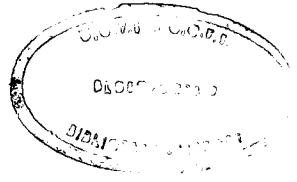


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**STRATEGIES  
FOR  
URBAN LAND MANAGEMENT  
IN THE  
FREE STATE**

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**HENNING STAPELBERG**

THESIS SUBMITTED TO COMPLY WITH THE REQUIREMENTS FOR THE  
DEGREE PHILOSOPHIAE DOCTOR  
FACULTY OF ECONOMIC AND MANAGEMENT SCIENCES  
DEPARTMENT OF PUBLIC MANAGEMENT  
UNIVERSITY OF THE ORANGE FREE STATE

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CO-PROMOTER: PROF. W J van H BOTHA

MAY 1999

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UNTO THEE, O LORD, DO I LIFT UP MY SOUL  
O MY GOD, I TRUST IN THEE

I wish to dedicate this thesis to my beloved wife, Maretha and our two lovely daughters, Isabel and Humari, without whose inspiration, love and patience this study would have been impossible.

## **A C K N O W L E D G E M E N T S**

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Unto my Heavenly Father for mercy, strength, health and ability to further my studies.

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5. All my relatives, friends and colleagues for their help and encouragement.

## DECLARATION

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I hereby declare that this thesis, submitted by me for the degree Ph.D at the University of the Orange Free State, is my own work and has not previously been submitted to any other university for this or any other purpose. I furthermore cede copyright of the thesis in favour of the University of the Orange Free State.

Date: 13/05/99

Henning Stapelberg

HENNING STAPELBERG

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## ***ABBREVIATIONS***

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THE FOLLOWING ABBREVIATIONS ARE USED IN THE TEXT

CBD:	Central Business District
DFA:	Development Facilitation Act (Act 67 of 1995)
DPSA:	Development Planning in South Africa
IDP:	Integrated Development Plan
LDOs:	Land Development Objectives
MEC:	Member of the Executive Council for Local Government and Housing

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# **1** *INTRODUCTION*

---

*Time present and time past*

*Are both perhaps present in time future,  
And time future contained in time past.*

T S ELIOT

The legacy of the past has left separate towns where the people live in separate areas based on race. This is a well-known fact and it is not within the ambit of this thesis to dwell on the facts why this had taken place. The major aim is to provide solutions to the problems now encountered with this legacy in the urban form and development and to improve for the future.

In the Free State Province no "Black" town was founded before a "White" town. The former came into being as a result of the latter and remained annexures or dormitory establishments for the White town (De Bie 1991:viii).

As a result of the separation of the towns in South Africa an excessive wastage of land has taken place especially between the Black and White towns as buffer zones and then one also finds the normal wastage which are divided into pockets within the towns. The rapid urbanization that took place caused the people initially to settle on the perimeter of the respective towns and then only later move into town and settle in an unplanned manner on the buffer zones and other vacant land such as parks and vacant school erven. This compounded urban sprawl in especially the Black towns in the areas where it could be afforded the least. Not only did normal sprawl occur, but in some instances leap frog sprawl where people settled away from the urban periphery and vacant land was found between the settlements and the formal town. This in effect invaded agricultural

land and also sterilized the vacant land in between for other uses than residential (Dewar & Watson 1990:15-16).

It must be borne in mind that urbanization is of great consequence in South Africa and the Free State Province is by no means excluded. It is interesting to see what the effect of urbanization has been globally before the more specific aspects are considered. Satellites in orbit can even give a visual picture of the scars of pollution, deforestation industry and urban sprawl. The impact of urbanization is tremendous if one is to take the population into account where the population has grown from 1.5 billion to 5.5 billion only in this century. Urbanization is so severe that for the first time in history more than half the population in the world live in cities, whereas it was a mere 10 per cent in 1900. At the rate of increase of about 250 000 people swamping the cities daily 75 per cent of the population could live in cities in 30 years' time (Rogers 1995: 2).

Land ownership in South Africa has long been a source of concern. The South African history of conquest and disposition, of forced removal and a racially based distribution of land resources, has left the present generation with a complex and difficult legacy (White Paper on South African Land Policy 1997: v).

In order to provide adequate land in an orderly manner to communities and to ensure that these communities are self-reliant and sustainable an entire new approach to land use and planning is necessary. Land was viewed as a cheap and infinite resource and the utter wasteful manner with which land was treated in the Republic of South Africa will have to change drastically.

In this thesis mention is often made to sustainability or sustainable planning. This denotes the sustainability with the environment while mention of self-reliance means that a town or urban area can function as a unit in an independent fashion. Normally this is not the case with Black towns.

In this thesis the male gender also includes the female. Reference to only the male gender has been made for the sole purpose of facilitating reading.

Where references to laws and/or court cases require double parentheses, (( )), the outer brackets will be square brackets, [ ], to facilitate reading and eliminate any confusion. This takes place mainly in Chapter 7 **infra**.

Reference to either town or city includes the other as urban areas.

Reference to township should also not be read as referring to Black towns only as the prevailing legislation in the Free State Province refer to townships as any land development where a town is established.

Reference to "Black" and "White" in the context of denoting specific areas is not used in any derogatory or discriminatory fashion as it is used to illustrate a specific issue or to describe something. No other intention or connotation should be ascribed to this seemingly racially based use of colour.

The spelling and language usage is mainly according to the guidelines of Fowler's Modern English Usage. The use of "situate" to indicate the present tense, past tense and past participle for the location of land is preferred and so used. The consistent use of "-ize" instead of "-ise" for the formation of verbs and nouns is also in accordance with the above authoritative grammarians. Although the "-ise" is acceptable in English it was preferred to use the more correct, perhaps archaic, version of "-ize" (Burchfield 1996:422; Fowler 1983:314).

## **1.1 THE MANAGEMENT OF LAND**

When considering the urban structure the social implications should also be taken into account. When an urban area becomes too dense it will impinge on all aspects of government as all the facilities will be strained by the additional

demands placed on them with the intensification. Careful and effective upgrading of these facilities will place an additional financial burden on the local government and the land use patterns will have to be brought in line with these facilities (Townsend 1995:14).

Land management and land use have to be sensitive to the land markets as well as being in harmony with the political policies. Land development should also be viable and feasible propositions. It is of no use if plans are compiled and implemented and no development can take place as market forces strangle all strategies. At the same time it also serves no purpose if plans merely follow the market forces because then the objective of planning is defeated. The fine line of distinction is to pursue the realistic assessments of market intervention possibilities. Following this fine line is what makes it important for management and not merely planning, especially as the different facets of development have to be taken into consideration. Land use controls also come into the management field and should be taken into account as the best plan can be made worthless if it is impossible to control the land (Mattingly 1993:125).

As can be seen, policies should guide the management of the land and the urban system cannot simply rely on the past policies to be guided through the myriad of legislation and changing circumstances experienced at present. Innovative planning is also important and this causes strategic management to play a greater role in the planning system. Innovation will have to take place in order to provide for the future.

The present system of planning works to a certain degree, but one major deficiency is that it does not contain any strategic principles or policy which addresses the phenomenon with which we have to deal in order to correct the spatial disparities which we have inherited (Oakenfull 1994:113). Distorted land markets and ineffective urban land management have often resulted in the degradation of environmentally fragile land. Furthermore, the occupation of hazard prone areas and open spaces lead to excessive urban sprawl as the people

settle farther away from the employment opportunities and the available amenities.

To prevent degradation, authorities should institute certain control measures over urban land use and development, but unnecessary constraints should not take place as this will in turn stifle all development (Bernstein 1994:1). In order to wed the different towns and to integrate land use as well as to have mixed land uses, it is important that all the various features of planning and policy are accommodated. What must always be kept in the back of the mind is that all planning should be compatible with development planning and the environment.

One of the major challenges regarding local government today is the question of urbanization and how to manage it within the constraints of financial resources and the inherited spatial fragmentation.

Growth relates only to quantitative expansion while development includes quantitative expansion and qualitative change and this is the basic difference between the two concepts. Consequently economic and social development are concerned with fundamental transformations within a society and economy (Moseley 1974:53). This again relates to the fact that planning is not only concerned with spatial planning, but that the entire spectrum of strategic planning should be seen as a process to planning in the best interest of the community.

## **1.2 AGENDA 21**

By the end of the 1980s the environment had become a major issue at all levels of government across the world. The United Nations Conference on Environment and Development held in Rio de Janeiro in 1992 established a detailed agenda for future international action. This was the now often quoted and pivotal Agenda 21 (Blowers 1996:2). Sustainable development implies that one generation should hand on the earth to the next generation in at least as good a condition as it had

inherited it. This is neatly summarized in the proverb: "*We have not inherited the earth from our parents, we have borrowed it from our children*" (Selman 1996:11).

The term sustainable development is derived from Agenda 21 that is a document developed at the United Nations Conference on Environment and Development, Earth Summit which was held in Rio in 1992 (Local Agenda 21 1998:Planning Guide). More than 400 000 people from 18 000 organizations and 178 countries attended this historical summit. Agenda 21 at local level was derived from this idea and each local authority or province can determine its own sustainability for its particular circumstances. A Local Agenda 21 is a long-term strategic programme to attain sustainability in the next millennium.

The contents and form of each Local Agenda 21 is likely to be different as the needs, resources and aspirations of each particular community will differ (Local Agenda 21 1998:Planning Guide). The entire issue around sustainability revolves around the maxim "Management for the Future". In other words the local appropriate means of managing change toward a desired future (Local Agenda 21 1998:Planning Guide).

Town planners have always had this dream of the "ideal city" or a plan of the "perfect environment" and these two principal interests have dominated the thoughts of land use planners for centuries. It has now become clear to most planners that, although some of them still cling to the mentioned way of thinking, their role has changed so dramatically that they have to become facilitators of an on-going process of development planning. Although the traditional role of "form giver" is still important the land use planner currently has to debate his planning in public participation meetings, take into consideration trade-offs and economic and social alternative plans (Fabos 1985:93). It follows that land use planning is based on similar planning processes; **viz.** the identification of problems, the assessment of the environmental, social and economic resources which are

needed to satisfy needs. Goals should be set and objectives should be developed with alternative plans, should adaptation have to take place (Fabos 1985:101).

### **1.3 SUSTAINABILITY AND COMPATIBLE DEVELOPMENT AND MANAGEMENT**

This thesis deals mainly with urban development and this means that the sustainability of the environment **vis-à-vis** the urban system will have to be discussed. The system, however, needs supporting functions such as urban planning and transportation systems. This in turn leads to the very important factor of interpreting the concept of sustainability in the formulation of urban environmental policies. The theories of the Brundtland Report (Owens 1994:170) of the 1980s are excellent, but operational definitions remain elusive.

The theory is difficult to translate into practical policies and this complicates matters for all those who are concerned with urban development. The need is clear as it comprises the meeting of needs of the present generation without compromising the needs of future generations, but a theory of value must be attached to this. However, sustainable development must be more than mere survival as our generation has needs that must be satisfied (Owens 1994:170).

### **1.4 PROBLEM STATEMENT**

A city is a wonderful creation of humankind and when one considers the nature of a city a possible definition could be: "... a place in which citizens, with rights of citizenship, live a civil life. Citizenship, civil, civic, civilized, civilization, these are the words which denote for us the most adorned state of social organization and behaviour that man has yet attained, and it is as a setting and as an instrument for this way of life that we would regard the meaning of the word *city*" (Gibberd 1953:9).

As far as land development and urban land use in the Free State Province is concerned the most evident and visual aspect has been the creation of two (or even more) urban areas for different race groups. In other words, segregated towns based on colour and race were established where the White town was the sustainable entity with the other town a dormitory accessory to it. This state of affairs resulted in the Black towns not developing to become self reliant in themselves, but were basically simply housing entities with the White town having all the business and industrial opportunities. The results of this policy are numerous and very sad, but mainly fall outside the ambit of this thesis, save of course for the land management aspects.

Suffice to say that as far as land use is concerned, it was detrimental not only to the Black town, but to the White town also and even more important to the whole entity. This left us with a legacy of the so-called "apartheid city" which was distorted and created separate urban areas based on race within one town. It was policy to develop the White town and the Black town remained stagnant bar expanding in numbers and extent.

Attitudes and standards will have to be determined against the backdrop of new and largely unknown circumstances (Steyn **et al.** 1996:2). The separate towns do not only need to be integrated, but land uses within the different areas also need to be integrated taking into account the different elements for current planning.

#### **1.4.1 Present situation in the Free State Province**

The existing legal provisions do not pose problematic as the work flow is sound. The land development applications and the number of erven created is of particular significance as it was stated in 1994 that approximately 66 000 erven were needed in the Free State Province before the year 2000. This number was exceeded by nearly 100 per cent as 117 767 erven have been provided by means

of township establishment since 1994 until the end of 1998. The vast number of town-planning scheme amendments is also indicative of the changes in land development that suddenly took place and needed correction in the town-planning schemes. In all the above it is significant that no backlog can be ascribed to the fact that the legislation is not up to standard and that it is stifling development.

This does not mean that the legislation cannot still be improved and for this reason a new law has been proposed in chapter 8 **infra**. It must also be remembered that land development **per se** is not the only criteria as many elements influence the system as will be indicated in the thesis.

The existing land use legislation in the Free State Province has become outdated. Contributing factors to this happening were **inter alia** the new dispensation, rapid urbanization, the urgency and awareness of sustainability and the promulgation of new legislation from central government **viz.** the **Development Facilitation Act, 1995 (Act 67 of 1995) [DFA]** set the scene for a total novel way of thinking.

The Free State Province has always had good land use legislation that was applied in a fair and just manner. The Townships Board has been functioning well and the few times that it was taken on review nothing could be held against it. However, the time has arrived that the inevitable paradigm shift should take place and the best of the past should be linked to the best of the present and the future should be approached with zeal and courage.

The advent of a new political dispensation has also greatly influenced the planning and development processes, as they have been experienced over the past years. Some of the major issues at hand are the following:

- The legacy of the separate White and Black towns has led to tremendous planning problems and these have to be corrected.
- Integration of the Black and White towns in order to form a unit.

- The transportation systems, especially in the bigger places are grave problems.
- Mixed land uses and in effect bringing the residential area closer to the job opportunities, in other words combining residential uses and job opportunities.
- A rapid increase in vehicle ownership among the previously deprived groups.
- Rapid and extensive urbanization.
- A tendency by developers to simply develop an erf even though the particular development is in conflict with the land use allocated to the erf by means of restrictive conditions and/or a specific zoning in terms of the town-planning scheme. Townships Board and the Member of the Executive Council entrusted with Local Government and Housing [MEC] are then confronted with a **fait accompli** and a huge expensive development when the application for the change of land use is lodged. This has to be eradicated and treated as a severe contravention of zoning.

The above is by no means an exhaustive list of the problems and challenges facing the local authorities and all planning bodies at all levels and spheres. The mentioned issues are the more comprehensive issues encompassing numerous elements; such as the integration of the different towns also includes the integration of land uses and services.

One of the major problems is to integrate the towns into one entity. The former buffer zones cannot simply be formalized as this will not result in planning in an orderly manner. Interface development will have to take place and this has an inherent problem of interface conflict. This means that a blueprint for all towns cannot be formulated and each town will have to be dealt with individually and developments will have to be considered bearing in mind the individuality and uniqueness of the area.

The Land Development Objectives [LDOs] as proposed by the **DFA** are going to address these issues. These LDOs are similar to the "old" structure plans, but differ in one major aspect and that is that a process now has to be followed whereas a once off plan was created in the past. Public participation is now obligatory in the process and the communities have a greater contribution to make in the planning of the urban area.

The crux of this thesis is to propose a new land management act for the Free State Province. The relevance of certain of the "older" planning principles, ways of thinking and then certain planning instruments that were used is also discussed in order to form a basis for the new way of doing. The **DFA** is also discussed in fair detail, but unfortunately it has not been fully implemented in the Free State Province so a number of assumptions, which could be proved incorrect, had to be made. In some provinces where the **DFA** has been implemented the conditions and circumstances differ so much from these in the Free State Province that analogies could not be made. The principles set by the **DFA** are good and expound upon the previous principles of public interest, interest of the area and of orderly planning. In compiling policies and legislation this uniqueness has to be accommodated and specifically addressed.

The fact that circumstances differ from province to province is always something to keep in mind as it definitely plays a major role – sometimes bigger than legislators care to think or acknowledge.

#### **1.4.2 Town-planning schemes as planning or control documents**

In the Free State Province the present situation is that the town-planning schemes are much outdated. In the past and even currently the town-planning scheme is used as a planning document and not as a control or management document. In the recent past a local authority relied on a structure plan to guide the planning and development of the town. These structure plans did have deficiencies as they

were politically inspired and did not address the integration of the Black and White towns. The planning process of the LDOs should underscore the planning aspects in a more comprehensive way than the former structure plans.

The lack of proper planning documents at many local authorities in the past resulted in either very little pro-active planning taking place or the town-planning scheme was used as a planning document. A clear distinction must be made between planning and control as these cannot be the same based on similar parameters and documents. Planning is *always* (own emphasis) future orientated and should indicate directions and policies for specific categories of land development and land use. Plan-making is when a plan has to be made when something has already happened and that is in the present; that is also why the term "forward planning" does not make sense as it implies that "backward planning" can also take place.

The LDOs should take care of the planning issues and then land should be zoned for specific purposes and based on certain policies. Zoning in this sense denotes that specific areas have been allocated particular uses and these are in zones.

An issue of paramount importance to keep in mind is that development taking place and a town-planning scheme not being able to regulate it is inviting problems as the managing of the land will be difficult, if not impossible. To illustrate what should happen is that the LDOs should indicate the areas for the various developments and the town-planning scheme should then be amended to provide appropriate zonings for those areas and to set the parameters for control and management. As an example [very many similar examples exist in the Free State Province] it can be stated that the town-planning schemes of several of the actively growing towns do not provide for "offices" or "guest houses", this means that these uses cannot lawfully be accommodated at present.

Should a developer want to erect offices in these towns the town-planning scheme will first have to be amended in order to allow the use. This is a longer and

cumbersome process to reach the intended goal. When this takes place the legislation, Townships Board and officials get blamed while it is solely the local authority that should see to it that their town-planning scheme is up to date and provides for the necessary uses.

The above is but a single example of many issues where development is delayed and often stifled as a result of the town-planning scheme not being able to accommodate the development.

Another major problem in the Free State Province is that parking requirements for business uses were determined long ago and existed predominantly only in the White areas. These parking requirements are inadequate and becoming more so with the formerly deprived people becoming more mobile with a rapidly increasing car ownership. Town-planning schemes should be updated for these issues and make proper provision otherwise the spill-over is going to cause a ripple effect to other components of the planning process.

It is also important to realize that land use cannot operate in isolation as uses influence several components and this has a ripple effect upon the entire integrated planning process. In the past planning components were isolated and this led to disproportionate development, not only racially based, but also spatially and the ancillary aspects like transportation systems.

#### **1.4.3 Development of urban areas**

Higher densities and much more innovative use of land will have to be found and of paramount importance is that the land should be better managed. Taking this as a point of departure the basis has to be sound policy determining the framework within which the innovation and management have to operate. LDOs are becoming more important as these determine the future expansion of towns as the basis of the development.

The rigid segregation of land use results in increasing the distance between residential areas and places of employment especially where the urban area is spread out over a large geographical area. Long distances result in residents spending unwarranted proportions of their income, time and energy on journeys to and from work and in the majority of cases these are the people who can least afford it. Rigid defining of uses permitted also discourages activities in the informal sector of the economy; this in turn forces the residents to travel to the formal business centres. The Central Business Districts (CBD) of the White towns are also under pressure as they are deteriorating as they become more decentralized. This has specific problems and is only touched upon in this thesis. A comprehensive study in this regard will stand bigger local authorities in good stead.

Residents are prohibited to conduct small businesses from residential erven that could have created opportunities and employment. In developing countries some of the most rewarding activities in the economy take place from people's homes, but then the uses should be more flexible. The petty informal traders must also have demarcated spaces from which to trade as they have a specific niche in the economy of specially the poorer sections of the community (Njoh 1995:345-346). The rigidity of the present town-planning schemes is maybe one of the major problems and could to a certain degree stifle development. Although control is essential the control can be flexible in the way that more uses are allowed within particular categories and not that it should be flexible in terms of the application of it.

The rigidity of the town-planning schemes causes a dislike of them among developers as they see the town-planning scheme as a threat to development. This should not be the case as the town-planning scheme actually only controls the zoning of the particular erven.

Over the years the Townships Board has had to bear the brunt of the blame for so-called delays, the other scapegoat being the cumbersome procedures. The time is now appropriate to respond to the call for own legislation as required by the **DFA** and to make own laws, policies and procedures for land use in the Free State Province. Unfortunately the Free State Province is lagging behind in so far as it concerns policies and process and land development legislation. This thesis is an attempt to partially correct this state of affairs.

The town-planning schemes have to be reviewed extensively and these amendments will have to receive urgent attention. The scope of the amendments to the town-planning schemes fall beyond the ambit of this thesis and is only touched upon where it interfaces with the thesis.

As it would be impossible to change everything at once, it is also imperative that change should take place orderly. The opinion is held that the legislation should first receive attention and then the subordinate legislation such as the town-planning schemes. Policies should of course run concomitantly with the legislation. In a process of this magnitude the **Substitute Combine Adapt Minimize/Maximize Put to other uses Eliminate Reverse (SCAMPER)** technique should be applied (Kuby 1996).

A theoretical study point of view and the land use processes in the Free State Province have been analysed. The change in the political dispensation and the proposed integration of the different towns and the new land development principles has necessitated it to review the position of the Free State Province in this field.

The emphasis is on land management as a specific reality is experienced and this should be managed in such a way that development takes place and that it is controlled.

Management means that opinion makers and decision-makers are dealing with imperfections. Incomplete and uncertain information based on uncertain circumstances. In this milieu decisions have to be made and planning and management have to take place – and this is where management and strategic planning surfaces. Social cohesion has to be preserved and people have to go along with the plans and decisions even if they are not ideal, but decision making is not a tidy, decent clean-cut process – it is a messy, untidy yet gutsy process (So 1979:15). This thesis aims to bring some tidiness in the decision-making process so that development can take place in an orderly fashion. Many of the ideas expressed in this thesis have been discussed with various people over the years and have been refined into that which is presented. Although not trained in a legal discipline the author has also taken pains to include court rulings on various issues and to use these as guidelines to eliminate revisions and trouble.

Throughout the thesis the fact that the Free State Province, like other provinces, has a unique manner of managing land use and development should be kept in mind.

The legacy in land issues that we have to correct and contend with is a truly daunting task. If one realizes that even though the United Kingdom, for instance, has had 400 year of practice at urban design and comprehensive planning and development the results have been "pretty disastrous" (Davies 1989:175)<sup>1</sup>. This sense of disaster was most likely experienced subconsciously by the people, but they were led to believe by what was fashionable, correct and intellectually acceptable. Now the truth and reality has dawned and it is realized that often bad and inhuman planning had taken place (Davies 1989:176). The secret it to enthuse people who have become demoralized and, perhaps, resigned to the hopelessness of their position, through professional leadership and through helping people themselves to overcome problems.

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<sup>1</sup> The complete speech by His Royal Highness the Prince of Wales as quoted in Davies (1989:175-177) is attached as Annexure A.

This may be through helping them to rehabilitate their own houses, for instance, which in turn give them new-found confidence through the acquisition of a skill. Through confidence comes hope; through hope come new ideas and new economic activity. However, it requires a change in attitude, which is not easy. Above all, it requires people who are concerned enough to want to make a contribution (Davies 1989:177).

It must be remembered that in the past very little or no real development in the sense of providing facilities took place in the Black areas and now all of a sudden the residents are confronted with elaborate plans indicating how the towns to be formalized and developed will look. An important aspect to keep in mind is that these communities have all along been deprived of especially business and commercial facilities and they do not really know or understand how to evaluate these plans. Some consultants exploit this and the people are led to believe all aspects of what is told to them. This in turn creates certain expectations that cannot be met with the residents and in turn unhappiness. Townships Board has a responsibility towards the public at large and these people should be protected against ruthless exploitation.

## 1.5 METHODOLOGY

Research will be done mainly from books and documents where these are practical in their application and where the more practical aspects of land use and management are emphasized. The theoretical aspects of spatial planning will be touched upon, but will not be researched in-depth as this is not a town planning **per se** thesis. All along it will be endeavoured to indicate how all aspects of planning should intertwine and work hand in glove with one another.

So far as the discussions around the **DFA** are concerned it has to be mentioned that this new-fangled legislation is still in its infancy country-wide and especially in

the Free State Province. Literature on it is scarce and what will be written are mostly found in policy documents and are also mostly interpretations as no experience can be incorporated.

Court cases form a large portion of the thesis and this is mainly because the Townships Board, and the Development Tribunal, are quasi-judicial administrative tribunals and have to adhere to certain rules. In the Free State Province the Townships Board is also the expert body on land use issues and advises the decision-maker accordingly. Unfortunately the discussion of specific cases will fall beyond the ambit of the thesis and only established policies and principles may be cited.

The new land development act that is proposed in chapter 8 is based on experience with existing legislation and problems that have been encountered with certain aspects. The main aim is to expedite applications and still keep it simple and economical – in contrast to the **DFA** that is complicated and expensive to administer.

This thesis will be based on theoretical research and vast experience of the author in land use related matters over a period of 15 years as head of the Townships Board Secretariat and land development division in the Free State Province. The author has attended more than 700 Townships Board meetings and slightly more than 50 per cent of these were hearings where objections opposing development were received. The proposed legislation in chapter 8 is also his own work based on experience.

It should also be noted that in all the court cases (13 in total) where the Townships Board was cited the author represented the Townships Board and the Free State Government (formerly the Free State Provincial Administration).

## **1.6 STATEMENT OF PROBLEMS AND SYNOPTIC VIEW OF CHAPTERS**

Town planning and land management will have to undergo serious changes and paradigm shifts in order to provide for urbanization and the integration of towns. These are some of the aspects that will be addressed in this thesis, but very little has been written about this, specially as no previous examples of such changes at such a vast magnitude have taken place. The entire Republic of South Africa is subject to these changes yet each province has its own unique circumstances that dictate the extent of the changes and these must be taken into consideration.

As so little has been formally published about the changes that have to take place in terms of land use and management much has to be relied on policy documents and articles, especially concerning the **DFA** and all its provisions. Townships Board also considers numerous applications where the principles and aspects of the immanent changes in planning are presented as arguments and these are then debated. Unfortunately specific references to cases may not take place and all aspects have to be "disguised" as principles. Specific references to Townships Board meetings are also restricted, as they will cause the thesis to become far too long.

Experience in land use matters and how to deal with it plays a great role in this thesis and a major part of it revolves around the experience and possible solutions to the problems encountered with an unfortunate legacy.

In chapter 2 the current reality of what has been inherited from a sad past is discussed against the background of the legislation at hand. The dynamics of development and planning are also illustrated. It is also attempted to indicate the deficiencies of the current way of dealing with the whole issue of land use. However, it must be borne in mind that not all planning was bad and some of the ideas and principles were sound, they were just implemented in an apartheid system and this made them appear bad.

Chapter 3 deals with the fact that planning cannot be seen as the only element in development and cannot be done in isolation. Some of the major protagonists are discussed **viz.** transportation systems and sustainability. Mere planning can never deal with all the aspects now influencing one another and the move to strategic planning is essential. It is imperative that planning should be regarded as part and parcel of management of land use and development.

Chapter 4 deals mainly with the protagonists who have to take part in the planning process. Spatial planning is also depicted as a process where various elements play an important role and where different aspects of a much broader process than merely planning has to take place in order to achieve pre-determined goals and objectives. It must be borne in mind that spatial planning cannot take place in compartments and that various other disciplines such as traffic engineering has a role to play in spatial planning.

In chapter 5 the emphasis is on the environment and how development can influence it and how strategic planning can be done to accommodate all elements. It must be remembered that planning in a sustainable way does not imply that development should not take place – management is the pivotal requirement. It is impossible to exclude the environment and as development has to take place in harmony with the environment it is important that management of the different elements takes place.

Chapter 6 contains a discussion on the **DFA** and land use control and/or management measures as the one goes hand in hand with the other. The governance aspect of local government as it pertains to urban land is also addressed. This legislation is considered by some to be the answer to all development problems and in this chapter detail discussions take place in this regard. Although the **DFA** has sound principles some of the provisions are not really designed for expeditious delivery and these are also discussed.

In chapter 7 the legal and administrative aspects are discussed and these are also relevant to the Development Tribunal instituted in terms of the **DFA**. It does not matter what legislation is adopted, it will have to conform to specific judicial rulings and these are discussed in detail. As this is not primarily a thesis of law only the relevant aspects concerning the Development Tribunal and Townships Board as quasi-judicial boards are discussed and then bearing in mind that these are planning boards.

Chapter 8 contains the proposed legislation for the Free State Province and the more revolutionary aspects contained in this act are discussed. The Free State Province, as other provinces, is unique in land uses and development and the proposed act takes this into account and uses the elements to ensure that orderly development and planning can take place expeditiously. Some of the provisions, like the advertisement procedure and the objection deposits are revolutionary and have nowhere been instituted, yet these provisions aim to streamline functions and expedite matters.

In chapter 9 a number of recommendations is made and conclusions are reached regarding critical issues where government at different spheres will have to take conscious decisions and set clear and crisp policies in order to maintain a proper and efficient land management system.

## **2 CURRENT REALITY OF URBAN AREAS**

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*Time past and time future*

*What might have been and what has been*

*Point to one end, which is always present.*

T S ELIOT

### **2.1 INTRODUCTION**

Land management depends on legislation and in the Free State Province the following legislation has been used for urban areas. This legislation deals with township establishment, town-planning schemes, alteration of the general plan, removal of restrictive title conditions, rezoning and the overall change in land use/zoning. The following legislation is of importance: [The legislation in the former homelands that have since been incorporated into the Free State Province is not mentioned as the following legislation has been made applicable to these areas].

- Free State Townships Ordinance, 1969 (Ordinance 9 of 1969)** hereafter referred to as **Ordinance 9 of 1969**.
- Removal of Restrictions Act, 1967 (Act 84 of 1967)** hereafter referred to as **Act 84 of 1967**.
- Less Formal Township Establishment Act, 1991 (Act 113 of 1991)** hereafter referred to as **Act 113 of 1991**.
- Development Facilitation Act, 1995 (Act 67 of 1995)** hereafter referred to as the **DFA**. The fact that the abbreviation is used in referring to this particular act is based on the colloquial use that has been established. [It needs to be emphasized that although this Act is part of the legislation it is not yet fully implemented in the Free State

Province and only the principles as set out in section 3 are applicable. The whole matter around the Act will be dealt with in greater detail in chapter 6 **infra**].

It has to be reiterated that this thesis does not intend to dwell on the past and subsequently very little is also going to be said on procedures to be followed with existing legislation. The principles of planning and development as enshrined in legislation, however, will be dealt with as these are of significance although the details of specific processes fall beyond the ambit of this document.

In the ensuing articles of this chapter it shall be attempted to indicate briefly the history of the Townships Board since 1894 and the role it plays in the consideration of land use and development. The different legislation will be explained in so far as it pertains to land use and then the features of a town-planning scheme will be discussed. The importance of a town-planning scheme as a control document will be discussed thoroughly as it currently is the singular most important document governing land use and in most instances also land management.

The urbanization phenomenon will also be discussed as this is the major influence on land management and all the other issues such as car ownership really originates from urbanization. Policies regarding land use and urbanization are in dire need of change and these are discussed with the view of improving life for the communities. Urbanization brings with it several related issues and these will be dealt with in a manner indicating how all these issues merge with one another.

## **2.2 FREE STATE TOWNSHIPS ORDINANCE, 1969 (ORDINANCE 9 OF 1969)**

The Townships Board is regulated by **Ordinance 9 of 1969** and this advisory tribunal advises the Member of the Executive Council entrusted with Local

Government and Housing (hereafter referred to as the MEC) on all town planning matters as stipulated in the ordinance. Township establishment, the introduction of town-planning schemes, the amendment of these planning schemes, the alteration and cancellation of general plans and the subdivision and consolidation of land are all processed in terms of this Ordinance. In all instances the Townships Board considers the applications and advises the MEC who has the final decision making powers. The only instance where Townships Board has the final decision-making powers is where it acts as an appeal board in terms of consent uses granted by local authorities.

### **2.2.1 Historical background of Townships Board**

Townships Board originated as an **ad hoc** planning advisory board in terms of the **Dorpserkenningen Act, 1894 (Act 6 of 1894)** when a commission had to investigate any application for land development. The first Townships Board, therefore, was appointed on an **ad hoc** basis to investigate each township establishment (section 3 of the Act which was an act from the Orange River Colony). Matters progressed to such an extent that it became important to have a permanent board and in 1909 in terms of the **Township Act, 1909 (Act 15 of 1909)** a commission was appointed to investigate all applications for township establishment (section 2 of the Act). After the Republic of South Africa became a Union, the Acts made way for Ordinances and this culminated in the first official Townships Board that was established in terms of sections 3 to 14 of the **Orange Free State Township and Hamlet Ordinance, 1928 (Ordinance 6 of 1928)**. The next legislation was the **Orange Free State Townships Ordinance, 1947 (Ordinance 20 of 1947)** and this resulted in the still used **Free State Townships Ordinance, 1969 (Ordinance 9 of 1969)**.

It must be borne in mind that Townships Board is an independent tribunal that also serves as a quasi-judicial body. Townships Board advises the MEC directly, not a Department, and the decision of Townships Board, which is in the form of a

recommendation should be conveyed to the decision-maker without any further references to other bodies or functionaries for their comments. The administrative functions of the Townships Board as a quasi-judicial body will be expounded upon in detail in Chapter 7 **infra**.

It must also be remembered that Townships Board and **Ordinance 9 of 1969** as a whole is not racially bound and provisions are applicable to any town. It also stands to reason that this Board is important as far as planning is concerned as it considers all aspects of planning and has to act in accordance with the town-planning schemes and in the interest of the residents.

### **2.3 REMOVAL OF RESTRICTIONS ACT, 1967 (ACT 84 OF 1967)**

In terms of **Act 84 of 1967** all restrictive conditions in deeds of title can be removed, suspended or amended. Rezoning can also take place in terms of this Act and a town-planning scheme can be amended should the restriction pertain to the land use. It is interesting to note that the Act specifically prescribes that the decision-making function should be based on public interest, the interest of the area or the development of a town (section 2 of **Act 84 of 1967**). This prescription of **Act 84 of 1967** relates to the principles of the **DFA** and these will be discussed in detail later in this thesis as it entails a detailed expunction of numerous court rulings [**cf.** Chapter 7 for a detailed discussion on this subject].

### **2.4 LESS FORMAL TOWNSHIP ESTABLISHMENT ACT, 1991 (ACT 113 OF 1991)**

**Act 113 of 1991** was promulgated in order to "replace" parts of the **Black Communities Development Act, 1984 (Act No. 4 of 1984)** that was revoked. **Act 113 of 1991** provides for a quicker way of establishing towns and this is based on two chapters, **viz.** chapter 1 and chapter 2. The former chapter

may be used if a need for land is experienced and the latter chapter if a need for housing is experienced. In the Free State Province only a very few chapter 1 applications had been received compared to a vast number of chapter 2 applications. This can be ascribed to the fact that land is still fairly readily available and section 1 therefore cannot be applied. **Act 113 of 1991** also has its limitations and in the end did not prove to be quicker in processing applications than **Ordinance 9 of 1969** as far as township establishment was concerned.

An important aspect to keep in mind when use is made of **Act 113 of 1991** is that a township can consist of only housing with a limited number of businesses and other uses as it is intended mainly for the provision of housing. This is because the Act specifies that a need for housing has to exist.

## **2.5 ANNEXURE F AS A "LEFT OVER" FROM THE BLACK COMMUNITIES DEVELOPMENT ACT, 1984 (ACT 4 OF 1984)**

Annexure F was an annexure to **Act 4 of 1984** and when the act was revoked this annexure had to remain as it served as a kind of town-planning scheme for the towns that had been established in terms of the particular legislation. The reason for this was that it would enable the Black towns to have some kind of land use control mechanism albeit not ideal. This legacy is now being used as a basis for the conditions of establishment pertaining to towns established in terms of **Act 113 of 1991**.

## **2.6 DEVELOPMENT FACILITATION ACT, 1995 (ACT 67 OF 1995) [DFA]**

The **DFA** is still in the process of being implemented in the Free State Province. At present the only aspects of the Act that are receiving attention are the

principles and the compilation of LDOs as the province has embarked on this programme. A detailed expunction of the **DFA** is found in Chapter 6 **infra**.

## 2.7 TOWN-PLANNING SCHEMES

Specific zonings originated when it became clear that land use had to be controlled in order to prevent the misuse, abuse and inappropriate re-use of land that could result in chaos. Demographic and business forces also strengthened the fact that zoning should be implemented (Listokin 1974:4).

A town-planning scheme plan is a precise plan indicating exactly what use is permitted on each piece of land. In a town the plan indicates every erf in a specific colour or other form of particular identification. This code is then an indication as to what use is designated to the specific erf. The town-planning scheme plan is primarily a control document with very little future planning in hand. It is a plan on which anyone should be able to determine the exact uses permitted on a specified piece of land. The whole idea is that this plan should be a development control document that is essentially a method of licensing (Alder 1979:1). In the past, it has been experienced that in the absence of proper structure plans, the town-planning scheme was often used as a planning document. This manner of planning is incorrect, as it does not really serve as a pro-active planning document as it places the emphasis on control (Day 1995:Personal interview).

Currently the majority of White towns in the Free State Province have town-planning schemes, whereas the Black towns do not have town-planning schemes controlling the use of land. In most Black towns land use is controlled by Annexure F or conditions of title, especially in recent times where tenure rights are also receiving attention (Stapelberg 1996:Internal policy document).

The town-planning schemes are still fairly rigid in categorizing land uses and the whole idea of land use control is basically a process of regulation and co-ordination where certain uses are permitted, but with no guarantee that the specific development will ever take place (Kivell 1993:133). This is the typical predicament when the town-planning scheme is used as a planning document. The uses have then already been established and should development not take place then the town-planning scheme is not in accordance with what is **de facto** happening.

### **2.7.1 Town-planning scheme characteristics**

Zoning in terms of a town-planning scheme is a means of specifying the use of a particular erf and the usefulness of a town-planning scheme ends at this stage. As a document a town-planning scheme has little planning in it as practice has it focussing on defining a catalogue of physical rights or restrictions in a legalistic manner (De Leeuw 1998:Personal interview). Market forces are then allowed to develop and use these zones in a specific manner and when something else than the specific use is envisaged then that use has to be changed. The measure of planning practice was related to the isolated use of specific land while economy, general welfare and good order, which are features to be applied to the total planning system, are excluded. The legislation governing town-planning schemes do make provision for changes to be made in the use of land, albeit in great administrative detail. However, the long-standing general wisdom has been that the scheme not only fixes the end product, but that it serves as the definitive planning solution (Oakenfull 1994:110). This manner of thinking resulted in local authorities and provincial administrations becoming locked in the confines of a town-planning scheme and regarding it as a planning document whereas the real and actual planning was neglected. The control measures, however, received sufficient attention and this resulted in the stringent controls of a town-planning scheme currently experienced.

Traditionally zoning is a method of rational land use based on the effort of planners to demarcate land uses and avoid incompatible land use and at the same time guarantee adequate land for each use. The zoning categories and permissible uses such as for residential, business and office uses allowed on land have been rigid and have tended to segregate and specify each category in great detail. This way of thinking cannot be continued and more flexibility will have to be accommodated. A major element has emerged and will in itself ensure greater flexibility and this is to mix the development in specific use or zoning categories without compromising health, safety and mobility (Werlin 1979:999). At this stage it is enough to state that structure plans (or LDOs **in casu**) should do the planning and the town-planning scheme zonings should follow suit in order to ensure that the control measures of the town-planning scheme are in accordance with the planning. The zone categories also have to become less rigid and should allow for some flexibility so that mixed uses could be accommodated.

In order to understand the difference between land use and zoning as it will be used in this thesis it is important to distinguish between the two concepts. Land use is what the land is used for, irrespective of whether the use is in accordance with the conditions of title and/or the provisions of the town-planning scheme. Zoning on the other hand is that particular use permitted in terms of the conditions of title and/or the provisions of the town-planning scheme. In other words land use may sometimes be unlawful while zoning is within the lawful provisions.

The allocation of land uses is more restricted in its effects and is a more negative method of land use control. Along the same line zoning cannot prevent development from taking place and it has to be changed, with some delay, and then typically "upward" rezoning is found. This means that the "new" zoning usually provides for more intensive land use. On rare occasions "downward" zoning is found where the use will be more restricted than before with no compensation paid. The former way is more development friendly whereas the latter is totally stifling (Clawson & Hall 1973:168).

Part of the flexibility that should be present in zoning is that which the property market indicates. The property market must not be under estimated to affect change within a city. The business market can determine zones for development that can create planning and economic problems for the city. These have to be identified at an early stage in order to act in a property-active fashion and not be caught unawares (Colenutt & Hamnett 1982:43).

## 2.7.2 Town-planning schemes as control documents

A town-planning scheme is a land regulatory instrument as clearly defined in section 25 of **Ordinance 9 of 1969** that reads as follows:

"A scheme shall have for its general purpose the co-ordinated and harmonious development of the area to which it is to apply (including, where necessary, the re-layout and development of any part thereof which has already been subdivided and built upon) in such a way as will most effectively promote the health, safety, order, amenity, beauty, convenience and general welfare of such area as well as efficiency and economy in the process of such development".

In the rapid changing circumstances and in the light of urbanization taking place at such a rapid pace zoning is becoming increasingly important. It is used as a device to guide development and by ensuring that incompatible uses do not infiltrate areas. In other words it protects areas as a New Jersey Supreme Court judgement aptly states: "... promoting the general welfare ... is to protect the private use and enjoyment of property, and to promote the welfare of the individual property owner. In other words, promoting the general welfare is a means of protecting private property" (Clawson & Hall 1973:170). It is interesting to note the similarities of the ruling with the quoted section from **Ordinance 9 of 1969**.

A town-planning scheme is a direct derivative from **Ordinance 9 of 1969** and in essence governs over bulk, height, coverage, building lines, density and of course the specific uses permitted on erven. In densely populated areas the overshadowing, blocking of sunlight and encroachment of privacy should also receive attention. The major purpose of these regulatory elements is to minimize the problems of congestion, ensure services and control uses and densities, in short to ensure orderly planning as stipulated in **Ordinance 9 of 1969** and the general welfare of the community (Pacione 1990:18). Land use regulatory controls usually determine the specific location and use of land as well as the intensity with which it is used. Regulatory controls are essential, yet sometimes have only marginal effects with the main reason being that they are not backed by sufficient political will and public support (Mattingly 1993:113).

A town-planning scheme unfortunately becomes outdated as rapidly as development takes place or circumstances change and should be updated at regular intervals in order to keep pace with changing circumstances and needs. It must be remembered that a town-planning scheme starts dating the day it is prepared (De Leeuw 1998:Personal interview). Daily updates are of course not possible, but it should be updated at least quinquennially or even more frequently depending on the change, growth, development and dynamics of the town. Larger towns and cities with more growth and development being more apt to change, will have to update their schemes much more frequently especially if they employ their own professional staff (Rosenberg 1984:32). Town-planning schemes should be retained as control documents, but they should be in pace with the development taking place and should provide for development otherwise they will be cumbersome hurdles and be regarded with contempt.

A town-planning scheme can never be a replacement for planning, unfortunately sometimes zoning, in the form found in the town-planning scheme, is the tail that wags the dog. It must always be borne in mind that the town-planning scheme has to fit in with strategic spatial management and planning and should follow

where led and not the other way around (McClendon & Quay 1988:139). Land use control, as found in a town-planning scheme, is also not the same as planning, but is an instrument used in implementing planning goals, objectives, policies and control. An essential pre-condition to the compilation of town-planning scheme regulations is a strategic spatial management plan in which the major land use elements are co-ordinated and interrelated. When a town-planning scheme follows a strategic development plan [LDOs **in casu**] then it can be regarded as technically correct and can hold its own when judicially tested. However, if town-planning scheme laws are enacted without regard to accepted goals, policies and planning principles then it can be regarded as unreasonable, arbitrary or capricious when subjected to legal test (McClendon & Quay 1988:142).

A town-planning scheme cannot provide a comprehensive and co-ordinated approach to solving urban problems and it cannot be allowed as a replacement for more and better planning (McClendon & Quay 1988:142). A town-planning scheme controls the land uses, it can at best allocate uses in predetermined areas and as the uses change when development takes place the land use in the town-planning scheme has to change to ensure control over the development.

A town-planning scheme helps shape the urban environment and largely determine liveability. Changes to the town-planning scheme in effect means changes to the environment and that is why public notice is so important. At present three basic defects can be traced in town-planning schemes (Town and Country Planning 1967:1) and these are:

- Town-planning schemes have become overloaded and this leads to delays and cumbersome procedures. The burdening has resulted because town-planning schemes are used as planning documents whereas they are control documents.

- Too little participation from the public has taken place and this leads to dissatisfaction and mistrust, especially when the scheme has to be enforced.
- The system has been better as a negative control on undesirable development than a positive stimulus for creating a good environment.

### **2.7.3 Methodology of land uses as found in town-planning schemes**

As a result of changes in development land use is also not a static end to a planning process, but is a process in itself as it has to adapt in terms of area and provisions as the LDOs indicate and how development takes place. The town-planning scheme should be the control document of the planning process, but then land use cannot be static as the planning constantly changes and the uses should adapt in order not to stifle development initiated by planning (Stein 1995:139).

The zonings permitted in terms of the town-planning scheme are basically part of a process of regulation and co-ordination where certain uses are permitted, but with no guarantee that the specific development will take place in future (Kivell 1993:133). However, if the development plan is in place the land use document or town-planning scheme must follow suit as control has to take place. In most cases the development cannot take place until such time as the zoning has been brought up to date.

The possibility also exists that land use control in the different use categories are wielded as tools to implement strategies that are impossible as they ignore the market realities. Sometimes the standards and requirements of the controls are of such a nature that they demand that humans behave in ways impossible if they should survive. As an example the minimum extent of erven cannot always be

afforded by all people and this forces people to settle informally (De Swardt:Personal interview 1998).

Market forces and socio-economic aspects should be recognized and taken into account and it is very important that the control measures should be just control measures and not used as planning documents or plans (Mattingly 1993:113). In the entire process of zoning as it is found in the town-planning scheme it is important to note that it is actually the land use that is restricted in specific ways. The structure plan actually indicates what the land may be used for while the town-planning scheme determines the particular uses per erf and then controls it.

What must be borne in mind whenever a town-planning scheme is in operation is that it stipulates zoning which in turn permits specific uses. Should the occupier of the erf conduct some other uses then these are unlawful in so far as they are in conflict with what the zoning stipulates (Thornley 1995:Personal interview).

The following diagram, 2.1, indicates the process of land use planning and as these steps are followed the land use can establish itself to the advantage of the area and community. In its simplest form the process consists of the three steps in the inner square. The ten steps surrounding the inner square may vary with changing circumstances, but if they are followed an accurate idea of what should be taken into account in the planning can be formed.

This will enable the protagonists to ensure that all the needs of the community in their interest will be addressed. It is evident that land use planning cannot be regarded as a "thumb suck" process and has to be based on information regarding the community and/or area in which the planning takes place. It is also interesting to note that the planning process also relates to a strategic planning system where **inter alia** alternatives are identified, goals are set and monitoring takes place. This process also intimates that spatial planning does not take place in isolation as the "plan" in each block implies a comprehensive plan and not only a plan that is spatially related.

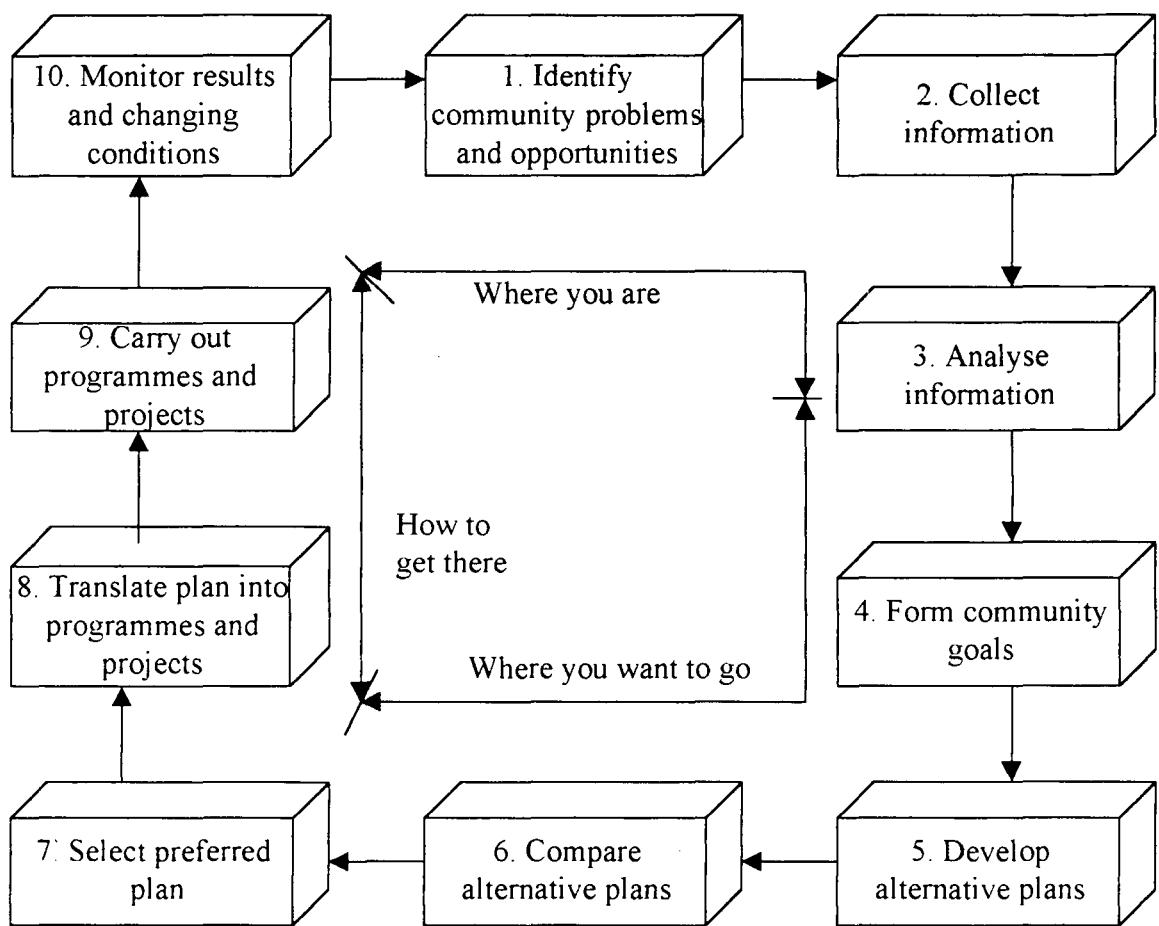


DIAGRAM: 2.1

LAND USE PLANNING PROCESS (Roberts 1988:225)

The conclusion can be made that as elements and features change so the processes absorb the changes and adapts them to form a cycle. It is important to note that the cycle should not be disturbed as the result of the planning process will suffer. The process can also be presented as moving from the present into the future; hence the planning for the future in the present. The movement of development should always be in the predetermined direction even if deviations do take place. Deviations should be abrupt and correction should be prompt otherwise the objective will be missed.

A rigid and compartmentalized determination of uses in the town-planning scheme has several negative implications for penurious towns especially in the present situation where poor transportation systems exist in segregated urban areas. The rigid segregation of land use results in uses being in isolated pockets and no variation takes place. This manner of doing increases the distance between residential areas and places of employment especially where the urban area is spread out over a large geographical area. Long distances result in residents spending unwarranted proportions of their income, time and energy on journeys to and from work and in the majority of cases these are the people who can least afford it (Njoh 1995:345).

Rigid defining of land uses permitted in the town-planning scheme also discourages activities in the informal sector of the economy. This in turn forces the residents to travel to the formal business centres and also does not allow the residents to conduct small businesses from residential erven, thus creating opportunities and employment. In developing countries some of the most rewarding activities in the economy take place from people's homes, but then the land uses in the town-planning scheme should be more flexible. The petty informal traders must also have demarcated spaces from which to trade as they have a specific niche in the economy of specially the poorer sections of the community (Njoh 1995:346).

## **2.8 ROLE OF A TOWN-PLANNING SCHEME IN URBAN AREAS**

The correction of the spatial segregation entails that development will have to take place. Development in turn means that a change has to take place and this change should firstly be in *kind*; (own emphasis) for example from a house to a shop, but it should also be change in a *degree* (own emphasis) where it is substantial (Cullingworth 1976:99). The *kind* (own emphasis) change is from one use to another while the *degree* (own emphasis) relates to the same use, but that the degree of the use changes, for instance residential with greater densities.

However, what must not be lost from sight is that development, and this includes the integration of the two separate towns should take place bearing in mind the provision of a "... domestic condition for the people in which their physical health, their morals, their character and their whole social condition can be improved." In other words the integrated entity should provide a secure and better living place, an adequate house, a pleasant town, where the city is dignified and the suburb salubrious (Cullingworth 1976:16). Orderly planning, public interest, interest of the area and the community all play important roles in planning and should be borne in mind with each step towards the correction of the spatial pattern.

Urban reconstruction in the post-apartheid Republic of South Africa is extremely exciting with new visions, wider participation and a developmental perspective that lacked in previous planning that concerned itself mainly with control measures. However, the reconstruction of cities cannot take place overnight and where planners simply rushed in to reconstruct the cities in view of the new-found democracy warning bells from history resounded. The process of reconstruction has to be linked to the Reconstruction and Development Programme (RDP) and in thus doing the process and administration of the Office of the RDP was slow and did not achieve much. This meant that the slow effect has a slow result and it was realized that the changes will neither be easy nor quick (Mabin & Smit 1997:217).

In order to establish a link with the Reconstruction and Development Programme (RDP) and land management one has to look at the basic principles of the RDP which are as follows (African National Congress 1994: 4):

- An integrated and sustainable programme. The RDP combines all strategies to distribute the resources of the country more fairly among all people. This strategy will be implemented at national, provincial, local, as well as public organisational level.
- A people-driven process. People with skills, initiative and determination, are the most valuable resource and should be nurtured in order to keep

the economy afloat. The RDP focuses on the basic needs of the human being, in exchange for the human being's energy needed to implement the process.

- Peace and security for everyone. The promotion of peace and security for all members of the community is important. Fairness and equality in the legal system are essential ideals for a people driven community.
- Nation-building. As a result of apartheid, the nation is divided and conflict exists among the various groups. It is the aim of the RDP to build a nation of people who work together. One country - one nation.
- The combination of reconstruction and development. The combination of reconstruction and development in an integrated system. To achieve this goal, an infrastructure is essential to provide services such as electricity, water, transport, health and communication.
- A democratic Republic of South Africa. Minority control in a community is one of the largest obstacles in the path of development in the Republic of South Africa.

Land management has to adhere to and promote these principles set out in the RDP in order to let development be compatible with the basic guidelines regarding planning and development of Government.

### **2.8.1 Land use qualities and requirements**

Town planning is not an unchanging process (subject) and is closely linked to changing patterns of development and related circumstances and of course political influences. It is difficult to judge what is "wrong" and what is "right" in so far as planning is concerned, but if the policies and guiding parameters are set then right and wrong become a little clearer. A town planner also has the unenviable duty to take many changing aspects into consideration with planning and development. As an example one can mention that the macro level (city

wide) is linked to the micro level (individual site planning) and this complicates matters as a development in a particular area which is judged in isolation could cause traffic congestion in another area. When a new development takes place on the periphery of the city with most of the people working in the Central Business District (CBD) then the car journeys generated by the particular development could add to the rush hour congestion in the city centre or along a specific arterial road. These examples are indicative of the process of planning and the wide spectrum that has to be considered by the town planner (Greed 1993:10-11).

The changes in land use management anticipated in the following few decades will be dominated by a few issues such as the likely influences of new scientific and technological developments, the decentralization of urban areas and the increased need to act locally and think globally. Major challenges to land use planners can be expected and these challenges will have to be met if sustainable and development planning is to prevail (Fabos 1985:186). As can be deduced the current situation is far from the ideal and the planners will have to muster all resources to correct the inherited fragmentation and to curb further disparities. The phenomenon of integration now becomes broader as not only are the spatial planners involved, but numerous other disciplines as the correction is not only spatial, but cuts across several disciplines such as traffic engineering and architecture.

The results of the manipulated urbanization the past four decades in the Republic of South Africa caught the town planners unaware. Black towns had been established with limited business and industrial opportunities and in the 1980s these towns were provided with all facilities forgetting that the residents of the towns had gotten used to providing for themselves. The legacy of the "apartheid city" and the correction of the existing development will be a problem for a number of years in future (Botha 1990:122). These towns will have to be integrated and become self-reliant in their own right otherwise the **status quo** will prevail and all the existing problems will be perpetuated and increased.

The decentralization of urban areas was initially made possible by the use of the car and has caused cities to spread far around the urban core. The migration of people from the rural areas into the cities is also responsible for the decentralization. The people settle on the purlieus of the town and in an attempt to accommodate these people in a sustained manner, shops (although sometimes informal) are provided in these settlements and as soon as this is done then decentralization takes place. A new attitude towards planning is required and the land use shift in towns will have to be accepted (Fabos 1985:188). If this cannot be accommodated no integration will be able to take place and the essence of one of the major principles in the **DFA** will be negated, **vide.** that the integration of land and mixed uses should be promoted. The most likely way in which the different urban areas can ever become self-reliant and also a sustainable entity is to integrate them into a single unit.

The decline of CBDs is a world-wide phenomenon and this also influences the urban area. The decline and decentralization of a CBD cannot be attributed to specific factors in all towns as the circumstances differ and the reasons are complex. However, some contributing factors that crop up more often than not are traffic congestion and the aging of the buildings (McCullum 1997:12). In the Free State Province the integration of the White and Black urban areas also play a vital role as the initial CBD is only in the White area while the Black area has no developed CBD.

Urban planning, linked to the previous policies, has crippled the ability of the cities in the Republic of South Africa to offer a decent urban life to the majority of its inhabitants as is evidently expounded in the separate towns. Yet, planning being so dynamic and adaptable ensures that the obstacles can be overcome to correct the legacy of the previous policies and it is possible to envisage a "new city" which is sustainable and integrated (Mabin & Smit 1997:193). The ideal situation will be to have one urban area where the entire area functions as one even if it has different and fragmented business areas.

## **2.8.2 Elements that influence the development of urban areas**

The influence of converting rural land to urban land can be minimized, and at the same time energy efficiency in the built area could be maximized, by creating relatively compact patterns of urban development. This means that existing urban areas should rather be intensified and mixed than to disperse growth and take undeveloped land (Owens 1994:172). This point of view can be applied directly to the situation in the Free State Province where buffer zones and open spaces exist between the Black and White towns. These spaces must first be used and developed before expanding the different towns each in its own manner and most likely away from one another that will increase the problems encountered with transport and services (De Swardt 1998:Personal interview).

Conditions in so-called squatter camps and/or informal settlements are often poor with flimsy houses and rudimentary services and infrastructure. Transportation is also sometimes slow, uncomfortable and dangerous (Sarre 1991:268). These conditions are not at all conducive to sustainability, internally [among the inhabitants] or externally [relative to the environment] and the town planner should take heed of this situation and endeavour to improve conditions with each piece of land development (Machogo 1997:Personal interview).

One of the greatest challenges that the town planner faces is that he has to plan into the twenty-first century and in so-doing has to accommodate an ever and rapidly increasing world population (Selman 1996:32). Planning has always been aware of the relationship between buildings, settlement patterns and resource consumption, but being aware is not enough; it should be applied and land management guidelines should be set and applied. One of the great anti-sustainability factors is the motor vehicle as it pollutes, makes a noise and consumes resources, such as fuel, that are limited. Policies that should definitely be set include (Selman 1996:39):

- Discouragement of dispersed low-density residential areas or any significant development highly dependent on car use. Compact cities result in less car dependency, which in turn create more sustainable areas.
- Some degree of concentration of amenities, though not necessarily centralization of facilities. They can be spread out across the area, but should not be provided on a singular basis, but in compatible clusters.
- Integration of development with public transport facilities and the maintenance of moderately high densities along public transport routes.
- If transport networks do not already exist planning them in an integrated manner with the development of land.

Planners should be compelled to accommodate more sustainable planning patterns in their plans. This is an important shift of emphasis from the philosophy of land use planning which, to a large extent, revolved around the car. The aim should be to guide new development to localities that will reduce the need for car journeys and the distances driven or which permit the use of more energy efficient public transport. A concerted effort should also be taken to improve cycling routes by making them safer and more attractive (Selman 1996:40). Taking all the above into account it appears that development and planning will have to coincide and that more attention should be given to more aspects and features to ensure proper planning in the interest of the area and the community.

Vacant land within existing urban areas should also be fully utilized, but this should be curbed in order not to allow "town cramming" which in turn could lead to social problems (Selman 1996:40). A fine balance exists between the different elements and approaches and this balance should be applied within the parameters of that which have been identified for the particular town in, for instance, the LDOs.

A clear distinction should be made between so-called town cramming and higher densities. The former relates to the unplanned settling in a hap-hazard manner

while the latter relates to the tidy and planned settlement of people. When planning is done properly the densities can be high without it being disadvantageous to the area. However, unplanned settlement can lead to all kinds of evils and dangers as the basic principles of planning usually are negated. As examples fire and disease can spread easier than in a planned area, the sustainability of the area towards the environment is also at greater risk when settlement takes place in an unplanned fashion (Selman 1996:41).

## **2.9 CHANGING PATTERN OF URBAN AREAS**

Patterns for development are a fundamental issue for sustainable development and in this sense the planning system has a fundamental contribution to make. Some ways in which new urban development may be accommodated are as follows (Lock 1994:236):

- Use and development of vacant land within built-up urban areas.
- Selective urban extensions (peripheral expansion).
- Selection of key suburbs for expansion.
- Multiple expansion of a number of areas.
- New settlements, that is land development.

