

The National Housing Code

RURAL INTERVENTIONS

Communal Land Rights

Farm Resident Subsidies

Subsidy Quantum - Rural Interventions



human settlements

Department:
Human Settlements
REPUBLIC OF SOUTH AFRICA

Volume 5

TABLE OF CONTENTS

ACRONYMS	3
PART A: RURAL HOUSING SUBSIDY: COMMUNAL LAND RIGHTS	7
1 OVERVIEW	7
2 POLICY PRESCRIPTS AND PROVISIONS	11
2.1 POLICY INTENT	11
2.2 THE LEGAL FRAMEWORK FOR COMMUNAL LAND TENURE REFORM	11
2.3 PRINCIPLES OF PROGRAMME	14
2.4 APPLICATION OF THE PROGRAMME	18
2.5 WHO WILL BE ASSISTED?	19
2.6 FUNDING ARRANGEMENTS.....	23
2.6.1 PROGRAMME/PROJECT BUDGETING	23
2.6.2 ASSISTANCE FOR PROJECT APPLICATION AND SUPPORT	23
2.6.3 SUBSIDY QUANTUM	24
2.6.4 APPLICATION FOR OTHER FUNDING.....	24
2.6.5 VARIATIONS	24
2.6.6 RELEASE OF FUNDS	24
2.6.7 DECISION MAKING AUTHORITY.....	24
2.7 INSTITUTIONAL ARRANGEMENTS	24
2.7.1 THE ROLE OF TRADITIONAL COUNCILS (after promulgation of the CLaRA).....	24
2.7.2 THE ROLE OF THE MUNICIPALITY	25
2.7.3 THE ROLE OF PROVINCIAL DEPARTMENTS	26
2.7.4 THE ROLE OF THE NATIONAL DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM	26
2.7.5 THE ROLE OF THE LAND ADMINISTRATION COMMITTEE (after promulgation of the CLaRA).....	26
2.8 HOUSING SUBSIDY SYSTEM	27

PART B:

GUIDELINES FOR THE IMPLEMENTATION OF RURAL HOUSING PROJECTS.....	31
1 NATURE OF GUIDELINES.....	31
1.1 IMPORTANT CONSIDERATIONS.....	31
1.1.1 SECURITY OF TENURE.....	31
1.1.2 SUBSIDY AMOUNT.....	32
1.1.3 ZERO RATING OF HOUSING SUBSIDIES FOR VAT.....	32
1.1.4 TRANSITIONAL MEASURES.....	32
1.1.5 NORMS AND STANDARDS.....	33
1.1.6 PROCUREMENT COMPLIANCE.....	34
2 SUGGESTIONS ON HOW TO IMPLEMENT THE RURAL HOUSING PROGRAMME.....	37
2.1 ROADMAP OF SUGGESTED IMPLEMENTATION PROCESS.....	37
2.2 SUGGESTIONS ON PROJECT PLANNING.....	37
2.3 PROJECT PROCESS.....	38
2.4 IDENTIFICATION OF LAND.....	39
2.4.1 ACCESS TO LAND AND TENURE RIGHTS.....	40
2.4.2 THE COMMUNAL LAND RIGHTS ACT, 2004 (ACT NO 11 OF 2004).....	40
2.5 IMPLEMENTING AGENTS.....	42
2.6 PROJECT PROPOSALS.....	43
2.7 PAYMENT PROCEDURES.....	44

ACRONYMS

Communal Land Rights Act, 2004 (Act 11 of 2004)	CLaRA
Department of Rural Development and Land Reform	RDLR
Enhanced People's Housing Process	EPHP
Housing Subsidy System	HSS
Integrated Development Plan	IDP
Interim Protection of Informal Land Rights Act, 1996 (Act 31 of 1996)	IPILRA
Integrated Residential Developments Programmes	IRDP
Land Redistribution for Agricultural Development Programme	LRAD
Land Restitution Programme	LRP
Member of Executive Council	MEC
Medium Term Expenditure Framework	MTEF
Municipal Finance Management Act, 2003 (Act 56 of 2003)	MFMA
National Home Builders Registration Council	NHBRC
National Housing Subsidy Database	NHSDB
Non-Governmental Organisations	NGOs
Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000)	PPFA
Provincial Department responsible for human settlement	PD
Public Finance Management Act, 1999 (Act 1 of 1999)	PFMA
South African Development Trust	SADT
South African Revenue Service	SARS
Value Added Tax	VAT

The Housing Code

Rural Housing Subsidy: Communal Land Rights Programme

PART A Rural Housing Subsidy: Communal Land Rights

1 Overview

2 Policy Prescripts and Provisions

PART B Guidelines for the Implementation of Rural Housing Projects

1 Nature of Guidelines

2 Suggestions on how to Implement the Rural Housing Programme



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PART A: RURAL HOUSING SUBSIDY: COMMUNAL LAND RIGHTS

1 OVERVIEW

The Comprehensive Plan for the Creation of Sustainable Human Settlements confirms the goals of a needs orientated, rural housing development programme that will preserve the rural landscape and cater for traditional technologies, appropriate funding mechanisms, address the important issues of tenure security, livelihood strategies and accommodate the broader socio-cultural matters. The rural population furthermore constitutes some of the poorest households in the country and a programme which harnesses housing to create assets as a means of poverty alleviation is required. The Rural Housing Subsidy was developed with this in mind.

The government has enacted the Communal Land Rights Act, 2004 (Act 11 of 2004) (CLaRA) aimed at communal land tenure reform which will impact on the application of this Programme. This Programme is aimed at providing housing subsidies to the holders of communal land rights as contemplated in the Act.

The Programme deals with the rules for housing subsidies for housing development on communal land which is, and will be, held by community members subject to the rules or custom of that community. It is a pre-requisite for the allocation of subsidies under the Programme, that the relevant members of the beneficiary community provide proof of uncontested land tenure rights and qualify for new order tenure rights on the portions of land allocated to them. The Programme is specifically directed at housing development for the benefit of the holders of communal land rights on State owned or other communally owned land as may be determined by the Minister of Rural Development and Land Reform. It excludes other residential properties offered in the market place where other Programmes can be utilised for purposes of housing development that can be registered in ownership in a proclaimed township. Owing to the widely differing rural housing needs across the rural landscape, the Rural Housing Subsidy has been designed to support infrastructure, house building, upgrading of existing services or the upgrading of existing housing structures or any combination of the said options. Housing subsidies under the programme are only available to community members who meet the qualification criteria.

