THE EVOLUTION OF LAND USE AND DEVELOPMENT CONTROL AND THEIR RELEVANCE IN A FUTURE SOUTH AFRICA

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DECLARATION

I, the undersigned, hereby declare that the work in this study project is my own work and has not previously in its entirety or in part been submitted at any university for a degree.

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SUMMARY

Modern land use planning and development control originated late in the previous century as a reaction to the poor living conditions created by the industrial revolution. Many types of controlling measures were formed and evolved through the years into the present systems of control.

The question is whether these controls still have relevance today. In this study project the evolution of control in Britain, the USA and South Africa is traced, and the present systems in these countries evaluated.

The British land use planning system of compulsory development plans and the obtaining of planning permission in any development has experienced some degree of deregulation of planning controls in the 1980s. This led to greater freedom for prospective developers, although there still is a strong feeling that development control must have a stronger, more clear relationship with definite policy. In the absence of policy, control can become arbitrary and ineffective and, instead of reducing uncertainty, enhances and intensifies it.

The principle central to US land use planning is the preparation of comprehensive plans, which addresses total socio-economic-physical development, thereby leading development and not restricting it. The most important method of implementing planning is zoning, which can be said to be the 'end' of the planning process and aimed mainly at control. Zoning is therefore the principle legislative land use control instrument in the US.

South African land use planning and development control evolved within a unique political framework, whereby different systems were applied for different races. Traditionally, land use planning has been done mainly through town planning, which has zoning as its central principle. Town planning (zoning) schemes create a mechanism whereby the use of land can be controlled. In contrast to American and British practice, South African town planning is often restricted to land use planning and therefore tends to be restrictive rather than offering positive methods or solutions for economic development and the alleviation of poor living conditions.

The present situation in South Africa, where mass urbanization, unemployment and poverty affect the lives of millions of people, leads to the belief that less rigid and inflexible control measures can create an environment where informal activities will help in the social upliftment of these deprived people. The existing planning system was therefore found not to be very effective in poor areas. There is a real need for a system to provide for control in highly formal "first world" areas and informal "third world" settlements. The conflict between 'more control' and 'less control' is central in this need.

In the study it was, however, concluded that restrictive controls should be kept to a minimum and that land use control should be separated from the current over-abundant control measures in order to help create self-sufficient and sustainable communities. A more innovative approach is needed, where town planning is more pro-active and not just an effort to cope with day to day problems.

OPSOMMING

Moderne grondgebruikbeplanning en ontwikkelingsbeheer het laat in die vorige eeu ontstaan as 'n reaksie op die uiters swak lewensomstandighede wat deur die industriële revolusie veroorsaak is. Verskeie tipes beheermaatreëls is geskep en het deur die jare verander om die huidige beheersisteme te vorm.

Die vraag is of dié beheer vandag nog enige relevansie het. In hierdie werkstuk word die evolusie van beheer in Brittanje, die VSA en Suid-Afrika nagespeur en die huidige sisteme in dié lande geëvalueer.

Die Britse grondgebruikbeplanningsisteem van verpligte ontwikkelingsplanne en die verkryging van beplanningstoestemming vir enige ontwikkeling, het gedurende die 1980s 'n groot mate van deregulering ondergaan. Dit het gelei tot groter vryheid vir voornemende ontwikkelaars. Daar bestaan tog 'n sterk gevoel dat ontwikkelingsbeheer 'n sterker, meer duidelike verband met definitiewe beleid moet toon. In die afwesigheid van beleid kan beheer arbitrêr en oneffektief word en, in plaas van om onsekerheid te verminder, dit aanmoedig of vererger.

Die sentrale beginsel van Amerikaanse grondgebruikbeplanning is die voorbereiding van komprehensiewe of omvattende planne wat totale sosio-ekonomiese-fisiese ontwikkeling aanspreek en sodoende ontwikkeling lei en nie beperk nie. Die belangrikste metode vir beplanningsimplementering is sonering, wat beskou kan word as die 'eindpunt' van die beplanningsproses en wat hoofsaaklik op beheer gemik is. Sonering is dus die belangrikste wetlike grondgebruikbeheerinstrument in die VSA.

Suid-Afrikaanse grondgebruikbeplanning en ontwikkelingsbeheer het binne 'n unieke politieke raamwerk, waar verskillende sisteme op verskillende rasse toegepas is, ontwikkel. Tradisioneel is grondgebruikbeplanning hoofsaaklik deur stadsbeplanning, met sonering as kernbegrip, gedoen. Soneringskemas skep dan 'n meganisme waarmee grondgebruik beheer kan word. In teenstelling met die VSA en Brittanje, word Suid-Afrikaanse stadsbeplanning gereeld beperk tot grondgebruikbeplanning. Gevolglik neig dit om beperkend te wees, eerder dat dit positiewe metodes en oplossings bied vir ekonomiese ontwikkeling en die verbetering van swak lewensomstandighede.

Die huidige situasie in Suid-Afrika, waar massa verstedeliking, werkloosheid en armoede miljoene minderbevoorregte mense daagliks raak, lei tot die gevoel dat minder streng en onbuigsame beheermaatreëls 'n omgewing kan skep waar informele aktiwiteite kan bydra tot die sosiale opheffing van dié minderbevoorregtes. Die huidige beplanningsisteem is egter nie baie effektief in arm gebiede nie. Daar is dus 'n groot behoefte aan 'n sisteem wat voorsiening maak vir beheer in formele "eerste wêreld" gebiede en vir informele "derde wêreld" vestigings. Die konflik tussen 'meer beheer' en 'minder beheer' is sentraal in hierdie behoefte.

In die werkstuk is dit bevind dat beperkende beheermeganismes tot 'n minimum beperk moet word en dat grondgebruikbeheer geskei moet word van die huidige oorvloedige beheermeganismes in 'n poging om selfonderhoudende en lewensvatbare gemeenskappe te stig. 'n Meer innovatiewe en verbeeldingryke benadering is nodig, waar stadsbeplanning pro-aktief is en nie net 'n poging om daaglikse probleme te hanteer nie.

TABLE OF CONTENTS

LIST OF TABLES

LIST OF FIGURES

1. INTRODUCTION

1.1 THE GOAL OF TOWN PLANNING

South Africa is a country with many diverse problems, some of which are unique to our situation and others which are part of worldwide phenomena. One of these problems is the massive rate of urbanization.

That there is an increasing rate of urbanization in the world as a whole, and particularly in the metropolitan areas of developing countries, is a fact beyond dispute. Similarly, it is beyond dispute that the management of this growth is an exceedingly difficult task which needs appropriate planning. Any attempt at appropriate planning therefore depends on a good understanding of the urbanization process.

But, what is planning? Is there an universally applicable definition or blueprint set of actions that will solve the problems or promote development? The answer to this surely is 'no'. Similarly, there is also no universally applicable definition to what 'development' is. 'Development' constitutes different things for different people, ranging from the provision of the most basic needs, to realizing the aspiration of going to the moon. The point is that different people see planning and development in different ways, and that no one point of view can be said to be the 'correct one'. For example, E.R. Alexander (TPR, 58(4) 1987 : 454) sees town planning as

> "the deliberate social or organizational activity of developing an optimal strategy of future action to achieve a desired set of goals, for solving novel problems in complex contexts, and attended by the power and intention to commit resources and to act as necessary to implement the chosen strategy".

Jerome G. Rose (1979 : 53) sees town planning as

> "a systematic, comprehensive, continuous, forward-looking process of analysis of a community's constraints for the purpose of formulating and implementing a plan for the achievement of the goals and objectives of the community".

It becomes clearer from these general definitions that planning at least involves a **system,** incorporating **actions,** and working towards **goals** and **objectives**.

Generally speaking the goal of town planning is to improve and promote the welfare of society. Promoting the welfare of society is, however, an ever changing goal. For urban and regional planning to have any meaning, it must therefore be an ongoing process which constantly monitors the problems and needs of people and determines courses of action to fulfill these needs.

In any urban planning operation serious difficulties are almost always encountered in translating an idealistic goal of an improved life-style into a programme of action for the achievement of specific material objectives or improvements. However, even if these material improvements do not of themselves create a better life, they play an essential role in removing the obstacles to a better life and as such they must always play a key role in the planning process.

But planning also involves definite measures of control. Foremost of these measures is the control of land use and development.

1.2 HYPOTHESIS

Looking from a global perspective, it becomes clearer that town planning control is playing an increasingly important part in highly developed countries, especially in the West, and an increasingly less important part in poor underdeveloped and developing (Third World) countries.

There are, however, certain conditions which a country have to comply with before town planning can play any significant part:

* there must be a certain degree of law and order, meaning that the greater part of the population must be able to benefit from the control and guidance that town planning can offer;

* the State must actively pursue uplifting the standards and solving the problems of the poorer section of the population; and

* the State must have the (financial) resources to achieve this.

The role of town planning in a developing country will differ from its role in a developed country. In the latter instance control plays an important part. In a developing country such as South Africa, positive guidance to resolve the problems of poverty and underdevelopment will be the biggest function of town planning.

From this it can be said that South African town planning has a pro-active, rather than controlling, part to play.

1.3 PURPOSE OF STUDY

The purpose of this study is to analyze the evolution of land use planning and development control as well as existing control measures, and to try to conclude what role it can or will play in a future South Africa.

1.4 METHOD OF STUDY

The purpose of this study can only be achieved if the evolution of town planning is understood. Therefore, the relevant aspects of the evolution of British, American and South African town planning will briefly be discussed in chapters 2, 3 and 4 respectively.

Chapters 2, 3, and 4 respectively also contain detailed discussions of the current legislative land use planning situations in Britain, the USA and South Africa, with relevant comparisons being made.

Chapter 5 looks at South African land use mechanisms, the limitations on land use and the restrictions on private property. In the second last chapter the situation in South Africa regarding our changing urban structures is discussed, while the last chapter deals with certain conclusions and recommendations regarding a better (town planning) future for South Africa.

2. BRITISH LAND USE PLANNING

2.1 AN HISTORICAL BACKGROUND

2.1.1 INTRODUCTION

British town planning legislation and procedures had a significant influence on South African land use control systems. It is therefore essential to take a brief look at the relevant aspects of British planning systems that influenced South Africa.

"The 20th century development of British town planning has a background of many different dimensions and perspectives. It was essentially a political, social, cultural, professional and technical response to a blend of circumstances which marked the years at the turn of the century" (Cherry, 1974 : 6).

During the 19th century Britain experienced substantial economic and social transformations. It became an urban country with massive housing and other problems experienced in the larger towns and cities. This was a developing situation in which a system of housing, health and community, and labour relations was gradually devised as a framework for urban management.

By the early 20th century an apposite context for the growth of a town planning movement existed, and when the first town planning powers were provided in 1909 - the Housing, Town Planning, etc. Act - their general provisions followed logically on past Public Health legislation (Cherry, 1974 : 7; Heap, 1969 : 1-4). Town planning was then essentially a reactive development. While it aimed at the future, its immediate concern was a response to the past and present. There are a number of factors in this situation which played very definite and particular roles.

The most significant factor in this context is the tremendous growth of cities in the 19th century. Between 1801 and 1901 the population of England and Wales almost quadrupled, increasing by nearly 24 million from 8,9 to 32,5 million (Cherry, 1974 : 8). This continuing growth in city size, particularly in London, raised real problems for the future. Cities became unmanageable, and technical problems such as dealing with transport, housing and sanitation were bad and likely to get worse. By the end of the 19th century it was already clear that cities were not only symbols of achievement, but sources of

great concern. The size and growth of London, in particular, was a matter that demanded close attention.

Probably the most important consequence of the high rate of urban growth was the accompanying housing and social problems. By the end of the 19th century some housing problems had already been tackled with varied degrees of success, but there were still many obstacles to satisfactory living. Poverty was widespread and endemic, real wages were low, comprehensive health services were almost non-existent and no adequate medical services were generally available for the sick.

In reaction to these conditions Ebenezer Howard started advocating his Garden City concept in the late 1890's. In his book, Garden Cities of Tomorrow, he proposed a satellite type of solution to the housing problems of the time, where garden cities would be developed as separate entities in rural areas surrounding big cities. Howard conceived the idea of a satellite town of 30 000 people, built at a distance from the parent city, and self-supporting by its own industry. In 1903 the first town, Letchworth, was developed 64 km northwest of London.

This was the basic situation in Britain at the turn of the century, which led the way for extensive health, housing and town planning reform.

With this situation as background, the emphasis will now be more on the legislative development of town planning in Britain, with special attention being given to land use and development control.

2.1.2 CONTROLLING URBAN CHANGE

The British land use planning system of today is founded on a block of wartime and post war legislation centered in the 1947 Town and Country Planning Act. The legislative background to this Act was provided by a series of public health and housing acts (Heap, 1969 : 1-4) which started in the middle of the 19th century.

Table 2.1 gives a summarized interpretation of the most important legislative measures and other relevant aspects regarding the evolution of British (town) planning systems and control measures. Only the most relevant aspects are listed, with a short discussion following the table.

Table 2.1: British Planning legislative evolution and other relevant aspects

Legislative measure or relevant aspect	Significance for land use and development control
The Public Health Code	
Public Health Act 1875 (By-laws)	Local authorities obtained control over the erection of future buildings and the laying out of future streets.
The Housing Code	
Housing of the Working Classes Act 1890	Provided for the removal of insanitary dwellings and for the supply of new houses for "the working classes".
Housing Act 1957	Established certain local authorities as housing authorities and provided for removal or closure of unfit houses and slum clearance.
The Town Planning Code	
Housing, Town Planning etc. Act 1909	First enactment to deal with town planning and to incorporate the term 'town planning'. Empowered local authorities to make 'town planning schemes' to regulate the layout of new developments.
Housing Town Planning, etc. Act 1919	Introduced 'interim development' whereby, during the preparation of a scheme, development of land might continue.

