

Scrutinising public land release: An investigation into the advantages of long-term leasehold arrangements in the delivery of well-located affordable housing



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Abstract

Scrutinising public land release: An investigation into the advantages of long-term leasehold arrangements in the delivery of well-located affordable housing

Raevaldo EJ van Rooyen - Rondebosch, Cape Town - 25 October 2024

Thirty years after the ending of apartheid, South African urban regions are still battling with an ongoing affordable housing crisis. Amidst growing critiques of the underutilisation of well-located state land, the Presidency acknowledges and intends to act on this through the accelerated release of public land to deliver more affordable housing opportunities in urban areas. However, within contemporary regulatory frameworks, urban practices around public land release have largely served short-term economic priorities through an emphasis on freehold disposal.

This has resulted in a stagnant urban landscape with little room for urban land reform, perpetuated by a deterrence from state officials to engage in innovative practices around land release. Neglecting to understand the modalities and mechanisms around public land release for affordable housing has detrimental consequences for planning and human settlement development. This warrants a critical investigation into alternative mechanisms that present advantages for different circumstances. As such, the overall aim of this study is to understand the advantages of long-term leasehold arrangements in the delivery of well-located affordable housing as an additional mechanism for public land release.

Methodologically, a Critical Discourse Analysis framework is used, supported by interviews and case examples, to answer the main and subsidiary research questions. The results of this study demonstrate the potential of long-term leasehold arrangements for the state and other affected stakeholders in the delivery and operation of affordable housing. These advantages yield long-term spatial transformative capacity that benefits all relevant stakeholders. Additionally, the results have highlighted the deficiencies in the regulatory systems for public land release and how this inhibits affordable housing objectives.

Moving forward, the knowledge from this research will deepen the understanding of the relationship between planning and property systems. The study also informs key considerations regarding public land release and affordable housing. In this, it proposes legislative, policy and planning recommendations to facilitate effective long-term leasehold arrangements and holistic state property management.

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Abbreviations & Acronyms

CoCT	- City of Cape Town
CDA	- Critical Discourse Analysis
CLT	- Community Land Trusts
CRU	- Community Residential Units
DAG	- Development Action Group
DALRRD	- Department of Agriculture, Land Reform and Rural Development
DoHS	- Department of Human Settlements
DMS	- Development Management Scheme
FHF	- First Home Finance
GIAMA	- Government Immovable Asset Management Act
GNU	- Government of National Unity
HSS	- Human Settlements Strategy
IDP	- Integrated Development Plan
IPAM	- Immovable Property Asset Management
LAA	- Land Availability Agreement
LCF	- Living Cape Framework
MATR	- Municipal Asset Transfer Regulations
MFMA	- Municipal Finance Management Act
NGO	- Non Governmental Organisation
NU	- Ndifuna Ukwazi
ODA	- Other Development Agency
SDF	- Spatial Development Framework
SHI	- Social Housing Institute
SHRA	- Social Housing Regulatory Authority
SPLUMA	- Spatial Planning and Land Use Management Act
TOD	- Transit Oriented Development
WCPG	- Western Cape Provincial Government
WIC	- Waterfall Investment Company
WII	- Waterfall Islamic Institute

Chapter 1: Introduction

1.1. Introduction

Historically, state land was used as a mechanism for discrimination and segregation in South Africa. As such, an objective of the Constitution of South Africa (RSA, 1996) is to enable spatial justice through improved land access for previously disadvantaged people. Thus, the state is mandated to foster conditions and enable a regulatory environment to achieve this. As part of fulfilling this constitutional objective, state land release for affordable housing has become a prominent discussion point and governmental strategy. This is evidenced in President Cyril Ramaphosa's opening speech to parliament amidst the start of the Government of National Unity (GNU). After acclaiming the successes of Operation Vulindlela's first phase, the President noted that the second phase would involve rapid land release for social housing.

Operation Vulindlela [in its second phase and among its key strategies] will focus on accelerating the release of public land for social housing and redirecting our housing policy to enable people to find affordable homes in areas of their choice.

(President Cyril Ramaphosa, July 2024)

This official commitment from the Presidency warrants a critical investigation of public land, the modalities of releasing public land for affordable housing, and the planning implications thereof. Existing literature, as well as the research findings (see 4.5), demonstrate that the modalities of public land release can either be detrimental or advantageous to public housing objectives.