The Housing Code

Rural Housing Subsidy: Communal Land Rights Programme

PART A Rural Housing Subsidy: Communal Land Rights

1 Overview

2 Policy Prescripts and Provisions

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2 POLICY PRESCRIPTS AND PROVISIONS

2.1 POLICY INTENT

This Section provides the prescriptive provisions for the Programme.

The main objective of this Programme is to facilitate project based housing development on communal land for the benefit of beneficiaries of both old order and new order land tenure rights secured in terms of the CLaRA as described in paragraph 2.2 (a) and (b) below. This is to be addressed through:

- a) An appropriate funding, institutional, decision-making and management framework for the Programme;
- b) Planning measures with due regard to municipal integrated development planning; and
- c) The application for housing subsidies on a project basis in a flexible manner to ensure that actual housing needs are addressed.

This Programme has been instituted by Government in terms of the provisions of Section 3 of the Housing Act, 1997 (Act No. 107 of 1997). This Programme facilitates, sets out the rules and provides guidelines for the application of subsidies under this Programme.

2.2 THE LEGAL FRAMEWORK FOR COMMUNAL LAND TENURE REFORM

The RDLR is responsible for the land tenure reform programme of Government, which impacts on old order and new order tenure rights which apply to people living on communal land in the former homelands and South African Development Trust (SADT) areas. The following definition of these tenure rights is found in the CLaRA:

- a) "New order right" means a tenure or other right in communal or other land which has been confirmed, converted, conferred or validated by the Minister in terms of Section 18;
- b) "Old order rights" means a tenure or right in or to communal land, which:
 - i) Is formal or informal;
 - ii) Is registered or unregistered;
 - iii) Derives from or is recognised by law, including customary law, practice or usage; and

iv) Existed immediately prior to a determination by the Minister in terms of Section 18 but does not include:

1. Any right or interest of a tenant, labour tenant, sharecropper or employee if such right or interest is purely of contractual nature; and
2. Any right or interest based purely on temporary permission granted by the owner or lawful occupier of the land in question, on the basis that such permission may at any time be withdrawn by such owner or lawful occupier.

The Interim Protection of Informal Land Rights Act, 1996 (IPILRA), provides for the protection of informal rights to land until these rights are converted to new order rights. The Act does not distinguish between “communal” or “rural” and other land, or land held by the State and land held by individuals or the private sector. The DLA provides interim procedures governing development decisions concerning state land in so-called rural areas, which requires the consent of the Minister of Rural Development and Land Reform as nominal owner of the land. The Act and the interim procedures will remain in force until repealed by the CLaRA.

The CLaRA applies to beneficiaries of communal land or land tenure rights, in terms of other land reform laws. It has the following broad objectives:

- a) To provide for legal security of tenure by transferring communal land, including land in the Kwazulu-Natal Ingonyama Trust to a person or community including a woman, or by awarding comparable redress where it is not practicable to secure legally secure tenure *in situ*;
- b) To provide for the conduct of a land rights enquiry to determine the transition from old order rights to new order rights;
- c) To provide for democratic land administration of communal land by communities;
- d) To provide for the establishment of Land Rights Boards; and
- e) To provide for the co-operative performance of municipal functions on communal land.

In view of these objectives, the CLaRA aims at achieving the following strategic outcomes:

- a) Communal land may be transferred to a person (including women) or a community;
- b) Land transferred to a community must be laid out in so far as the following aspects are concerned:

- i) The preparation of a communal general plan and its approval in terms of the Land Survey Act, 1997;
 - ii) The registration of the communal general plan;
 - iii) The opening of a communal land register in terms of the Deeds Registries Act, 1937; and
 - iv) The transfer of the new order rights by means of a Deed of Communal Land Right to the person or persons entitled to those rights.
- c) Access to land must be provided for on an equitable basis to all South African citizens with rights therein;
- d) Gender equality must at all times be promoted;
- e) Old order rights in land vested in a married person must, irrespective of the matrimonial regime, be registered in the names of all spouses and held jointly in undivided shares;
- f) A woman is entitled to the same legally secure tenure of rights in, or to and benefits from the land as a man;
- g) The ownership of land that is not State land but is registered in the name of a person, a traditional leader or leadership, a Communal Property Association or a trust or other legal entity, vests in the community on whose behalf the land is held or in whose interests the registration was effected immediately by operation of the law when a determination is made by the Minister responsible for Rural Development and Land Reform; and
- h) The interests of the State and particularly of municipalities must be provided for in any development of land. This involves the provision of services, access to the land by way of roads, the transport of people, community facilities, educational needs, health services and the like.

The tenure reform programme provides the focal point for the implementation of the CLaRA.

The CLaRA will come into operation on a date decided by the President, whereafter the IPILRA will be repealed at a date to be determined. Furthermore, since it will take some time to fully implement this Act, this National Housing Programme needs to provide for situations both under the CLaRA and the IPILRA.

2.3 PRINCIPLES OF PROGRAMME

This Programme is specifically intended to facilitate housing development on:

- a) State land that is occupied by a community for a continuous period of at least 5 years prior to 31 December 1997 as if that community was the owner, without force, openly and without the permission of the owner;
- b) State land in the former homelands;
- c) SADT Land, which has not been disposed of in terms of the State Land Disposal Act, 1961;
- d) State land, which was listed in the schedules to the Black Land Act, 1913, or the schedule of released areas in terms of the Development Trust and Land Act, 1936, before their repeal;
- e) Kwazulu-Natal Ingonyama Trust Land;
- f) Land acquired by or for a community whether registered in its name or not; or
- g) Any other land, including land that provides equitable access to land to a community, determined by the Minister responsible for Rural Development and Land Reform.

The Interim Protection of Informal Land Rights Act: The housing subsidies allocated to beneficiaries under this Programme are awarded to persons who enjoy informal land rights protected by the provisions of this Act.

Subsidies: Subsidies under this Programme will only be approved if no other form of subsidy can be applied.

Community participation: It is a pre-requisite for project approval that members of the beneficiary community must participate in all aspects of the housing development that is planned and will be undertaken. Where the CLaRA is applicable, participation must also take place through the representative Land Administration Committee.

Co-ordinated Approach: The PD must satisfy themselves that projects to be funded under this Programme are in line with municipal and district integrated development planning, relevant services sector plans and co-ordinated between all stakeholders, interested and affected parties concerned including the relevant spheres of government, specific line departments responsible for land management and services provision, the Traditional Council, Land Administration Committee or community members, as applicable.