Each of the above patterns has to be evaluated against a wide range of criteria among which are the criteria for sustainable development and transportation systems. One of the most important aspects is the influence the development will have on "car dependency". The issue is that the dominant criterion should be self-containment where employment and residential areas should be close to each other. Schools should also be located in such a manner that they are pupil and teacher friendly; in other words in close proximity to where the pupils live (Lock 1994:236-237). The siting of facilities and amenities is a feature that will also have to receive greater attention as the urban areas become integrated. Planning

should not be done taking only the specific area into consideration, but also the entire urban area.

As an example of city expansion in a poor manner Bulawayo can be mentioned. It at present has a city sprawl where virtually no-one, especially not the poor can afford to commute to the city centre (Townsend 1995:9).

The decision taken by the local government that the poor should leapfrog outwards from the city centre has placed a major cost burden on the people and when this mistake was realized a decision was taken to provide smaller erf sizes. This had the affect that small subdivisions were created on the periphery of the city and this was then intensified. This phenomenon is similar to the situation in cities in the Republic of South Africa under the apartheid system. The point is that urban sprawl is the real problem and can produce extreme problems and cause towns to be totally unsustainable (Townsend 1995:9).

Urban growth does not require, but dictates certain increases in facilities and amenities. The "new" features are to the advantage of the entire community and should be encouraged as the economy and community benefit from them. Urbanization places a burden on the urban area, but it also brings with it certain benefits. The cyclic manner of urban growth is depicted in the following diagram 2.2. If one looks at the new business that starts in the town and how that influences all the aspects of the economy and this in turn exerts an influence on land use, it is evident that the expansion is cyclic and one leads to another.

In diagram 2.2 a picture is given about how land use influences for instance the financial base of a town and also the economy as a demand for local goods and services increases. This is indicative of the indirect "spin-offs" of land use and how these in turn influence the future use. It also emphasizes the importance of land use as the incorrect use could have the opposite results and prove disastrous to the town.

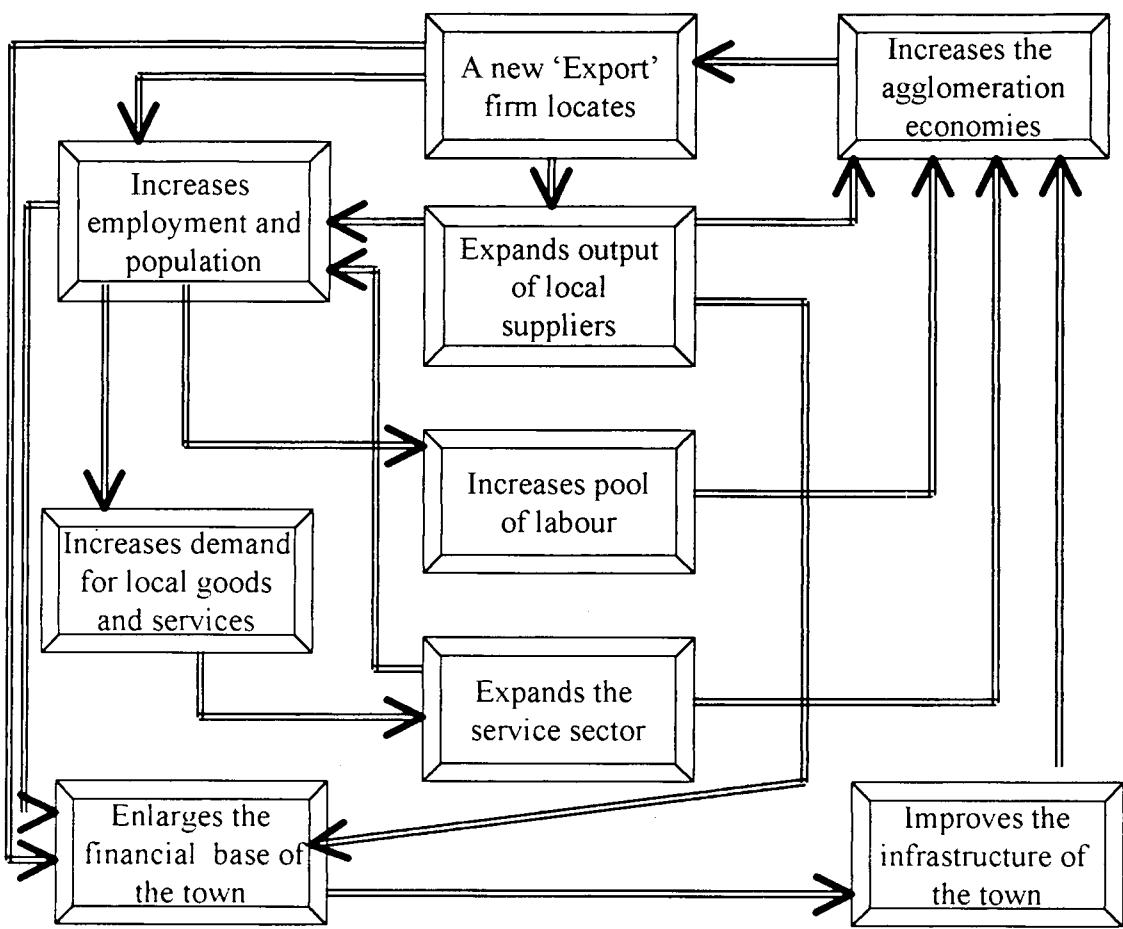


DIAGRAM: 2.2

#### CYCLIC MOVEMENT OF LAND USE CHANGES (Moseley 1974:96-97)

When the principles of mixed uses and the integration of different land uses are taken into account the settlement of office parks on the periphery of business and residential areas in towns immediately springs to mind. Although this has a great deal of positive aspects and wholly conforms to a number of sound planning principles and the **DFA** it can lead to suburban traffic congestion (Nel & Verster 1996:15). It must be borne in mind that in most cases the streets have been designed to accommodate only residential cars and with a relatively low volume. Although the development of offices in residential areas brings employment closer to dwellings it is a fact that not all the employees live in the direct vicinity. These people have to travel from other residential areas to another residential area to work and this places a burden on both residential areas. This manner of travel

can be regarded as "rat-running" and can pose grave problems to the flow of traffic (De Swardt 1998:Personal interview).

What in actual fact happens is that residents from one suburb travel to another suburb to work, this trip could either cut across the CBD or could miss it. Whatever the case the "normal" traffic pattern of cars moving into the CBD in the morning and moving out in the afternoon is disrupted. The ideal situation should be when the urban area has ring roads or belt ways and the inter-suburb traffic could make use of these to travel between the different suburbs.

## **2.10 POLICY FRAMEWORK**

The aspects as have now been highlighted require policy adjustments and evaluation, analyses and consultation are partly political, partly technical, partly focused on facts, partly on values. Evaluation of policy and guidelines are clearly central as they represent the core of the policy making and review process in which old and new ends and means are considered in relation to both known facts and held values. Analysis and consultation are complementary processes to this, but are important as policies will have to be adapted (Solesbury 1974:143).

Evaluation in policy making for planning is concerned with the determination of appropriate ends and means for the control of changes in the environment in order to serve the community. While the definition of objectives is essentially a process of reviewing objectives which underlie current operational policies, and which are either explicit in current policy or implicit in past decisions. Dissatisfaction with present policy is the common starting point for policy review (Solesbury 1974:143). It is common cause that dissatisfaction was experienced with the previous policies and new policies have been formulated, but these now have to be implemented and instruments for the implementation and activation of these have to be found.

One of the main questions to be answered in the Republic of South Africa is whether a consistent planning framework can be developed and be made applicable to both the highly formal (some call it the first world) areas of urban areas and mainly to informal (some say third world) settlements. The all encompassing question in this regard is how adequate is the planning system to encourage, manage, direct and change urban growth. This question leads to some key issues that include the adaptation by the town planner in the reshaping of the planning frameworks and how one can learn from international experiences (Kelly 1994:138).

A fairly novel way of designing and planning in developing countries is to have commercial buildings facing onto sidewalks, residences above these and then have parks and green spaces as an integral part of the development. The physical layout should be pedestrian and cycling friendly with dedicated travelling lanes (Kelly 1994:139). The idea of mixed uses can be taken even further and the uses can be "stacked", in other words, different uses can be created vertically and not necessarily only horizontally. This will have the effect that for instance a shop can be found on ground level, commercial or light industry one floor above and then residential use on the third storey. This is the ultimate mixed use as the people who live, work and sell on a single stand (Botha 1995:Development Tribunal interview). In short this results in vertical zoning upon horizontal land zoning.

If the above scene materializes then of course other amenities for the community should be provided in clusters in close proximity and this could lead to scattering of the CBD. In the current situation in the Republic of South Africa it is still difficult to devise a clear vision for the CBDs and how one should go about in either revitalizing them or allowing them to relocate.

Planners, environmentalists, academics and policy-makers have for quite some time expressed their concern about the balance between jobs and housing. The mitigation of traffic congestion will be possible if the ideal balance between jobs and housing could be attained. However noble this seems, it must be borne in

mind that a rigid and universal policy cannot readily be adopted as each town will have its own unique circumstances. As a point of departure the jobs-housing balance refers to the spatial relationship between the number of jobs and the number of housing units in a particular area (Bloemers 1995:Personal interview).

Three levels for this balance exists, **viz.** macro, mezzo and micro level and they can be described as follows (Peng 1997:1216-1217):

- At macro level the jobs-housing balance is measured in a large region such as a city or even province which is self-contained.
- At mezzo-level the balance is measured within a reasonable commuting distance from a given employment site to a residential site; the reasonable distance agreed upon to be between 10 and 14 kilometres.
- At micro level the jobs-housing balance is identified with a policy of mixed use development. It is measured at the small community level and is similar to the notion of the balanced or self-contained community in traditional town planning. Jobs and residents are exactly balanced when residents can work and live together; in this situation it will be possible to reduce the number of vehicle trips, increase walking and cycling or even eliminate trips completely.

In order to deal with all these aspects it will again be necessary to mention that it must be kept in mind that the separation of the White and Black towns has complicated matters. Racial reservation was a policy that had to be taken into account in the past and this resulted in complex legislation to create a very regulated environment. Reservation of land no longer exists, but its affects have been tremendous and will be present for yet a while (Mabin 1993:11). It should also be remembered that the quicker commencement is made with correcting the inefficient current reality and bearing in mind the objectives of self reliance and sustainability the quicker results could be shown.

The town-planning scheme has been regarded as a policy document for planning and this has to change dramatically as development takes place and circumstances change. Plans must be realistic and economically feasible as the proof of the pudding lies in the eating and excellent plans that are not realistic or feasible are harmful as the residents' rights could be affected. Procedural processes and safeguards should be restricted to the really vital and all dilatory elements and factors should be eliminated. It is also important to keep the plan relevant and this means that regular revision and updates with the necessary public consultation will be necessary. Planning while taking into account only spatial planning aspects is suicidal and the whole wide spectrum of land use, transportation systems, economic and social elements are vital and should be included (Town and Country Planning 1967:2-4).

## **2.11 CHANGING POLICIES PERTAINING TO LAND USE**

A range of arguments exists against compact cities, but what is evident is that more compact urban environments achieve substantial reductions in energy consumption and emissions. This is mainly due to the reduction in the need to travel and the need to rely on private transport as people live closer to their places of employment (Gordon 1997:239).

It is difficult to draw experience from other countries, as the Republic of South Africa is so unique in its spatial planning mainly due to its political history. The only way to learn from other countries is to draw from experience of countries with similar growth, capacity and income distributions as the Republic of South Africa. An analogous example of a country is Brazil; yet it also has various differences the main difference being the difference in political attitude. However, the vast urbanization that is taking place in the Republic of South Africa is comparable to that of, for instance Sao Paulo, in Brazil and a lesson can be learned from their experiences in this regard (Mabin 1993:15).

In Brazil the policies to shape the intensification of urban areas are very flexible as for instance the selling and trading density rights and urbanization. These are approaches that seek to overcome the fragmented nature of the city and these can be useful to apply in the Republic of South Africa where the fragmentation has been based on race. As a consequence it will be necessary to compact, restructure and integrate the city and to create qualitatively fine spatial environments (Mabin 1993:15). Not only should the different urban areas be consolidated with integrated planning, but each urban area should also become more compact without any detrimental effects to the particular community or area.

An ideal situation will be to develop on vacant land within the urban area or to re-develop and intensify low density areas. These development sites can be chosen for commercial units or for housing and this will enable the urban area to become more compact. However, transportation systems, service capacities and existing uses in the area will play an important role in the entire project. Sustainable development can be enhanced in such a venture as uses can be mixed and integrated in such a way that job opportunities and residential areas draw closer to each other. The land manager can employ this method to create a more efficient and better designed environment (Johnson 1997:9).

Common characteristics such as low-density sprawl, fragmentation of development and the separation of land uses are evident in urban areas. All the urban areas have a mono-centric economic activity structure where the majority of employment opportunities are found. Around these centres are the residential areas with the poorer areas farthest away along the periphery of the urban area. Adverse effects are now also evident as travelling time and money are excessive yet the people have to travel to and from their jobs. Each urban area is unique and its shape is determined by its size, shape and distribution of its activities (Mabin 1993:15). It can be concluded that although several aspects influence the structure of an urban area it does happen that some are more applicable in differing circumstances. These varying circumstances are in different relationships

to one another and the influences exerted also differ to such an extent that each urban area will have a unique structure.

The results relating to objectives are of interest in policy evaluation, and because among the independent variables are variables which define the alternative policies alongside other variables with values determined quite outside planning policy and which are taken in the model of assumptions. The results should be analysed to ensure that policy review takes place (Solesbury 1974:158).

Land use planning shapes future development and should something in the process go wrong then adaptability and correction is of utmost importance (Kaiser **et al.** 1995:36). The integrated planning that should now take place should be adaptable and flexible to such an extent that although the detail may deviate the general direction is not lost.

Aspects that currently pose problematic to the creation of a compact and integrated urban design are the following (Dewar 1995:408-410):

- The dominant pattern is low density, mainly single storey sprawl. Higher densities are found in isolated pockets especially in the informal settlements.
- The urban fabric is coarse, fragmented and discontinuous with pockets of development mostly separated by buffer zones.
- Land uses are agglomerated and separated from one another to the greatest degree possible.
- The built environment is still dominated by detached individual houses that tend to waste space and add to distance and expense.
- Collections of urban houses are arranged in cells surrounded by buffers and highly influenced by the motorcar.
- Activities are spatially separated into mono-functional areas influenced by the belief that conflict should be reduced between uses and activities.

The buffer zones between the White and Black towns used to be 500m that was reduced to 200m when the sprawl became excessive and informal settlements started taking place. However, it must be remembered that the buffer zones were not the only vacant space left between the different towns. The buffer zone was the legal space, but the **de facto** situation was that vast tracts of land were left vacant and in most cases a railway line, road, stream or industrial areas separated the towns. These open spaces were the first to be infiltrated with informal settlements, but unfortunately the people settled in an unplanned way with high densities and sometimes also wasting land due to poor or even the total absence of planning. Taking the infiltration into account the urban fabric was not improved and the towns remained separate entities (De Bie 1997:Personal interview).

At present the sprawling discontinuous urban pattern makes efficient and viable public transport impossible. The existing systems generate few economic opportunities for small-scale entrepreneurs and monopolistic enterprises are advantaged. Infrastructure is made more expensive and resources are wasted in addition to distant settlements becoming financially non-sustainable (Dewar 1995:411).

The urban form is restless, as change and transition are normal parts of the urban condition. It must be remembered that the urban form contains elements of stability, but is by no means static. Land use and the changing and increasing demands placed on it causes transition and this has to be managed properly otherwise change can result in decline. Land use is of vital importance as it is the container for urban activities and thus forms the physical framework of cities and influences various other socio-economic features (Kivell 1993:177). As a result of the constant state of flux experienced by towns, policies have to be adapted on a regular basis. Policy review provides a starting point in current policies that have to predict the outcome of alternatives relative to objectives resting on an understanding of the processes of change in the environment system sufficient to enable predictions of some reliabilities to be made (Solesbury 1974:143).

## 2.12 CONCLUSION

As it has been indicated in this chapter a number of acts and ordinances are applicable to land use. This is confusing and inefficient as officials and consultants have to use various ways to obtain a common goal. The legislation is not so much out-dated as it is confusing and now the **DFA** adds to the confusion. The only way to deal with this situation is to revoke all legislation and compile one comprehensive piece of legislation so that efficiency can be the objective. This legislation should be within the set parameters of the **DFA** and existing planning principles.

The importance of a town-planning scheme should not be underestimated as the LDOs can only provide for the actual spatial and related planning. The composition of the LDOs is a process where the community is consulted prior to any plan being compiled, unlike a structure plan where the planning was done and then circulated for comments. However noble the intentions of the **DFA** and the LDOs the basic similarities of structure plans and LDOs should not be ignored as they are still valid albeit in a lesser degree.

LDOs of a particular town may provide for specific uses while the town-planning scheme does not accommodate the particular use and this then prohibits the use. When this happens the LDOs, in so far as land use is concerned, will fail in the aim of development and growth. The solution is that the town-planning scheme should follow the LDOs and be as up to date and innovative, as the LDOs, otherwise the entire purpose will be defeated.

The town-planning schemes are much out-dated and urgent attention should be given to them in order to accommodate all the uses required for urban areas. The town-planning scheme in a local authority should also cover the Black areas and not, as at present, only the White areas. This will mean that the town-planning scheme should become more flexible in the mix of land uses and this will have to

be carefully considered to ensure that compatible uses are in the same zoning category.

Clear and crisp planning policies should be set and the town-planning scheme should be used as a policy and management document. At present its main function is control, but this should be extended to policy and management in order to make it more accessible and clear to the community. Community participation as required in the LDOs process should also be part of the town-planning scheme. Although this falls beyond the ambit of this thesis it is of importance to take note of this as the town-planning scheme can thwart development.

However, the town-planning schemes will have to be revised and not only amended to provide for the latest developments. The rigid categorization of uses in particular zones will have to become more accommodating and certain aspects will have to be delegated to the municipalities in order to have the decisions taken quicker. The consent uses in the town-planning schemes pose an ever-increasing problem and careful consideration should be given to remove this method of actually rezoning land by means of special consent. Instead of the consent uses the zonings in the use categories could be expanded to include a more diverse combination of land uses.

An important fact that must never be forgotten is that planning cannot take place in isolation – numerous aspects influence it and it influences numerous. The sustainability of development should always be kept in mind and development for the sake of developing and discarding all else is not sound planning. This is also an aspect where policy becomes important, planning in all spheres cannot take place if no guidelines exist. As an example it can be mentioned that in the Free State Province no policy regarding erf sizes exists; this is confusing not only to the decision-maker, but also to all consultants and developers as no-one really knows what is within the guidelines. The opinion makers should take heed and commence with real policies and planning otherwise neither development nor pro-

active planning, development, not only spatial, but across the spectrum will take place.

The integration of the Black and White urban areas should not only take place on paper, but distinct efforts should be made to develop the Black area and to merge it with the White area in such a manner to ensure that the unit is sustainable and self reliant.

The challenge is clear and the local authority of each town will have to take the challenge and proceed in a pro-active and planned fashion in order to conquer the obstacles.

# **3      URBAN LAND USE AND LAND MANAGEMENT**

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*If all time is eternally present  
All time is unredeemable.*

T S ELIOT

## **3.1 INTRODUCTION**

The size of the earth is constant. It is only a marble which is a mere 40 000 odd kilometres in circumference, three-quarters water and much of the rest is uninhabitable mountain and desert land. Resources are depleted at an alarming rate while wastes are generated even more rapidly. People become more and they wish for more, yet land space and energy remain constant (Stead 1992:11).

Land use in the Republic of South Africa is unique in the way it is structured as separate urban systems, one being an opulent White area and the other a sprawling Black area on the peripheries. The White area with good commercial and municipal services and the Black areas with poor services, uniform housing and ever increasing informal settlements. The Black areas had virtually no economic, commercial or industrial base and the people lived there to work in the White areas. This is the system that has been inherited and should now be corrected with integrated planning and sound land management. This is the single most important land management challenge that faces local government (Swilling & Boya 1997:166-170).

Although the Black areas have no, or much fewer, business development than the White areas it is imperative that what is currently available should be used to the maximum extent as a vast amount of capital is locked up in the areas. This does

not only entail direct capital, in other words the amount it cost to create it, but the huge potential capital that can be utilized.

Towns and cities are dynamic phenomena and are primarily based on economics. Although they have occupied the same location for many years the buildings and infrastructure are not static and the dynamic forces have affected changes throughout the lifetime of the town. Development causes the town to expand and develop and this causes not only land use to develop, but also development to take place across the whole socio-spatial spectrum. The effect of these processes (for example, travelling to work, access to facilities and development of land) is most tangibly revealed in patterns of land use and land use changes (Pacione 1990:7). The choices of policy must perforce rest on value judgements of the worth of one kind of outcome against another. As an example, the worth of present economy in the utilization of resources against flexibility to accommodate as yet unforeseen changes, the worth of benefiting one group in the community at the expense of another (Solesbury 1974:151). As can be deduced the correction of the fragmented urban areas will not be an easy task and policy and planning will have to work hand in hand to achieve the objectives.

In this chapter the urban area will be discussed and in so-doing the development and expansion thereof. The obstacles and problems will be indicated, but most of all the solutions for a total city will be elucidated. Land management in particular and in terms of acquired experience will be discussed and then of course one of the major issues, that of urbanization.

### **3.2 DYNAMICS OF URBAN AREAS**

The ideal objective is to move away from "suburbia" or "township" and to create the quality of "urbanity". In other words the importance of a sound and self contained community should not be negated. This movement does not have a quick remedy and the disparities cannot be corrected overnight. The existing

situation will have to be managed as best possible, but always bearing in mind the better product objectives (Dewar 1995:413):

- Compact cities rather than sprawl.
- Integration, mixed and overlapping land uses and activities.
- Continuity of urban fabric.
- Linearity as structural geometry as opposed to specific focus.
- Complex processes of development involving many protagonists.

The property market influences land uses and this element must not be underestimated to affect change within a city. The business market can determine zones for development that can create planning and economic problems for the city. These have to be identified at an early stage in order to act in a property-active fashion and not be caught unawares (Colenutt & Hamnett 1982:43). Market forces will have to be determined and provision made for changes so that development and control can take place.

Development for residential areas tends to take place at the periphery of towns as the attractiveness of land in the inner city diminishes; for commercial and business purposes the converse is true and these uses tend to settle in or as close as possible to the inner city. The deterioration of the CBD is a world-wide phenomenon and can be ascribed mainly to crime, transportation problems, lack of parking, congestion, age and dilapidation of buildings. The outward movement of the city causes decentralization and suburban employment growth as shops and offices develop outside the city core. This leads to a web of influences as transport now also focuses on suburb to suburb journey patterns apart from the existing CBD to residential area journeys. Suburban development nodes also now replace the CBD as the main focus of activity and this may lead to split business cores (Kivell 1993:180).

Business nodes outside the CBD need to be considered carefully as the traffic could pose a problem. If the business nodes are located along ring or belt roads

or even main arterial roads then the traffic should not pose a problem. The entire transportation system, however, must be analysed and then the public interest should prevail. It is also important to take cognizance of the interest of the area and whether the area will benefit by the development.

All these aspects of transition have qualitative, quantitative and location effects on the urban land use pattern. The most important aspect that influences the urban land use pattern is the fact that the town can change from a fairly compact town to a dispersed town with more than one core. Decentralization is an extremely powerful force, but it is not a question of the city just growing outwards, but a matter of the increasing car ownership and the towns becoming more "open". The spread of towns is a comprehensive phenomenon as it is not only the people who have dispersed, but also jobs and other activities. The urban atmosphere and prestige of the town has lost its attractiveness and the people tend to move outwards to such an extent that the relationship between urban and rural is shifting (Kivell 1993:188).

### **3.2.1 Erf sizes influencing urban sprawl**

It is important to realize that the erf sizes also contribute to spread out urban areas and these should be closer knit; especially where the different towns exist. Mixed land uses together with areas with erf sizes mixed definitely play a very important role in the complete land use system. Going vertical instead of only horizontal could create a lively city-scape that will also reduce costs and time of journey between uses. What should be created is a self-contained, all purpose, closely-knit, compact, exciting and enjoyable place to stay in. This is an important aspect in land use that must receive attention and that is where vertical uses can differ as well as the horizontal uses. This opens up a vast number of options and curtails linear expansion (Njoh 1995:352). Erf sizes are vitally important and for the process to obtain equity in all the urban areas clear policies will have to be devised and applied. The proposed LDOs, in terms of the

DFA, will have to address this matter as ervaen will have to be provided for the whole socio-economic sphere.

### **3.2.2 Features influencing land use planning**

Land use planning consists of a number of features such as analysis, synthesis and consensus formation. The analytical feature comprises primarily quantitative and statistical methods while the synthesis side comprises methods relating to qualitative and design based. The consensus features are primarily based on interaction and conflict management. These features form the crux of managing current land use planning as it illustrates that it is not merely a simple adoption of a plan, but an intricate process that has to be followed. The approach includes an advanced plan that will guide and govern future development and it also includes actions to monitor and respond to change in order to attain the ultimate objective of development. It is always easy to say that planning is not static, but dynamic, yet the dynamic turbulence should be identified and managed. Some of these dynamic variables include (Kaiser *et al.* 1995:36):

- Accelerating rates of change.
- Rapid shift in conditions.
- Increasing unpredictability of events.
- Frequent problems so complex that normal strategies do not solve the problems.
- More time spent on responding to unanticipated results and consequences of previous actions.

Land use and land use planning have to be viewed from different perspectives and the dynamics should be identified and harnessed to ensure that pro-active planning and development take place that have positive influences on the area and the community. Land in its natural state and in the changed state of urbanization is a result of a planning process. This is true as the development of

natural land and the development of urban land constitutes change and this may lead to conflicting interests and this is where the land use manager has to stabilize development. In order to stabilize the use it is necessary that the positive uses be encouraged and the negative uses discouraged. This is done by the planner building upon a knowledge base that encompasses all the features and aspects of land use and land development (Kaiser **et al.** 1995:196). As examples it can be mentioned that some of the major protagonists in land development are the traffic engineers, the economists and the environmentalists. All these disciplines play major roles in the complex management of land.

It can be concluded that certain destabilizing factors, such as planning and locating incompatible uses in the same area and not having specific control measures in place to control and manage the use of land should be identified and isolated in order to curtail constraints and enhance the positive aspects. Total chaos can erupt should all types of development simply take place at random and unabated. Should land use development take place wherever the developers think appropriate and the development of roads take place in a different part it cannot only result in a waste of time and money, but have such negative influences that the urban fabric can become irreparably frayed.

In the following diagram 3.1 it can be seen how the economy could benefit from new development. The advantages also do not only influence the protagonists directly, but the accumulative effects are so vast that it influences aspects across the entire spectrum of development. The diagram depicts the positive aspects of development that takes place in a proper manner, however the converse is also true, poor and unplanned development can result in a whole row of negative influences. The local authority should take heed of these issues as they will have to be prepared for the development. Not only the local authority should be prepared, but legislation and appropriate policies should be in place to accommodate the development otherwise it will either not take place or, should it take place, it will be ill accommodated.

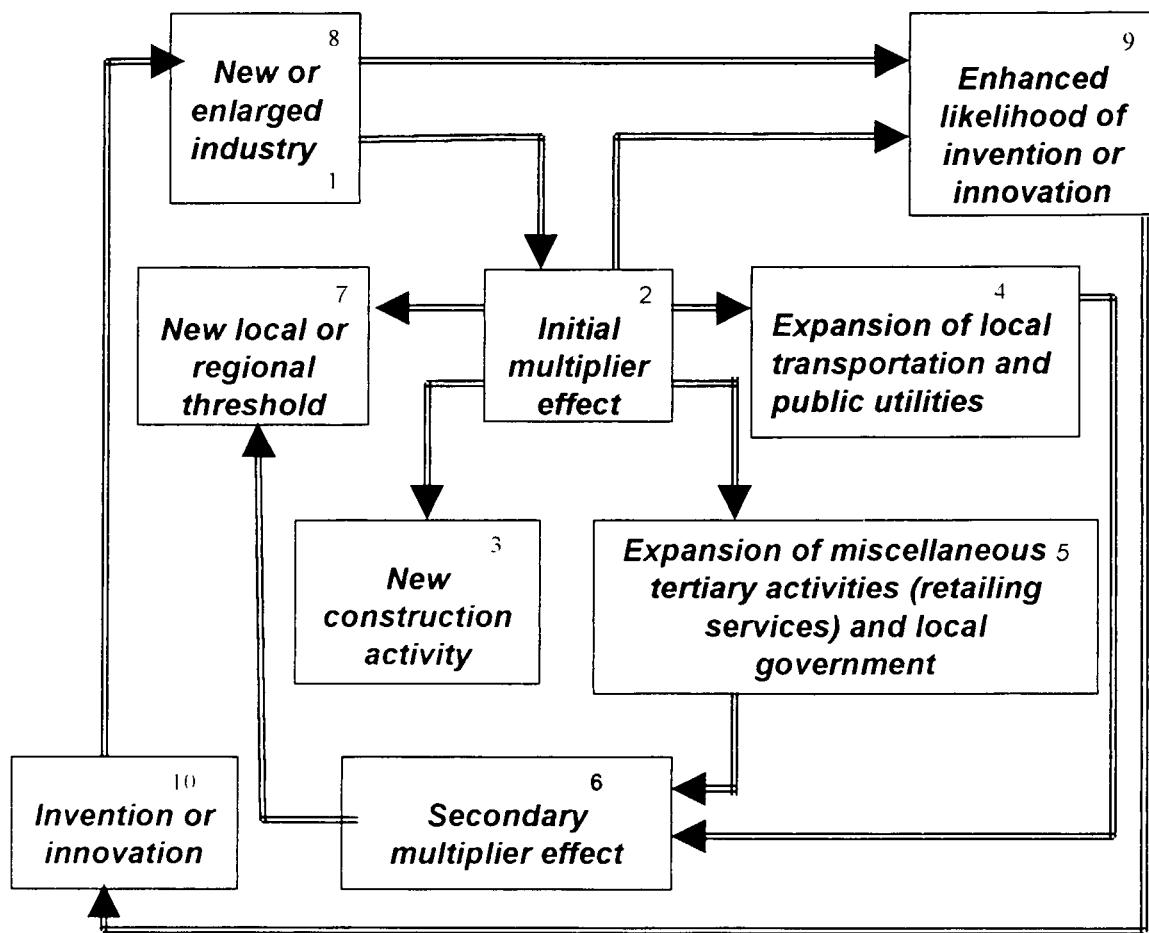


DIAGRAM 3.1

ACCUMULATIVE GROWTH PROCESSES (Brook 1982:23-24)

All plans should have the following three major components upon which the minor components are based (Kaiser **et al.** 1995:252):

- Facts
- Goals
- Recommendations

From the above the different aspects in planning, evaluation and monitoring appear and are addressed as part and parcel of the holistically viewed plan.

When the core of the urban area becomes crowded rapid suburban growth can benefit the area by relieving congestion, but when the suburban spread continues in an unbridled way then the inner core might deteriorate to such an extent that it dies. In a particular situation where the towns become integrated this is a definite cause for concern and should be viewed with circumspection (Pacione 1990:23). This is particularly significant **in casu** as more than one urban area is found throughout the Free State Province. The amalgamation of the areas and the spread of the CBDs could pose problems if not managed properly.

In places where rapid expansion of the urban population is experienced it is obvious that a rapid rise in the demand for residential erven for all income groups will take place. Subsequently not only residential erven will be needed, but all the uses linked to residential uses, such as businesses and schools (Bernstein 1994:10). It is also important to realize that job opportunities can be created and that offices and even light industries can settle and enhance the integrated planning process.

In the entire process of the compilation of the land development plan, structure plans (LDOs **in casu**) land classification has to take place where specific land is identified for certain uses. The classification is a spatially explicit statement of development policy that is divided into categories nearly like zoning. The difference being that zoning boundaries follow erven lines whereas land classification does not. It is a plan that states general policies for each type of district and category rather than specific restrictions on uses and structures (Kaiser **et al.** 1995:290).

### **3.3 POSSIBLE RESULTS OF THE CHANGE IN LAND USE PLANNING**

"New" land uses tend to develop as shorter work weeks and shorter work lives together with more leisure time and greater affluence lead to new lifestyle preferences. These aspects have an influence on the way a town develops as for

instance tourism begins to play a more important role. The development industry is also becoming more and more packaged, producing shopping centres and entertainment complexes. Towns are also better marketed as local authorities have to generate more and more money in order to be competitive and sometimes merely to retain solvency (Kivell 1993:184).

Urban land use requires a special pattern of tasks, as it involves balancing location requirements against space requirements, demand against supply and the needs of one land use against another. When one considers the tasks one realizes that the analytic features are the location of requirements, determining the suitability, estimating space requirements and calculating holding capacities. However, the synthesis task is the crux of land use management and is based on the preceding analyses to assist design decisions to achieve the set goals (Kaiser **et al.** 1995:289).

The total sphere of urban planning revolves around three basic features **viz.** planning where the strategies for organizing land use are outlined; development which includes land assembly and servicing as well as infrastructure. As a third feature the former two aspects have to be properly controlled and control mechanisms have to take place (Barlow 1995:11).

Land use consists of two main elements, **viz.** the development and control. When changes in land use take place these two elements intermingle and it becomes increasingly difficult to distinguish between them. In order to have development take place the following aspects need mentioning in the structure plans (Couch 1990:140):

- The locality of particular land uses should be specified.
- The intensity/density of land uses should be determined.
- The traffic aspects should be addressed and here the flow, routes (public transport and private), management and influence should be taken into consideration.

- Access and parking problems and possibilities should be ascertained.
- Areas should be designated for particular uses and this should include open spaces and areas for redevelopment.
- Design policies should be specified.

It stands to reason that it is important that these elements should be compatible with the parameters set out in the relevant policies and the control documents like the town-planning scheme.

### **3.4 MANNER IN WHICH PLANNING SHOULD TAKE PLACE**

Demand constantly arises for land and sometimes low-income groups are forced to occupy illegal land with no services on the periphery of towns where land may be prone to hazards. Within urban areas uncontrolled growth and inadequate infrastructure can cause irreversible losses in the sense that cultural resources and open spaces may be lost. All this is a result of poorly managed development and land use and the direct consequences are that urban sprawl with all its diverse problems takes place as well as the deterioration of the overall quality of life (Bernstein 1994:1).

One of the traditional definitions of town planning is that it is the art and the science of ordering land uses and siting the buildings and communication routes in order to secure the maximum level of economy, convenience and beauty for its inhabitants. This is what the traditional planner has to do, but it is not enough in the view of the modern manner of thinking (Greed 1993:5). The modern town planner needs to take many more aspects into account when planning and it is important not to see town planning necessarily as a subject, but rather as a process. Town planners are primarily strategic managers as their skills encompass a broader view in order to see the connexions among different issues and topics; an inclination to grasp the essence of understanding and planning urban areas (Greed 1993:6).

It must be borne in mind that development always takes place in a definite territory or space and is as a consequence conditioned by the environment formed jointly by people and the natural and artificial environment. Certain constraints such as poor transportation systems and opportunities such as vacant or under utilized land are prevalent and together with policies, planning and parameters these form the setting within which the town planner has to work (Kozlowski & Hill 1993:16). The present planner and land manager cannot simply allow development for the sake of development, but has to take cognizance of a large number of influences and variables, such as the rate of urbanization, the economy in the particular place and so on. The integration and changing circumstances surrounding land uses are so intertwined that they complicate matters.

The quest for integration and mixed land use has led to planning no longer being regarded as an activity separate from management. Planning should be seen as an integral part of it and also as much with the delivery of services as with the preparation of a plan. As an example it can be cited that the implementation of LDOs is as much the responsibility of a town planner than that of a manager as the entire process has to be managed. Moreover, the LDOs indicate land uses and land use changes as well as specific developments and this leads to land management (Devas 1993:93). Spatial planning is only one of the elements of planning and management, albeit a very important element. Spatial planning influences so many elements of planning as it cuts through such a broad spectrum of aspects concerned with planning, for instance the provision of services, transportation systems and the placing of schools and clinics.

### **3.5 OBSTACLES IN LAND MANAGEMENT**

In the current situation and with the prevailing circumstances where separate urban areas exist and only one is really developed, pure spatial planning will not suffice. Harking back to the tried and tested planning principles will also not work

and totally new systems will have to be developed and implemented to deal with the present situation (Devas 1993:93).

In the South African context most urban developments are characterized by urban sprawl along transportation routes and the Black towns and White towns separate from each other. This causes the urban systems to be driven by regional dynamics and these do not always lead to sound planning (Dewar & Uytenbogaardt 1991:42). One of the ways to combat sprawl is to compact the urban system and to increase densities. This will also ensure that over a period of time the urban area will have a system that works well for pedestrians. A compact urban system also ensures that the economic oligopolization of the urban area is curtailed as the economic features are within a compact area (Dewar & Uytenbogaardt 1991:45). The economic base in spatial planning is important as this is one of the binding factors in an urban area because no urban area can exist with a failing economy.

The growing concern for the future of urban areas and the well-being of the inhabitants with the increasing urbanization opposed to the deterioration of the urban environment has led to greater emphasis being placed on the applied problem solving approach to management of towns. Land use is by no means the only aspect of concern and an inter-disciplinary approach is necessary to ensure the future of towns. The current trend is to distinguish problems *in* and problems *of* the urban area [own emphasis]. The former relates to all kinds of social and economic aspects while the latter has to do with land use and related matters (Pacione 1990:1).

Two kinds of problems, **viz.** the size and density of the population and the spatial structure are found in the urban system. In both cases the related issues are included such as transport patterns and systems, housing, development and, **in casu**, the physical and social segregation of groups (Pacione 1990:2). It can be deduced that planning related issues are becoming as important as the planning aspect itself. A large number of elements, **inter alia** transportation services, land

availability and accessibility influence the planning process and it is not only a planning process, but a land management process.

The local authority should be aware of the possible obstacles and should have a planning programme that can deal with these problems. In short the programme should be able to pre-empt most of the salient problems that among others include the provision of services, public transport and traffic congestion that are likely to occur and these should then be taken care of promptly. In diagram 3.2 the planning programme is set out diagrammatically and this should serve as a model for most of the planning and development done in a pro-active manner. It must always be borne in mind that development will not take place if the developers have to do the planning for the local authority. The local authority should have its planning programmes in place and when development takes place it should fit in with the programmes. It is also a method of attracting development as something substantial can be produced to prospective developers (Farthing 1995:Personal interview).

What must also be remembered is that development does not take place if the environment is not conducive for it and where the developer has to embark on preliminary actions before the proposed development can take place. In other words the local authority should do its homework and ensure that the LDOs, the town-planning scheme and all the provisions of all land use management and related matters are in order to accommodate development. If a developer has to wait for the local authority to get its house in order to accept development then the developer loses money and confidence in the local authority.

It can furthermore be concluded that as spatial planning influences so many other spheres of development and the economy the importance thereof should not be underestimated. The local authority that ensures that all the various elements are inter-linked and work in unison rather than in conflict will attain the development.

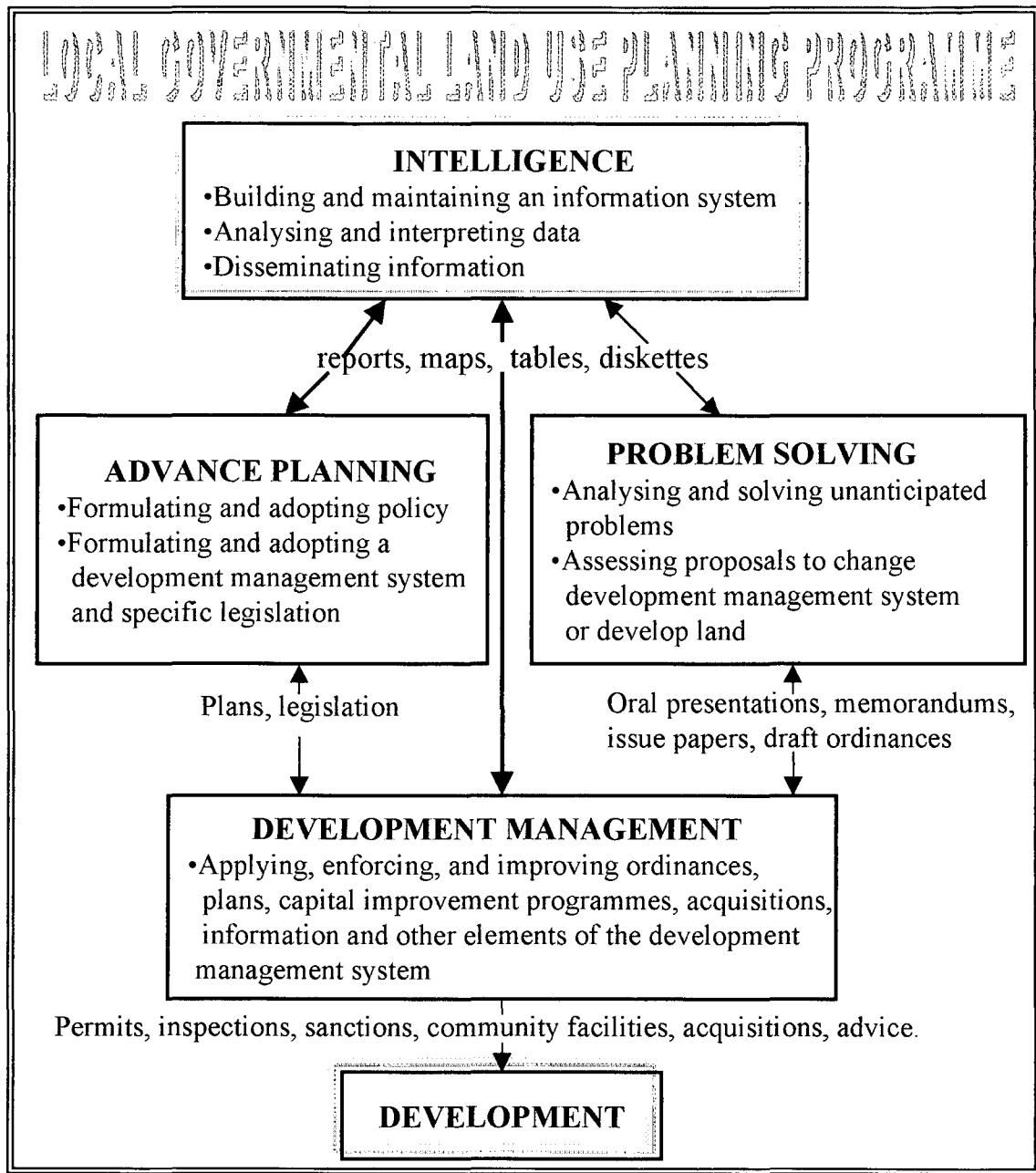


DIAGRAM 3.2

LAND USE PLANNING PROGRAMME (Kaiser **et al.** 1995:62)

### 3.5.1 Segregated urban management

In order to manage the land use and the future allocation of uses when local authorities compile LDOs the desired locations of various types of development

like for instance schools and businesses should receive attention. The possible future extension and development should also be indicated taking into consideration all the relevant aspects surrounding the issue. It must be remembered that these indications do not grant the owners the permission to develop as indicated, but the application for obtaining the rights should still be lodged (Barlow 1995:12). It must always be kept in mind that the control and development systems should work hand in hand and they must coincide, otherwise no development can take place.

The rapid growth of urban areas poses serious challenges to the government at local, provincial and national levels and especially to the planners and managers of the towns involved. By making this statement, it is implicitly stated that government should somehow intervene with the process of urbanization in order to control and organize the situation. This immediately raises two fundamental questions (Devas & Rakodi 1993:31):

- Whether government should intervene in this process at all or whether the process should be left to sort itself out according to the self-regulatory forces of the market.
- Whether government has the skills and abilities to intervene in the urbanization process in such a way that the result will be better than had no intervention taken place.

It must be borne in mind that government intervention includes the three spheres of government and with urbanization the local authority will be first in line as the most important sphere where this process will have to be handled. In the process of urbanization it is impossible to allow the market forces to control and organize and it is imperative that government should intervene, especially local government.

This is essential as urbanization does not operate in isolation, but the whole land use management process is affected. Planning in its "widest" sense is influenced

by this phenomenon. In other words it is not a question of should the state intervene, but to what *degree* [own emphasis] should the state intervene and what *form* [own emphasis] should the intervention take (Devas & Rakodi 1993:33). It is important that government **per se** cannot intervene by taking part in the development process or system as this would then be descending into the development arena in direct competition with free enterprise. What government can do, however, is to facilitate the process of development by providing conducive conditions in which development can take place. Security should be provided so that the neighbourhood (whether residential, commercial, business or industrial) should not deteriorate beyond limits set by the local government. What this means, is that policies should be set and these should be reviewed at regular intervals so that corrective and/or preventative measures can be taken in time.

### **3.5.2 Solutions based on the latest policies**

The essence of the solution to urban management is that integrated planning and development should take place. Gone are the days when only a few specific elements or features of planning were addressed; at present the entire spectrum has to be accommodated and addressed as the features are intertwined and not compartmentalized. Should any attempt be made to demarcate each feature rigidly, a situation will arise where the one element will progress and the other will either stagnate, or even worse, will work against the progressing one. Should this happen, it will result in chaos (Boelema 1995:Personal interview).

The basic features of urban land management pertaining to "planning" and "development", are town planning, economic development and municipal management in harmony with transportation and the environment. In this case the different features will not be discussed in detail, but the emphasis will be on town planning and the relationship among the features in so far as land use management is concerned. The baseline for this feature will be the aesthetic, orderly and salubrious layout and management of land and how land is managed

(Devas & Rakodi 1993:41). What should also be kept in mind is the provision of services. These are not only expensive elements, but also time consuming. The proper functioning of urban areas very much depend on the level of services available which means that in the process of land management this aspect should feature as a major issue.

Land should be managed effectively and this is a critical requirement to achieve the proper functioning of urban areas, so that these areas can play their respective roles in the social and economic development of the people, save for the role in spatial management. It must be accepted that land development and management has more to it than merely planning. Management of land is essential as the general activities have to be executed and the relationship among the various aspects influencing development has to be managed (Mattingly 1993:102). It must also be borne in mind that a current reality has been inherited and in order to correct the sad history of the separate towns, the land use and its ancillary features have to be managed as it is impossible to start with a clean slate.

What must also be kept in mind is that the monetary investment in the Black town cannot simply be disregarded, as it is so extensive. The total infrastructure that includes services such as water, electricity sewerage, flood water and roads need to be maintained and the system has to be managed in such a way that the best possible solution can be reached (Machogo 1997:Personal interview).

Current town-planning schemes and policy frameworks reflect the traditional pre-occupation of planners to find the perfect solution to all problems. Needs have now changed to such an extent and so rapidly that the planning and design of urban areas have become too complex to permit a search for perfect or optimal solutions. The reality, especially in developing countries, is that urbanization has probably outstripped management capacity and financial resources (Daniels 1994:13). The element of urbanization cannot be wished away and simply cannot be stopped; so it has to be managed. Urbanization can be defined in many ways,

but in the end it boils down to the growth of urban areas as a result of the influx of people and the natural population growth. The growth of urban areas lead to the increase in land extent and this is compounded by the fact that erven are big and that single dwellings are found on large erven. One of the possible solutions to the excessive urban sprawl is to introduce the townhouse and flat concepts in the former Black towns and encourage the people to live in townhouses and flats at a grander scale than at present. This of course should not be racially bound, but as an alternative means of housing. The present subsidy scheme for housing will also then have to be adapted (Stapelberg 1997:Internal policy document).

### 3.5.3 Urbanization

Urbanization could perhaps be regarded as the single most important problem and challenge to local government in the Republic of South Africa. Urbanization has an influence on all the activities, like the flow of traffic, transportation systems and then also the usual rendering of services and goods by a local authority to the inhabitants. In this thesis where emphasis is placed on land and land use management it is quite obvious that urbanization will play a major role. A number of factors influences the use of land, but urbanization is the major issue that has to be taken into account. The other factors, such as the spreading of the CBD and buying patterns, are so closely related to the phenomenon of urbanization that it is impossible to delimit the areas into watertight compartments. Urbanization, though important, should be regarded as part and parcel of urban land management and the aspects influencing it.

Through the late 1970s and 1980s urbanization also took place at an alarming rate. People swamped the cities and populations increased dramatically. Often the state and informal settlers engaged in conflict as unauthorized shack dwellers settled around towns. In 1986 one of the most important policy documents regarding land use appeared **viz.** the **White Paper on Urbanization**. A very positive urbanization policy was purported and it tried to reverse decades of poor

(if any) policies. It recognized that urbanization was inevitable and here to stay and it also attempted to indicate how urbanization could be used to ensure a better life for all. In essence the policy dropped influx control and proposed development of "orderly urbanization" (Mabin & Smit 1997:214). This was the beginning of the informal settlements alongside the existing towns, normally Black towns, and this added to the legacy of attempting to incorporate the towns into one entity.

Urbanized land in the Republic of South Africa has a certain shape and pattern and show specific common characteristics such as low density sprawl, fragmentation and different towns/areas for different people. The land uses are also compartmentalized to such an extent that this causes further fragmentation as job opportunities are far removed from residential areas.

The size, shape and distribution of activities determine the structure of an urban area and its structure should be closely knit for a viable entity where the residents are best served. The density of an urban area relative to its geographical size and the development within gives a city a three dimensional form, **viz.** density, extent and development. Within this form all the other elements such as businesses, schools, the CBD and residential areas are found and they all influence the operation of the urban area. It must also be borne in mind that control of development plays an essential role in the development of a city and this is of great importance in so far as land use and development are concerned (Haiden & Potgieter 1997:25). It can be concluded that development cannot take place in an uncontrolled manner as it will lead to incompatible and nuisance activities taking place. The public will in this case be affected adversely and only the developer will benefit on the short term.

The management of an urban area has to be strategic as it is a living and dynamic organism. In order to manage urban areas, it is imperative that the entire approach should be strategic and this requires that a multi-disciplinary planning team should assist with the change of the system, or elements within the system.

This is important as changes/development, among others, result in specific traffic patterns and the location of businesses and offices. A comprehensive planning team, consisting, **inter alia**, of town planners, engineers, land surveyors and community organizations, is required to ensure that integrated growth and development take place. Focused implementation should lead the management projects with the aim to serve the inhabitants in a better way (Haiden & Potgieter 1997:26-27). The strategic part of the planning process is where the influences of a particular development are anticipated and pre-empted steps are taken to eliminate the obstacles.

In compiling policies certain choices regarding the land development objectives have to be made and the following can be regarded as the essence (Policy Overview 1990:2):

- Is it going to be permitted that the influx and increase of people overwhelm the urban areas?
- Are attempts going to be made to harness the inevitable process in order to manage it efficiently and to the benefit of everyone?

The consequences of being overwhelmed are terrible and cannot be afforded as the urban areas are the heart of the economy and they can lead the way to a prosperous future, but if unsuccessful then the opposite is also true. Urbanization will continue to take place irrespective of who governs the country and political success (or failure) in this regard can be determined depending on the way this is managed (Policy Overview 1990:3). It is a common fact that urbanization brings with it numerous problems such as social conflict, provision of services and land use allocations and these have to be addressed in order to make the area sustainable. However, attention should be focussed to manage the growth of the towns and not simply to curb its expansion (Policy Overview 1990:15). Expansion cannot be stopped and uncontrolled growth will adversely affect the residents as the development will take place in a hap-hazard fashion.

The previous bout of serious urbanization in the Republic of South Africa took place in the 1920s to 1930s when the majority of the influx was White. The vast urbanization now faced is that of Black people and the major reason why this is an issue is that the process of Black urbanization has been a target of a policy of intervention that tried to force the inevitable into a certain direction. This resulted in the following differences between the two urbanization processes experienced (Policy Overview 1990:6):

- The number of people involved is much greater and this in turn brings about more opportunities, challenges and problems on a scale not experienced before.
- Black urbanization is burdened with a century long history of discrimination which constricted it of the natural dynamics of the process.
- As a result of the above a severe backlog has developed in so far as the meeting of demands are concerned.
- The legacy of the previous policy and history has resulted in the urbanized black population being younger and less skilled than other South Africans.
- Black South Africans are not yet fully skilled in the policy implementation processes.

Throughout history it has been shown that city growth can be constricted only by extreme and draconian measures, such as by refusing the urban area to expand. However, these measures work effectively only for a short period and then the reverse process stops and urbanization again takes place. These measures also obviously cause numerous other problems and inevitably lead to the loss of lives to such an extent that it is not even worth contemplating (Dewar & Watson 1990:8). It is impossible to terminate the influx of people and the growth in population. It is equally impossible to reverse the present situation – it will be like attempting to turn the Titanic around and then try and miss the iceberg the

second time round. The key issue is to manage the situation by strategic management.

The influence of increasing urbanization is not to be ignored, especially if the extent of urbanization is taken into account. In 1991 the total number of people in the Free State amounted to 2 193 070 and of these, people living in urban areas in the Free State amounted to 1 377 238 and those living in non-urban areas to 815 832 (Department of Central Statistical Services 1991). This means that 62.8 per cent of the population lived in urban areas while 37.2 per cent lived in non-urban areas.

In the 1996 census the total number of people in the Free State amounted to 2 633 504 and of these 1 806 651 lived in urban areas and 826 853 in non-urban areas (Orkin 1996:[12]). This relates to 68.6 per cent people living in urban areas and 31.4 per cent living in non-urban areas. When considering these figures it can be deduced that the increase in the total population of the Free State amounted to only 440 434 persons, but the urbanization process increased to such an extent that many more persons now live in urban areas. In total the increase of people living in urban areas is now 429 413 which means that 11 021 fewer people live in non-urban areas.

When the afore-mentioned figures are expressed in percentages the picture becomes even clearer. The total population growth in the Free State Province was 2.01 per cent since 1991 yet the population growth in the non-urban areas was only 1.35 per cent. This is in keeping with the figures as the population growth in the urban areas was 3.12 per cent - nearly one and a half times as much as the total growth. This phenomenon is indicative of the fact that although people are becoming more the urbanization process, by migration, is taking place even more rapidly and this in turn means that urban land management becomes all the more important.

The rapid growth of urban population has great implications on services and the infrastructure of cities. As urban areas expand, land use and the related matters need more attention and land use management becomes more important (Devas & Rakodi 1993:8). It is a known fact that the financial implications for the provision of services are greater when distances are longer and the price of infrastructure is recovered from the end-user who in this case is the house owner.

The poor used to be in the rural areas, but over the past few years these people have moved to the cities. This pattern shifting has increased the problems in the cities and has burdened the land use management as land has to be made available for these people and development has to be stimulated in order to create jobs. The fact whether urbanization is a good or bad thing can be debated upon for a long time. The people against urbanization tend to think of appalling squatter conditions and human misery when those in favour of urbanization again indicate that the urban areas have always been the symbols of prosperity and civilization and the places where the real economic growth takes place (Devas & Rakodi 1993:12). It can be concluded that urbanization result in more people, more traffic, and consequently a greater burden on all services. The urban areas have to be improved to accommodate this and not only spatial planning is at stake, but the total spectrum of land management.

Whatever the case, urbanization is here to stay and while it cannot be prevented it will have to be managed in such a manner that it is to the benefit of the inhabitants (Devas & Rakodi 1993:25). Urban land management plays an intricate role in the generative capacity of all features, **viz.** services and spatial planning and development. One of the more important aspects to be enhanced in the South African context is that the economic sector in urban areas should be encouraged, as an overwhelming need to turn the urban areas into efficient economic machines is apparent (Dewar & Uytenbogaardt 1991:16). This is to ensure that the urban area is an economical asset and not a liability. All local authorities are dependent on the economy and a spatial land use policy able to encourage development and accommodate it can only enhance the economy in

the local authority. Urbanization should be turned into an asset for urban areas and in order to do that land management is of vital importance.

Urban areas are the main centres for education, job opportunities, health care and economy, but they are also wasteful consumers of natural resources requiring enormous quantities of water, energy and raw material, much of which is wasted and not used in a sustainable manner (Yeld 1997:55). Land use policies should be adapted to curb the sprawling land uses and more compact cities should be encouraged. In order to control all the elements in the new policies pertaining to land use management the town-planning scheme should be updated and re-assessed to keep apace with development. Efficient urban transport systems should also be developed, as should road systems that allow traffic to flow easily so that less energy is wasted (Yeld 1997:56).

The following diagram 3.3 indicates how a combination framework can look. All the elements such as housing, transportation and land use influence the liveability and these in turn have to be monitored so that adaptations can take place if and when necessary (MacLaren 1996:196). This of course increases the importance to have proper planning based on sound principles enhancing the entire liveability of the community. It is evident that no specific aspect can be viewed as "detached" from the other. Co-ordination and collaboration are absolutely essential. It is also important to note the cyclical aspect of the process or framework, **viz.** the sector policies lead to components of liveability and then to monitoring. This in turn leads to all the public services that are part of the sector policies.

The cyclical element is of importance as it emphasizes the fact that all elements lead to the level of liveability of an urban area. This of course enhances the level of being able to accommodate development.

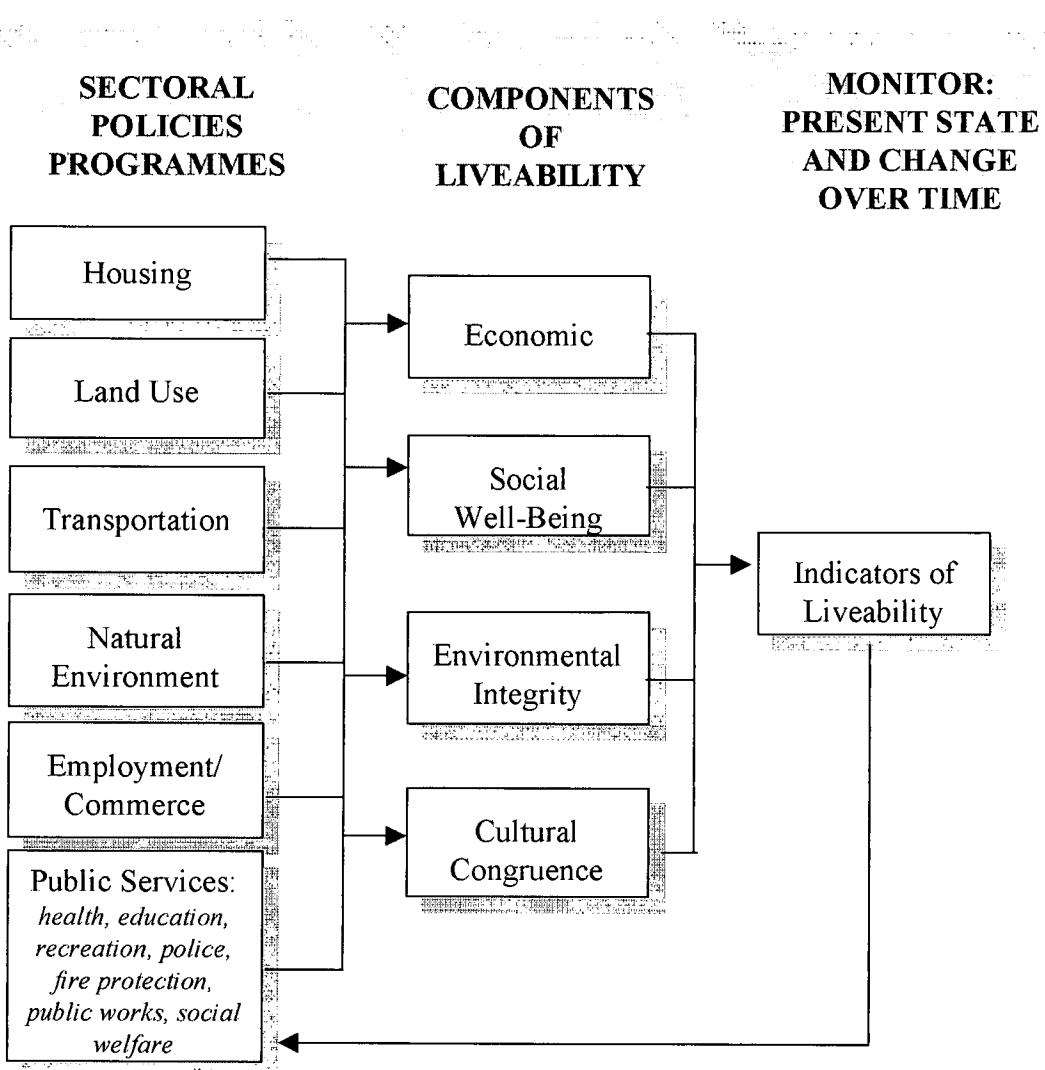


DIAGRAM 3.3

COMBINATION FRAMEWORK (MacLaren 1996:196)

Urbanization through-out the world demonstrates the need to look at growth and change management. Current urbanization challenges require moving beyond traditional planning to holistic, integrated and strategic planning that will relate to solving the problems and needs of governance. Planning visions, frameworks and strategies should be seen as integrative management tools for providing guidelines for development and conservation as well as for administrative and fiscal management (Daniels 1994:12).

It can be concluded that urban areas are becoming bigger and more densely populated and that this trend will continue for many more years. The opinion

makers have to correct what has been inherited and must manage for the present and plan and manage for the future. This is a daunting task and severe changes will have to take place. This could be achieved in adapting and changing the bureaucratic machinery to change, adapt and yet still control land use and land development related issues (Stapelberg 1997:Internal policy document). The most important conclusion that can be reached is that legislation and procedures will have to be streamlined and pruned to ensure expeditious considerations of all land use matters.

### **3.6 SUSTAINABLE MANAGEMENT/STRATEGIES**

Planning **per se** is not sufficient and strategic management with a vision of what ought to be the objective should be applied. The strategic vision, in other words pre-empting and anticipating possible problems in the planning stage, serves as a guide through the decision-making process at all levels. In other words strategic management involves moulding the core values into actions that ensures a sustainable environment where humans are provided with goods and services necessary for a good life and doing justice to the ecosystem (Stead & Stead 1992:168). Development can sometimes be confused with the assumption that it will be to the benefit of or for the improvement of the local community, while it is actually in direct contradiction with the imperatives of the specific local community and the ecological development (Serageldin **et al.** 1994:3).