Explicitly choosing to advance public policy objectives in affordable housing (specifically social housing) through rapid land release implies an urban context. This is because social housing delivery targets defined restructuring zones across urban areas in the official policy documentation (see 2.6 and 4.3). This exploration of state land release in urban regions is critical for a few reasons. At present, it is recognised that apartheid spatial planning is being perpetuated due to a lack of densified and integrated development in well-located urban areas, which ultimately wastes the potential of land as a mechanism for reforming cities (Development Action Group, 2024: 07). Moreover, and specific to land release systems, local governments possess a disproportionate tendency to dispose of state land on a freehold basis to generate short term sums of income (Duprez and McGaffin, 2018; DAG, 2024). Some municipalities also hold urban land for the sole purpose of improving their asset balance sheets and loaning capacity (DAG, 2024: 07). These and various other practices create a static

urban landscape, resulting in public officials deterring from investigating more effective measures as well as an overall deficient holistic vision for urban land reform (DAG, 2024: 07).

This brings me to the notion of exploring long-term leasehold land release. It is critiqued that strictly engaging in freehold land disposal forfeits a municipality's ability to attain greater returns over the long term with the asset "lost in perpetuity" (Duprez and McGaffin, 2018: 4). Long-term leaseholds fulfil this gap as an alternative mechanism. For this dissertation, the system of leasehold on state land can be simply defined as an arrangement the Government (as the representative of the people of South Africa) enters into with a private stakeholder whereby land rights are granted upon negotiations that are then contractually bound for a designated period of time (Bourassa and Hong, 2003: 9). The Government retains title of the land, and through lease arrangements, enable private stakeholders to develop and transfer the rights to use the land (Bourassa and Hong, 2003: 9). The system of leasehold arrangements on state land demonstrates tremendous potential as a tool, amongst many others, for the Government to use in recognising policy objectives or additional revenue generation.

Mechanisms and tools to realise public policy objectives are vital for South Africa as a developing country with a past scorned by vast spatial injustice. Thirty years after the ending of apartheid, South African urban regions are still battling with an ongoing housing crisis, validating the prioritisation of accelerated land release, as mentioned above. As of 2023, there is a recorded housing backlog of approximately 350 000 units within Cape Town (Githahu, 2023), and there is an urgent need for affordable housing alternatives in well-located parts of the city. While the state-subsidised housing programmes outlined in the Housing Code (RSA, 2009) aim to address these challenges, a growing consensus is that additional mechanisms are desperately required to accommodate the extensive backlog.

With the foundation established above, this chapter introduces the research project. Structured into nine parts, it begins by outlining the issue under investigation and further exploring the briefly discussed concepts mentioned above. After critically understanding the nature of the subject matter and issues at hand, it continues to define the dissertation's overall aim and main research question. A brief overview of the research methodology and the stipulated research techniques follow. Finally, it concludes with the selected structure for the dissertation.

1.2. Issues under investigation

Across urban South Africa, there is an ongoing issue of inefficient and underutilised state land. Within Cape Town (where land prices are at their highest) there are many instances of this, and they are most contentious in well-located parts of the city. As an example, the Ysterplaat and Wingfield military sites (Mandated under the National government) combined make up a total of 668 hectares and are in well-located positions along national/regional roads prime for affordable housing (Kretzmann, 2023). Another portion of underutilised state land (Mandated under the Western Cape Provincial Government) is the former Tafelberg High School located in central Sea Point. The site has been vacant and non-operational since 2015 (Charles, 2023), and it has been receiving regular aesthetic maintenance due to the Heritage Overlay Zone. Cases such as these exist across different spheres of government under various departmental mandates.

Researchers at a Cape Town-based legal advocacy NGO, Ndifuna Ukwazi (NU), have constructed an interactive map viewer that denotes the parcels and sizes of underutilised state land in Cape Town. According to the mapper, there are approximately 2,700 parcels of vacant or underutilised state land across Cape Town (Gontsana, 2023). The researchers further note that many of these parcels are inappropriate for housing. However, they illustrate the failure of the Government to optimise and efficiently utilise its land assets (Gontsana, 2023). Underutilisation of well-located public land has exponential effects due to the value of these land parcels in urban regions. This is because the close proximity to employment opportunities, amenities, public transit and public facilities characterises well-located land, enabling greater access to the potential of socioeconomic development (Ndifuna Ukwazi, 2024: 11).