Housing Act 1925, and the Town Planning Act 1925	'Housing' and 'Town planning' was separated for the first time.
Local Government Act 1929	Power was given to county councils to act jointly with other local authorities in the preparation of planning schemes.
Town and Country Planning Act 1932	Extended land use planning to include not only urban areas but also rural areas, as well as the compulsory preparation of planning schemes for these areas.
The Barlow Commission Report on the Distribution of the Industrial Population, 1940	Recommended the redevelopment of congested urban areas, the decentralization or dispersal of industries and industrial population, and the encouragement of a reasonable balance and diversification of industry throughout the regions by means of the development of garden cities, satellite towns and trading estates.
Town and Country Planning (Interim Development) Act 1943	Brought all land in England and Wales not already subject to an operative planning scheme under interim development control and gave, for the first time, power to all interim development authorities to enforce such control.

Town and Country Planning Act 1944	Introduced the important new concept of positive town planning by empowering local planning authorities to undertake themselves the actual development of their own areas.
Town and Country Planning Act 1947	Expropriated all development rights and made planning permission compulsory for all new development.
Town and Country Planning Act 1968	Introduced a new style of planning, called development planning with "structure" and "local" plans.
Town and Country Planning Act 1971	Retained principles of 1968 Act.

(Sources: Heap, 1969; Report to the Nuffield Foundation, 1986; Smith, 1974; Cherry, 1974).

The 1909 Housing and Town Planning Act created an opportunity of controlling not merely the construction of individual buildings, but of building development as a whole. In effect residential districts could be safeguarded against the undesirable intrusion of industrial buildings, and industrial areas could be set apart for the sole purpose of industrial development.

The planning system centered on the *planning scheme* - a set of written clauses and accompanying maps - which was essentially a local extension of the 1909 Act and gave the local authority enforceable powers. Matters dealt with included the width and alignment of streets, the number and spacing of buildings, their design and external appearance and the uses to which they could be put. This could be done by defining 'Use Zones' and by specifying which proposals needed permission from the authority. The scheme could also specify that where development permission was refused, the planning authority might be liable to pay compensation to the owner of the land (McLoughlin, 1973 : 13-15).

2.1.2.1 Between the wars

For almost thirty years - up until the outbreak of war in 1939 - the planning scheme concept dominated successive Acts of Parliament concerned with town and country planning. They were essentially concerned with control over physical development including the specification of the use of which land could be put, the appearance of buildings, alignment of streets, densities of development and so forth. Control was very largely negative in effect, i.e. the schemes and their implementation were concerned with what should not occur rather than what should occur. Therefore they tended to be unrealistic in terms of how much and what sort of developments were envisaged : usually far more land was zoned for development than was ever likely to be used. Although the important 1932 Town and Country Planning Act extended the making of schemes to all land, the procedures involved were cumbersome and very slow. The making of 1932 Act schemes were also still hampered by the problems of claims for compensation both for refusal of permission and for failure to zone land for development.

2.1.2.2 War-time developments

During the Second World War period there was a growing concern about the economic, social and environmental consequences of industrial and urban concentration, heightened at that time by fears of vulnerability to air attack, which prompted demands for a more comprehensive planning system. These concerns and uncertainties were drawn together by the Barlow Commission on the Distribution of the Industrial Population, which was appointed in 1937 and reported in 1940 (Report to the Nuffield Foundation, 1986 : 6).

2.1.2.3 The post-war period

The post-war town and country planning system was born in hope and confidence. The great trilogy of reports of Barlow, Scott (on rural land) and Uthwatt (on compensation and betterment) had identified the problems and the remedies, thus creating the foundations of British planning from the wartime period until the changes of the late 1960's.

Of importance are their central objectives for planning, and what the legal and administrative powers and procedures did seek to influence and control.

Essentially, the reports taken together made these recommendations (Report to the Nuffield Foundation, 1986 : 6; McLoughlin, 1973 : 17; Smith, 1974 : 40).

* that planning control should cover the whole country;

* that there should be a national policy for industrial location and population distribution; and

* that there should be a central planning authority concerned with:

  (i) urban redevelopment and reduction of congestion;

  (ii) achieving industrial 'balance' within and between regions;

  (iii) examining the potential of garden suburbs, satellite towns and trading estates;

  (iv) research and information about industry, resources and amenities; and

  (v) the correlation of local planning schemes in the national interest.

Legislation derived from these reports include, the Town and Country Planning Acts of 1944 and 1947. The Town and Country Planning Act 1947 made an entirely new beginning by repealing all previous town planning legislation. The Act contained some of the most drastic and far-reaching provisions ever enacted affecting the ownership of land (and buildings) and the right of an owner to develop and use his land as he thinks fit. Generally speaking, ownership of land carried with it, after July 1 1948, nothing more than the bare right to go on using it for its existing purposes.

Following Barlow was a collection of non-statutory advisory plans for London and Greater London. The Greater London Plan (GLP) and other regional plans made very wide-ranging proposals for urban redevelopment, industrial dispersal, a network of arterial roads and the location of large new residential developments including complete new towns.

As far as control was physically practicable over such matters, it was very nearly absolute. That is, with respect to 'any building, engineering, mining or other operations, in, on, over or under land, and to any material change in the use of land or buildings' planning authorities had considerable powers under the law. At the same time their positive powers of implementation had greatly increased, especially because the legislation has in most cases removed liability for compensation to owners for refusal of permission to develop land or to change its use. Moreover, the comprehensive development powers

under the 1947 Act, and the power to build new towns are the most striking examples of the ability to take public developmental initiatives set alongside the power to regulate those of others.

2.1.2.4 Planning Advisory Group objectives

In Britain, the statutory planning scene in the 1960's was dominated by the 1965 report of the Planning Advisory Group (P.A.G.). With reference to the British system as they found it, P.A.G. reaffirmed that planning was concerned not simply with land use allocation but also with the quality of the physical environment. At central government level many issues were of interest, but at local level physical planning and development control were regarded as the essence.

Throughout their report P.A.G. refer to the objectives of planning. In talking of future urban planning they listed the major tasks for the following twenty years as including: the physical reshaping of large towns and cities; the redevelopment of town centers; radical reappraisal of the functions of towns and land use structure, and 'balancing' accessibility and environmental standards (McLoughlin, 1973 : 22). These objectives, set out in 1965, played an important part in the further development of British land use planning and control measures.

2.2 THE LEGISLATIVE FRAMEWORK

Although there has been a good deal of subsequent amendment, including the 1981 Local Government, Planning and Land Act, which simplified the plan-making procedure and reallocated development control functions, the 1971 Act remains the principal act relating to town and country planning in England and Wales.

The town and country planning system as established by the foundation acts and subsequent legislation comprises in essence three elements:

i) A system of statutory plans indicating what development is intended to meet, the needs of a planning area over a given time, and where development is to be permitted, refused or made subject to special conditions;

ii) A system of controls to ensure that development is carried out in accordance with plans, policies and statutes;

ii) A system of governmental and quasi-governmental agencies to administer the planning and development control functions and to secure development.

The main feature of the present position is the compulsory preparation of development plans for each part of the country.

2.2.1 DEVELOPMENT PLANS

Under the 1947 Act each local planning authority was required to survey its area and to prepare a development plan indicating how it proposed land should be used, by development or otherwise, and the stages by which development should be carried out. The plan was intended to show which towns and villages were suitable for development and which could best be kept at their present size, the direction in which a city would expand, areas to be kept as agricultural land, areas for housing and industrial development, the sites of proposed roads, public and other buildings and works, airfields, parks, pleasure grounds and other public open spaces and nature reserves. The plan could be for all or part of the authority's area, and was to be submitted to the responsible minister within three years for approval. It would cover a period of twenty years, subject to review every five years.

Before approving the plan, the minister was required to assess its general provisions, to hold a public inquiry at which objections could be heard, and to consider the inquiry inspector's report. Once approved, the plan provided the basis for not only positive development by the local authority, but also for the control of private development. It did not, however, guarantee the right to carry out any development indicated in the plan, nor did it provide the only standard or measure by which such decisions were taken.

Delays and other difficulties encountered in the operation of the system led to the appointment of the Planning Advisory Group (P.A.G.) in 1964 whose report the following year recommended a new system incorporated in the 1968 Town and Country Planning Act and consolidated in the 1971 Act. This system, which remains in force, consists of two parts:

* a structure plan which still requires ministerial approval; and

* local plans which only have to be adopted by the local planning authority (Report to the Nuffield Foundation, 1986 : 36).

Since 1987 metropolitan counties will no longer make structure plans (Van Wyk 1990 : 338). Instead a new type of plan, the unitary development plan will be made. It is also stated that non-metropolitan (shire) countries are not affected by the new developments for unitary development plans, meaning that they still follow the system of structure and local plans.

The new unitary development plan is divided into two parts. The first part is almost similar to the old structure plan (see section 2.2.2), while the second part reflects the local plan (see section 2.2.3). The term 'development' is central to the operation of the 1971 Act, and where an activity involves 'development', a developer cannot undertake such development without the appropriate planning permission.

2.2.2 STRUCTURE PLANS

Unlike the earlier development plans, the structure plan is not intended to be a precise, mapped indication of development intentions. It is in fact a written statement:

i) formulating the policy and general proposals of the local government in respect of the development and other use of land in that area (including physical environment improvement and traffic management);

ii) stating the relationship between those proposals and other general proposals for the development and other use of land in neighbouring areas which may be expected to affect that area; and

iii) containing such other matters as may be prescribed or as the minister may in any particular case direct.

With ministerial (Secretary of State) consent, separate plans may be prepared for different parts of the structure planning authority's area. Adequate publicity and opportunity for objections must be given to these plans. The minister can, if satisfied that the authority has adequately publicized and consulted on its proposals, either approve it, in whole or in part, with or without modifications or reservations, or reject it.

2.2.3 LOCAL PLANS

Under the 1968 Act it was assumed that planning would be carried out by unitary authorities which would elaborate the broad strategy of their structure plans in a series of local plans. The 1972 Local Government Act, however, allocated structure planning to county authorities and local planning to the district authorities, while requiring the county to prepare a development plan describing the local plans to be made and which authorities should be responsible for them.

These plans consist of a written statement formulating proposals for the development and other use of land in the area, a map showing these proposals on a geographic basis, a reasoned justification of the general policies as set out in the structure plan, and other diagrams or illustrations which are necessary (Van Wyk, 1990 : 338).

They are meant to develop the policy and general proposals of the structure plan and relate them to a precise area of land, to provide a detailed basis for development control and for coordinating the development and other uses of land, and to bring local and detailed planning issues before the public (Report to the Nuffield Foundation, 1986 : 38). Since 1986 the local authority, in adopting the plan, does not have to take account of objections, nor does the plan need ministerial approval. The authority must, however, send the draft plan to the minister who may direct that it should not take effect unless approved by him. In effect this gives the minister a kind of veto power. However, until 1986, only one local plan had been rejected by a planning minister (Report to the Nuffield Foundation, 1986 : 38).

2.2.4 DEVELOPMENT CONTROL

Development control is the means by which local planning authorities seek to put their development plans and policies into effect. It involves the principal day to day activities of planning departments and committees, and is the level at which individuals and organizations most frequently come into contact with the planning system.

In the pre-war system of planning schemes, development was permitted or prohibited by the zoning of land for particular uses. Post-war legislation not only introduced a more flexible and comprehensive system of plans, it also made all development outside certain categories, subject to specific consent by the local planning authority. These exemptions comprises mostly

development by government departments. Development by a local planning authority in accordance with its approved development plan is also accepted as having planning permission.

2.2.5 THE MEANING OF DEVELOPMENT

The key to development control is the definition of development which requires planning permission. The current legislation (the 1971 Act) repeats the 1947 Act definition. Section 22(1) defines development as:

> The carrying out of building, engineering, mining and other operations in, on, over or under land; and the making of any material change in the use of any building or other land.

This very wide, all embracing definition brings within control potentially all aspects of the use and development of land and buildings.

2.2.6 ENTERPRISE ZONES

The 1980 Local Government Planning and Land Act gave power to the Secretary of State to establish enterprise zones (EZs) where a general planning permission exists (for ten years) for development which falls within parameters established by the local planning authority in drawing up the EZ scheme. Generally EZs are relatively small inner city areas with no residual rights, where the Government wishes to encourage economic development. After the local authority's scheme has been adopted, no further planning control is needed for development in accordance with the scheme as it is automatically granted planning permission. In effect, this is a move back to use zoning.

Although this looks as if it would greatly encourage development, the impact of EZs has not been all that significant.

2.2.7 SIMPLIFIED PLANNING ZONES

After the perceived successs of the EZ approach, the government encouraged local planning authorities to apply it through the mechanism of simplified planning zones (SPZ). First proposed in 1983-84, they were part of the government's deregulation package in their white paper, "Lifting the Burden"

and came into law that the 1986 Housing and Planning Act. These SPZs were to confer the same freedom from planning urban areas where there is a particular need to promote regeneration and to encourage economic activity. Although the central government was enthusiastic about SPZs, in practice local planning authorities were reluctant to surrender their powers of planning control, and by August 1990 only three SPZs had been declared, with a further eight in draft.

2.2.8 REDUCING LOCAL DISCRETION IN PLANNING CONTROL

During the 1980's the central government also wanted to strengthen its control over planning policy in order to achieve its objective of lifting the bureaucratic burden on business. During this time the Department of Environment (DOE) undertook a major review of this planning policy statements.

Perhaps the most important shift in emphasis of policy was the presumption in favour of development. As DOE circular 22/80 put it, development should only be prevented or restricted 'when this serves a clear planning purpose and the economic effects have been taken into account' (Home, 1991 : 297). Circular 14/85, which accompanied the government white paper 'Lifting the Burden', went further and stated that ".....Local planning authorities were required to back up refusals with evidence refusing only where there was demonstrable harm to interests of acknowledged importance." It became accepted that development control should avoid placing unjustifiable obstacles in the way of any development especially if it is for industry, commerce, housing or any other purpose relevant to economic prosperity. The Circular was regarded by some as a marked downgrading of development plans. It said that reasons for refusing planning consent must always be 'precise, specific and relevant' and that planning authorities should avoid 'unnecessarily onerous and complex controls' (Report to the Nuffield Foundation, 1986 : 44).

Under an EEC Directive promulgated in 1985 it is now also necessary for major development proposals likely to have a significant effect on the environment by virtue of their nature, size or location, to be accompanied by an environmental impact assessment (EIA).