Access to funding: Funding under this Programme will only be available within the context of an approved housing development project and may not be accessed on an individual basis.

Subsidy to individual beneficiary community members: The housing subsidy will be deemed to be allocated to each individual qualifying beneficiary community member, the particulars of whom will be recorded on the National Housing Subsidy Database.

Security of communal land tenure: It is a pre-requisite for the allocation of subsidies under this Programme, that the beneficiary community members' rights are uncontested and that they qualify for or acquire a new order right to the piece of land allocated to him or her.

Reallocation of subsidised unit: In the event of the piece of land being vacated by the beneficiary community member for whatever reason, the Land Administration Committee must ensure that the vacant residential structure is re-allocated to another individual qualifying beneficiary community member, the particulars of whom will be forwarded to the PD and recorded on the National Housing Subsidy Database.

Development activities covered by the approved project funding: Project funds may be used for any development which, in the discretion of the MEC, represents housing purposes and may include the following:

- a) Assistance to municipalities to prepare project applications including the provision of project application, planning, land surveying, design, project management and facilitation and implementation agent's services;
- b) Development or upgrading of local access and internal roads and storm water drains;
- c) Development or upgrading of internal or local water infrastructure;
- d) Development or upgrading of local sanitation facilities;
- e) Construction of new housing structures or the repair and upgrading of existing houses;
- f) Purchasing of building materials where persons wish to construct, repair or upgrade their own houses;
- g) Housing purposes approved by the MEC which is not, or cannot be, funded through other programmes of government and require funding under this Programme, and will be of benefit to all beneficiaries that form part of the project;

- h) Instances where the houses in the aggregate are considered to be adequate, the housing subsidy may be utilised for the provision of residential engineering services or other housing purposes.

Development activities not covered by the Subsidy: Housing Subsidy funds may not be used for the following purposes:

- a) Individual subsidies;
- b) The acquisition of land;
- c) Residential properties offered in the market place where beneficiary individuals will acquire ownership, leasehold rights or deeds of grant in respect of those properties, in which instances beneficiary individuals may qualify for individual or other subsidies;
- d) Activities covered by other programmes of government except if at the discretion of the MEC it is considered for housing purposes;
- e) Bulk or connector municipal engineering infrastructure programmes;
- f) Energy supply;
- g) Refuse removal;
- h) Land reform; and
- i) Any repair, operation and maintenance of services.

Maintenance: Where, as a last resort, municipal engineering infrastructure services or other housing purposes are to be developed, project applications must include an undertaking by the municipality or service provider concerned pertaining to the maintenance and management of such services or housing purposes, excluding the maintenance of houses as applicable.

Project development phases: Municipalities may in collaboration with the Land Administration Committee or community members concerned as applicable, decide to:

- a) Undertake a project in a single phase, or
- b) Undertake a project in a phased manner according to which the construction and or the upgrading of residential engineering services constitutes a phase independent from the construction of the houses as the final phase of the project; or
- c) To undertake a combination of services only or houses only or upgrading only.

Project implementation: Projects may be implemented:

- a) By Municipalities or other agents or support organisations as approved by the MEC who will collaborate with the Traditional Council or Land Administration Committee or community members concerned as applicable, to prepare project applications, obtain project approvals and implement projects.
- b) By the PD as an option of last resort. In such a case, the PD must embark on the project development in partnership and collaboration with the municipality to ensure that the capacity of the municipality is enhanced and that all aspects of the project is approved by the municipality.

Implementing Agent: The municipality or the PD may procure the services of an accredited implementing agent, to undertake the project on its behalf, for the community. As an alternative it may appoint a support organisation established or identified by the members of the beneficiary community, who wish to apply the Programme in terms of the People's Housing Process.

Support organisation: The municipality may appoint a support organisation which may not necessarily become the implementing agent, to assist the community to plan and prepare their project application, and to register the beneficiaries.

People's Housing Process (PHP): The project may be undertaken in accordance with the EPHP.

Municipal Service Provision Undertaking: Projects are subject to an undertaking by the municipality to provide municipal bulk and connector engineering infrastructure services. Other relevant service providers may also be considered. No residential reticulation engineering services such as water reticulation will be approved and constructed as part of a project without the undertaking by the relevant authorities that sufficient bulk and/or connector engineering infrastructure services are available and will be provided.

Enrolment of project with NHBRC: Based on the fact that this Programme constitutes project based housing development, only projects constituting new residential structures constructed by home builders will be required to be enrolled with the NHBRC. Unless the home builder has been registered by the NHBRC, the MEC will not:

- a) Approve a housing project;
- b) Grant a housing subsidy to a prospective beneficiary for the construction of a residential structure by a home builder; and

- c) Pay a home builder any portion of housing subsidy funds in respect of an approved housing project.

Procurement processes and procedures: All procurement processes and procedures for the acquisition of housing goods and services through this Programme:

- a) Must be fair, equitable, transparent, competitive and cost-effective; and
- b) Have to comply with the requirements of the Preferential Procurement Policy Framework Act, 2000 (PPFA) and the provisions of the Public Finance Management Act, 1999 (PFMA), and the Local Government Finance Management Act, 2003 (MFMA), which pertain to supply chain management.

LRAD and other government programmes in relation to this Programme: The applicable land reform programme, i.e. LRAD programme, provides certain services which may also benefit the beneficiaries of this Programme. Such benefits may not be duplicated under this Programme:

- a) Where it is possible to provide, for example, water for domestic use to the residential structure on the piece of land through the agriculture infrastructure project, the Housing Subsidy Scheme should not finance such services;
- b) Any saving so achieved must be transferred to the funds available for the remainder of the residential engineering services and/or housing development project, as the case may be; and
- c) Both programmes are designed to deliver the maximum benefits to the beneficiaries that could be achieved by the alignment of the programmes; including alignment with other municipal infrastructure programmes.

Monitoring and evaluation: The PD is responsible for the monitoring and evaluation of projects and compiling case studies for consideration by the National Department to ensure that this Programme is adjusted from time to time in terms of the need and development requirements.

2.4 APPLICATION OF THE PROGRAMME

The Programme aims at addressing the housing needs of qualifying individual beneficiary community members through the provision of housing and basic services on certain communal land, where other programmes are not applicable.

Security of tenure is a key principle of the housing programme. Benefits of the National Housing Programme will extend to persons who wish to obtain a housing subsidy and who have uncontested old order rights. Documentary proof of the

rights granted to him/her must be provided with an application, and in the case of the lack thereof it should include an affidavit providing details of the rights held in respect of the land and confirmation of the fact that the land has been occupied for a continued period of more than five years. This must also include a resolution of a meeting of the tribe or community convened for this purpose that confirms that they are not aware of any person who contested the applicant's right to occupy the land.