The lack of attention and action surrounding underutilised (sometimes vacant) well-located state land directly contravenes the principles within the Spatial Planning and Land Use Management Act (SPLUMA) of 2013. The SPLUMA (2013) principle of Spatial Sustainability speaks of the requirement of land use management systems to “promote land development in locations that are sustainable and limit urban sprawl” (RSA, 2013: 18). Furthermore, the principle of Spatial Efficiency speaks of land development that “optimises the use of existing resources and infrastructure” (RSA, 2013: 18). The failure of national, provincial and local governments to optimise land resources in well-located areas, such as those mentioned earlier, is actively negating the legislative requirements outlined by SPLUMA (2013). This serves as legislative grounds within planning, further supporting the need to evaluate land release mechanisms.

Examining SPLUMA (2013) once again, under the principle of Spatial Sustainability it states that “spatial planning and land use management systems must promote and stimulate the effective and equitable functioning of land markets” (RSA, 2013: 18). Therefore, the state needs to actively participate in, and mobilise land markets through, spatial and land use planning. This is evidenced in the recent Stellenbosch Inclusionary Zoning Policy (2023), where additional land use (property) rights are leveraged to attain a portion of gap-market affordable housing. This enables developers to earn greater returns from high-value land developments while fulfilling a public policy goal. Long-term leasehold arrangements have a similar capacity to manoeuvre within high-value land markets by leveraging property rights in a different manner.

Key challenges associated with delivering affordable housing in urban areas are not only the exorbitant land prices as seen thus far, but also the declining funding systems, bureaucratic deficiencies resulting in a lack of coordination and overall capacity, and poor housing quality as well as operational viability (DoHS, 2023) (see 2.5). While these challenges have their own root causes that need to be addressed, they all have a relationship to land release and tenure (see Chapters 2 and 4). Therefore, establishing effective and appropriate land release mechanisms in the delivery of various affordable housing programmes contributes to solving these challenges (see Chapter 4). Moreover, the experience for both delivery agents and beneficiaries of affordable housing changes depending on the selected form of land tenure, and these carry their own advantages and limitations.

However, the advantages of long-term leasehold arrangements on state land for affordable housing developments have largely been ignored because existing legislative and policy frameworks pertaining to leaseholds tend to focus only on agricultural and commercial land uses (Duprez and McGaffin, 2018). The State Land Lease and Disposal policy’s (RSA, 2024) scope is limited to assets under the title of the Department of Agriculture, Rural Development and Land Reform, as well as former homeland areas. Thus, while the policy aligns with the objectives of the Constitution, as mentioned in the introduction, the scope does not cover urban regions which is the context for this research. The Municipal Asset Transfer Regulations (National Treasury, 2008) regulate urban land asset release in conjunction with other municipal capital assets. This legislative framework is built upon principles that possess a narrow perspective on municipal sustainability, placing a disproportionate emphasis on economic value. This and more are explored in greater detail in Chapter 4. Similarly, the 2023 draft White Paper on Human Settlements recognises the necessity of obligating government in all spheres to “identify, acquire and use well-located state land” in establishing sustainable human settlements (DoHS, 2023: 27). However, this

draft does not make explicit mention of strategies involving the leasing of state land in contributing to the delivery of affordable housing (see Chapter 4). At present, what is of note is that the regulatory frameworks for leaseholds on state land have largely neglected considerations for affordable housing.

As mentioned earlier, well-located state land mandated under Local Government is often sold to generate revenue (Duprez and McGaffin, 2018), and this approach to land and income generation gives credence to short-term outcomes alone. Additionally, disposing of state land relinquishes the long-term spatial transformative capabilities and powers held by Local Governments. Holding strategic parcels of well-located land enables municipalities to enact planning interventions that allow for longer-term spatial justice objectives such as affordable housing. The literature reviewed in Chapter 2 explores these advantages in greater detail, with further nuances presented in the research findings and analysis chapter (see Chapter 4). For now, and to build on this, I briefly refer to a case example where long-term leaseholds enable successful spatial and financial outcomes: the Waterfall City development located in Midrand, Gauteng.