It must be considered carefully when developers disregard sustainability as if it will be detrimental to development. Local government should take heed of the provisions in Agenda 21 concerning environment compatibility and development issues and enforce the policies contained in it as it is part of planning and development and should receive as much attention as for instance transportation (Farthing 1995:Personal interview).

The following are some basic urban challenges that have to be taken into account when planning (Haughton & Hunter 1996:1):

- The ever increasing number of people provokes adverse environmental change on a global scale and urban populations make the major contribution as the environment is often abused by pollution emanating from the urban areas.
- The different social and economic urban life in cities has given them a fragile environment of their own.
- The increase in the use of motor cars has added to environmental decay in cities and it is difficult to absorb the demands caused by especially pollution placed on them.

The Earth Summit (Haughton & Hunter 1996:9) brought global leaders together to confront the environmental challenge of sustainability at a universal level. The municipalities should now take this further and see to it that the sustainability of towns is addressed in the relevant document, **in casu** the LDOs. In short this means that the goals of the universal Agenda 21 should be "localized" to suit the particular place and circumstances (Haughton & Hunter 1996:9). This is an important aspect to bear in mind as urban areas differ from one another in so far as for instance topography, demographic composition, kinds of land use (for example residential, industrial) and locality are concerned. All the aforementioned aspects also play a role in the applicability of Agenda 21. This will lead to the final challenge which should enhance the integrated planning of land use and the management of the existing and changing state of affairs (Haughton & Hunter 1996:23). It can be concluded that as the urban area becomes more susceptible to sustainability the rural area will also need attention as the two areas should compliment each other and operate in unison. It must also be remembered that the one cannot really operate without the other and another level of integration takes place, **viz.** that of integration of the urban and rural areas.

What should be well understood is that the requirements of sustainability are not instituted to curb development in any way, but they actually assist the development to be a haven for livelihood and safety. The land use planner should also not stare dumbstruck at all the requirements, but should manage them in such a manner that the development and the environment are put in an advantageous position. Sustainable urban development is a continuous dynamic process that responds to changing economic, environmental and social pressures. Basic policies can be laid down, yet sustainable planning and development will vary from place to place and which will evolve differently from place to place (Haughton & Hunter 1996:285).

Waste disposal [including refuse, air pollution and sewage] can prove destructive to the environment should it not be handled properly. The waste can also affect crops and subterranean water and the destructive cycle can begin. This is another reason why a Local Agenda 21 is important as these dangers can be identified and then the LDOs and Integrated Development Plan [IDP] can tie in to form a safe and environment friendly development (Day 1995:Personal interview).

Development should be community based in order to be effective and efficient and to serve the community best. A number of aspects are imperative to adhere to in order to let community based development function properly (Serageldin **et al.** 1994:22):

- Community based organizations, such as the South African National Community Organization (SANCO) should recognize that their effectiveness depends on their ability to interface with municipal authorities.
- When the communities are convinced that their ability to control, shape and improve their own living environment are based on their own initiatives then the leaders and residents should apply their skills and initiative to broaden the scope of life. A sound leadership structure should be in place and is crucial to the improvement process. Local

government responds better to organized communities that display initiatives and are committed to assuming responsibilities for maintaining improvements.

- A partnership can be structured between the community based groups and the local government if mutual responsibilities and commitments, such as the locality of for instance schools and businesses, are agreed upon.
- In less affluent municipalities the community and the local government will have to engage in joint creative strategies to mobilize the existing resources in order to render effective services and to develop the area.

Urban areas are often viewed as points of environmental decay and where noise, pollution and congestion pose a serious threat to human health and well-being. However, urban areas should also be recognized as the economies of communities. Industrial and business activities take place in urban areas and the sheer number of people and job opportunities ensure that the economy is based in these areas. Urbanization has become wide-spread around the world and the economies of scale in urban areas are by far superseding the diseconomies and external costs of city life. Unfortunately the environmental situation in many cities is a matter of concern and should be addressed in all land use aspects (Nijkamp & Perrels 1994:1). Traffic congestion and industrial pollution can play havoc with the environment and this should be managed in the most environment friendly manner possible.

The urban design will influence the sustainability of the separate towns in the Free State Province as at present the lay-out is far from ideal with the separate areas and the vast sprawls. As the spatial form is corrected in order to integrate the separate Black and White urban areas the sustainability ought to improve, but this will need attention and planning - it will not simply happen on its own. Urban form and energy use can be linked in such a way that the separate urban areas can be united into a single entity. The following interesting facts are prevalent

and should be taken into account when considering the development of a township establishment (Haughton & Hunter 1996:96):

- The shape of the urban lay-out can lead to variations of energy demand up to 20 per cent.
- Density or clustering of trip destinations enhancing the use of public transport can lead to a saving of 20 per cent in energy demand.
- Dense or mixed zones can bring about enormous savings on energy as car dependency is reduced.
- Layout and orientation of erven and buildings can lead to energy savings of 12 per cent through passive solar gain.

In theory sustainable development means development that meets the needs of the present without compromising the ability of future generations to meet their needs (Yeld 1997:12). In other words, keep within the carrying capacity of the earth (Yeld 1997:27). The Republic of South Africa does not have an attractive track record concerning sustainability, especially regarding the former homelands where people were forced to overcrowd and overstock which in turn led to terrible soil erosion and all kinds of detrimental effects on nature (Yeld 1997:14).

The so-called new Republic of South Africa does not only mean a politically free country and everything that goes with it, but it also means that the future is going to have severe demands on the limited natural resources. The government will have to formulate baseline policies and guidelines for the medium and long term in order to achieve the political goals of integration. The principles and goals of the RDP will have to be implemented and executed at all levels in order to ensure the sustainability of resources and the environment (Yeld 1997:16). The most dangerous affect of long-term environmental neglect is a natural resource bankrupt nation with little hope of ecological and economic recovery. No-one can say how close to this critical point the country is and it is imperative that everything possible should be done to prevent this from ever happening. This is

why the RDP and all planning policies should focus on these aspects and they should be brought to fruition (Yeld 1997:17).

Sustainable development is not only meeting the needs of the present without impoverishing the future, but it is about development in the broad sense of the word. Maintaining that which is available at present and also then ensuring that all features and aspects are managed in such a way that development can take place within the milieu created for it (Drakakis-Smith 1996:iv). In other words sustainable development primarily focuses on the need to preserve the capacity of the earth in order to conserve human life through the availability of providing the entire spectrum of natural resources (Smith & Niedermeier 1996:489). Taking the elements of sustainable development into consideration this is much easier said than done, especially in the Free State Province with its many small fragmented towns. Some of the towns simply do not have the financial resources even to think about spending money in order to conserve natural resources.

The larger towns, however, should pay close attention to the sustainability of development and it should be a requirement that development should be as sustainable as possible. In other words the development should conform to at least the majority of the principles set in the **DFA** and then also take cognizance of the environment and the integration of all other disciplines that are influenced by land use.

The following diagram, 3.4, indicates a rational planning model where the needs are identified and then addressed through specific steps. The emphasis is on corporate approach and not working in individual compartments. Strategic planning **in casu** should always take into consideration the fact that the community, in other words the public, should benefit and that the best should be obtained from the available resources.

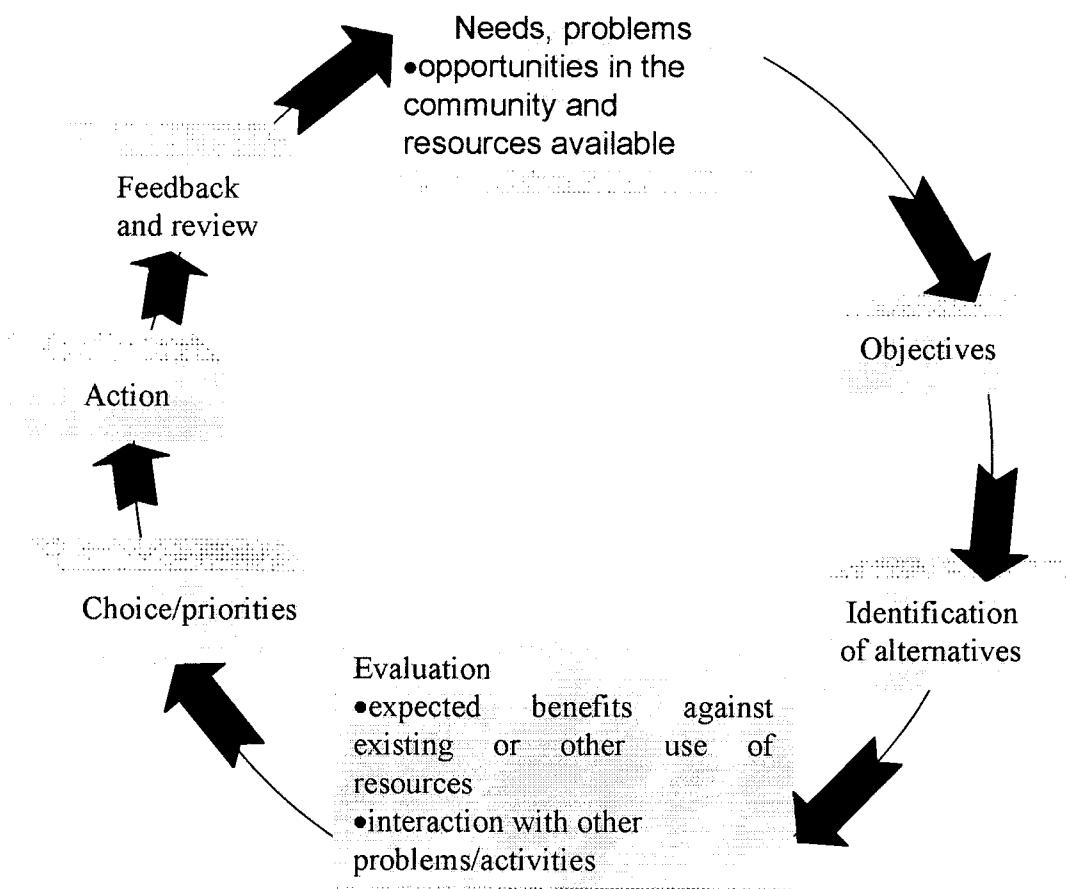


DIAGRAM 3.3

SCHEMATIC PLANNING MODEL (Raine 1982:36).

The poorly planned and in older areas unplanned high densities in the Black areas create inefficiencies and are expensive in terms of energy and money. People travel to work over long distances that are time consuming and these result in loss of productivity and poor social conditions. Generally the poorest people also pay the greatest part of their income to transportation costs (Van Ameringen 1995:26). In order to sustain a salubrious environment the planning system has to protect the amenity in the community, in other words an internal environment that enhances the quality of life should be created (Owens 1994:172).

### **3.7 CONCLUSION**

Upon first reading it appears that the entire planning process is simple and straightforward. Although this might be true it does not detract any importance from the process and the fact that all aspects need to be addressed sufficiently. It also appears simple to adhere to all the new-fangled principles and ideas of intensification and mixed land use. However, the assurance can be given that by perceiving it as simple would be misleading and underestimating the real problem.

A very important aspect that can never be over-emphasized is that development and sustainability are not opposed to each other, but complimentary. The issue is to wed the two issues in a similar fashion as the issues such as traffic, transportation systems, business areas are wed to land use and land use management. Sustainability should form the backdrop of all land development and management as this will ensure that as the relevant aspects, like for instance transportation systems, form a coherent unit with development, it will result in an asset to the community and also in the public interest.

As an example it can be mentioned that areas can be intensified, for instance by subdivision, if the services could accommodate the increased load. This is the case with water, electricity, sewerage and also flood water, suffice to state now that intensification cannot simply take place in an unplanned manner. Not only spatial planning is important, but also the "external" elements such as traffic and roads.

Mixed land uses could also prove to be a problem as all uses are not compatible. It must be borne in mind that the residential areas should be protected in order to ensure sound communities. By merely creating land uses where employment opportunities could be close to the residential areas could cause conflict at the interface where the uses are inconsistent with each other and this leads to more problems as the residential area is then harmed.

Development should always take place against the background of sustainability and self-containment of areas. All aspects relating to planning should be taken into account and orderly planning should prevail. It is imperative that the consequences of land development and land uses are always kept in mind. Land uses influence so many aspects of a community that they should be based on objective and feasible principles.

It will never succeed if everything is allowed on the basis that it creates development and job opportunities. Development and the creation of job opportunities are extremely important, but should the particular land use or development not be to the advantage of the community, the area, or in the public interest, then it should not be allowed. The principles of the **DFA** should also be applicable and in this sense one should be careful that not only one or two principles are applicable, but a substantial number depending on the kind of development and the particular circumstances.

# **4 MEANING AND NEED FOR STRATEGIC SPATIAL MANAGEMENT AND PLANNING**

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*In my beginning is my end. In succession  
Houses rise and fall, crumble, are extended,  
Are removed, destroyed, restored, or in their place  
Is an open field, or a factory, or a by-pass.*

T S ELIOT

## **4.1 INTRODUCTION**

Planning has been taking place since the beginning of humankind. However, land use planning has never been so much in demand and in the spotlight as the past few decades. Definitions of planning abound and yet it is still difficult to define, especially as it does not stand independently or detached from ruling government policy and/or various other disciplines, such as for instance the environment and traffic. Although certain features can be identified which cut through all kinds of planning the general framework still governs the guidelines along which the specific policy should be executed. Major features of general planning include a sequence of actions that are designed to solve problems in the future. These features include the following:

- The identification of the problem.
- Formulation of goals and setting measurable objectives.
- Identification of constraints.
- Projection of the future situation.
- Generation and evaluation of alternative courses of action.
- Production of a preferred plan.

It will be noticed that the above features resemble the usual process of planning and within this broad planning programme a wide variety of planning types can be determined. Planning encompasses more than simply land use or spatial planning, but social planning, economic planning and traffic systems, to mention but a few, should all form part and parcel of the broad planning process (Glasson 1978:21). One of the major challenges for planners is to bring together all the different elements of the entire spectrum of planning and management and this will then result in strategic planning (Dean 1996:17).

Strategic management of land use and spatial planning have become increasingly important in the past number of years. In the past, planning was done according to rigid planning principles demarcating land uses according to categories and it comprised mainly spatial and land related issues. In recent times it became clear that the way of thinking should change and planning had a much wider scope than previously accepted. In the past planning was also done in compartments and this led to awkward situations where land use and transportation often worked against each other instead of complementing each other.

Planning is an integral part of management as it also has to anticipate events and circumstances. Poor planning and management is when one only responds to events and not anticipate with a plan that is adaptable (So 1979:13).

Spatial planning can be regarded as one cornerstone of the entire planning process and this immediately results in the fact that attention will have to be given to other disciplines. However, some of the other disciplines are so much influenced by spatial planning and **vice versa** that they become intertwined with one another. In order to manage this phenomenon it is necessary to apply strategic methods as the issues cannot be specifically demarcated. Spatial planning in urban areas has an influence on transportation, on the economy, the provision of schools and clinics and then as a backdrop all development and planning should be assessed against the environment.

In the past planning was done *for* people [own emphasis] and this has now shifted to planning *with* people [own emphasis]. It is important to take cognizance of this shift in emphasis as it influences the entire process of planning and moves more to the management aspect as the public have a larger influence on the development and use of land. This aspect in itself has far-reaching implications as the people have to be educated and taught about procedures and processes. On the other hand planning is also complicated by the process of public participation apart from it being time consuming. In any event this is the way to follow and the process has to be managed. In this chapter the more influential aspects around spatial planning **per se** will be discussed and from that a process can be developed that could be of some use in future.

In this chapter strategic planning will be discussed as far as it pertains to land management. The objectives that have to be attained and the protagonists who should participate in the achievement of the objectives link to the requirements and the different influences that can affect strategic planning. This sets the scene for transportation systems and the interaction with land use, maybe one of the major problem areas to be solved in the near future.

## **4.2 OBJECTIVES OF STRATEGIC MANAGEMENT**

Strategic management cannot take place in limbo or in a compartmentalized environment. Planning, financing, service departments, housing and several other disciplines are of the utmost importance to ensure that a strategic plan is compiled and executed. Policy making and the implementation of policy are dependent on co-ordination and collaboration among disciplines and should these links fail, then the ultimate result will suffer (Price 1986:11).

Strategic management should be seen in the broad sense of the concept and should embrace much more than only the physical planning aspects. A number of aspects that should receive attention are the following (Moseley 1974:3):

- Development, not just growth, should be cultivated. Which means that not just quantitative expansion should be considered, but also the process of structural change.
- The focus should be "multi-dimensional" taking into consideration growth and structural change not only in planning, but also in social systems and the economy. It can be concluded that the focus should be "wider" than previously where the focus was only on planning **per se** whereas now traffic, cultural differences, social elements, to name but a few, all play major roles in the planning process.

The conclusion can be made that a holistic view should be followed and that minuscule focussing will be detrimental to the process and public interest. Strategic management is a process that is focussed and concentrates on specific issues that were selected to be in the particular sphere. Certain considerations like car dependency are of importance as resource availability has to be determined as well as to ascertain the prevailing features that have to be addressed in the action orientated plan which accompanies any strategic planning or management system. Strategic management is not a system dealing with the future or taking decisions in future, but it is a system that concentrates on present decisions while contemplating the future (McClendon & Quay 1988:50). Strategic management in terms of land use relies on certain aspects that can include the following (McClendon & Quay 1988:51):

- Determining external forces and how these will influence the events set out along the way of achieving goals.
- Selecting key issues that will have to be resolved.
- Broad goals will have to be set to establish the direction of the development.
- Executing external and internal analyses to look at forces that could affect the achievement of goals.

- Continually developing interim goals, objectives and strategies in respect of what could be achieved and how to accomplish them.
- Developing plans to implement strategic actions.
- Monitoring, updating and evaluating strategies and ensuring that modification takes place accordingly.

In the South African context with the separate urban areas it is necessary to implode development so that sprawl can be curbed. Growth should take place on the inside of the areas as they integrate and sprawl away from each other should strictly be curbed. Buffer strips and excessive road reserves, if the chances of using them are very remote, should be developed or put to some other use. Increased density does not mean widespread construction of high rising buildings, but the significant increase in density by smaller stands and more than one house on stands of a certain size. However, densities should vary and this calls for careful analysis before embarking on a project where urban areas are intensified (Dewar & Uytenbogaardt 1991:90). The latter analysis can be regarded as part of the LDOs process and emphasizes the importance and precision of these documents.

It is also important that strategic planning should be plan led; in other words that objectives and procedures should be planned and taken into account when determining processes. More emphasis should be placed on promoting development and guidance in respect of mixed land uses in order to enhance the active management of land uses in the urban area (Pollock 1997:24-25). It can be concluded that a systematic approach to processes is required and that mixed land uses are more than just spatial planning.

#### **4.3 PROTAGONISTS IN THE STRATEGIC MANAGEMENT PROCESS**

In an attempt to ensure strategic management a public-private relationship has to exist between developers and the local authority. Integrated planning combined

with strategic management processes involve quangos embracing developers, the community and local authority (Barlow 1995:viii).

In the past much emphasis has been placed on urban land use control and this has to change in order to place the emphasis on urban land management. The management of land use will improve the efficiency of the urban system and harness the energies of the poor. Management of the entire system will also encourage growth and development as the integration of all the aspects having an influence on land use planning will be considered and the best possible informed decisions can be taken (Policy Overview 1990:19).

Land use design and the development management plan should be mutually supportive and this will lead to the strategic management of land taking into account all the various aspects that could influence it. Development design is intended to implement development management as it provides legal and political bases for regulations as proposed in the management programme. The ideal is to incorporate the land use design features within the development and/or management which in turn will lead to the land use plan being adopted as a component of the development management programme (Kaiser **et al.** 1995:398-399).

In order to manage the land use issue in a manner that takes into consideration the needs and desires of a community in a certain area, it is necessary to do a needs assessment. This links closely to the policy and the adaptation of policy as the needs change and policy has to be in line with the management of the various aspects associated with the particular needs (Blackman 1995:174).

In diagram 4.1 the process of determining the needs is schematically illustrated. It is evident that the administrators of the policies and the planning process play the major roles in this model. These are the people who have to provide the legislation and guidelines within which the needs are assessed and then formulate them to accommodate the specific needs.

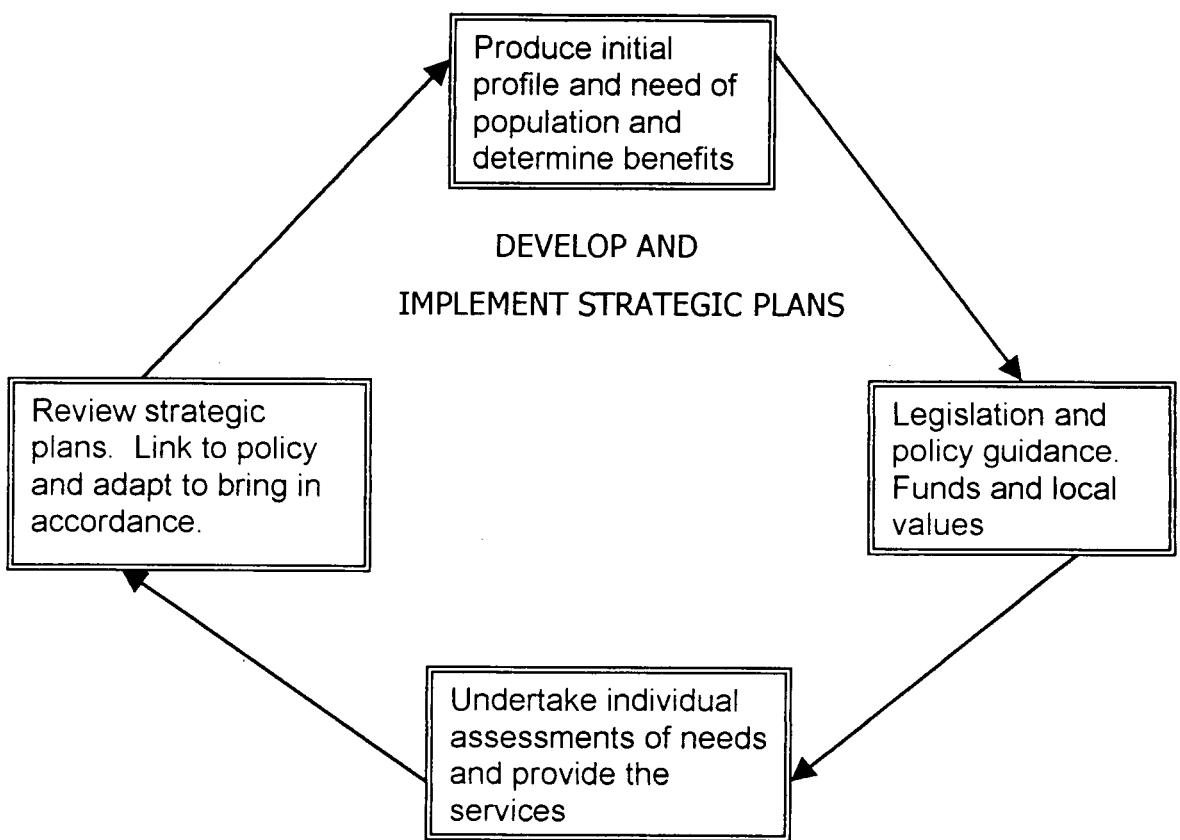


DIAGRAM 4.1

NEEDS ASSESSMENT MODEL (Blackman 1995:175).

#### 4.4 INFLUENCE OF STRATEGIC MANAGEMENT

In many cases excessive regulation of land development standards that reduce the supply of affordable serviced urban land exist. One such regulation can require large erven. These excessive standards then place the land beyond the reach of a large number of people and the low income groups then resort to illegal settlements (Bernstein 1994:2).

Land management is an interrelated complexity of contemporary urban social, economic and environmental problems and in order to resolve these an applied or problem orientated analytical approach is required. It must also be borne in mind that some of the issues will clash and then the one cannot totally be eliminated

and this leads to the management of the different issues in order to serve the community (Pacione 1990:171).

Excessive regulatory measures have constrained the provision of land in some places, but some of the major contributing aspects that stifled development were the lack of effective land policies, inadequate and too rigid regulatory frameworks at local and provincial level. Inadequate and out-dated town-planning schemes cause zonings to take place in a haphazard manner on an **ad hoc** basis and this can lead to serious problems for development as no specific features are identified. The town-planning scheme has a definite influence in market forces and can play a decisive role in particular cases (Bernstein 1994:30).

The history of town-planning schemes has indicated that the various aspects of a town-planning scheme are all based on "policing", in other words regulating specific uses with very little flexibility. Performance zoning [in a town-planning scheme] on the other hand allows for greater flexibility as long as certain basic standards are met. This kind of zoning leans more to a planning process than to a control document (Bernstein 1994:60) and seems to be the answer to the unique problems in the Republic of South Africa and specifically the Free State Province. Land use controls as set out in town-planning schemes have not been very successful in achieving development. If the scheme is not founded on a strong foundation and is reinforced by supplementary control measures and consistently take into account the market forces, then it cannot even be an effective control document (Bernstein 1994:62). Although "performance zoning" can take place in a town-planning scheme the LDOs are really the initiators of indicating land development and change. The town-planning scheme should be in line with this and should provide the specific use as demarcated in the LDOs.

Planning is neither static nor one-dimensional and this dynamic and multi-dimensional activity should embrace social, economic and technological factors. Planning concerns the future and it is intrinsic to the methods of planning that they are concerned about the improvement of the human and its environment

(Bruton 1974:26). Policies change and this has a direct influence on the planning process.

Urban development must concern itself with land as the basis for the interrelated features such as social, economic and physical planning (Mattingly 1993:131). This is only the tip of the iceberg as all the other disciplines are so intertwined with one another that land development influences them across the board.

Strategic management is a process for resolving problems and achieving goals and this is based on the LDOs which in turn will determine how well the problems are solved and the goals achieved. The LDOs and strategic planning should act hand in hand in order to co-ordinate rather than to compete, to look ahead and anticipate rather than to react and in the process to make decisions that are based on shared community goals and objectives (McClendon & Quay 1988:142).

A great need exists to relate planning to land administration, as this is a factor that significantly affects the selection of areas to be developed and serviced. Planning and administration form an integral part of management and that is why management is so essential in planning (Devas & Rakodi 1993:151).

#### **4.5 REQUIREMENTS FOR STRATEGIC MANAGEMENT**

Urban managers should consider the uses of land in such a way that the health and safety of the general public are ensured while seeking to conform to and achieve policies (Mattingly 1993:113). When embarking on a strategic planning process the emphasis should be on the following (Devas 1993:93):

- Increased efficiency – where greater results are obtained from fewer resources.
- Transparency – where it is clearly defined what is provided by whom, to whom and at what cost.

- Accountability – where decision-makers and managers are called to account for the performance and services for which they are responsible.

It is imperative that some degree of government intervention exists, although too much intervention will force free enterprise into specific directions. Private protagonists should take into account the set parameters regarding land use and the basic features of land use such as for instance density, design, location and timing of development. Urban areas that are expanding rapidly should ensure a proper balance between urban development and environmental protection against the backdrop of sound planning principles and management (Bernstein 1994:4). The integration of the urban areas will also positively (hopefully) influence the environment as densities will increase and travelling distances become shorter and this should enhance sustainability.

When compiling a strategic plan it is important to keep the following basic aspects in mind when it comes to the control and development of urban areas (Barlow 1995:11):

- Plan making – stating the strategies needed for the organizing of land use.
- Development – land use, infrastructure and servicing.
- Regulation – placing uses and the re-development of form and location.

A clear distinction exists between plan-making and planning as the former denotes the features of management as it comes into operation when something has happened and a plan has to be devised to solve the issue at hand. Planning on the other hand means that plans are devised prior to any occurrences (Selman 1996:3).

The urban context of this country rests on three major realities. It makes no difference who is in power at a political level, these realities have to be addressed

and managed regardless of the form and political and economic dispensation which emerges over time (Dewar 1988:157):

- The rate of urbanization and urban growth that is not only as a result of natural increase, but also as a result of rapid migration.
- The high levels of poverty and unemployment are of grave concern and will have to be addressed.
- The marked levels of inequality of income will have to receive attention to ensure that the levels of land management are more equal.

Land management will have to be approached by keeping these aspects in mind otherwise totally inappropriate development can take place. Radical changes in city management are necessary and realities should be accommodated to ensure the optimum development for all people (Dewar 1988:157).

People tend to let the need for housing dominate the "urban problem" as it is seen as a synonym for the "housing problem". However, at the most fundamental level people do not move to the cities for housing, but to find work and gain access to the economic opportunities. This movement to the cities then leads to a housing problem as an effect of the primary cause for movement. Strategic managers should realize that the agglomeration of large numbers of people should be managed and for the urban area to perform successfully a few requirements have to be met.

A major overarching aspect is that the potentials contained in the agglomeration must be realized, as this does not happen automatically. Within this the first aspect is to manage the entire urban system as a unit where each part reinforces the others. The essence of urban areas which perform positively and pro-actively is when services and activities are rendered to the people and groups who cannot do so themselves. The second requirement is that these services and activities must easily be accessible to the people, in other words the restrictive barriers, of which distance is but one, should be eliminated. From the point of view of the

urban poor the best situation is still if the activities could be accessed on foot (Dewar 1988:158).

It must be borne in mind that the greater the range and intensity of urban activities the better the environment performs, if it is managed properly. In order to ensure a little equity among the groups transportation and land use can play major roles.

Many urban areas have grown so rapidly over the past few years as a result of the economy of the urban areas. People take to the towns in order to improve themselves and for a better livelihood as they attempt to share in the profits of the urban economy (Kirkby **et al.** 1996:198).

It must be borne in mind that people come to towns and cities to experience the many opportunities that can be generated by the physical agglomeration of large numbers of people. However, the ability of an urban system to generate economic, cultural, social and recreational opportunities and facilities needs more than only people and demographic size, but also a vibrant and efficient structure of the urban area. Urban management plays an intricate role in the generative capacity of all these features. One of the more important aspects to be enhanced in the South African context is that the economic sector in urban areas should be encouraged as an overwhelming need to turn the urban areas into efficient economic machines is apparent (Dewar & Uytenbogaardt 1991:16).

Cities are the main centres for education, job opportunities, health care and economy, but they are also wasteful consumers of natural resources requiring enormous quantities of water, energy and raw material, much of which is wasted and not used in a sustainable manner (Yeld 1997:55).

The spatial conclusions reached with the increased agglomeration are that if the needs of the majority are to be accommodated, then development must be integrated and transportation means and systems should be addressed and

adapted to provide in the specific needs for the urban environment. Land must be sufficiently integrated and transportation should play an integral part in the development of the whole urban area (Section 3 of the DFA).

Dewar (1988:158) has the opinion that the following levels of planning should be distinguished:

- Macro level of planning activities where attention should be given to the closest possible integration of large employment generators and the communities which house the work force.
- The micro level where the greatest possible mix and overlap of activities **viz.** residential, small scale manufacturing, commercial and cultural activities should co-exist.

Unfortunately the situation in the Republic of South Africa is precisely the reverse of this and dwelling unit densities are low, fragmented and discontinuous. Furthermore, the land uses are compartmentalized into mainly mono-use areas that are separated by buffers such as open spaces and railway lines. Transport routes basically link the consequences of these buffers and this borders on disaster as with each agglomeration of people little co-ordinated planning and development can take place. The areas tend to operate independently and little reinforcement of one area by the others exists (Dewar 1988:159).

Urban development is at present dominated too much by rigid sets of standards relating to buildings, site use and space budgets. This system of management is outdated, greatly anti-development orientated and inappropriate. The two major deficiencies are the following:

- The system is expensive to maintain and enforce in its present form.
- It is too rigid, inflexible and cumbersome to accommodate the dynamics and speed of change.

All this does not mean that all control measures should be abandoned, but merely that they should be adapted to keep pace with the rapid urbanization and development. The need for control is founded upon the fact that the rights of any individual undertaken on the grounds of self interest may impinge on the rights of others or may negatively affect the public good and the broader community is entitled to protection in this regard. All the mentioned "problems" are not insurmountable, but emphasize the fact that management will have to take place in all aspects and that changes will have to be made. Planning should take place in a positive, development orientated fashion where the emphasis is on pro-active planning and management yet also keeping in mind the measures of control (Dewar 1988:164-165). The aspect of control is important as development without control defeats the purpose.

The following diagram, 4.2, indicates the major stages of the planning process. This is used to analyse the role of eco-development features at different planning stages. Planning is always based upon something and that has to be determined and the process as indicated in the diagram sets out the stages. It is important that attention be given to these stages as the planning process cannot simply begin and not know where it is heading.

It is also important to realize that planning is a systematic process where all the protagonists should play their roles in order to make it successful. These roles should be played in a proper order as it is important to ensure a cyclical process where due attention can be given not only to the process of planning, but also to the monitoring and review in order to ensure the relevance of the planning. Planning takes place in a dynamic environment and should continuously be adapted and this makes the review aspect important. Monitoring and reviewing ensures that planning does not become stagnant, but remains relevant and necessary.

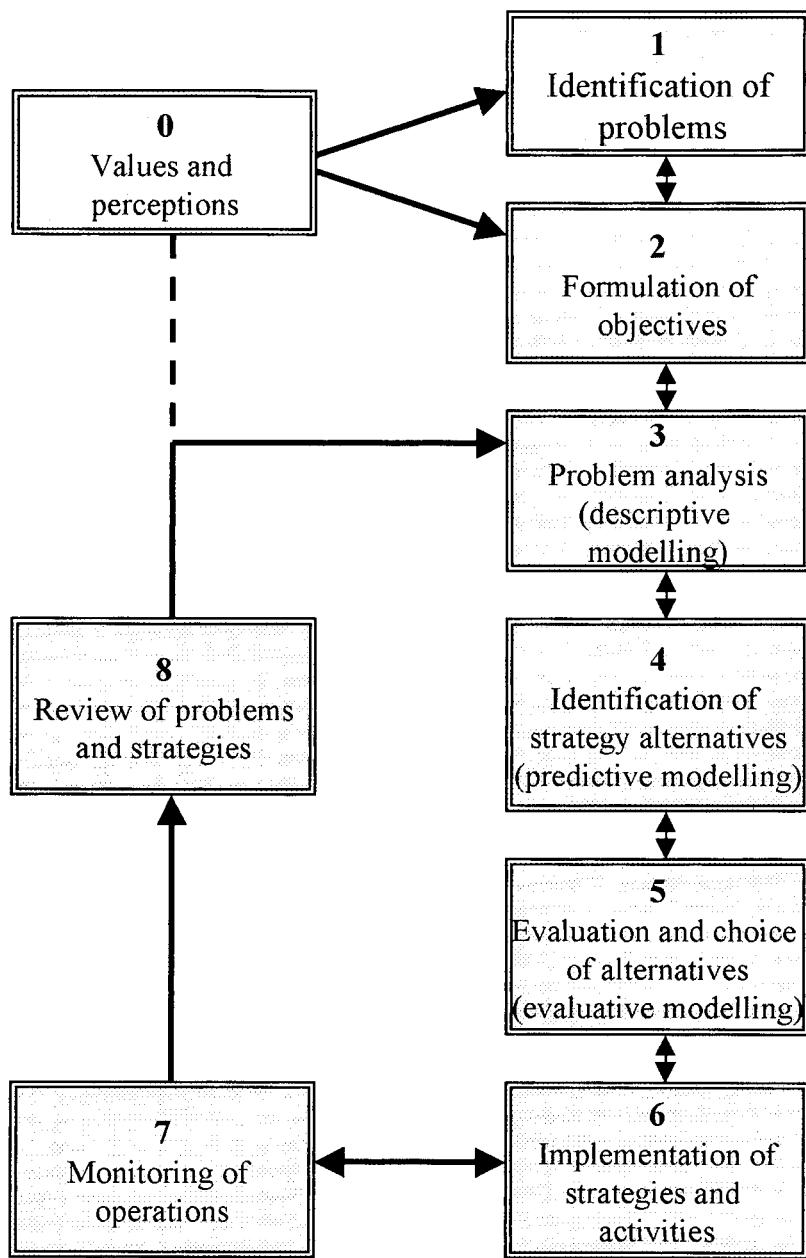


DIAGRAM 4.2

MAJOR STAGES OF PLANNING PROCESS (Bartelmus 1986:47).

In order for the urban system to function effectively the different aspects of planning across the board have to be accounted for and the urban structure should be of such a nature that the maximum possible freedom be given to the people. The structure of the urban system should also release the energies and talents of the people; in other words the structure should be stimulating although

it is complex and in so-doing the structure will come "alive" and generate opportunities (Dewar & Uytenbogaardt 1991:19).

#### **4.5.1 Public participation**

Cullingworth (1976:261) states that one of the most important documents on public participation at a national level to be published recently is the Skeffington Report in England. Although the report was accepted it did not really serve its purpose and nothing in it can be accommodated by the Free State Province as the conditions are too different.

The Skeffington Report made some very obvious remarks about the manner in which the public should be informed. However, one of the more important implications of the Report is that "... the views of the non-joiners and inarticulate are as important as the actively interested and organized" (Cullingworth 1976:261). This of course is a very important aspect in the Republic of South Africa as the majority of people in the country have been excluded from formal planning of towns and development in the past. These sectors are now main protagonists yet the former exclusion requires a certain amount of training to be given with each development. A word of caution should immediately be stated and that is that all residents in a community have rights and development can only take place should it be in the interest of the majority of the people in the community. If a development becomes detrimental to a substantial portion of the members of the community then it has to be reconsidered. However, it must be borne in mind that in some instances some people will be adversely affected, but these should be in the minority.

Public participation in so far as it pertains to land use is the active participation by all the levels of the community. Socio-economic differences do exist in our towns and development cannot simply include only some of the communities. Participation at all levels includes active participation from the people who are

actually the beneficiaries of the development. This means that the public should have the opportunity to raise meaningful opinions and even influence the planning process. Public participation should not merely be the opportunity to object to something, but to be part of the whole planning process and to exercise influence on the results (Steyn **et al.** 1996:4). These aspects are important, as it does not help objecting or raising concerns if nothing happens. The latter way of doing things is unacceptable as it boils down to a top.- down structure without really listening to the needs. Planning like this will create problems and should be avoided.

Pro-active planning is important, as it is derivative of the South African situation and an approach that seeks to be directly responsive to societal need and democratic precepts. This form of planning facilitates the involvement of formerly disadvantaged and marginalized communities that influence the decision-making. This not only suggests public participation, but more important planning participation in the process that implies that the planner becomes more involved in the total activities of the community (Davies 1992:23).

The danger with public participation is that the wishes of the residents can be so far removed from what is really good for the area and what really fits in, that bureaucratic control in the end has to prevail. When this happens the whole purpose of public participation can fail (Cullingworth 1976:276). This seems much harsher than it really is, because the bureaucratic way will not be forced upon the people, but they have to be convinced about what is best for the area and then in turn for them.

Land use planning is one of the areas where the comments of the community are of great importance and it is also a good place for the community to be involved. The policy plans regarding land use should be made available to the public prior to approval and the community should be afforded the opportunity to comment and participate in these matters. Extensive public participation should take place and the trust of the public should be obtained and clear policy should be set or the

result will be disappointment and cynicism with the process. The following can be regarded as a checklist for a process of planning (Blackman 1995:106-107):

- The local government and the public should be clear about the process and the objectives right from the start. It also has to be decided whether the public will merely be informed, consulted or more actively involved in the planning and decision making.
- At the outset it is important to decide who is to be involved among the public. Target groups should be identified and it should be ascertained whether they have specific problems and then these have to be addressed in advance; for instance attending meetings or understanding the processes. The local government and the planner and associated protagonists will play a vital role in this process.
- A variety of methods need to be used to reach the public. Depending on the magnitude and overall influence within the area, large meetings to informal group discussions should be held to inform the public.
- The local government and the public (and the developer) must know that public involvement will add to the time not only in so far as policy is concerned, but also with the implementation of the specific policy.
- Agreements should be reached regarding the reporting periods and mechanisms.
- The different roles adopted by the various protagonists should clearly be defined.

Effective development policy can only take place if community participation is actively a part of the entire system. The best designed policies cannot at all times exclude tensions should these policies be imposed on the communities without any consultation or participation from the community (Policy Overview 1990:27). One of the principles of the **DFA** specifically states that policies should exist concerning the participation of the public. This is indicative of the sincerity attached to it even from the sphere of National Government and effect should be given to this aspect.

As spatial planning has always taken place in a system where consultation was at a low level, if it did take place at all, the change to consultative planning is also an attitude change as various influences are "invited" so to speak. The land use planning system operates in a democratic environment and in order to change the attitudes of the communities towards development and land use it is necessary that the planners should not operate in a technical vacuum even if they do have a sound knowledge base. It is important for the local people and communities to become involved and form an integral part in the process of change. In order to develop the community to such a stage that it can understand the essence of developments relevant information must be provided to the community. This information must be kept up to date with the various aspects that are relevant to the area and the particular development otherwise no worthwhile contributions can be made (Blowers 1996:32).

#### **4.5.2 Transportation**

Sarre (1991:265) gives a vivid and somewhat humorous, yet sad, description of rush hour traffic in Cairo. Busses are "... crammed beyond theoretical capacity, so passengers cling to the outside, sit on the roof or in the windows." The consequential chaos in the streets with these crowded buses causes the traffic never to stop and passengers board the buses by taking "running leaps" and disembark by simply jumping off.<sup>1</sup>

The above situation appears to be funny and unlikely in communities in the Free State Province, yet it is a reality in particular areas and could be awaiting residents if careful planning is not done and note taken of the dangers that could be looming in the future. It is a fact that the transportation systems in third world cities are bad, but in most large cities the situation is deplorable and also often still deteriorating. Rising levels of car ownership, the ever increasing number of

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<sup>1</sup> A complete description of these conditions is attached as Annexure B.

employees who travel to work, geographical sizes of cities ever increasing, the lack of adequate investment in transport facilities and poor controls over private transportation generally contribute to worsening situations arising all over the world.

It is evident, therefore, that each city has its own kind of transport chaos – in Caracas are too many cars; in Beijing and Shanghai too many bicycles; in Calcutta too few buses and in Lagos too many people who walk to work. The consequences of cities growing in size and sprawl are that it takes longer and longer to and from work and congestion is the prime enemy of time and money in each case (Sarre 1991:265). It must also be remembered that not only cities have to cope with long distances – as a result of the past policies in the Republic of South Africa even residents in small towns experience long distances between work and home. This factor is part of what makes the situation unique and it emphasizes the problems instead of alleviating them. Although congestion does not take place in small towns the distances are long and the travelling time excessive. In the small towns the car ownership percentage is not as large as in the cities and taxis are little used; in other words the people travel by bicycle and on foot which aggravates the travelling time and distances.

The relationship between land use and transportation systems is critical to the planning process as the one constantly influences the other. If the one changes the other is influenced and these influences should also be considered in the total management of land use. The future land uses and transportation systems have to be assessed and adapted in order to instill harmony between them as the relationship between these two features influence the entire land use and transportation plan and cannot be done separately (Ross 1988:311).

Land development and land use in conjunction with transportation should be well planned as it is imperative to consider carefully the location of, among others, higher density areas and mixed uses. This is important as these issues have an influence on the jobs-housing balance and a pedestrian friendly development

while at the same time reducing car travel. All these aspects should be considered as land use development and planning should serve as a guide to transportation. These arguments are also valid for the "re-urbanization" of towns where the areas are more densely developed and where congestion could occur (Kelly 1994:139).

In the urban areas the transport problem cannot always be blamed on under-supply, but in virtually all cases the public transport is ineffective and inefficient in its operation. In order to improve the effectiveness of a transport system it is necessary to take into account the spatial development and uses of land in the urban area (Western Cape Provincial Transport Policy 1997:2).

#### **4.5.2.1 Historic overview of long travelling distances**

Urban areas in the Republic of South Africa have always been segregated. Prior to 1950 Black urban dwellers were segregated into locations or shanty-towns. Between 1950 and 1960 the apartheid policy was strictly enforced and Black areas were settled at the periphery of the towns and cities. Relocation of people took place and this had an extreme influence on transport as the people were now much further removed from employment opportunities. Distances increased vastly and became time consuming while walking decreased dramatically as a result of the increase in distance (Cameron & Maeder 1995:45). When this took place transport immediately became motorized dependent and this can be regarded as the beginning of the great urban transport problem now facing the country. It must be remembered that although the physical distances were longer the transportation was subsidized to such an extent that in monetary terms the distances were not so extensive.

The land settlement policies regarding the urban settlement resulted in the largest portion of the Black population living in satellite dormitory towns and the people were obliged to travel long distances to places of work (Clark **et al.** 1988:7). This of course has a great influence on traffic as the people rely heavily on public and

taxi transport resulting in particular traffic patterns. The more these people become vehicle owners and travel individually, the more cars will be on the roads and the traffic patterns may again change and this will compound problems. What makes the situation even more complex is that we now have to predict these problems and situations and the accuracy of the predictions could greatly influence or even determine the form and system of the urban area.

Integration between transport and spatial planning has never really taken place as the underlying political dimensions of land use decisions within the macro planning system have never been entirely grasped. Transport has always been treated as a derived demand and consequently was neglected in favour of land use. These two aspects, however, should be considered equal and treated as such and it should be realized that the one directly influences the other (Western Cape Provincial Transport Policy 1997:10).

#### **4.5.2.2 Aspects influencing the problem of transportation**

As towns grow and develop they tend to spread out automatically and this leads directly to an increase of travel distances and car dependency. Certain types of land use also intensify this as can be seen with out of town or edge of town shopping centres. These tend to be reachable only by car or taxi as they are out of the way of public transport. When these developments are planned it will be wise to take into consideration the influence of it on traffic flow and the sustainability of the town (Blowers 1996:115).

The poor are the people who are the most disrupted when bad transport is the only means available. The policies in this regard should take this into account as large percentages of the earnings by the poor are spent on transport. Improved transport facilities in the poor areas can improve the whole social welfare of the area and also improve the prospects of the people who need it most (Linn 1983:88). The major elements that contribute to the chaos of urban transport are

the high pollution in central cities and the congestion. These can be alleviated to a large degree by ensuring that public transport is improved and by better management of public transport, especially in relation to land use (Linn 1983:88).

Viable public transport requires certain threshold densities and the mode of transport is dependent on the location of residential areas and employment. The shorter the journey between residential areas and employment or services the more trips can be combined and trips may even be made on foot. Dormitory suburbs and development on the urban periphery reinforces car dependency and generates travel (Owens 1994:172).

The fact that car ownership is still fairly low with the majority of people should not misguide the fact that it is still the worst problem to be solved. Private car ownership is increasing at a massive rate and the current opinion makers should not make the same mistakes with misguided policies and poor management as the industrialized countries and should pre-empt the problems and with property-active planning steer clear of the problem (Linn 1983:89).

The fragmented towns that are a part of the previous government legacy caused the majority of Black workers to be far away from their job opportunities and this places an additional burden on various aspects of the community. In most cases no integrated transport system exists which places a heavy burden on the commuters as travelling is expensive and travelling time leads to a loss of time and energy that could be used for domestic and family responsibilities (Turok 1993:11). The problem is also not only evident in the Black/White town relationship, but within each town in itself.

Land use policy relates closely to transport problems as the expansion of towns and the location of business centres can either cause extensive transportation problems or even alleviate others depending on the changes and the traffic patterns (Linn 1983:89). It must be kept in mind that an improved urban transport system is not the only means to improve access to employment and

services to the poor – making residential land available close to job opportunities is just as important.

In fact the poorest of the poor who can only afford to walk will not benefit by an improved transport system and the location of residential areas in relation to job opportunities will be of great assistance to these people (Linn 1983:106).

The transport system in an urban environment is crucial and it affects the lives of the people in many ways. It can assist the people in providing a facility to reach work and transporting goods and materials. It gives access to work and leisure, homes and businesses, schools and hospitals and the degree of efficiency with which these services are rendered directly influences the community (Pacione 1990:159). As is evident the provision of amenities and facilities in the suburbs are also of importance, sometimes these facilities are so far apart and difficult to reach that specific journeys have to be made. The vast sprawl is of importance and apart from the segregated towns this is the biggest transport problem.

In order to produce a transport system that is truly efficient, viable and affordable while also being sustainable, it will be necessary to adopt policies such as containment, intense land use and mixed land use. This relationship must be described firmly and defined in detail so that the spatial land distribution and transport decision making can function hand in hand (Western Cape Provincial Transport Policy 1997:13).

#### **4.5.2.3 Interaction between land use and transportation**

Transportation neither land use can operate in compartments. The one inevitably influences the other. Diagram 4.3 illustrates just how intricate this relationship is. It becomes clear that not only future development and planning influences the transportation system, but the present systems and land uses as they grow and

development also play a significant role in the relationship. All these factors have to be taken into account and should be part of the whole planning process.

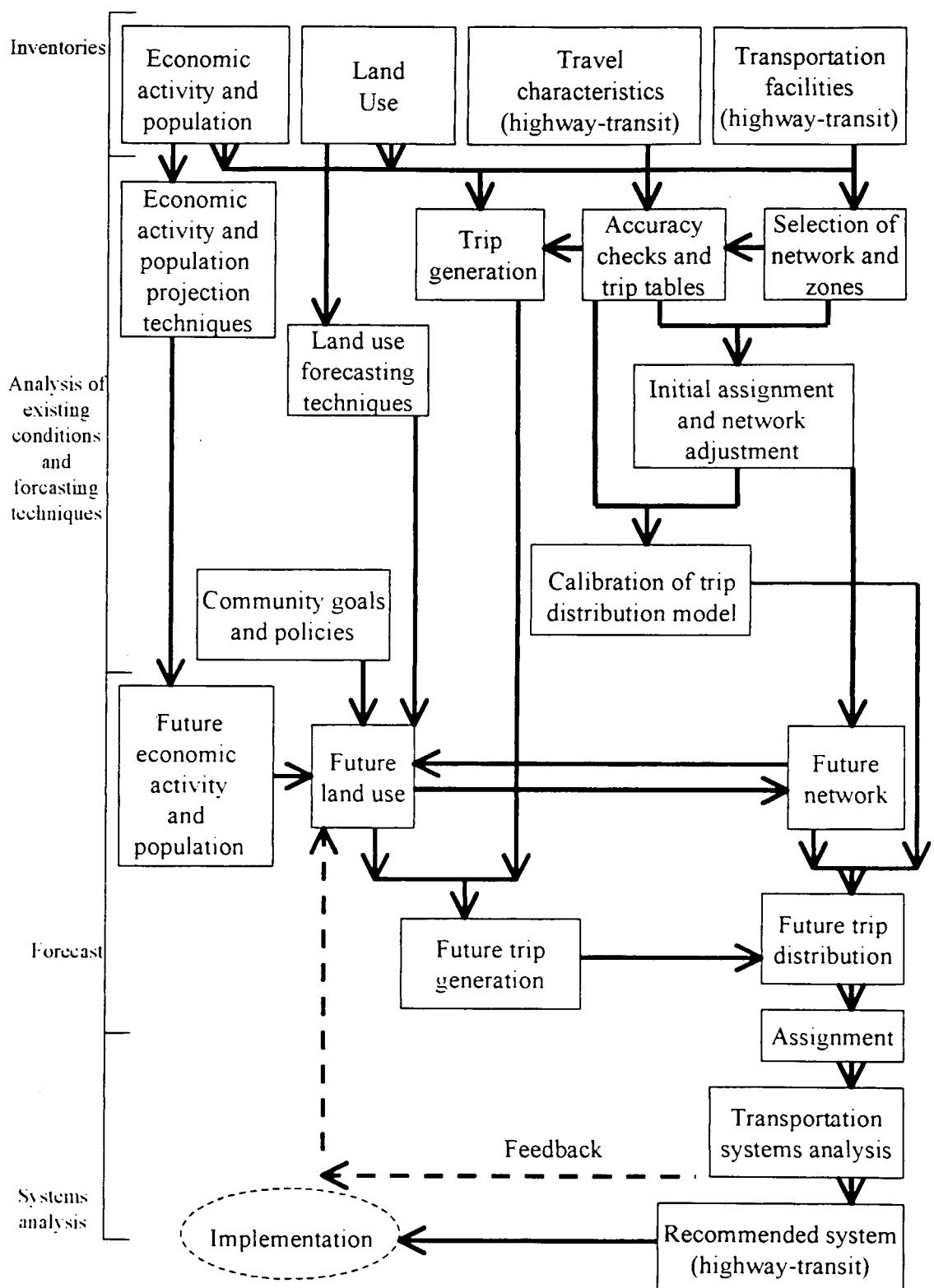


DIAGRAM 4.3

TRANSPORTATION AND LAND USE INTERACTION (Ross 1988:312)

Urban living is greatly dependent on the car and in turn this marginalizes the poor in so far as the spatial settlement is concerned. Urban performance is the manner in which the urban form is structured to facilitate and promote the movement among the various activities in the urban system (Dewar & Uytenbogaardt 1991:19). Regarding the extensive car based transport it is necessary to adapt to a different way of living and take note of the extent where we stop living off the non-renewable capital of the earth and rather live off the interest.

The pollution in certain areas is extreme and by developing incorrectly this could be aggravated. Sustainable development would seek to reduce pollution and imaginative thinking, appropriate siting of developments and new innovative means of planning could conspire to achieve the sustainable end result. The reduction of travelling needs and a shift to more and better use of available land could pose as some of the viable solutions (Lusser 1994:176). It will serve no purpose if the point of view is heralded that no-one is really guilty and that these problems do not really exist. Somewhere it should be started and this issue be addressed.

#### **4.5.2.4 Affects of long travelling distances**

Transport has a wider role to play than simply just getting people to and from work, although this is surely the most important aspect regarding urban travel. Transportation determines land use to the degree that different uses require different modes of transport. People travel on business, shopping and so forth and in each case the travel distance is of importance. The longer this vital distance the travel time increases as it does with traffic congestion and this does not only relate to travel, but has a wide spectrum of influence. Long travel times force commuters to have less sleep time and other normal domestic activities such as child rearing, further study, house building, reading and so forth. All these are features of community development and the less time available for self-

improvement and community building the longer will it take to transform (Clark **et al.** 1988:34).

Transportation systems are important aspects regarding the use of land and the consequential influence on traffic flow and generation. The ideal situation would be that travelling time will be shorter and distances shorter, unfortunately a particular situation exists and will have to be managed within the existing means (Hobbs 1974:24).

Although the town planner depends heavily on the traffic engineer for the influence of traffic on existing uses and cities as well as in new developments when any development takes place, the town planner has to take note of the effects of the proposed development. One of the most important aspects to be considered for the purpose of this thesis is that movements are directly related to the distribution and intensity of land uses (Hobbs 1974:42).

Traffic affects everyone in some way or another either directly or indirectly, be it the traveller in a car, the public transport traveller, the pedestrian or the resident. The affects can also vary as time, money, noise or pollution might occur. It is clear, therefore, that the town planner has to take these aspects into account especially concerning the sustainability of development (Bruton 1974:171).

A very important aspect to bear in mind is that the relationship between land use and transport is of the utmost importance. As land uses change they have a varying influence on the transport patterns and intensity. Conversely, certain transport patterns influence land uses and causes particular developments to take place in specific areas. Interaction among transport patterns, land uses and the changes in these features all interact and influence one another. The ability to understand and interpret this interaction is directly related to the predictability of the types and locations of future transportation systems and land use demands and locations (Ross 1988:310). It can be concluded, therefore, that isolated

planning and development of land or transportation cannot be tolerated as the one is directly related to the other.

Transportation and land use have often been regarded as two separate entities and this has led to vast problems, as these two features cannot be regarded as being separate matters in urban policy analyses, programme design, evaluation, development and urban management (Chapin & Kaiser 1979:619-620). These aspects are even more important and critical in the current situation where separate urban areas have to be integrated. The transportation aspect determines land uses and **vice versa**, but it must also be kept in mind that the private car ownership of the majority of people is ever increasing. This makes transportation systems even more crucial as each land use has to be based on unknown projected traffic analyses.

It has been argued that the non-motorized (really meaning motor cars) means of travel does not suit the expansive urban geography of the larger cities and even small towns where the towns had been separated by politically dictated planning. Quite often reference is made that the Republic of South Africa is "different" from other countries and therefore a different path of development or evolution has to be followed. A major difference being that separate urban areas have been established due to particular policies and legislation. Although differences are acknowledged, several basic similarities are also evident and no reason exists why lessons that have been learnt by other countries may be ignored; neither can the global obligations be ignored. In respect of the use of motor vehicles the following can be stated (Howe 1995:1-2):

- The development of a city largely dependent on private car transport for its mobility is no longer a realistic option for even the wealthiest of countries; so much more in the case for the poorer areas of the Republic of South Africa.
- Taking the above into account public transport or non-motorized transport will have to receive much greater prominence and this will

definitely have an influence on the pattern, control and management of land.

- Environmental concerns will ensure that this manner of thought receive its rightful considerations.

However, one must be very careful of the collective "non-motorized transport" as this can mean different things in different areas. If used as a common category simply because of the opposition to motorized transport then it can be misleading rather than helpful. The three main strategies for non-motorized transport (for example walking, cycling and carts) are as follows (De Langen 1995:33):

- **Laissez faire** – no policy exists for these modes. In other words very little thought, if any, is given to the facilities needed for them. This means that the increasing motorization of urban traffic becomes more chaotic, unpleasant and detour prone for pedestrians and too unsafe for cyclists. In most cases only the cars are afforded the pleasure of policies as congestion has to be alleviated in order to allow some kind of transport flow.
- Restrictive – this means that certain modes of transport are restricted to enable motorized traffic flow. Sometimes even walking and/or cycling is restricted in urban areas under the surmise that they serve no public purpose and is a safety hazard to cars. This way of thinking is shortsighted as each mode has its own right to existence and can serve a valuable purpose and should never be looked upon as simply "non-motorized" traffic and be considered as "backward".
- Supportive – this is enhancing efficient walking and cycling and can be found in many cities where it is realized that each mode of transport has its own specific advantages and disadvantages. Cycling routes can be constructed and restricted areas for cars can be created to make it safer for pedestrians.

As stated by the above author it can be deduced that for certain urban trips and for certain segments in the population walking is most attractive, in other segments it is bus, or car, or bicycle. What mix of urban transport options is most attractive can only be determined in each urban area. The development needed and level of planning will depend on the needs of the people and the area.

Strategic planning now has to take place, as it is evident that land uses influence the transportation systems and that spatial development cannot take place in isolation without taking the existing transportation systems into account. It is also important to bear in mind that not only should the present be taken into account, but also planning and development for the future should receive urgent attention.

Planning is important to enhance the quality of life of the community (Cloete 1991:55) and is based on the actions taken to exercise choices between alternatives (Hanekom & Thornhill 1983:165). However, the planning features can too easily result in planning in compartments and in isolation. The whole issue of land use and development is based on strategic planning and management of the existing circumstances.

Strategic planning is purposeful planning in order to achieve a specific goal and differs from mere planning in the sense that it is based on long term and is a more refined means of planning always endeavouring to attain a specific objective. This also means that all influencing aspects and features of related planning should be taken into consideration and that a single line of planning is inadequate. Various policies that could influence the achievement of the ultimate goal also have to be taken into consideration with the strategic planning process (King & Cleland 1978:6).

It can be concluded that in order to achieve the objectives of integrated planning, better and more efficient land use and development as well as sustainable development, a strategic planning and development approach will be required.

In order to establish possible strategies for mobility and related land use and development the following should form the point of departure (De Langen 1995:33-35):

- Walking: Improved management of the existing street network and attention to the safety should be addressed.
- Security: Deteriorating outdoor security is of great concern. Streets with good walking quality, good visibility and many people on foot are essential to security.
- Proper taxation: The value added from urban development must enrich the area not only a few individuals. This means that proper streets and other infrastructure should be built.
- Mobility of the majority: All modes have their own role to play. Cycling is the most attractive for distances 1 to 10 kilometre because of the low cost, high speed and low noise/pollution.
- Guide urban development: Roads are the best municipal land use policy instrument and land use must reduce growth in travel distances and limit separation of activities and segregation of population groups.

Long term visions for transport planning (only those relating to land use development) could be the following (Cameron & Maeder 1995:53):

- More efficient urban land use structures, correcting spatial imbalances and reducing travel distance and times.
- Improved accessibility and mobility which limit walking distances to less than two kilometres in urban areas.
- Affordable public transport where commuters spend less than 10 per cent of their disposable income on transport.
- Retention of the present level of public transport yet still promoting the use of public transport as opposed to private car travel.
- Facilitating integrated and mixed land use planning.

- Sustainable and dedicated funding for both infrastructure and operations.
- Transport infrastructure, bulk services and transport operations should be enhanced for the effective functioning of cities and industrial areas.

It is generally accepted that land use policies should support the development of transport corridors containing high residential densities and mixed land uses. Land use policies should also concentrate on employment activities at development nodes within these corridors. Appropriate measures should be taken to contain urban sprawl and prevent the proliferation of low density suburbs dependent on private transport with extensive road networks which carry little traffic (Cameron & Maeder 1995:53). The afore-mentioned is mainly applicable to cities, but the towns experience similar problems just on a much smaller scale depending on the size of the town.

The above underscores the fact that not only do long distances exist between urban areas in the same town, but also within suburban areas and these contribute to the complexity of the relationship between land use and transportation systems. The management of land use and land development cannot take place without taking into account the various facets of transportation, which include roads. Developments must be accessible and in order to gain access roads are necessary, roads again result in certain development taking place and so the cycle continues. The aim is not to break the cycle, but to manage it in such a way that the area and public interest are best served.

A conclusion that can be reached is that the relationship between transportation and land use is complex. Urban form (compact, multi-nodal or sprawling) and the efficiency with which it functions greatly influence transportation, as the people have to move to and from employment sources. The obverse side of this coin is that the type and location of major transportation facilities influence urban form and can act as an indicator about development (De Swardt 1998:Personal interview).

As a result of the intertwining of transportation and land use the classic chicken and egg situation is encountered. On the one hand transportation should be made to fit the city and on the other hand particular land uses can be attributed to the availability of certain transportation facilities. However, one aspect of agreement is that land use planning and the planning of transportation systems should be integrated and co-ordinated in order to best serve planning for the area (Kelly 1994:130).