If a community has a recognised traditional council, the powers and duties of the land administration committee of the community is exercised and performed by the traditional council. Persons who qualify for new order tenure rights as determined in terms of CLaRA will qualify for housing subsidies under this Programme.

2.5 WHO WILL BE ASSISTED?

The Programme provides for a range of benefits linked to beneficiaries.

The following entry levels of qualification criteria apply:

- a) Resident:** (i.e. citizen of the Republic of South Africa or in possession of a permanent residence permit. Certified copies of the relevant documents must be submitted with the application).
- b) Competent to contract:** He or she is legally competent to contract (i.e. over 18 years of age or legally married or legally divorced and of sound mind).
- c) Not yet benefited from government assistance:** Neither that person nor his or her spouse has previously derived benefits from the housing subsidy scheme, or any other state funded or assisted housing subsidy scheme which conferred benefits of ownership, leasehold or deed of grant or the right to convert the title obtained to either ownership, leasehold or deed of grant.

In the case of a divorced applicant who previously derived benefits from the housing subsidy scheme, or any other state funded or assisted housing subsidy scheme which conferred benefits of ownership, leasehold or deed of grant or the right to convert the title obtained to either ownership, leasehold or deed of grant, the terms of the divorce order will determine such an applicant's eligibility for any further benefits under this Programme. Divorced applicants who acquired ownership of a residential property or who derived a financial benefit from the sale of a residential property as part of the dissolution of the joint estate, will be disqualified from accessing any further housing subsidy, except that such an applicant may purchase a serviced stand developed as part of a project financed from any of the National Housing Programmes.

d) Not previously owned a fixed residential property: Neither the person nor his/her spouse has previously owned or currently owns a fixed residential property.

In addition to the above requirements, any applicant must also satisfy the following general criteria, as linked to the benefits of the Programme:

e) Married or Cohabiting: He or she is married (in terms of the Civil Law or in terms of a Customary Marriage) or habitually cohabits with any other person. The word “spouse” includes any partner with whom a prospective beneficiary habitually cohabits.

Where an application is made for a subsidy on the basis of a legal marriage or cohabitation arrangement, it is required that the property must be allocated in the names of both spouses. Documentary proof of the marriage and affidavits from both spouses in respect of cohabiting arrangements and customary marriages must be provided.

f) Single with Financial Dependents: He or she is single and has proven financial dependents. A financial dependent refers to any person who is financially dependent on the subsidy applicant and who resides permanently with the housing subsidy applicant. Financial dependents include any or a combination of the following proven financially dependent persons of, and residing permanently with, the subsidy applicant:

- i) Biological parents or parents-in-law;
- ii) Biological grandparents or grandparents-in-law;
- iii) Brothers/sisters under the age of eighteen [18] years or, if older, who are proven financially dependent on the applicant;
- iv) Children under the age of eighteen [18] years, i.e.:
 - a) Grand children;
 - b) Adopted children;
 - c) Foster children;
 - d) Biological children; and
 - e) Any of the above persons over the age of eighteen [18] years who are still studying and who are financially dependent on the applicant, and

- v) extended family members who are permanently residing with the applicant due, for example, to health problems and who are therefore proven financially dependent on the housing subsidy applicant.

Special Provision: It is a requirement that in cases where housing subsidy applications are submitted by single persons with financial dependents, that the particulars from the identification document of such dependents must be recorded on the application form, and the information must be captured in the Housing Subsidy System. The following documents must accompany an application for a housing subsidy:

Certified copies of:

- i) Birth certificates, bearing the thirteen digit identity number for children who do not have bar coded identity documents;
- ii) Bar coded identity documents of all persons who are claimed as part of the household;
- iii) Divorce settlement documentation (to prove custody of children) where relevant;
- iv) Affidavits for unions solemnised in terms of SA Civil Law and accompanied by sworn statements to prove the authenticity of the relationship to the applicants, where applicable; and
- v) court orders or, orders issued by the Commissioner of Child Welfare to prove guardianship for foster children, where relevant.

In addition to the above requirements, any applicant must also satisfy the following general qualification criteria, as linked to the benefits of this programme:

- g) Single persons without financial dependents:** The subsidy may be allocated to such individuals at the discretion of the MEC to *inter alia* make provision for widows and others who may have lost their dependents.
- h) Monthly household income:** Persons must comply with the provisions of the programme funding schedule as annually approved by MINMEC.

A prospective beneficiary will be required to submit adequate proof of income, and, in the case of income received through self-employment, must sign an affidavit stating the amount earned.

For the purposes of assessing whether any particular person is entitled to receive a housing subsidy, the income of his or her spouse (if any) shall be added to that person's income, and "income" shall include:

- i) Basic salary and/or wages;
- ii) Any allowances paid on a regular, monthly or seasonal basis as part of an employment contract;
- iii) Any loan interest subsidy, or other remuneration payable regularly on a monthly basis to the individual (and/or to his or her spouse) by his or her employer;
- iv) Any financial obligations met on behalf of the individual (or his or her spouse) by his or her employer on a regular monthly basis;
- v) Any commission payable to the individual (and/or to his or her spouse) on a monthly basis (an average of the most recent 12 (twelve) months will be determined for eligibility assessment purposes);
- vi) Income received through self employment; and
- vii) Any retirement or disability benefits received on a regular (monthly) basis.

i) Persons who are beneficiaries of the Land Restitution Programme: Beneficiaries of the Land Restitution Programme (LRP), should they comply with the other housing subsidy qualification criteria, may apply for housing subsidies in the following manner:

- i) In cases where a serviced site has been provided in terms of the Land Restitution Programme, such beneficiaries may qualify for a subsidy to construct a house.
- ii) In cases where an unserviced site has been provided in terms of the Land Restitution Programme, such beneficiaries may qualify for a housing subsidy to service the site as a last resort where no other funds are available and for the construction of a top structure (house).

iii) In cases where the beneficiary did not receive any residential property, such beneficiaries may qualify for a housing subsidy.

j) Persons classified as military veterans: Military veterans who are single without financial dependants may also apply for subsidies. Under this Programme, military veterans must be confirmed as such by the SANDF. Veterans must submit with their application:

- i) Proof of service; and
- ii) Details of social services received.

k) Persons in polygamous unions: Polygamous unions are recognised and subsidies may be allocated accordingly. In such cases, where available, applicants must submit affidavits from traditional leaders or the person who performed the marriage.

l) Persons classified as aged: Aged persons who are single without financial dependants may also apply for subsidisation. Aged persons can be classified as male and female persons who have attained the minimum age set to qualify for Government's old age social grant.

m) Persons classified as disabled: Persons who are classified as disabled, whether single, married or co-habiting or single with financial dependants, may apply for housing subsidies. In addition the MEC may in his/her discretion decide to award the beneficiary the variation of the subsidy.

