former IH researcher at NU, an organisation which fundamentally is pro-development, so long as that development is balanced and inclusive. Sendin explains how even the lack of affordable housing can be weaponized to prevent an apartment block being built — not because those objecting actually support affordable housing, but rather to prevent any additional development in their area.

Catherine Stone, an urban planner and Director of Spatial Planning in the Western Cape Provincial Department of Environmental Affairs and Planning, which is currently drafting a provincial policy framework on IH, agrees. “Citizens need to be vocal about what they want, but also generous in how they engage with proposed developments and more welcoming of change. That is the nature of cities: areas are going to become more dense. If we’re fighting around the quality of the development versus whether there can be new development, our energy is better spent.”

DEFINING AFFORDABILITY: WHO WILL BENEFIT?

It is widely acknowledged that IH does not provide housing for the very poor, but rather is a way to provide an affordable housing option in well-located areas that can be used by the “upper gap market”; that is, middle-class working households with fully employed people (e.g., teachers, policemen, service industry workers, etc.)

The CoCT is currently investigating the impact of different approaches to defining “affordability”. Although the target market is still being defined by the feasibility analysis, it is likely that the City will use a “standard definition” of affordability across the City, based on a possible monthly household income of <R22 000; and/or housing product price, where rentals are <R6 000 per month or sales are <R600 000.

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NO SILVER BULLETS

Without a doubt, whatever IH policy the CoCT produces, it will be criticized. People will say that it will ruin the property market and development (even though without a thriving property market, there is no IH). Others will claim it will hurt the profit margins of residential property developers, and thus fuel gentrification in the city’s few existing affordable areas. That is, IH requirements could push developers to lean further into the luxury residential market, resulting in less mid-range accommodation, which is already inadequate, and thus placing additional pressure on the few neighbourhoods where it can still be found. (That said, the luxury market in Cape Town is already oversupplied, and unlikely to present a tempting alternative in the current economic climate).

Other concerns will be around the City’s ability to manage what will be a complex program necessarily involving numerous departments and officials to cooperate and buy-in. “It will require a huge amount of administrative capacity within the city. For instance, how do you deal with the
management of buildings going forward? And who gets allocated these things?” asks McGaffin (see Box 4). On that latter point, still others will criticize IH’s limitations in terms of the number of units it can produce and who it will serve (Box 7).

The City’s Eddy is acutely aware of all of these potential pitfalls and perceived shortcomings. “This is not a silver bullet for the larger affordable housing crisis in the city in any way, shape, or form,” she acknowledges.

But the takeaway here is that focusing on the hurdles perhaps misses the point in this early stage of the game. “IH has never been about the numbers. It’s not a large-scale housing delivery program. It’s about leveraging the capacity of the private sector, testing models, starting to provide some mitigation against displacement as a result of gentrification, and building a fairer society,” says Stone, adding that there will always be excuses not to start something new. “But if we don’t start, we will never learn how to improve the model to make it more efficient and cost effective.”

Joburg’s Weakley agrees. With criticism of CoJ’s policy coming at his department from all sides, he is the calm in the eye of the storm, advocating openness to experimentation and flexibility. “We are refining our understanding as we go. Technicaities come up all the time,” he says, mentioning how just that week he met with developers over whether balcony areas were included in IH calculations.

The other point all IH proponents make is that nothing done in this space is wasted. “The evidence base we’re creating [will help] the City to understand the housing market better, to make sure our general policy approaches are better targeted and will benefit other planned strategic work on affordable housing provision,” says Eddy, referring to the City’s need to support equitable development more generally.

While even its most rabid proponents would never claim that IH can fix South Africa’s larger affordable housing problem, it is one potentially powerful tool that municipal governments can wield to start integrating South African cities. It is also unique in that it requires the private sector to meaningfully engage with the formal affordable market, which has yet to happen in South Africa.

“It could be the thin edge of the wedge to open up that space [to find solutions] for the affordable housing problem,” says McGaffin.

A vociferous proponent of mainstreaming affordable housing who has expressed reservations about the limited quantum IH can produce, McGaffin agrees that working through the issues around IH could help advance the affordable housing conversation. “Any form of affordable housing has to deal with a lot of these issues, so if some of them are addressed through this process, it could be applicable more broadly.”

And this is critical, because progress in addressing key issues — bottlenecks around efficiencies and regulations, land prices, and questions of management and institutionalization — could reduce skittishness about the affordable housing space, which, despite being the country’s largest residential property market, remains neglected by formal developers. This shift is crucial, as the public sector will increasingly be unable to provide for this market. “The reality is government is going to have less money to put into housing, so we need to be creative around how we bring more housing online, and every mechanism we can enable is worth it,” says Eddy.