One of the major problems to be solved is how to manage transportation in older urban areas where the planning has already been done and now traffic congestion is taking place. Several factors can be responsible for traffic congestion and if the planning is not integrated these could lead to serious problems. The two major factors contributing to traffic congestion are (Kelly 1994:131):

- Excess motor vehicles; in other words private car ownership.
- Unplanned and obsolete street and transportation systems and excessive density of population.

It can be concluded that another important factor is the particular use of land and its influence concerning transportation. Some uses require a particular transportation system and these should be compatible, otherwise it will contribute to transportation problems. Obviously the two systems cannot exist independently of each other and that they have to be integrated. Decisions regarding transportation will necessarily affect land use and **vice versa** so that change in the one will effect change or adaptation in the other.

In some instances the idea is purported that the shape of a town and the land use should be controlled by land uses, this however, is not the case as uses are normally applied to existing developments and therefore cannot change much (Kelly 1994:138).

It is also a fact that a town-planning scheme is a control document and not a planning document; in other words a maintaining document and not an instrument to manage the development of a town or suburb. Planning, integrated planning which includes the planning of roads, however, can determine the shape and patterns of developments. When planning in such an integrated manner ring roads (beltways) can be constructed. These are not the normal radial roads linking the suburbs to the urban core, but roads that go around the outside periphery of the suburbs. These ring roads serve a dual purpose as they render access to the city from different access points and also serve to divert passing traffic away from the urban core. This manner of routing eliminates unnecessary traffic in the urban core and leaves the radial (smaller) routes for inner city traffic. Another idea is also to move away from the accepted arterial- collector- local hierarchy of roads and to favour a grid system where all roads are in the same category (Hobbs 1974:111).

This idea then ensures that arterial streets do not become barriers to pedestrians. However, the advantages of the hierarchy system are that traffic can flow faster in the higher category streets and certain traffic is designated to particular streets. All this cannot take place should the land use planning and the transportation planning be done independently (Kelly 1994:139). The crux of the matter is how to manage the current reality and still plan for development. The only way to approach this is to bear in mind that strategic planning and management is essential as the different disciplines and the respective aspects within the disciplines are so intertwined that no clear delimitation is possible.

Major transportation facilities influence the type and extent of growth that takes place and also the location of that development. This simply emphasizes the fact that transportation and land use should take place in harmony otherwise either the land use or the transportation will fail (Kelly 1994:140). People are prepared to commute only to the extent that the commuting costs are equal to the savings on housing closer to their respective places of employment.

On the other hand the employer, especially a large one, often settles close to the residential areas of the workers, more often than not the customers and the workers come from the same area. This necessitates the location of the employer close to the workers who will then also result in a location close to the customers. This means that with the development of urban areas and businesses the jobs-housing balance will closely be balanced (Peng 1997:1231).

Integrated transport and land use systems should exist in order to provide a more equitable and efficient form of urban development. An integrated system will be aimed at satisfying all the residents of a town and making use of all aspects of policy implementation. Management of the integrated system must recognize the need for a comprehensive re-planning of the spatial structure and transport systems in most towns and cities (Hobbs 1974:112).

It can be concluded that this means a shift away from the exclusive pre-occupation with physical and/or planning and moving towards a more flexible network of planning where very many more aspects are taken into account. The existing approach is much more concerned with standards and control which allows too much government pressure into the system. The whole process should lean more to the development aspect and the process where the specific community has a larger role to play.

One of the major priorities would be to encourage development corridors of high density mixed land uses structured around public transport routes as this will open the transport system to entrepreneurs and link the White and Black towns. Transport markets will be generated and these in turn are necessary to support profitable nodes that again add to development. The integration of public transport routes and land uses make access to the activities convenient and this attracts development (Clark **et al.** 1988:45-46).

As car ownership increases, travelling patterns become more and more diverse causing large cross-flow traffic among suburbs apart from an increasing

residential to CBD traffic. These movements cannot be handled with current and established transport systems and will have to be given serious thought in order to be accommodated (Bruton 1974:171). In the context of the Republic of South Africa it has to be remembered that separate urban areas exist in the towns and that the residents of the Black town have to be transported to the White town where the majority of work opportunities exist. The number of combi-taxis is significant and is growing as is the case in car ownership and these figures will play an ever-increasing role in spatial planning and development as roads have to be provided to these developments.

Inter-suburban traffic also becomes more important as suburban residents move among suburbs to employment opportunities and decentralized facilities. This aspect is not only based on the mentioned elements, but on the fact that the Black and White towns are separate (De Swardt 1998:Personal interview).

Land uses along main transport routes linking the different urban areas and the CBD as well as leading between urban areas now become all important as business arterial roads. Business nodes also develop closer to residential areas and these have a definite influence on the transportation systems.

In diagram 4.5 the conclusion can be reached that it is possible to forecast travel demand for a specific spatial structure. The spatial structure in turn can be tested for technical feasibility, in other words how will the traffic be influenced by the spatial development? Costs, accessibility and direct and indirect influences can also be ascertained. As an approach this is vital as certain developments along specific roads could strangle the transportation system and harm the economy.

It can be deduced from the diagram that the traffic aspect forms an integral part of land use and the influence of the land use on traffic patterns has to be taken into account. It is also interesting to note how the traffic in turn could influence the land use/development as it becomes necessary to revise the land use should the traffic pose a problem beyond resolving.

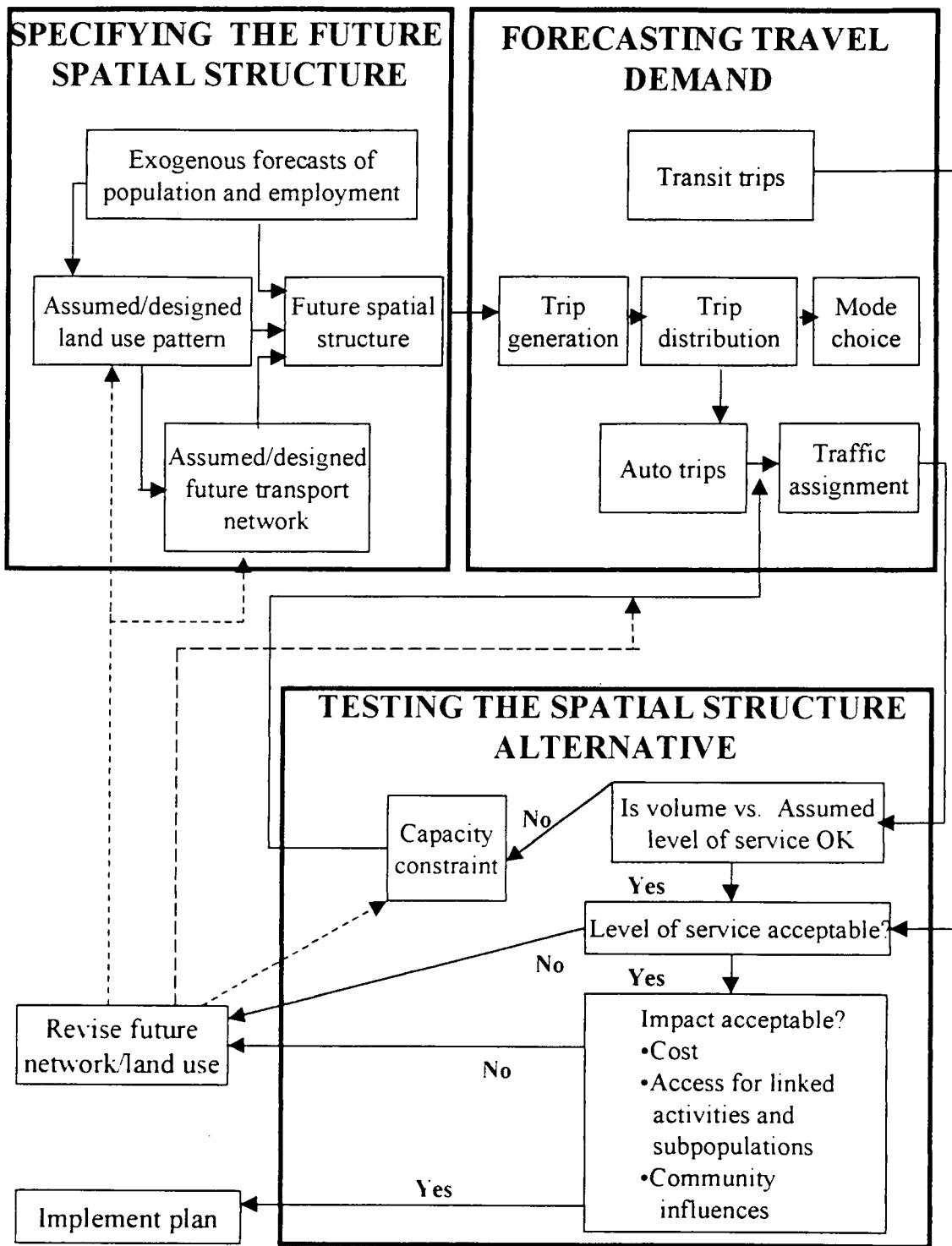


DIAGRAM 4.5

LAND USE AND TRANSPORTATION PLANNING PROCESS (Kaiser et al. 1995:376)

It is of utmost importance that the transport strategy forms part of the land use planning strategy as an integrated whole as required in section 3 of the **DFA**. If this does not take place, land use planning takes place in narrow compartments and the unified vision of the common objectives is lost. It is also disastrous should the development control measures not take cognizance of transport planning and the property-active plans such as the LDOs.

The structure plans [LDOs **in casu**] should take the lead and attempt a definite steering approach to where what should happen and not let the market forces have free rein and completely dominate integrated planning (Blowers 1996:122).

The afore-mentioned does not only apply to township establishment, but also to the development of large business and shopping centres, specially in the cities and larger towns. If the locality of these businesses do not fit in with the planned traffic system it could create havoc in so far as traffic flow and congestion are concerned. Not just one element can be considered, but a strategic approach should be adopted where the interlocking elements such as housing, transportation and employment are all considered. An overall strategy that balances the strategies within each individual part should be devised (Hobbs & Doling 1981:101).

The present **laissez faire** market driven approach must give way to a more integrated planning approach at all levels; in other words where the overall planning for the area is decided and at the individual development level. In all cases where major developments are proposed these should be subject to a comprehensive shopping impact analysis. This is inclusive of a comprehensive traffic study indicating the trip generation, the influence on the flow of traffic, the influence on intersections and some indication of the additional vehicle mileage generated by the development.

Where possible a comparative study should be included where another comparable centre is located and another location for the proposed centre. This

seems harsh, but the location of centres should not only be market driven; sound and integrated planning should form the basis of development (Blowers 1996:127).

Public transport is best left to the experts to plan and the market forces should not be left to guide the system. This is because a variety of vested interests can be identified and so many people want to maintain these for a variety of reasons and intentions (Browning 1987:3). Sometimes a change is made to assist the regulation of traffic, for instance the on-street metered parking. No reason exists why buses and taxis should not be regulated in a similar manner in order to overcome problems of excessive demand for limited facilities. Charges should be made for the use of these facilities (Browning 1987:6). It can be concluded that changes in land use should be considered carefully and the traffic aspects should be analysed as holistically as possible bearing in mind the expected and anticipated vehicle growth and development of land in the area.

An extremely strong relationship exists between transportation and the need to co-ordinate land use. The transportation system should be designed to serve the people and the businesses and land creates the demand to travel and this intertwining of the common features leads to the two aspects being interdependent and influencing each other. This view is from the transportation side, but viewed from the other side it is also important to take into consideration how the land uses regarding the location and densities of residential areas and the development of business nodes influence the transportation systems (Hobbs 1974:111).

Unfortunately land use and transportation tend to be two separate entities in practice as transportation assumed the development and use of land as a given and land use accepted that transportation will be available wherever development takes place. This has led to inefficient transportation systems and incorrect location of land uses. The ideal would be to conceive an integrated approach and this would lead to effective planning as a whole where transportation and land use

influence each other and mould each other into an efficient entity (Kaiser et al. 1995:375).

Municipalities regulate all forms of traffic, therefore, no reason exists why buses and taxis should not be regulated in such a way as to charge them for using the facilities specially built for them (Browning 1987:6).

#### **4.6 CONCLUSION**

With the current rapid rate of urbanization it is imperative that land management receive serious attention and that an integrated approach is followed where all facets of planning are employed in order to attain a common goal. The phenomenon of urbanization will not go away – it is here to stay and it will increase. The challenge is to manage it and to ensure that a future for the following generations exists.

Urbanization has some obstacles, but having planning programmes and sound policies in place can overcome these hurdles. The initial challenge is to manage the situation as it is, as it cannot be wished away. The first step is to get proper legislation in place as the subordinate town-planning schemes and regulations can follow. However, the importance of the town-planning scheme should not be regarded as insignificant as this is the document that manages land in the meantime. As the management of the current situation progresses the ensuing challenges are to correct the deficiencies and create a better world for all.

As has been indicated in this chapter the categories of the town-planning scheme should be more accommodating and flexible. This is essential when the town-planning scheme becomes the managing document of land uses in both the Black and White areas. The implementation of such a document will require extensive research but will be well worth the while as development cannot take place if no management of the uses can take place.

The implementation of the LDOs will be a sound beginning to incite development in all towns. The implementation of the LDOs is extremely important, as all planning objectives should be addressed in these documents. It must also be borne in mind that the LDOs are a process and not simply a plan; it also takes into account all the components of planning and not only spatial planning. In the process of compiling the LDOs the major protagonists will emerge and these bodies will have to be consulted when the town-planning schemes are reviewed.

The LDOs will also have to pay special attention to the influence of transportation systems on land use and **vice versa** as these two elements greatly influence each other. The increase of car ownership poses a major challenge to land management as people become more mobile and the land uses, especially where businesses are concerned, will have greater affect on traffic routes and transportation systems in general.

It is impossible to plan in compartments as one or more of the components will be disadvantaged. What must also be kept in mind is that the perfect situation does not exist, to the contrary a sad legacy has to be corrected. This is why it is so important to have clear guidelines and policies that can cause development to be sustainable and in the interest of the people in the specific areas.

Strategic management is also of importance as certain obstacles can be identified and by having clear policies a strategy can be devised to eliminate most obstacles should they cross the development path. Unfortunately the converse is also true – no policies, no strategy and the obstacles become major problems.

In the proposed act, [cf. Chapter 8 **infra**], the afore-mentioned obstacles, challenges and problems will still exist, but the opinion is held that it will be a start in the direction of making the processes easier and creating the opportunities for development to be considered quicker. However, this will not take away the responsibility of the decision-maker to produce clear policies.

# **5 THE ENVIRONMENT, SUSTAINABLE PLANNING AND DEVELOPMENT**

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*Time past and time future*

*Allow but a little consciousness.*

T S Eliot

## **5.1 INTRODUCTION**

Among all the different planning and land use management features the environment is ever present and no matter how planning takes place, or does not take place, planning will have an influence on the environment. To understand a certain way of planning in order not to harm the environment close attention has to be paid to the messages sent to us from the environment indicating how it is going to be affected.

What must always be borne in mind is that the environment forms a backdrop to all aspects and features of life. If the environment is harmed it does have an influence on one or more aspects of life. Planning, therefore, should take into consideration the influence it will exert on the environment and then the "better" planning will have the least negative influence, or even a positive influence although some compromises will have to be made. No planning or poor planning will of course have the reverse effect.

It is also of paramount importance to take note that whatever planning is done, some influence on the environment will take place, if not in the near future then later. The art of planning lies in envisaging and anticipating the influences and then adjusting the planning and managing the entire process.

In the ensuing paragraphs sustainable planning will be discussed in a way that will indicate that development should not in any way be threatened by sustainability. Land use for urban purposes should be sustainable with the environment and this does not mean that development should not take place – it means that development should take place in harmony with the environment and not destroy the environment.

A number of methods on how development and the environment could enhance each other will also be discussed and the most important elements are included in the LDOs. The LDOs should address the development as part and parcel of sustainability with the environment. It also becomes imperative that a Local Agenda 21 should be compiled by each local authority and this should guide development in such a way that conflict does not take place between the two major elements.

Policy of course is of paramount importance and it is important that policies regarding sustainability and development are compiled taking into consideration all the aspects of the environment and how sustainability can best be achieved.

In this chapter it must be remembered that sustainability relates to the relationship between the urban area and the environment in its broadest sense. Sustainability is not used in the sense of a town being able to act as an independent organ – to indicate this the term "self reliant" or "self contained" will be used.

## **5.2 HISTORICAL BACKGROUND TO SUSTAINABLE DEVELOPMENT**

Sustainable development is one of the key challenges of our time and yet it is rife with uncertainties and contradictions (Ravetz 1994:181). The contradictions are addressed in Agenda 21 and boils down to the fact that development should not

be detrimental to the environment, but it does not mean that development should cease (Blowers 1996:2).

The four common principles of sustainability and sustainable development are set out in diagram 5.1. Futurity indicates that future generations should also share in what the present generation has at its disposal. Environment means that it should be protected and left as an heirloom to future generations. Public participation is the contributions of the public needed as well as an attitude change so that all people are aware of the environment. Equity is the fair shares, locally and globally – access to the environment, but also every person's fair share of responsibility towards the environment.

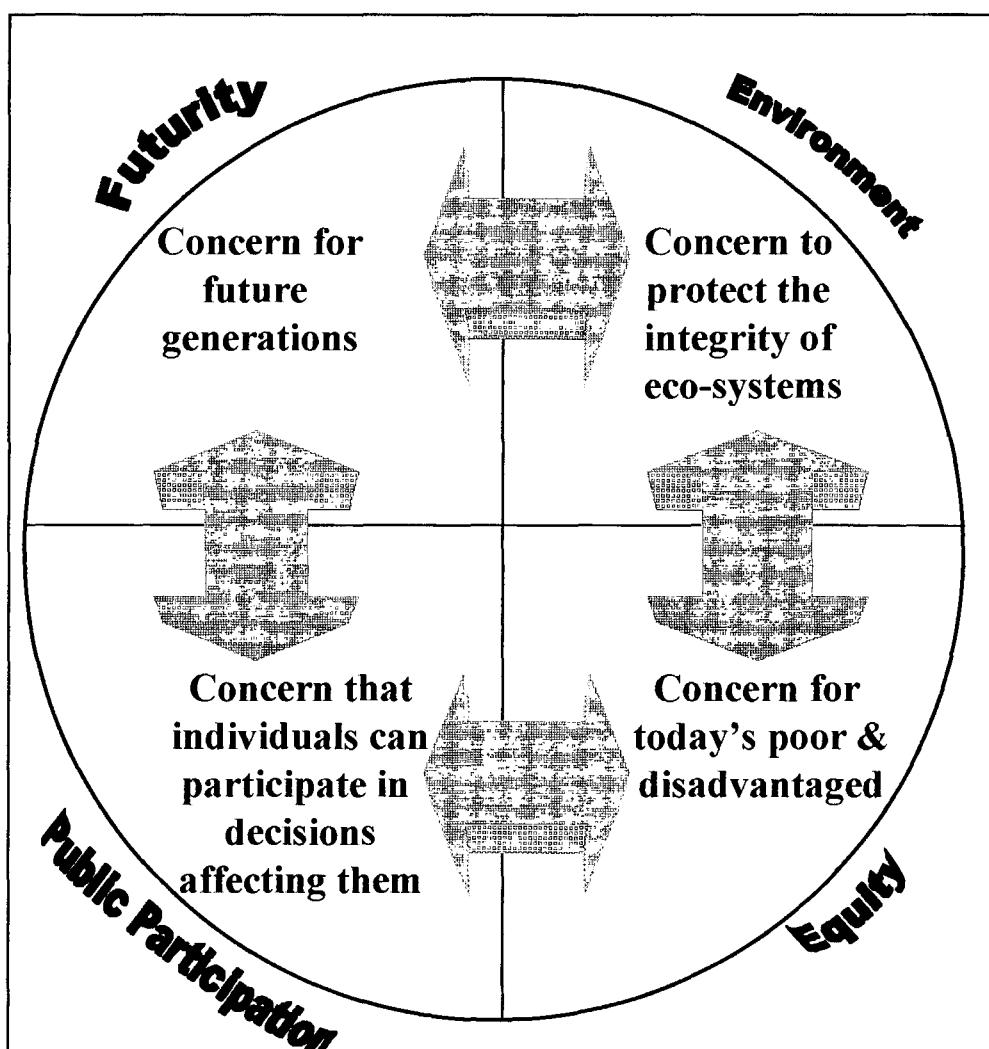


DIAGRAM 5.1

THE PRINCIPLES OF SUSTAINABLE DEVELOPMENT (Curwell & Cooper 1998:20).

All development has an influence on the environment and this influence has to be managed in such a manner that the environment is not harmed to the extent that it cannot function properly. It is also important that planning should take the development into consideration as best it can in order to ensure a future for all.

### **5.3 PLACE OF LAND USE/ZONING**

Land use/zoning is linked to environmental change at all scales, from the local, or individual, to global. The significance of these changes is increasingly acknowledged and the importance thereof should not be underestimated (Owens 1994:171).

Land use planning and zoning has a vital role to play in the pursuit of strategic and local sustainability. Agenda 21 expects an integrated approach between planning and management of land use. According to Agenda 21 land use planning is regarded as a prerequisite for promoting sustainable human settlement development. Agenda 21 defines effective urban management as comprising (Selman 1996:109):

- Providing adequate shelter for all.
- Improving human settlement management.
- Promoting sustainable land use planning and management.
- Promoting integrated provision of environmental infrastructure.
- Promoting sustainable energy and transport systems in human settlements.
- Promoting human settlement planning and management in disaster-prone areas.
- Promoting sustainable construction industry activities.

It is clear that the objectives of the RDP and that of Agenda 21 coincide to a large extent and that the challenge is to correct the spatial disproportionate urban areas and to integrate them.

With the current rapid rate of urbanization it is imperative that a Local Agenda 21 be compiled in order to ensure that the environment will be able to sustain the urban areas and that urbanization takes place in harmony with the environment. Land use policies should be adapted to curb the sprawling land uses and more compact cities should be encouraged. In order to control all the elements in the new policies the zoning scheme should be updated and re-assessed to keep apace with development. Efficient urban transport systems should also be developed, as should road systems that allow vehicles to flow so that less energy is wasted (Yeld 1997:56).

Sustainable development and planning is part of planning and especially the urban management and this relates to the purpose of sustainable development planning being to broaden the scope of factors considered in planning and decision making within the parameters of policies and legislation. In no way is it anticipated or intimated that sustainable development should influence or "bend" the policies of LDOs in any substantive way (Chalk 1997:14).

#### **5.4 SUSTAINABLE DEVELOPMENT**

Resources can be divided roughly into two categories, **viz.** renewable and non-renewable. The ideal management strategy in this respect would involve balancing demand against supply in order to ensure sustainability. Certain resources are life-giving and should be retained to ensure a future for our children and together with this is the curbing of pollution which is also a slow killer of resources. Pollution essentially means that materials are generated that cannot be absorbed by nature at the same rate as they are generated, if absorbed at all.

In other words sustainability means finding ways and means for the human to live on this finite planet indefinitely without compromising its future.

What is very important is to realize that sustainable does not mean static – it is a dynamic interaction of interlocking cycles where the point of balance changes as development changes the patterns. In all this the role of the urban manager stands centrally as a change to a sustainable city/society will require a high degree of intelligent and integrated planning and management to maintain the critical balance of development as a holistic approach (Clayton 1992:9-11). In the same way as planning and towns/communities do not remain static so does sustainability change within certain circumstances and the circumstances quite often determine the course that should be taken to achieve planning for sustainable development.

It can be deduced from the above that sustainable development is the result of planning in a sustainable manner. Planning **per se** cannot be sustainable, but planning in a certain way can result in development being sustainable. However, the emphasis should fall on the sustainability, be it planning in a certain manner or development.

Diagram 5.2 indicates that sustainability influence and is influenced by several other components. It is interesting to note that land is not mentioned specifically in the diagram, but all the components are bound to land so it can be taken for granted that land acts as a backdrop to the entire process. In the diagram it is clear that all these components interact to result in a sustainable entity. What is also interesting to note is that some of the arrows are double sided and do not indicate an influence only in one direction. In other words it is indicated that a cyclical affect is presented with elements influencing one another both ways. It can further be deduced that not only is the ideal situation to create a sustainable environment, but also a self-reliant and sound community. This is also possible in the diagram as all the elements of self-reliance are present, such as health,

economy and industries. This is the ultimate goal and will not easily be attained in the Free State Province as towns are spatially so far removed from each other.

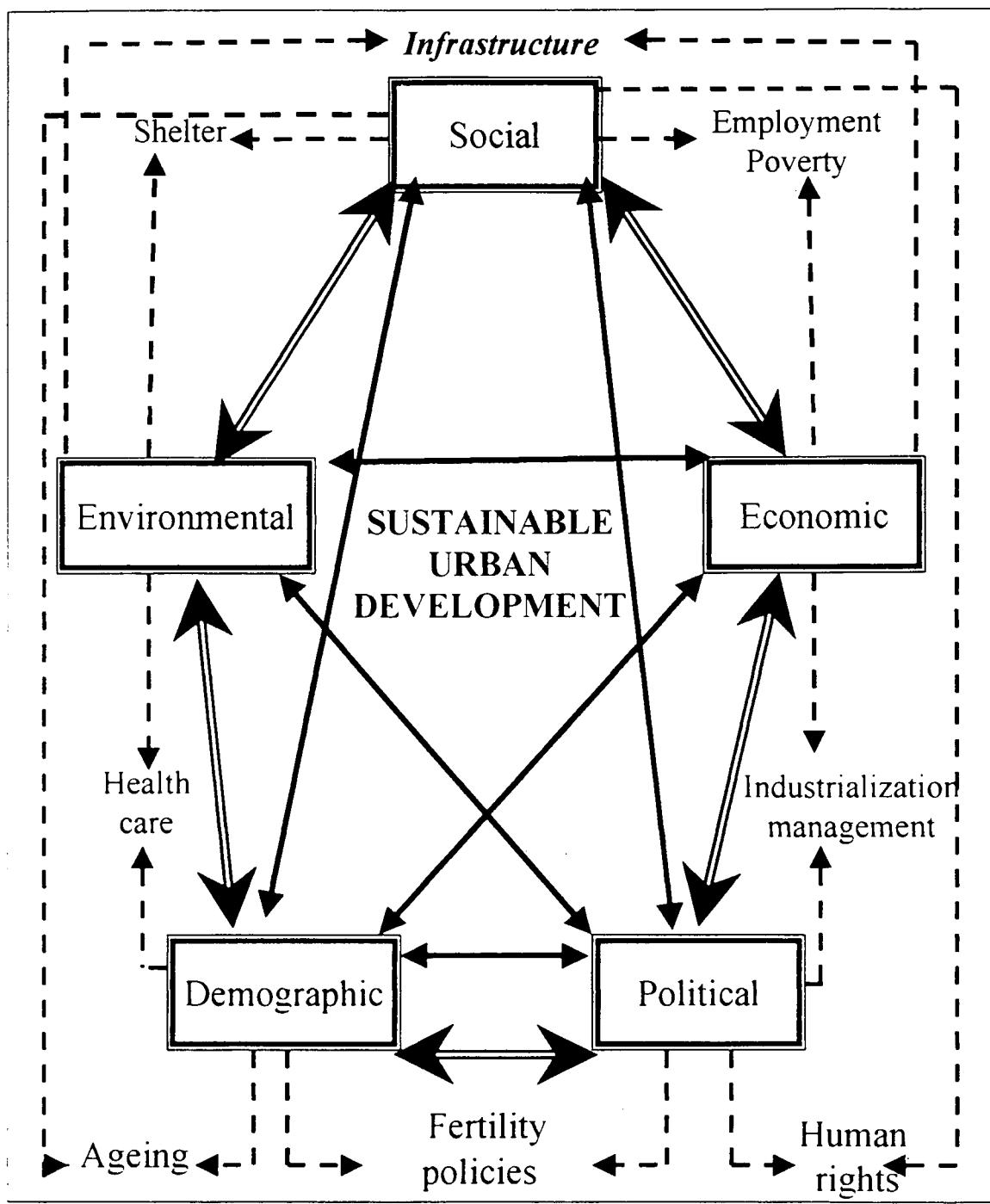


DIAGRAM 5.2

MAIN COMPONENTS INFLUENCING SUSTAINABLE URBANIZATION (Drakakis-Smith 1996:v)

#### **5.4.1 Ways in which sustainability can be achieved**

Planning and thinking about the environment as an "aside" simply cannot achieve sustainable development. Planning in a sustainable manner takes effort and should form the base and backdrop of the planning and management system. People's attitudes about planning will also have to change and if a particular development means that the environment will be harmed then the development will have to be adapted to accommodate the needs and requirements of the environment.

The urban area cannot function on its own, it has influencing factors from outside and from within and this is an essential first step to identify the contribution of land use planning to the urban area. The entire framework where interaction between land use and the environment takes place must be identified and delineated in order to ascertain how the one affects the other. The most important question is how do land use policies relating to urban development contribute to meeting the objectives of sustainability (Owens 1994:171). This immediately relates to the aims of a town-planning scheme which is the control document.

It can be concluded that the town planning schemes are not applicable in all towns and sustainable development should be adhered to in all towns. The influence of land use on the wider environment should be taken into account and the relationship of this with sustainability in the wider sense of the word is of importance. For instance travel patterns, transport means and pollution as a result of coal burning for energy serves as examples for the relationship between planning and sustainability. Transport and the influence on land use and development will be discussed in greater detail later, suffice to state now that the segregated towns found in the Free State Province result in excess trip generation. It reinforces car dependency and in turn public transport, mainly taxis, as the majority of people do not own cars.

The following diagram, 5.3, indicates how sustainable goals can be determined and it presents itself quite simple should the process be followed. It also ensures that all aspects receive attention and all relevant protagonists should be allowed to contribute. The sustainability of an urban area, especially the larger areas, can be ascertained and adjustments can be made to existing policies or policies could be formulated should no policy exist (MacLaren 1996:189).

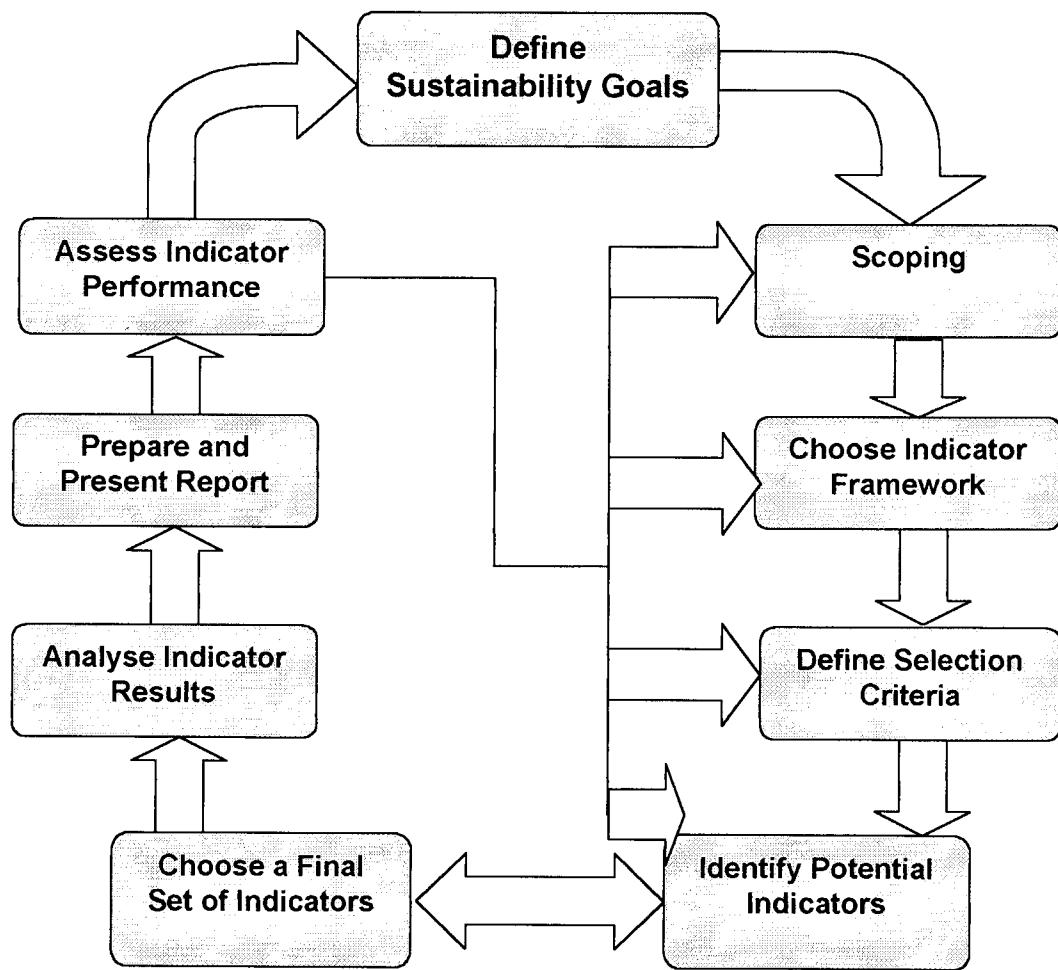


DIAGRAM 5.3

STEPS IN THE URBAN SUSTAINABILITY PROCESS (MacLaren 1996:189)

Sustainability is relative to the allocation and misallocation of land and this means that the misallocation of land has severe repercussions on the quality of life and

the sustainability of the environment. However, the allocation of land is hardly an environmental problem; it is a political and economic problem. In order to be sensitive to the progress of sustainable development it is necessary to analyse the major changes in systems in the rights of land.

It has also been established that sustainable development prevails easier in equitable communities than in inequitable communities. This means that prerequisites for sustainable development include a system of government that provides for relatively equal rights and more equal distribution of land (Halmberg **et al.** 1991:10). The present situation in the Free State Province is that although rights are equal, the towns are separate and this leads to circumstances not being balanced.

It can be deduced that the change in land use can have an influence on the sustainability of an area and this change may be direct, indirect, short term or long term. The differing circumstances make it very difficult to identify and to ascertain the actual influence it will have on the sustainability of the area. This, yet again, emphasizes the need for pro-active planning as this will eliminate negative influences to a large extent. Although land use and environment systems cannot yet fully be delineated, it is important to note that land use and the environment is indeed linked in a significant and complex way. The further the influence is removed in time and space the smaller the effect of any one decision will have on a cumulative impact and the more difficult it will be to identify the land use component. Nevertheless, it remains fundamental.

It stands to reason that land use planning is an important instrument in the holistic approach to sustainability. It can also be deduced that the singular role of land use only influences the quality of the direct urban environment. This has now changed and a much greater emphasis can be placed on the actual land use. The most important factor with the land use aspect and its influence is the fact that policies have to be in place. In other words management for the future

should not only be talked about, but something should be done about it (Owens 1994:171).

### **5.4.2 Policy regarding sustainability**

One of the cornerstones of sustainability is that urban sprawl should be contained at all costs and that the so-called compact city is the answer to long travel distances. The compact city is also the ideal situation for public transport and quality of life for the inhabitants. The advocates of this concept indicate that suburban development, pejoratively referred to as sprawl, is highly energy consumptive and creates an inferior quality of life. However, some experts doubt the superiority of the compact city arguing that decentralization of jobs and houses actually results in shorter journey lengths and that congestion in the urban core is avoided by this and in turn leads to greater sustainability. Another definite problem with the quest for the ultimate compact city is that it attempts to reverse the most persistent trend in urban development over the past decades and that is to decentralize (Blowers 1996:155).

A conclusion that can be reached is that in the Republic of South Africa a decentralized agglomeration of different towns is found. In each case in the Free State Province the well developed White town and the deprived Black town has to be integrated into a self-reliant entity and this cannot succeed if decentralization does not take place. However, undue sprawl should also be curbed, especially development to the outside (wayward) perimeters of the towns.

Policies should be more flexible and non-conforming to political influences and ideologies. Flexibility should also be built into the urban policy with regard to long term sustainability of each particular urban area bearing in mind that development should not outstrip the available resources (Townsend 1995:14). As the circumstances between the towns differ so greatly it makes it virtually impossible

to have a rigid and non-conforming policy. The policies should also be adaptable and act as guidelines for action within certain parameters.

In many cases policies do not address the real focal points where people cannot help themselves and these areas are where the real needs exist and where the policies have to take control of development. A policy should also take into consideration the broader development framework otherwise it is doomed to fail if it only focuses on certain aspects and does not address others. Currently planning is seen to revolve around "development", but as this could be true it is necessary to define development and to find out whether it should dictate to planning. Development has many guises and for the purpose of this thesis the following aspects of development are of importance (Dewar 1979:861-869):

- The first feature of development was actually a description of a human condition. Although it is normally used in a societal sense this is only a measurement of the aggregate individual condition. Policies should take this into account and in order to succeed the policy must have the flexibility to accommodate a wide range of significant individual differences and requirements. However, often the policies are rigid and allow little or no leeway as it is designed on average conditions. This causes the policy often to aggravate the problems of the recipients as priorities are distorted.
- A second feature was to uplift or improve a community, but it is far more than this and its overtones are more important than its absolute dimensions. Development cuts through a very broad spectrum and is a vehicle for the people to improve themselves. Job creation, employment stimulation and the social well-being of people are at the fore-front of development and where land is concerned these aspects also play an important role. Consequently the benefits of policy should be based on needs and equity in need must exist; in other words people of equal need should have equal access to the benefits of the policy.

- The third important feature of development is that it is a process and not a static condition that can be achieved and then once attained ceases to exist. Land policy should bear this in mind and therefore should cater for all people and all socio-economic levels of society. This in turn links to the flexibility of policy as priorities differ and even fluctuate according to the economy and general circumstances in the country and then the policy must be able to accommodate these changes without losing direction to achieve the ultimate goal. Monitoring, reviewing and adaptation are very important.
- A fourth aspect that must be remembered is that a policy can merely create opportunities for self-sustaining improvement. Policy is not a condition that can be granted, but a process towards improvement and especially for the people who make use of the opportunities created by policy.
- A fifth aspect of development relates to a total human condition and the perception of the condition from the point of view of an individual. The individual should recognize the opportunities most suited for him in the process and then he should exploit these and use them to his advantage. The particular circumstances and the context from which these opportunities are viewed will also play a role in the manner of which the policy is perceived.
- In the sixth place it is found that the development of a society is dependent on security. In this case security of tenure, available erven, shelter and a settled community.
- A seventh element of development is context related and bound. Realities have to be accepted and taken into account with all development and a certain development in a certain place will be good

and well accepted while a similar development in another place will not work. This is because the contexts and the circumstances differ and therefore the perception of what is priority.

The policies concerning land use and land development must be appraised in terms of clearly defined criteria in order to identify the strengths and weaknesses of existing legislation and also to make adjustments and adaptations as to the changes that will be necessary in each province and town. These appraisals should also lead to replacement of the existing out-dated and cumbersome and even inappropriate instruments (Hanekom 1997:3). In other words, legislation should be adapted to particular provinces and this should take into consideration the unique circumstances in the area.

A system of land use should not be a negative control on undesirable development, but rather a positive stimulus to the creation of a good environment. In order to achieve this the control measures should be more flexible and should permit more compatible uses per category with the only prohibitive feature being that the community should not be disadvantaged (De Swardt 1997:1). Bearing this in mind the controlling body, the municipality or Provincial Government, should have the necessary statutory muscle and be structured in such a manner that policies can be formulated and implemented. Control measures, such as town-planning schemes LDOs and specific policies regarding transgressions, should also be in place and statutory steps should be taken where and when necessary in order to ensure control (De Swardt 1997:3).

It is incorrect to regard policy as something that should only control, had that been the case earlier, it has to be changed. Policies should concentrate on growth management and then the following should be considered (Gildenhuys 1994:15):

- Integrated urban development and not **ad hoc** short-term actions should be undertaken. The emphasis should also be placed on a

concerted effort from all the protagonists to alleviate the problems and crises in our cities.

- Sustainable urban development where the urban system is contemplated when needs are defined in terms of effective demands. However, a focused policy framework is required to ensure that integration and sustainability are ensured.
- Growth management is a continuous process that makes it more than a solution to development problems, but makes it a management process.

It can be deduced, therefore, that not only should policy be made in respect of development, but also in respect of control. Development will not be of any use if it cannot be controlled as unbridled development is not in the interest of the public nor in the long term development of an urban area.

Pro-active planning means that anticipation and timely provision for development should take place and that co-ordination and collaboration should take place among all departments at the different spheres of government, the local, provincial and national spheres of government, the public and the different elements and features of planning (Claassen 1994:7). What is of importance is that policy should not be made in isolation, but that all possible protagonists should be invited to participate in order to ensure a well defined and developed planning and development project.

Diagram 5.4 below is a policy making and implementation model indicating how the policy operates in a cyclical manner. In this diagram the review feature is also indicated and this indicates the wide influences reviews can have on the process. What is also interesting is that as the community changes, it has a direct influence on the sections belonging to the local government and the converse is of course also true. The relationship between the local authority and the community also has to be such that cybernetics can take place. In other words all communication channels should be used to ensure that two way communication takes place. This will ensure that nothing the community does not want is forced onto them and

also that the local authority can provide in needs effectively and efficiently. It is important that policy analysis also takes place and that, depending on the result, review is courageously dealt with in a manner that is advantageous to the community and the local government. It has to be reiterated that this can only take place if the local authority and the community are aware of each other's needs and desires and what is possible to provide.

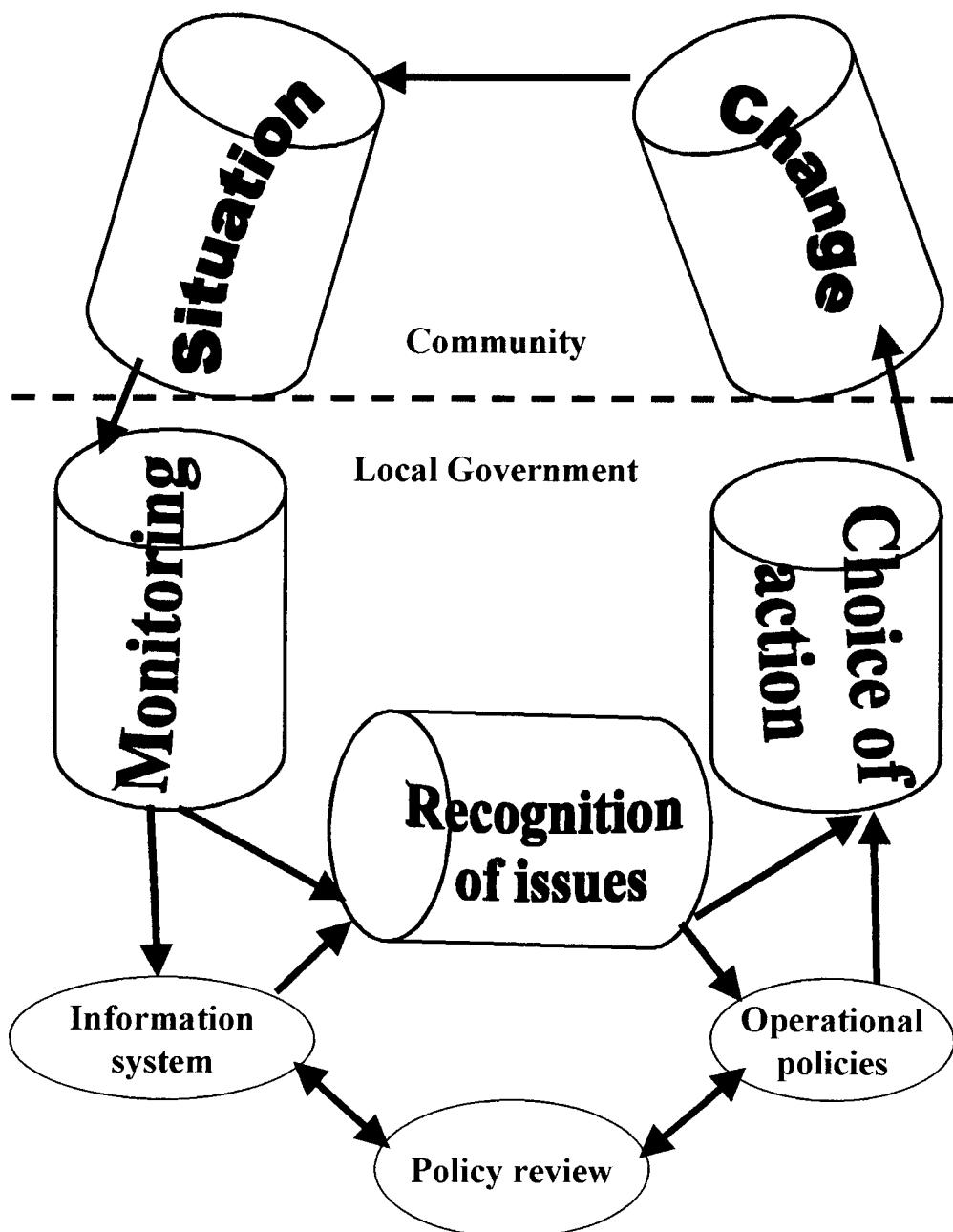


DIAGRAM 5.4

POLICY REVIEW CYCLE [slightly adapted] (Solesbury 1974:153)

### 5.4.3 Ways to ensure sustainability

What must never be accepted as a point of departure is that sustainable development is an impediment to development. Development and environmental protection can co-exist and the one can actually assist the other and produce good results (Tasmanian Public Land Commission 1997:4). Various strategies and policies can be implemented to enhance development and some of the better known policies are (Oranje 1995:24):

- Placing bounds on urban sprawl and supplementing this with using former "buffer zones" and also by the intensification of areas.
- Mixing land uses so that employment opportunities are closer to residential areas; this will reduce energy consumption and money and time spent on travel.
- Empowering and enabling people to take control over their own areas.
- Co-ordination of land uses and public transportation systems that will be to the advantage of the area as a whole.
- Taking cognizance of the environment assessment reports and then doing something positive about it.

Amenity and aesthetics, where planning has a strong traditional role, sometimes appear to be conceived as critical for sustainability. A complex situation can arise and suffice to say that in order to minimize conflict the differences should not be emphasized but rather the similarities (Owens 1994:172). In order to explain the conflict it can be mentioned that development, when done properly, is never in conflict or restricted by sustainability, the one complements the other. One of the factors that should receive serious attention **in casu** is that derelict and vacant land within cities should be used as this permits more development and enhances internal environmental quality.

Large areas of land are used for the car based transport system and if public transport could be improved these areas could be used for environment friendly

development – again meeting objectives for sustainability. Areas should be designed in a sustainable and attractive fashion and for this vision is needed and particular guidelines and frameworks derived from policies introduced by the different spheres of government (Owens 1994:172). Various elements have an influence on sustainability and these have to be identified and addressed and in so-doing development can take place giving each contributor a share of the development.

The sustainable urban area pursues development for both the present and future welfare of the inhabitants and habitat of the region that is compatible with the sustainability of imported and exported externalities both in present and in future (Ravetz 1994:181). In order to enhance sustainability in land use and development it is necessary to take cognizance of the fact that the yield of all types of energy from the earth has a limit and the influence on land development as a holistic approach is of importance. Sustainability is based on ecological thinking and is determined by the carrying capacity of the earth (Stead & Stead 1992:167). Sustainability has characteristics that also involve the strategic management of sustainability. These should be applied in such a manner as to capitalize on opportunities and in turn minimize environmental threats. Taking the environment into account when developing should be part of the development and the environment can be incorporated in such a manner as to enhance the development.

The idea that the earth's resources are limited is not new. People have always known that they should be involved in planning for future generations yet terms as "sustainability" and "sustainable planning" are fairly novel and are associated with radical plans (Selman 1996:1). Fortunately people now increasingly realize that sustainable planning is essential, but then have the idea that it is something to be sorted out internationally or at lowest nationally. This notion is incorrect and even dangerous – sustainable planning starts at the individual and the attitude of people.

In order to conform to the overall objectives of sustainable development the individual goal of the built development is to ensure that development and use of the urban area respects and is in harmony with the natural environment. The relationship between the two should be balanced and should enhance each other (Blowers 1996:7).

Development is generally accepted to be a process that improves the living conditions of people. The modern phenomenon, however, is not to simply improve the conditions of people, but to take into consideration the entire sustainability of the entire area or city (Bartelmus 1986:3). Environmental and economic sustainability should also receive major attention in the entire planning process as this means that energy, transport, waste and pollution have to form an integral part of land use. Economic sustainability also focuses on self-reliance and a diversity of the uses of land and the influences these exert on land use issues (Ravetz 1996:154).

#### **5.4.4 Issues at hand with sustainable development**

Sustainable development cannot be regarded as an "add-on" to current policies, but it requires a fundamental and revolutionary change in the total development and planning discipline. It is a movement away from direct control to planning and managing of development. Sustainable development seeks to integrate local and global, short and long term and environment and development (Blowers 1996:xi). The whole idea revolves around integrated planning and planning for sustainable development forms part of the integrated plan leading to development.

Diagram 5.5 demonstrates the interconnectedness of economic success and the health of the eco-system. Planning is part of the society and environment to which its survival is attached. Land use cuts across all these and has a direct and indirect influence on all the elements and land use is also influenced by them as

development takes place. The planner and developer should have vision based on sustainability in order to develop strategies for the long term. These strategies should be to develop within the eco-system and thus protecting it.

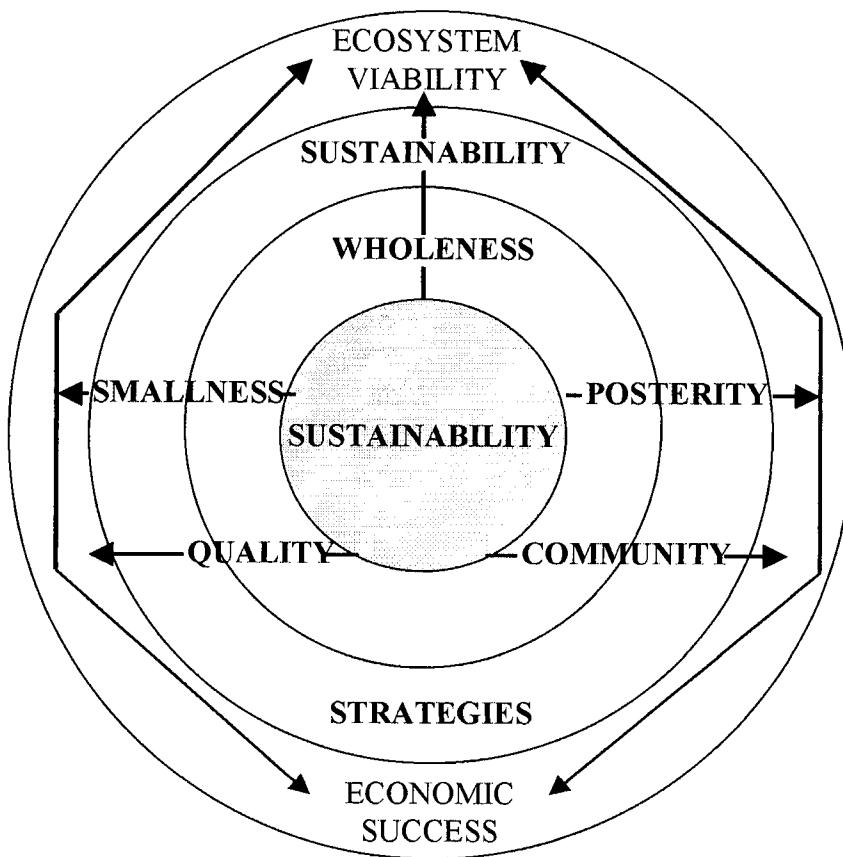


DIAGRAM 5.5

SUSTAINABILITY STRATEGIES (Stead & Stead 1992:169)

The present generation seems to have reached a critical point in terms of safeguarding the future for our heirs to the earth. The present generation simply cannot continue abusing the natural environment without destroying the life support systems on which life ultimately depends on this earth. It must be realized that planning has a definite influence on certain sustainability aspects and that if planning continues along the old traditional lines and not take nature into account, a dear price will be paid. The earth has finite space and resources and if these are depleted then no alternatives are available. Correcting steps, such as

curbing pollution, urban sprawl and overall better use of land and proper land management, have to be taken and taken quickly as time is running out while the population growth is booming ahead unabated (Rookwood 1993:103).

In order to commence with the changeover from the **status quo** to sustainable planning it is important to have a change of attitude, but this will not happen on its own. A concerted effort will have to be made by decision-makers, such as Townships Board, developers and planners who can influence people to be sensitive towards the environment. Specific policies should also be adopted and adherence to these will have to be enforced. Time is running out and to delay will be devastating – action plans should be compiled and implemented as soon as possible to manage the environment and development (Rookwood 1993:107). It can be deduced that the urgency of the matter cannot be emphasized enough and to say that sustainability hampers development and it should, therefore, be disregarded would be like suicide – only it would also lead to murder for future generations.

It must be emphasized that sustainable development cannot be achieved by adding it on to existing policies; in other words nothing can be achieved if it is only implemented along the margins and not really bears down to the core of the issue. It requires fundamental and revolutionary change in the way land use planning is managed. Sustainable development is a concept that acts as an interface to all the major aspects of land management and development (Blowers 1996:xi).

Sustainable development is a multi-partite process and endeavour and not one level or sphere of government can be held responsible for it. Although national government can pass legislation in this regard, it is essential that especially local government should play a leading role in this regard. One of the responsibilities of a local government is to be aware of the needs of the citizens as the local government is a democratically elected body, provider of services in peoples' daily lives and are accountable to the local electorate (Selman 1996:85). This is an

important aspect as local government has to make policies regarding development and control and in either sustainability plays an essential role.

Managing the future is actually guiding policy and governance in order to attain sustainability. Efforts required to manage for the future should integrate planning and policy making in order to form a combined effort to focus on long term results and involve all sectors of the community (Local Agenda 21 1998: Planning guide).

Local Government in collaboration with Provincial Government should have a Local Agenda 21 that should form part of the LDOs. The LDOs should not be approved if the sustainability has not been addressed in a proper fashion and no indication of the contents of a Local Agenda 21 is given. The whole idea of a Local Agenda 21 is to have such a document compiled for each local authority and then also have one at provincial level. This is an important document and should form part of the LDOs and IDP processes. Once this document has been compiled all development should be considered against the backdrop of the Local Agenda 21 to see how the proposed development aims to fit in with the demands and proposals of the Local Agenda 21 (Farthing 1995:Personal interview).

Sustainable development can also be done by taking the particular climate into consideration. In the Free State Province with the hot summers and cold winters it is important that houses face north. In order to achieve this special attention must be given to the orientation of the erven as they are so small in the lower income bracket that the house cannot easily be turned to make the best use of the sun. In order to let the house face in such a manner as to obtain optimum sun in winter and as little as possible in summer is a design aspect within the field of architects. Suffice for this purpose to indicate that erven should be provided so that houses could face north. North is important for this area as the sun then shines into the house in winter and warms it. In summer the sun does not shine in and the house is cooler. The poorer people do not have the necessary funds for heating and cooling in winter and summer respectively and the climate must

be fully utilized to assist them to have a better life. All this is indicative that the disciplines of the town planner and the architect are also closely related.

Wind direction is also important and urban design can be done in such a manner that the best micro-climate is obtained. In the designing stage the climate should be taken into account with special attention to the sun, wind direction and temperature. As the wind direction changes according to season it is important to design so that the winter wind is blocked and the summer breezes are allowed to blow through the streets (Bureau of Meteorology Australia 1997).

## **5.5 STRUCTURE PLANS/LAND DEVELOPMENT OBJECTIVES [LDOS]**

In the past plans indicating future extensions of any spatial development as perceived for the future was called structure plans or development plans or master plans (Price 1995:Personal Interview). However, the term structure plans is the best known in the Free State Province. LDOs in terms of the **DFA** now replaces all other plans and can be considered to be something similar to structure plans save for the fact that LDOs are a process and not just a plan, hence it encompasses more than structure plans. The spatial planning portion, however, is similar. The aim is to attempt to indicate what can be done in order to correct the disparities of the past and leave future generations with better legacies in so far as urban structures and sustainability are concerned (Price 1995:Personal interview). However, the present must be dealt with in such a way that it can be understood what is available and where improvement is needed in order to establish solutions.

The pace at which urbanization is taking place poses unprecedented challenges to policy makers in various disciplines. Special attention should be paid to the policies regarding land use and land development as these are apt to have decisive influences on the sustainability of urban areas that are under increasing pressure of rapid urbanization. Policies are the foundations on which structure

plans and LDOs are based and these in turn have to comply with the requirements of a sustainable environment (Linn 1983:xiii).

The importance of setting out clear policies for land use should under no circumstances be underestimated as the entire development pattern could be harmed by poor policies. It must be remembered that a town or neighbourhood exists for decades and if it poses problems such as poor location of businesses, schools or even the absence of certain facilities then those problems exist, and even increase, for the same period. This means that if the area is unfriendly towards sustainability, then it will remain like that for many years and in that period it will always be a liability to sustainable development instead of an asset.

Urban planning should be guided and urban reconstruction should be introduced to prevent the deterioration of the inner city areas, to upgrade the periphery and to expand the existing service infrastructure. These guidelines will ensure that the urban fabric does not become frayed and coarse and that the best use will be made of the available land. The low-rise urban sprawl raises transport costs of the poor to unacceptable high levels and in order to avoid this the density of areas closer to the inner city should be increased as much as possible. Around the suburban commercial nodes, activity axes and along main transport routes more dense residential development should take place, but also allowing for a diversity of land uses (Townsend 1995:14).

Although the problem of travelling large distances to work each day may be problematic few people seem to realize that this is related to the massive and insatiable demand for large tracts of land used for detached, single level housing (Townsend 1995:15). Therefore, attention should be given to the large area, low density urban areas, but these cannot be wished away and will have to be addressed in LDOs to prevent it from occurring again. It can be accepted that the LDOs will play an important role in the whole planning process and this process should receive ardent attention to ensure that it remains on track.

### 5.5.1 Objectives of structure plans/LDOs

Compactness goes hand in hand with liveability and adds to prevent excessive commuting which is still one of the most energy and time wasteful aspects of city life today; not to mention the frustration. Intensification of space utilization in the city also minimizes the provision of service costs, as distances are shorter. The physical layout should also be of a design that ensures that major commercial areas should be at the centre of gravity of the public transport system. In other words the transport system and land use planning should take place hand in hand as these two aspects determine the shape and efficiency of the city (Elkin & McLaren 1991:16).

Urban sprawl is when development on urban peripheries is characterized by scattered low-density development with poor or incomplete infrastructure and vacant areas. The extent of sprawl varies from place to place and cannot be defined in extent or size, as the variations are too vast (Bernstein 1994:26). **In casu** this is not necessarily the case as the peripheral sprawl is usually high density, but the fragmented urban areas have an even bigger effect than the traditional sprawl.

Structure plans were meant to be able to accommodate change rather than to restrict, provided it was within the guidelines set for the urban goals. In other words the structure plans were based on the continuous monitoring about the changes in the urban environment. By using the structure plans as plans indicating future development and not controlling existing development, it is found that they are more flexible and a step by step approach can be adopted in order to achieve the pre-set objectives.

The planning system and the development plan/structure plans/LDOs [**in casu**] specifically should be the kingpin around which the economic and social issues revolve and inter-link in respect of the spatial change. If the planning system cannot rise to this challenge then the system and not the individual aspects will

fall apart and the effectiveness of public policy in general will be reduced. Careful consideration must be given to the manner in which planning strategy and the strategy of sustainable development might influence land use and planning systems. In the complete planning system regulatory land use planning still plays a critical role in the following aspects (De Swardt 1998, De Leeuw 1998 & Price 1995:Personal interviews):

- Dealing with local site related matters.
- Ensuring that development does not exceed sound planning thresholds.
- Promoting and managing the qualities in the area.
- Balancing the various aspects that could influence social and spatial projects.
- Dealing with locally adverse influences on development.

From the above it becomes important to note that consideration must be given to how strategies and other projects could influence land use planning. Priorities should be stated and careful consideration should be given to each claim on development, in other words the planning system should provide reassurance about its capacity to meet the demands of the strategies within the framework in which it is operating.

### **5.5.2 Requirements of LDOs**

It is important that the planning system should have a discretionary nature and precisely defined objectives and purposes in order to consider land developments. In effect it is a set of procedures setting out the parameters, such as what uses should be accommodated in particular areas, within which consideration must take place, but enough elasticity should be available to accommodate the objectives. In other words the uses should not be rigid, but should be flexible to accommodate differing circumstances and needs. Planning staff at all government spheres [national, provincial and local] should also be familiar with the nature of

the planning and environment in order to assess how these should be incorporated into the plans.

Consideration must be given to the ways in which strategies of sustainable development and transportation influence land use planning systems as these two elements are closely related. Bearing this in mind a number of aspects need to be taken into account in the assessment of the planning framework these are (Healey & Shaw 1993:772-774):

- The ideology and priorities of Government.
- The capacity of Municipalities and their specific frameworks in order to take control over their own planning matters.
- How land use planning is integrated with environmental and transport strategies and how these are linked to the budgets. The influence of the specific development within the broad spectrum of strategies.

The increase in urban size, especially the sudden increase in the case of the Republic of South Africa, has caused the urban areas to expand outwards and upwards. In other words the expansion is horizontal and this increases the physical extent, which in turn enhances urban sprawl with the accompanying ill effects thereof. The ideal is to compact the urban area and this necessarily entails development in a vertical fashion where the land uses can be mixed in a vertical manner. The internal structure has also changed as decentralization has taken place and the evident low-density sprawl characterizes the modern city (Haughton & Hunter 1996:81). The core has also split into the suburbs and now also into the former Black towns as the greater area becomes integrated.

In the South African situation where the Black and White towns are now considered as a whole and a single entity the sprawl is particularly significant especially on the poorer sides of town. A policy concerning the consolidation of the cities should now emerge and this should involve the promotion of building houses and developing within the existing town areas. This way of doing is a

means of saving on infrastructure costs, reducing the demand for land on the periphery and enhancing public transport possibilities which in turn will reduce travelling distances (Haughton & Hunter 1996:89). In the South African context this way of doing should be promoted as far as possible as the areas between the former Black and White towns (buffer zones) are the ideal pieces of land where development such as this can take place. Aspects that should receive attention in this regard are the following (Haughton & Hunter 1996:90):

- Development on non-developed urban land.
- Subdivision of erven especially where the erven are large.
- Reducing erven sizes where township establishment takes place.
- Allowing medium density in areas previously exclusively zoned for single residential.
- A shift to two and three storey housing.