Furthermore, if a person who has already received state funding for housing and/or who already owns or owned a residential property, is or becomes disabled, or if his or her dependent(s) is/are or become disabled and that person satisfies the other qualification criteria, the MEC may at his/her discretion decide to award the beneficiary the variation of the subsidy.

The variation of the subsidy amount for purposes of improvements to the dwellings for disabled persons is contained in the Variation Manual, included in the Technical and General Guidelines of the National Housing Code.

2.6 FUNDING ARRANGEMENTS

2.6.1 PROGRAMME/PROJECT BUDGETING

Funding in the form of approved housing projects will be reserved from the annual allocation by the PDs. Funding must be available for expenditure under this Programme in accordance with the priority planning and Medium Term Expenditure Framework (MTEF) allocations

of the PDs. The actual project funding will be allocated to the municipality concerned for the implementation of the approved project on behalf of the approved housing subsidy beneficiary community members.

2.6.2 ASSISTANCE FOR PROJECT APPLICATION AND SUPPORT

The MEC may, in his or her discretion and on receipt of a properly motivated request from a municipality or support organisation, nominated by the beneficiary community, approve financial assistance to it, either in the form of a grant for purposes of initial project planning and preparing a detailed project application and business plan, as well as to cover expenditure in providing assistance to the beneficiary community in general. This grant is not only applicable to projects utilising the EPHP. The amount of the grant will be determined by the MEC on receipt of the application.

Should the project not be approved, the municipality or support group will not be obliged to refund any or all of the amounts paid to it in as far the reason for not approving the project is due to factors beyond its control.

2.6.3 SUBSIDY QUANTUM

The subsidy amount per beneficiary community member is determined, and announced, annually by the Director-General of the National Department.

2.6.4 APPLICATION FOR OTHER FUNDING

Approved funds may only be used for the activities described under this Programme and the servicing of stands as a last resort where no other funds are available. Any other funding received through other government programmes and related to a specific project must be declared and deducted from the approved subsidy funding if applicable.

2.6.5 VARIATIONS

Variations may apply where applicable. For this purpose please refer to the Manual on the Adjustment of the Housing Subsidy Scheme Amount for Extraordinary Development Conditions in the Technical and General Guidelines.

2.6.6 RELEASE OF FUNDS

Funds will be released on the proven achievement of milestones as determined from time to time by the National Minister, and specified in the agreements between the contracting parties.

2.6.7 DECISION MAKING AUTHORITY

The authority to consider and approve projects vests with the MEC.

2.7 INSTITUTIONAL ARRANGEMENTS

2.7.1 THE ROLE OF TRADITIONAL COUNCILS (after promulgation of the CLaRA)

The Traditional Councils, amongst others, need to:

- a) In terms of the CLaRA perform the duties of the Land Administration Committee which include ensuring the allocation of new order rights to persons and the registration thereof, the maintenance of registers and transactions, resolve land disputes and to liaise with the municipality and others concerning the provision of services and planning of development;
- b) Support the municipalities in the identification of its community housing needs;
- c) Facilitate the involvement of the community in the development or amendment of the Integrated Development Plan (IDP) of a municipality to reflect the community's housing needs;
- d) Make recommendations to government that will contribute to development and service delivery;
- e) Participate in development programmes of municipalities and of the provincial and national spheres of government;
- f) Promote the ideals of co-operative governance, integrated development planning, sustainable development and service delivery;
- g) Promote indigenous knowledge systems for sustainable development and disaster management; and
- h) Perform the functions conferred by customary law, customs and statutory law consistent with the Constitution of the Republic of South Africa, 1996.

A traditional council must in terms of the Traditional Leaders and Governance Framework Act, 2003 (Act No 41 of 2003), co-operate with any relevant municipal ward committee and must meet at least once a year with its traditional community to give account of its activities and finances.

2.7.2 THE ROLE OF THE MUNICIPALITY

The role of the municipality is:

- a) To conduct integrated development planning,
- b) To identify housing needs,
- c) To conduct project planning and apply for project approval via the PD to the MEC;
- d) To enter into formal agreements complying with supply chain management policies with developers or contractors where applicable;
- e) To appoint an Implementing Agent to assist in preparing an application and to implement the project;
- f) To provide bulk services where applicable; and
- g) To undertake the functions of the Provincial MEC if the municipality is accredited in terms of the provisions of the Accreditation Regulations instituted by the Minister.

2.7.3 THE ROLE OF PROVINCIAL DEPARTMENTS

The role of Provincial Department is mainly to:

- a) Conduct an investigation into the informal rights allegedly held;
- b) Guide, assist and collaborate with municipalities in the preparation and submission of applications; and
- c) Consider, approve and fund applications and monitor the implementation of projects.

2.7.4 THE ROLE OF THE NATIONAL DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM

The role of this Department is to:

- a) Ensure the protection of informal land rights,
- b) Institute land tenure enquiries;
- c) Provide clarity on the development of state land through decisions in terms of its interim procedures governing land development and approval of use of land for housing development; and
- d) Make determinations as provided for in the CLaRA.

2.7.5 THE ROLE OF THE LAND ADMINISTRATION COMMITTEE (after promulgation of the CLaRA)

After the promulgation of the CLaRA, a community must establish a land administration committee as prescribed in terms of the Act and which has the following powers and duties:

- a) To take measures towards ensuring the allocation by the committee of new order land rights to persons;
- b) To take measures towards ensuring the registration of communal land and of new order rights;
- c) To establish and maintain registers and records of all new order rights and transactions affecting the rights;
- d) To promote and safeguard the interests of the community and its members in their land;
- e) To endeavour to promote co-operation among community members and with any other person in dealing with matters pertaining to land;
- f) To assist in the resolution of land disputes; and
- g) To continuously liaise with the relevant municipality, Land Rights Board and any other institution concerning the provision of services and the planning and development of the communal land of the community.