The Waterfall City development is a private-sector partnership where a large portion of land (approximately 2,200 ha) is master-planned, and sections are leased to developers via 99-year agreements (Murray, 2015). Of specific relevance is the ownership and business structure of the project. The land is owned as part of a trust by an Islamic family (Murray, 2015). A corporate entity called the Waterfall Investment Company (WIC) oversees the project and enforces the values and objectives of the trust (Murray, 2015). This enables them to place Islamic principles and values at the forefront of the project and guide the development of business ventures, design principles, planning, architecture, and more (see 4.7) (Murray, 2015). As such, the Waterfall City development operates as an “all-encompassing corporate entity that engages in profit-making activities and functions as a pseudostate with administrative powers” (Murray, 2015: 518). Thus, through the long-term lease agreement model, they manage to achieve a mutually beneficial arrangement for all stakeholders. Earlier discussions on leasing State land reiterate this notion of the potential to achieve broader policy objectives through long-term lease arrangements such as these (Bourassa and Hong, 2003).

Therefore, the dissertation seeks to critically understand the advantages and limitations of long-term leasehold arrangements and assess how the regulatory framework enables the process in order to develop mechanisms to improve the delivery of affordable housing on well-located state land.

1.3. Aim of the research

The overall aim of the study is to critically assess the advantages of implementing long-term lease agreements on well-located state land for affordable housing delivery. The research also aims to evaluate how the regulatory framework enables such arrangements.

1.4. Main research question

Based on the issue under investigation and the overarching aim of this study, the main research question asks: What are the advantages of implementing long-term leasehold agreements on well-located state-owned land for the delivery of affordable housing? And how does the regulatory framework enable (or limit) such arrangements?

1.5. Introducing the research methodology

To answer the main research question, this dissertation uses Critical Discourse Analysis (CDA) as a methodological framework. CDA recognises that fundamental social and institutional structures can be challenged or evaluated by critically analysing the texts and discourses that formulate them (McCloskey, 2008). This is effective for urban planning policy research as it addresses some of the shortcomings of 'traditional' policy research (see 3.2.). In recognition of the overarching aim of the research, CDA is a suitable framework as it enables the analysis of imperative discussions and debates around the long-term leasing of state land to shed light on its advantages and limitations. Additionally, this methodology critically evaluates contemporary regulatory frameworks and how these enable (or disable) these arrangements. This understanding can challenge the accepted predominant social structures around state land release and affordable housing, which can then be improved through appropriate mechanisms.

While this is an appropriate framework for this research, it is crucial to recognise the limitations of this research methodology and develop strategies to mitigate their effects. Various critiques of CDA note how its emphasis on language can distort effective research (see 3.2). As such, this dissertation uses interviews and case examples to supplement the CDA. An additional limitation intrinsic to discourse analysis is the bias held by the researcher when selecting and interpreting the various pieces of literature, policy, and legislation. Therefore, it is vital to be aware of and acknowledge these biases.

1.6. Research techniques

The study uses interviews to supplement the primary research methodology to gain a more nuanced understanding of the subject themes. The interviews are conducted in a semi-structured format, containing a combination of prescribed and open-ended questions. The individuals selected for the interview process include various practising professionals from the private sector, non-governmental organisations, research bodies, and academia. Where appropriate, in-person or online interview sessions were employed and were all conducted in alignment with the ethical criteria outlined by the University of Cape Town's Faculty of Engineering guidebook.

In addition to interviews, the research uses two case examples to further gain an understanding of the advantages and limitations of the subject themes in praxis. This is achieved through secondary desktop research. The first case example is the Waterfall City development in Midrand, Gauteng. The second is the Uthingo Park social housing development located in Witbank, Mpumalanga.

1.7. Ethical Practices

When embarking on an academic research project, the researcher must adopt a robust ethical ethos reflected throughout all parts of the research process. Therefore, this research is cognisant of the plausible impacts of the study and adopts mechanisms to address this. The research is ethically approved by the Faculty of Engineering and the Built Environment at the University of Cape Town, and the necessary clearance documentation is attached to the dissertation (see Appendix 1). Interview participants were all required to sign informed consent forms before the interview process and were allowed to withdraw from the study at any point. All data collected were kept secure, with access solely granted to me (the principal researcher).