Sustainable development where the environment is defended in the common interest can only take place if attitudes and behaviour have changed to be sensitive towards the environment. In order to achieve this it is imperative that political commitment should be achieved to ensure that the environment receives its special attention. Development is of little or no consequence should it be detrimental towards the environment and the opposite is true; should the environment benefit from the development then everything possible should be done to assure the development (Blowers 1996:2).

The purpose of structure plans is mainly to indicate areas where major changes by development, re-development or improvement may be expected. This seems much simpler than it is as it involves much more than simply picking out areas where action is suspected. Problems should be identified and solutions should be posed in the plan. Furthermore, areas for development should be identified and if problems should arise with for instance traffic then the Local Government should address these in good time. It must be emphasized that action areas should be indicated in this instance and not precisely defined. Exact definition will make the

structure plans a control document and not a planning document (Cullingworth 1976:85). Planning documents like structure plans cannot consist of uses exactly defined as they cover an area and not specific erven.

When only the needs of housing are considered then the overall strategy of structure plans should be the following (Lock 1994:238):

- Allocate the maximum amount of housing to existing larger urban areas where they can be easily accessible to local facilities and to a range of transport provision.
- In so far as needs cannot be met in central locations in larger urban areas, promote land for housing in locations capable of being served with some means of public transport.
- Avoid any significant incremental expansion in suburbs where this can lead largely to car commuting to employment opportunities and poor servicing by public transport.
- Avoid greenfields development, but promote appropriate development within existing communities.

### **5.5.3 Decentralization in urban areas**

Decentralization in the CBD basically means that the CBD no longer forms the core of the business area in the urban area. This entails that the CBD develops into satellites in surrounding areas. This phenomenon should be addressed in the LDOs and this should be taken into account against the backdrop of transportation distances. These in turn affect the sustainability of the urban area with the environment. Another aspect that has to be weighed very carefully is the fact that with decentralization the CBD could decline especially if the businesses from the CBD merely move out of the city centre into other areas. This also has the result of increasing car dependency, as normally public transport is available into and from the city centre, but not between suburbs and this could lead to congestion

on suburban streets. In the LDOs document attention should also be given to the reasons why decentralization takes place as certain measures can be taken to either enhance it or curb it, depending on which reasons prevail and what the objectives are for the particular area. One reason could be that groups of people are younger, more mobile and more affluent and therefore want to, and can afford to, live in areas farther away from the city core. Another reason could be that the re-organization of the businesses is such that the pedestrian in the city core is no longer the prime target, but the mobile young people in the suburbs; in other words the business target group has changed. Yet another reason is the car ownership which has increased and the large shopping centres in the suburbs which turns a suburb into a little town of its own with its own CBD (Daniels 1982:26). In this case the objectives are determined by the particular circumstances which dictate the objectives and specific development.

The expansion of the suburban economy is a consequence of decentralization. The decline of the city centre where costs are escalating due to overcrowding and where traffic has started to become a problem is a phenomenon that can hardly be stopped. The buildings are often old and in need of renovation to be in keeping with market trends and with the desires and demands of tenants and shoppers. Work conditions are also not in all cases satisfactory. In juxtaposition to this one finds new suburban shopping areas where the buildings are of the latest standard, where ample parking is available and where the shoppers want to be and want to shop. All in all the new complexes are best suited for the people and therefore they attract more businesses and people (Gomes 1995:Personal interview).

Urban decentralization also not only influences businesses, but also offices. Quite often the so-called white-collar workers who work within the city core now tend to move to the periphery and even into residential areas. The traffic and parking are the most important reasons, but also the tranquillity of the suburban area that is conducive to productivity. It must also be borne in mind that these people are mostly car owners and car dependent in any case whether he has to travel to the

city core or to another suburb it makes no difference. The only planning problem which could arise is that suburban traffic increases in a different pattern as people now commute inter-suburb and not from residential areas into the city core (Daniels 1982:34).

While urban sprawl took place due to informal settlements in the Black areas the White areas continued with sprawl in their own areas. Urban sprawl in the White areas is mainly due to large lot sprawl where the erven are big, yet are used for a single family. It is also interesting to note that space standards are very high especially in the town-planning schemes and that no-where is a maximum, only the minimum space needed for particular uses are specified. This manner of thinking has led to vast spaces being unused by developers and is a direct wastage of urban land (Dewar & Watson 1990:18). The impact of land wastage is not only in terms of a waste of a scarce resource, but it has a ripple effect on several other features.

Isolated portions of land within a city not only pose a land shortage threat, but are also dangerous, as they become places for loiterers and vagrants where crime and violence are committed. Transportation also becomes an ever-increasing problem as the even and well-defined periphery or edge of towns, along which a ring road could be built now, has jagged edges, [not the normal curvilinear or rectilinear edges of a properly planned town] as the informal settlements settled without any plan. The perception that city growth, especially sudden and rapid growth, results in urban inefficiencies is true and these inefficiencies and wastage are indisputably occurring. However, the central point of focus is that it is not a growth problem as much as it is a management problem. In other words the disadvantages experienced may be ascribed to poor management and not really the growth. It is possible to manage and guide city growth in such a way that the urban systems function well and that efficiency and amenity are not compromised in any way (Dewar & Watson 1990:20).

What is needed is a well developed, co-ordinated urban management plan and then the political will to execute this plan. In the Free State Province it stands to reason that not everything contained in this management plan will be popular with all the people and criticism will be found; the answer is to have the political stability to continue and persist with the plans.

#### **5.5.4 Variables in LDOs**

Structure plans [LDOs **in casu**] should contain proposals for a period of 15-20 years ahead and should be based on thorough surveys and sound predictions for growth and development. These plans should explain the location and amount of land needed for expansion and development. Exact boundaries should not be delineated, but the general location for specific development should be indicated as well as the phases in which specific development should take place. Broad issues should be addressed and not the detail and precise proposals (Raine 1982:9).

Social and economic goals cannot be set exactly neither can they be stated explicitly. Too many variables exist with these goals and the important aspect is to state attainable objectives albeit not precise (Raine 1982:41). In order to set these goals realistically a corporate approach has to be taken. This entails some other disciplines that will include for instance, land use, economy, environmental and social expertise. This approach will ensure that realistic and achievable goals can be set that will address all the relevant aspects associated with development and growth (Raine 1982:35).

A community expresses its intent as to what it would like to happen with its future land use planning. Specific areas should be identified for particular uses, densities, intensive uses and different zonings. Land use plans will inevitably vary from town to town and in bigger towns even from area to area within the same

town. These differences can be ascribed to the fact that circumstances differ so vastly in each area. Land use planning normally has a future of 5 years ahead, but for larger centres targets of up to 20 years can be set; however, all plans have to be revised at least every 5 years (Roberts 1988:223).

A land use plan is the pivot around which comprehensive planning revolves, this means that land use is but one element of a comprehensive plan. As a floor plan is a basic necessity for building a house a land use plan is a basic requirement for a successful community. This plan indicates what goes where, when, how much how and why. As a basis it has an underlying common denominator which is time; this in turn leads to the element of prediction. The land use plan not only indicates the prospective development, but also the sensible development pattern – not disorganized, random and unstable sprawl (Roberts 1988:224).

The land use planning process is basically the assignment of land to the different categories of land use and to identify areas that are anticipated for development and expansion. These areas include existing land uses and conditions, availability of land, infrastructure and spatial relationships to other land uses and the development of infrastructure. As in any urban planning process analyses should take place in order to select the final version of a land use plan. This is not an elementary process as the land use plan influences so many other aspects that in turn influence the plan. In short it boils down to the fact that the land use plan should be in the interest of the area and the public. The compilation of the plan is also only the start of the process and the implementation is a key factor in the entire process of the comprehensive plan as an entity (Day 1995:Personal interview).

It is a mistake to compartmentalize the actual planning and implementation process. This manner of doing things will result in having a plan with features that cannot be implemented and also some aspects that should be addressed at implementation. Firstly it must also be borne in mind that no land use plan can be

implemented in one swoop – it is a plan indicating certain features and should be implemented gradually and in time as the development and expansion take place. Secondly, another important factor is that the controlling measures, for example, the town planning schemes and other regulatory documents should be amended, if necessary, to make provision for the aspects proposed in the land use plan (Roberts 1988:228-229).

When a structure plan is compiled it must always be kept in mind that the community cannot make a quantum leap into the future as depicted in the long-range goals encapsulated in the development plans. The future can only be reached by consistent application of the policies set out in the plan and then by the management measures and programmes of action. In other words the community has to be taken and led step by step along the route of management and development into the future (Maynard 1995:Personal interview).

The long-range policies should not be thrown at a community, but the short-term policies should be stepping-stones to the ultimate goal. This way of thinking also has its pitfalls, as the long-range goals cannot be achieved if the plan focuses only on the short-term. The long-range, goal orientated plan and the shorter-range plan should complement each other in such a way that the community is served best.

The long-range plan should have roots in the short-range plan and the short-range plan should include long range aspects in order to lead to the long-range goals. Without these leaders in the short-range plan the danger exists that the development plan can run into nearsighted sub-optimization and inconsistency in the long-term which in turn will create inadvertent and aggravated land use problems. Conversely the long-range plan must be founded on the short-range plan otherwise it will be all the more difficult to attain the goals set in the long-range plan (Maynard 1995:Personal interview).

### 5.5.5 Sequence of events in Land Development Objectives [LDOs]

The development plan is a proposed sequence of actions in order to improve the development management system. One of the primary aims is to alleviate current and projected problems such as traffic flow and land use, and in so-doing implementing new policies and goals to be attained over a period. In an effort to achieve the set goals explicit analyses of the land development situation, the social and economic situation are necessary and these have to be linked to the financial aspects of generating funds, budget cycles and the ultimate financial gain envisaged with the future development. It is important to note that for each plan various time zones should apply, not only for the ultimate plan, but for each subplan which constitutes part of the overall plan (Kaiser **et al.** 1995:73).

Structure plans<sup>1</sup> are statements of intent and indicate a particular action in respect of land use and zoning. Policies and goals are translated into action programmes linked to specific timetables. One of the major ultimate aims is to provide the decision makers with a co-ordinated set of guidelines that addresses costs, priorities, assignment of responsibilities and tasks, financing and the assessment of changes and influences. Time frames have to be set and linked to specific projects (Kaiser **et al.** 1995:74).

The structure plans should be compiled with the general purpose of guiding a community and development towards a better future for all, taking into account the present and future needs. When determining goals, problems should be pre-empted and solutions should be built in. These changes will require adaptations and this implies that the planner should be concerned with emerging conditions. If these conditions can be predicted then the plan can really serve the community and enhance the public interest. It does seem that structure plans could then change the natural tendency of planning and development, but if this does happen

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<sup>1</sup> Structure plans include LDOs **in casu**.

then it will only be for the immediate and then the guidance incorporated in the structure plans will guide the development in an orderly fashion (Stein 1995:110).

The structure plans should incorporate already determined or probable trends in development and should be tailor made for the specific town and what the community wants. Continual evaluations and analyses are required in order to circumvent the obstacles as the problems that attempt to impede the achievement of goals surface. The structure plans now really come under pressure and the manner in which the problems are predicted and solved will determine the success of the whole exercise (Stein 1995:111).

The structure plans should comprise the objectives and the full reasoning behind the overall strategy and its policy fields including the availability of resources. The context of national and regional as well as of the local circumstances should be taken into account when compiling a management plan as each town will have its own unique set of problems and challenges. In order to address these requirements the local circumstances will have to be evaluated against the backdrop of pre-determined policies (Solesbury 1974:86).

Structure plans should address the following basic functions as a policy document (Solesbury 1974:94):

- Interpreting national and regional policies: National and regional policies will form the more generalized guidelines and these will have to be focused upon in the unique circumstances of a local town. The specific objectives will have to be addressed in relation to, and not contrary to national and regional policies.
- Stating objectives and strategic policy: This is the crux of the structure plans and should be clear and based on the particular circumstances related to the particular town.
- Stating policy norms for strategic decisions: Executive decisions are based on the deals and objectives of the structure plans and some

direct guidance will have to be included in order to facilitate the decision making. Regulatory functions can be derived from the planning proposals set in the structure plans and these should be within the set parameters of the structure plans to ensure strategic management that is consistent and not contradictory.

Structure plans are intended as a policy statement embracing the policy of the local authority regarding the proposals in respect of development and the use of land. The change in land use is normally part of the defined term development as the change in land use is not only quantitative, but also qualitative. The development and change of land use can be construed as improvement of aspects and features pertaining to the basic principles of planning, among others, the management of traffic and the physical environment. As a minimum the structure plans must include the policy for controlling all the classes of change that can be defined as development and therefore subject to planning control (Solesbury 1974:97). Merely identifying the problems serves no purpose and possible solutions should also be proposed. It will be necessary to pose alternative solutions as many variables occur and circumstances change and differ.

The LDOs should also address transportation in an energetic and pro-active manner. A number of basic issues should be addressed and these include planning to reduce the need to travel and this subsequently leads to less dependency on the motorcar. In order to achieve this it is necessary to enhance public transportation systems and more attractive walking and cycling environments (Barraclough 1998:18).

In diagram 5.7 it is indicated that land use planning and development cannot be isolated from the political and technical spheres. These influences have to be taken into account on the horizontal line with formulation and analysis. In the same way does the horizontal line influence the vertical line and planning and development is where the two lines intersect. Two key issues that often arise are the "scanning" and "focussing" elements. The politicians tend to "scan" while the

planners have to "focus" in order to meet the needs of the people. However, both parties should scan and focus – scan the broader spectrum of the environment and then focus on key issues. The aim of diagram 5.7 is to indicate the cycle to integrate the more reductive, analytical and technical phases of the planning process with the political and problem formulating aspects. The political and technical axis indicates the recommendations of the technocrats to the decision-maker while the horizontal axis indicates the process that should be followed **viz.** the analysis and formulation phases.

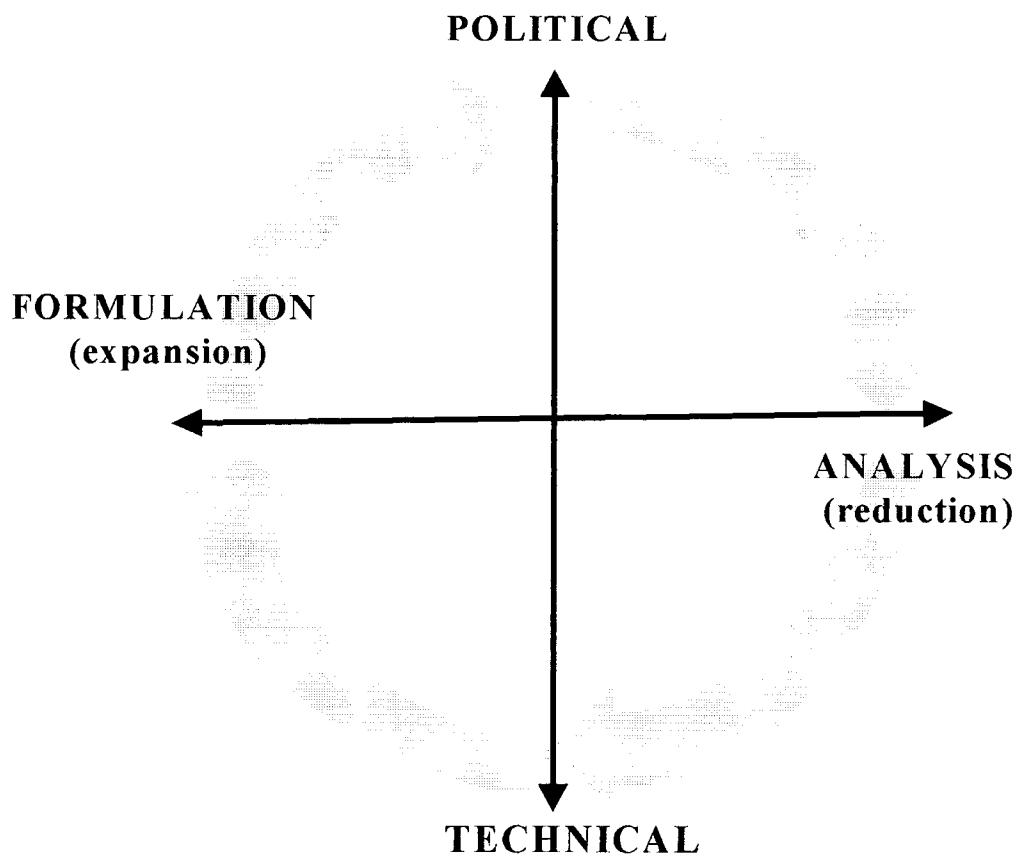


DIAGRAM 5.6

THE STRATEGIC CHOICE CYCLE (Yewlett 1985:224)

Structure plans can be regarded as being a significant policy statement in the context of the total policy needs of a local authority (Solesbury 1974:103). One of

the main functions of the structure plans is to provide a framework for development and more detailed policies for the whole policy field. Structure plans provide a statement for the strategic management of land and development for the local authority (Solesbury 1974:106).

Planners have an enormous role to play in the setting of structure plans and short of having clairvoyant powers should pick up developmental signals. These should be analysed in order to ensure that the system and process of planning should be turned into development for the entire town and/or community (Cooke 1983:239).

First and foremost the structure plans provide a framework of objectives and strategic policies and secondary to these it should express comprehensive policies regarding the variables that can influence the primary policies. In other words the controlling and regulatory aspects can also be addressed albeit not in detail (Solesbury 1974:112).

Local structure plans (local portions of LDOs **in casu**), among others, detail where what should take place in future, but do not give the developers any right to develop in the area. The change of the land use should first take place. However, the LDOs give an indication of what should happen and strengthens the case of the developer should he lodge an application for the change in land use (Barlow 1995:12). It is of great importance that planning and control should operate alongside each other to assist in development.

The compilation of structure plans has to take into consideration that planning consciousness rests on the following two pillars (Dewar & Uytenbogaardt 1991:13):

- The first pillar is humanist; the art of planning concerned with the making of human settlements. This feature, in modern context, is dominated by three dynamics: rapid population growth, rapid

urbanization and rapid technological change. These aspects influence the process of planning and the monitoring of existing trends related to human settlement have to be considered in all development. Within these parameters the timeless qualities are encapsulated and the quest to create environments containing all sound principles have to be continued.

- The second pillar is planning consciousness relating to the natural condition that provides the setting within which development has to take place. In this feature a dynamic balance has to be obtained in order to conserve and develop.

Structure plans were initially introduced to provide the broad context for urban renewal; identifying specific areas for change, development and also how transportation routes should be followed in the system. In other words the structure plans identified and set the broad policy guidelines for land use and development (Couch 1990:138). What must be remembered is that the LDOs form part of the Integrated Development Plan [IDP] instituted in terms of the **Local Government Transition Act, 1993 (Act 209 of 1993)**. The IDP shall be compiled by the district councils and shall be in respect of each local authority (section 10D (4) **Act 209 of 1993**).

## 5.6 CONCLUSION

It does not help if a world summit has been held and Agenda 21 together with all its relevant provisions and recommendations have been adopted across the world and no local authority in the Free State Province has an idea how development and planning fits in with these provisions. It is imperative that each local authority should have guidelines and set provisions for development and planning in order to have it consistent with sustainability in the area.

Any development has an influence on the community and it is important that this community should participate in the planning and development. Policies should exist and these should be available and made known to the community as they should be put in the position to object should they not agree with it.

It should be borne in mind that although the structure plans have a poor connotation attached to them as a result of the political dispensation that prevailed at the time, the ideas and principles are still sound. The process of the LDOs also relies on similar components although the process is more elaborate and comprehensive. All learned from structure plans should not summarily be discarded and attention should still be paid to the planning principles.

Structure plans [LDOs **in casu**] should facilitate development and should help with the planning with the community for the community. In so-doing the policies of the various and different components will emerge and the total planning process will be approached holistically, as it should take place. The LDOs should accommodate a Local Agenda 21 and the objectives of the local authority and close behind this planning document the town-planning scheme should follow to ensure that the planning and development can be accommodated by it.

What must also be remembered is that the Development Tribunal is bound by what the LDOs stipulate and this makes the LDOs very important and powerful documents. [See complete discussion on this in chapter 6 **infra**).

Local and provincial authorities will have to take up the gauntlet and perform with the policy setting and determination of guidelines as they will have to accept responsibility for the total planning spectrum. The total spectrum will include the integration of the various urban areas and the implementation and enforcement of management parameters.

The LDOs will have to set the pace in so far as the planning and development are concerned. The importance of this document must not be underestimated

especially as the Development Tribunal is bound by the guidelines of the LDOs. The notion that this is merely a document with vague indications should be discarded and the compilation of LDOs should be approached with the necessary sincerity. This leads to the fact that funds will have to be made available for the proper setting of LDOs and also the up-dating and improving of the town-planning schemes so that development can take place in an organized fashion.

It is also of paramount importance that it should be realized that all the issues mentioned in this chapter has to link and merge and that compartmentalization should not take place. Planning in isolation will not lead to positive development and the interest of the public will not be served.

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# **6 DEVELOPMENT FACILITATION ACT [DFA] AND LAND USE CONTROL MEASURES**

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*What we call the beginning is often the end  
And to make an end is to make a beginning.*

T S ELIOT

## **6.1 INTRODUCTION**

As it has been indicated in previous chapters the entire idea of town planning and management of land use has changed. Land use now forms part of a bigger and more encompassing process. When viewed like this it appears that development is much more in the foreground than previously and the idea is entertained that development should take place at all costs and that it should attract even more positive attention if it can be proven that jobs will be created. However, this way of thinking is dangerous and can very easily lead to chaos and disaster. Although development should be encouraged as much as possible and everything possible should be done to incite it, one must be careful not to throw all control measures overboard and concentrate only on development.

It is vitally important to always keep a tight rein on development control measures as unbridled development can easily cause solutions to job creation and other social problems, but cause planning problems and another set of social problems over a longer term. What is also important is that the environment and transportation systems should always be borne in mind as these have direct influences on land use and **vice versa**.

Taking our ill fated legacy of different urban areas within a single town into consideration control measures are even more important especially as different control instruments with different measures have been created. In the former Black towns Annexure F is applicable while in some areas conditions of title are applicable in the White and Black areas. Just to complicate matters if a town-planning scheme is in operation then this also controls land use, but town-planning schemes are only in White areas.

The **DFA**<sup>1</sup> was introduced towards the end of 1993 as a draft Bill. After about 8 drafts it was finalized and promulgated in September 1995. The primary aim of this Act is, as is stated in the heading to the Act "(T)o introduce extraordinary measures to facilitate and speed up the implementation of reconstruction and development programmes and projects in relation to land; and in so doing to lay down general principles governing land development throughout the Republic; to provide for the establishment of a development and Planning Commission ... to provide for the establishment in the provinces of development tribunals which have the power to make decisions ... in respect of land development projects; to facilitate the formulation and implementation of land development objectives by reference to which the performance of local government bodies in achieving such objectives may be measured ..."

The basic purpose of **DFA** is clear – it has to speed up land development, lay down principles and establish Development Tribunals. In this chapter it will be endeavoured to analyse the Act as experienced in the Free State Province. The advantages of it, the uncertainties and deficiencies.

In order to facilitate reading the provisions of the Act will be discussed **seriatim** as they relate to specific ideas, therefore the sections will not necessarily be discussed individually unless otherwise required.

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<sup>1</sup> In this chapter all references to legislation will be deemed to be to the **DFA** unless explicitly stated otherwise.

It should be borne bear in mind that only the provisions dealing with land development and land change issues will be discussed and nothing about the land tenure aspects as those fall beyond the ambit of this thesis.

A synoptic background to the implementation of **DFA** in the Free State Province is as follows:

- The names of prospective Development Tribunal and Development Appeal Tribunal members have been submitted to the Premier for appointment.
- Work plans for the compilation of LDOs have been submitted and after evaluation these will be submitted to the MEC for his approval.
- The LDOs process is fairly far progressed and will be in place as soon as the LDOs are submitted.
- The principles are applied in all land development and land use change applications.

It is evident, therefore, that the process of implementation is still in its infancy stage and impetus will be given to it once the Tribunals have been established.

## 6.2 BACKGROUND TO THE DFA

The **DFA** is the first real uniform legislation governing land development to such an extent in the country and especially the principles that are applicable to all the provinces are filling a niche. It must be remembered that it does not revoke any existing legislation, but merely allows applicants another route to follow. Within the plethora of legislation the Act intends to provide an avenue where applications can be dealt with expeditiously in order to provide in the much-needed housing.

The **DFA** has certain provisions that can negate constraining elements of other laws and this could prove useful especially where the former homeland legislation

is applicable [which fortunately is not applicable in the Free State Province as they have been revoked]. An interesting fact is that constitutionally planning is a provincial function and should a province pass legislation that is in conflict with national legislation then the provincial legislation prevails. This means that should the **DFA** principles be used and an own law be accepted then it will prevail over it (Emdon 1994:90).

The **DFA** introduces a complete paradigm shift from mainly exclusive land use control to development (Bierman 1997:25). In doing this the Act completely changes the historical approach to land development (Latsky 1995:82). One cautionary aspect to observe is that all the emphasis should not fall on development and nothing on control.

### 6.3 PRINCIPLES OF THE DFA

In order to discuss the principles effectively it is necessary to quote them as found in the Act. These principles are applicable throughout the country and serve as guidelines to any competent authority that takes any decision in terms of the **DFA** or any other law dealing with land development. This is a good provision as the principles are now applicable to all applications for township establishments in terms of **Ordinance 9 of 1969** and **Act 113 of 1991**. In short this means that the principles are additional to the guidelines as found in the mentioned legislation. It will be noticed that the principles can be divided into the following five categories (Emdon 1994:91):

- Restructuring spatial environment by setting principles to correct the racial pattern of development.
- Spatial order principles by making cities more compact and creating a unity between the separate urban areas and integrating transportation, job opportunities and residential areas, infrastructure and uses.
- Sustainability is promoted in order to create sustainable urban units.

- Involvement from all sectors is promoted as the whole issue cannot be viewed as a government only matter.
- Participation of communities is promoted.

Bearing these five categories in mind the following principles as found in the **DFA** are basically self explanatory bar a few features which will be discussed in ensuing paragraphs. The principles are set out in section 3 of the **DFA** and the following are paraphrased in order to provide a guideline for the ensuing discussions:

- (1) Policy, administrative practice and laws should provide for urban and rural land development and should facilitate the development for formal and informal, existing and new settlements.
- (2) Policy, administrative practices and laws should discourage the illegal occupation of land, with due recognition of informal land development processes.
- (3) Policy, administrative practice and laws should promote efficient and integrated land development in that they -
  - promote the integration of the social, economic, institutional and physical aspects of land development;
  - promote integrated land development in rural and urban areas in support of each other;
  - promote the availability of residential and employment opportunities in close proximity to or integrated with each other;
  - optimize the use of existing resources including such resources relating to agriculture, land, minerals, bulk infrastructure, roads, transportation and social facilities;
  - promote a diverse combination of land uses, also at the level of individual erven or subdivisions of land;

- discourage the phenomenon of "urban sprawl" in urban areas and contribute to the development of more compact towns and cities;
  - contribute to the correction of the historically distorted spatial patterns of settlement in the Republic and to the optimum use of existing infrastructure in excess of current needs; and
  - encourage environmentally sustainable land development practices and processes.
- (4) Members of communities affected by land development should actively participate in the process of land development.
- (5) The skills and capacities of disadvantaged persons involved in development should be developed.
- (6) Policy, administrative practice and laws should encourage and optimize the contributions of all sectors of the economy (government and non-government) to land development so as to maximize the capacity of the Republic of South Africa to undertake land development and to this end, and without derogating from the generality of this principle -
- national, provincial and local governments should strive clearly to define and make known the required functions and responsibilities of all sectors of the economy in relation to land development as well as the desired relationship between such sectors; and
  - a competent authority in national, provincial or local government responsible for the administration of any law relating to land development shall provide particulars of the identity of legislation administered by it, the posts and names of persons responsible for the administration of such

legislation and the addresses and locality of the offices of such persons to any person who requires such information.

(7) Laws, procedures and administrative practice relating to land development should -

- be clear and generally available to those likely to be affected thereby;
- in addition to serving as regulatory measures, also provide guidance and information to those affected thereby;
- be calculated to promote trust and acceptance on the part of those likely to be affected thereby; and
- give further content to the fundamental rights set out in the **Constitution of the Republic of South Africa, 1996 (Act 108 of 1996)**.

(8) Policy, administrative practice and laws should promote sustainable land development at the required scale in that they should -

- promote land development which is within the fiscal, institutional and administrative means of the Republic of South Africa;
- promote the establishment of viable communities;
- promote sustained protection of the environment;
- meet the basic needs of all citizens in an affordable way; and
- ensure the safe utilization of land by taking into consideration factors such as geological formations and hazardous undermined areas.

(9) Policy, administrative practice and laws should promote speedy land development.

- (10) Each proposed land development area should be judged on its own merits and no particular use of land, such as residential, commercial, conservational, industrial, community facility, mining, agricultural or public use, should in advance or in general be regarded as being less important or desirable than any other use of land.
- (11) Land development should result in security of tenure, provide for the widest possible range of tenure alternatives, including individual and communal tenure, and in cases where land development takes the form of upgrading an existing settlement, not deprive beneficial occupiers of homes or land or, where it is necessary for land or homes occupied by them to be utilized for other purposes, their interests in such land or homes should be reasonably accommodated in some other manner.
- (12) A competent authority at national, provincial and local government level should co-ordinate the interests of the various sectors involved in or affected by land development so as to minimize conflicting demands on scarce resources.
- (13) Policy, administrative practice and laws relating to land development should stimulate the effective functioning of a land development market based on open competition between suppliers of goods and services.

In the above principles seven, **vide.** numbers (1), (2), (3), (6), (8), (9) and (13), are found starting with the words: "Policy, administrative practice and laws ..." followed by an instruction to promote, discourage, contribute, and then the principle is set out. In one principle, number (7), the words: "Laws, procedures and administrative practice ..." are found and in the rest simply a principle. The

wording as quoted is interesting as it puts an obligation onto the institution that enforces or administers the Act. This obligation is to ensure that policy, administrative practice and laws that should take care of the specific principle are in place.

At present these governing instruments are not yet in place and the principles are applied on an **ad hoc** basis. Some attempt is made to apply the principles consistently, but without guidelines and parameters based on something concrete it is only a matter of time before inconsistencies and disaster strikes. The provisions in the respective laws pertaining to different applications are still applied and in conjunction with these the principles. It is interesting to note that in sections 8(5) and 25 of **Ordinance 9 of 1969** and in section 2 of **Act 84 of 1967** the needs and desirability are emphasized. The needs, public interest and interest for the area are evident in the principles of the **DFA** as they concentrate on the same issues, save they are more explicit and explanatory. They define exactly what is meant by each requirement whereas, for instance, public interest had to rely on definitions from other sources, for example the courts in the past.

Thus it can be concluded that the basic planning principles have not changed so much over the years, but the application thereof has changed in so far as the elements are now more defined. This leads to greater consistency and the actual interpretations are more uniform.

It is imperative that clear guidelines and parameters are set, based on empirical research and implementation according to the circumstances in the Free State Province. What must never be forgotten is that the principles are uniform, but the application thereof will differ from province to province and place to place. This means that the guidelines set within the parameters of the principles become more important as these will actually guide the development and planning that is envisaged. The LDOs will also have to be set accordingly otherwise the planning and actual development could lead to conflict.

## **6.4 DEVELOPMENT PLANNING COMMISSION**

The Development Planning Commission is established and operates in terms of sections 5-14 of the **DFA**. This Commission is a national based body that does planning at a national level. As this Commission does not have a direct influence concerning urban land use in the Free State Province, no great attention will be paid to it at this stage. In short: each province is represented on the Commission and it has a set of parameters within which it has to operate. The basic ideas what to consider are provided for in the Act, but the detail research and the policy formulation still have to take place.

## **6.5 THE DEVELOPMENT TRIBUNAL**

The institution and operation of the Development Tribunal in terms of the **DFA** (sections 15-26) will be discussed in the ensuing paragraphs.

### **6.5.1 Appointment of members**

All the members including the chairperson and deputy chairperson will be appointed by the Premier by reason of "...(t)heir qualifications in and knowledge or experience of land development or the law and shall be persons who are in the Premier's opinion competent to perform the functions assigned to them ..."'

It is a pity that more detail is not given about the qualification and/or experience of the members as "... in the opinion of ..." is very vague and may lead to all kinds of incorrect appointments. It is expected that more specific guidelines will be set for the appointment of members of such an important Tribunal with such far reaching powers.

The Development Tribunal also has to decide on conflicts that emerge from development related processes conforming to the principles in the **DFA**. This strategy could pose problems as the Development Tribunal explicitly recognizes the powers of the local authority to design local development, but then implicitly negates them by providing a government body to take the decisions. This way of doing is incoherent as local government is either given powers or not, while pretending to do so and then doing the opposite is pointless. However, in a political society where politics are highly factional it is inevitable that while one faction will be pro premier the other will oppose the premier. Should the faction on the side of the premier lose in local government elections the Development Tribunal appointed by the premier can become a convenient mechanism of undermining the elected local government (Ritchken 1997:206). This could become a serious problem especially in the Free State Province where a track record of factional differences has been established and where the differences were so serious that, **inter alia**, a former Premier was "re-deployed".

As far as is possible, half the members of the Development Tribunal should be persons in the employ of the Provincial Government and the other half should be members not employed by Government at all (section 15 of the **DFA**). This is a good provision as it prevents the Development Tribunal from being unbalanced by either officials or private persons. Unfortunately in the Free State Province some key protagonists have been left out of the list of prospective members. These are the Surveyor General and the Registrar of Deeds who play vital roles in the entire land development process. This should be corrected as soon as possible even if the number of members that has been set at 14 has to be increased (Stapelberg 1997:Internal policy formulation on the **DFA**).

The term of office for members depends on the premier of each Province. This may cause uncertainties as it may differ from province to province and although not serious it may cause confusion at national level should a national amendment of this section be contemplated. One should also think that a specific directive

should have been issued in the **DFA** regarding something like this [section 15(5)].

Section 15(8) of the **DFA** where the chairperson of a meeting has to be appointed by the premier, could pose problematic should both the permanently appointed chairperson and the deputy chairperson be absent simultaneously. In a situation where the normally appointed chairperson is absent and the deputy chairperson has to preside a scheduled meeting and he suddenly takes ill, then the premier must first be contacted to appoint a chairperson. This could take a while and in the meantime the meeting cannot continue and this could pose an embarrassment and be expensive especially if counsel and consultants are concerned.

A suggestion would be to amend this section to the effect that the members can elect a chairperson in the scene described above. This will have the effect that the meeting can continue without undue delay. An example of such a provision can be found in section 3(3) of **Ordinance 9 of 1969**. In the past this avenue has had to be used quite often at the Townships Board and it has worked very well.

In the Free State Province very little experience is included in the proposed members of the Development Tribunal. The opinion is held that a total "experience drain" was ensured. The interviews with prospective members had also taken place in November 1995 and yet no-one has been appointed [March 1999]. The methodology followed in compiling the short list and the manner in which the interviews for membership were held left much to be desired. The impression was created that few (if any) experienced persons should serve on the Development Tribunal as the people who were interviewed had very little experience over a broad land use spectrum. Had some of the successful candidates been experienced and some inexperienced the ideal situation could have been reached (Stapelberg 1996:Discussions with MEC).

Miller (1996:7) warns that the members of the Development Tribunal should be carefully chosen and then well trained otherwise the baby will be tossed out with the bath water. Members should have experience and be persons with strong character and local knowledge of planning and development as well as of the needs in the particular communities. It must be emphasized that the Development Tribunal has major powers, not only in deciding on land development and related matters, but also on the suspension of legislation.

### **6.5.2 Seat of Development Tribunal**

A problem could arise with the provisions of section 15(10)(a) as the Development Tribunal has as its seat at the place or places "determined *by* the Premier *by* notice in the **Provincial Gazette**" [own emphasis]. No deviation may take place, therefore, without it being approved by the premier and published in the **Provincial Gazette**. The obligation "*by*" in this sense also means that the act of decision-making takes effect only when the notice is published in the **Provincial Gazette**. Had the specific section stated that the premier may decide and then publish his decision it would have meant that the action of decision had taken place when the actual decision was taken. However, **in casu** the long way has to be taken and this could lead to at least a few days' delay. This whole matter is expounded in chapter 7. This circumlocutory fashion of doing something as simple as determining the seat of the Development Tribunal is not understood.

It is suggested that a simpler method be formulated to replace the section to make the decision quicker and the notification simpler. An example could be that the Chairperson determines the locality and that the municipality and all the affected participants be notified about the location or change in location. It is recommended that it receive urgent attention as the ineffective manner could defeat the purpose of the speeding up process initiated by the **DFA**.

### **6.5.3 Tribunal of record**

In section 19 of the **DFA** it is stated that the Development Tribunal is a tribunal of record. This is much easier said than done if the provisions are in such vague terms. Nowhere is it stipulated for how long the recordings must be stored or whether all recordings must be transcribed, who must certify the transcriptions, or should the recordings then still be kept. This stipulation is very vague and could lead to great confusion not only among provinces, but also among parties appearing before the Development Tribunal and officials within a province.

At the time of writing, the regulations, in draft form, were also not clear on this matter and it is suggested that it be approached with circumspection as the Townships Board used to keep electronic recordings at hearings and that caused serious problems. Counsel was approached in this regard and it was decided not to keep recordings and this has worked well. Specific provisions should be formulated around this entire concept should it be retained (Stapelberg 1997:Internal policy formulation on the **DFA**).

### **6.5.4 Powers of the Development Tribunal**

The Development Tribunal can subpoena persons to appear and testify. This is a good provision as it will put an end to the frustration of having to wait for a department to comment on a much needed development. This department will then be subpoenaed and the development can progress without much delay (sections 17 and 18 of the **DFA**).

The Development Tribunal has the powers of a Magistrates' Court. The decisions are final and it also has the powers to subpoena people to come and testify on matters. Comprehensive reasons for a decision shall also be given in each case (sections 17 and 18 of the **DFA**).

Mediation, appeal and review procedures are provided for in sections 22-26 of the **DFA**, but as these are of little concern for the scope of this thesis they will not be discussed.

In section 33 of the **DFA** the consideration of applications are discussed and **inter alia** provision is made for the suspension of conditions and zonings. Also in this section it is stated that laws and provisions may be suspended. This is a very sensitive aspect as it can be dangerous to simply suspend the application of certain provisions. The consultation process is thereby negated and should advertisements be published in terms of that particular legislation then public notice will not take place and transparency and public participation are out the window.

Section 34 of the **DFA** provides for the suspension of restrictive conditions and servitudes by the Development Tribunal. The same arguments as stated above also apply to this and the opinion is held that if suspension takes place one-sidedly from the top then the entire spirit of consultative governance is thwarted. Transparency is also ignored and the suspension of acts and real rights from a tribunal could be regarded as invasion and autocratic conduct from a government instituted body (Stapelberg 1996:Internal policy document on town-planning schemes).

Latsky (1995:81) indicates that the Development Tribunal cannot simply suspend a law without hearing the department administering the particular law; the specific department should be given an opportunity to state its case. This seems contradictory as the whole idea is to expedite procedures while arranging to hear a department is also time consuming and then the **audi alteram partem** maxim is still negated as far as the public is concerned with for instance the change in land use. The needs and wishes of the public should receive due attention and should be heard as not only the "other side", but the party that will have to live with the consequences.

A precedent system will be established as the hearings will be public and reasons given for any decision taken by the Development Tribunal (Latsky 1995:81). This is something to be considered carefully as the Development Tribunal is still a quasi-judicial tribunal and not a real court of law.

The Development Appeal Tribunal is a body that will hear the appeals of the Development Tribunal should a party be aggrieved and appeal to this body. The Development Appeal Tribunal consists of 5 persons and in the Free State Province no-one has yet been appointed (March 1999). The reason for this is that the Development Tribunal is not yet in place therefore the Development Appeal Tribunal will serve no purpose.

It is seriously suggested that these harsh measures are reconsidered and that if not removed have proper and stringent guidelines set for their applicability. It will be very easy to abuse these powers and this could lead to many problems and become a drawn out and expensive exercise.

## 6.6 GENERAL

It must be borne in mind that the Development Tribunal is an administrative tribunal as is the Townships Board and all the powers and constraints as discussed in chapter 7 **infra** relating to the Townships Board are **mutatis mutandis** applicable to the Development Tribunal.

In previous presentations that were given on the **DFA** at workshops throughout the Free State Province, emphasis was placed on the mobility of the Development Tribunal as compared to the Townships Board, allegedly not being mobile. This is of course not the case as the Townships Board used to hear objections in other locations than Bloemfontein up to 1986. Since then all meetings have taken place in Bloemfontein and with hearings an inspection **in loco** was held and then the hearing was held in Bloemfontein. This situation has changed again in the past

nearly 3 years and if at all possible hearings are now held at the town where the inspection takes place (Stapelberg 1997:Internal policy formulation on the **DFA**).

It has been stated in the Free State Province that once the Development Tribunal is in place it will replace the Townships Board. This has been contested as **Ordinance 9 of 1969** will then have to be either extensively amended or replaced. The **DFA** will also have to be amended in so far as to give powers to the Development Tribunal in terms of **Ordinance 9 of 1969**. The consultants assisting with the implementation of the **DFA** could not address the problem and the **status quo** is still in place. This means that the Townships Board will operate alongside the Development Tribunal in order to allow the applications to be considered and development to take place.

This was initially the intention, but previous opinion makers in the Free State Province wanted the Development Tribunal to replace the Townships Board at all costs. It is not possible to simply repeal **Ordinance 9 of 1969** as the **DFA** for instance does not make clear provision as to how a town-planning scheme can be instituted or amended and how rezoning should take place. It is clear on all issues of land development and how to remove restrictions should they impair land development, but when these issues are in isolation then it becomes a little grey (Stapelberg 1996:Internal policy document on town-planning schemes).

The **DFA** binds the hands of the Development Tribunal in so far as it cannot decide otherwise than that stipulated in the LDOs (*cf.* paragraph 5.7.2 **supra**). The functions of the Development Tribunal now become questionable as it must decide as indicated by another document. This can even relate to the usurping of power as extensively dealt with in chapter 7 **infra**.

People should also be wary of expecting too much from the **DFA** and the policies required should be clear and focused (Miller 1996:8). In the Free State Province the existing legislation works. However, new legislation should be compiled within the parameters of the **DFA** principles, but suitable to the unique conditions, to

really assist with land development in the encompassing sense; not just related to township establishment.

A very important aspect that must not be forgotten is that the **DFA** is but one route that a developer can follow (Hendler 1995:5). This aspect cannot be emphasized enough as many people in the Free State Province still think that the **DFA** is the panacea and will replace all other legislation (White Paper on South African Land Policy 1997:82).

## **6.7 LAND DEVELOPMENT OBJECTIVES [LDOs]**

LDOs are to be set by each local government in respect of its area of jurisdiction. The MEC considers these and may approve or disapprove depending **inter alia** on whether the LDOs address all the aspects of development and planning in the opinion of the MEC. Should a local government fail to set LDOs the MEC can force it to do so (sections 27-29 of the **DFA**).

### **6.7.1 Requirements of LDOs**

The LDOs are closely related to the general principles of section 3 and the elements that should be included are all derived from the principles. It is also clear that the features are related to the general planning principles of land development and land use. It should be borne in mind that although the LDOs are not the old structure plans, the basic requirements are similar. The planning principles applicable to structure plans can be used together with the **DFA** principles to compile LDOs. Miller (1996:7) states it very aptly that not all planning done in the past has been within the parameters of the objectives of the **DFA**, but that not all planning can be discarded as worthless. Planning has been done in terms of planning principles and as indicated these do not differ so much from the **DFA** principles.

### **6.7.2 Stature of LDOs**

LDOs are extremely powerful documents as the Development Tribunal or any other competent planning body shall not approve any land development application if it is inconsistent with any objective in the LDOs. This cannot be a sound way of doing things as it acts as constraints to the consideration of applications on the basis of merits. The situation can also become untenable should the LDOs be dated and not indicate a particular development as an objective, yet the proposed development is essential and important to the specific town, area and in public interest.

It is suggested that this particular aspect be reviewed as the opinion is held that it is not wholly fair and could lead to court revisions. The status vested in LDOs is also unbalanced as it not only binds the decision-making powers of the Development Tribunal, but it makes the decision obsolete to a large extent. The LDOs will operate in close alignment with the IDP and in so-doing integrated planning will spread (Mabin 1997:28).

## **6.8 SUBMISSION AND CONSIDERATION OF APPLICATIONS**

In terms of section 32 of the **DFA** an application should be submitted to the Development Tribunal by the designated officer "... together with his or her report and recommendations on the land development application, to a tribunal for its recommendation." This includes any and all representations and objections which implies that a hearing will take place. The designated officer cannot usurp the power of the Development Tribunal by reporting on the case at hand and then also make a recommendation without even having heard the **viva voce** presentations at the hearing.

This conduct could lead to bias and pre-judging which could in turn result in a review. The usurping of power is expounded upon in chapter 7 **infra** and it will

serve no purpose to repeat it here. It is suggested that this provision be reviewed and corrected by for instance only permitting the designated officer to present the case without any recommendation.

## **6.9 COMPARISON BETWEEN THE DEVELOPMENT TRIBUNAL AND THE TOWNSHIPS BOARD**

The Development Tribunal is said to be much more powerful and better equipped than the Townships Board. This is partly true, but it should also be seen in perspective whether applications for development will benefit by the **DFA**. A brief comparison between the two bodies can shed some light on the matter (Stapelberg 1997:Internal policy formulation on the **DFA**).

The differences can be listed as follows (Stapelberg 1996:Discussions with MEC):

- Townships Board is an advisory body to the MEC and final decision-making powers are limited whereas the Development Tribunal has final decision-making powers in all cases.
- Townships Board operates like a quasi-judicial tribunal whereas the Development Tribunal operates like a court of law with similar powers yet the provisions of a quasi-judicial tribunal are also applicable to the Development Tribunal.
- Townships Board cannot suspend legislation and has limited powers whereas the Development Tribunal can suspend legislation and has more powers.
- Townships Board has no form of mediation whereas such a provision is made for the Development Tribunal.
- Townships Board can be taken on review only while the Development Tribunal can be taken on appeal.

The similarities of the two bodies are as follows:

- They are both tribunals and bound by the rules of natural justice.
- Both are mobile, irrespective of what the previous presenters at workshops held by the Free State Government said about Townships Board.
- Both bodies are bound by principles and should apply them.
- Both bodies are independent tribunals and bound by common law and the rules of natural justice.

It remains to be seen whether the **DFA** with the Development Tribunal is really going to expedite matters in the Free State Province. The current legislation is simple and yet very effective whereas the **DFA** is strange and complicated. The **DFA** is exactly what the name suggests; a "facilitation" act. This is said as it is an act that operates alongside the other existing legislation although the principles are applicable to the whole country and all land development applications have to conform to these principles.

The opinion is held that the key to the success of the **DFA** lies in the introductory words of most of the principles, *viz.*: "Policy, administrative practice and laws ..." (section 3:**DFA**). This intimates that the provinces should get their own legislation in order to operate within the parameters of the **DFA** in order to expedite processes. This also has the advantage that each province can make its own legislation to suit its particular circumstances. If the principles are studied carefully then it is clear that the ones which start with the quoted words are the ones where real speeding up is required and also those where the real development and integration can take place. In other words those principles are the ones really in need of attention.

New provincial legislation within the parameters of the **DFA** should preferably combine all the existing provisions and should of course act within the provisions

of the **DFA** and make use of some of its very good and sound provisions especially in so far as the principles are concerned.

Regulations can be made in terms of section 23 of the **DFA** and it is suggested that these regulations include specific guidelines concerning public participation and public interest and also the parameters of the process of obtaining the public view. In the past, public interest has in many cases posed an intrinsic problem and it would be wise to consider it with circumspection as it could result in serious issues that could be a sound basis for review (Stapelberg 1991:98).

One of the interesting issues that also relates to the **DFA** is the question of the different control documents in the Black and White towns. With these towns now integrated as one entity these (sometimes vastly) different controlling provisions will have to be integrated to form one [**cf.** chapter 8 **infra** in this regard].

#### **6.9.1 Exclusions from the DFA**

In the Constitutional Court Ruling **Municipality City of Port Elizabeth v Rudman [1998 (4) BCLR 464 (SE)]** it was ruled that even if the principles of the **DFA** are applicable to the whole country it is still unthinkable that the intention was to invalidate all existing town-planning schemes. The mere existence of administrative controls that regulate the property even if some of them differ from the principles in the **DFA** does not cause the controls to be of no consequence. The ruling went further and stated that even though the principles are applicable they are not applicable on erval that have already been developed in terms of another controlling mechanism [a town-planning scheme **in casu**].

This ruling is of importance as it emphasizes the fact that the **DFA** is facilitating legislation and operates alongside existing legislation and cannot **mero moto** overrule the provisions of controlling and existing legislation.

## **6.10 INTEGRATED PLANNING IN TERMS OF THE DFA AND ACT 209 OF 1993**

A complete paradigm shift away from land use control to land management has taken place. The focus of the new approach is on the facilitation of development rather than rigid planning. In this category the **DFA** has good elements with the LDOs and the role they will play in planning.

**Act 209 of 1993** also **inter alia** governs development and although land use **per se** is not involved, the process links closely to that of the LDOs. As the vogue phrase is integrated planning, it would be proper to discuss the Integrated Development Plans [IDP] very briefly at this stage.

Section 10 D(4)(b )(i) and (ii) of **Act 209 of 1993**, compels district councils to formulate and implement an IDP for its area of jurisdiction and this immediately answers the question who is responsible for the compilation and implementation of an IDP.

In section 10G of **Act 209 of 1993** it is stipulated that the duties of local authorities in respect of an IDP are as follows:

- to monitor regularly and assess its performance against its integrated development plan; and
- to report annually to and receive comments from its community regarding the objectives set in its integrated development plan (section 10G (1) (f) and (g) of **Act 209 of 1993**).

Further provisions that should be noted are:

- A local authority shall ensure that its budget is in accordance with its IDP (section 10G(3)(b)(ii) of **Act 209 of 1993**).

- A municipality shall compile capital programmes including an investment programme, having due regard to the IDP (section 10G(3)(c) of **Act 209 of 1993**).
- A financial plan must be prepared in accordance with the IDP in respect of all powers, duties and objectives of a council (section 10G(1)(c) of **Act 209 of 1993**).
- A municipality shall only incur expenditure in accordance with its approved budget (section 10G(4)(a) of **Act 209 of 1993**). This stipulation links with section 152(2) of **Act 108 of 1996** where it is indicated that a municipality must strive, within its financial and administrative capacity to achieve its objectives.
- A municipality shall ensure that the acquisition and disposal; the utilization and control, and the maintenance of assets are carried out in an economic, efficient and effective manner [section 10G(11)] of **Act 209 of 1993**). Here the obligation of annual reporting [section 10G(1)(g)] earlier referred to, must also be borne in mind.

The general stipulations having been taken note of, the few and incomplete indications concerning who must prepare an IDP, must be looked at next. As a point of departure, attention must be given to the following:

- A district council (which is now also defined as being a local authority) shall, with the approval of the local authorities in its area of jurisdiction, formulate and implement an IDP for its area of jurisdiction (section 10D(4)(b)(i) of **Act 209 of 1993**). Then, with the approval of a council concerned, it shall also formulate, and if so requested, implement an IDP for the council (section 10D(4)(b)(ii)(aa) of **Act 209 of 1993**).

- The proviso at the end of section 10D(4) of **Act 209 of 1993** stipulates that local authorities shall have formulated and implemented their IDPs within one year after the promulgation (22 November 1996) of **Act 209 of 1993**. In theory clemency is shown by stipulating that the MEC, after consultation with the Minister of Provincial Affairs and Constitutional Development, may extend this period. It is interesting that in the Free State Province no such plans have yet been compiled and the process of compiling LDOs has begun in about June 1998.

This, however, does not really solve the problems with the time frames. In both **Act 209 of 1993** [section 10G(2)(d)] and the **Free State Province Local Government Ordinance (Ordinance 8 of 1962** section 81) it is indicated that municipal budgets must be finalized by 30 June each year.

In order to understand the complexity of the situation and the duties of some of the participants better, a brief look must also be taken at some of the legal obligations of the national and provincial governments.

Finally, an IDP is defined thus: "integrated development plan" means "a plan aimed at the integrated development and management of the area of jurisdiction of the municipality concerned in terms of its powers and duties, and which has been compiled having regard to the general principles contained in Chapter I of the **DFA** and, where applicable, having regard to the subject matter of a land development objective contemplated in Chapter 4 of that Act" (**Act 209 of 1993** section 10B).

In this definition it is made clear, contrary to some other points of view, that the LDOs are not the more important, as they form part of an IDP. The effect of LDOs is limited to the extent that only where applicable, an IDP is to have "regard to the subject matter of a land development objective" (**Act 209 of 1993** section 10B).

From the above it appears that the successful preparation of IDPs will inclusively be dependent upon consultation and co-operation. Indeed compilation of an IDP in seclusion seems impossible.

In both **Act 108 of 1996** and **Act 209 of 1993** much emphasis is put on giving priority to the basic needs of people. Determining these should therefore be the first step to be taken in the process of preparing IDPs. Bearing in mind that LDOs form part of the IDP – in other words then guiding the LDOs into addressing basic needs. When all the complexities of the legislation have been sorted out, it stands to reason that local government will have to bite the bit and make progress with the compilation of all these plans in collaboration with district councils.

The IDP and LDOs are intertwined and cannot be compiled and implemented in isolation. The bottom line of all this is that strategic management will be the answer to the results of these planning instruments.

## **6.11 PROPOSED LAND USE AND LAND DEVELOPMENT LEGISLATION**

Having taken all the aspects of structure plans, development plans, IDPs and LDOs as well as the existing legislation into consideration the opinion is held that each province should have its own legislation as it has its own unique circumstances.

It is stated in the preamble of the **DFA** that it was instituted **inter alia** to speed up the delivery of residential land in the country. However, this is only one side of the coin, the other side is control and how control should be exercised. The following sections will juxtapose development and control. The aim is to indicate that both elements are necessary to have a successful local government and proper land use planning and management.

## **6.12 NECESSITY TO CONTROL AND DIFFERENT MEANS OF CONTROL**

It is important that the different methods of land use control should briefly be discussed in order to provide a background against which the proposed methods can be compared later in this thesis. Control in so far as it pertains to land use can take on various forms. However, the basic element is that land should be used in accordance with certain conditions to ensure that not anything that can be a nuisance or hindrance takes place on the land.

### **6.12.1 Conditions of title and establishment**

When a township establishment is approved certain conditions are attached to the establishment and certain conditions to each erf. The Township is normally subject to certain restrictions regarding mineral rights and other general conditions pertaining to the entire township, for instance access routes that are either denied or restricted at certain points.

Another set of conditions is attached to the different erven and these conditions restrict the use of each erf. In this case the conditions are perpetuated to each Deed of Title and this ensures that the specific erf has a particular use. The general purpose of these conditions is to establish and retain the specific character of the neighbourhood where they apply. Encroachment of rights and privileges on erven has to be regulated by conditions should no town-planning scheme be in operation (Van Wyk 1990:38).

Ownership entails that certain conditions have to be tolerated as limitations, for instance the fact that only one dwelling is permitted on a portion of land, have an important role to play in the regulation of land use and the orderly method of functioning in the community. Ownership includes various rights and benefits, but

also restrictions that a person must accept that to live in a certain area entails all sorts of restrictions limiting the ownership (Van Wyk 1990:37).

All these restrictions can be regarded as an infringement on the rights of ownership as **carte blanche** is not enjoyed with ownership. However, the effect is not all negative, as the imposition of certain restrictions can safeguard ownership in the manner that no owner can do as he wishes on his property. The protection of adjacent owners go even a little further as a violation of a condition can be enforced against an offending owner while objections can also be raised should an owner attempt to change the conditions (Van Wyk 1990:38).

It is often found that owners make use of their properties contrary to the conditions registered in their title deeds. This has the effect that encroachment on rights of the neighbours and other residents in the town take place. Should a person become aware of the infringements then legal action may be taken against the perpetrator as both statutory and non-statutory measures exist to enforce compliance with restrictive conditions. However, before a person can engage in legal action it must be determined whether the person has **locus standi** that may pose problematic. Courts are fairly strict as to who can be granted standing to sue, but if the decisions that deal specifically with restrictions are examined then it is found that a definite principle emerges. This is that if the restrictions are imposed in favour of all the erven in a township each owner has **locus standi** to enforce the conditions against any of the others. This principle is based on the nature of restrictive conditions where owners of erven are mutually and reciprocally bound by the conditions (Van Wyk 1990:39).

When a person has established his **locus standi** he has a number of avenues to explore in order to correct the violation. The best option is to have an interdict brought to the court against the owner who violates the conditions; the interdict can also include the township owner or the local government. This may be temporary or permanent.

Although the conditions may vary in origin, construction and nature the end result is to achieve a specific goal for the area (Van Wyk 1992c:280). These conditions sometimes constitute common law and sometimes praedial servitudes. These aspects are extremely legalistic and fall beyond the ambit of this thesis, therefore, to go into the extreme legalistic aspects here will serve little purpose. Suffice to say that the conditions constitute restrictions on the use of the erf and should be removed if the use is to be changed. [More detail about this aspect will be given in Chapter 7 **infra**] These conditions constitute real rights and prevail even if the provisions of a town-planning scheme are in conflict with them (South African Law Commission 1985:7).

### **6.12.2 Annexure F**

Annexure F used to form part of the **Black Communities Development Act, 1984 (Act 4 of 1984)** and served as a kind of town-planning scheme for the particular erven. The layout plan indicated the different uses for erven and the Annexure F then designated specific uses to each kind of erf. However, some general provisions are also incorporated in Annexure F and the municipality is also given the authority to grant consent uses within specific zonings.

When **Act 4 of 1984** was repealed this Annexure F was excluded and is still in force today. It is used for township establishment in terms of **Act 113 of 1991** which means that the conditions simply state that Annexure F is applicable to the categories of erven established.

### **6.12.3 Land zones**

Land zoning originates when a town-planning scheme is compiled and promulgated in terms of the **Ordinance 9 of 1969**. Specific use zones are allocated to each erf and these, together with general restrictions, then control the

use of the erf. Within each category a number of uses are primary uses and with the consent of the municipality certain secondary uses can be obtained as consent uses. Land use is not necessarily regulated by legislation, but zoning is regulated and this of course leads to the particular use of land. The town-planning scheme as the control document, should keep pace with changes in development and policies as cities are in a constant state of flux. Urban areas are dynamic and this is based on three principle forces (Colenutt & Hamnett 1982:12):

- Users of land and buildings. The users are the people who require and demand. One can view whichever sector of planning, but these users beat the tune. Each group plays an important role in the use of land and property and to complicate matters their demands change as technological and sociological changes take place. New buildings with new requirements are needed and these have to be located in the right place in order to meet the demands of the users. The location again reflects the activity of the user, the income of the firms and households and their need to be close to, or far away from, the end user. Depending on the particular desires of the people, the location will be determined.
- Property development industry. Land-owners and development control the supply of land and normally land in the inner city is more expensive than that on the outskirts. This is mainly due to the fact that "inner land" is closer to the CBD yet also within easy reach of other neighbourhoods. Financial institutions are also an important factor to bear in mind as they determine whether or not a developer is financed. The location of the development is of importance to the financial institution.
- Planning system. The planning system is an important aspect of the entire development of towns and cities. The municipality should see to it that the land use plans are property-active and not relying only on the

town-planning scheme as a planning and control document. Changes in land zoning in order to accommodate the desired and permitted land use should be carefully considered and where it becomes evident that a development node is imminent, then all consequential aspects and land zonings should be taken into account.

#### **6.12.4 Town-planning scheme as a control instrument**

In order to correct the spatial segregation of the urban areas mixed uses can be employed especially in certain areas, for example residential areas and commercial uses may be mixed. This manner of planning can bring new life into an urban area. It can also curb crime as people are moved into commercial areas and people presence is experienced at night. Towns can be much more resourceful and yet contemporary towns have developed with densities and patterns which leaves much to desire as far as resourcefulness and resource conservation are concerned. Towns are about bringing people together and to make it a sustainable entity (Elkin & McLaren 1991:45). It can be concluded that it does not help to obtain development for offices, as an example, and then the town-planning scheme does not make provision for offices. The development will then not be able to establish itself unless the town-planning scheme is first amended. In short, the town-planning scheme should be kept up to date with the proposed development otherwise the two documents will operate in different directions.

The dynamics of a town-planning scheme is an important aspect as the entire purpose of development can be defeated should the town-planning scheme and the development planning not proceed **pari passu**. The planning and development process comprises a number of protagonists. These protagonists and their roles are indicated in diagram 6.1. It should be noted that all protagonists in the end meet at the local authority and that is where the current planning hub is located. Although no local authority as yet has decision-making powers in the Free State Province it is still the sphere that has to provide goods

and services to the community. Development and planning is part of the competency of local government and should be dealt with at that level even if the decision-making function is at provincial level.

In diagram 6.1 it can be seen that different actions, such as a flow of information among the various departments, have to take place and various people have roles to play in the process of planning. Each local authority will have its own method of going about this as circumstances are not the same at all local authorities, but this is a basic model of the process.