Freeman agrees, noting that solving housing affordability issues requires multiple strategies, and that IH is one tool that should be considered in cities with strong development markets, but it is long term by nature. In other words, like most worthwhile endeavours, the real benefits of IH take time to manifest. Given the COVID-related economic downturn upon us, the cyclical nature of IH must be recognized and understood. That is, the political will to adopt IH policies typically grows in market upticks, but the resulting policies often don’t go into effect until the end of those growth cycles. When the market inevitably cools, an IH policy can get scapegoated for that slowdown. Meaning it is the City’s job to help stakeholders understand the intent and impact of the policy, and allow it the time it needs to show results. “Inclusionary housing policies are a long-term strategy — the market has to have time to adapt,” Freeman says, adding, “But now is always a better time than later to put one in effect.”
In September 2017, Ndifuna Ukwazi objected to “The Vogue” development on the grounds of its unaffordability for 90% of Capetonians. This kind of exclusive development continues to entrench spatial apartheid in Cape Town, where access for black and coloured people remains an issue.

**When possible, aspire to simplicity in policy**
- Demystify the numbers through an easy to understand calculator that all stakeholders can utilize

**Increase the value to be captured and shared**
- More efficient planning approvals/processes & expediting of process would increase developers’ profits, and therefore ability to contribute to IH.
  - Increased efficiencies could also reduce the holding costs (an important factor that determines the viability of any private development project), and enhance the feasibility/likelihood of securing IH within private development projects for market rate residential units

**Dedicate municipal resources over the long term for proper implementation**
- Need regularly obtained public data around the housing market to be able to track positive and negative consequences of this and other policies
- Need human resources to ensure stewardship of IH stock and developer compliance over the long term
  - Requires reliable City database and management of this

**Management institution for AH**
- Initially draw on Social Housing Institution (SHI) experience and expertise around allocation, management of stock, and how to keep stock affordable in perpetuity
  - Assist or encourage more commercial developers to enter the Social Housing development space
- Explore creation of smaller non-profit, publicly-funded entities to manage stock (so that developers know don’t have to worry about off-take)
Public land & cost of land

- Consider creative use of in-lieu fee contribution to fund the packaging (i.e., dealing with infrastructure issues, development rights, title deed restrictions, etc.) of public land parcels for affordable housing of all kinds
- State (province) can bring more public land to the party
  - Review the existing municipal and provincial legislative frameworks that require the disposal of public assets (land in particular) based on maximising a site’s economic value at the expense of its potential social value.
- State entities (Transnet, etc.) are another source to explore
- Change legislation requiring state to get highest price for land

Role of National government

- Clarify that IH falls under land-use policy, not housing
  - Discussion around where IH should sit: Human Settlements, Planning, and/or National Treasury’s Cities Support Programme (CSP)
  - National government can provide guidance on the institutional arrangements for the IH policy development process, including the potential role and expectations of the departments involved
- Where things are working, introduce more widely & standardize
- Financial underwriting of risk
  - Consider reforms to legislation around landlord and renter rights to reduce risk around affordable rental stock.

The importance of investing properly in pre-policy engagement processes

- Given the high average number of objections both pre and post development in Cape Town, this investment could actually save money

Role of Provincial government

- Approve provincial policy (framework or guidelines) that requires (or at least encourages) municipalities to have IH policies
- Bring land to the party
- Streamlining development processes under Provincial control
  - Health, education, and social facilities need to be adequate and supportive of IH development

Engagement with civil society

- Dialogues with civics to discuss densification, get buy in for “neighbourhood vision” and medium-density development.
- Engage environmental lobby in these issues, which directly impact urban sprawl.

Use learnings from IH to “mainstream” affordable housing for commercial property developers
“Inclusionary Housing has never been about the numbers. It’s not a large-scale housing delivery program. It’s about leveraging the capacity of the private sector, testing models, starting to provide some mitigation against displacement as a result of gentrification, and building a fairer society.”
NOTES

1. Prior to SPLUMA, there were legal contestations around which sphere of government had supreme powers over the land use regulatory functions for municipalities. SPLUMA was thus developed with the objective of streamlining the multiple planning laws, some of which were inherited from the apartheid era.

2. Section 20 of SPLUMA, obligating cities to adopt a MSDF, and section 21(i), prescribing MSDF content and requiring the local municipality to, “– identify the designated areas where a national or provincial inclusionary housing policy may be applicable”. Additionally, section 24(d), where a land-use scheme must “– include provisions to promote the inclusion of affordable housing in residential land development; while Schedule 1(h) notes that Provincial legislation must, “– provide measures related to the approval of a development application which requires the use of land for identified inclusionary residential and economic purposes, and which is subject to any national policy”.

3. As described in Chapter 2 of SPLUMA, these include spatial justice, spatial sustainability, spatial resilience, efficiency, and good administration (Daniels, 2016).