2.8 HOUSING SUBSIDY SYSTEM

All approved projects under this Programme must be administered through the Housing Subsidy System and no parallel systems will be allowed. All approved Housing Subsidy Scheme beneficiaries must be recorded on the National Housing Subsidy Database (NHSDB).

The Housing Code

Rural Housing Subsidy: Communal Land Rights Programme

PART A Rural Housing Subsidy: Communal Land Rights

1 Overview

2 Policy Prescripts and Provisions

PART B Guidelines for the Implementation of Rural Housing Projects

1 Nature of Guidelines

2 Suggestions on how to Implement the Rural Housing Programme



human settlements

Department:
Human Settlements
REPUBLIC OF SOUTH AFRICA

PART B: GUIDELINES FOR THE IMPLEMENTATION OF RURAL HOUSING PROJECTS

1 NATURE OF GUIDELINES

This section provides suggestions on how to implement projects under the Programme, and therefore is non-prescriptive in nature. The MEC has discretion in the application of these Guidelines.

It is, however, important to note that the contents of the Guidelines are based on the statutory provisions applicable to all spheres of government. The key legislation includes:

- a) the Constitution of the Republic of South Africa, 1996;
- b) the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- c) the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003); and
- d) the Housing Act, 1997 (Act No. 107 of 1997).

In considering the application of the Guidelines for the Implementation of the Programme, consideration should be given to the implications of any deviations, measured against the provisions of the relevant legislative provisions.

The Constitution, 1996 obliges the three spheres of government to fulfil the obligations imposed by it, and to apply national and provincial legislation enacted in terms of the Constitution, 1996 (sections 85(2), 125(2) and 151 (3)). In the implementation of this programme, all office bearers and officials must ensure compliance with this statutory framework.

1.1 IMPORTANT CONSIDERATIONS

This section deals with security of tenure, the subsidy amount, VAT, Transitional Measures, the planning requirements and identification of projects, and the procurement prescripts.

1.1.1 SECURITY OF TENURE

Persons under this Programme will only qualify for housing subsidies and/or other benefits where they acquire the secure right to occupy, use or own a property in terms of a tenure form which is protected in terms of prevailing legislation.

In the event of beneficiaries vacating properties developed in terms of this Programme, the MEC should investigate the reason for the vacation of the property, and deregister the original beneficiaries if circumstances warrant it.

1.1.2 SUBSIDY AMOUNT

As indicated in the Policy Section, the Director-General of the National Department will annually announce the various housing subsidy guideline amounts and the guideline amounts for the variation of the project costs to cater for special development requirements.

The total subsidy allocation should preferably be pooled for use by the community as described in the approved application.

1.1.3 ZERO RATING OF HOUSING SUBSIDIES FOR VAT

In terms of a ruling by the former Commissioner of Inland Revenue, housing subsidies fall within the definition of “transfer payments” as contemplated in the Value Added Tax Act, 1991 (Act No. 22 of 1991) and is subject to VAT at a rate of zero percent (0%).

1.1.4 TRANSITIONAL MEASURES

Until the CLaRA is promulgated:

- a) Benefits of the National Housing Programme will extend to persons who wish to obtain a housing subsidy and who have uncontested old order rights on land described in Part One of this Programme. Documentary proof of the rights granted to him or her must be provided with an application, and in the case of the lack thereof it should include an affidavit providing details of the rights held in respect of the land and confirmation of the fact that the land has been occupied for a continued period of more than five years. This must also include a resolution of a meeting of the tribe or community convened for this purpose that confirms that they are not aware of any person who contested the applicant’s right to occupy the land.
- b) The Provincial Department shall be entitled to conduct an investigation into the informal rights allegedly held and may determine the manner and scope of conducting the investigation or survey.
- c) A group of persons who hold access to State Land, or such persons or body acting on their behalf, and who wish to obtain housing subsidies, must prepare a proposal in the format prescribed herein to

the Minister of Rural Development and Land Reform for his/her consent. The proposal must indicate how the persons who will be entitled to participate in the project will be identified.

- d) The approval of the Minister of Rural Development and Land Reform must be submitted together with the application for housing subsidies under this programme.
- e) Persons identified in the development proposal approved by the Minister of Rural Development and Land Reform in terms of its Interim Procedures governing land development decisions, will qualify for subsidies under this Programme provided that such persons qualify in terms of the criteria specified and the amendments in this chapter.

After promulgation of the CLaRA: Where the Act is in operation a community must establish a land administration committee as prescribed in terms of the Act and which has the following powers and duties:

- f) To take measures towards ensuring the allocation by the committee of new order rights to persons;
- g) To take measures towards ensuring the registration of communal land and of new order rights;
- h) To establish and maintain registers and records of all new order rights and transactions affecting the rights;
- i) To promote and safeguard the interests of the community and its members in their land;
- j) To endeavour to promote co-operation among community members and with any other person in dealing with matters pertaining to land;
- k) To assist in the resolution of land disputes; and
- l) To continuously liaise with the relevant municipality, Land Rights Board and any other institution concerning the provision of services and the planning and development of the communal land of the community.

1.1.5 NORMS AND STANDARDS

Members of the beneficiary community have access to:

- a) Permanent residential structures with secure tenure, ensuring internal and external privacy and providing adequate protection

against the elements. The ministerial norms and standards may serve as a guide in this regard;

- b) Portable water and adequate sanitary facilities to be provided should be sustainable, environmentally acceptable and comply with local circumstances; and
- c) Upgrading of services only should not be allowed unless the community has adequate housing.

1.1.6 PROCUREMENT COMPLIANCE

In terms of the provisions of the Constitution, 1996 and the Public Finance Management Act, 1999 (Act No. 1 of 1999), all interfaces between the organs of the state and the suppliers of housing goods and services must be undertaken through a process that is fair, equitable, transparent and competitive.

Requirements in terms of the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000)

Arrangements for preferential procurement are designed to maximise job creation through the creation of employment opportunities for local residents from poorer households and to provide opportunities for small businesses. Preferential procurement is a policy that promotes the appointment of specific suppliers of housing goods and services namely local residents from poorer households, and small and micro businesses. In this Programme special emphasis should also be placed on the provision of work opportunities for women within a project.

It is advised that in the design of contracting strategies, the abovementioned principles be adhered to.