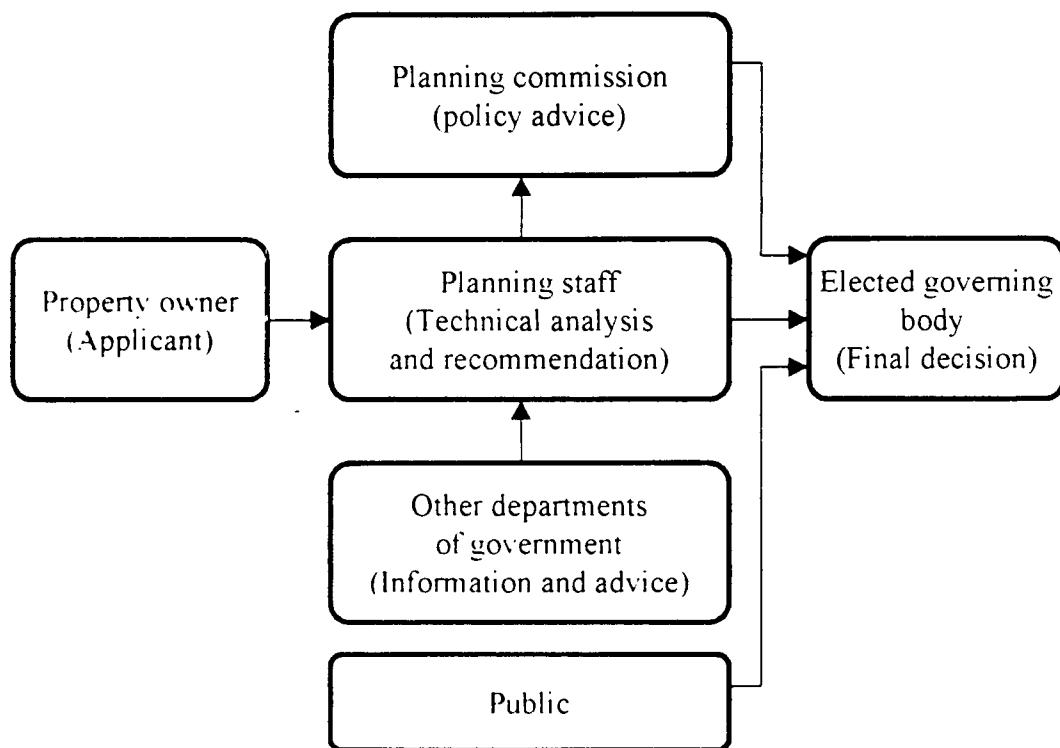


DIAGRAM 6.1

LAND USE REVIEW PROCESS (Sawicki 1988:241)

### 6.12.5 Limitations of a town-planning scheme

A town-planning scheme cannot provide a comprehensive and co-ordinated approach to solving urban problems and it cannot be allowed as a replacement for

more and better planning. The town-planning scheme is a control document and controls land zonings and does not direct it (McClelland & Quay 1988:142). A town-planning scheme is often incorrectly regarded as a planning document, but it is a control document with planning and development control measures and not planning and development features.

Before the rezoning of land can be discussed it is essential that it be understood that zoning is a means to ensure sound planning which everybody wants as opposed to poor planning or worse, land use that no-one wants. Sound planning in turn indicates or leads to development whereas poor planning may lead to development, but not to sound and steadfast development (Allensworth 1981:11).

Zoning, as in a town-planning scheme, however, is not a static end to a planning process, but is a process in itself as it has to adapt in terms of area and provisions as planning and development documents indicate how development takes place. The town-planning scheme should only be the control document of the plan brought about by the planning process, but then land uses cannot be static as the planning constantly changes and uses should adapt in order not to stifle development initiated by planning (Stein 1995:139).

As an example it can be mentioned that in the Black areas no provision is made for parking at business centres. If provision is made then it appears to be inadequate when compared to the provisions in town-planning schemes governing land use in White areas. Residents in the Black areas are becoming increasingly mobile and car ownership is also increasing dramatically. Provision will have to be made in this regard and it is an aspect that should receive urgent attention otherwise the entire planning system could be defeated when no, or very little, parking is provided. Likewise, in the older town-planning schemes inadequate provision is also made for parking at businesses in the White area. Development of the towns now take place and the provisions are so outdated that it actually

stifles the development instead of assisting it (Ladybrand town-planning scheme number 1 of 1976).

The possibility also exists that control measures such as particular land uses are wielded as tools to implement strategies that are impossible as they ignore the market realities. As an example the minimum extent of erven cannot always be afforded by all and this forces people to settle informally, either in backyards or on vacant land. Market forces should be recognized and taken into account. It is very important that the control measures should be applied as control measures and not to be used as planning documents or plans (Mattingly 1993:113). In other words when the specific land uses are indicated then the uses are enforced as the particular uses. The zoning can be different as this is a feature of planning. The distinction of the different documents should always be borne in mind and not be confused; especially in the current situation where LDOs are regarded as the development and planning document. This will result in a distinction taking place between the town-planning scheme and the LDOs where the former will control while the latter plans.

When compiling and applying a town-planning scheme it is important to realize that a rigid and compartmentalized town-planning scheme has several negative implications for penurious towns, especially in the present situation where poor transportation systems exist (Njoh 1995:345-346). This means that the land is so rigidly controlled and uses are compartmentalized to such an extent that mixed uses do not feature. When a town-planning scheme is so rigid then uses cluster and travelling distances tend to be greater and in the majority of towns this poses a problem for the community.

It must be remembered that development cannot take place in an unbridled fashion as control has to take place and stay in pace with the development. Development control should receive attention, as should the legislation to

accommodate the changing circumstances and means of planning. The statutory system governing the development control should be revised and updated and also adjusted to provide for the development and then to control it in such a way that it remains a viable prospect. The scope of value judgements should receive attention as this point of view deviates from the previous set of judgements where the spatial aspect received paramount attention.

The control of development has some limitations and a major one is that it is a slow way of going about the control. In the process it often appears that some elements stand in favour of the transgressor. Enforcement should be quick and effective and for this the law must be simple and focused (Town and Country Planning 1967:9).

Growth should not be delayed or frustrated and the provisions of the town-planning scheme must be broadened, both to take advantage of variables and changing circumstances and also to incorporate other elements of planning, like transportation systems (Town and Country Planning 1967:10).

#### **6.12.6 Role of land use in decision-making**

One of the key factors that a decision-maker should be aware of is how to evaluate all the influences on and about land use and development and consider all areas of uncertainty associated with each consideration. The quality and quantity in delivery should be considered against the planning background. It must also be borne in mind that planning control is the executive arm of the entire planning process. The development may take place, but if no control can take place then the development cannot be successful in terms of being in the public interest and also complying with all the planning principles. The quality in the planning system could easily neglect issues such as needs, values and judgements and the decision-maker should guard against this as these issues cannot be

divorced from the planning process (Tewdwr-Jones 1995:166-167). The aspects of public interest and interest of the area along with trite planning principles and the principles of the **DFA** are of great importance and although the LDOs are the initial planning document, the zoning of a particular erf should also adhere to these features. When the land use is changed then all these aspects have to be taken into account and have to be addressed.

A number of the land uses relating to the locality of land is the work areas, the residential areas, shopping and recreational areas, the community facility systems and the environmentally critical areas. Land use planning should take these features into account and integrate them with those for other planning aspects such as transportation and social economic aspects. When the town and the planning thereof is considered in a holistic manner then pro-active and anticipatory action planning can take place. It must be remembered that a town is not something that can be delineated into compartments and it is essential that it should be planned, structured and managed as a whole (Chapin & Kaiser 1979:366). All planning and development should take into consideration what is best for the public, the area, the town-planning scheme and the related features such as the environment and transportation system.

In the decision-making process, on the way to establish a policy, a number of protagonists, such as the planning team, local authority and community based organizations, have to take part. Political parties interact with technocrats and interest groups state their demands. Somewhere from these opinion makers decisions have to be reached and in diagram 6.2 this process is schematically depicted. In the diagram it can be seen how the process works and where the different processes lead to in the end. It is important that these processes should take place in order to obtain a well-informed decision. Yet again it can be deduced that no compartmentalization can be allowed as the process will be weakened.

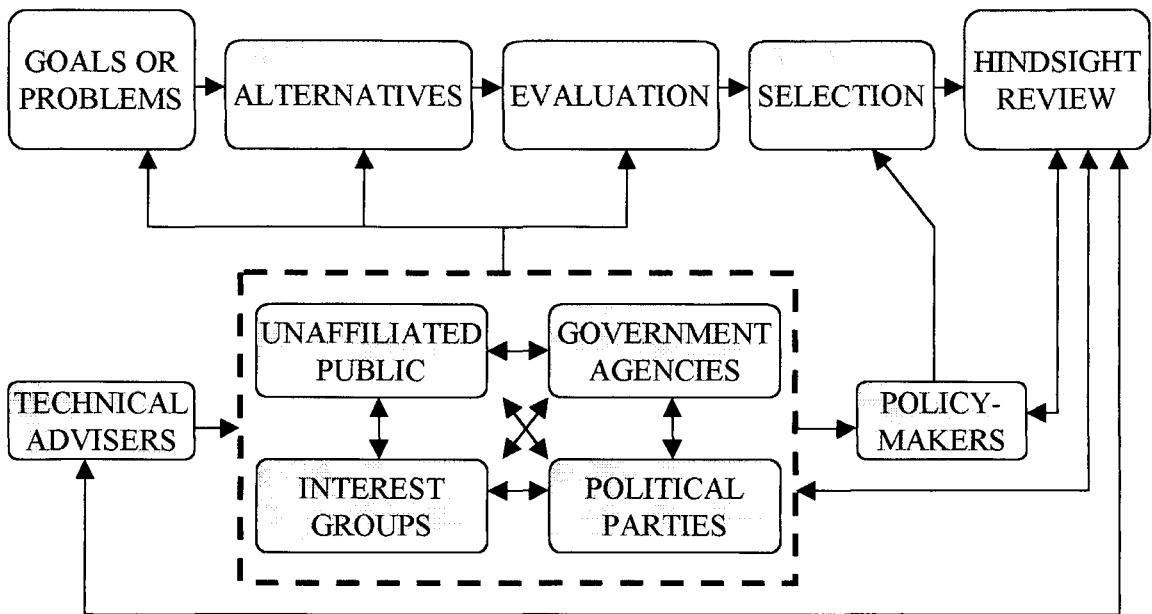


DIAGRAM 6.2

PROTAGONISTS IN DECISION MAKING (Sewell & Coppock 1977:9)

The integration of towns is of importance as access to more opportunities will be available and this will hold benefits for all elements of development and not only spatial planning. Actions should be taken to provide opportunities and facilities closer to towns as this will assist in transforming the towns and integrate them into one whole (Harrison **et al.** 1997:45).

As part of the integration of land uses offices and businesses play major parts in the process of integration. Office and business development can be undertaken in the former buffer zones and these developments will then not only take up the spatial area, but will also provide job opportunities close to the "different" residential areas. What can also happen is that offices should increasingly move to within residential areas and that office parks should be established in residential areas. An example of a very successful development of this kind is the Woodmead Office Park in Sandton. The design is excellent and the prices paid to have an office there are indicative of the success of it. The residential area is also not adversely affected – on the contrary (De Swardt 1998:Personal interview).

At present developers are reluctant to develop in the former Black areas mainly as a result of the high crime rate. However, interface development should take place and this will enhance development and also form vital integration opportunities. Activity spines can be developed from the White area into the Black area and in so-doing the interface development will cause the integration of businesses and this will eventually lead to the different towns becoming one whole unit. One of the basic elements that must be kept in mind is that these activity spines will have to be developed carefully in order to ensure the viability. Distances are of utmost importance and if these distances are too long then the development will not work. Transportation systems should also be well developed and accessibility should receive attention as these aspects could torpedo development if not resolved in the interest of the people who are targeted to use it (Harrison **et al.** 1997:46-52). Compact cities have great advantages as it reduces the impact on the natural environment around it and leads to which create better visual identity. The compact city is also better suited for pedestrians and is an all round saving system as transport systems are more efficient and money and time are saved where transportation is concerned (Goodchild 1994:152).

## **6.13 STRUCTURE PLANS AND LAND DEVELOPMENT OBJECTIVES AS INSTRUMENTS TO ACCOMMODATE DEVELOPMENT**

In the process of compiling structure plans<sup>1</sup> the local authority will have to exercise effort to change and these changes will determine the level of development in the area. The **raison d'être** lies within the workings of the community and the relationship between the authority and the residents will also determine how much intervention by the local authority will be tolerated and at what level. The objectives of the local authority as set in planning should be as the needs and desires are perceived and should be directly related to the

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<sup>1</sup> Structure plans in this section are equated with LDOs and **vice versa** as the issue is mainly to discuss a particular document that should guide planning and development.

community as the local authority cannot exist to serve its own ends (Solesbury 1974:43).

As it has been concluded, development cannot simply take place and no instrument exists that can control it. What would happen is that neither the traffic, nor parking facilities, nor height and coverage or bulk, nor sustainable planning will be adequately addressed as the developer will try and make as much money as possible in such a brief period as possible.

In the past the only real statutory planning documents were the structure plans in terms of the **Physical Planning Act, 1991 (Act 125 of 1991)**. In order to be statutory binding these plans were set in terms of **Act 125 of 1991** and then it had to go through a particular process which is not of consequence for this thesis at present. Most of the time, however, structure plans were compiled without following the set procedures prescribed in **Act 125 of 1991** and then these plans were simply non-statutory guidelines with no binding force. In order to expound on the advantages and disadvantages of structure plans it is necessary to cite some research results. Structure plans have been called by many names throughout the world, but basically they are the same plans and documents with minor differences and variations as for example the process to be followed and the manner in which public participation takes place. In short the contents and emphasis were usually the only differences.

When compiling structure plans it is essential to take note of planning as a holistic phenomenon. It would always be advisable to develop a neighbourhood environmental vision and set priorities according to the **SMART** (**S**pecific targets, which are **M**easurable, **A**chievable, **R**ealistically attainable within resources and **T**ime limited) procedure linked with a **SWOT** (**SW**eaknesses, **O**pportunities, **T**hreats) analysis (Selman 1996:107). These are instruments to identify prospects and needs and then according to which correcting measures could be taken.

Structure plans should embrace more than merely a land use plan, but the question is – how much more? If the structure plan is one of a number of policy plans and one of a special kind, then it can occupy a pivotal position that gives a summary on spatial and location aspects while encompassing aspects from other plans (Bruton 1974:58). Development plans should provide the framework within which the criteria for making decisions are established. In principle this means that a strategic and long-term approach should be established in order to manage the area by the flow of development objects and the co-ordination among the various aspects such as decisions on land use and the development of projects (Healey & Shaw 1993:769). These are indicative of what is really needed in terms of planning and development as identified aspects can be addressed and the plan can focus on the places where improvement is necessary.

When compiling structure plans an explicit effort should be made to identify criteria for sustainable development and then to include them into the decisions regarding the scale and location of the proposals (Blowers 1996:33). In order to have an effective plan the implementation must be possible; it is incorrect to regard the implementation and the planning as two different processes with implementation coming after planning. The plan and the implementation must be feasible and the two processes have to react to and be in harmony with each other in order to be effective and feasible (Hack 1988:207). One of the most important aspects now needs addressing, **viz.** implementation. It serves no purpose should a wonderful plan be compiled and it cannot be implemented. The end result of a plan must be as feasible as the process followed in compiling the plan.

The structure plan should provide the municipality with some foresight as the municipality ought to know where it is going in so far as planning is concerned otherwise hap-hazard and **ad hoc** planning will be the result. The planner together with the public should be able to create opportunities and ensure that planning should not merely respond to what the market wants or dictates. This

will ensure that the expansion and development will be according to a pre-determined plan where all relevant aspects of the planning in the particular area have been taken into account. In short the entire planning, economic and social spectrum of the town should be evaluated and in each aspect the public should be consulted and then projections should be made not only concerning growth, but also indicating what should happen where (Hack 1988:210).

The objectives of the policy attached to the compilation of the structure plans may not be firmly fixed at the start. It may also not be possible to determine those discriminatory objectives which are to be sought without some knowledge of the likely results of alternatives which may attain them, and on the other hand few mandatory objectives or constraints are absolute (Solesbury 1974:141).

Structure plans should indicate the direction headed towards in so far as land development is concerned. In diagram 6.3 this process is set out diagrammatically. The relationships between the three important components to take into account are the relationship between policy framework plan and the later plans, problem solving and land use management. These components should act together and in close collaboration as the entire structure plan process depends on the success of these relationships. As can be deduced from the diagram, planning needs to relate to policy and then to classification, design and management. The structure plans should then take into account the goals and objectives as well as the particular prevailing circumstances.

It is also evident that the entire process is again cyclical and the one element flows into the other while some flow in both directions. Yet in the end, land use management is the pivotal element where all the different elements merge and where the emphasis is on what is called in the diagram "advance planning". It can be concluded that the LDOs in the Free State Province will fulfil the role of the structure plans and that these LDOs will have to conform to the direction setting and flow of planning as set out in the diagram.

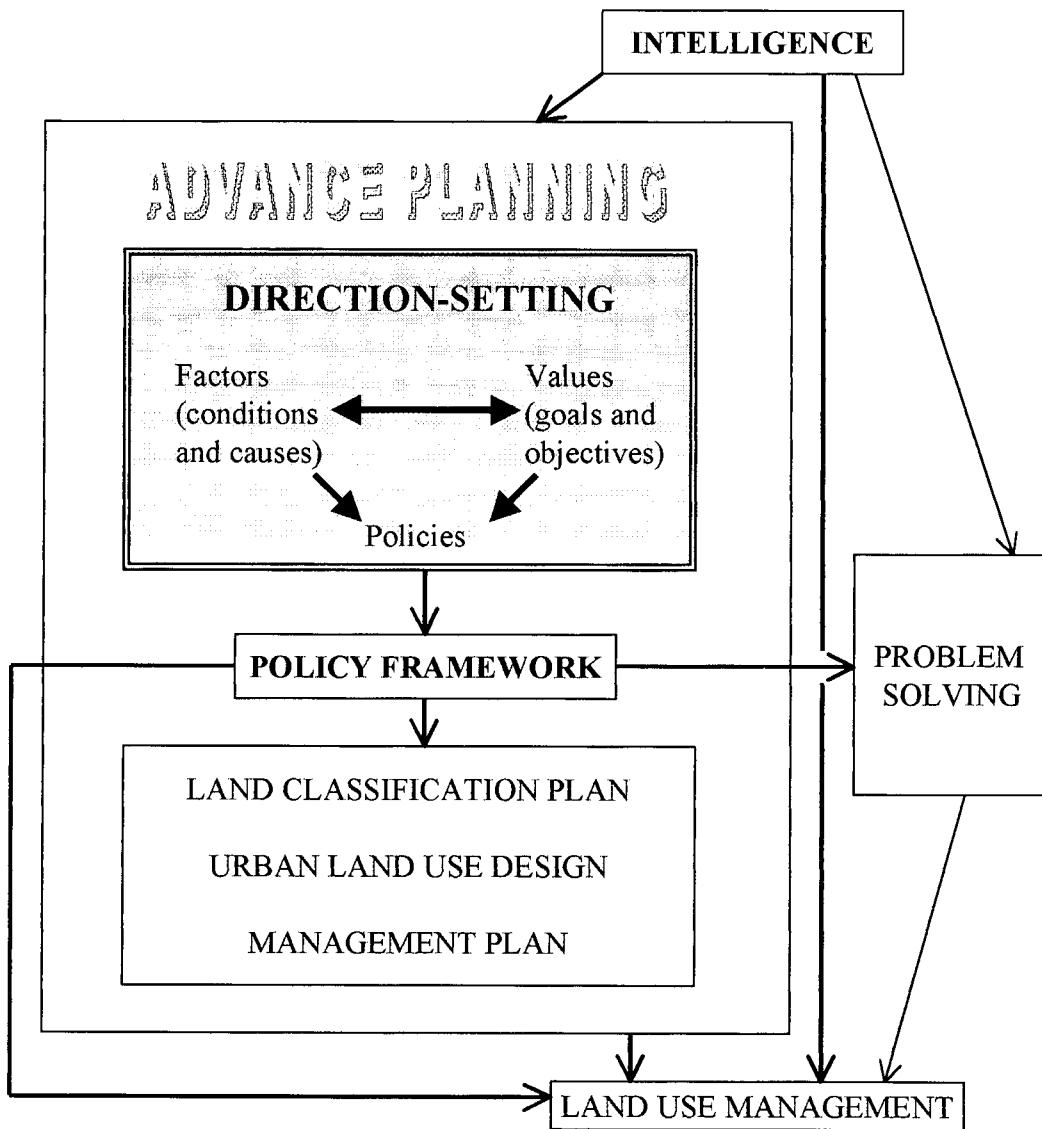


DIAGRAM 6.3

ROLE OF DIRECTION SETTING IN PLANNING (Kaiser et al. 1995:258)

In the compilation of structure plans and the evaluation and assessment incentive zoning should be a result of the indications in the structure plans. This means that should a specific area be designated for a particular use then the appropriate zoning should be given to the area. A developer, when interested in the land, can then acquire it and need not wait for rezoning to take place prior to development.

taking place. It is a fact that incentive zoning has reinforced the fact that regulations cannot be a replacement for plans, but they can be a powerful tool for the implementation of plans (Hack 1988:212). As a consequence of this the town planning schemes will have to be adapted to make provision for more development friendly provisions as a control document and should not be a rigid control document as at present.

The structure plans should be pro-active and the need for creativity and innovative ideas cannot be stressed enough. Analytic plan making should take place and the structure plans should be orientated to problem solving and should at the same time also anticipate the future needs. Instead of addressing the isolated salient features the co-ordinated and interaction of several problems should be addressed in an integrated manner (Chapin & Kaiser 1979:71). The emphasis in this is that a structure plan is a planning document indicating more than the minute land use on particular erven; which is the task of the town-planning scheme. Policy relating to the structure plans should include (Chapin & Kaiser 1979:71):

- A definition of objectives as ends.
- The devising of alternative actions as means to those ends.
- The prediction of the likely result of those alternatives.
- The comparison of those results.
- The decision on a preferred action.

In executive decision making this sequence is of importance to the existence and nature of policy itself. Policy expresses norms indicating relations between variables that are conducive to the attainment of not only political objectives, but the entire spectrum of planning (Solesbury 1974:140).

A structure plan can be regarded as a process rather than a rigid blueprint and this entails that it is flexible and dynamic. The accumulated data are not necessarily part of the plan, but an antecedent. Subsequently it is necessary for

the compilers of the plan to set goals, take decisions and take action in order to have any practical influence on what affects these have on land (Stein 1995:109).

Land management in so far as it relates to the entire sphere of development and sustainable urban development, also taking into consideration the unique features of urban systems in the Republic of South Africa, is not merely the eradication of a racially based development process. This process previously catered only for White areas and must now be re-directed to include the previously unmet needs in the Black areas.

It is a strategic framework that approaches the planning process in its widest sense in a totally different manner. The different socio-economic communities and the ecological objectives have to be married and integrated and this is a great challenge for government (Swilling **et al.** 1997:189). Especially the planners will have to guard against the development agenda being clouded by simply an attitude of removing racially based planning or at best redistribution. This should take place, but planning is more than this and if only this happens then the risk is run that people will be unable to catch up with a fundamental paradigm shift that is taking place in the rest of the world.

Traditional images of the planner and planning process need to be destroyed or defined very differently in order to provide for land management in its widest sense and not only planning and development. Planning is not a design process only, but a total process of planning and development that includes a list of other disciplines such as traffic and environment (Fair 1965:39). In combination with the image of the planner structure plans should also adapt to face the challenges of the particular circumstances and the LDOs **in casu** should address the challenges and in so-doing set goals for each specific town taking into account the particular circumstances.

Development should be seen in a wider context of nature's carrying capacity and this has to be determined and analysed. Development is not merely building and

expanding irrespective of the environment, but taking the environment into account and paying heed to conservation. Hitherto many of these aspects have been taken for granted, but this may not continue. A new way of looking at matters will have to include the empowerment of people by information as knowledge equips people to take part in development in an effective fashion (Swilling **et al.** 1997:190). This is easier said than done as the formerly deprived people will have to be educated in a manner to enable them to accept that they are part of the holistic planning process. The entire community will also have to be encouraged to be aware of their rights and obligation to contribute towards the welfare of their area.

Land use planning combines analysis of uses and influences, synthesis of the influences and consensus where all the aspects are linked in harmony in order to set a plan acceptable to the community. On the analytical side the quantitative and statistical aspects are concentrated on while on the synthesis the methods are mainly qualitative and design based. The consensus formation comprises methods such as adaptation and review and these are primarily based on interaction and on conflict management. All these aspects have to be implemented and achieved within the milieu of change and turbulence. The following characteristics of turbulence can be identified and should be kept in mind (Kaiser **et al.** 1995:36-37):

- Accelerating rates of change.
- Increasing scale of perturbations in conditions.
- Continuing sense of crises.
- Frequent and complex problems that interact with normal strategies.
- Increasing time spent on unanticipated consequences of the above.

It stands to reason, therefore, that the planner of today acts in difficult circumstances and has to contend with much more than previously. Continuing changes in the client communities by way of growth and decline not only complicates the environment in which the planner has to work, but these and the

sociological changes that take place rapidly necessitates regular monitoring and interpretation (Kaiser **et al.** 1995:36-37).

Policy making, regarding the compilation of structure plans, calls for a response from the government that cannot easily be related to the existing operational policies (Solesbury 1974:139). Purposefulness and decision making in its entirety therefore rest on the process by which policy norms are determined, the process of policy making and review. In some policy making the requirements of rationality and purposefulness may be relatively easily satisfied. For example, where policy relates to one element in a system, such as the location of a highway route or choosing between a slower or a faster rate of housing redevelopment in an area, the objective may be known, but the estimated result is still unknown (Solesbury 1974:141). The policies controlling the structure plans should be development related and form part of planning. Policies cannot function independently and not take into consideration the effects of land management.

Policy analyses are of paramount importance in the planning process. In the circumstances experienced at present and the inherited distortions of the urban areas all policies have to be analysed on a regular basis and then adaptations should take place. Diagram 6.4 indicates the process of analysis and also who participates in this as each protagonist has a particular role to fulfil. It is important to follow a pattern when analysing a policy as the correct decisions have to be taken promptly. A policy cannot simply be reviewed for the sake of review, but has to be reviewed in order to improve on it somehow. In order to improve it all the protagonists should participate and the alternatives of each should be analysed before decisions are taken.

What appears from the diagram is that policies should not only be established and then forced upon a process, but policies should take into account different and changing circumstances. It is also apparent that alternative policies should be in place at an early stage of the process. This links up with strategic planning where

it is essential to counter problems and obstacles not by reacting, but by having alternatives in place so that the process need not be interrupted by problems.

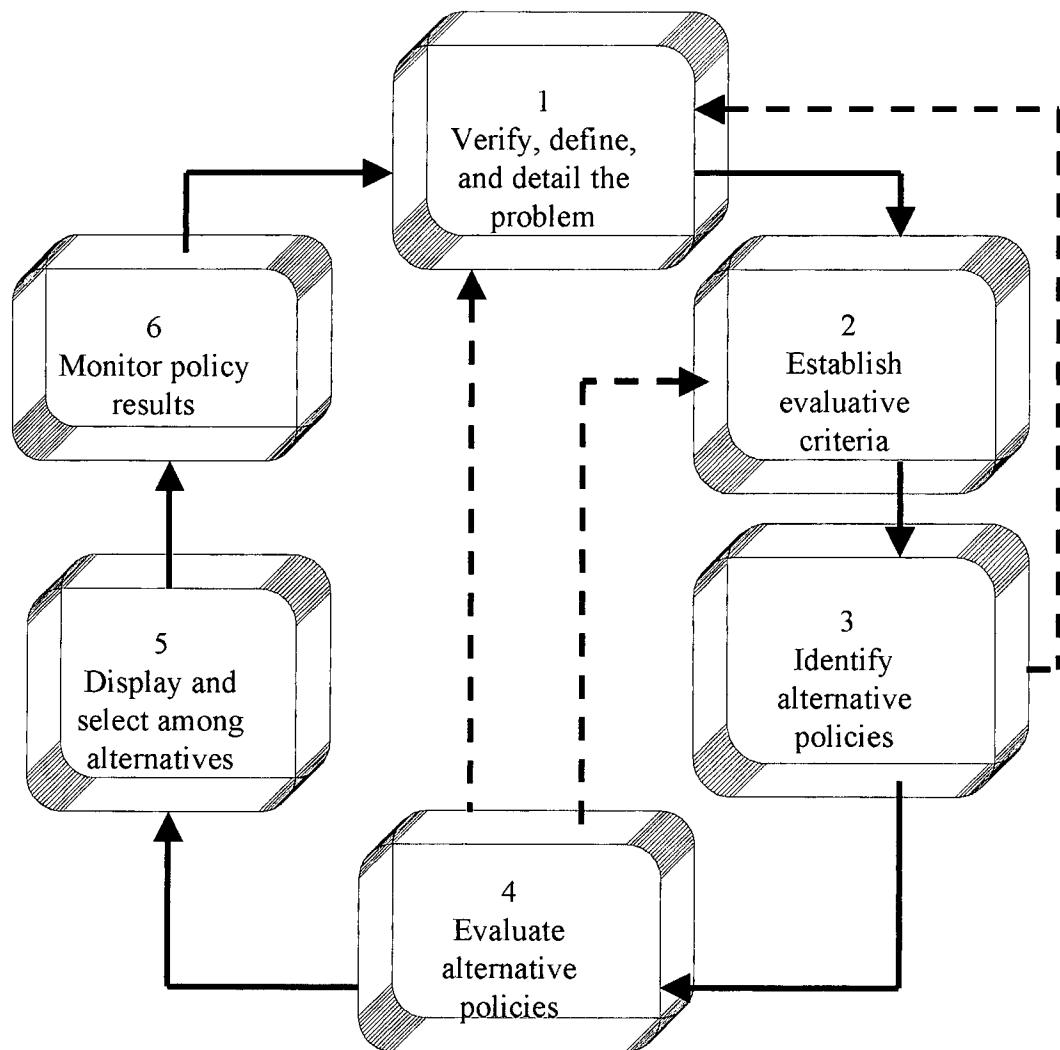


DIAGRAM 6.4

BASIC POLICY ANALYSIS PROCESS (Sawicki 1988:57)

When it comes to strategic management one of the principle goals is equity planning and rooting out inequality. In doing this, the ability of traditional planning is challenged in order to get to the roots of poverty. Strategic planning now has to be undertaken and the challenge to traditional planning is the

inflexibility and rigidity of this kind of planning that does not go far enough to deal with the unfair position of the towns. Strategic planning, therefore, is of the utmost importance as a new model of planning. The appeal of this mode of planning is that it focuses on specific tasks rather than the often vague and broad objectives of the traditional manner of planning (Campbell & Fainstein 1996:261-263). Ordinary planning along the traditional planning principles cannot succeed and the principles laid down by the DFA should also be addressed.

Developing cities have their own unique way of developing and structure plans have not been very successful. One of the major reasons is that it is too slow as it is based on medium to long term planning while in the Third World cities the only important decisions are those that can be enforced immediately and controlled in a simple way (Balbo 1993:23). The spatial fragmentation at urban areas and the difference in service standards which is encountered in the Republic of South Africa requires planning at the level of overall planning otherwise the spatial distortion will never be corrected. Urbanization is so rapid that mastering urban spatial systems is becoming increasingly difficult and in order to manage this phenomenon some kind of "master plan" or structure plan is necessary. The structure plan as an instrument of planning should not be thought of as a once off exercise, but as an on-going process. This is essential as the urban area never stops changing and developing and the plan should indicate progress as circumstances change and changes take place (Balbo 1993:29). Structure plans had been neglected by local authorities because they were regarded as cumbersome and the community did not really take note of them as the plans were regarded as being "forced" upon them from government at all spheres.

Urban planning should be comprehensive and on a wide scale and should be collaborative and involve lead agencies. Detailed action plans should be compiled together with all the other plans like strategic and management plans. Assessment and monitoring must constantly take place in order to ensure that adjustments could be made in good time. The interest of the community should always prevail and be taken into account with all plans. Transportation, social

welfare, job opportunities, businesses and all other parameters and features should be included in the urban plan. An element that should permeate throughout this planning process is the integration of features and the mixed land uses (Alden & Romaya 1994:440). The only way in which the different urban areas can be integrated and the urbanization accommodated is by strategic planning based on the principles of integrated planning and mixed land use.

Mixed land uses that are compatible with one another should be promoted in the structure plans as this introduces a residential population into areas predominantly used for other purposes like commercial and light industrial uses. When uses are mixed it can lead to development in a way that architecturally valuable buildings can be preserved as, for instance, offices. If the use had been for residential only then the maintenance of the old houses would have been too much and they would most likely be demolished, however, if the house can be turned into a viable proposition then it can be retained (Goodchild 1994:151). In short, the mix of uses should always be, and only be, considered if the uses are reconcilable with each other and if the uses will not cause an undue nuisance factor to the area.

It must be borne in mind that not only the land space should be mixed, but space above ground level can also be mixed. This, for instance, can take place where business uses, commercial uses or even light industrial uses are at ground level and residential uses above ground level. When uses are mixed like this, one does not find that areas are drained either during business hours or after business hours (Goodchild 1994:152). Mixed uses not only curb urban sprawl, but compacts the urban area in such a manner as to ensure better and more efficient transportation systems and then also creating better use of land and most likely less influence on the environment.

LDOs should address the synergy between the forms of development and the concerns of the environment and these must be managed in such a way that development can take place in a sustainable manner (Swanepoel 1996:315). One of the major objectives of the LDOs will be to de-segregate the urban areas and in

doing this the planners, policy and decision makers will face many daunting problems of which three will have to be approached carefully (Van Ameringen 1995:39):

- The entrenched system of the segregated infrastructure systems that divide the urban areas.
- The fragmentation of governing and controlling measures for the different areas.
- The existing limitations of development agencies in respect of planning, local government service supply and land management.

In the process as described above the period for which planning is to be done demands lesser detail and results in greater uncertainties. This way of doing will merit a different approach from tactical policy; short-term policy may be more realistically constrained than long-term policy; land use and transport policy with its fairly well established theoretical base in location theory and a substantial amount of planning. In order to formulate a structure plan the following basic elements require attention, **viz.** analysis, evaluation and consultation. These three elements form the strands from which the policy is woven (Solesbury 1974:142). These policy elements have to form part of the planning process in order to achieve integrated planning.

In all planning documents the need has to be addressed as it gives rise to the programme and then an idea emerges and this has to be within context as different settings and circumstances are encountered. All stages are creative and not necessarily sequential and this complicates matters for the planner if he thinks in a linear fashion; the design and process has to be cyclical as certain features in a stage feed back into others and then adjustments have to be made (Dewar & Uytenbogaardt 1991:15). It sounds simple to emphasize the need, but this is something that changes due to changing circumstances.

One of the views of a land use plan is that it should be a guide or a framework document and that the land development plan should form part of this plan (Chapin & Kaiser 1979:63). In the present situation, however, this can be translated into the LDOs and then the development plan that is site and development bound. In other words, the LDOs will be the framework and the development plan will indicate the development on the particular site.

Chapter IV of the **DFA** provides for a real planning tool to replace the statutory and non-statutory structure plans of the past. It is obvious that the LDOs will have as a cornerstone the principles of Chapter I of the **DFA** and that a few principles will really receive more attention than others. As examples the following can be mentioned; the integration of the segregated towns, the mixed land uses and the bringing closer of the residential areas and job opportunities.

## **6.14 COMPILATION OF LAND DEVELOPMENT OBJECTIVES [LDOs]**

As the setting of LDOs in the Free State Province is a new feature in planning no formal literature exists and the following aspects are as found in policy documents and discussions among officials at the Free State Provincial Government and also from information sessions held at local authorities.

When LDOs are compiled it is essential to let the public participate in the following manner (Stapelberg 1997:Internal policy document on LDOs):

- Launch events with a trained facilitator where the basic information is given.
- Community liaison via a Councillor
- Identify local issues.
- Broadening issues (placing isolated community issues in the wider neighbourhood picture).
- Consensus and indication on plans.

In terms of section 27(1) of the **DFA**, the Free State Province MEC for Local Government and Housing promulgated regulations relating to the compilation of LDOs. These regulations set out the procedure of setting work plans for the eventual compilation of LDOs. It is not considered necessary to discuss these regulations in detail, as they are actually self-explanatory. Suffice to say that the regulations set out the procedures and again make the municipality aware of the principles and content of the LDOs and that these should be based on the principles of the **DFA**.

In the whole process of setting LDOs the traditional planning principles should also be regarded as still applicable and should not be discarded. However, a paradigm shift should take place and this must lead to the application of basic principles in conjunction with the general principles of the **DFA** and the subject matter that should be dealt with in the LDOs and set out in section 28 of the **DFA**. This paradigm shift should then again take place against the backdrop of especially the fact that integration, mixed land use and development should be promoted.

The LDOs can be regarded as the old structure plan, but embracing more than merely physical planning. The LDOs are a special kind of plan occupying a pivotal position that gives synoptic spatial and location expression to all or most of the other planning documents. The setting of LDOs is also more of a process than a structure plan as it encapsulates more features and requires a formal consultation process before the actual plan is compiled.

## **6.15 CONCLUSION**

When considering the **DFA** it comes to mind that although it has some excellent elements it also has some very weak spots. It is always very difficult to compile a universal land use act for South Africa, this has been tried several times in the past with no success. In this statement it is not intimated that the **DFA** will not

succeed, but for the circumstances in the Free State Province the opinion is held that it is too elaborate, too complicated and excessively expensive to administer.

The principles are very sound and definitely fill a niche in the system and process of development and planning. One of the main issues that administrators forget is that the **DFA** is facilitating and that the provinces and the local authorities will have to get their acts together in so far as policies and procedures are concerned. The idea is created that the **DFA** has to be implemented to expedite matters. This is not wholly true – the **DFA** and the Development Tribunal can do very little to speed up matters as it is unclear and silent on too many issues as has been stated in the above paragraphs.

The LDOs **prima facie** seem likely to be good and worthwhile documents if they are comprehensively compiled and in tandem with the town-planning schemes otherwise they will be just another document. The IDP consisting of, **inter alia**, the LDOs appears to be the major planning document, but it is in terms of different legislation as the LDOs and it places the obligation to compile it on the District Council, while the LDOs are compiled by the local authority. This seems to be confusing and try as the different national departments may to change this seemingly unwise legislative move; the legislation is clear on it.

Town planning is essentially concerned with shaping the future, although this does not mean that the past has to be forgotten. The problems facing the current planning process are not difficult to understand or identify, but the solutions could pose problematic albeit a great challenge to land managers to solve. The integration of the different urban areas, within a single town, with one another is one of the major problem areas. Furthermore, not only the integration of urban areas are at issue, but also the integration of different land uses keeping in mind that different control measures are in place. Mixed land use and transportation systems also all have to merge into a whole – as a sustainable unit – development orientated; yet controlled.

Another aspect that should receive serious attention is that politicians and other opinion makers should not turn a deaf ear to land use perpetrators. These people should be stopped in their tracks as they abuse the town-planning schemes and conditions specifying certain uses. This is not a problem that cannot be addressed with current legislation as the instruments and power exist, but the will to do something about it is lacking. The best legislation ever cannot operate efficiently if it is not administered meticulously and with the necessary authority. What are also needed are clear policies stating the guidelines along which applications should be considered.

The **DFA** has indicated a direction to the local authorities and the provinces and this should be followed by preparing own tailor-made legislation and setting policies and displaying a will to develop and plan for a better future. The **DFA** has set goals and obligations to the provinces and the local authorities and these can be attained only with innovative thoughts and strategic management of land and other resources.

# **7 ADMINISTRATIVE AND LEGAL ASPECTS**

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*In my end is my beginning.*

T S Eliot

## **7.1 INTRODUCTION**

Land use and urban management are not restricted to administrative and planning aspects as all these are based in law. The issues pertaining to all aspects of land use are closely related to administrative procedures and these in turn are based in judicial principles.

This chapter will deal with some of the salient aspects that have been encountered in research and experience. In order not to commence with an issue without basing it on something will be futile, as most of the judicial findings remain the same irrespective of the particular legislation used. As the Townships Board is still in place in the Free State Province and all indications are that the Development Tribunal will function alongside the Townships Board, at least for a period, before something else replaces the Townships Board, it will be necessary to deal with the concept of tribunals. It must be borne in mind that the Development Tribunal is also an administrative tribunal and similar features as applicable to Townships Board will apply to the Development Tribunal.

Land zoning and development are inextricably linked with the majority of forces that shape everyday life and the management and control of these forces remain the keys to the successful functioning of urban areas (Kivell 1993:194).

Although the general planning and management has its own principles and rules along which it operates certain basic principles in law still apply. The decision-

maker may not really, without exposing himself, decide otherwise than advised by Townships Board. In this chapter an attempt will be made to indicate some features of tribunals and how they should operate. Although the Development Tribunal is instituted in terms of the **DFA** and other principles of consideration are now in place, the basic measures of consideration are still the same as at present.

### **7.1.1 Township establishment in terms of Ordinance 9 of 1969**

In terms of **Ordinance 9 of 1969** township establishment is considered taking the following aspects into consideration:

- The need and desirability of establishing the township.
- The suitability of the site with regard to the following:
  - = area
  - = position
  - = water supply
  - = flood water drainage
  - = soil
  - = aspect
  - = slope
  - = possibility of extension
  - = climatic conditions
  - = accessibility to rail and road; and
  - = any other physical condition which may effect the township.
- Servitudes and other restrictive conditions on the land.
- Whether the area is proclaimed mining land.
- The allocation of areas within the township **viz.** residential, commercial, industrial zones.
- The conditions which should be registered if the application be approved.
- The regulation and/or prohibition of subdividing erven.

- The minimum size of erven, regulation of building lines, open spaces around buildings, height of buildings, use of buildings. (If a town-planning scheme is in operation this comments upon it and this condition will be of little or no value).
- The necessity of including sewerage and drainage conditions in deeds of transfer (section 8 and the regulations of **Ordinance 9 of 1969**).

As can be seen the essence is that the interest of the area and the community is taken into account as all the issues are related to this and if the application does not comply to these requirements it will not be approved.

### **7.1.2 Subdivision and alteration of the general plan in terms of Ordinance 9 of 1969**

Here the decision-maker has to be convinced that the application is "... desirable ..." and "in the interest of the development of a township, or in the public interest ..." (section 18 of **Ordinance 9 of 1969**). As can be seen the public is again the central issue and the applicant has to prove the benefits to the public and the area (township).

### **7.1.3 Town-planning scheme compilation and amendment in terms of Ordinance 9 of 1969**

Section 25 of **Ordinance 9 of 1969** expounds the purpose of a town-planning scheme and although this section has been quoted earlier in this thesis it is important to look at the features carefully and it, therefore, is quoted again.

"A scheme shall have for its general purpose the co-ordinated and harmonious development of the area to which it is to apply (including, where necessary, the re-layout and development of any part thereof which

has already been subdivided and built upon) in such a way as will most effectively promote the health, safety, order, amenity, beauty, convenience and general welfare of such area as well as efficiency and economy in the process of such development" (**Ordinance 9 of 1969** section 25).

The above provision in **Ordinance 9 of 1969** is found in all the previous provincial ordinances and this is indicative of the fact that the provisions are "loaded" with what is needed. In the previous dispensation town-planning schemes were intended only for White areas, but should the provisions be applied to all areas, as at present, it is obvious that all areas can benefit from these features. The features of a town-planning scheme capture the whole spirit and essence of controlling and managing land uses for the community.

It is of utmost importance that the town-planning scheme should be correct and kept up to date with the development taking place in a particular town. In the court case **Port Elizabeth Municipality v Wade (1973 (1) 80** a person residing in a zone "special residential purposes" conducted a blasting business from his erf. The objectors took the case to court and the fact that the town-planning scheme did not have a specific definition for "special residential purposes" was highlighted as a deficiency as it was not possible to say exactly what activities were prohibited. The word "special" may be interpreted as to widen the use or to limit the use. The result of this case was determined by the perpetrator acknowledging his transgression and the objector partly succeeded in his stopping the illegal use. However, the emphasis is on the detail of the town-planning scheme and the fact that a town-planning scheme has the force of law and should be foolproof.

#### **7.1.4 Applications in terms of Act 84 of 1967**

The change in land use or the removal of restrictive conditions in terms of **Act 84 of 1967** can only take place:

"Whenever the Administrator<sup>1</sup> of a province in which the land is situate, is satisfied -

- (a) that it is desirable to do so in the interest of the establishment or development of any township or in the interest of any area, whether it is situate in an urban area or not, or in the public interest; or
- (b) that the land in question is required -
  - (i) for ecclesiastical purposes by the owner or purchaser thereof; or
  - (ii) for public purposes by the State or a local authority; or
  - (iii) for the use or erection of any building by the State or local authority; or
  - (iv) for purposes incidental to any purpose mentioned in subparagraphs (i) to (iii), inclusive." (section 2 of **Act 84 of 1967**).

In the above quotation the public interest again appears and is set as a prerequisite for the applicant to prove before the application can be approved.

It must be clear to the decision-maker that the proposed change will be desirable and in the interest of the development of a township or in the interest of the area or in the public interest (Van Wyk 1992a:378).

## **7.2 DISCUSSION OF THE REQUIREMENTS FOR APPLICATIONS PERTAINING TO THE CHANGE IN LAND USE**

It is interesting to note that restrictive covenants and conditions of title on the one hand and servitudes on the other are so similar that the courts and many commentators confuse the two. Van Wyk (1992b:270) explains the history and application of the different elements extensively. This is a very legalistic topic and not fitting for this thesis, however, suffice to state that restrictive covenants and

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<sup>1</sup> Administrator should be read as MEC

conditions of title form a category of real rights. In this thesis cognizance is taken that in a detailed legal fashion these elements differ, but for the purpose of this thesis they can be regarded as restrictive conditions or conditions restricting the use of the land to which they pertain. **In casu** these restrictions are to be removed if the use of the land is to be changed and this is where the features covered by this document come in and these will be discussed with the emphasis on administrative procedures instead of on legal aspects. Van Wyk (1992c:286) states that conditions of establishment are not restrictive conditions in the strict sense, but, because conditions of title emanate from conditions of establishment the latter must also be restrictive conditions. This merely emphasizes the fact that for the purpose of this thesis the intricate legal aspects should not really feature.

Before the advent of town-planning schemes the conditions registered against the deed of title ensured that the land could be used for only certain purposes. This had the effect that all owners actually benefited from these conditions (**Alexander v Johns 1912 AD 431 and several other subsequent cases**). This had the result that a neighbourhood had a specific character (**R v Swart 1952 4 SA 689**) and that it could be retained by the owners (**Transvaal Consolidated Land and Exploration Company v Black 1929 AD 454 & 461 and numerous subsequent cases**). The conditions also had the effect that a developer who laid out a town entered into a contract with each of the purchasers for the benefit of a third party who are all owners (Van Wyk 1992b:287). In order to retain the particular character of an area the courts even went so far as to deny uses that would "... affect the quietness of the neighbourhood" (**Ex parte Vinkati Investments (Pty) Ltd 1965 430**).

Where a distinction can clearly be made is that servitudes are not the same as restrictive conditions. The basic difference is that with a condition we find no specific dominant and/or servient tenement in contrast to traditional praedial servitudes. The conditions of establishment are distinctly different from restrictive conditions in respect of certain erven and are thus not a burden to any other

even in the town. This is why they cannot be elevated to servitudes (**Cohen NO v Verwoerdburg Town Council 1983 (1) 334 H.** The restrictive conditions, however, can also be "taken over" by a town-planning scheme as in both cases the use is controlled and this cannot happen with servitudes (Van Wyk 1992b:282).

The process of applying to the court to have restrictive conditions removed entails an **ex parte** application for a **rule nisi** calling on persons to indicate why the rule should not be confirmed by a specific date. Should an objection be received it is fatal to the application (**Shell South Africa v Alexene Investments and Others 1980 1 SA 683 (W) 688F 691A-B**). Remaining silent will be accepted as consenting (**Ex Parte Rovian Trust (Pty) Ltd 1983 (3) SA 209 (D) 213D-E and several previous cases**) while a single objection will be regarded as a veto (**Ex Parte SE One (Pty) Ltd 1974 (4) SA 159T 159H**).

In following the **rule nisi** procedure one of the objections is that the objector has to prove the onus of the objection and this could result in costs should the court not hold the objection (**Ex parte Shnaps and Coopersmith 1946 CPD 888 and 895**).

In this whole process the issue of somebody having **locus standi** also arises. A person who wishes to object to the removal of a restrictive condition has to prove that he has **locus standi** to do so. It is stated that conditions may be enforced by persons for whose benefit they exist or operate (Meyer 1987:89); or by persons authorized to do so (**Ronnie's Motors (Pty) Ltd v Van der Merwe 1960 4 206 E and several prior cases**). In **Bamford v Minister of Community Development and State Auxiliary Services [1981 (3)]** it was ruled that "Whilst it is true that there is only one applicant (applicant before the Court and objector to the development), and he could not in law have brought the action on behalf of the public, it is obvious that he is bringing it to vindicate the rights of the public, and I consider that in assessing where the balance of

convenience lies the Court could and should have regard to the realities of the situation."

It must also be remembered that the conditions have the force of law and should be treated in this manner (numerous cases have been ruled in this manner and the following are only as guidelines: **Sandton Town Council v Original Homes (Pty) Ltd 1975 (4) 154; Palm Fifteen v Cottontail Homes (Pty) Ltd 1978 (2) 886-887**. On the converse side it must be kept in mind that the Administrator did not legislate when imposing the conditions by proclamation (**Administrator Cape Province v Ruyteplaats Estates (Pty) Ltd 1952 (1) 541 and several others based on similar principles**).

As can be gathered the legal elements in this debate are rife and complicated. Prescription of certain conditions can also take place as ruled in **Oertel and Others NNO v Director of Local Government 1981 (4) 376**, albeit that not all conditions are subject to prescription and that the circumstances may vary.

The courts are reluctant to remove these restrictive conditions as all owners in a neighbourhood benefit from the conditions as explained above. The emphasis is on orderly and harmonious planning and development (Van Wyk 1992a:371). Once it has been established that the character of an area has changed to such an extent that the purpose of the conditions has been defeated then the restriction may be removed (**Cannon v Picadilly Mansions Pty Ltd 1934 WLD 187 and numerous subsequent cases**). The courts will only assent to the removal of the conditions once it has been established that the removal will not have a detrimental effect on the rights of the other owners in the area (Van Wyk 1992a:370).

It has also been ruled that the court has no statutory power to remove a condition from a deed of title and can only do so if the consent of all interested persons have been obtained or if it can be shown that the conditions for some reason no longer exist (**Ex Parte Saiga Properties (Pty) Ltd 1997 (4) SA**

**718).** In **Ex Parte Glenrand (Pty) Ltd (1983 (3) 203 at 205)** it was ruled that the judge "... could find no authority to detract from the proposition that a party should approach the Court only after he has taken the obtaining of consent as far as he can without judicial assistance."

An interesting situation arises when a town-planning scheme is in operation and restrictive conditions are still registered in the deeds of title. Normally the town-planning scheme is regarded as the control document and the conditions are easily removed in order to have a clear title and only the town-planning scheme governing.

What often happens is that the land use changes and then the uses permitted in the town-planning scheme are "too wide" and Townships Board is of opinion that the change in land use for the immediate purpose applied for is good, but that other permitted uses should not be allowed. This is a concern as primary uses in the town-planning scheme now have to be limited. In **Chassay Bros and Another v Registrar of Deeds (1957 (4) 84)** it was argued that if the proposed conditions to be registered were more restrictive then they should not be registered and this was subsequently overruled<sup>1</sup>.

It is evident from the above that the Townships Board can restrict primary uses in certain cases, but that all cases should be considered upon their own facts and circumstances.

### **7.3 WHO IS AFFECTED AND PUBLIC INTEREST**

When the use/zoning of land is to be changed, **Act 84 of 1967** stipulates that people should be informed who, in the opinion of the Provincial Secretary (now Head of the Department), could have an interest in the intended change. This is

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<sup>1</sup> This is such an important aspect that the entire ruling pertaining to it is quoted in Annexure C.

apart from the advertisement in the press and **Provincial Gazette**. In this regard it is important to identify such parties as a court ruling states that publication in the press only is inadequate and notice to other owners in the township is essential. This procedure is to afford the other erf-holders the opportunity to state their views regarding the application and mere publication in the press is regarded as insufficient (**Ex parte Bain, 1964 (2) CPD 799-803**).

It appears that the legislator intended the Provincial Government to take trouble with the applications and identify exactly who could be affected and specifically to bring the application to attention. It is doubted that the intention was to attract objections, but rather to obtain possible comments on certain issues. The referral is not specified so it could also include government departments and not necessarily only adjacent owners or commercial competitors.

When the application is considered the "public interest" plays an essential role and this has been one of the more difficult aspects to define by Townships Board over the years. The courts have numerous definitions of public interest and it is interesting to take note of these – especially in the light of the principles set by the **DFA**.

As a point of departure it should be taken that should a town-planning scheme be in operation it should be "... designed to promote the common good and not the good of only one class or race in the community" (**Vereeniging City Council v Rhema Bible Church, Walkerville, 1989 (2) SA 142 at 143 H**).

However, orderly planning should coincide with sound town planning principles and for this reason town planners are members of Townships Board and comments from the town planners of the Department are available. When in doubt Townships Board can also seek further advice from other town planners in order to ensure that town planning principles **per se** are not violated [**Administrator, Tvl and Firs Investments (Pty) Ltd v Johannesburg City Council, 1971 (1) 56 (A)**].

The town planners must also bear in mind that they have to protect the public interest through their views on the proposed land use. The planner cannot simply accept the change of land as "good" if it is in accordance with the town-planning scheme. This plan may be dated, or circumstances may have drastically changed. Some widely used basic themes are the following that were laid down in a court case in New York.

"Underlying the entire concept of zoning is the assumption that zoning can be a vital tool for maintaining a civilized form of existence only if we employ the insights and the learning of the philosopher, the city planner, the economist, the sociologist, the public health expert and all the other professions concerned with urban problems. This fundamental conception of zoning has been present from its inception. The almost universal statutory requirement that zoning conform to a "well-considered plan" or a "comprehensive plan" is a reflection of that view ... Without (a comprehensive plan), there can be no rational allocation of land use" (**Udell v Haas, 21 N.Y. 2 d. at 469, 425 NE 2 d. at 900 (1968)** as quoted in **Nelson, 1977:28**).

Town planning principles therefore can be advised upon by the experts, but Townships Board must also look at a wider spectrum, **vide**. the public interest which is of paramount importance with each application, especially when objections are received, as this means that some of the public feels aggrieved about the proposed land use.

After having heard the aggrieved persons, the Townships Board must take into consideration the technical aspects as explained by the professional planners and then the interest of the general public. Public interest or the interest of the general public is perhaps the most difficult aspect to consider as it can be vague at times or difficult to define. Expert evidence can be rejected by Townships Board if the members do not agree, but it is not so easily done with public

interest. In town planning, room for a considerable divergence of opinion exists and this is also the case in Townships Board.

It is also important to note that it does not matter for how long a proposed use is requested. If an applicant wishes to obtain the use for only a short period this fact cannot influence the decision if the applicant has convinced that the proposed use will be in public interest (**Galanakis v Liquor Licensing Board of Rhodesia 1974 (2) 30D**).

In order to endeavour explaining "public interest" it would be advisable to look briefly at what the courts have said in this regard:

It is the duty of the tribunal to consider whether the amendment would be of advantage to the scheme as well as to the individual, as advantage only to the individual and detrimental to the town-planning scheme would be wrong. In other words a proposed amendment which would only be to the benefit of the applicant cannot succeed, it need not only be detrimental to the scheme, but it should be advantageous to the scheme also [**Ronnie's Motors (Pty) Ltd and Others v Van der Walt and others 1962 (4) 660 (C)**].

Townships Board must consider whether the public would be better served if the proposed amendment were approved or under the existing state of affairs. The applicant must show that the interest of the general public, which the town-planning scheme ought to serve, would outweigh the inconvenience suffered by the objector. If the general interest of the public would be advanced (upon the hypothesis that it will be advanced at all) it would be sufficient to grant the application. It must be noted that the word "general" does indicate that something broader than the personal interests of the applicant or a particular person is at stake. It does not, however, indicate that the public whose interest is to be served, is necessarily to be

widely representative of the general public (**Leicester Properties (Pty) Ltd v Farran, 1976 (1) D and CLD 492 E**).

"The public" are those individuals or classes of individuals who might be affected directly or indirectly by the proposal. The interest must be general; not particular. "General public" is a nebulous aggregation of all the individuals who are concerned with the proposed scheme. It may not necessarily embrace every member of the community, but it suggests that it intends to cover more than a group of people with a particular interest. The composition of "general public" or "public" does vary according to each particular scheme depending upon a vast number of reasons and circumstances. The onus lies upon the applicant to prove that in the light of town planning principles and requirements it is desirable that the use be changed. The change should also not be measured against some people, but whether the general good of the neighbourhood will be advanced by the change. One of the basic principles of zoning is that the individuality of localities should be preserved and more reason exist if that individuality has developed naturally (**Anderson and Another v Vainona Estates (Pty) Ltd 1959 (4) 826**).

The purpose of the town-planning scheme is not only to operate in the interests of the general public, but in the interests of the inhabitants of the area covered by the scheme, or at any rate those inhabitants who would be affected by a change of land use. "Affected" does not necessarily mean only that which is measurable in financial terms as, for instance, buildings, not conforming to the provisions of the town-planning scheme may perhaps not be detrimental to the neighbourhood but may detract from the amenity of the neighbourhood and if allowed to proliferate, change the whole character of the neighbourhood.

The town-planning scheme is in operation to promote and protect, and amenities should be maintained. Furthermore, the purposes pursued by a town-planning scheme should not always be in the general public interest, but particularly in the

interest of the area covered by the scheme and in the interest of the residents who would be affected by those particular provisions (**BEF (Pty) Ltd v Cape Town Municipality and Others, 1983 (2) CPD at 401 B-D**).

A "definition" of "amenity" can be the pleasant circumstances, features or advantages experienced (**Stein v Johannesburg 1935 TPD 17 at 21**). In other words, "amenity" is much more than the visually-aesthetic and includes all that is seen, heard, felt or smelt, in other words everything that stimulates the senses in a pleasant manner (Floyd 1966:25).

"The public" is an unspecifying term and should be limited in each case according to the context. Generally it does not mean all the inhabitants of the world or the country, but for practical purposes only the inhabitants of a town/or such members of a community as particular advertisements would reach. "The public" therefore does not include everybody, but only a "portion" and that portion varies with each case [**Argus Printing and Publishing Co Ltd v Derby's Artware (Pty) Ltd and Others 1952 (2) CPD 1 (C)**].

In the ruling of **South African Hotels Ltd v Wienburg and Others (1949:822)** the court held that a common sense approach should be adopted in order to determine the public interest. In the case under discussion an hotel was to be erected where an old shop was situated. The court ruled that the public in this instance was a wide variety from the residents in Cape Town to the international visitors.

In **Clinical Centre (Pty) Ltd v Holdgates Motor Co (Pty) Ltd (1948:486)** it was held that the proposed development should outweigh on balance any hardship or damage that may be experienced by the objectors. The proposed development should not be directed towards the advancement of the applicant's interests with some incidental advancement to the public. The converse should happen where the public interest must be the motive and not merely an incidental

result. Public interest should be serving the people and the decision-maker should regard it as whether the proposed development will be necessary to the town-planning scheme and then in the interest of the public. Another way to view it is for the applicant to show that the development is in the real interest of the public and not only to his own benefit or some other purpose divorced from the public interest (**Barry v Smulowitz 1950:86**).

In view of the above-mentioned, Townships Board has a formidable task to establish the real public interest in every application, especially when objections are received. However, a broad common sense view of the position as a whole, together with the above and the following opinion at a Townships Board hearing, serves as a guideline and norm to Townships Board (Olivier, Townships Board meeting 549B, 25 October and 4 November 1985)<sup>1</sup>. The essence is that public interest is the need and wishes of the majority of people who require something. Policies should also govern this manner of thinking and should take cognizance of what is needed.

#### **7.4 TOWN-PLANNING SCHEME AS SUBORDINATE LEGISLATION**

In the Free State Province the existing town-planning schemes have the so-called "Special Consent Uses" where the local authority can consent to a different use for an erf than that which is determined by the town-planning scheme. As an example the following can be considered:

Use zone = "Industry General" while special consent may be given for "Motor trade" and/or "motor trade general"; "other uses not mentioned excluding noxious industries" (Welkom town-planning scheme 1/1980, schedule B).

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<sup>1</sup> The *ad verbum* quote from the minutes is in Afrikaans and for completeness is found in Annexure D.

The problem with this mode of procedure is that it is not within the ambit of legislation and it can very easily create chaos as the town-planning scheme plans are not in accordance with what actually happens on the ground. The plans indicate a certain land use while the actual use is really something different. The special consent is according to the scheme within the particular land use zone, but in actual fact the use has changed. This is also not in the public interest as the town-planning scheme is a public document and when the public now examines it, it is not a true reflection of what is taking place. It can be misleading to a large degree because it is silent on so many important aspects.

**Ordinance 9 of 1969** [section 25(3)(c)] makes the following provision in respect of consent uses:

"A scheme should contain such provisions as may be necessary or expedient -

- (a) ...;
- (b) ...; and
- (c) for the achievement of the objects of the scheme, and may provide that a local authority may in its discretion grant exemption from or relax such provisions of the scheme as are specified in the scheme."

From this it can be deduced that the town-planning scheme can make provision that the local authority may grant the exemption of certain aspects contained in the scheme or that certain stipulations can be relaxed. However, no *effective* [own emphasis] change in land use is permitted as is so often the case with consent uses.

What now often happens is that the local authority grants a special consent that is actually a change in use that falls within the ambit of **Act 84 of 1967**. The consent uses are not indicated on the scheme plans and therefore are unknown to Townships Board that ends up not knowing what is taking place on the ground

when re-zoning applications are considered. The public is also unaware of this change in land use as it is not indicated on a public document like a town-planning scheme plan (Stapelberg 1991:64-66).

A further problem is, of course, that special consent uses can be approved which are contradictory to conditions of title. This conduct has the effect that even though the local authority notifies the applicant that special consent has been granted subject to the removal of the restrictive conditions, the special consent is of no value whatsoever as the conditions overrule all consent uses and even the town-planning scheme. Although the town-planning scheme is a creature of statute the rights under it may not be used or enjoyed or exercised if the conditions of title are prohibitive (**Enslin v Vereeniging Town Council 1976 (3) at 446 C-E**).