Although the abovementioned measures were aimed at reducing the discretion of local planning authorities, the central government did allow them to vary the toughness of their planning control, but only in relation to its policy objectives. Thus, tighter control was allowed, particularly in the conservation of the natural and built environment. More specifically this includes more control over conservation areas (CAs), countryside protection, Green Belts, and settlement boundaries or infill development.

2.2.9 TIGHTER CONTROL MEASURES

Since the early years of planning controls protecting the countryside and preventing the loss of farmland to urban and other uses has long been a major preoccupation of the British planning system. Along with the New Towns programme, Green Belts have probably been the toughest policy for countryside protection in Britain. The usual presumption in favour of development was reversed in Green Belts, and only development for agriculture and forestry, outdoor sports, cemeteries, institutions standing in extensive grounds, or other uses appropriate to a naval area were allowed. The purposes of Green Belts were also expanded in the 1980's beyond their original three claims of :

* checking sprawl;
* preventing neighbouring towns from merging; and
* preserving the special character of historic towns.

Two new purposes were included, namely:

* safeguarding the countryside from encroachment; and
* assisting in urban regeneration (by forcing redevelopment of urban sites instead of new development land releases).

Besides countryside protection, the planning system also applied increasingly tight conservation policies to buildings and urban areas. The main targets for tighter control have been listed buildings (buildings of special architectural or historic interest) and CAs (areas of special architectural or historic interest, of which it is desirable to preserve or enhance the character or appearance). Local planning authorities are now free to designate CAs where they think fit.

Tighter legislation has also been introduced over conservation (in 1986 and 1991), the expanded 'permitted development' rights are less available in CAs, and generally tougher development control policies are applied in spite of the government's advice to keep a balance between conservation and change. This remains a very important consideration that needs to be taken into account at every level or stage of a (development) programme.

Similarly, control over listed buildings have been tough. A list of buildings may be compiled by the Secretary of State, and it is an offence to demolish, damage or alter such a building (Home, 1991 : 298-299).

Specific land use planning control also exists with regard to ancient monuments and archaeological areas, advertisements, trees, waste land, and caravans in urban areas (Van Wyk, 1990 : 342-346). There is, however, no need to discuss these in detail here.

2.3 CONCLUSIONS

From the above the following can be concluded:

* The scope of development control is not defined by the development plan, but by legislation as interpreted by the courts. In other words, legislative measures determine the extent of control.

* This means that development control is highly discretionary, but that local authorities still have to have development plans and in practice much time and effort goes into their preparation.

* Development control is thus a curious mixture of discretion and law in which the role of explicit, formal and legitimized policy in any substantial sense is highly problematic. It is a system characterized simultaneously by what some see as an excessive concern with detail and a high degree of local, administrative discretion. The result is great uncertainty about the likely outcome of an application and, indeed, of an appeal.

* It is also a system characterized by conflict of interests, for instance between the forces resisting change and those promoting development. Both are filled with uncertainty, as each application or appeal has to be decided on its own merits. There is also tension regarding the purpose of development control, whether to implement a plan or facilitate development, to enhance the environment or protect the neighbourhood.

* Since the 1947 Act there has been virtually no challenge to the relationship between policy, represented by plans, and control. Davies (1988 : 135-136) states that the crucial argument here must be that if development control is to be more than the relatively neutral forum for the resolution of conflict about development, it must have a stronger, more clear relationship with policy. In the absence of policy, control risks being arbitrary and ineffective, and, instead of reducing uncertainty, enhances and perpetuates it.

3. USA LAND USE PLANNING

3.1 INTRODUCTION

The legislative restrictions controlling land use in the United States differ materially from those in other countries in the Anglo-American family. The aspect central to this distinction is the Fifth Amendment to the Constitution, which provides that no person may be deprived of his property without due process of law, and no property may be taken for public use without just compensation.

Land use regulation powers can be delegated to the state governments, but these powers stay subject to the limitations placed upon them by the Fifth and Fourteenth Amendments to the Constitution.

When state and local government regulate land use, it is described as being an exercise of 'police power' or the power of the government to regulate human conduct to protect or promote public health, safety, or the general welfare of the community.

By the turn of the 19th century the disorganized physical structure of American cities was causing trouble, not only for living conditions but for the conduct of business as well. This created a real need for public remedial action. But, according to W.H. Wilson (Krueckeberg, 1983 : 88) very little development control existed in the USA at that time. Movements towards comprehensive metropolitan plans started in 1909 with the movement for 'Boston - 1915', which led the way for more town planning ideas and literature.

At this stage (early 20th century) several factors led to efforts at development control. These include the:

* uncontrolled penetration of industrial development into residential areas; and

* limited success of deed restrictions on residential land.

New York city authorities were led to consider control after the erection of several large buildings on narrow streets in the lower Manhattan area. Many of these buildings casted long shadows, blocking off direct sunlight from smaller buildings. It was the effect that this loss of sunlight had on land

values, as well as the penetration of warehouses and garment factories (bringing with them poor Russian Jewish workers) into high-class areas, that led to the passing of the first comprehensive zoning ordinance (including districts for use, height and area or coverage) in the city in 1916 (Claassen, 1990).

The constitutional validity of zoning in the USA was uncertain until 1926, when it was tested by the Supreme Court in the case of the Village of Euclid v. Ambler Realty. The village adopted a zoning ordinance in 1922. At this stage a property of Ambler Realty was zoned for residential use although the owners wanted to use it for commercial and industrial development. In 1926 the Supreme Court eventually found in favour of Euclid with a 4 to 3 vote, thereby establishing the constitutionality of zoning laws.

These events eventually led to the drafting of the Standard State Zoning Enabling Act in 1926. This Act provided that zoning, which is the means by which the comprehensive plan is effected, must be consistent with the plan.

3.2 ZONING AND ITS RELATIONSHIP TO PLANNING

Many people erroneously mistake zoning for planning and vice versa. This was the case in the USA in the 1920's, until the drafting of the Standard City Planning Enabling Act in 1927, which suggested five areas of planning, namely streets, public grounds, public buildings, public utilities, and zoning (Claassen, 1990). Planning was then seen as a more comprehensive process than just land use control. The first half of the planning process can then be described as the formulating of a comprehensive or master plan, while the second part consists of the implementation of the master plan. Several techniques exist for this implementation of which zoning is the most important. It can then be said that zoning is the end of the planning process and mainly aimed at control, while planning is a more long-term process aimed at land use, transportation, recreation, protection, employment, etc.

Rose (1979 : 54) list other techniques also aimed at the implementation of the planning process. These include:

a) Subdivision control or regulations through local ordinances prescribing the procedures and standards that must be followed when dividing land into smaller parcels in preparation of development.

b) Official map ordinances providing for municipal maps showing proposed parks, streets and other facilities.

c) The power of eminent domain, which is similar to South African expropriation law.

d) Urban renewal or community development programmes.

From this discussion it should become clear that zoning law is one of a number of techniques of implementing the planning process (with the master plan as result) to achieve community goals and objectives. Zoning is therefore a technique to control land use directly. In the United States two other techniques of controlling land use directly exist. These are (i) judicial land use regulation through the nuisance doctrine - which involves private lawsuits between adjoining landowners over allegedly obnoxious activities affecting the use of adjoining or nearby land, and (ii) restrictive covenants or private agreements either between a developer and his purchasers, or between adjoining landowners in an established residential area (Williams, 1966 : 11 and Rose, 1979 : 62).

3.3 PLANNING AND LOCAL GOVERNMENT

Claassen (1990 : 2) states that the planning system as diagrammatically illustrated in Figure 3.1, is closely linked with the local government system, and that their planning system can only fully be appreciated if the major characteristics of their local government system is analyzed.

In the United States municipal functions include much more than in South Africa, e.g. libraries, police and hospitals are municipal functions there. Local governments also have more freedom and greater opportunities to act free from interference of higher governments.

Every municipality also has its own charter, which means that, within the limits set by the Constitution, a municipality can decide on how it wants to govern. Although these local authorities can regulate zoning, they have no inherent power to enact zoning laws. Zoning ordinances are enacted pursuant to the police power delegated by the state. (A statute delegating such zoning powers is known as an enabling act, and there are standard enabling acts which give guidance to local governments, thereby bringing about some uniformity) (Claassen, 1990).

Local planning in the USA differs from state to state and town to town. The 1924 and 1926 standard enabling acts do, however, create some degree of uniformity. The planning system is basically divided into two sections, namely planning and zoning.

Figure 3.1 is an attempt at a diagrammatical representation of the comprehensive planning system of the USA (only regarding the relevance to this study).

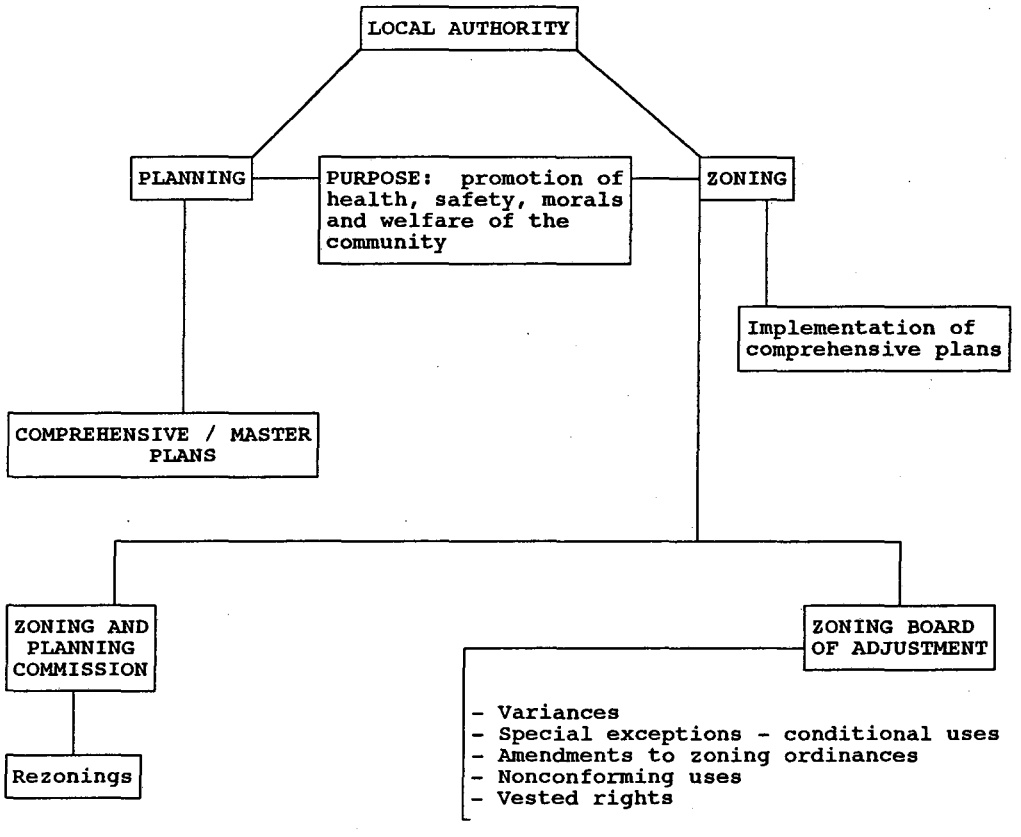

Figure 3.1: The Comprehensive US Planning and Zoning systems

3.4 COMPREHENSIVE PLANNING

The United States planning system is centered around the preparation of comprehensive or master plans. A comprehensive plan states the policy of a local authority regarding the future development of the area. These plans are regularly revised and updated - in some towns every year. Although comprehensive plans differ in form, content and function, they typically

consist of several 'plans' such as land use, transportation and community facilities.

Claassen (1990) also states that not all towns have comprehensive plans, which means that zoning has to be done without any overall direction (which is also the case in many South African towns).

3.5 DEVELOPMENT (OR STRATEGIC) PLANNING

In some of the more progressive local governments in the USA a system of 'development planning' has been introduced.

'Development plan' or 'development planning', as used here, means a systematic programme for the improvement of the socio-economic situation of the inhabitants of an area. This involves the improvement of the welfare of the people concerned.

The system of development planning means that the local government annually determines long and short term aims and objectives, and decide on means and methods to achieve these aims and objectives.

In effect this system brings the politicians, planners and citizens closer together, and is almost comparable to 'development planning' in South Africa.

3.6 ZONING

Zoning prescribes the use of land and the intensity of use. This means that the height, number, size, bulk and coverage of buildings and structures are regulated. The foundation upon which zoning rests is 'police power' and the validity of zoning provisions depends upon whether a particular zoning regulation represents a valid exercise of police power.

At local level a zoning and planning commission (ZPC), required by law, is an important link in the zoning system. The members of the ZPC are appointed by the mayor which is the chief elected executive officer of a United States municipality, and the town council.

The most important task of the ZPC is to make recommendations to the city council about rezoning applications. Some cities also have a Zoning Board of Adjustment with whom appeals can be lodged. This Board of Adjustment

also have other tasks, such as the granting of variances or special exceptions.

3.6.1 THE PURPOSE OF ZONING

Most of the current legislation provide that the purpose of zoning is the promoting of "health, safety, morals" and the "general welfare of the community". This purpose may be achieved:

* with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses;
* with a view to conserving the values of existing buildings; and
* for the purpose of encouraging the most appropriate use of land in the area.

Although the preservation of the character of the neighbourhood has long been regarded as primary purpose of zoning, there are other ways in which the purpose can be achieved (Van Wyk, 1990 : 367-368):

* The preservation of specific historic sites and buildings in their historic settings;
* The preservation of certain sections of the county to be disposed of to 'substantial' persons with ample financial resources;
* The preservation for community identity by providing open areas or green belts between suburban communities.
* The retention of a semi-rural character in suburban communities by providing sufficient open space around buildings.

The importance of stating the purpose of zoning legislation is to emphasize that a zoning classification which unreasonably restricts the use of property without any bearing on the police power purposes of zoning will not be upheld in any court of law. This purpose is then central in the provision of any zoning plan.