1.8. Structure of the dissertation

The structure of the dissertation proceeds as follows:

Chapter 2 identifies, reviews, and interprets the relevant literature for the topic under study. Additionally, it develops the subsidiary research questions as well as the assessment criteria used in analysing the research findings (see Chapter 4). The targeted literature enables a nuanced understanding of long-term leasehold systems and how these operate in the context of state land to fulfil public policy objectives, which for this study is affordable housing. As the dissertation uses a CDA framework, this chapter simply introduces the relevant regulatory and policy texts that are analysed in Chapter 4.

Chapter 3 provides a detailed account of the research methodology and techniques used to collect data for this study. This chapter outlines, justifies, and discusses both the advantages and limitations of the chosen research methods and techniques. For this dissertation, the chosen research methodology is CDA, and the research techniques are semi-structured interviews and desktop research for the purpose of exploring applicable case examples. This chapter also elaborates on the ethical considerations I have taken in conducting this project.

Chapter 4 presents a CDA of the regulatory and policy texts introduced in Chapter 2. This data, alongside the data collected via interviews, is analysed against the assessment criteria developed in Chapter 2.

Chapter 5 systematically answers the main and subsidiary research questions. From this, Chapter 2 is used as a normative framework in conjunction with the research findings presented in Chapter 4 to suggest effective recommendations moving forward. It then concludes with recommendations for further research avenues concerning leasehold arrangements and presents some reflections on the entire research process.

1.9. Conclusion

This chapter opens the dissertation by introducing the subject matter and issue under investigation. It provides the overall aim of the study and the main research question. The research methodology and techniques are also briefly introduced as well as the projected recommendations. The next chapter engages a review of the relevant literature to establish subsidiary research questions and assessment criteria.

Chapter 2: Literature Review

2.1. Introduction

Chapter 1 introduced the issue under investigation as well as the main research question. In recognition of the challenge of underutilised state land and the lack of affordable housing in well-located parts of the city, this study aims to critically explore the advantages, and possible limitations, of implementing long-term leasehold arrangements on well located state owned land for the purpose of delivering affordable housing. Additionally, it aims to understand how the regulatory system enables, or disables, these arrangements. These aims are facilitated via a Critical Discourse Analysis (CDA) that emphasises the notion of conceptualisation (see Chapter 3) by examining the role of discourse in developing social practice (Mendes et al., 2024).

Importantly, this chapter desists from reviewing the regulatory system. Rather, the legislation and policies pertaining to long-term leasehold arrangements—in tandem with other texts derived from interviewing research participants—are analysed against the assessment criteria established in this chapter. As such, the purpose of this chapter is to review the literature on land, property, planning, long-term leaseholds, affordable housing, and community land trusts to establish subsidiary research questions, which, in turn, inform the assessment criteria used to analyse the discourse (i.e. the legislation, policies and other texts). Additionally, this chapter briefly introduces the legislation and policies that are analysed in Chapter 4.

This literature review opens with a discussion on land, property, and tenure, and their relations to planning, to establish the foundations for discussions on long-term leaseholds. It then explores four critical themes of long-term leases to foreground some of the advantages. A brief discussion on Community Land Trusts follows to understand the benefits of this medium for engaging in long-term lease arrangements. Affordable housing is then conceptualised in the context of the research, with an emphasis on social housing in South Africa. Section six briefly introduces the relevant regulatory framework to be analysed in Chapter 4. The chapter then concludes with a summary table of the subsidiary research questions.

2.2. Land, Property and Planning

2.2.1. Land and the notion of property

In recounting the history of land tenure in South Africa, Van Der Merwe (1989) argues that the relationships between land and people (or groups of people) are the fundamental

determinants of societal structures. As such, Fawaz (2017) notes that, at present and in different geographic contexts, 'property' is the primary medium for this relationship. This understanding is vital to the discussions of long-term leaseholds, given the important role of land tenure. This is because its differences from other forms of tenure play a role in determining its advantages. Before describing tenure and its characteristics, Margeot (1987) first examines the linguistic origins of the word. *Tenere* is the Latin origin of tenure and means 'to hold'. Thus, tenure is the set of systems that exist between people and how they 'hold' land in relation to each other (Margeot, 1987). This understanding is further developed by Harvey (2006), who notes that tenure is an institution of formal and informal systems that dictate access to and control over land. These are brief descriptions of property and tenure, and it is widely recognised that these systems are vastly complex and ever adaptive across different contexts. Nonetheless, what is critical to grasp is that systems of property and tenure affect societal structures.