Another very important factor is the time wasted in obtaining consent use while restrictive conditions that prohibit the proposed use exist. What happens in practice is that the town-planning scheme prescribes a specific procedure that has to be followed when applying for special consent use. This entails advertisements and a notice to be posted on the site for at least 14 days. The application, if no objections are lodged, serves before the management committee and then before the municipal council for consideration. Only now, if approved, the consent use comes into operation - only to be thwarted by the restrictive conditions.

These conditions now have to be removed in terms of the provisions of **Act 84 of 1967**. The whole procedure again has to be followed as explained above which again entails, **inter alia**, advertising. Only after the removal of restrictions has been approved may the applicant legally proceed with his proposed use, but what happens if the removal of restrictions application is refused for some or other reason? The applicant then loses money and time and his whole effort fails. It is of the utmost importance, therefore, that the proper method and instrument should be used in order to obtain the best results. The major problems with consent uses are that they do not include Townships Board or any other

independent planning board, no proper record is kept of the consent uses and the proper method of legislation applying to rezoning is ignored. It must furthermore be borne in mind that when town planning becomes loose and easily amended, it can turn into a source of corruption that could turn the town-planning scheme into a curse and not a blessing.

An aspect that is chosen to be ignored is that consent uses are rights attached to the person who owns the land and not to the land itself. This means that should a consent use be granted, then the particular rights are not transferable to a next person who buys the land. **Prima facie** this does not pose a problem as the next person can then merely request another consent use. The problem arises, however, if the consent is not granted and the buildings have been altered in such a way that the initial use cannot be conducted from the land.

In order to illustrate this one can take the "single residential 1" category in the town-planning scheme of Bloemfontein. The primary use is for "dwelling houses" while the consent uses are for:

- = Special Buildings
- = Town Houses
- = Places of Instruction
- = Places of Assembly
- = Institutions

As can be concluded, should consent be given for one of the uses it will be possible to change the dwelling house into something else. Should the consent be withdrawn for some reason then it could cost a substantial amount to convert the buildings back into a dwelling (Bloemfontein town-planning scheme 1/1954:table 4). This is but one example of many in town-planning schemes throughout the Free State Province and in some cases even more severe consents are allowed.

The opinion is held that when a consent use entails a substantive deviation from the zoned use then the use has to be changed by rezoning the land in terms of the relevant legislation. Normally the applications for consent uses do get advertised, but not as widely as when rezoning takes place and as has been indicated extreme land use changes can take place. Unfortunately some town-planning scheme do not even require the advertising of consent uses.

The initial idea of consent uses was to expedite changes in use should the uses be very much consistent, for example from within the single residential category a guest house with a limited number of rooms can be conducted. This consent is still within the parameters of residential and the house need not be changed so much that it cannot be converted back to a single dwelling.

Taking this as a point of departure the applicant could conduct the consent use as a "trial" and should the guest house with limited rooms prove feasible then a rezoning to a bigger guest house could take place. In other words the consent is merely to "try out" the future use.

Some of the town-planning schemes in the Free State Province have a stipulation that if a developer cannot provide the required parking for the envisaged development then he has to make a financial contribution towards the municipality so that should the need arise parking can be provided by the municipality. A case like this was argued before Townships Board and it was indicated that in the court ruling **Luzon Investments (Pty) Ltd v Strand Municipality and Another (1990 (1) 215)** it was held that "(b)efore a power to charge a fee or contribution can be implied, the implication sought to be drawn must be a necessary one, meaning that: Effect cannot be given to the meaning of the statute as it stands unless the power to charge is read into it". Furthermore "... any power which might have been given to a local authority by a provincial ordinance which is contrary to the Act would be invalid." The Act referred to here is the **Financial Relations Act, 1976 (Act 65 of 1976)** and this act does not allow town-planning schemes to legislate in terms of it. This

has far-reaching affects as it is obvious that the provision in the town-planning scheme is **ultra vires** as no enabling legislation exists for it. This is indicative of the speciality of town-planning schemes and the compilation thereof should not be taken lightly and should not be done superficially. This matter also shows that as a controlling document the town-planning scheme should take into consideration the broader aspects of control and not only spatial planning.

## 7.5 Advertisements and notices

When advertising the change of land use it is important to state the locality as the general public should easily be able to identify the land in order to know if the change will be on a locality likely to affect them. In **Ex Parte Nova Estates (Pty) Ltd (1966 (1) 671 C)** it was stated that the street descriptions should rather be stated in the notices instead of only the deed of title description. In other words the ideal situation will be to give the "formal" description as found in the deed of title and then a street description of address or number to enable the ordinary person to identify the area easily.

The notices published after the decision to remove the conditions or rezone in terms of **Act 84 of 1967** should also comply to certain requirements. The main issue is that the difference should be realized between publishing a notice *in* the **Provincial Gazette** that some decision has been taken and publishing a decision *by* notice [own emphasis]. The former means that a decision has been taken and that at the time of the decision the change had already been affected; the latter means that although the decision has already been taken when the notice had been signed it only comes into effect at the date of publication. In other words the action of the decision-maker is when the notice appears in the **Provincial Gazette**. The notice in the latter case then has the decision maker as the first person as if he himself had written and published the notice while it is common cause that he had taken the decision and that the support staff had published the

notice (**R v Mabusela 1955 (1) 31 B-H; Rex v Naran Samy 1945, 622** and **Departmental legal opinion**).

It seems a triviality as to who should take the decision in each case, but in law it makes a difference and should be treated properly in order to ensure correct procedures, legal binding to decisions and also to prevent the decision-maker ending up in the review court.

## **7.6 CONTRAVENTION OF A TOWN-PLANNING SCHEME AND/OR RESTRICTIVE CONDITIONS**

In the past and more so recently developers simply start businesses on erven that have prohibitive conditions registered against the title and/or the incorrect zoning. This has far reaching consequences as the entire effort of planning and land management goes out the window. So-called "market forces" now take place and the municipality, Townships Board and the decision-maker is confronted with a **fait accompli**. These "market forces" are sometimes merely irresponsible and ruthless developers who act in a manner which in planning terms is despicable, they do not think of anything or anybody else but themselves and then blame lame legislation, officials and everything, but their own greed for their actions.

People who transgress the law by speeding or stealing are prosecuted and convicted, but people who violate the real and property rights of others rarely come to justice. The courts are clear in so far as this aspect is concerned and attention should be paid to what has been decided in this regard.

The classical court ruling is **Patz v Greene & Co 1907:427** where the appellant before the court was the objector to an unlawful trading business. In the ruling pertaining to the case it was said that the Court had to intervene as the objector had exhausted all avenues of remedy without any success. The **locus standi** was also established as any member of the general public also has the right to object if

he can prove damage or injury. As far as competition is concerned the judge also said that competition that is lawful cannot be complained about, but when unlawful, can be regarded as damages.

It is evident, therefore, that the courts tend to lay great emphasis on the title conditions and specific zoning of an erf and it is trite law that the conditions override the town-planning scheme where a conflict between the two exists. As an example the case of **Shell South Africa v Alexene Investments and Others** can be quoted where it was said that "... a local authority is bound to observe every condition relating to a township or an erf in a township, imposed by the Administrator, and such local authority is compelled to refuse to approve any building plan in conflict with any such condition. A subsequent town planning scheme does not override the title conditions imposed on an erf, where there is a conflict between the two (**Shell South Africa v Alexene Investments and Others, 1980 (1) SA 683 (T) at 689 H**). See also **Kleyn v Theron 1966 (3) SA 264 (T) at 270 H-272 C**). Rezoning, therefore, is necessary even before the building plans can be approved by the local authority (**Klerksdorp Council v Flamwood Estates (Pty) Ltd 1959 (3) TPD at 726 A**).

Hence the local authority may not consent to or authorize an erf to be used contrary to the conditions of title. Before advantage can be taken of the consent or the proposed scheme implemented, the conditions of title must be altered to be in accordance with the proposed use. In other words no valid consent exists before the conditions are correct. This means that a consent given in terms of the town-planning scheme does not entitle the owner to use the erf for the proposed purposes unless the title conditions are in accordance (**Enslin v Vereeniging 1976 (3) SA 443 (T) 447 B-D**).

In the recent past developers have simply started developing without approval of the change in land use and some not even submitting building plans. This seems absurd and far-fetched, but is unfortunately true. The municipalities should stamp this out as soon as possible as it undermines the authority of the town-planning

scheme and also the planning and management of a town and or area. Furthermore, it is unfair towards the developers who take the legitimate route and have to spend money in order to obtain the correct rights. Apart from the court rulings, some of which have been cited **supra** the Public Protector has also investigated a case and some of these findings are briefly discussed in the ensuing paragraphs (Public Protector Report 1998:1).

The complaint was that the Sandton City Council did not enforce their town-planning scheme and the National Building Regulations and the Transvaal **Town-planning and Township Ordinance, 1986 (Ordinance 15 of 1986)** in order to prohibit a person from erecting certain structures and conducting business from a plot. The zoning prohibited these activities yet the Municipality did nothing to stop the activities. The complainant alleged that his real rights and the value of his property were at risk. Upon investigation it was found that the provisions of the town-planning scheme were impugned by the brazen and blatant flouting of the provisions.

Not going into the finer details of the case suffice to say that the Municipality did not really assist the complainant and the relevant MEC also did not exercise his powers to stop the unlawful activities. The Public Protector categorized the Municipality as having a "... lack of will to govern." He also said that it was a pity that "... the Council has proved itself so diligent at avoiding, delaying and obstructing a definitive resolution to this protracted matter, while having been so tardy in establishing an open and transparent mode of dealing with the complainant and his fellow residents." (Public Protector Report 1998:18).

The Council purported that it did not have either funds or the necessary personnel to inspect and bring to justice the perpetrators. This was found to be no excuse as ratepayers are entitled to expect the Council to act in accordance with the Constitution and other legislation governing the Municipality (Public Protector Report 1998:20).

The above incident continues and in the "Star" newspaper of 6 April 1998 (Cox 1998:[?]) it is reported that the above complainant is suing the Council for R8 million for gross negligence. Another base for the claim is failing to prosecute the transgressors of the town-planning scheme in the area, thus having his real and property rights unlawfully violated. The basis of the claim also rests on the fact that the complainant's property is worth less in excess of R3 million and this is a direct result of the unlawful activities in the area. The result of this case was unknown at time of writing this thesis.

As can be concluded from the afore-mentioned articles the municipalities should act as the "policing department" and should act in terms of the necessary legislation. It would be wise if the municipalities take heed of, **inter alia**, the following provisions that burdens them with certain responsibilities:

- Section 33(1) of **Act 108 of 1996** determines that every person shall have the right to administrative action that is lawful, reasonable and procedurally fair.
- Section 41(1)(c) of **Act 108 of 1996** provides all spheres of government to bear the obligation, **inter alia**, to "provide effective, transparent, accountable and coherent government."
- Section 10G(2)(f) of **Act 209 of 1993** states that if an employee of the municipality causes the municipality loss or damage because he or she, **inter alia**, failed to collect money owing to the municipality for the collection of which he or she is responsible; or, due to an omission to carry out his or her duties, is responsible for a claim against the municipality, the chief executive officer shall take disciplinary action and, in appropriate cases, recover the loss or damage. Thus:

If a person who is or was in the employ of a municipality causes or caused the municipality a loss or damage because he or she -

- (i) failed to collect money owing to the municipality for the collection of which he or she is or was responsible;

- (ii) is or was responsible for an irregular payment of money of the municipality or for a payment of such money not supported by a proper voucher;
- (iii) due to an omission to carry out his or her duties, is or was responsible for fruitless expenditure of money of the municipality;
- (iv) is or was responsible for a deficiency in, or for the destruction or damage to money of the municipality, stamps, face value documents and forms having a potential value, securities, equipment, stores or any other property of the municipality; or
- (v) due to an omission to carry out his or her duties, is or was responsible for a claim against the municipality,

the chief executive officer of that municipality, or, if the chief executive officer was responsible for such loss or damage, the council, shall determine the amount of such loss or damage and take disciplinary action where possible and in appropriate cases recover the loss or damage (section 10G(2)(f) of **Act 209 of 1993**).

Persons feeling aggrieved can also, of course, obtain Court interdicts to prevent the person from conducting his illegal proposal from the land. It must be borne in mind that although a town-planning scheme is "subordinate" legislation (**Vereeniging v Rhema Bible Church 1989 (2) SA 142 (T) 149 D**), its provision binds landowners independently (**Cape Town v Belletuin 1979 (2) SA 861 (A) 881 H**). Furthermore it must be remembered that when a town-planning scheme has been proclaimed, it has the force of law (**Klerksdorp Council v Flamwood Estates 1959 (3) SA 715 (T) at 723 F**).

It must be remembered that a town-planning scheme does not override the provisions of conditions of title and consent in terms of the town-planning scheme does not automatically authorize the user of an erf to act contrary to its conditions in the deed of title [**Malan v Ardconnel Investments 1988 South Africa 12 (A)**]. The fact that the municipality gives a consent does not "remove" the restrictive conditions and the conditions prevail, even with primary uses in the town-planning scheme (**Shell South Africa v Alexene Investments supra**).

In the case of **C D of Birnam Ltd and Others v Falcon Investments [1973 (3)]** it was ruled by the Court that the applicant before the court (objector in the case) must show that the respondent had breached the particular prohibition of the town-planning scheme. It must also be proved that these conditions were enacted in the interests of the property owners in the area. The losses and damages suffered must also be shown. As seen it is not simply a question of appealing to the courts to take a decision in a matter, but it is a question of ascertaining exactly what rights are applicable and then acting upon those.

## 7.7 Role of the Townships Board

The Townships Board has to decide each case on its merits in such a way that an appeal, or revision, to a court should be a practical impossibility. The onus of proving that the decision was so grossly unreasonable that it should be set aside should be an extremely difficult one to discharge (**Johannesburg v Administrator, Tvl. and Mayofis 1971 (1) SA 87 A at 99 H - 100 A**). Furthermore, the decisions of Townships Board should not be unreasonable or arbitrary that no reasonable man could have arrived thereat without being influenced by improper, irrelevant or extraneous matter (**Ronnie's Motors and others (Pty) Ltd v van der Walt and others 1962 (4) at 665 E**).

It must be borne in mind that whatever Townships Board considers, it must consider each case on its own merits. Policies, norms and general principles can at most serve as a general guideline, but may not be treated as hard and fast rules to be applied invariably to each case. Townships Board is a public body upon which a discretion has been conferred by statutory provision and therefore general principles may only serve as a guide, not as a decisive factor. A board having a discretionary power is entitled to be guided by a general principle, but the consideration of the case at hand should always prevail (**Tayob v Ermelo Local Road Transportation Board and Another 1951 (4) 443**). If the principle, or policy, is regarded as a decisive factor, then the public body (Townships Board **in casu**) will not have considered the matter, but will have prejudged the case without regard to its merit (**Computer Investors Group v Minister of Finance 1979 (1) TPD at 898 C-F**).

From the above it is clear that where factors such as public interest and amenity are in issue, criteria are less clear-cut and simple. It is also evident that a multitude of practical considerations are regarded in the making of decisions. The existing state of affairs, with ideas of future development and possibilities of future development, are all aspects which have to be taken into account before an opinion - not necessarily a unanimous opinion - is reached (**Vaid v Westville Town Board 1949 (3) SA 37 N 50**).

The decision should furthermore be founded upon reasons and the exercise of discretion granted by statute. The court will not interfere with the exercise of such discretion or set aside the decision, unless it is proven that it was wholly unreasonable to the extent that **mala fides** or the existence of an ulterior motive was present. It must also be remembered that whatever academic qualifications the members of Townships Board may lack, they are people of considerable experience in town-planning matters and personally well able to make a practical evaluation on expert evidence [**Administrator, Tvl. and Firs Investment v Johannesburg City Council 1971 (1)**].

When objections are received the Secretariat sends them to the applicant and then arranges a date for the inspection **in loco** and a date for the actual hearing of the parties. When a town-planning scheme is advertised and objections lodged, the Ordinance prescribes that at least 14 days' grace should be given from the referral of the objections to the actual hearing at Townships Board. This is to enable the applicant to prepare himself for the hearing [**Ordinance 9 of 1969**, section 27(3)]. Although this is the only section where this stipulation appears it is followed as a guide in respect of all kinds of objections. It is regarded as reasonable that the applicant should have time to prepare himself for the hearing after he has received the objections. In each case at least 14 days are given to all parties as "preparation time" (Baxter 1984:551).

At the inspection **in loco** the parties are requested by the Chairman of Townships Board not to argue the merits, or lack of merit, but to indicate the locality of the particular property under consideration, danger points, advantageous points or any other physical aspect regarded as important or which is going to be mentioned at the hearing. Townships Board members note especially the following:

- locality of property;
- access to streets;
- traffic volume and/or flow;
- intersections;
- buildings; and
- character of the immediate vicinity regarding zoning, uses and accessibility.

This is, of course, not at all an exhaustive list of what is noted, as it largely depends on what kind of applications and objections are under consideration. A change in land use will most likely entail a more thorough inspection than an application for the removal of the condition prohibiting subdivision of an erf in a

residential area where the objector is a neighbour stating that he will not like another house next to him.

At the Townships Board hearing the emphasis is very much on the **audi alteram partem** maxim. The parties are always given ample time and opportunity to state their respective cases **viva voce** with or without written submissions at the hearing. The Chairman plays a key role in the procedures of the meeting as he gives rulings as to who speaks when and also has to maintain order in the meeting, otherwise it will be chaotic and the case under consideration will suffer. Townships Board is not a court of law and a much more informal atmosphere prevails at meetings as one of the primary issues is to gather as much information as possible in order to take an informed decision.

After each party has had an opportunity to state his case, questions may be put to him by the opposing party, the chairman and other members of Townships Board. Questions from the Townships Board members are asked mainly to shed light on the matter and not to puzzle the person/party at whom they are directed. When all parties have stated their respective cases, Townships Board goes into committee and either defers the decision to a future date, which very rarely happens, or discusses and decides immediately. It must be mentioned that Townships Board never merely decides upon a matter, but it is discussed extensively and all possible angles are explored. The composition of Townships Board is also such that different points of view do surface during cases owing to the particular field of expertise of each member.

Parties may be represented by counsel and these people lay great emphasis on the procedures and if any deviation is apparent an **in limine** objection is lodged. Townships Board then has to decide upon the matter which most of the time is highly technical and not its mistake. Favourite **in limine** objections with applications in terms of **Act 84 of 1967** are that the application is incomplete or faulty in some or other way or that the advertisement is incorrect or incomplete. In all cases the processing of the applications in terms of the Act is a function

performed by the Department and Townships Board is not a party thereto. Townships Board cannot provide answers to any discrepancies and can find itself in a very difficult position with these **in limine** objections.

Legal advice was sought by the department and after discussion of the problem it was decided that no **in limine** objections will be heard by Townships Board if it does not concern Townships Board itself in a direct manner. In other words, if the objection is raised that the Board is incorrectly constituted or that a quorum is not present then the objection can be heard and a ruling upon it will be given. However, if the objection concerns the Department, the objector will have to seek other remedies to obtain a ruling; for instance an interdict against the Department.

It is interesting to note that the courts gave a ruling upon similar matters where it was said that:

"... I do not think we ought to extend that decision so as to confer on other public bodies jurisdiction to investigate and decide controversial questions of law and fact other than such as are specifically prescribed and arise for determination by the specific provisions of the legislative enactment under which such public bodies function, and by which jurisdiction is conferred on them" (**Wing Lee Ltd v Johannesburg City Council, 1931 AD 45 at 55**). See also **Durban City Council and Another v Local Transportation Board and Another 1964(3) SA 244 D and CZD at 256**).

Townships Board is a planning advisory board and when it is burdened with such legal technicalities, which do not really fall within its jurisdiction, then the primary function of planning is easily lost.

Townships Board is a tribunal that has been clothed with certain discretionary powers and it has to exercise these powers in a responsible manner. Planning

guidelines are applied and taken into consideration as are the principles set out in the **DFA**, yet each case has its own unique merits and these should be considered as explicitly stated in the ruling of **Computer Investors Group v Minister of Finance (1979 (1) 898)**. In addition to this it must also be kept in mind that the Townships Board is a "... creature of statute and possesses only such powers as are conferred upon it statute" (**Bronkhorstspruit Liquor Licensing Board v Rayton Bottle Store (Pty) Ltd and Another 1950:601**). This makes it clear that the Townships Board can do and consider only that which it is authorized to do by legislation. It also makes it clear that the Townships Board is not a policing mechanism or body that has to be the aggressor in tracing and punishing perpetrators. It can merely react upon complaints that the municipality is not applying its town-planning scheme.

Townships Board is a body considering planning applications and as explained these are considered taking various aspects into consideration and one of the major considerations is public interest as expounded upon **supra**. People often regard the granting of an application as a favour or privilege; this is not the case as found in **Tayob v Ermelo Local Road Transportation Board and Another 1951 (4):445**. This matter is also very aptly explained in **Tabakain v District Commissioner, Salisbury 1974 (1):606** where the following was said:

"Subject to necessary measures of control there is a general right to be allowed to trade. The complexities of modern society have enormously multiplied the controls to which people are subjected in the exercise of their general rights, and there is an increasingly insidious tendency to regard permits of all kinds as a form of privilege. I would resist the notion of regarding a permit under sec. 4 of the Secondhand Goods Act as a sort of delectable crumb that might or might not be dropped from the bureaucratic dinner table. To withhold such a permit is to affect the citizen adversely in his rights by denying to him the opportunity of exercising his trade in a manner that is normal for anyone of good character. Not only is it the scope of the general right to trade that is adversely affected, it is also the

obvious slur that is thereby cast upon the applicant's fair name and fame, particularly under circumstances like these where the refusal is based upon secret information of a "highly confidential" nature not revealed to the applicant himself."

Townships Board considers matters on town planning principles and issues, but taking into account the entire spectrum of related issues of which the needs of the people play an important role **Davies v Umtali Board and Paper Mills (Pty) Ltd and Another 1975 (2) 472.** The issues of public interest also form an important platform on which the eventual decision will be based. In recent times the principles of the DFA are also addressed and accommodated in the decision-making process and these reflect on the more salient issues that should receive attention.

Once Townships Board has decided upon a case the basic decision cannot be altered without acting **functus officio**. In certain cases the decision-maker can refer the matter back to Townships Board if he wishes to disagree with the recommendation. In such cases Townships Board can only reconsider its decision if new information has come to light or if the decision-maker wishes to approve different conditions than those recommended by Townships Board. It must be emphasized that only the decision-maker may refer something back to Townships Board, but then not to reconsider, only to elaborate on the rationale of the case.

However, in certain instances the Townships Board may consider something again as ruled in **Davies v Umtali Board and Paper Mills (Pty) Ltd and Another (1975:(2) 472)** where it was stated that the tribunal had not taken all relevant facts into consideration. In **Jackson v Adams (1957)** the following was said: "If the town planning court (Townships Board **in casu**) has proceeded on a wrong basis, if it has paid substantial regard to some irrelevant consideration or omitted to give due weight to relevant matters of importance, its discretion has not been properly exercised and its decision requires correction."

If the recommendation of Townships Board fails to impress an official or the Department, power may not be usurped leading to disregarding the decision of Townships Board (**Administrator Transvaal and Firs Investments v Johannesburg City Council 1971 (1) at 77 H**). The Townships Board is an independent tribunal and is not represented by any official or the MEC (formerly Administrator) (**Pretoria Stadsraad v Administrateur Transvaal 1962 (4) 481**).

If the decision-maker wishes to differ from Townships Board of his own accord or as a result of certain information pointed out by his Department, the correct procedure would be to contact Townships Board via the Secretariat for more information. If new information has come to the fore the case may be reconsidered by Townships Board, but if no new information is available, then Townships Board can only expand upon its original decision. The decision-maker also cannot "force" Townships Board into a specific decision as it is an impartial and independent board of experts.

Townships Board cannot act under dictation as a discretion has to be exercised by the body in which the power is vested. Power cannot be usurped by another body be it subordinate or not; (Baxter 1984:442) in other words if the Townships Board should decide on a matter then it must decide, as is the case with the MEC. In an unreported case the MEC got a direction from the Provincial Executive Council to decide in a specific manner on a case. The decision was taken on review and was declared null and void and the matter was referred back for another decision. The following rulings are also of importance in this regard and are the basis of exercising power. In **Shidiack v Union Government 1912 AD** the ruling stated: "Where the legislature places upon any official the responsibility of exercising a discretion which the nature of the subject-matter and the language of the section shown can only be exercised in a judicial spirit, then that responsibility cannot be vicariously discharged. The persons concerned have a right to demand the judgement of the specially selected officer. If the Act requires the satisfaction

of the Minister himself it is not competent for the Governor-General to declare by regulation that the satisfaction of a subordinate official will suffice."

In **Citimakers (Pty) Ltd v Sandton Town Council 1977 (4) SA 959 (W)** it was ruled that: "An opinion-making function, much in the nature of a judicial discretion, conferred on a named body, cannot usually be delegated in the absence of specific legislative authorisation and a general grant usually lacks the required degree of specificity."

This puts responsibility on each member serving on a committee and also on the committee as a whole as the decisions have to be taken on what is before it and not on what has been obtained from other sources. It also emphasizes the fact that the MEC may not obtain additional information regarding an application after the case has been decided on by Townships Board. The ultimate decision-maker should not descend into the arena where the application is heard, on evidence when objections are received, but should accept his responsibility and adjudicate on the evidence put before him by all parties concerned.

Townships Board, when serving as an independent tribunal conforms to the requirements of a tribunal, **vide**. (Baxter 1984:240-242):

Administrative decisions are isolated from the general administrative processes with the following advantages:

- Where the interests of those immediately affected by the decision in question are great and the welfare or interest of the general public are considered less important, a tribunal is able to focus its attention on the issues of the parties without being distracted by the concerns of the Department. Special attention may also be given to local requirements irrespective of policies concerning the Department as the Department is not concerned.

- Special attention may be required by a body undistracted by general administrative concerns where individual rights and interests are concerned.
- An impartial decision, free from the considerations of policy and "departmental bias" is ensured.
- Another related advantage is that acting upon a recommendation by Townships Board ensures that politically accountability can be alleviated if not nullified. The tribunal is insulated from political gains or losses as far as votes are concerned, this is not a cause for concern with Townships Board.

From the above it stands to reason that if the Department "overrules" the recommendations by Townships Board the afore-mentioned is nullified to a large extent. If the decision maker decides something different to that which was recommended, he exposes himself tremendously. If he should be challenged in court to state his reasons for deviating from the recommendations of Townships Board, he will have to provide very sound reasons to substantiate his decision and even more so if he has relied on a Departmental recommendation which deviates from the recommendation of Townships Board.

It must be remembered that the Townships Board and the decision-maker can be taken on review to court. The basic grounds for revision are that the **audi alteram partem** axiom was not applied and that the tribunal or decision-maker acted in a **mala fide** manner and did not duly consider the case by applying its mind to the matter. The action of the authority is **ultra vires** should one or more of these elements feature in a review case (**Jacobs en 'n ander v Waks en andere 1992 (1) 538**). In the **Johannesburg Stock Exchange and Another v Witwatersrand Nigel Ltd and Another 1988 (3) 132** the ruling was: "Broadly, in order to establish review grounds it must be shown that the president

failed to apply his mind to the relevant issues in accordance with the 'behests of the statute and the tenets of natural justice'."

Townships Board or the Development Tribunal may be taken on judicial review should administrative proceedings in the tribunal not take place in accordance with certain common law duties to which they may be subject (Rose Innes 1963:23).

The Townships Board, although clothed with statutory powers, cannot be taken on appeal as any right of appeal that may arise from a decision exist only if the appeal is specifically created by the relevant statute. In other words Townships Board decisions can be taken on review to the High Court. Furthermore, no appeal exists on the merits of an administrative body exercising discretionary powers unless afforded by statute (Rose Innes 1963:32-33). However, the Development Tribunal in terms of the **DFA** can be taken on appeal as an appeal procedure is provided in the Act and a Development Appeal Tribunal is also established in terms of the Act.

As mentioned above the Townships Board cannot be taken on appeal, but cases may be reviewed by the High Court, as is the fact with the Development Tribunal and the Development Appeal Tribunal. Taking the Townships Board and the other Tribunals on review the following can be regarded as basic criteria for grounds for revision and these, or some of the aspects, will have to be proven for the revision to succeed (Rose Innes 1963:55):

- If the administration body acted **ultra vires**.
- If no decision as required by statute has been reached or that the administrative body failed to consider the matter before it or failed to apply its mind to the matter or failed to exercise its discretion.
- If the administrative body disregarded the direct provisions of the statute.
- If there was fraud, bad faith or corruption.

- If the administrative body acted for ulterior or improper purposes or motives.
- If the administrative body failed to observe the principles of common and natural justice.
- If the administrative body ignored the **audi alteram partem** maxim.

Administrative tribunals are not courts of law, yet they have to act according to certain basic rules, which are known, as natural law or common law that are the minimum requirements for justice. The parties before the tribunal must have due and proper opportunity of producing their evidence and stating their contentions. The tribunal must in turn decide impartially and honestly and deal with the matter before them without bias. These two basic aspects form the principles of fairness and should they not be adhered to the decision by the tribunal will be **ultra vires** (Rose Innes 1963:144 - 145).

When hearing parties before the Townships Board it is essential that the parties be granted sufficient time to prepare for the hearing. The Townships Ordinance states that 14 days should be granted, but this is only for the hearing in so far as it pertains to the approval of a town-planning scheme. Consequently the 14 days period has been accepted as policy and is applied to all the hearings before Townships Board as it is regarded as a fair time to give the parties to prepare themselves. The period granted to the parties is very important as it forms part of the **audi alteram partem** rule. Parties before an administrative tribunal should be given proper notice and due time for preparation in order to give him adequate opportunity to defend himself (Rose Innes 1963:158).

It is also important that the parties who appear before the tribunal should be informed about the proceedings and the reasons for appearance. In the case of the applicant in a case it is obvious that he should defend his case and in the case of the objector that he should present his objection, but the applicant's case lies for inspection whereas the objector has no statutory obligation to disclose his case. In the past this has caused delays and frequent postponement of

proceedings where the objector surprises the applicant and Townships Board about the founding for the objections. This has been resolved by stating in the advertisement that all reasons have to be disclosed at any objection lodged. This also includes all substantiating documents like traffic impact studies and environmental studies. This manner of doing has fulfilled the **audi alteram partem** rule where no party can surprise the other and each has the opportunity to defend himself (Rose Innes 1963:158).

Administrative tribunals are generally bound by the provisions of the statutes that govern them, but are also free to decide upon their own procedures provided that these are not contrary to the provisions of natural justice. Although the rules of natural justice do not place an obligation on the tribunal to hear evidence **viva voce** it is advisable in so far as it concerns land uses as parties are not always competent to argue the issues at hand if only written arguments are allowed. Appearance and **viva voce** testimony also ensures that all information is conveyed to the tribunal that ultimately has to take a decision. In order to ensure that the tribunal hearings do not take the form of a court of law no cross examination is allowed and only questions for the sake of clarity are allowed, this adds to the slightly more informal proceedings at a hearing (Rose Innes 1963:160).

Taking a tribunal on review cannot rest on the fact that an incorrect or unfavourable or unpopular decision has been taken, as this does not constitute an irregularity. The correct application of the statute is of importance and not merely the result (Rose Innes 1963:201).

An interesting aspect has now been established in the Constitutional Court where it was ruled that review need not rest only on the procedures and the adherence to natural justice, but also on merits.

In the Constitutional Court case **Roman v Williams NO 1997 (9) BCLR 1267 (C)** the following was ruled. An extensive quote from the ruling is justified as it is of such great importance.

"Judicial review as it existed previously no longer had an independent existence from constitutional review which cast the net much wider. The enquiry in a review would no longer be limited to the manner in which an administrative decision had been reached but now extended to its substance and merits. The test imported a requirement of proportionality between means and ends. In determining whether administrative action was justifiable in relation to the reasons given for the decision, the test had to be an objective one. Administrative action in order to qualify as justifiable in relation to the reasons given had to meet three requirements: suitability, necessity and proportionality."

The constitutional ruling then continues to state that "the constitutional test imports the requirement of proportionality between means and end and that the role of the courts in judicial reviews is no longer limited to the way in which an administrative decision was reached but now extends to its substance and merits". This means that the "essence of justifiability is that the decision must be capable of objective substantiation" and this must appear from the reasons that the section is based on accurate findings of fact and correct application of the law".

This ruling has the effect that the accepted norms for revision have been overturned and this is specifically stated in the following quotation of the ruling "(t)he scope of this constitutional test is clearly much wider than that of the common law test and it overrides the common law review grounds as set out in **Johannesburg Stock Exchange and Another v Witwatersrand Nigel Ltd and Another 1988 (3) 132.**"

The entire decision-making process of tribunals can come under scrutiny based on a novel set of review principles as stated in the ruling as follows:

"Administrative action in order to qualify as justifiable in relation to the reasons given must meet the three requirements of suitability, necessity and proportionality which involve a test of reasonableness" and "(t)he constitutional test embodies the requirement of proportionality between the means and the end. The role of the courts in judicial reviews is no longer confined to the way in which an administrative decision was reached but extends to its substance and merits as well." (**Roman v Williams NO 1997:1278**).

This ruling has turned the normal view on reviews around and it will be interesting to see what transpires as time passes. However, it stands to reason that decision-makers now have even more responsibility and will have to substantiate their decisions carefully and comprehensively.

The Townships Board of the Free State Province has also been taken on review in one of the biggest administrative cases ever heard in the province **vide. SHELL SA (Edms) Bpk en Andere v Voorsitter Dorperaad van die Oranje-Vrystaat en Andere (1992 (1) 906)** as well as an unreported ruling on the same case. In both cases the Townships Board and decision-maker were acquitted, as it could not be proved that either party acted maliciously.

## 7.8 CONCLUSION

A number of important issues have been raised in this chapter and it should be borne in mind that most of these issues will also be applicable to the Development Tribunal as it is also a quasi-judicial tribunal. Certain issues are vital for a tribunal and it would be wise for the department within which such a Development Tribunal falls to ensure that the members are **au fait** with the possible pitfalls and revision issues that could be encountered.

Another aspect that is worth mentioning again is the fact that no-one should intervene between the decision of Townships Board and the final decision of the MEC. The courts are strict on these matters and should some-one influence the decision-maker to take a certain decision then that decision is **ultra vires** and a case for revision will be wide open.

The fact that the LDOs bind the consideration and decision of the Development Tribunal causes a little uneasiness as it could be interpreted as a usurping of power as the Development Tribunal may not decide contrary to the provisions of the LDOs. It does appear as if the Development Tribunal is merely a ratification stamp in this regard.

The town-planning scheme of course again emerges with specific problems basically because they are way out of date. The opinion is held that it just again illuminates the cracks in the town-planning scheme system and emphasizes the fact that they should be reviewed as soon as possible.

Ultimately, when the policies and new legislation comes into operation development and planning will be given impetus in order to enhance planning in its broadest sense.

# 8

# **PROPOSED LEGISLATION GOVERNING LAND DEVELOPMENT AND LAND MANAGEMENT**

*What might have been and what has been  
Point to one end, which is always present.*

T S Eliot

## **8.1 INTRODUCTION**

As could be deduced from the previous chapters the present situation regarding land use management is far from ideal. The **DFA** was promulgated yet it is clear that it is only a facilitation act and the provinces will have to compile their own "(P)olicies, administrative procedures and laws..." (section 3 of the **DFA**) within which to operate. This is an excellent idea of the **DFA** as it realizes that National legislation cannot possibly provide for the uniqueness of each province.

The proposed legislation has a motto of "**KEEP IT SIMPLE**" as experience has taught that legislation should be elementary, yet efficient in order to function well. **Ordinance 9 of 1969** and **Act 84 of 1967** have been indicative of this as they have successfully been in operation for many years.

Although existing legislation is in operation the need for revised legislation has been identified as circumstances have changed drastically. The major changes being a new Constitution and dispensation, the Black and White towns are now a unit under one municipality, rapid urbanization, excessive urban sprawl and several elements resulting from these features. Subsequently a number of challenges have surfaced and these are very deftly depicted in the principles of the **DFA**.

The proposed law focuses on land use and land management only and it assumes that the **DFA** and **Act 209 of 1993** are in place, or some legislation that will substitute them should they be revoked. This assumption is made as these laws fill a particular niche.

The proposed law has some revolutionary ideas and these will be discussed in paragraphs ensuing the proposed Act. A number of provisions have been **mutatis mutandis** "taken over" from existing legislation as the opinion is held that they were still relevant.

## **8.2 PROPOSED LAND USE AND LAND DEVELOPMENT LEGISLATION**

Having taken all the aspects of structure plans, development plans, IDPs and LDOs as well as the existing legislation into consideration the opinion is held that each province should have its own legislation as each province has its own unique circumstances.

The ensuing proposed legislation is presented and although it is not presented as the perfect solution it can form a basis from which further development can take place.

# **LAND DEVELOPMENT AND PLANNING ACT**

The purpose of this Act is to regulate land development, land use, the change in land use and town-planning schemes and generally managing land in the Free State Province

## **GENERAL PRINCIPLES APPLICABLE TO THE ENTIRE ACT**

The following principles are applicable to the entire province and to all applications considered in terms of this legislation and all other legislation governing land use, removal of restrictions, rezoning, land development and township establishment. Policies and administrative practices, regarding the principles, should be compiled and approved by the Land Development and Planning Board. In the case of laws the normal legislative process should be followed.

### **SPATIAL PATTERNS AND THE MANNER IN WHICH LAND SHOULD BE APPLIED**

A Policy, administrative practice and laws should promote efficient and integrated planning and development, the objective of which is -

- 1 The integration of social, economic, institutional and physical aspects of development.
- 2 The integration of rural and urban areas in a symbiotic relationship to each other.
- 3 The creation of employment opportunities in close proximity to, or integrated with residential areas.
- 4 To discourage urban sprawl.
- 5 The correction of historically distorted spatial patterns.
- 6 The optimal use of existing infrastructure; and

- 7 The optimal use of existing resources such as agriculture, land, minerals, bulk infrastructure, roads, transportation and social facilities.

## SUSTAINABILITY AND GOOD PRACTICE

- B Policy, administrative practice and laws, should promote sustainable development that -
- 1 is within the fiscal, institutional and administrative means of the province;
  - 2 meets the basic needs of all citizens in an affordable way;
  - 3 facilitates the development of well planned formal, existing and new settlements;
  - 4 discourages illegal occupation of land;
  - 5 promotes speedy development;
  - 6 stimulates the effective functioning of a development market based on open competition between suppliers of goods and services;
  - 7 is environmentally sustainable;
  - 8 creates a climate which will promote public health and safety;
  - 9 integrates transport planning and land use planning;
  - 10 allows for diverse land uses; and
  - 11 is enabling and developmental, rather than prescriptive or control orientated provided that adequate control can be enforced by the town-planning scheme.
- C Each proposed township should be evaluated on its own merits and no particular land use, such as residential, commercial, conservation, industrial, community facility, mining, agricultural or public use, should be regarded as subordinate or less important or desirable than any other use of land.

## PUBLIC PARTICIPATION

- 1 Members of communities affected by planning and development should be encouraged and assisted to participate actively in the planning and development process.
- 2 Laws, policies and administrative practices should encourage and optimise contributions from all sectors of the economy to development, and to achieve this end national, provincial and local government should define and expose the role of each sector of the economy in respect of planning and development and the desired relationship between the sectors.
- 3 The skills and capacities of disadvantaged persons involved in development and planning should be developed.
- 4 National, provincial and local government bodies should promote sound management of urban and rural planning and development through creating adequate administrative and human resource capacity.

## ENHANCE PLANNING AND DEVELOPMENT

- D Development and planning policy, administrative practice and laws in the province should -
- 1 support and promote the growth and development strategy of the Provincial Government;
  - 2 facilitate the rapid implementation of programmes designed to meet the goals and objectives set by the Free State Provincial Integrated Development Plan, Regional and Local Integrated Development Plans;
  - 3 strive to ensure co-operation and co-ordination between different levels of government;
  - 4 promote co-operation, co-ordination and integration between different municipalities and regions in the province; and

5 foster co-operation and co-ordination between different provincial departments

## Definitions

1. In this Act, unless the context otherwise indicates -

"acceptance" means that the officers of the Free State Provincial Government or the Board have accepted an application as being complete;

"advertisement" means that a notice shall be published by the applicant in accordance with the prescriptions set by the Board. These prescriptions shall include at least the following, but may be expanded by the Board:

- (a) A notice shall be published once in the **Provincial Gazette** and once in at least two official languages in separate newspapers circulating in the area where the land of application is situate. The advertisements should appear on the same day and in the languages used predominantly in the newspapers.
- (b) The notice shall be in accordance with the form as provided by the secretariat to the Board.
- (c) The notice shall state at least the official description of the land (for example the erf number), a street address (if applicable), the existing use, the proposed use and where the application will lie for inspection (two places have to be stipulated, one of which shall be the offices of the secretariat).
- (d) The period for objections should be stated as well as the address where they can be lodged; which will be with the secretariat. The time and place where objections should be lodged must be stated in the notice.

- (e) The applicant shall post a sign on the affected property and maintain it for the duration of the advertisement period. The sign shall be at least 500mm x 1000mm in size, be easily visible and shall contain the same information as the notices. After the expiry date of the period for objections the applicant shall submit an affidavit to the effect that such a sign was posted and maintained.
- (f) The applicant shall also inform affected persons in the area of the intended change or development. A **pro forma** notice as well as who should be notified will be provided by the secretariat and the applicant is responsible to notify the affected persons by registered mail or by having the notices delivered to them and then submitting an affidavit to that effect.
- (g) The period for objections shall be 14 days from the day of publication (including weekends and public holidays). Should objections be received the objector will have an additional 14 days from the date of the expiry of the initial period (weekends and public holidays included) to submit substantive reasons for the objection. Failure to submit comprehensive reasons will disqualify objections.

"approved land development" means land development declared approved or recognized as such, in terms of this Act or in terms of any prior law relating to land development or township establishment;

"approved scheme" means a town-planning scheme in respect of which the MEC has by proclamation in terms of this Act or section 29 of the Free State Province **Townships Ordinance, 1969 (Ordinance 9 of 1969)** notified that such scheme has been approved by him;

"Board" means the Land Development and Planning Board referred to in section 2;

"building" includes any structure attached to the land on which it stands even though it does not form part of such land;

"business" means any person or institution which is registered at the District Council or needs any kind of licence to perform its/his/her duties;

"erf" means a portion of land registered or intended to be registered in an erf register in the office of the Registrar of Deeds and includes a subdivision of an erf;

"Head of the Department" means the Head of the Department of Local Government and Housing and includes someone under his command in the Department;

"IDP" means an Integrated Development Plan as compiled in terms of the **Local Government Transition Act (Act 209 of 1993)**;

"individual" means anybody who is not registered at the District Council or needs no licence to perform its/his/her duties;

"land development" means a portion of land subdivided, laid out or developed for residential, business, industrial or similar purposes or deemed by the Board to be destined for such purposes;

"LDOs" mean Land Development Objectives as compiled in terms of the **Development Facilitation Act, 1995 (Act 67 of 1995)**;

"MEC" means the Member of the Executive Council responsible for Local Government and Housing;

"Objector" means a person who objects to any application in terms of this Act. The objector shall deposit an amount of R500-00 (in the case of an individual) and R5 000-00 (in the case of a business) together with his objection with the secretariat. This money will be refunded if the objector, or his representative, attends the inspection **in loco** and the hearing. Should the objector, or his representative, not attend either or both the inspection or the hearing the total amount will be forfeited. An objection should not be based on competition or economic considerations as it will then not be accepted, but should be based on orderly planning, planning principles, public interest and the principles set out in this Act.

"prescribed", means prescribed by regulation under this Act;

"public place" means a place as defined in section 1 of the **Land Survey Act, 1997 (Act 8 of 1997)**;

"receipt" means that an application has been received, but not necessarily accepted as the correctness thereof first has to be established;

"secretariat" means the person(s) who are employed to execute the functions and arrangements of the Board;

"scheme" means a town-planning scheme;

"this Act" includes the regulations made thereunder;

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## CHAPTER 1

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### **LAND DEVELOPMENT AND PLANNING BOARD**

#### **Constitution of Land Development and Planning Board**

**2 (1)** The Land Development and Planning Board established as the Townships Board in terms of section 4 of the Free State Province **Townships Ordinance, 1969 (Ordinance 9 of 1969)**, shall continue to exist with the following as **ex officio** members:

- (a) (i) the Surveyor-General;
- (ii) the Registrar of Deeds;
- (iii) the Director of Spatial Planning; and
- (iv) the Director of Land Use

of the Free State, or any person on the staff under the control of such member authorized by such member to act as an alternate on his behalf;

- (b) such additional persons as the MEC may deem fit to appoint for their proven experience, knowledge of and interest in town-planning;
- (c) the above members are to be appointed in such a way that the number of public officials may not constitute more than 50 per cent of the members; furthermore the appointments should, as far as possible, take into account gender equity and to be representative of the community in the Free State Province.

- (2) (a) A member appointed in terms of subsection (1)(b) shall hold office for a period of three years. The MEC may at any time terminate the appointment of such member if in his opinion good reasons for doing so exist.
- (b) An appointed member of the Board shall vacate his office if he has, without leave from the Chairperson of the Board, been absent from three consecutive meetings of the Board, or of any committee of the Board: Provided that such leave shall not be granted in respect of a continuous period exceeding six months.
- (c) Whenever for any reason the office of an appointed member of the Board becomes vacant before the expiration of the period for which he was appointed, the MEC may appoint any other person to fill the vacancy until the expiration of the period for which the vacating member was appointed.
- (d) An appointed member whose period of office has expired shall be eligible for re-appointment.

### **Chairperson of Board**

- 3 (1) The MEC shall designate one of the members of the Board as Chairperson and one as deputy Chairperson.
- (2) The deputy Chairperson shall exercise the powers of the Chairperson when the Chairperson is absent or unable to act as such.

- (3) Whenever the Chairperson and the deputy Chairperson are absent from any meeting of the Board the members who are present may elect from among themselves a Chairperson to act at the meeting.

## **Meetings**

- 4**
- (1) Meetings of the Board shall be held at such times and places as the Chairperson may determine.
- (2) Five members of the Board shall constitute a quorum at a meeting of the Board, an inspection is also regarded as a meeting.
- (3) The decision of the majority of the members present at a meeting of the Board shall constitute the decision of the Board: Provided that in the event of an equality of votes the Chairperson of the meeting shall have a casting vote in addition to a deliberative vote.
- (4) At all meetings of the Board where objections are heard the parties shall be bound by the contents of their respective cases, be it the application or objection. No additional information shall be accepted at the meetings. Expert testimony will be allowed, but shall also be bound by the original information. No cross examination shall be allowed, but only questions which could clarify matters. An applicant or objector may appear himself or be represented by some-one. When an inspection has taken place only the persons/parties/members of the Board who attended the inspection may be heard at the hearing.

## **Committees and advisers**

- 5** (1) The Chairperson of the Board may appoint one or more committees from the members of the Board to assist it in the exercise of its functions or the performance of its duties.
- (2) The MEC may, on such conditions, and at such remuneration as he may determine, appoint one or more advisers to serve on and assist a committee appointed in terms of subsection (1), and such advisers shall in all respects have the same rights as other members of such committee, except that they shall not be entitled to vote at a meeting of such committee.

## **Delegation of powers**

- 6** (1) The Board may, with the approval of the MEC and on such conditions as he may determine, in writing authorize -
- (a) a committee appointed under section 5(1);  
(b) the Chairperson;
- to exercise or perform in general or in a particular case or in a case of a particular nature, any power, duty or function conferred or imposed on the Board by or in terms of this Act.
- (2) The MEC may at any time withdraw an approval given under subsection (1).

## **Members who have an interest in matters**

- 7** No member of the Board shall vote upon or participate in or be present during the discussion of any matter before the Board or a committee of the Board in which he has directly or indirectly any pecuniary interest.
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## **CHAPTER II**

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### **LAND DEVELOPMENT.**

#### **Land Development subject to approval of Board**

- 8** No person shall develop land except with the specific approval of the Board or otherwise than in accordance with the provisions of this Chapter.

#### **Application for land development**

- 9**
- (1) The owner of land (in this Chapter referred to as the applicant) who proposes to develop land shall submit an application for approval to do so to the Head of the Department in such form and accompanied by such plans, documents, information and fees as may be prescribed or determined by the Board. A copy of the application should simultaneously be lodged with the local authority, or if the land is not within the area of a local authority, then with the closest local authority.
  - (2) If the land upon which the development is to take place is subject to a mortgage bond, a lease of mineral rights or a prospecting contract or if the mineral rights have been severed from the ownership of the

land, the applicant shall lodge with such application the written consent of the mortgagee, the lessee of the mineral rights, the holder of the prospecting contract or the owner of the mineral rights to the development of land: Provided that the Board may approve that this requirement be dispensed with in the case where such mortgagee, lessee, holder or owner cannot be traced.

- (3) The applicant shall submit with his application a statement in which he -
  - (a) motivates the application and the need and desirability of land development, taking into consideration the general principles set out in this Act;
  - (b) declares whether such land is or is not subject to any encumbrance registered in the Registrar of Deeds or the Mining Title Office; and
  - (c) specifies the nature of any such encumbrance, if any;
- (4) Upon receipt of an application referred to in subsection (1) the Head of the Department shall notify the Surveyor-General and the Registrar of Deeds thereof and furnish them with a description of the land upon which the development is to take place.
- (5) After an owner of land has taken steps to develop land no person shall -

- (a) transfer any land in such application; or
- (b) erect a building on such land,

except with the approval of the Board or otherwise than in accordance with the conditions imposed by the Board when granting such approval, until -

- (i) the application for approval for the development of such land shall have been refused by the Board; or
  - (ii) the applicant shall have withdrawn the application; or
  - (iii) the approval of the application shall have lapsed in terms of section 12 or 14; or
  - (iv) the Board shall have declared the development approved and, in the case of such an owner who is not a local authority, the MEC in consultation with the Board shall have satisfied himself that the services and amenities which have to be provided in connection with such land in terms of the conditions subject to which the development of such land was approved, are available and shall have issued a certificate to that effect.
- (6) Any contract entered into in conflict with the provisions of subsection (5) shall be of no force or effect and shall be considered null and void.

### **Receipt of application**

- 10** (1) Upon receipt of an application the Head of the Department shall investigate the siting and need for land development and refer it to the Board within 30 days after the application has been accepted.
- (2) The Board shall consider the development of land in principle and decide thereupon within 30 days, where-after the applicant, objectors (if any) and all other parties to the matter shall be notified accordingly.

- (3) If such application is approved the detail land development application shall be submitted not later than 6 months after the date of the letter of approval.
- (4) Failing to comply with sub-section (3) the principle approval shall lapse.

### **Procedure to be followed by Board when considering application**

- 11** (1) Upon receipt of an application referred to it in terms of section 9 the Head of Department shall notify the applicant that the application can be advertised as specified in section 1 **supra**.
- (2) The Head of Department shall transmit copies of any objections to or representations concerning an application lodged with it to the applicant.
- (3) After the expiry of the period specified in the notice published in terms of section 1 the Head of Department shall submit the application to the Board and the Chairperson shall -
  - (a) set a time for the inspection of the site of the proposed land development;
  - (b) set a time and place for the hearing of the application and any objections or representations received in connection therewith; and
  - (c) cause the applicant, the objectors and persons lodging representations to be notified accordingly: Provided that if no objections or representations were lodged with the Board the Chairperson of the Board may dispense with the inspection of the site.

- (4) When considering an application the Board -
  - (a) shall, in so far as they may be applicable, have regard to such matters as may be prescribed for the purpose or as may be deemed relevant by the Board; and
  - (b) may require the applicant to furnish such further information, plans or drawings as it may deem necessary.
- (5) After consideration of an application the Board shall decide on the matter in the following manner: -
  - (a) that the application be approved subject to such conditions as the Board may deem advisable and that the town-planning scheme, where applicable, automatically be amended to include the land and should the land be situate outside the area of jurisdiction of a local authority the inclusion will be consequential to the approval of the land development; or
  - (b) that the application be refused.
- (6) The Head of the Department shall notify the applicant, the Surveyor-General, the Registrar of Deeds and all relevant parties to the particular case of the decision taken by the Board in terms of subsection (5) and of the conditions, if any, subject to which an approval in terms of the said subsection was granted.
- (7) The Board may, after an application has been approved in terms of subsection (5) and before the land development in question has been declared an approved land development, upon request of the applicant, consider any amendments to the conditions subject to which such approval was granted, and the Head of the Department

shall notify the Surveyor-General and the Registrar of Deeds of such amendment or addition.

### **Applicant to lodge general plan and diagrams with Surveyor-General**

- 12** (1) An applicant shall, within a period of two years from the date of the notification of the approval in terms of section 11(5) lodge for approval with the Surveyor-General the general plan and such diagrams as may be necessary for the land development.
- (2) If an applicant fails to lodge the general plan and diagrams with the Surveyor-General within the period specified in subsection (1) the approval of the application shall lapse.
- (3) When such general plan and diagrams have been approved by the Surveyor-General he shall notify the applicant and the Registrar of Deeds of such approval.

### **Copy of general plan to be supplied to local authority**

- 13** (1) If the land on which the development is to take place is situate within the area of jurisdiction of a local authority, the applicant shall, within a period of three months from the date on which he was notified in terms of section 12(3), of the approval of the general plan and diagrams, supply such local authority with a certified copy of the approved general plan.

- (2) If an applicant fails to comply with the provisions of subsection (1) the local authority may recover from such applicant the costs incurred by it in obtaining a copy of such general plan.

### **Lodging of general plan, diagrams and title deeds with Registrar of Deeds**

- 14** (1) An applicant shall, within a period of one year from the date of the notification of an approval in terms of section 12, lodge the general plan and diagrams in question together with the title deeds of the land to which it relates with the Registrar of Deeds for registration, and the Registrar of Deeds shall notify the Head of the Department of the registration.
- (2) If an applicant fails to lodge such documents with the Registrar of Deeds or to obtain registration thereof within the period specified in subsection (1) the approval of the application shall lapse.

### **Approval of land development and extension of boundaries**

- 15** (1) (a) After the provisions of section 14 have been complied with the Board shall declare the land development to be approved.
- (b) The conditions upon which the application for the land development has been approved shall be set out in a schedule to such approval which will be published in the **Provincial Gazette**.
- (2) The Board may rectify any error or omission in a notice in the **Provincial Gazette** or the schedule thereto issued in terms of subsection (1).

- (3) If a portion of land should, in the opinion of the Board, by reason of its location, provided that the land borders directly onto land covered by a general plan, be included in an approved land development the Board may, by notice and subject to such conditions as it may deem advisable, extend the boundaries of such town to include such land, and thereupon such land shall be deemed to be an erf in that town and the Surveyor-General and the Registrar of Deeds shall amend their records accordingly: Provided that the land to be included is relatively the same extent as the adjoining erven in the town and shall be used as an entirety.

### **Alteration or cancellation of general plan**

- 16** (1) (a) When the Board is satisfied that it is desirable to do so in the interest of the development of a town, or in the public interest, he may on application of a person in terms of subsection (2)(a) grant approval for the alteration, amendment or total or partial cancellation of the general plan representing the lay-out of such town, either unconditionally or subject to such conditions as it may determine.
- (b) This subsection shall empower the MEC in consultation with the Board to alter the name of a town.
- (2) (a) Any person may apply for the approval of the Board as contemplated in subsection (1), and such application shall be submitted to the Head of the Department in duplicate in such form as may be prescribed or determined by the Board and shall be accompanied by such plans, documents, information and fees as may be prescribed or determined by the Board. A

similar application shall also be submitted to the relevant local authority.

- (b) Upon receipt of such application the Head of the Department shall cause an advertisement to be placed in accordance with section 1 **supra**;
  - (c) A copy of every objection, and of the report of the local authority, received by the Head of the Department shall be sent to the applicant by registered post.
  - (d) On the expiration of the period within which objections may be submitted to the Head of the Department, he shall refer the application and all objections, if any, to the Board. The Chairperson of the Board shall set a time and place for the hearing of the application by the Board and the applicant, every objector and the local authority shall be notified thereof in writing, and at such hearing the applicant, every objector and such local authority shall have the right to be heard.
  - (e) After the hearing and consideration of the application the Board shall-
    - (i) grant the application in the form in which it was made; or
    - (ii) grant the application subject to alterations, amendments or conditions as it may deem fit; or
    - (iii) refuse the application.
- (3) When a general plan of a town is totally or partially cancelled by the Surveyor-General, in terms of section 37(2) of the **Land Survey Act, 1997 (Act 8 of 1997)**, such town, or that part of the town which is represented by the cancelled part of such plan, shall cease to exist as a town or as part of a town; the conditions pertaining to such land will also be regarded as revoked;

- (4) (a) When a public place or part of a public place shown on the general plan of a town is permanently closed, the town owner shall, unless the Board determines otherwise, be divested of his rights of ownership in and to the land comprising such public place or part of a public place and thereupon such rights of ownership shall vest in the local authority of such town or, if no local authority exists, in the MEC in trust for a future local authority until such time as a local authority is constituted for such town or it is incorporated within the area of jurisdiction of a local authority, when it shall vest in such local authority, and such vesting shall be recorded by the Registrar of Deeds in such manner as he may deem appropriate.
- (b) The provisions of paragraph (a) shall not affect any right to minerals or any other real rights held by the town owner in the land concerned or his right to obtain registration thereof.

### **Subdivision and consolidation of erven or land**

- 17 (1) Except with the approval of the local authority the Surveyor-General shall not approve a diagram -
- (a) which has been compiled from two or more diagrams representing several erven or portions of land, for the purpose of obtaining a consolidated title thereto.
- (2) An application for approval by the local authority shall be made in writing by the owner of the erf or land and shall be accompanied by such fees, documents and information as may be determined by the local authority.

- (3) The local authority may -
- (a) refuse such application; or
  - (b) subject to the provisions of the approved scheme, if any, which applies to the area in which the erf or land in question is situate, approve such application subject to such conditions as it may deem fit.
- (4) When the local authority approves an application -
- (a) by which a public place or part of a public place shown on the general plan of a town is affected; or
  - (b) whereby a new public place is created in that town.

The approval of the local authority shall, subject to the provisions of section 16, be subject to the amendment or change of that general plan by the Surveyor-General in terms of section 37(2) of the **Land Survey Act, 1997 (Act 8 of 1997)**, necessitated by the approval.

- (5) After an owner of land has applied for approval by the local authority for the subdivision of an erf shown on the general plan of an approved town, in such a way that a new public place is created in that town by the subdivision, the provisions of section 16(4) shall apply **mutatis mutandis** to that erf.

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## CHAPTER III

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### TOWN PLANNING

#### **General purpose of scheme and provisions which may be included in scheme**

- 19** (1) A scheme shall have for its general purpose the co-ordinated and harmonious development of the area to which it is to apply (including, where necessary, the re-layout and redevelopment of any part thereof which has already been subdivided and built upon) in such a way as will most effectively promote the health, safety, order, amenity, beauty, convenience and general welfare of such area as well as efficiency and economy in the process of such development. The provisions of the general principles in this Act and the LDOs shall also be given attention.
- (2) In the preparation of a scheme due consideration shall be given to such matters as may be prescribed.
- (3) A scheme shall contain such provisions as may be necessary or expedient -
- (a) for promoting orderly development, regulating, restricting or prohibiting the development of the area to which it is to apply;
  - (b) for dealing with any matter referred to in subsection (2); and
  - (c) for the achievement of the objects of the scheme.

- (4) (a) A scheme may provide for an appeal to the Board against a decision given by a local authority under such scheme or when an unreasonable delay has occurred on the part of the local authority to give such a decision.
- (b) When an appeal is lodged in terms of an approved scheme against the decision of a local authority or the unreasonable delay on the part of a local authority to give a decision -
- (i) it shall be in writing and shall, in the case where it is an appeal against a decision of the local authority, be lodged with the Board within thirty days from the date on which such decision was conveyed to the particular party;
- (ii) the appellant shall, when he lodges the appeal with the Board, furnish the local authority with a copy thereof;
- (iii) the Board may confirm, alter or reverse such a decision or may, in the case where an unreasonable delay has occurred on the part of the local authority to give a decision, give any decision which the local authority would have been competent to give; and
- (iv) the local authority shall be bound by the decision given by the Board in such appeal.

#### **Prohibition of works prior to scheme becoming an approved scheme**

20 (1) When the approval of a local authority is required in law for -

- (a) the erection or alteration of, or addition to a building, or the carrying out of any work whatsoever; and/or
- (b) any land or building being put or converted to any use;

such local authority shall not, except with the prior consent of the Board, grant such approval if such erection or alteration of or addition to a building, or such work or use would not conform to the proposed provisions of a scheme in the course of preparation or awaiting approval by the Board.

(2) Whenever it appears to a local authority that the proposed provisions of a scheme in the course of preparation or awaiting approval by the Board are likely to be contravened if -

- (a) any erection, or alteration of, or addition to any building is undertaken or proceeded with;
- (b) any other work of any nature or description is carried out, undertaken or proceeded with; or
- (c) any particular use is made of any land or building,

such local authority must prohibit such erection, alteration, addition, work or use.

- (3)
- (a) Any person who has without reference by the local authority to the Board been refused an approval referred to in subsection (1) or who is aggrieved at a prohibition in terms of subsection (2) may, within thirty days or such further period as the Board may approve after such refusal or imposition of such prohibition, lodge an appeal in writing against such refusal or prohibition with the Board and he shall at the same time submit a copy of the notice of appeal to the local authority.
  - (b) The decision of the Board in the matter shall be final and binding.

## **Submission of scheme for consideration by Board**

- 21** (1) When a local authority has completed the preparation of a scheme it shall submit the scheme together with such plans, documents and information as may be prescribed or determined by the Board to the Head of the Department who shall refer it to the Board.
- (2) Upon receipt of the scheme the Board may, after consultation with the local authority, make such amendments to the scheme as it may deem necessary, and thereafter the Head of the Department shall cause an advertisement to take place in accordance with section 1 **supra**.
- (3) In the event of objections and representations having been lodged the Board shall, after the expiry of the period referred to in subsection (2), set a day for the hearing -
- (a) forward copies of such objections and representations to the local authority; and
  - (b) notify the local authority and such persons of the time and place fixed for such hearing.