3.6.2 USES NOT PROVIDED FOR IN THE ZONING PLAN

Zoning enabling legislation also authorizes several techniques that provide

some escape from a literal and rigid enforcement of zoning laws. These generally fall under the authority of the Zoning Board of Adjustment (see Figure 3.1) and include (Rose, 1979 : 111-146):

a) variances, mostly regarding use and height;

b) special exceptions or conditional uses, authorized by express provision by the ordinance, e.g. hospitals and schools permitted in residential areas;

c) amendments to the zoning ordinance, subject to the courts' decision whether it was done to promote the interest of an individual or individuals;

d) nonconforming uses, i.e. uses that were permitted prior to the adoption or amendment of a zoning ordinance and which are allowed to continue even though they fail to conform to the requirements of the ordinance; and

e) vested rights, i.e. where an owner of land obtains a building permit under existing zoning laws and he spends a large amount of money or becomes substantially liable in reliance thereon, he may be allowed to complete his construction in accordance with the permit, even though the zoning ordinance is changed after the issuance of the permit.

3.7 ZONING FLEXIBILITY

Conventional zoning based on the Standard State Zoning Enabling Act, and upheld in the Euclid-decision, is based upon certain (not always correct) assumptions. For this reason provision is also made for devices for zoning flexibility. These include (Rose, 1979 : 147-176):

i) Floating zones, which are zones created in a zoning ordinance, but which are not affixed to a specified piece of land, thereby "floating" over the municipal area until it is attached to a specific piece of land by application of the owner.

ii) Contract or conditional zoning, i.e. zoning amendments providing for a change of land use, in return for an agreement provided by the owner of the property to be benefitted by the amendment.

iii) Incentive zoning, any type of zoning provision that offers a positive incentive to private developers to encourage them to develop the land in a manner that will achieve public objectives and serve community interests.

iv) Performance zoning, i.e. zoning provisions that prescribe the standards to be met before a given use of the land can be permitted, e.g. industrial use may be permitted in a designated zone if the proposed use meets performance standards relating to noise, smell, smoke, etc.

v) Special districts, created to restrict or to protect and promote a particular purpose, e.g. cities that have adopted ordinances to either restrict or deconcentrate "porno shops" and "adult theaters". Due form of special district is a mixed use district in which several different land uses are permitted. Although this concept seems to be in direct contrast to zoning, it can be successful in certain areas, e.g. the revitalization of a downtown area of a central city.

vi) Cluster zoning, i.e. a zoning ordinance provision that permits the reduction in minimum lot sizes under circumstances that assure that the amount of land reduced from the minimum size of each lot in the development will be added together and set aside within the development as open space for recreational, conservation, or other historic or scenic purposes.

These zoning flexibilities can be useful in some areas. It must, however, be remembered that the uncontrolled use of these devices may lead to a situation of uncontrollable chaos. In practice these devices can therefore be subject to many legal objections.

3.8 ENTERPRISE ZONES

Another attempt at encouraging development needs mentioning here. Enterprise zones (EZs), was first mentioned by Peter Hall in 1977, when he tried to create a new style prosperity within stagnant urban economies.

In the USA enterprise zones (EZs) are areas which receives incentives and other encouragement such as tax rebates, infrastructure development and marketing assistance, to attract development and to encourage existing enterprises to expand or, in the worst case, just not to move away. This concept was officially introduced in the USA in 1982, first at federal level, and later at state and local government level (Claassen, 1989 : 25). The purpose of EZs is, in principle, to rehabilitate declining areas. Generally an EZ will have a management body which should actively market the area and provide other services.

EZs can be compared to those areas in South Africa designated by means of the decentralization policy of the government. The difference lies in that the underlying reason for decentralization by the SA Government was primarily to implement the Apartheid policy.

More than one thousand EZs currently exist throughout the USA. The success or failure of these zones have been investigated by numerous researchers. Some say the EZs may improve environments for profit making, but not for living, while other say that few local EZ programmes were very successful in stimulating business development or attracting firms to relocate to the zone. The fact remains, however, that some sort of effort was made to help stimulate local economic development.

3.9 OTHER URBAN LAND USE CONTROLS

3.9.1 EQUITABLE RESTRICTIONS

The equitable restriction in subdivisions is a unique device used in the USA so that, in a subdivision, all property owners and certain other persons have the right to enforce a restriction against any of the other owners. (They are similar to the South African restrictive covenant and condition of title). The purpose of equitable restrictions is, as is the case in SA to retain the specific character of a particular neighbourhood.

Since the late 1970s, some cities in the US, e.g. Houston, relied on private deed restrictions to preserve their neighbourhoods. Many people believe that the system of restricting property uses through an agreement by residents of a subdivision is preferable to zoning to protect residential areas. They believe that enforcing deed restrictions does not stifle growth but that zoning does.

Others severely question the reliance on deed restrictions to preserve neighbourhoods. The main questions arise concerning the enforceability and effectiveness of deed restrictions in protecting residential areas.

The relevant fact here is, however, that presently the system of equitable restrictions in subdivisions provide property owners with the right to enforce restrictions against any of the other owners in that area.

3.9.2 AESTHETIC CONTROLS

Several other land use planning controls exist. As far as measures regulating land use planning in urban areas is concerned, the aspect central to many of these controls (relating to signs, architectural design, historic preservation and historic landmarks) is that aesthetic values form the basis of these measures. The following are regulatory measures in which aesthetic considerations are paramount, as well as measures regulating buildings, housing and subdivisions (Van Wyk 1990 : 376-380):

* **Sign control**, regulating signs occurring along streets and highways, on buildings as well as billboards, political and advertising signs;
* **Historic districts**, consisting of districts, sites, buildings, structures and objects significant in American history, architecture, archeology and culture;
* **Landmark preservation**, regulating historic landmarks outside historic districts;
* **Appearance of structures**;
* **Subdivision control**; and
* **Housing and building standards**, serving as guidelines for habitability, generally focussing on the safety and construction of buildings.

3.10 CONCLUSION

Zoning is the principle legislative (urban) land use control instrument in the United States. It is essentially an attempt to make some things better and to prevent others from getting worse. Other legislative provisions regulating

urban land use have a recurring theme that aesthetic considerations must form the basis of the regulatory measure. South African zoning legislation derives many of its principles from the US system.

Claassen (1990) also states four important aspects of the US planning system from which much can be learned. These are:

i) the high degree of public involvement in the zoning and comprehensive planning system;

ii) the pro-active character of comprehensive plans, which addresses total socio-economic-physical development, thereby leading development and not restricting it;

iii) the importance of short term planning, especially in addressing development problems, done through the annual revision of development strategies; and

iv) the important role of local governments and the wide scope of planning, including not only physical aspects but also socio-economic development.

4. SOUTH AFRICAN LAND USE PLANNING

4.1 INTRODUCTION

In South Africa, with its centralized type of government, many of the developmental elements are controlled by the central government departments or the provincial administrations. The administrators also have strict control over local government affairs.

Traditionally land use planning has been effected primarily at the provincial and local level, i.e. through town planning. Town planning is directed mainly at promoting the coordinated and harmonious development in order to secure an adequate immediate environment for man, through the provision of housing, streets, water supply, sewage and waste disposal, and other services, as well as the protection of public health (Page and Rabie in Fuggle and Rabie, 1983 : 466-467).

A brief look at the evolution of township establishment and town planning legislation is necessary to understand the background to the present systems.

4.2 HISTORICAL DEVELOPMENT OF LAND USE CONTROL

When, in 1657, the period of service of some of the servants of the East India Company had expired, they were given land in the form of small garden plots on the banks of the Liesbeek River near Cape Town. All allotments were surveyed by the Company's land surveyor and registered in the deeds register. A diagram attached to each deed which showed the dimensions and the location of the plot.

The governor's administrative powers were delegated to magistrates which were established at Stellenbosch, Swellendam, Tulbagh and the other towns which had grown out of settlements (Page and Rabie in Fuggle and Rabie, 1983 : 448).

In most of the early towns where growth was inevitably slow, life simple and largely self-sufficient, and land values low, a natural segregation of uses occurred. These early towns consisted of little else besides residential buildings, churches and government offices. Limited need was felt for any special control of planning or layout design. Particularly the surveying and registration of erven provided the necessary order (Floyd, 1960 : 111).

The procedure for land grants developed into a formal system. A prospective farmer applied to the magistrate (landdrost) whereafter a land commission inspected the proposed site. This was followed by the beaconing of the land and its registration in the deeds office. Before allowing the grant the land commission had to be satisfied that sufficient water and arable land for economic farming were available, as well as wood for domestic purposes. With the Great Trek this procedure was also introduced into the northern republics.

The period commencing with the discovery of diamonds in 1867 caused chaotic circumstances to develop in mining towns. Wherever rapid growth and industrial development took place, areas of mixed use developed. This caused areas to be spoilt for residential use and property values detrimentally affected (Floyd, 1960 : 111-112). Other uses encroached on residential areas because of the high value of the land in established business centers. Vacant land or poor properties in residential areas were put to business or industrial use. This led to a high degree of profit-seeking, speculation and poor subdivision. In the light of these developments as well as trends in especially England at that stage, a procedure arose whereby use or zoning restrictions were applied to land. The first persons to realise the value of keeping different uses in defined areas, were owners of land who disposed thereof as township lots or erven.

The township establishment and town planning systems in the four provinces developed separately, as did the situation regarding black land and land for Coloureds and Indians.

4.2.1 TRANSVAAL

During the early period most of the towns established, resulted from the initiative of either the government or churches, the aim being either administrative or to serve as social or commercial centers for their districts.

The Transvaal system developed in the following chronological way:

* 1905 Proclamation of Townships Ordinance

  - first provision for township establishment and development on private land;

  - introduced principles on which subsequent legislation was based.

* Townships Act 33 of 1907

  - extended procedures and formalities.

* Township and Town Planning Ordinance 11 of 1931

  - provided for the preparation of town planning schemes by local authorities and for better control of townships layout;

  - formed the basis of not only Transvaal legislation, but also of that later introduced in the other provinces.

* Town Planning and Townships Ordinance of 1965

  - replaced 1931 legislation.

* Town Planning and Townships Ordinance 15 of 1986

  - replaced 1965 legislation;

  - still in force.

4.2.2 NATAL

The first settlement in Natal was that of a few traders at Durban in 1835. Certain towns were laid out as administrative and district centers, so that by 1900 the most important towns had already been established.

The Natal system developed in the following way:

* Township Law 11 of 1881

  - first to deal with establishment and local management of townships.

* Township Ordinance 11 of 1926

  - defined the boundaries of townships according to a specific plan.

* Private Township and Town Planning Ordinance 10 of 1934

  - controlled town planning schemes and township layouts;

  - enabled local authorities to prepare schemes.

* Town Planning Ordinance 27 of 1949
  - replaced previous measures;
  - still in force.

4.2.3 ORANGE FREE STATE

* Recognition of Townships Law 6 of 1894
  - first legislation regulating the establishment of townships.
* Townships Act 15 of 1909
  - replaced 1894 measures
* Township and Hamlet Ordinance 6 of 1928
  - no township could be established other than in terms of this ordinance.
* Township Ordinance 20 of 1947
  - replaced previous measures;
  - controlled town planning and township layouts and provided for the preparation of town planning schemes.
* Township Ordinance 9 of 1969
  - replaced previous measures;
  - still in force.

4.2.4 CAPE PROVINCE

Except for the period between 1927 and 1985, the position concerning township establishment in the Cape, was not the same as in the other provinces.

Prior to 1927 the Cape practise was unique in South Africa. As the Colony expanded, new districts were laid out, so that by 1836 the Cape Colony was divided into two provinces, the Western and Eastern. On the establishment of

each new district, a drostdy was founded and the boundaries of the district defined. Each town within the district adopted municipal status, which in effect was the establishment of the town. For each municipality so established, legislation was promulgated. In many cases the separate legislative enactments of the various municipalities regulated township establishment.

Between 1927 and 1985 township establishment procedures were more or less the same as in the other provinces.

The system developed as follows:

* Township Ordinance 13 of 1927

  - first comprehensive ordinance to regulate the establishment of townships and to provide for the approval of town planning schemes

* Township Ordinance 33 of 1934

  - replaced previous measures;

  - basis of the legislation remained the same.

* Land Use Planning Ordinance 15 of 1985

  - introduced an entirely new approach to town planning and township establishment, including:

    * long term planning through structure plans;
    * land use control through zoning schemes;
    * measures regulating the subdivision of land;
    * the introduction of a Planning Advisory Board.

The purpose of the new ordinance consisted of four parts:

i) the promotion of long term planning;

ii) the reinforcement of the free market in land use control;

iii) the devolution of decision making; and

iv) the rationalization of procedures.

4.2.5 BLACK LAND

Throughout South Africa's history the position regarding the use and occupation of land by black persons and land use planning for black people was entirely different from that of white people. Specific areas, the so-called black areas, were set aside in terms of legislation applicable only to those areas. Separate provisions therefore regulate the establishment of black townships. This is a complex subject which is subject to a great degree of uncertainty.

At this point it is relevant to make a distinction between what was seen as 'urban land' and 'rural land' law. The distinction in this context is technical and peculiar to black land. 'Rural' essentially applied to land governed by the Black Land Act 27 of 1913 and the Development Trust and Land Act 18 of 1936 - the so-called 13% of South Africa belonging to Blacks. Both these acts were repealed in 1990 with the dismantling of apartheid legislation and -systems started by President F. W . de Klerk on February 2, 1990.

On the other hand, 'urban' also applied in areas which, in the usual sense of the word, would be regarded as rural.

From the beginning of this century, Blacks, being excluded from urban areas in 'White South Africa', were accommodated in so-called locations. Later townships were established, altered and disestablished in terms of the now repealed Blacks (Urban Areas) Consolidation Act 25 of 1945. Presently the Black Local Authorities Act 102 of 1984 and the Less Formal Township Establishment Act 113 of 1991 regulate township establishment and land development.

As far as rural areas are concerned, the 1913 Black Land Act was the first legislative attempt to divide the old Union into areas where Blacks could own land. Scheduled areas were set aside for the exclusive occupation and acquisition by Blacks. These areas included the black reserve areas outside the bantustans (South African Development Trust Land), National States and TBVC countries.