5. Bhana, Hendricks & Tonkin (2009)

6. Increased values can arise from changes in land-use regulations and installation of infrastructure, as well as population growth and its concomitant increased demand for land (Bhana, Hendricks & Tonkin, 2009)

7. LILP (2018)

8. The appropriateness of LVC tools depends on the context, see Box 1 for more details

9. TOD promotes dense, mixed-use, compact developments around public transport and employment hubs (CSP, 2017)

10. While the national level policy position for IH was articulated in both national and provincial legislative frameworks, such frameworks are not intended to be prescriptive; thus it could be argued that the real dereliction was the local municipal level’s failure to develop IH

REFERENCES


11. The Department of Housing was warned that IH could be deemed unconstitutional. Although this was never clearly established to be the case, the Department, already having lost numerous court battles, backed down from the topic (personal communication, Margot Rubin, July 2020).

12. While SPLUMA resolved this fundamental question, coordination between and within departments across the three spheres of governance remains challenging.

13. Broadly considered a planning tool, IH requires coordination between multiple departments and sectors; from a practical standpoint, the question is better answered by where capacity exists (DAG, 2020).

14. The support of Tau’s successor, Herman Mashaba, and his MMCs for planning, was also critical to the policy’s final adoption.

15. Option 1: Rental caps: 30% of units are either capped at R2,100, or are social housing or FLISP housing; Option 2: Size caps: 10% of total residential floor area dedicated to “micro” units of 18-30m², with no limitation on price (rental or sale); Option 3: 20% of total residential floor area is for IH units (which must be at least 50% of the size of the market-rate units) with no limitation on price (rental or sale) http://bit.ly/cojcitywide

16. In South Africa, the vast bulk of affordable housing continues to sit in poorly located townships, RDP/BNG developments, and informal housing taking the form of backyarding, informal settlements, and informally occupied inner-city buildings. While the country’s social housing program (comprising social rental housing and finance-linked subsidy targeted at the “gap” market) has supplied over 4 million housing opportunities, these too have mostly been relegated to subpar locations due to the cost of land.


19. iThemba Property is a commercial developer specializing in developing and managing affordable rental stock in Johannesburg, especially the inner city.

20. The cost of doing business is frequently exacerbated by planning approval delays. Widespread concerns about this issue have led developers to motivate for the use of a set of incentives that help safeguard their return on investment from the holding costs associated with planning approval delays.

21. iThemba calculated the costs of building identical units in the inner city of Johannesburg and Woodstock, Cape Town. Due in part to City-imposed regulations, the Cape Town unit cost 25-30% more to build than the exact same unit in Johannesburg.

22. Following the Dialogue Series, the CoCT in September 2018 finalized and presented a concept note on IH. Progress on IH stalled at the end of 2018 in the political and administrative turbulence that resulted from the resignation of Mayor Patricia DeLille. Fortunately, the process – clearly aligned with the City’s existing approved policies (IDP and MSDF) – had its own momentum, and on 10 November 2019, Councillor Malusi Booi, new Mayoral Committee Member for Human Settlements, announced that the City would undertake a feasibility analysis to “primarily inform a draft inclusionary housing policy”. https://www.dailymaverick.co.za/article/2019-11-11-cape-town-cbd-a-step-closer-to-affordable-housing/

23. While initially formulated under an ANC Mayor, CoJ’s policy was approved under a DA Mayor and EFF-DA coalition government, demonstrating that this is a policy all parties can agree on.
DAG is a leading Non-Profit Organisation that supports communities to strengthen community organising; enabling affordable housing, land and tenure security; resist evictions; and shape urban development policies. Our mission is to support and advocate for community led development addressing economic, social and spatial imbalances. DAG has systematically worked with a range of government and civil society stakeholders in urban development and governance to ensure that there is accountability, transparency and good governance on the part of the state and, that community leaders and representatives participate more meaningfully in decision-making processes. Alongside this citywide agenda, DAG has also incrementally developed an innovative approach to the delivery of low-income housing.

This programme is supported by the Government Technical Advisory Centre (GTAC), on behalf of the intergovernmental Relations Department of the National Treasury as the custodian of the Cities Support Programme (CSP). The CSP was established in 2011 with the objective “to support the spatial transformation of South African cities to create more inclusive, productive and sustainable urban built environments”. The CSP implements its support within the country’s eight Metros. National Treasury has approved a second phase for the CSP (2019-2023) with a strategic objective of institutionalising, within national departments, provinces and metros, a set of policies, practises and activities which support the development outcomes of spatial transformation and inclusive economic growth. The CSP2 has a programme consisting of 50 projects that are now focussed on supporting city and sector reform processes.

The Lincoln Institute of Land Policy (LiLP) seeks to improve quality of life through the effective use, taxation, and stewardship of land. A non-profit private operating foundation whose origins date to 1946, the Lincoln Institute researches and recommends creative approaches to land as a solution to economic, social, and environmental challenges. Through education, training, publications, and events, LiLP integrate theory and practice to inform public policy decisions worldwide. Work is organized around the achievement of six goals: low-carbon, climate-resilient communities and regions, efficient and equitable tax systems, reduced poverty and spatial inequality, fiscally healthy communities and regions, sustainably managed land and water resources, and functional land markets and reduced informality.