The Housing Code

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PART A Rural Housing Subsidy: Communal Land Rights

1 Overview

2 Policy Prescripts and Provisions

PART B Guidelines for the Implementation of Rural Housing Projects

1 Nature of Guidelines

2 Suggestions on how to Implement the Rural Housing Programme



human settlements

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REPUBLIC OF SOUTH AFRICA

2 SUGGESTIONS ON HOW TO IMPLEMENT THE RURAL HOUSING PROGRAMME

2.1 ROADMAP OF SUGGESTED IMPLEMENTATION PROCESS

2.2 SUGGESTIONS ON PROJECT PLANNING

Housing development should form part of an approved and agreed planning processes. The housing projects for persons enjoying communal land rights should be incorporated into municipal IDP. Municipalities are advised to establish housing chapters in their IDPs to ensure a dedicated housing voice in the broader IDPs. A National Housing Programme has been instituted to assist municipalities to develop the required housing chapters of their IDPs. This programme is also administered by the provincial departments and municipalities are advised to apply for assistance under the programme where required.

PDs will be required to compile comprehensive multi year housing development plans with effect from 1 April 2007. A detailed strategic planning framework has been approved by National Treasury and MINMEC. This framework provides for detailed planning mechanisms for each National Housing Programme. The National Housing Programme, Housing Subsidies: Communal Land Rights must be accommodated in the new multi-year plans of provinces that will allocate funding to the programme in a specific financial year. The basis for planning projects in the multi-year plans will be the priorities agreed to by the MEC and the municipalities in each province.

The planning process should entail the following steps:

- a) Municipalities are advised to develop housing chapters of their IDPs as the basis for the negotiation of funding allocation for housing development projects;
- b) The municipality may then apply for assistance to establish a housing chapter of its IDP where required;
- c) Once agreed and approved by the municipality, the municipality will inform the provincial department and provide the details of the housing needs as identified in the Housing Chapter of the IDP;
- d) The MEC will annually call on all municipalities to submit their priority funding needs in respect of housing development;
- e) Within the context of the Premier's Intergovernmental Planning Forum, the MEC and the municipalities should agree on the priority projects to be funded over the relevant MTEF period; and

- f) This agreement on funding priorities should constitute a commitment from the MEC to reserve and release the funding agreed to and will form the basis for entry into the Multi Year Housing Development Plan of the province.

2.3 PROJECT PROCESS

The procedures typically applicable to a specific project (see [Figure No. 1](#)) could include the following:

- a) The community confirms its need for housing development assistance;
- b) The need is communicated to the traditional council and/or municipality;
- c) The municipality confirms that the project is part of the Housing Chapter of its IDP and funding reservation agreed with the MEC. If not it should proceed to incorporate such needs to the priorities and funding reservation;
- d) The community applies to the municipality to appoint an implementing agent or supporting organisation to assist it with the preparation of a subsidy project application;
- e) A geotechnical survey should be completed to determine variations to the subsidy amounts, should they apply;
- f) The PD will evaluate the application against the funding priority reservation and submit it to the MEC for consideration;
- g) If the application is approved the municipality facilitates the procurement of the services of the implementing agent/support organisation in terms of its required procurement prescripts;
- h) Once appointed the implementing agent/support organisation will proceed to establish and confirm the land rights and obtain the required land use approval through the Department of Rural Development and Land Reform;
- i) The implementing agent/support organisation will establish the actual needs of the households and discuss the available development options with the households. This will form the basis for the project design;
- j) Information pertaining to all the individual households who might qualify for subsidies is collected by the implementing agent/support organisation and submitted to PD for checking, testing against the data base systems and, if found in order, the applications can be processed for the approval stage;
- k) A project application is prepared and submitted to the MEC by the implementing agent/support organisation based on the agreed development options;

- l) The PD evaluates the project application and, if found in order and in compliance with the policy prescriptions, will submit it to the MEC for consideration;
- m) Once the project application is approved by the MEC the provincial department will record the project on the Housing Subsidy System (HSS) and inform the municipality of the decision;
- n) Project agreements will now be concluded;
- o) If the project will entail the construction of new housing units that will be constructed by contractors, the implementing agent/ support organisation will now seek project enrolment with the NHBRC;
- p) The project implementation commences;
- q) Payment of subsidies in accordance with milestones contained in the agreement will be administered during the project;
- r) Project completion; and
- s) Services handed over to municipality.

2.4 IDENTIFICATION OF LAND

The MEC, who approves any particular project, must be satisfied that the land in respect of which the project will be undertaken has been properly identified. The MEC, who approves a project proposal, should require that the land in question is identified at least in the manner set out below:

- a) An environmental impact assessment should be conducted, where required in terms of relevant legislation;
- b) Ideally, the land should be identified on a general plan, which has been prepared by a land surveyor. The plan would contain allotment numbers and would be available for registration on the National Housing Subsidy Database;
- c) If it is not practical to require the preparation of a general plan and the project is situated entirely within the boundaries of a surveyed farm or portion of a farm in respect of which a diagram has been approved in the Office of the Surveyor General and registered in the Office of the Registrar of Deeds, the land to be developed may be identified with reference to that diagram; and
- d) In cases where the project is situated on a piece of land for which no diagram has been approved by the office of the Surveyor General, a survey of the outer boundary of the project area should be undertaken, a diagram should be prepared and the diagram should be approved by the Surveyor General. A copy

of the approved diagram with the informal allotment indicators should be kept on file with approved project and contract documentation. The informal allocation of allotments with clear numbers should be undertaken to facilitate identification and HSS entities.

2.4.1 ACCESS TO LAND AND TENURE RIGHTS

- a) The project application must clearly prove that the beneficiary community has the necessary tenure security, as well as the support of the administering body responsible for that land;
- b) Should the rights not be clear or be contested, the rights must be determined in terms of the applicable legislation, before the application can be considered; and
- c) The MEC may approve the project and allocate subsidies if the MEC is satisfied that the tenure rights are clear and uncontested.

The MEC should be satisfied that the beneficiary community members' rights are uncontested and that they qualify for, or have acquired new order rights, to the piece of land allocated and/or registered and that the relevant provisions of the CLaRA and the IPILRA (and the interim procedures governing land development decisions which require the consent of the Minister of Rural Development and Land Reform), as applicable, have been complied with in order to protect the State's investment through the housing subsidy allocation.

2.4.2 THE COMMUNAL LAND RIGHTS ACT, 2004 (ACT NO 11 OF 2004)

The CLaRA recognises that a community or person is entitled, within the available resources of the State, either to tenure that is legally secure or to a similar remedy if the tenure of land of the community or person is legally insecure as a result of past racially discriminatory laws or practices.

Prior to securing an old order right or transferring communal land to a community or person, the Minister of Rural Development and Land Reform institutes a land rights enquiry through a land rights enquirer.