The application of the provincial townships ordinances were specifically excluded from these areas by the Black Laws Amendment Act 56 of 1949, and in 1962 separate regulations regarding township establishment in these areas were promulgated. These regulations continue to apply until amended by the competent National State Authority.

In August 1990 regulations regarding the establishment and development of towns in areas outside the National States were published. On the same day regulations providing for the preparation of structure plans and town planning schemes were published (Van Wyk, 1990 : 40).

4.2.6 COLOUREDS AND INDIANS

In contrast with Blacks, the rights of Coloureds and Indians to own and occupy land were far less restricted. In the early Cape land grants were awarded to Coloureds in the same way as to the European settlers. After Union numerous legislative provisions regulating the position of Coloureds and Indians were introduced. These paved the way for the introduction of group areas legislation. The 1913 Black Land Act preceded the Group Areas Act 36 of 1966 and stipulated which areas of South Africa could be occupied by Blacks on the one hand and non-Blacks on the other. The Group Areas Act has since been repealed and township development is presently regulated in terms of the various provincial ordinances.

4.3 THE OBJECTS OF LAND USE PLANNING LEGISLATION

The legal regulation of the way in which owners or occupiers use, exploit or develop land has various different but inter-related objects. Broadly speaking it can be said that the use of land is controlled:

i) to promote the health, welfare and amenities offered to persons that live together in urbanized society. This is achieved through the zoning of land uses in town planning schemes;

ii) for cadastral reasons i.e. to ensure that land units are of a proper size and location, thereby achieving proper usage of the land;

iii) to prevent nuisance;

iv) to promote the proper and efficient exploitation of land as an agricultural and industrial resource. This is done through national and regional planning; and

v) for the protection and conservation of the natural environment.

For many years the promotion of racial segregation was a sixth object of land use planning legislation in South Africa. This has, however, been changed by the abolition of the apartheid system over the past two years.

4.4 'CONTROL' AND THE TOWN PLANNING SYSTEM

In contrast with American and British practice where a much more comprehensive approach is used, town planning in South Africa is often restricted to land use planning. Planning therefore tends to be restrictive rather than offering positive methods or solutions for economic development and the alleviation of social problems.

Late in the previous century modern town planning and building control originated as a means to prevent exploitation of renters through sub-standard developments (housing) and the undesirable and health-hazardous mix of land uses. Today town planning is still very much reactive and bent on 'control' rather than aimed at promoting development. The introduction of structure plans in Natal and the Cape Province was an effort to make the planning process more development oriented, although it seems as if structure plans are more often used to control rather than direct and encourage development.

An important reason why town planning continues 'to control', is that the more affluent section of society, which also controls the system, desires the control which ensures a good living environment and security for their investments. A large and ever-increasing percentage of South Africans are, however, living in informal towns or squatter camps where building and town planning control have little meaning. In such areas there is a great need for development of all types, and so is the need to make town planning much more development orientated.

4.5 TOWN PLANNING TODAY

The present town planning system in South Africa can broadly be divided into three elements, namely long term planning, land use control, and the control of subdivision of land. These elements form the core of the town planning system.

Town planning in South Africa is regulated mainly in terms of the various provincial ordinances, which makes provision for the preparation, approval

and implementation of town planning schemes.

There is, however, other legislative measures which also play important roles:

* **Long term planning**

Long term planning is done mainly in terms of the provisions of the Physical Planning Act 125 of 1991 (see section 4.10 for detailed discussion). This Act provides for a system of national and regional land use planning, where policy plans (national and regional development plans and regional structure plans) and urban structure plans can be prepared.

At provincial level long term planning in Natal and the Cape Province is done differently than in the other provinces. In Natal and the Cape Province structure plans provide the mechanism whereby long term planning can be done, whereas in the Transvaal and the Orange Free State it must be done through town planning schemes and zoning regulations. Under the Physical Planning Act these provinces can, however, now also prepare regional or urban structure plan.

* **Land use control**

The situation today as far as zoning is concerned, is that the Cape Province has a town planning system in essence close to the British system, whereas the systems of the other provinces are closer to the American system.

In the Cape the use of land is controlled mainly through zoning schemes, while in the other provinces it is done through town planning schemes.

* **Subdivision of land**

Different systems regulate the subdivision of land in the different provinces (see discussion in section 4.8).

The most important elements of South African town planning mentioned above will now be discussed.

4.6 TOWN PLANNING SCHEMES

Broadly speaking, town planning schemes provide for the control over land use by the local authority concerned. The aim of this is to enhance the welfare, prosperity and progress of the community to the highest possible

level. Although town planning in some instances involves an interference with private ownership, its main aim is still to benefit the community in which it operates.

4.6.1 PROCEDURE IN THE CREATION OF A TOWN PLANNING SCHEME

Each province has its own provincial ordinance regulating these procedures, namely:

* Natal - Town Planning Ordinance 27 of 1949 (Chapter IV).
* Orange Free State - Townships Ordinance 9 of 1969 (Chapter III).
* Transvaal - Town planning and Townships Ordinance 15 of 1986 (Chapter II).
* Cape - Land Use Planning Ordinance 15 of 1985 (Chapter II).

  (In the Cape a town planning scheme is known as a zoning scheme).

Each ordinance contains detailed provisions regarding the creation of town planning schemes. The procedures in Natal and the Orange Free State are the same, while the introduction of the 1985 Ordinance in the Cape brought significant changes in the procedures in this province. Transvaal practice differs substantially from the other provinces.

After a local authority has prepared a scheme it is submitted to the Townships Board. In the Cape the scheme is submitted to the local authority concerned. In Natal and the Orange Free State these Boards call for public representation and hold public hearings regarding the scheme. Similarly, in the Transvaal each stage in the procedure must be open for inspection by the public. Interested parties may lodge objections and make representations, whereafter objections will be heard and evidence given.

After this the scheme is considered in relation to the representations received. Either the local authority or the Townships Board submits a report and any recommendations on the scheme to the Administrator, whereafter he may approve the scheme by proclamation.

The procedure concerning the creation of a town planning scheme is basically the same as that involved in the establishment of a township.

4.6.2 THE PURPOSE OF TOWN PLANNING SCHEMES

The aim of a town planning scheme is to provide, within an existing town, for the planning and control over the spatial utilization of land.

The South African town planning ordinances are based on the English Town Planning Act of 1925 and the Town and Country Planning Act of 1932. These enactments, as well as the American zoning enactments provided the basis upon which the provincial ordinances express the purpose of a town planning scheme, namely (Van Wyk, 1990 : 162):

> "the coordinated and harmonious development of the area to which it relates in such a way as will most effectively tend to promote health, safety, good order, amenity, convenience and general welfare, as well as efficiency and economy in the process of development".

(The word "amenity" does not appear in the Natal ordinance and has been replaced by "beauty" in the Free State ordinance).

The purpose of a town planning scheme finds concrete expression in zoning which is central to the town planning scheme.

4.7 ZONING

The various provincial town planning Ordinances provide for zoning or the reservation of areas for different land use purposes. Zoning essentially is "the creation of districts within a city where different building regulations are applied (affecting the height, bulk and coverage of buildings) and within which different use activities are permitted or prohibited" (Van Wyk, 1990 : 164). It is therefore primarily concerned with certain restrictions or limitations on ownership and use of land. The public interest in health and safety is accommodated in standards relating to engineering infrastructure and in legislation dealing with housing and building standards.

The purpose of zoning is thus to create and retain the specific character of an area. This purpose will be missed if a use was allowed for which no provision is made in the town planning scheme. In certain instances, however, uses which do not conform to the town planning scheme are allowed, e.g. consent uses.

These are uses belonging to a specific use zone which are not primary uses, but which are necessary in a specific area because they provide certain conveniences. In a residential zone these uses would be places of worship, social halls and so on. Special consent from the local authority is required for these uses.

4.8 SUBDIVISION CONTROL OR TOWNSHIP ESTABLISHMENT

The subdivision of land (also known as township establishment) is also controlled in terms of town planning ordinances. As a general rule, subdivisions will be permitted by an appointed authority only if the developer submits a comprehensive plan indicating the size of land units, the layout of streets, public services and facilities. Since permission is essential in this process, it provides a method of controlling the urbanization process.

Township establishment consists of the practical procedures involved in the founding and development of new townships. Legislation regulating township establishment is at present contained in the various provincial ordinances, as well as in the important Less Formal Township Establishment Act 113 of 1991, which provides for shorter procedures for the establishment of townships in squatter settlements.

4.8.1 PROCEDURE IN THE ESTABLISHMENT OF NEW TOWNSHIPS

The procedure in the establishment of new townships is basically the same in the Transvaal, Natal and the Orange Free State, but is, since the promulgation of the Land Use Planning Ordinance 15 of 1985, somewhat different to the Cape procedure.

Transvaal, Natal and Orange Free State have a linear system, where the applicant, municipality, Townships Board and Administrator all function 'in line'. The ordinances of these provinces provide that a township may only be established with the approval of the Administrator. Any owner of land or developer who wishes to establish a new township must apply to the relevant administrative authority for permission. This authority refers the application to the Townships Board, and notice is given to the Surveyor-General and the Registrar of Deeds. If approved, it must be advertised so that any objections can be heard. Once the objections, if any, have been heard the Administrator can either approve or refuse the application. On approval the Administrator

can impose any condition on the application. The Administrator may, after approval but before declaration as an approved township, amend or add to the conditions, after consultation with the local authority and the applicant.

Within a specified period after approval, the applicant must lodge for approval with the Surveyor-General such plans and diagrams as are necessary for the establishment of a township. Again within a specified period, the applicant must lodge with the Registrar of Deeds the general plan and diagrams, together with the relevant title deeds of the land to which it relates, provided that the conditions imposed by the Administrator have been complied with.

After that, in the Transvaal and Orange Free State, the Administrator, by notice in the Official Gazette, declares the township an approved township, and in a schedule to the notice sets out the conditions subject to which the township is declared an approved township. In Natal the notice in the Gazette does not include the conditions in a schedule. The conditions are instead entered into an introductory folio of the relevant township register in the Deeds Office (Van Wyk, 1990 : 115-121).

In the Cape township establishment is known as the subdivision of land (Chapter III of the Land Use Planning Ordinance). The line of application here goes through the applicant to the municipality, with some applications going to the Administrator. The introduction of the Planning Advisory Board provided an extra point of view where necessary. The procedure described in the ordinance is briefly as follows: any owner of land may apply to the town clerk in writing for the granting of a subdivision. Upon receipt of an application the town clerk, if of the opinion that persons will be adversely affected, must advertise it. This is important because it provides citizens with the right to participate in the land use planning process (There are, however, serious problems regarding advertising of applications reaching the poorer section of the population staying in informal or squatter settlements).

Any objections received should be submitted to the owner concerned. Relevant comments of persons who have an interest in the application must be obtained and these, together with the application, are submitted to the council. After that the council may grant or refuse the application, subject to any conditions it deems fit. Although no provision is made for the proclamation of the subdivision or of the conditions laid down, in practice the situation is the same as in Natal where the conditions are entered into the introductory folio of the township register in the Deeds Office.

In some cases the application can be submitted to the Administrator for approval. In such cases he has to obtain the view of the Planning Advisory Board, but their permission is not necessary for approval of the application.

4.8.2 TOWNSHIP ESTABLISHMENT CONDITIONS

Conditions of establishment are the conditions subject to which the township is declared an approved township. The purpose of such conditions is, with due regard to the essential services and facilities, in the interest of sound local government and control and in the interest of the future residents of the township. Conditions of establishment are thus essentially obligations placed on the developer. These conditions can be placed on the following:

- Roads, water, electricity, stormwater drainage and other services.
- The removal of obstacles such as buildings, fences, trees and tree stumps.
- The reservation of mineral rights.
- The name of the township.
- Disposal of existing conditions of title.
- Endowment.

(Endowment requires the developer to pay to the Administrator a certain percentage of the land value, or a lump sum at the date of disposal. The purpose of endowment is to obtain a contribution from the township owner towards the local authority's provision of amenities in the township, which will enhance the price of erven in the township).

4.8.3 LESS FORMAL TOWNSHIP ESTABLISHMENT

Many displaced, unemployed, poor and homeless people flock to urban areas only to be taken up in a system of informal townships or low income squatter settlements. These people make use of land in a way that presents many social, health and sanitary problems. The control of the use of land by informal or squatter communities as residential settlements is now regulated under the provision of the Less Formal Township Establishment Act 113 of 1991. This act provides two different procedures:

i) Section I provides for less formal settlement procedures, which are used when there is an urgent need for land to solve a squatter situation that involves serious health and safety risks.

ii) Section II provides for less formal township establishment procedures, which are used when an application for township establishment is in accordance with the low income housing demand.

In addition, under the Upgrading of Land Tenure Rights Act 112 of 1991 provision is made for the recognition of informal settlements as "formalized" townships. In such formalized townships the Administrator may by notice impose certain conditions for the regulation of the use of erven or other pieces of land.

4.9 NUISANCE

Sometimes disputes arise between neighbours practicing mutually discordant land uses. The evolution of the common law concept of nuisance, which found a place in the zoning provisions of town planning schemes, helped to solve this problem. In effect the nuisance doctrine created localities in which only particular land uses were lawful and prohibited in these localities uses which were harmful and in conflict with the broad interests of the neighbourhood. Presently the notion of preventing discordant land uses in neighbourhoods and localities survives in the zoning provisions of town planning schemes and the provisions of the Abolition of Racially Based Land Measures Act 108 of 1991.

Under this Act a majority of all the owners of residential premises in any neighbourhood may by agreement lodge draft by-laws in relation to any such neighbourhood with the local authority concerned regarding:

i) the election and establishment of these (above-mentioned) owners of a neighbourhood committee;

ii) overcrowding of residential premises, norms or standards for the determination of overcrowding, and the prohibition, prevention, combating and termination of any overcrowding inconsistent with such norms and standards;

iii) the use of habitation of premises which are unfit for that purpose, including norms or standards for the determination of such fitness, and the prohibition, prevention, combating and termination of any such unfit use;

iv) the clean and hygienic maintenance of residential premises;

v) the repair, cleaning up or removal of nuisances on premises by the owner;

vi) the repair and maintenance of buildings, structures, machinery, accessories, fences and open spaces on or in any residential premises; and

vii) the orderly use of amenities established and maintained for the residents of the neighbourhood concerned, the determination of norms or standards in respect of any such use and the combating and prohibition of any offensive, indecent, unhygienic or dangerous conduct in the use of such amenities.