## **Amendment of scheme submitted for approval**

- 22** (1) After the hearing contemplated in section 21 has been held the Board may require the local authority to amend the scheme wholly or in part, and if the local authority fails to prepare such amendment and submit it to the Board within the period fixed by the Board, the Board may itself prepare such amendment and the local authority will be responsible for the costs.

- (2) The provisions of section 21 shall **mutatis mutandis** apply in connection with an amendment submitted to, or prepared by, the Board in terms of subsection (1) or (2), unless the Board is of the opinion that such amendment is not of a material nature and that it will not materially prejudice any person.

### **Approval of scheme**

- 23 (1) After the provisions of section 22 have been complied with the Board shall decide on the town-planning scheme with such amendments as it may consider necessary.
- (2) The Board shall notify by notice that it has approved of a scheme and that a copy of such scheme will be open for inspection during office hours at the offices of the Board and the local authority.
- (3) The Board and the local authority concerned shall ensure that a copy of the approved scheme is always available for inspection at their offices during office hours.

### **Amendment of approved scheme**

- 24 (1) Anyone may, and a local authority shall, if so required by the MEC in consultation with the Board, prepare an amendment of an approved scheme and submit it to the Board. If such applicant is not a local authority the application should be submitted to the local authority and a copy to the Head of the Department. The local authority shall comment on such application within 30 days from the date of

submission and upon failure to do that the Head of the Department shall refer the application to the Board who shall proceed with it.

- (2) Upon receipt of the application the Head of the Department will cause the application to be advertised in accordance with section 1 **supra**.
- (3) When a local authority who has in terms of subsection (1), been required to prepare an amendment of an approved scheme has failed to submit such amendment to the Board within such period as may be fixed the Head of the Department may prepare such amendment and submit it to the Board.
- (4) The Board may by notice in the **Provincial Gazette** correct an error or omission in an approved scheme if in its opinion such error or omission is not of a material nature.

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## CHAPTER IV

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### **CHANGE IN LAND USE**

#### **Alteration, suspension and removal of restrictions and rezoning of land**

**25** Alteration, suspension or removal of restrictions, rezoning or obligations in respect of land by the Board -

- (1) Whenever the Board is satisfied -

- (a) that it is desirable to do so in the interest of land development or the development of any town or in the interest of any area, whether it is situate in an urban area or not, or in the public interest and that the advantages are materially in accordance with the principles and purposes of a Town-Planning Scheme and the general principles set out in this Act and that the provisions of the LDOs have been taken into account:

it may, on application of any person by notice in the **Provincial Gazette** alter, suspend or remove, either permanently or for a period specified in such notice and either unconditionally or subject to any condition so specified, any restriction or obligation which is binding on the owner of the land by virtue of -

- (aa) a restrictive condition or servitude registered against the title deed of the land; or
- (bb) a provision of a law relating to land developments or to town planning; or
- (cc) rezoning in terms of a town planning scheme; or
- (dd) rezoning and a restrictive condition or servitude registered against the title deed of the land; or
- (ee) rezoning in terms of a town planning scheme and a provision of a law relating to land development or to town planning,

and which relates to -

- (aaa) the subdivision of the land; or
- (bbb) the purpose for which the land may be used; or
- (ccc) the requirements to be complied with or to be observed in connection with the erection of buildings or the use of the land.

- (2) For the purposes of paragraph (bbb) of subsection (1), any restriction or obligation which is binding on the owner of the land by virtue of a restrictive condition or servitude registered against the title deed of the land, shall be deemed also to relate to the purpose of which the land may be used if, in the opinion of the Board, the restriction or obligation prevents or prejudices the establishment or development of any land.
- (3) Provided that where a town planning scheme is already in operation and the conditions of title stipulating the use of land are in conflict with the provisions of the town planning scheme the town planning scheme shall prevail.
- (4) The Registrar of Deeds is given the authority to clear the Deed of Title of such conflicting conditions concerning the use of land if the applicant provides substantial proof that the town-planning scheme deals with the use adequately.

### **Form of application**

#### **26 Form and method of application -**

- (1) Any person who wishes to apply to the Board for the alteration, suspension or removal of a restriction, or servitude, or rezoning of land shall submit his application to the Head of the Department in the form prescribed by the Board and the application shall be accompanied by such documents and particulars as the Board may require.

- (2) If the land concerned is situate in the area of a local authority, the application shall be lodged with such local authority and the applicant shall simultaneously forward a copy of such application to the Head of the Department. The local authority shall transmit the application within 30 days from the date of receipt to the Head of the Department together with its comments and recommendation thereon. Should the local authority not respond with comments within the specified period the Head of the Department shall refer the application to the Board which shall continue to process the application and any conditions set by the local authority after the period of 30 days will have no effect. The local authority shall then also not have a veto right to the development.
- (3) If the land concerned is not situate in the area of a local authority or if the application is made by a local authority, the application shall be lodged directly with the Head of the Department and the provisions set for the local authority shall then apply **mutatis mutandis**.
- (4) If the land is encumbered by a bond the application shall be accompanied by the bondholder's consent to such application.
- (5) On acceptance of an application the Head of the Department shall cause an advertisement to be published in terms of section 1 **supra**.
- (6) A copy of every objection received by the Head of the Department shall be sent to the applicant by registered post.

### **Consideration of application by Board**

- 27** (1) On the expiration of the period within which objections may be lodged in terms of the notice referred to in section 26(5), the Head

of the Department shall refer the application together with all objections and all relevant documents and particulars to the Board for investigation and its recommendation. The Board shall consider the application and objections within 40 days after receipt thereof. If objections have been received an inspection **in loco** is obligatory and a public hearing where all parties are present shall take place. Only members of the Board and parties who attended the inspection may take part in the hearing. In the case where no objections have been received the application must be considered within 30 days from acceptance at the Board and the Chairperson may rule that no inspection or hearing is necessary.

- (2) After consideration of the application, the objections and other relevant documents and particulars, the Board may grant the application subject to such conditions as he may deem fit, or refuse it. Upon approval a notice to the affect will be published in the **Provincial Gazette** and all the relevant parties to the case shall be notified.

#### **Endorsements in connection with alterations, suspensions or removals of restrictions or obligations**

- 28** (1) The Registrar of Deeds and Surveyor-General concerned shall as soon as possible after the publication of a notice make such appropriate entries in and endorsements on any relevant register, title deeds, diagram or plan in their respective offices or submitted to them, as may be necessary to reflect the effect of the notice.

## **Enforcement of scheme**

**29** (1) If a person in contravention of a prohibition in terms of the provisions of an approved scheme -

- (a) undertakes or continues with the erection or alteration of or addition to a building or causes such erection, alteration or addition to be undertaken or continued with;
- (b) carries out, undertakes or continues with any other work or causes such other work to be performed, undertaken or continued with; or
- (c) uses or causes to be used any land or building,

the local authority concerned shall direct such person in writing -

- (i) to discontinue or cause to be discontinued such erection, alteration, addition or other work or use of any land or building;
- (ii) at his own expense to remove or cause to be removed such building or other work or to cause such building or other work or use of any land or building to conform to the provisions of such scheme,

within the period specified in such direction which shall not exceed 3 months.

- (2) When a person fails to comply with a direction in terms of subsection (1)(c)(ii) the local authority shall cause such building or other works to be removed or to conform to the provisions of the approved scheme at the expense of such person.

- (3) A local authority shall take the necessary steps to ensure that the provisions of an approved scheme are implemented and the MEC may, if a local authority fails to take steps, at the expense of such local authority, take any steps which a local authority may take in terms of subsections (1) and (2) to enforce the provisions of such scheme.

**Existing use of land or building not conforming to provisions of approved scheme**

- 30** (1) If any land or building within an area to which an approved scheme relates is on the date on which the Board gave notice that he has approved of such scheme, used for a particular purpose and such use constitutes a breach of any of the provisions of such scheme, but is otherwise lawful, the use of such land or building for such purpose may be continued and shall be deemed to conform to the provisions of such scheme.
- (2) (a) The right to continue using any land or building as contemplated in subsection (1), shall, if such land or building is not so used during a continuous period specified in the scheme concerned, which shall not be longer than 12 months, lapse at the expiration of such period.
- (b) In any action it shall be presumed, if it is so alleged, that such right has lapsed.

## **Local authority may acquire land for purposes of scheme**

- 31** A local authority may purchase or otherwise acquire or expropriate land or a real right in or over land to which an approved scheme applies and which it requires for the purposes of the scheme.
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## **CHAPTER V**

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### **GENERAL**

#### **Right of entry**

- 32** Any person authorized thereto by the MEC or a local authority may for the purpose of ascertaining whether the provisions of this Act are being complied with -
- (a) enter upon and inspect any land or premises at reasonable times;
  - (b) question any person he finds on such land or premises with respect to any matter relevant to such purpose.

#### **Conflict of laws**

- 33** When a condition subject to which the development of land was approved or a provision of an approved scheme is in conflict with a regulation of a local authority such regulation shall, to the extent of such conflict, be of no force and effect.

## **Regulations**

**34** The MEC, in consultation with the Board, may make regulations in respect of -

- (a) the forms, plans and documents to be submitted and the information to be furnished by a person making application for the development of land or the subdivision of an erf or land or the alteration, amendment or cancellation of the general plan of a town and the fees to be paid in connection with such application;
- (b) the matters to which the Board shall have regard when considering an application for the approval to develop land;
- (c) the matters to which a local authority shall give consideration when preparing a scheme;
- (d) the plans and documents to be submitted and the information to be furnished by a local authority when it submits a scheme prepared by it to the Head of the Department; and
- (e) the requirements relating to the alteration, suspension or removal of restrictions or rezoning of land generally, any other matter which he considers necessary or expedient to prescribe in order that the purposes of this Act may be achieved.

## **Offences**

**35** (1) Any person who -

- (a) contravenes or fails to comply with -
  - (i) any provision or of any regulation under this Act;
  - (ii) a direction or a prohibition;
  - (iii) any condition subject to which land has been developed has been declared or recognized as an

- approved development or any other conditions imposed in terms of this Act;
- (iv) any provision of an approved scheme; or
  - (v) a restrictive condition or servitude registered against the title deed of any land;
- (b) furnishes information which is false or misleading in or in connection with an application, objection or representations lodged in terms of this Act; or
  - (c) resists or hinders any person in the exercise of his powers or refuses or fails to answer to the best of his knowledge any question put to him,

shall be guilty of an offence and liable upon conviction to a fine not exceeding R50 000-00 (fifty thousand Rand) or to imprisonment for a period not exceeding 24 months or to both such fine and imprisonment.

- (2) Any person who has been convicted of an offence under this Act and who, after such conviction, persists in the conduct or neglect constituting such offence, shall be guilty of a continuing offence and liable to a fine not exceeding R20 000-00 (twenty thousand Rand) in respect of every day that he so persists.

## **36 Delegation to Local Authority**

The MEC may, on request and after consultation with the Board delegate some or all the powers mentioned in sections 8 - 27 to a local authority subject to the following conditions:

- (1) That the local authority is not the applicant or objector or in any way connected to the applicant or the objector.
- (2) That the local authority has the proven expertise, formally approved LDOs, IDPs and a planning department, or a planning consultant appointed on a contract basis, all to the satisfaction of the MEC in consultation with the Board.
- (3) Upon delegation the MEC may impose such conditions as he deems fit and may at any time withdraw any delegated powers.
- (4) For the purpose of the delegated powers the Board should be read as the Council of the local government.
- (5) If any objections are received in a matter processed under delegated powers then the delegation is automatically withdrawn and the parties shall be heard by the Board.

### **Incomplete matters**

- 37** Any matter which is being dealt with by the MEC, the Board, a local authority or compensation court in terms of a provision of an Act repealed by this Act and which is uncompleted at the date of commencement of this Act, shall be completed, **mutatis mutandis**, in accordance with the provisions of this Act.

## **Repeal of acts/ordinances**

- 38** (1) Subject to the provisions of subsection (2), the acts and ordinances mentioned in the Schedule to this Act are hereby repealed to the extent set out in the third column of the Schedule.

[The legislation to be repealed will be the entire Free State Province **Townships Ordinance, 1995 (Ordinance 9 of 1969)** the relevant sections of the **Less Formal Township Establishment Act, 1991 (Act 113 of 1991)**, the entire **Removal of Restrictions Act 1967 (Act 84 of 1967)** and the relevant still existing sections of the **Black Communities Development Act, 1984 (Act 4 of 1984)**.]

[The **Development Facilitation Act, 1995 (Act 67 of 1995)** will still be in place albeit only technically.]

- (2) Any proclamation, regulation, appointment, notice, approval or condition issued, made, given, granted or imposed or any other stipulation performed under a provision of an act or ordinance repealed by subsection (1), shall be deemed to have been issued, made, given, granted, imposed or done under the corresponding provision of this Act.

## **Short title**

- 39** This Act shall be called the Free State Province **Land Development and Planning Act, 1999**.

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### 8.3 FEATURES OF THE PROPOSED ACT

In order to facilitate the understanding of the proposed act the following aspects are expounded upon:

Section 1: The **definitions** are comprehensive especially in so far as the "advertisement" process and the "objector" are concerned. The following aspects regarding the advertisements need attention:

Where advertisements are required in the proposed Act a revolutionary **modus operandi** is proposed in order to adhere to the quest for public notice and to the expeditious finalization of applications.

The notice of the application in the **Provincial Gazette** and the press takes place only once and not as at present twice in the press. This serves to curtail costs and the opinion is held that once is adequate in the light of the entire proposal. The period for objections is also only 14 days in all cases; with the proviso that should someone be aggrieved an additional 14 days is allowed for this aggrieved person to submit reasons and substantiation for the objection.

This procedure will cut through the "run of the mill" applications and expedite them while the objector is granted an additional 14 days to substantiate his objection. The applications that draw objections will consequently take a little longer as the subsequent stages will include a hearing. Adequate provision is made for the **audi alteram partem** axiom in respect of the objector who may need time to compile reports or do research. In short this means that notice is given for 14 days and then people may object. The objector is then granted an additional 14 days to lodge any further documents if he so desires.

The other significant change proposed is that a sign should be posted on the property affected by the application. This is to inform the people in the area that something is going to happen on the land or that the use of the erf could change.

Many people do not have access to newspapers and/or the **Provincial Gazette** and they also do not receive notices as affected persons. This sign should be at least 500mm x 1000mm in size and should be maintained by the applicant for the entire duration of the advertisement period.

It will also be noticed that a monetary deposit is requested from every objector. This is not to preclude anybody as the money will not be deposited prior to the inspection and hearing and will be refunded at the hearing irrespective of success; if the objector attends both the inspection and the hearing. This is important to understand that he will not physically part with the money should he attend the inspection and hearing the converse is also true, if he does not attend then the money is forfeited. This provision is to prevent people from simply objecting for some obscure and petty reason and then not even attending the inspection and hearing. In the process time is wasted for the developer and this results in money wasted. It also costs the Board money and time to hold the inspection and hearing and then the application could have followed the normal route. This has happened numerous times in the past and the provision is to stop this kind of approach.

Section 2, **Composition of the Board:** The Land Development and Planning Board could be smaller than the Development Tribunal, but the key protagonists are still included. The balance between the officials and the private appointees are also of significance as is the equity in gender and the racial and demographic composition.

Section 3, **Chairperson of the Board:** This is similar as in the present **Ordinance 9 of 1969** as the opinion is held that it is a more convenient and effective manner of operation than the Development Tribunal in the **DFA**.

Section 5, **Committees and Advisers:** This is an existing provision, but is very rarely used. Attention should be given to this and it should be used – even in the present **Ordinance 9 of 1969**; it can expedite matters.

In sections 9, 16, 34 and 36 certain powers are granted to the MEC " ... in consultation ... " with the Board. A clear distinction between "in consultation" and "after consultation" should be made. The former relates to the MEC entering into discussions with the Board and then a consensus decision has to be reached and the MEC cannot simply overrule the wishes of the Board. The latter means that the MEC can consult the Board and then decide as he wishes (Meyer and Wessels 1997:Personal interview). **In casu** it is thought wise to allow the MEC to have discussions and then to make provision for a consensus decision.

Sections 9 and 10: These sections are the **combination of provisions** found in **Act 113 of 1991** and **Ordinance 9 of 1969**. The initial land development approval is an indication for the developer as to the principle of the application and he then at least also knows that the locality is correct. The time periods are significant as they bind the developer and the government and this helps expedite the process.

Section 11 (5) allows for land to be incorporated within the **area of jurisdiction** of a local authority automatically after land development has taken place. This is a speedy way of doing something that has to take place in any case and it excludes a long and cumbersome process.

Sections 13 and 15 have the times allowed for the **registration of the general plan and the erven register** prolonged compared to the time allowed by **Ordinance 9 of 1969** at present, but no provision to condone the failure of registration or the extension of time is provided. This is significant as some towns in the Free State Province have been approved 18 years ago and nothing has been developed. Conditions change substantially and so rapidly that the periods allowed in the Act are adequate. If the developer does not develop within that period he has to apply **ab initio**.

Section 16: **Amendment of the general plan:** The significant issue here is that this procedure as found in **Ordinance 9 of 1969** at present explicitly prohibits the change of the name of a town and it is now explicitly permitted. In the present situation names have to be changed via the Courts and this is an ineffective and inefficient way of operation regarding aspects not really so crucial.

Section 17: **Subdivisions and consolidations:** It serves no purpose that these applications should be considered at a provincial level. All local authorities are capable and competent enough to consider these applications.

Section 25(3) and (4): In these sections the issue of **conflicting conditions** in the deed of title and the provisions of the applicable town-planning scheme are addressed. It should be accepted that the town-planning scheme is the control document and where it comes into operation in an urban area where the land use was previously regulated by conditions in the title deeds the title deed conditions should be secondary to the town-planning scheme provisions. At present these conditions, if in conflict, should be removed in terms of **Act 84 of 1967** and then in most cases it is simply to get the conditions in accordance with the town-planning scheme. It stands to reason that this is a cumbersome method of achieving very little as the use is not changed in any way. The proposal allows the Registrar of Deeds to remove these conditions should they be in conflict with the town-planning scheme. No opportunity for advertising is necessary as the community is in a similar position as when the town-planning scheme was promulgated.

This procedure should not be confused with the change in land use zoning where the entire process of advertising and consideration needs to take place. The proposed "easy" way is only for conflicting conditions in the deeds of title prior to the town-planning scheme coming into operation.

Section 26(2): At present **Act 84 of 1967** states in section 3(8) that the local authority gets 30 days in which to **forward its comments** the Provincial

Government and failing to do so the application "may" be processed without the comments. This causes delays in the entire process as normally the comments are awaited and this could lead to several months. The local authorities claim that they have to wait for a Council decision and Council meets only once a month. Although this may be the case development is of paramount importance and the local authorities will have to delegate certain powers in order to speed up the processes. The proviso that the local authority may not afterwards hamper the developer in his development is particularly important as should the local authority not be in favour of the development then different conditions can be set to make life unbearable and to defeat the development.

Section 29: A town-planning scheme should always be **enforced by the local authority**. This also places a responsibility on the local authority to ensure that the town-planning scheme is not out-dated and that it provides for development and growth. Unfortunately developers have taken chances and did as they wished irrespective of the provisions in the town-planning scheme. Local authorities have also some blame in this and this section is important as it gives certainty to owners about the uses of their properties and as to what is permissible and what not.

Section 35 **Offences:** The present tendency to do as you like is the beginning of chaos and anarchy. Perpetrators should be hounded and then brought to justice. The present fines are totally inadequate and some transgressors, when convicted, have had the audacity to simply continue and pay the daily fine for a year in advance. The opinion is held that this conduct should be terminated immediately.

Section 36: At present **petty actions related to land development** and land use changes have to be approved by the MEC via the Townships Board. This is a circumlocutory way as many of the local governments in the Free State Province are competent to deal with many issues autonomously.

The delegation of powers to local government is done in such a manner that it works on a scale of who can and who cannot. This is considered to be a fair manner as a bigger town could perhaps have fewer delegated powers than a smaller town because it cannot satisfy all the requirements needed for the delegation. If a town cannot meet all the requirements then it will have no delegated powers and if it can meet all the requirements it may have all powers. The only exclusion is that where the municipality is a party in the matter then it cannot also decide on it – normal natural rule of justice that one cannot be the judge in one's own cause. The latter applications will then have to be processed by the Board.

#### **8.4 CONCLUSION**

A number of unique and revolutionary aspects have been addressed in the proposed act. This has been done based on experience and by realizing what creates confusion and causes frustration with the applicants, be they local authorities or developers. Furthermore, certain aspects that can expedite applications without prejudice have also been addressed. The advertisement and notification procedures are simple and yet effective. The deposits for objectors are considered necessary as more often than not the objectors do not turn up and a great deal of time and money have been spent worthlessly.

The proposed legislation is by no means the **locus classicus** of land development and land management and neither are the provisions cast in stone, but it does address the existing crises and problem areas and it poses to expedite procedures. The uniqueness of the Free State Province is also encapsulated in the spirit of the proposed Act and it is hoped that the Free State Provincial Government will accept some of it as a basis for its own provincial legislation as so desperately needed. The simplicity and focussed provisions should put the Free State Province among the front runners in so far as land use development and management are concerned.

# **9 RECOMMENDATIONS AND CONCLUSION**

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*We shall not cease from exploration  
And the end of all our exploring  
Will be to arrive where we started  
And know the place for the first time.*

T S ELIOT

## **9.1 INTRODUCTION**

Urbanization is increasing continuously and with it is found the issues of traffic, increasing car ownership, more schools, businesses, offices, to name only a few elements that influence land use. Urban land development and land use have left the present generation a poor legacy that can greatly be ascribed to previous policies. However, realities must be faced and the only manner in which land development and land use can progress to ensure salubrious communities will be to face the many challenges and manage the present situation. Progressing from the present into the future will require innovative thinking and comprehensive planning.

Land use and land management cannot take place in isolation and without taking into consideration numerous other factors such as transportation systems, intensification of the population, economic forces of free enterprise, mixed land uses and the extent and rapidity of urbanization. The legacy of vast urban sprawl and separate urban areas will have to be addressed and this will have to be based on the principles of the DFA and all principles ensuring public interest and the interest of the area.

The challenges to the local authorities and all other land use and land development decision-makers are evident and they will have to take up the gauntlet and govern in new innovative ways where the creation of a conducive climate for development is a priority and control essential.

The change in attitude in so far as planning is concerned should be mentioned that the integration of spatial segregation, land uses and compatible mixed uses form an important basis especially if it is against the backdrop of sustainability. It must be accepted that sustainability is important and all development will have to conform to certain features within set parameters in order to conserve the environment.

It has to be accepted that all planning principles of a few years ago are no longer applicable, and if applicable, then in quite different form. The entire scene from planning in a controlled manner to planning management in order to enhance development causes the rigid applicability of certain planning principles to be outdated, superfluous and inordinate. The present situation in the Free State Province is that the town-planning schemes of the towns are outdated and will have to be revised in order to provide for the development of the towns as development is the beginning of integration. The legislation governing land use, zoning and land management is also far too circumlocutory, outdated and, in the case of the **DFA**, far too complex.

As a consequence of the principles of the **DFA**, intensification of urban areas and compatible mixed land use will again be touched upon against the backdrop of the influencing elements like transportation systems, business location and urbanization. Sustainability should always form part of development and planning and the influence of this will briefly be summarized. Development without control defeats the means and the result and certain town-planning scheme provisions will be recommended albeit briefly, as a thorough study of this phenomenon will comprise a thesis on its own.

The proposed act as set out in chapter 8 **supra** for the Free State Province will again be elucidated upon as it does have some revolutionary and intriguing provisions that will definitely expedite land development issues. Particular recommendations regarding this legislation will be made.

## **9.2 INTEGRATED PLANNING AND INTERFACE DEVELOPMENT**

One of the major challenges is to integrate the different urban areas and to promote mixed land uses. This mode of thinking will ensure that employment opportunities will be closer to residential areas, traffic congestion could also be alleviated and this in turn will lead to greater sustainability. When viewed like this it seems so easy, yet it is of paramount importance that one should look at the reality and then attempt to manage it in the best possible manner.

At present and in the near future development will not readily take place in the former Black areas mainly as a result of the high crime rate. Developing only the White area will perpetuate the previous policies and compound the already encountered problems regarding urban sprawl and segregation. The only solution at present is to have interface development along the periphery of the White area where it joins the Black area or where the buffer zones used to be located. These developments will then "link" the areas together and as time progresses it will be much easier to commence development within the Black areas. Interface development should take place along main routes between the urban areas and should provide in the demands of all communities (Maynard 1995:Personal interview).

A possible obstacle that must not be negated is the so-called interface conflict where the interface development is not compatible with either one, more or all the uses it should link. The solution is to plan pro-actively and to ensure that the various uses are compatible and that the uses will not directly or indirectly be conflicting to one another. In other words the development should be compatible

in so far as the primary and direct uses are concerned, but also concerning the subsequent elements that could influence it such as traffic flow and sustainability with the environment (De Swardt 1998:Personal interview). It can be concluded that strategic land management could lead to active and successful interface development. This result can be obtained by detailed structure plans [LDOs **in casu**] and it goes without saying that the importance of these documents and plans should receive the highest priority.

In order to eliminate the interface conflict in so far as the town-planning scheme is concerned the zoning categories will have to receive attention. Regarding the conflict of zonings it should be assured that the uses are compatible otherwise the entire purpose of the interface development will be defeated.

The role of the local authority in this matter cannot be over-emphasized and it is imperative that a local authority should be in a position not only to accommodate development, but to control it. In other words the town-planning scheme should be up to date and approved structure plans or LDOs should be in place. This will lead to sound development and planning taking place across the entire spectrum of land management. It is also obvious that in order to accommodate and manage development the local authority should have an Agenda 21 in order to ascertain whether the development is compatible with the environment and sustainable with the area (Thornley 1995:Personal interview).

All development should, however, still be sustainable and this will entail that a Local Agenda 21 will have to be in place at local authorities. It must be remembered that Agenda 21 shifts the focus from the normal "green" plans to human welfare, and development that is compatible with the environment in order to ensure a better future. Agenda 21 should be viewed as a strategy impelling the world towards a sustainable future and when applicable in a particular area, with unique circumstances, it is an asset and not an encumbrance to development as a whole (Selman 1998:15-17).

### **9.3 INTEGRATION, LAND USES AND COMPATIBLE MIXED LAND USES**

It has to be accepted that integration, land uses and mixed land uses are so inter-linked with one another that it is very difficult to distinguish between them and to avoid referring to each, or all, every time the solution will be to refer to land management as a collective. What also has to be remembered is that the accompanying influences like traffic and businesses play a pivotal role in land management as a whole (De Leeuw 1998:Personal interview).

As the traffic situation in the larger urban areas in the Free State Province plays an important role it is wise to first look at this element as an influence on land management. Different land uses attract different kinds of traffic at a different level such as industrial/service uses will attract more heavy vehicles that are slower moving than quicker motor cars. Offices on the other hand will attract motor cars, but not necessarily as many at peak hours than for instance business uses. The distribution of vehicle trips also vary depending on the locality of the particular development (Exter *et al.* 1997:3). Therefore, it can be concluded that the placing of a specific development in a particular area could pose problematic as the generated and attracted traffic is influential.

In respect of transportation systems, land use and the economy, it will be wise to take heed to what the Minister of Transport said at the implementation of a new transportation policy (Maharaj 1997:[?]):

"We need to examine the impact of developments, relevant to transport, in other sectors of the economy, the region and the world. This will ensure that the transport system, its technology and infrastructure, meets our economic goals and growth objectives, as well as the needs of its customers. ... It will be important to establish a business environment

appropriate for the provision of transport as market forces will regulate supply and demand."

It can be asked whether this does not have a bearing only on transportation systems and how does it influence land management? The answer can be complex, but the essence is that a development needs to get the people who support it to the premises and this is mainly via roads. If the roads prove to be inadequate then the development will not be the prospective success as traffic congestion will prevent people from frequenting the development. The local authority in this case should provide adequate road systems and pro-active planning in terms of the LDOs will ensure that development and transportation systems match (De Leeuw 1998:Personal interview).

The rapid and vast growth in car ownership among all the people leads to traffic becoming an ever-increasing factor with which to contend. The roads become busier by the day and this also has an influence on the location of particular developments. What has happened now is that the CBDs are deteriorating at an alarming rate and that businesses tend to move to the periphery of the original CBD and also into the suburbs. This "movement" of businesses and offices has generated extensive traffic problems as "rat-running" now takes place as increasing traffic move between suburbs and not like intended with the road systems from residential into the CBD and out again. What happens now is that ribbon development takes place along the larger traffic arterials surrounding the CBD and even along the "beltways" that in most cases link the Black and White towns (De Swardt 1998:Personal interview).

The Free State Province is not excluded from the phenomenon of CBD deterioration and in the bigger centres this is a grave problem. The easy answer to this problem is that crime is so rife in the CBDs that no-one wants to have businesses in the area. However, another factor that has emerged is that urban decay can partly be ascribed to poor municipality management. This lack of sound management is that too many unlawful commercial uses are tolerated in

the residential areas and then also that permission is too easily granted for developers to settle commercial uses and offices in residential areas (Muller 1998:10-11). However, the reality is that CBDs are entering a spate of deterioration and this creates certain land management problems that will have to be addressed.

The movement away from the CBD has a specific result in the sense that development is taking place along arterial routes, especially the routes linking the different urban areas. Ribbon development is nothing new to the spatial planning profession, but this is a scene that has not emerged in a serious fashion for a long time. The extent with which it is now taking place is also much greater than in the past as is the influence as a result of the larger car ownership. The fact that development takes place in this manner leads to subsequent overcrowding as development and the generated traffic tends to spiral. This means that as development proliferate the traffic increase which in turn attracts more development, which attracts more traffic and so it continues (Kern 1980:2-3). It can be concluded that the one use feeds the other in a two way directional manner and that strategic planning becomes more and more important as a guide to planning and development. What could actually happen in certain cases is that the existing CBD of a town could break up into smaller CBDs and these could be strung along a main route like beads on a string (De Swardt 1998:Personal interview). The LDOs can play a vital role in this entire issue and together with the IDP the spatial and all related planning can be done by a local authority. At present it does not seem as if one answer is correct as the circumstances are too different and unsure, yet pro-active planning will have to take place in order to guide the development in an orderly fashion.

What should not be forgotten is that a CBD is very susceptible to the cyclic changes of its users. This means that should the majority of users change then the CBD has to adapt quickly in order to survive. If the CBD does not respond then it will deteriorate. In order to keep the CBD effective the response to change should be rapid and the changes should be anticipated by means of strategic

planning and efficient land management (Tomalin 1998:94). It can be deduced that the LDOs should take into cognizance the imminent changes and have alternative plans at hand to prevent the deterioration and scattering of the CBD.

As far as residential expansion is concerned it is important to note that a reduction in the need for movement is required. The majority of people do not like to move from the community in which they are established to another area, even if they should become more affluent. This entails that land development should provide different pockets of land where the sizes of erven vary so that people can move about in the same community, should they wish. More affluent people can then also initially settle on larger erven that are more expensive. What it boils down to is that planning should take place in close collaboration with the community and in this process all aspects, like community services, should be addressed (Dewar **et al.** 1991:33-34).

The entire legislative issue concerning LDOs and an IDP should be clarified at national government level as both the acts governing the compilation of these documents are national legislation (section 10D of **Act 209 of 1993** and sections 27-29 of the **DFA**). At present it does seem as if the legislation is contradictory as **Act 209 of 1993** determines that an IDP should be compiled by a district council while the **DFA** determines that LDOs should be compiled by the local authority. It simply does not make sense as no-one now really knows which plan influences which. It is also interesting to note that in the Free State Province no effect has been given to the provision of section 10D(4) of **Act 209 of 1993** that stipulates that the district councils and local authorities shall have compiled an IDP within 12 months after the **Local Government Transition Second Amendment Act, 1996 (Act 97 of 1996)** has come into operation (Stapelberg 1997:Internal policy document on LDOs). Needless to say this act has been in operation for much longer than 12 months.

When contemplating a definite policy on mixed land uses one has to go about it very sensitively. Already in other provinces where mixed uses are being

implemented problems are arising. What can easily happen is that uses are juxtaposed and combined to residential uses and then these "other" uses are incompatible with the existing residential uses. Inadequate infrastructure could become burdened and the residential suburbs become uninhabitable if the uses are irreconcilable with one another.

While the concept of mixed uses is sound and quite necessary as it attempts to resolve past imbalances and integrate formerly isolated areas within the urban fabric, it must be approached with some caution. Mixing uses must also always take place bearing in mind that the uses have to be compatible with one another. What could happen is that buffer strips between uses may again emerge and then integration among different uses never take place. Higher densities might cause problems with service infrastructure and even necessitate more schools in an area where no room is available; this in turn compounds the traffic problem as scholars have to commute to schools. Offices and businesses in a residential area could also "over-power" the residential uses and then residents will move away and the area may become another non-residential area – this will defeat the entire purpose of compatible mixed uses. One of the major prerequisites for sensible mixed uses and action in public interest is that clear policies should be formulated and these should be included in the town-planning scheme from where the zonings and uses could be controlled (Cohen 1998:[?]).

#### **9.4 PLANNING PRINCIPLES – PAST AND PRESENT PERTAINING TO STRUCTURE PLANS AND LDOs**

The idea is not to go into detail and tabulate the differences in planning principles of the past and present. It would suffice to indicate that in the past planning principles were control inclined whereas the present approach is to emphasize development much more. In the past the structure plans were mere guidelines and the public participation that took place was limited as the plan was compiled and then the representatives of the community and other selected protagonists

had an opportunity to object to it or give representations. These structure plans used to indicate broadly the directions of expansion of the different towns without really giving attention to the development of the towns (De Leeuw 1998:Personal interview).

The present tendency is to encourage development as can be deduced from the RDP, the LDOs and the IDP. The entire environment around planning has changed to become more conducive for development and this is why Agenda 21 is often (quite unjustly) viewed as hampering development as it is another set of requirements to which development has to conform. However, the IDP and LDOs have to take care of this – provided of course that Agenda 21 is taken into account and a Local Agenda 21 is available. Agenda 21 encourages development as long as it is sustainable and the environment is taken into account in assuring sustainability (Thornley 1995:Personal interview).

The IDP, together with the LDOs, is really a total management plan where all the aspects of strategic management are taken into account while the LDOs concentrate mainly on spatial/land management, in other words somehow related to the structure plans of yore. One of the major differences of the LDOs and the old structure plans is that the compilation of the LDOs require a comprehensive public participation process where the needs of the community are prioritized and dealt with in the LDOs. In other words the setting of the LDOs is a process and not merely setting a plan.

LDOs should also address the aspect of urban sprawl as required in the principles of the **DFA** (section 3 of the **DFA**). Within these objectives set by the LDOs document local development plans for specific areas or suburbs should also be compiled. These plans should address the development at a much more detailed scale similar to the town-planning scheme, but as a planning document, not as a control document (Day 1995:Personal interview). It stands to reason that these local development plans will have to go through a process of public consultation similar to that required for the particular LDOs.

However, the principles of the structure plans should not be negated **in toto** as some of them are still very much applicable. The main emphasis to fall on the development aspects and not so much on the control aspects. The LDOs should take cognizance of the fact that it should act as an incentive to development and not only as a spatial plan. In other words the LDOs should be spatially based, but development orientated (Price 1995:Personal interview; Randsdorp 1995:Personal interview).

LDOs should focus on more than spatial elements and the entire urban system should receive attention. Several elements are interlocking and interdependent such as housing, employment, education and transportation to mention only a few. The LDOs should take all these elements into account and consider strategies where all these could work in unison and harmony to achieve the best possible results for the community (Hobbs & Doling 1981:101).

The compiler of the LDOs has a daunting task as the best possible plan should be provided to the community and this entails that a comprehensive approach is required. This approach also needs to take into account the fact that planning is cyclical and on-going. In other words as soon as the initial goals have been attained then new goals have to be set as the circumstances have changed. It is also important to note that the planner cannot act in a vacuum and that he has to consider real alternatives that are feasible. Some alternatives will seem like the best for the situation, but when taking all the prevailing circumstances into account may not prove feasible and of this the planner should be aware. The situation must be assessed in respect of the particular circumstances prevalent in the specific situation (Hobbs & Doling 1981:102 & 114).

When compiling the LDOs the people actually living in the area should be consulted. This is particularly important with regard to residential areas where mixed uses are envisaged. In practice one should be careful not to penetrate residential areas to such an extent that the area entirely loses its residential

character and become dead-by-night with only office buildings and with unbearable traffic during the day – this will be death by development. Feedback, consultation and transparency are needed as well as a multi-disciplined approach that will ensure that all the aspects that could influence the planning have been addressed (Cohen 1998:9).

The LDOs should also address the aspects of commercial development in the suburbs and the influence this development will have on the traffic. Traffic congestion on the arterial roads to and from the CBD could much easier occur in smaller residential streets should excessive traffic be canalized into the suburbs (Davies 1986:76). It can be concluded that the fact that traffic plays such an important role in the entire land use sphere that it should receive attention and that it should be carefully considered how land develops and zoned in order to ensure that the specific areas are not strangled and that the inverse of the noble intentions do not take place.

It is recommended that the process of the LDOs be undertaken with great responsibility and resilience as these goals and parameters that are set in terms of the LDOs are binding to all decision-makers and tribunals in terms of any legislation. No approval shall be given to any application that is inconsistent with the provisions of the LDOs (section 29 of the **DFA**). This is a very dangerous provision in the act as outdated LDOs can stifle development and even cause the town to have no development at all. It goes without saying that once LDOs have been set, with the necessary responsibility and clairvoyance, then these have to be kept up to date to provide for changing circumstances and needs.

It is evident, therefore, that LDOs, while instituted to attract and ensure development, can also stifle and curtail development. Local authorities will have to pay heed to this pitfall and take precautionary measures such as ensuring that adequate funds are available to keep the LDOs in pace with the requirements of the town, area and community.

The entire issue of the IDP that should be set in terms of **Act 209 of 1993** (section 10D) while LDOs are set in terms of the **DFA** (section 27) is most confusing and the only losers in this confusion are the people in the community. These hurdles should be eliminated as quickly as possible and pressure should be exerted by the local sphere of government to the national sphere of government in order to have these processes work in unison in order to serve the community best.

## **9.5 DEVELOPMENT IN RELATION TO TOWN-PLANNING SCHEMES AND RELATED ISSUES OF LAND USE AND ZONING**

One of the most serious problems regarding land use control and land management facing local authorities and provincial government is the fact that town-planning schemes are governing most of the White towns and conditions of establishment and Annexure F the Black towns. This leads to the problem that different provisions exist for different areas still largely based on race. The differences also make it more difficult to integrate the different areas in order to form a unit. A consequent problem is that the town-planning schemes cannot be applied directly in the Black areas as they are too rigid and are incompatible with the existing uses of the land. The town-planning schemes are also outdated in relation to the principles of the **DFA** and this issue will cost dearly to rectify.

A town-planning scheme is one of the most important instruments in the planning and development profession, but at the same time it is completely inadequate in planning for the extensive growth and change experienced in urban areas at present. The town-planning scheme sets out the control measure for that what is intended by the LDOs. The LDOs and the town-planning scheme should not have conflicting ideologies and policies and each should serve a demarcated area. It must be remembered that the town-planning scheme mostly does not see the entire urban area as a holistic and dynamic entity with the inter-relationships among all the planning disciplines. It is a control document that views particular

aspects from the point of view of control in specific ways in specific areas. This feature of the town-planning scheme does not make it bad, to the contrary as a plan it is still one of the most important regulatory or control documents – it just emphasizes a different aspect of the whole planning and development issue (Fair 1965:42-44).

A feature that will have to be addressed is that of intensification of areas in order to curb urban sprawl. This is also a very sensitive aspect as purely intensification cannot take place unbridled, as services will have to be assessed to ascertain whether sufficient capacity will be available. Initial densities will have to be determined to make provision for possible intensification led by needs. Densities should also be determined by policy and not at random as this will create uncertainty among the owners and it will also jeopardize sustainability. Traffic routes and infrastructure can also be planned in accordance with the policy determined density and this in turn will give certainty to the community (Carmona 1998:228-229).

However, intensification cannot simply take place as the pendulum can swing too far towards high densities and what has been thought of as the ultimate answer can become a nightmare. When densities become too high for the area to be self-contained which in turn will cause all kinds of socially linked problems causing the community to scatter and in the end the planning to fail (Rogers 1997:1).

The local authority should have plans containing certain policies for certain identified areas where particular development ought to take place. Housing for example should not receive much attention that only housing sites are provided as that will make the area unliveable. These policies could be included in the town-planning scheme and/or the LDOs – it must just be available and implemented (Breheny & Ross 1998:139).

A further problem of the town-planning schemes is that the zoning categories are not flexible enough and do not have adequate room to accommodate mixed land

uses. The town-planning schemes should be flexible in permitting different land uses in the particular zoning categories, yet the scheme should be enforced rigidly.

## 9.6 TRANSGRESSIONS OF TOWN-PLANNING SCHEMES

People often simply develop without paying heed to either the zoning or the restrictive conditions. In these cases the perpetrators should be stopped and the transgressions even removed or demolished as they simply then quickly apply for the change in land use and the local government and Townships Board are faced with a **fait accompli**. This normally results in approval even if the prospective use is not befitting. It has happened that an office block and a business mall of several floors have been completed without the building plans being approved as the use of the land is not in accordance with the "new" use.

In the town of Clarens a developer unlawfully opened a mill in the residential area of the town and when requested to close it down, also by Townships Board, he simply continued operations. As this was a nuisance to not only neighbours, but the entire area and complaints were lodged at the local authority and the Townships Board. Steps were taken to close the mill, but the developer persisted, each time founding lame justification on equally lame arguments. Eventually, after nearly a year the developer closed down and moved (Reporter 1998:3).

This is unacceptable practice as the transgression should be dealt with quicker and more effectively. The legislation does provide for specific action to be taken in this regard and these actions should be taken irrespective of the political brunt that will follow as a consequence (section 31 of **Ordinance 9 of 1969**). Unlawful operations tend to become rife and should be nipped in the bud otherwise land management anarchy will erupt.

These transgressions are despicable and should not be allowed at all and under no circumstances. The local government should take control of these perpetrators and act harshly in order to ensure proper planning and development taking place. Development should take place in an orderly and well planned manner and conform to all legislation.

## 9.7 WAY AHEAD

The **DFA** has indicated the way ahead by means of very sound and well founded principles. The challenge will lie in how these principles can and will be implemented and enforced. The spirit of the principles is very noble, but if they are not enforced and implemented then they will serve no purpose at all.

It is also a fact that provincial legislation will have to be formulated to ensure policies, guidelines and parameters within which all land use and land management systems can take place. The challenges are rife and should be met with zeal and zest in order to develop the available land as best we can – and to manage the existing situation as well as possible.

In order to correct the legacy that is the reality today certain definite steps have to be taken and these should endeavour to result in the following:

- Quicker release of decisions.
- Sound policies and principles.
- Providing adequate land to people in a planned fashion.
- Providing spatial order to communities.
- Developing in a sustainable manner.

In order to achieve all these noble goals it is important to have legislation and policies that are in line with what has to be attained. Current legislation is dated in the Free State Province and the **DFA** has not been implemented as yet so this

will have to be addressed. It must also be borne in mind that in the principles of the **DFA** an obligation is placed on the provincial and local government spheres to provide policies, administrative procedures and laws in terms of the **DFA** to manage land. It must also be remembered that the **DFA** is a "facilitation" act and not the panacea of land management. The suggestion is that tailor made legislation such as that proposed in chapter 8 **supra** be considered. This law is revolutionary in its approach and will doubtless serve the purpose for which it is intended. One of the more important aspects is to speed up the process of decision-making and shorten the period from application to approval and the proposal does exactly that while still giving due attention to public participation and most importantly acting within the parameters of the **DFA** principles. Some of the more revolutionary provisions of the proposed legislation will again be emphasized in this respect: [In order to obtain a complete and comprehensive idea of the proposed legislation it will be best to consult chapter 8 **supra** in this regard].

- The envisaged Land Development and Planning Board will have final decision-making powers that will curtail the period from application to consideration.
- The 14 days advertisement period will expedite the consideration process while the prospective objectors will not be disadvantaged as they will be granted an additional 14 days to substantiate their objections after they have filed their intention to object. The applications that do not attract objections will therefore lie only 14 days for objections while those drawing objections will lie 28 days.
- The fact that an easily visible sign should be posted and maintained on the site for the same period as the advertisements enhances the public participation, as the site is easily identifiable. The people living in the area who do not receive newspapers then also know about the

envisaged change and the procedures to be followed regarding the objections.

- The monetary deposit required for objections serves the purpose that people will not merely object simply to waste time and then not even attend either the inspection or the hearing. Experience has shown that people sometimes lodge unsubstantiated objections and this results in the application being delayed, an inspection and hearing held while the objector does not respond. When a deposit is required then the objector will at least attend in order to prevent the relinquishing of his deposit.
- The fact that incorporation within the area of jurisdiction and the town-planning scheme takes place automatically when land development takes place is also a great time and effort saving process. At present each aspect needs an application and this takes time, effort and money while the proposed procedures will entail that the land development application encapsulates the other aspects that are automatically consequential to the land development.
- The increased penalties for transgressors of the town-planning scheme must be high as these people simply cause problems without taking into consideration the public interest and/or the interest of the area.
- The fact that the town-planning scheme of a town overrules the conditions of title is also extraordinary and even more so when the removal of the conditions that are in conflict with the provisions of the town-planning scheme. The Registrar of Deeds can remove these conflicting conditions in a simple and quick procedure and this will save a great deal of money and time as well as pave the way for quicker development.

- The delegations proposed will also assist with development as the municipalities that conform to the requirements will be able to receive the delegations and consider all applications themselves. This will facilitate the development process, but on the basis of delegation and not the blanket assignment of powers to the municipality.

The afore-mentioned aspects are the more salient and revolutionary aspects and the entire proposed act should be read in order to comprehend all aspects of expediting development processes without relinquishing basic features such as public participation and/or abandoning planning principles. However, the primary legislation is but one aspect while the LDOs and town-planning schemes should follow in order to ensure a uniform package of legislation and policies to create a controlled and yet conducive environment for sustainable development.

LDOs are useful documents, but it should be reiterated that the town-planning schemes should not be neglected in the eagerness of having development orientated LDOs while the particular town-planning scheme can then act in a stifling manner if it is not in line with the LDOs. Careful consideration of the compilation of the LDOs should also be given in so far as it relates to sustainability. It is strongly recommended that a Local Agenda 21 be required as either a separate document to the LDOs or be incorporated in the LDOs, but that it should receive its rightful attention.

One of the major problems in the land management system is the different regulatory instruments used in the Black and White towns. White towns have town-planning schemes and conditions of establishment while the Black towns are subject to the provisions of Annexure F only. This way of different control features could be regarded as discriminatory and if not at least unfair. The opinion is held that a new town-planning scheme should be compiled for each town where the Black and White areas are incorporated and controlled with a single set of provisions. This of course is easier said than done and thorough research should take place as the rigidity of the town-planning scheme should be

wed to the more lenient approach of Annexure F. This venture will also be dear and funds will have to be sought for it.

The town-planning scheme in a town should also follow close behind the LDOs as the town-planning scheme should follow the indications of the LDOs in such a manner that the provisions of the LDOs are not thwarted. This means that the town-planning scheme should be in line with the LDOs and the provisions of both documents should be aligned otherwise development will be curtailed.

The sphere of local government has an ever-increasing difficult task and this will have to be dealt with enthusiastically and with zeal. Urbanization is here to stay and increase and it will have to be managed as well as everything that goes with it. The instruments to plan, develop and manage will have to be in place and this thesis attempts to elucidate the importance of basic documents and a revolutionary piece of legislation that will act in an enabling and empowering manner.

## **9.8 SUMMARY**

Land development and land use needs a multi-pronged approach in order to be managed. Spatial strategies aimed at controlling and constraining growth have made place for land management conducive to development (Gardner 1994:3). In other words land management is multi-faceted and has to be managed in such a way as to include many more disciplines than only a town planner. The plans compiled, be they structure plans or LDOs or town-planning scheme plans, should address a whole range of issues in order to ensure a viable, self contained, self reliant, happy, salubrious and sustainable community.

Legislation, LDOs and town-planning schemes should be development friendly and especially the town-planning schemes should be much more flexible in their approach in order to ensure that development over a broad spectrum may take

place. The town-planning scheme should not be rigidly categorized and the zonings should receive attention so that vertical zonings may also take place in addition to horizontal zonings. The particular zoning categories should also be adapted to provide for the provisions of the LDOs and then for the provisions of the Local Agenda 21.

It appears that traffic is becoming a major problem and in the process of integration of the Black and White towns, the uncertainty of the deteriorating CBDs and the increase in car ownership land management is becoming very important and cannot be neglected or negated in any manner.

Urban strategies should be well thought and focussed and all the necessary instruments should be in place in order to take the best informed decisions. It must also be remembered that planning is not done for a community, but with a community to ensure that priorities in the community are addressed. It also needs to be emphasized that the implementation of strategies and the proper management of land need funds and these funds will have to be generated mainly by local authorities.

Innovative strategic planning should take place and the maxim "INNOVATE OR EVAPORATE" should be borne in mind when it comes to land management in future. Strategic planning normally takes long term goals into consideration. The plan, however, helps us to make enlightened decisions today. Problems have to be responded to today and nothing will happen if we should post a sign: "Plans being prepared", and competing demands will not disappear should we add to our sign "Quiet please, long range goals being formulated." However, our decisions will also not improve should we post the following sign: "We do not know where we are going, but we have to move fast." (So 1979:14).

## ANNEXURE A

"This, I need hardly say, has happened in the recent past. In the United States and United Kingdom we have 400 years of practice at urban design and comprehensive planning and development. The results, particularly in the U.K., have been pretty disastrous – often with the best intentions. But people, I think, have felt this sense of disaster subconsciously. Having been told so firmly what was good for them, what was fashionable and intellectually acceptable, what was artistically correct and contemporary, most of us were cowed into feeling that we were frightful reactionary imbeciles even to consider that what was being produced was often nonsense and thoroughly inhuman. Now, however, there is, I think, a growing awareness that it is all right not to be ashamed of those feelings.

I began to wonder what really did make the best sort of urban environment. What was likely to produce the greatest sum of human happiness when it came to the design of modern cities? Who was going to decide anyway? How do we avoid making similar mistakes to those of the last? With the speed of technological advance being so great, will we be designing a built-in obsolescence for 30 or 40 years' time, merely to hear our children or grandchildren castigating us for getting it wrong?

The secret is to enthuse people who have become demoralized and, perhaps, resigned to the helplessness of their position, through professional leadership and through helping people themselves to overcome problems. This may be through helping them to rehabilitate their own houses, for instance, which in turn give them new-found confidence through the acquisition of a skill. Through confidence comes hope; through hope comes new ideas and new economic activity. This, together with the co-ordination of the private and public sectors, which can provide pump-priming

*resources, ensures that a renaissance can take place. I have seen it with my own eyes. I have talked to those involved and I have seen the skepticism evaporate when people discover how this approach can work. But it requires a change in attitude, which is not easy for those brought up to view things differently. Above all, it requires people like yourselves who are concerned enough to want to make a contribution and who are humble enough to make it in this way.*

*The point I would make is that, when talking about remaking cities or bringing new economic life to certain parts of them, we must never forget that at the heart of the question is the human individual: a person who is more than just a cog in a gigantic utilitarian machine, someone who responds, often subconsciously, to things of the spirit as well as the material. So Ladies and Gentlemen, let's go and show the skeptics what can be achieved!" (Davies:175-177).*

## *ANNEXURE B*

*"Travelling is not easy in Cairo. During rush hours (7 a.m. to 8 p.m.) buses are crammed beyond theoretical capacity, so passengers cling to the outside or sit on the roof or in windows. The city's traffic chaos reduces the speed of the crowded buses, so they never stop. Getting on and off is an art, a sport and proof of one's spirit. Boarding is to take a running leap and clutch at whatever one can, window or door openings, bumpers, or fellow passengers, who often extend a helping hand. Getting off is the real challenge, requiring what one connoisseur calls the flying dismount" (Sarre 1991:265).*

## ANNEXURE C

"In my view the approach of the Town Planning Court should be this; no condition should be registered if, viewing the scheme broadly and as a whole, the registration of such condition would be likely to defeat the objects of the scheme. Every case should be considered on its merits, and I do not think that the mere fact that in certain cases the restrictions in the condition are more restrictive than the restrictions in the scheme would justify refusal to register the condition, as registration of the particular condition against a particular piece of land need not necessarily tend to defeat the object of the scheme as a whole. To give an example; a scheme may permit only three types of user of land, use A, use B, and use C. A restrictive condition which is sought to be registered may limit the user of the particular piece of land to use A alone, and prohibit uses B and C. There may, however, be abundant land in the remainder of this zone which may be put to uses B and C. In such a case I cannot see how confining the use of one particular piece of land in the area to use A would defeat or run counter to the scheme as a whole, because the scheme presupposes that all three types of users may exist side by side in the particular zone, and the mere fact that one particular piece of land is confined to use A alone would not defeat the scheme if the area zoned is viewed as a whole. Now to give a contrary example; if a particular owner owned the bulk of the land in such a zone, and wished to make it a condition attaching to the title of every piece of land which he sold in the zone that only use A would be permitted, then the registration of this restrictive condition might well defeat the object of the scheme, as it would mean that there would be no other land in the zone available which could be put to uses B and C; and the scheme provides that all three uses may be carried on in the zone. In such a case I think that the Town Planning Court would be acting within the limits of its discretion if it refused to allow registration of the condition.

*I consider that a broad view should be taken of each application, to ensure that the spirit of the scheme is not defeated. If the restrictive condition can be registered without interfering with the broad spirit of the scheme, then I do not think that any town planning considerations would justify a refusal to register the condition. It must always be remembered that the Act should be construed and applied so as not to interfere with private rights more than is strictly necessary; and where the principles of the Act can be applied without interfering with those rights that is the manner in which those principles should be applied." (Chassey Bros and Another v Registrar of Deeds 1957 (4) 84).*

## ANNEXURE D

*The following extract from a hearing of objections for the change in land use has proven to be a crisp, clear and brief summary of public interest:*

*"Daar is soveel aspekte van openbare belang. Ek dink nie daar is basies 'n verskil in al die wetenskappe van wat is in openbare belang nie. Ek dink mens moet kyk na die breë beleid waarop die land of jou stad of jou streek ingestel is. Jy kan nie openbare belang losmaak van die breë beleidsbepaling nie. Met ander woorde, jy moet in die toekoms in gaan kyk en sê waarheen wil ons gaan - waarheen beweeg ons met ons hele bevolking, of die mense wat onder my jurisdiksie is. Dan dink ek is openbare belang die grootste groep of die grootste voordeel vir die grootste moontlike aantal mense onder jou jurisdiksie. Natuurlik, in daardie proses moet jy probeer om elkeen te laat toekom wat hom toekom, maar in die proses sal u natuurlik ook die regte van ander mense moet beperk, of selfs heeltemal wegneem. Dit is die hele basis of fondament van die idee van geregtigheid - dat om 'n balans te probeer kry tussen individuele belang teenoor sê Staatsbelange. En in die besonder wat hierdie Raad moet betref, dink ek moet u in die eerste plek kyk na 'n breë beleidsrigting - waarheen gaan u in die breë beleid en dan vra: hoe kan ons dit versoen met die belang van die grootste aantal bewoners van ons jurisdiksie. Dit is alles teorie. Die vraag is, hoe verwerklik jy dit - hoe maak jy daarvan praktyk of realiteit? En dan lyk dit vir my die idee wat ontwikkel het deur hierdie norme op die hiërargie, dit is iets wat uitkristalliseer, die praktyk oor 'n lang tyd en op baie plekke bewys" (Olivier Townships Board meeting 549B, 25 October and 4 November 1985).*

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## SYNOPSIS

This thesis deals with land management in urban areas and how the present legacy of separate towns may be managed and how the ultimate goals of integration and mixed land uses in a compatible manner can be attained. New legislation to ensure expeditious consideration of applications and the pruning of logical steps are also discussed and proposed. The new-fangled legislation, the Development Facilitation Act, 1995 (Act 67 of 1995) is also discussed thoroughly and the uncertainties, deficiencies and advantages regarding this legislation are discussed at length.

The present situation regarding the separate towns and the problems encountered receives attention and this moves towards the integrated planning system where not only planning should be integrated, but where the entire approach should be integrated. This means that planning cannot be done in isolation or in compartments, but that a multi-facetted approach is required where all disciplines that are directly or indirectly involved in development are incorporated.

This means that traffic, infrastructure, services, the economy, social aspects, planning and the environment all need to be addressed. What is emphasized is that land use and land development influence a whole spectrum of other elements and these in turn influence planning and land use. The ideal will be to manage the land development and use in such a way that strategic thinking and management take place. In respect of all these elements the backdrop of Agenda 21 should not be forgotten.

Each town has its own particular and unique circumstances and these have to be taken into account not only in so far as it pertains to planning, but as it will influence the environment. Local Agenda 21 plans will have to be compiled and not with the notion that it will stifle development, but in order to develop in a consistent manner with the environment and the provisions set out in Agenda 21.

It is common knowledge that something will have to be done with the integration of the towns as well as with the different zoning control measures. The rigidity of the town-planning schemes will also have to be addressed, but in order to commence with this, new tailor-made legislation, administrative procedures and policies are required. This thesis aims to satisfy at least the one element and that is the legislation. However, the research done can be useful for the compilation of structure plans, land development objectives and the subsequent town-planning scheme amendments in order to enhance development and have all urban areas incorporated within a single town-planning scheme.

Another feature of the thesis is that it thoroughly discusses the administrative processes and procedures regarding the Townships Board and the Development Tribunal as well as all aspects relating to the procedures followed in land development. Some of the terms such as public interest and zoning for specific uses lend themselves to different interpretations and these have been researched from a town-planning point of view, but more importantly from an administrative point of view as these are elements readily used in quasi-judicial tribunals. Numerous court cases have been consulted and clear guidance has been indicated in this respect.

The thesis aims to elucidate possible solutions in land management regarding the rapid urbanization process encountered at present, sustainability in respect of Agenda 21 and new legislation for the Free State.

#### SEARCH WORDS/PHRASES

Zoning, town-planning scheme, structure plans, land development objectives, Development Facilitation Act, tribunal, administrative procedure, urban regeneration, urban planning, central business district, Agenda 21.

## OPSUMMING

Hierdie proefskrif handel oor die bestuur van grond in stedelike gebiede en hoe die huidige situasie van afsonderlike dorpe bestuur kan word om die uiteindelike doelwitte van integrasie en versoenbare gemengde grondgebruiken te bereik. Nuwe wetgewing wat die spoedige afhandeling van aansoeke en die inkorting van logiese stappe word ook bespreek en voorgestel. Die nuwe wetgewing, die **Wet op Ontwikkelingsfasilitering, 1995 (Wet 67 van 1995)** word ook deeglik bespreek en die onsekerhede, gebreke en voordele betreffende hierdie wetgewing word ook uitvoerig bespreek.

Die huidige situasie van afsonderlike dorpe en die probleme wat daarmee ondervind word kry ook aandag en dit beweeg na 'n ge-integreerde beplannings sisteem waar nie net beplanning ge-integreer word, maar die hele aanslag van beplanning behoort ge-integreerd te wees. Dit beteken dat beplanning nie in isolasie gedoen kan word, maar dat 'n multi-faset aanslag verlang word wat al die dissiplines insluit wat direk of indirek betrokke kan wees.

Verkeer, infrastruktur, dienste, die ekonomie, sosiale aspekte, beplanning en die omgewing moet ook aangespreek word. Wat beklemtoon word, is dat grondgebruik en ontwikkeling 'n hele spektrum van ander elemente be-invloed terwyl hierdie elemente ook die grondgebruik be-invloed. Die ideaal sal wees om die beheer van grondgebruik en ontwikkeling op 'n strategiese wyse te laat plaasvind. Al die elemente moet ook in ag neem die versoenbaarheid met Agenda 21.

Elke dorp het sy eiesoortige en unieke omstandighede en dit moet in ag geneem word met beplanning aangesien dit ook 'n invloed op die omgewing sal hê. 'n Plaaslike Agenda 21 behoort in plek te wees met die doel om versoenbare ontwikkeling te bevorder en nie te kortwiek. Ontwikkeling wat versoenbaar is met Agenda 21 se vereistes is reeds volhoubare ontwikkeling.

Dit word algemeen aanvaar dat iets gedoen sal moet word met die integrasie van die verskillende dorpe en ook die afsonderlike sonerings-beheer wat tans van toepassing is. Die regiditeit van dorpsbeplanningskemas sal ook aangespreek moet word en om daar mee te begin moet paslike wetgewing, administratiewe procedures en beleid daargestel word. Hierdie proefskrif poog om in een van die elemente te voorsien, naamlik die wetgewing. Die navorsing wat gedoen is kan ook as basis dien vir die opstel van struktuurplanne, ontwikkelings doelwitte en die daaropvolgende aanlegskemas om sodoende ontwikkeling te bevorder en ook om al die stedelike gebiede met een kontrole dokument te beheer.

Nog 'n aspek van die proefskrif is dat die administratiewe prosesse en prosesse met betrekking tot die Dorperaad en die Ontwikkelings Tribunaal ontleed word, asook die aspekte wat betrekking het op alle grondgebruik procedures. Sommige van die aspekte soos publieke belang en sonerings vir bepaalde gebruik leen hulle daartoe vir verskillende interpretasies en hierdie aspekte is nagevors vanuit 'n stadsbeplanning oogpunt, maar ook veral uit 'n administratiewe oogpunt aangesien hierdie aspekte dikwels voorkom met judisiële tribunale. Verskeie hofsake word ook behandel om rigting te gee aan die grond bestuur.

The proefskrif verklaar ook moontlike oplossings in grond bestuur veral wat betref die vinnige urbanisering wat plaasvind, die volhoubaarheid en die voorgestelde nuwe wetgewing vir die Vrystaat.