A land rights enquiry enquires, among others, into the following matters:

- a) The nature and extent of all constitutional and human, old order and other land tenure and competing or conflicting rights, interests and tenure of land, whether legally secure or not, which are or may be affected by the enquiry;
- b) The interests of the State;
- c) The options available for legally securing any legally insecure rights;
- d) The provision of access to land on an equitable basis;

- e) Spatial planning and land use management, land development, and the necessity for conducting a development or a re-densification or other land reform programme, and the nature of the programme; and
- f) The measures required to ensure compliance with the requirements relating to the security of tenure and to promote gender equality in the allocation, registration and exercise of new order rights.

Upon receipt of a report by a land rights enquirer, the Minister of Rural Development and Land Reform determines the location and extent of the land to be transferred to the community or person.

The Minister of Rural Development and Land Reform further determines the following:

- a) That the whole of the area of communal land, which is, or is to be, surveyed must be registered or remain registered in the name of the specified community;
- b) That the whole of the area is to be subdivided into portions of land, each of which must be registered in the name of person and not the community;
- c) That a part of the area must be registered or remain registered in the name of the specified community, and part of the land must be subdivided and registered in the name of a person;
- d) That a part of the area is reserved to the State; and
- e) That an old order right is to be confirmed, converted into ownership or into a comparable new order right or cancelled where tenure cannot be legally secured, upon which the land to which the right relates must be incorporated into land held or to be held by the community and the holder of the right must be awarded specified comparable redress.

In making the determination, the Minister of Rural Development and Land Reform takes into account the IDP of each municipality having jurisdiction and after consultation with the Minister responsible for Cooperative Governance and Traditional Affairs, each municipality and other land use regulator, the Minister may:

- a) Reserve a right to the State, including a municipality, and stipulate any land use or other condition that is necessary for a public purpose or in the public interest or to protect the affected land, rights in the land, an owner of the land and a holder of the rights;
- b) Confer a new order right on a woman who is a spouse of a male holder of an old order right, to be held jointly with her spouse, or who is the widow of a male

holder of an old order right, or who succeeds to the right, to be held solely by the woman, or in her own right;

- c) Validate a putative old order right that was acquired in good faith; and
- d) Declare invalid an old order right that was not acquired in good faith and determine the holder of the new order right.

2.5 IMPLEMENTING AGENTS

Communities may require assistance to plan proposed projects, to collect the evidence of their entitlement to subsidies and to implement projects. Should the community wish to implement the project in terms of the EPHP, the procedures and guidelines of that programme in this regard shall apply. Municipalities are responsible for the implementation of housing projects and may also procure the services of implementing agents.

Without limiting the discretion of the Municipality, implementing agents may include the following:

- a) Contractors;
- b) Local and provincial authorities;
- c) Rural NGOs;
- d) The Utshani Fund, the Rural Housing Loan Fund and support organisations in terms of the EPHP;
- e) Community groupings, including faith-based groups; and
- f) Private sector agents, including project managers, attorneys, land surveyors, town planners, engineers and building contractors.

These implementing agents should assume the following roles:

- a) Educating the project beneficiaries with regard to housing subsidies;
- b) Planning projects and to submit those projects to the MEC and, if applicable, the Minister responsible for Rural Development and Land Reform, for approval;
- c) Verify the land rights of the communities;
- d) If the MEC approves any particular project, to implement it subject to compliance with the legislation pertaining to supply chain management and in particular, preferential procurement; and

- e) In applicable instances, to ensure that participating beneficiaries obtain access to credit.

The community may request the municipality to appoint a support organisation to prepare the project application, where this organisation may not be qualified or wish to be the implementing agent. The applicable requirements relating to the implementing agent should also apply to such a support organisation. Because of the nature of the subsidy and uncertainties related to tenure, a project initiation grant may be made available to prepare the project application.

The MEC, if he or she should agree in writing to the appointment of an implementing agent or support organisation, the following terms should be accommodated in the agreement:

- a) The agreed amount available to the implementation agent or support organisation in order to assist them in preparing any particular project proposal will be made available;
- b) Agreement on the amount that will be made available and the times at which it will be paid; and
- c) That if the project in question is not approved, the implementing agent or support organisation will not be obliged to refund any or all the amounts paid to it should the project in question not be approved.

2.6 PROJECT PROPOSALS

The municipality, with the support of the implementing agent or support organisation should prepare and submit to the MEC an outline proposal on behalf of the beneficiary community that should contain the following:

- a) The full names and identity numbers of the qualifying beneficiaries who will participate in the proposed project;
- b) The support of the owner of the land (including, if applicable, the determination made by the Minister responsible for Rural Development and Land Reform in terms of the CLaRA);
- c) Details of allotments in respect of which the project will be undertaken, and the nature of the old order rights held by the qualifying beneficiaries in respect of those allotments;
- d) Proof, in the form required by this Chapter, of those old order rights;
- e) A copy of the written agreement concluded between the qualifying beneficiaries and the implementing agent;

- f) Details of the amount of the subsidy for which application is being made, and the manner in which the amount of those subsidies will be applied;
- g) A referenced location plan, as well as a schematic site development plan which clearly delineates the services, residential and other housing related structures or facilities to be provided through the subsidy;
- h) If engineering services are to be provided, a copy of the agreement concluded with the service provider, which makes provision for the maintenance of those services; and
- i) If the qualifying beneficiaries will obtain credit, details of the credit provider concerned, and the terms and conditions on which credit will be made available.

If the MEC is prepared to accept the outline proposal in question, he/she should advise the municipality of further steps which it requires in order to plan the project in detail. The implementing agent should thereafter undertake the required detail planning and submit a detailed project proposal to the MEC. The MEC should enter into an agreement with the municipality upon approval of the project.

2.7 PAYMENT PROCEDURES

The amount of any approved subsidy may be paid to the municipality in advance or at such milestones as the MEC concerned may agree. The municipality will in turn pay the implementing agent or any party that it has contracted to implement the project or part of the project in accordance with the agreement with that particular service provider.

In determining the times at which the amount of approved subsidies should be paid to an implementing agent, the municipality may be guided by the following principles:

- a) Payments can be made on the achievement of milestones as set out in the agreement with the implementing agent;
- b) In the case of services to be taken over by the municipality, approval of such services by the municipality should also be required; and
- c) The municipality may make progress payments commensurate with the progress on milestones, where clear and independent proof of such progress is submitted.

FIG 1. PROJECT PROCEDURES FOR ACCESSING A RURAL SUBSIDY