It is within the powers of the local authority concerned to promulgate such by-laws in respect of the neighbourhood. Any by-law which discriminates on the ground of race, colour or religion or is grossly unfair shall be of no force and effect.

4.10 THE PHYSICAL PLANNING ACT 125 OF 1991

When planning at regional or national level land use controls of a different order are required. Up until the present the development of the legal framework for planning in this context has been rather spasmodic and without order or plan.

The first attempts at legislation for macrocosmic planning was the National Resources Development Act 51 of 1947. At the time it was assumed that land use planning was more than a local affair, that it was in fact of national importance, and had to be controlled and coordinated at the highest level if effective and orderly planning was to result. Today it can be said that the idea of 'control at the highest level' was erroneously thought to be what was needed.

This Act was amended in 1955 and eventually replaced by the Physical Planning and Utilization of Resources Act 88 of 1967, which retained the principles pertaining to resource utilization and provisions concerned with controlled areas. In addition it contained provisions dealing with zoning and the subdivision of land for industrial purposes.

In 1975 the Act was substantially amended and renamed the Environment Planning Act. The most significant provisions were those pertaining to the drafting, approval and effect of guide plans and the restriction of the use of land for brickworks, potteries, quarries and other processing of minerals. The Act became an instrument for overall physical planning at central government level, which was done by means of guide planning. The Act was amended in 1981 and renamed the Physical Planning Act, 88 of 1967.

In 1991 a totally different system was introduced by the Physical Planning Act 125 of 1991. This Act provides the necessary legislative basis for a system of national and regional land use planning. The purpose of the Act is to establish a planning instrument to ensure orderly physical planning in the Republic at all levels of government.

4.10.1 OBJECTIVES

The main objectives of the Act are, first, to determine and establish the responsibility for physical planning at the various levels of government.

Second, the principle of guide plans is retained in a new system of four levels of plans, with a *'national development plan'* at the top level, followed by *'regional development plans'*, *'regional structure plans'* and at the lowest level, *'urban structure plans'* (see Table 4.1). The object of these plans, including the 'development' plans, is given in Art. 5 as "....*to promote the orderly physical development of the area* ...". Their purpose, content and planning procedures is much the same as that of the old guide plans. An important difference is that urban structure plans are now controlled by regional and local governments, not by the Minister of Planning and guide plan committees. These urban structure plans are of particular importance for the Transvaal and the Orange Free State as their planning ordinances do not provide for structure plans.

Art 3 empowers the Minister *'to divide the Republic into development regions'* and *'to divide the development region into planning regions'*. The probable extent of these planning areas as well as the essential properties of each plan are

summarized in Table 4.1.

Table 4.1 : Characteristics of Planning Mechanisms created by the Physical Planning Act 125 of 1991

	NATIONAL DEVELOP-MENT PLAN	REGIONAL DEVELOP-MENT PLAN	REGIONAL STRUCTURE PLAN	URBAN STRUCTURE PLAN
Name of region		Development region	Planning region	
Probable area	Republic	National development regions[1]	NPDP or RSC regions[2]	From metro-politan area to part of a city
Type of plan	Policy plan	Policy plan	Policy plan	(Not speci-fied)
"Planning Authority"	Minister of Plan-ning	Minister of Planning	Administra-tor	(Administra-tor)
"Responsible authority"				Regional or city council
Plans prepared by	Planning Committee	Planning Committee	Planning committee	Regional or city council
Objects of plan	"Promote the orderly physical de-velopment of the area ... to the benefit of all its inhabitants"			(Not speci-fied)
Content of plan	"Broad guide-lines for the future physical development of the area.."			

[1] The 8 National development regions. A to H, of the Regional Development Advisory Committees, as announced at the Good Hope Conference in 1981.

[2] The 38 planning regions of the 1975 National Physical Development Plan or Regional Services Council areas.

(Source: SAITRP Newsletter, June 1991)

Third, the Act provides for co-ordination between different levels of government in the preparation and implementation of the various plans.

Fourth, the Act promotes public participation in the preparation of plans, and, fifth, requires that in this preparation proper consideration be given to:

* the potential for economic development;
* the socio-economic and development needs of the population;
* the existing transport planning and future transport needs;
* the physical factors which may influence orderly development in general and urbanisation in particular; and
* the possible influence of future development upon the natural environment.

4.10.2 POLICY PLANS

A policy plan consists of broad guidelines for the future physical development of the area to which the plan relates. It may provide that land shall be used only for a particular purpose or, with the consent of the Minister, an Administrator or any other authority specified in the policy plan, also for other purposes for which provision is made in the policy plan.

The Act provides the following types of policy plans:

* National development plan - prepared for the Republic;
* Regional development plan - prepared for a development region; and
* Regional structure plan - prepared for a planning region.

4.10.3 URBAN STRUCTURE PLANS

An urban structure plan may be prepared, for the area of jurisdiction of one or more local authorities, or for the region of a regional authority. Urban structure plans should also consist of guidelines for the future physical development of the area to which the plan relates. Planning procedures for urban structures plans are not specified, but Art 26(1) empowers the Administrator to make regulations to govern procedure.

Although the Act emphasizes *'orderly* physical development', much more is in fact needed. The real aim of planning, namely to "improve welfare and quality of life of society" should be foremost in the preparation of all these plans.

4.10.4 HIERARCHY OF CONTROL

Art 27 prescribes a strict hierarchy of control. Each plan, including town planning schemes and zoning schemes, must strictly conform to the higher order plans. No provision is made for exceptions, barring the case of land presently unzoned where the *'consistency'* norm can be applied (SAITRP Newsletter, June 1991).

4.10.5 EFFECT ON AGRICULTURAL LAND

All land in the area to which the plan applies, and which in terms of the relevant plan may be used for agricultural purposes only, shall be excluded from the provisions of the Subdivision of Agricultural Land Act 70 of 1970.

4.10.6 PREPARATION, AMENDMENT, REVIEW OR WITHDRAWAL OF POLICY PLANS

Planning procedures for the policy plans are virtually the same as for the old guide plans, with the retention of planning committees who are responsible for the drafting of plans. An important difference is that the Administrator and not the Minister, will be the *'Planning Authority'* for regional structure plans (see Table 4.1). The Act also contains provisions for the removal of conflicts, ambiguities or administrative difficulties regarding plans, and for the amendment, review or withdrawal of plans.

4.11 OTHER LAND USE CONTROL LEGISLATION

4.11.1 AGRICULTURE

Until 1957 there was no statutory control over subdivision of agricultural land, except the limited protection offered by the town planning legislation.

Although traditionally the subdivision of land was vested in the provincial administrations, no provision was made for this in the South African constitution. The first enabling legislation was passed in 1944. Consequently

the different provinces adopted ordinances dealing with the division of rural land, most of which proved ineffective.

The matter of subdivision of agricultural land was in principle settled by the Subdivision of Agricultural Land Act 70 of 1970, which practically applies to all privately owned land except that within municipal areas. The Act prohibits the subdivision of land or the registration of an undivided share or a lease over portion of a farm in a deeds office without the written consent of the Minister of Agriculture. The purpose of the Act is simply to prevent the subdivision of agricultural land into units that are not economically viable.

Land used for agriculture is also controlled through the Conservation of Agricultural Resources Act 43 of 1983. Under this Act the Minister of Agriculture may prescribe control measures, which must be complied with by land users to whom they apply.

4.11.2 Mining

The exploitation of land by way of mining the minerals in or upon it is regulated by the Minerals Act 50 of 1991.

4.11.3 Building restrictions

The National Building Regulations and Building Standards Act 103 of 1977 prescribes the kind and standards of buildings that may be erected on property, thereby restricting or controlling the use of the land.

In order to restrict the establishment or extension of townships on land adjacent to roads in respect of which building restrictions exist, the Advertising on Roads and Ribbon Development Act 21 of 1940 can prohibit the division of land, limit the use to which the land may be put, restrict the number and extent of buildings or structures which may be erected on the land or prohibit the erection, construction or laying of any structure or thing below the surface of the land.

The National Roads Act 54 of 1971 also provides for the limitation of the use to which land may be put, as well as for the number and extent of structures that may be erected.

4.11.4 TRANSPORT

The Urban Transport Act 78 of 1977 places metropolitan transport areas under the powers of the Administrator. The Act also provides for the establishment of a National Transport Commission, who in turn is responsible for transport planning in metropolitan areas.

4.12 ENVIRONMENTAL PROTECTION

The conservation of natural resources and the prevention of environmental pollution has in recent years emerged as a major purpose and aim of land use regulation legislation. Earlier many people considered wildlife, plants and natural features as the subjects of private property rights and therefore liable to use, exploitation and destruction at the will of the owner. Conservation of the natural environment was thus in direct confrontation with private ownership. The enactment of legislation which overruled private property rights or created legal protection for the natural environment has then been the only really effective manner to achieve environmental protection.

Environmental land use planning and control legislation provides for the establishment of areas that are set aside exclusively for a specific form of land use or that serve to define the area within which certain control measures can be applied (Page and Rabie in Fuggle and Rabie, 1983 : 472). Usually provision is also made for a specialized authority to administer the area in question.

Three categories of control over the environment can be identified, namely:

* general control, through zoning schemes, structure plans and guide plans;
* Specific control over processes, e.g. water and air pollution; and
* Control over land (strict control) which involves strong control through legislation, protected natural environments, mountain catchment areas, nature reserves, lake areas, limited development areas and other controlled areas.

Structure plans (and guide plans) can be used by local authorities to lay down guidelines for the future physical development of an area, after all environmental aspects have thoroughly been taken into consideration. They

are also ideally suited for use by local authorities and regional services councils (RSCs) to establish a policy for environmental conservation. Structure plans can identify sensitive areas, make prescriptions for environmental impact assessments, as well as for the handling of historical buildings or areas. It must, however, be remembered that structure plans are only policy plans and as such do not have a great deal of enforceability. Therefore certain legislation, especially the Environment Conservation Act 73 of 1989, can play an important role in environmental protection. A definite system whereby the public and local authorities can combine their efforts and consult with the Department of Environmental Affairs is still needed in order to integrate conservation, development and planning processes.

4.12.1 THE ENVIRONMENT CONSERVATION ACT 73 OF 1989

The Act, replacing the Environment Conservation Act 100 of 1980, provides very important measures for the protection of the natural environment. These measures include:

i) the proclamation of 'protected natural environments', previously known as 'natural environments' under Act 100 of 1980;

ii) control measures or - mechanisms including control over actions which may have a damaging effect on the environment (e.g. air pollution), regulations regarding waste disposal and noise, as well as regulations for the preparing of environmental impact assessment reports; and

iii) regulations regarding the proclamation of 'limited development areas' by the Minister.

Two recent amendments (Acts 73 and 79 of 1992) greatly strengthened the powers of the Act. Wider powers were given to the Minister of Environment Affairs, the Administrators, RSCs and municipalities to stop any private development considered to be harmful to the environment. The very wide definition of 'environment' makes this provision applicable to almost any situation where the environment is detrimentally affected, e.g. the outlet of gases or water, agricultural practices or construction. Effectively the protection of historic buildings, plants and wild life, as well as the environment fall under this new provision.

Theoretically this new provision creates a situation where a lower authority can veto the decision of a higher authority. It can happen that the Minister or an administrator approves a new development, but that a RSC or municipality later decides that the development is harmful to the environment and then order it to be stopped.

Where the Minister of Environment Affairs had to get the consent of other Ministers in identifying actions having a real detrimental effect on the environment, another new provision now only requires that he acts in 'consultation' with the other Ministers in identifying these actions. This gives him an almost direct control over land use and development. This is a step greatly welcomed by environmentalists, as in practice it was very difficult obtaining the consent of other Ministers. Practically this means that if the 'development of undeveloped land' is one of the actions identified by the Minister, a lot of new developments will first have to be approved by him. Effectively this gives the government stronger controlling powers over development.

4.12.2 Water control areas

In terms of the Water Act 54 of 1956 a variety of control areas may be established. Extensive provisions regarding the use of water and land apply in these areas.

4.12.3 Air pollution control areas

The Atmospheric Pollution Prevention Act 45 of 1965 provides for the declaration of controlled areas in respect of :

i) noxious and offensive gases;

ii) smoke control zones;

iii) dust control areas; and

iv) vehicle exhaust gases.

Extensive provisions apply in respect of land use in these areas with a view to preventing and combating air pollution.

4.12.3 PROTECTED AREAS

The establishment of various types of protected areas is provided for by a number of statutes and ordinances. The integrated environmental management procedure (The Department of Environment Affairs 1992, 12) identifies a list of environments dividing it into designated and demarcated areas. Designated areas means "any area already declared in terms of an Act of Parliament or by agreement between landowners and the State President or the Minister of Environment Affairs". Demarcated areas means "any of the listed areas which are demarcated by a central, regional or local authority. Extensive provisions apply in respect of land use in these areas. For the purpose of this study there will only be briefly looked at the most important demarcated areas.

National Monuments

Land (or buildings) can be declared as a national monument in terms of the National Monuments Act 28 of 1969. Control over national monuments is exercised by the National Monuments Council and through a number of criminal prohibitions relating to national movements.

Lake areas

The Lake Areas Development Act 39 of 1975 empowers the State president to declare certain land to be a lake area. In respect of land under the control of a provincial administration, the Minister of Environment Affairs must consult with the administrator concerned. Lake areas are controlled by the Lake Areas Development Board and through regulations issued by the Minister of Environment Affairs.

Mountain catchment areas

In terms of the Mountain Catchment Areas Act 63 of 1970 the Minister of Environment Affairs may declare any area to be a mountain catchment area. This is mainly done to prevent plants in these areas from becoming extinct. Control over land use in these areas is exercised through directions to landowners, issued by the Minister.

Limited development areas

In terms of the Environment Conservation Act 73 of 1989 the Minister can declare land to be a limited development area.

Protected natural environments

In terms of the Environment Conservation Act 73 of 1989 the Minister can declare land to be a protected natural environment. This is, amongst other reasons, done to protect beautiful and valuable natural areas in private ownership from being developed.

Conservation areas

In terms of the National Monuments Act 28 of 1969 certain areas may be declared as conservation areas. In addition to the Minister of Environment Affairs may declare certain 'sites of conservation significance'.

4.13 INTEGRATED ENVIRONMENTAL MANAGEMENT

At present the lack of coordination between the local planning process and Acts of Parliament providing protection for the natural environment, such as the Environment Conservation Act, is a huge shortcoming that needs to be addressed. Too many departments, administrations and authorities are concerned in the planning and environmental conservation process. Ideally the public should only have to deal with a single system including planning, development control and environmental protection at local level. At local level urban planning and environmental protection can not logically be separated.

The role of the local planning process in environmental protection should be brought to the attention of the public, environmental groups and the relevant government departments. The 1992 guideline document concerning the Integrated Environmental Management Procedure (IEMP) by the Department of Environment Affairs is an attempt at formalising IEMP in South Africa in such a way that it can be accepted as policy by government. The document outlines a revised IEM procedure and gives broad guidelines for key stages in the procedure.

According to the document, "IEM" is designed to ensure that the environmental consequences of development proposals are understood and adequately considered in the planning process (Department of Environment Affairs, 1992. The Integrated Environmental Management Procedure). The term *environmental* is used in a broad sense, encompassing socio-economic and biophysical components. It is also stated that the purpose of IEM is "to

resolve or mitigate any negative impacts and to enhance positive aspects of development proposals".

Figure 4.1 is a flow diagram of the revised IEMP, outlining the various stages in the process. It is not necessary for the purpose of this study to discuss these procedures in detail. It must, however, be said that the essence of the revised IEM procedure is that, before development can be started, an *Impact Assessment* is either undertaken, or is deemed to be not necessary. Provision is also made for an *Initial Assessment* to establish whether or not an *Impact Assessment* is required, when appropriate. The message of the document is that careful planning, incorporating the necessary assessments, will speed up the process, and facilitate informed decisionmaking (Department of Environment Affairs, 1992. The Integrated Environmental Management Procedure). This idea can very effectively also be applied to all the above discussed land use planning systems and measures in an attempt to eradicate divided uncoordinated control.

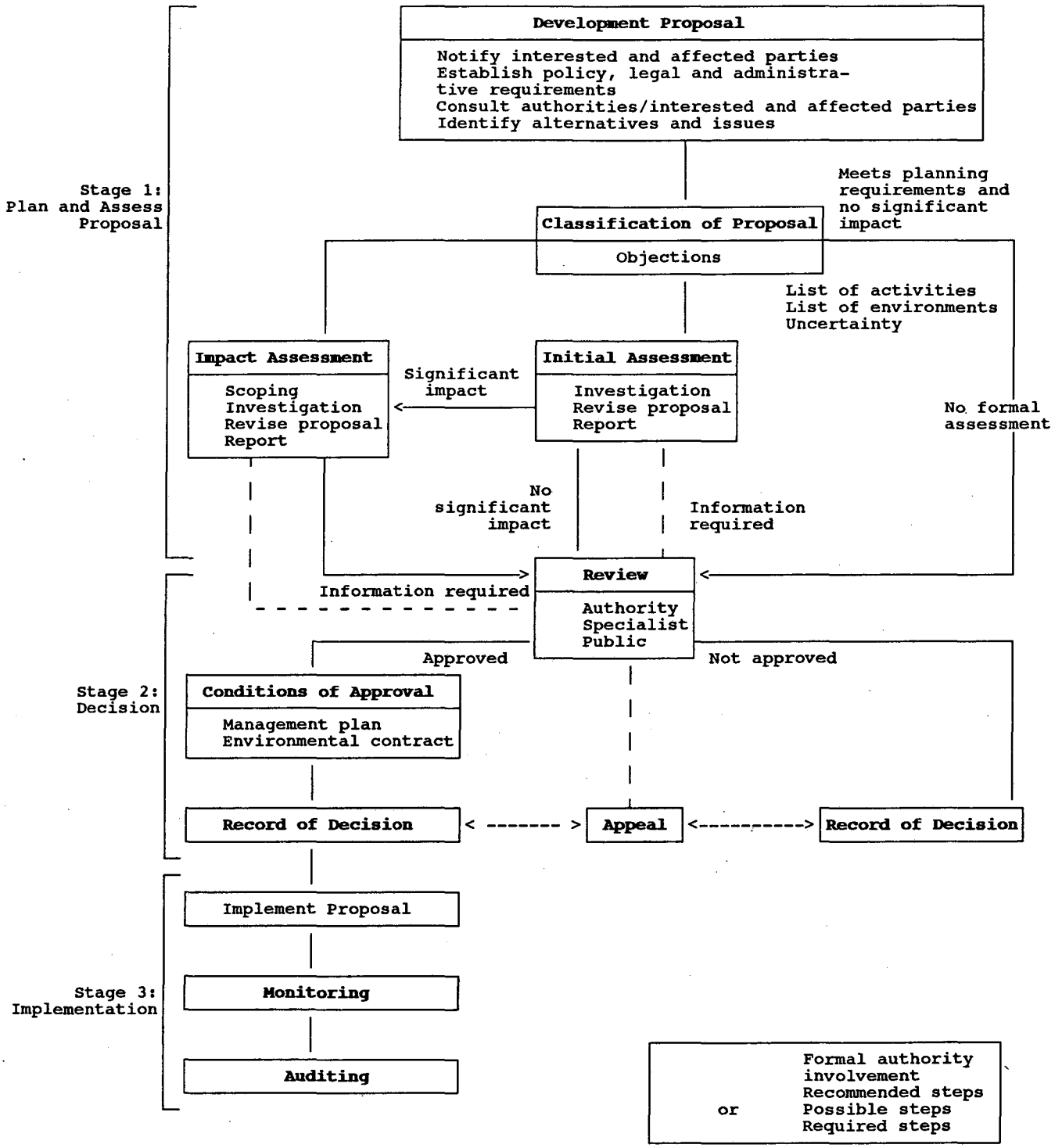

Figure 4.1: The IEM Procedure

5. LAND USE CONTROL MECHANISMS, LIMITATIONS AND PRIVATE PROPERTY

5.1 LAND USE CONTROL MECHANISMS OF PLANNING LAW

All the different statutes mentioned in the previous chapter have one thing in common: they involve or imply a limitation or limitations upon the powers and rights of landowners. In other words, landowners are not entirely free to use their land as they want too - some or other form of control is exercised over their land use rights. For the purpose of this study it is necessary to look at the forms that these limitations upon ownership may take, that is, the methods used to limited private ownership of land.

5.1.1 PROHIBITIONS AND RESTRICTIONS

Related to statutes, which may simply prohibit landowners from using land in a particular manner, is the mechanism of restriction of land uses, found in the zoning provisions of town and regional planning schemes.

Land use planning involves the devising of a plan that will achieve certain specified social goals. This plan seeks to achieve the goals by regulating the manner in which the land in the planning area is used. This regulation can be either negative or positive, i.e. the plan either prohibits land uses (because the usage clash with the objects of the plan), or requires uses (because the usage advances the objects of the plan). It can therefore be said that a land use plan is a series of prohibitions upon certain land uses and an accompanying encouragement of those uses not prohibited. Zoning is the mechanism that seeks to achieve these goals, prohibiting particular uses or permitting others according to the nature of the zone in which they occur.

5.1.2 LICENSING OF LAND USE PRACTICES

One of the most popular methods of controlling land use is to make the legitimate undertaking of certain actions dependent upon obtaining a licence or permit, or at least approval by the concerned administrative authority. This licensing is frequently used in combination with the restriction of land use purposes discussed above. Land uses which require such licensing include amongst others (Page and Rabie in Fuggle and Rabie, 1983 : 470-471):

* the use of natural resources;
* nuclear installations development; and
* land uses in controlled areas.

5.1.3 ADMINISTRATIVE DIRECTIVES

A number of Acts provide for the administrative authority concerned to issue environmentally relevant directives relating to the use of land to the owner or occupier of the land in question. Accordingly the Conservation of Agricultural Resources Act empowers the serving of a notice to the occupier or owner of land, calling upon him to eradicate weeds which grow on the land in question. Likewise the Mountain Catchment Areas Act provides for the issue of directives to owners and occupiers of land with respect to the conservation, use and management of such land situated in mountain catchment areas.

The administrative authority in question may, either upon its own initiative or after failure by the owner or occupier to comply with the (binding) directives, itself perform any act relating to the directives. The may also even recover the costs involved from the landowners in question.

5.2 LAND USE LIMITATIONS AND PRIVATE PROPERTY

One of the basic characteristics of ownership of private property is the freedom of power to use, exploit and dispose of the property according to the owner's personal and individual discretion and wish. This means that ownership legally implies that there are no external controls upon the owner in the exercise of ownership. Land use control, which implies a restriction upon freedom, thus stands in direct contradiction of private ownership.

The relevant question here is whether landowners are or ought to be entitled to some sort of redress or compensation for the effect that land use controls have upon their legal rights. This is an important issue because the extent to which landowners may invoke such remedial measures (as the law might allow) can greatly inhibit the scope of intensity of land use planning and control.

5.2.1 COMPENSATION

(i) Injurious affection

The various provincial townships ordinances make general provisions for compensation to landowners whose land is 'injuriously affected' by the implementation of an 'approved' town planning scheme. Since the provincial authorities as a matter of course never seek final approval of schemes, this form of compensation is virtually never paid.

(ii) Patrimonial loss

Provision is made in terms of the Mountain Catchment Areas Act that if a directive places limitations on the purposes for which land may be used, the owner or occupier of such land must be paid compensation in respect of actual patrimonial loss suffered by him. In terms of the Forest Act the owner of land in respect of which trees or forests have been declared by the Minister of Environment Affairs to be protected, is entitled to recover damages for patrimonial loss resulting from a refusal of consent to cutting or from the imposition of burdening restrictions.

(iii) Grants in aid

Any owner or occupier of land who has to comply with ministerial (Environment Affairs) directions relating to the land in question, has in terms of the Mountain Catchment Areas Act and the Environment Conservation Act the right to financial aid by way of grants or otherwise. This aid is subject to the discretion of the Minister of Environment Affairs.

A similar discretion to give financial assistance to certain owners or occupiers of land is granted to the Minister of Agriculture, in terms of the Conservation of Agricultural Resources Act.

(iv) Tax relief

The Mountain Catchment Areas Act also grants some measure of tax relief, excluding any land situated within a mountain catchment area upon which, in terms of any direction, no farming may be carried on, from all taxes imposed by a local authority on the value of immovable property.

5.2.2 UNCOMPENSATED LIMITATIONS ON LAND USE

Where restrictions short of expropriation are placed on the ownership of land, there is no all-embracing principle nor legislative provision that the person prejudiced is generally entitled to compensation. Restrictions upon the powers of landowners resulting from zoning, planning, legislative or administrative directives generally do not give rise to any right to compensation (Source unknown).

A definite distinction can and must be made between the "taking" and the "regulation" of property rights. This distinction is of central significance in the evaluation of the impact land use controls have upon the concept of ownership. In constitutional theory regulation of property rights is contrasted with the taking of these rights. Taking or expropriation is a direct violation of a civil right and is justifiable only if compensation is paid. On the other hand, regulation of property rights is seen as a necessary and proper government action carried out in the public interest and for public benefit. As such it is not considered to involve any taking of property and does not give rise to payment of compensation.

5.3 CONCLUSION

The validity of this viewpoint that compensation is not payable when property rights are 'regulated' can be argued extensively. First of all it can be argued that the 'necessary and proper' regulation of property rights stems from a very socialistic, centristic approach. The idea of 'strong' government regulating rights 'top-down' is one that would be best suited in a socialistic country. Unwillingly the impression is created that the rights of the individual is regulated in such a manner that he almost loses all control over his own property.

On the other hand it can also be argued that some form of regulation is necessary to help create a harmonious society in which all the inhabitants can live together peacefully and without conflict. At some stage it can become necessary to regulate rights or to control land use in the public interest, for public benefit, to prevent chaos in society, and to advance the general welfare of communities.

Whichever of these arguments are supported, the issue here is that the rights of ownership in land are not purely egotistical but involve an altruistic element of

social obligation, i.e. not only rights and powers but also social duties. From such a concept would arise a social and legal regime in which land would be used in a manner that recognises and advances the various social, economic and human values and interests that form the rationale for modern land use controls. To achieve this, however, is a very difficult task. Many external forces and influences play definite roles in the day to day control of land use. To control these forces and influences thus becomes an almost equally difficult task.

6. LAND USE CONTROL, LOW COST DEVELOPMENT AND LEGISLATIVE CHANGES

At this point in time it is very important for everybody in South Africa to start facing and accepting the daily realities. In these times mass urbanization and unemployment are phenomena that lead to huge housing shortages and poverty, with accompanying problems of health and welfare. This vicious circle is an almost unbreakable chain in which many poor, mostly black, people are caught up. Many reasons can be given for this situation, some more important and some less important. The town planning system, past and present, cannot be excused, for it too played a contributing role in creating this situation.

6.1 THE PRESENT POSITION

For several decades South African land use planning has been dominated by racially based, legislative measures and strong control over land use and planning procedures. Very rigid and inflexible town planning schemes, relying heavily on zoning to control land use and land development, is a major stumbling block in the whole system. As far as urban expansion is concerned, the highly controlled system of private suburban development accounted for most geographical extension of our cities, with public development of low-income black areas making up the rest. Different systems (inherited from apartheid), legal frameworks and administrations were used for separate races and racial zones. Despite the abolition of racial measures in 1991, the different (township establishment) procedures applied in the different areas before the abolition thereof, still remain in force and still have far reaching effects. The existing planning system is also not very effective in poor areas. The biggest problem is the huge influx of people into metropolitan areas. The sheer quantity of these people create a big problem on its own. Most of these people have little money. They need a place to stay, but cannot afford to buy land. The question is where should these people stay.

Relating problems can be identified, e.g. the standards that must be applied or strived to be achieved when provision is made for these people, the people's understanding of their situation, huge unemployment, and other social problems. These people also have great needs and desires for social services, schools, houses and other facilities. The problem, however, is that government structures cannot always provide in these needs. Planners therefore realise that they are daily confronting changing urban situations, and

a number of initiatives both official and unofficial are emerging to consider the future of urban planning in South Africa. There is a real need for a system to provide for control in highly formal "first world" areas and informal "third world" settlements. Serious doubts, however, exist as to whether this is possible or not.

6.2 CHANGES IN FUTURE SPATIAL ARRANGEMENTS

With the abolition of statutory control the population composition of neighbourhoods will in the future be based on natural selection. This selection includes cultural preferences as well as economic considerations. Effectively this means that the boundaries of local authorities will change drastically and race-oriented divisions will disappear. Botha (1992) states that the creation of 'independent' black local authorities was a huge failure because functional urban systems were divided into ethnic pieces, which in turn led to an imbalance in the different authorities' taxbases. He also states that in the future populations within local authorities' boundaries will become more heterogeneous, which in turn will lead to more complex land use patterns. Some neighbourhoods will accommodate the higher income groups, while most people will be taken up in medium-low and very low income categories. Therefore, South African towns and cities will have, and in fact always have had, a large third world character. This third world component of the population experiences great financial hardship and difficulties. For these people the current very rigid and demarcated zoning system is not very effective or popular.

Mabin (1992) looks at the processes that are driving change in our cities. According to him the major forces driving patters of urban change include:

* a primarily economic demand for reasonable urban space, and

* a mainly non-economic demand for access to urban environments, backed up by minimal economic capacity.

Unfortunately, there is very little supply on offer to meet these needs, and the planning system is not very realistic with regard to these needs. The duality in the system leads to a situation where residential areas for Blacks are planned separately from the remainder of the city - leading to the so-called Apartheid city. This duality ensured that township establishment and town planning schemes were isolated from the realistic demands and needs. The

township establishment process is evidential enough of this. Two main features dominated the process, namely;

(i) the racial reservation of land, and

ii) strong control over subdivision.

Although racial reservation, with some exceptions, no longer exists, the effects thereof are understandably huge. The most important effect would appear to have been the minimal demand for small, very low-cost residential and business sites in those zones reserved for white racial occupation. The reason for this is quite simple: while a large proportion of whites could afford larger, higher-cost sites, the vast majority of blacks could not.

Mabin also mentions two related factors which have significantly altered the context within which the township establishment process operates. These are the repeal of racially-based land measures and the emergence of a political climate and environment in which powerful political forces beginning to contest issues closely related to the land conversion process.

The response of the State to the major problems was initially to create an 'ordered informal settlement' process of expansion, e.g. that experienced at Khayelitsha. Meanwhile, an enormous demand for smaller, cheaper sites has been accumulating. Much of this demand is presently absorbed in a range of informal housing circumstances, including ex-hostels, backyards in old and new 'white' areas, outbuildings and rooms on formal black township sites, backyards shacks, as well as freestanding shacks in or adjacent to townships. There is thus an enormous need for land and housing for the poor. Reality, however, teaches us that political conflict, violence in poor communities, boycotts and threats of boycotts of home loan institutions make these areas almost unmanageable and very unattractive to land developers. This leads to what Latsky (1992) calls an interim stage of "comfortable chaos", where people can sit back, with the attitude of 'what must be, must be'.

One must also ask the question whether there is , or ever will be, an adequate supply for the huge demand for smaller, cheaper sites. There seems to be potential for supply to emerge. This supply is outside the formal township establishment process, and the 'new' less formal township establishment routes (in terms of the Less Formal Establishment Act 125 of 1991) may not offer the prospect of regulating it effectively.

What, however, has to be realised and accepted is the fact that our existing planning systems may not be adequate to absorb and regulate the changes in urban environments. The planning system may no longer be relevant to the processes at work in the political, social and economic environment. The processes of expansion at the urban edges move in quite new directions as cities have become legally accessible to people who the National Party Government with its policy of 'separate development' until recently sought to exclude. The question now is whether the town planning system can answer the political demand to integrate rather than segregate cities. In order to make any progress, we must realise that we stay in a third world country with third world towns and cities. This means that standards and regulations can no longer be drawn up with the upper socio-economic strata of the community in mind. Local authorities have to manage their areas with the poorer people in mind. The days of looking after the interests of the rich are over. Everybody will have voting power, therefore the needs of the poor majority have to be looked after. But, the vested rights of the higher socio-economic classes must still be protected, otherwise there will be no incentive for these entrepreneurial groups to create welfare and enhance prosperity. Point is, it stays a huge challenge to apply orderly land use control fairly in any such heterogeneous society. However, the quest for efficient, economically effective and socially stable cities has to continue. Mabin, for one, is convinced that major changes are needed if planning is to contribute positively to the achievement of any significant goals in this area.

6.3 KEY ISSUES AND CHALLENGES

Whereto now? What does the future hold in store? Questions with uncertain answers. The planning profession, however, has a definite part to play in the reshaping of planning frameworks, especially regarding urban challenges.

Dewar (Mabin, 1992) has sought to identify critical issues which he argues planning must confront in order to make a serious contribution to reshaping the cities in efficient, liveable directions. These are:

i) the need to compact the cities.

ii) restructure and integrate the cities

iii) create qualitatively fine spatial environments.

In order to achieve this, Dewar emphasizes the need for a range of urban projects, drawing together public and private actors, and communities, as well as to pool resources in ways directed to advancing the three directions of change he identifies.

Latsky (1992) also identifies three key substantive challenges facing the planning system. Firstly he identifies the access and participation challenge. There is a real need for any legislation or system not merely to regulate, but also to inform, be accessible, to enable and to empower people. Any future planning system must therefore be accessible and create opportunities for participation. Such a system should not merely regulate, but also inform. Secondly, he identifies the challenge of accommodating a dynamic, as opposed to a static or linear view of urban land delivery. A system accommodating reality in poor areas should be established. Thirdly, he sees the need to create mechanisms for conflict resolution, especially in the informal settlement process, between the conflicting interests and rights of inhabitants (occupants and owners).

6.4 NEW LEGISLATIVE MEASURES

Although it still has a very definite role to play in the modern first world component of society, it has become clear that the South African hierarchy of planning tools have become obsolete, out of date or behind the times regarding the situation in poor areas, where informal settlements is at the order of the day. An important question for urban planning is whether current initiatives to restructure planning frameworks, especially that of Dr C.J. van Tonder, will be able to produce an efficient system. Dr. Van Tonder, Director of Local Government in the Cape Provincial Administration, was appointed by Pres. F.W. de Klerk in 1991 to investigate existing and proposed new national township establishment legislation. Judging from discussions about Van Tonder's work, certain relevant points have to be clarified.

According to Mabin (1992) the intended legislation does in some ways appear to correlate with the types of issues identified by Dewar, e.g. those which seek to achieve

* integrated, balanced urban environment with full range of uses and facilities for self-sustaining communities and efficient urban systems, and

* optimal use in new developments of existing infrastructure and its most economic extension.

These principles which Van Tonder says 'should' inform the handling of 'applications for development', are normative principles which do not fully reflect or identify many contradictory forces in South African society. For example, the norms proposed include:

* Social norms of public accountability of chosen politicians or representatives;

* Economic norms, including effectiveness, the importance of the market- mechanism, the protection of ownership, short and streamlined procedures, and an understanding of financial implications; and

* Legal norms, including fairness (the "audi alteram partem" rule should apply), the right to unprejudiced trials, information, and motivated decisions.

Some of these proposed norms are exclusively supportive of promoting individual home ownership, and not rental or communal tenure. They also fail to address the question of accomplishing integration of function in the cities, and would appear to support rather the maintenance of large single-income-group residential areas. Overall, Van Tonder's principles begin to set out an approach to a policy rather than merely the elements of a planning system.

Any new legislation should have definitive stated objectives based on specific goals. Such legislation must

* be able to adapt to any new constitution. In other words, it must be directed towards the future South Africa, reflecting the needs and aspiration of all parties involved.

* be able to adapt to and link up with a mixed economy.

* share common, universal values. In other words, not only the formal (mainly white) sector should be served, but also and maybe more importantly, the interests of the huge poor (mainly black) sector.

* be able to link up with the South African culture, where many people (mainly blacks) are poor and unschooled.

* be aimed at letting development really happen. It must in other words be 'implementable'.

* reflect basic principles of government policy. It must be aimed at broad development principles, based on a definitive policy.

* not only be aimed at physical planning and control, but more towards the actual 'development process' itself.

* prevent fragmentation of planning authority for the whole country.

* provide for the allocation of funds.

7. SYNTHESIS AND RECOMMENDATIONS

7.1 SYNTHESIS

The purpose of this study was to look at the evolution of land use planning and development control and to look at the role it can or should play in a future South Africa. South African land use planning over the years looked extensively to British and American planning systems for guidance. South African land use planning, however, developed under unique circumstances, with political decisions creating frameworks within which the planning system had to function. Planners, being restricted by these political decisions, therefore 'created' a unique system, central to which stands the Apartheid city. Accompanying this is the very wide spectre of urban problems, being greatly worsened by increasing urbanization.

With regard to land use and development control it must be realised that not only Western norms and standards should be applied. Much can be learned by looking at similar situations in other developing countries. Special attention must also be given to cultural differences in communities and how they should be accommodated in a new system.

Any development needing rezoning should be streamlined by clearly stipulating rezoning procedures. This should be done to drastically shorten and to eliminate delays in the process. Something similar to the American "Zoning and Planning Commission" can accomplish this and even enhance community participation. Such a commission can make recommendations to a local authority regarding rezonings or any issue regarding zoning, e.g. variances, conditional uses or the desirability of non-conforming uses. Similarly, Botha (1992) convincingly speaks of some sort of informal 'court' where people with no real background in planning and land use issues can, where disputes arise, decide which concerned party has a stronger right. The problems surrounding the 'advertising' of applications, i.e. that many poor people in the midst of such applications are not aware of the proposals, should also be carefully looked at.

Long term planning can be done through the structure planning system (provided for in the Physical Planning Act 125 of 1991 and the Cape Province Land Use Planning Ordinance 15 of 1985) so that developers will know what to expect if they apply for rezonings. There should always be a supply of land

for the various uses so that prices are not unnecessarily inflated through a shortage of supply.

Regarding zoning there is a strong feeling that 'forward zoning' or 'zoning in advance' should be included by means of 'substitute schemes' (with a five year timespan). The correct application thereof should promote development. There is, however, doubt about the effectiveness of the zoning system as a whole, and a believe that private deed restrictions are as effective as governmental zoning in protecting residential neighbourhoods and property values. Depending on circumstances, e.g. the type of area under consideration, a system of no zoning can work. In poor areas rigid zoning does not serve a very positive function, and neighbourhood committees can possibly be more effective in controlling land use.

A dynamic system or ordinance which eliminates conventional zoning district designations and replaces them with far fewer and more important district designations might be more effective than rigid and inflexible zoning provisions. This approach to zoning will enable a community to plan for its future population, while safeguarding the natural, social and economic qualities that have made it an attractive place in which to live. Unlike the traditional approach, this 'performance zoning' does not organize uses into a hierarchy which is then used to protect "higher" uses from "lower" ones. Instead, it imposes minimum levels of "performance" by setting standards which must be met by each land use. This approach can be researched further and possibly implemented effectively in many places in South Africa.

It is also necessary to emphasize the importance of town planning schemes as planning instruments that need drastic adaptations and changes. The rigidness of existing town planning schemes is a major stumbling block. The effect of scheme regulations should be to make the schemes more flexible. They should therefore **not** be strictly regulatory, containing some consent uses, but rather contain few(er) limitations on the use of land. This means that they can become positive documents of control, leading development rather than restricting it.

Local authorities are also playing an ever-increasing important role in the reshaping of planning. They can, however, not do much on their own. Thus, more interactive planning will be vital to the reworking of planning frameworks. Civics, provincial administrations, servicing agencies, town councils and other concerned parties must be brought together to negotiate.

There should be a high degree of community participation and the reorganization of departments and the staffing of authorities are aspects which should be considered in detail at local level. There should therefore be a detailed revision of the whole 'planning process', where the 'process' component is just as important as the 'plan' component. All this can be more easily achieved if there is to be devolution of power to the local level, neighbourhood level, or even micro-community level if necessary. What is also important is that local authorities should have their own in-house set of norms and standards to govern e.g. what should be classified as a nuisance.

7.2 RECOMMENDATIONS

The following principles should be taken into consideration, not only at local level, but throughout the whole planning spectrum:

* positive guidance to developers by means of pro-active and promotive planning. Land use planning and zoning should rather encourage and not prohibit development;

* minimal bureaucratic delays in the development process, in other words, cut out the 'red tape';

* decisionmaking with regard to planning must be made in a democratic way;

* enough opportunities for public and community participation should be created, with special attention given to the inadequacy of the present system regarding poor areas;

* the acknowledgement and protection of individual interests and rights;

* unbiased and fair 'trials' and conflict resolution mechanisms;

* processes to stimulate and promote environmentally friendly, sustainable development; and

* the close consultation between, and working together of municipal, provincial and state departments in order to promote development and not stifle it.

It is also essential that local authorities constantly examine the role of their planning system. Restrictive controls should be kept to a minimum and land use control should be separate from the current over-abundant control measures, to help the people to create self-sufficient and sustainable enterprises. What is needed is a more innovative approach where the town planning system is more pro-active and not just an effort to cope with day to day problems. The goals and objectives for the community should be actively pursued to most effectively promote the welfare of the community. What is, however, important to realise, is that no act or official system is a formula for success. In the first instance the choice of a community to improve its future lies within the community itself. That means that in shaping a better future all the people must participate in the process. Hake (in Botha, 1992) puts it very clearly when he says that:

> "To press that the movement of urban development 'from below' should be taken more seriously is not to argue that the authorities should abdicate from all responsibilities for planning or control. The challenge is to work with peoples' aspirations and to abandon policies which fly in the face of their hopes".

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