Social relations of power are a component of societal structures and are among the features affected by property and tenure. To begin to understand this correlation between tenure and social power, it is helpful to pick up on the statement by Harvey (2006) on the idea of tenure as holding access and control, and adapt this to Njoh's (2009) writing on *"Urban Planning as a tool of Power and Social Control"*. Access can be understood as 'power over', and control as 'power to'. In this context, 'power over' describes the relationship between people that unfolds as a result of granting or restricting access to property (Njoh, 2009). Meanwhile, 'power to' describes the capacity that comes from the ability to control what happens on or to property (Njoh, 2009). Therefore, tenure and property exist as conduits for social power. Access and control is also reflected in Fawaz's (2017) sentiments on claiming ownership over land. Land ownership involves including or excluding other individuals in the principal relation the 'owner' has to said land (Fawaz, 2017). This principal relation to land operates in different forms, such as human settlement or production such as in agriculture. Therefore, at this juncture, it is critical to understand that the ability to include, exclude, give access to, and operate control over land is dependent on social power through institutions that uphold property (Fawaz, 2017; Harvey, 2006). Thus, long-term leaseholds (and other forms of tenure) are conduits of social power.

Developing this discussion of social power and land further, Blatman-Thomas and Porter (2019) argue that property is the central tenet through which land dispossession and displacement occur in settler colonies including South Africa. It is demonstrated that the relationship various societies throughout history have with land, transcends 'possession or occupation' (Blatman-Thomas and Porter, 2019). However, the full expression of these

relations is hindered by, and in conflict, with Western systems of property (Blatman-Thomas and Porter, 2019). This is supported by Dorries (2022), who posits that the preoccupation with property inherited through colonialism, and perpetuated through contemporary planning, reinforces socioeconomic inequity and discrimination.

In the context of long-term leasehold arrangements, these understandings of property and tenure lead me to ask by way of a subsidiary research question: **What societal structures and power relations do contemporary leasehold systems challenge or perpetuate in South Africa?**

2.2.2. Relationships between property and planning

The preceding section acknowledges the complex nature of property and its effect on societal structures. However, it is argued that due to this complexity, urban planning practitioners desist from engaging with planning's relationship to property (Blomley, 2017). Blomley (2017) goes on to argue that although property is central to planning, planning's tendency to distance itself from property (predominantly through land use planning) only perpetuates a certain consequential relationship. Fawaz (2017) also notes this tendency of planning (specifically land-use planning) to give in to the 'property effect.' These scholars argue that planning, in neglecting to engage with the question of property, firstly perpetuates the idea that private property (freehold) is the natural order of the built environment and, secondly, that planning does not have a direct relationship to property. Fawaz (2017) refers to this as planning that is 'propertied.'

Planning in its various forms and practices is fundamentally involved in allocating or altering property rights (Blomley, 2017). Thus, land use planning is not the only way planners engage with property. Fawaz (2017) demonstrates this notion by drawing attention to the upgrading of informal settlements. Informal settlement upgrading is a non-land-use-related planning intervention, however, its end goal remains preoccupied with discerning private property (Fawaz, 2017). Dorries (2022) similarly critiques this preoccupation planning has with property and advocates for a system of planning that transcends this 'propertied' nature by emphasising the human relationships to land, with the aim of establishing practices of belonging as opposed to exclusion. While these scholars observe different issues and desire different outcomes with planning's relationship to property, what is evident is that planning has a fundamental relationship to property. Furthermore, there is scope for planning to transcend this limited propertied nature.

In its most basic sense, land use planning can be viewed as a process of governance that decides where particular socioeconomic activities should occur and assigns property rights to best enable these activities (Chigbu et al., 2019). Blomley (2017) goes on to argue that this approach to planning serves, firstly, to centre private property in the planning apparatus and, secondly, to emphasise utility over people. This highlights how planning is principally concerned with regulating and managing people through physical productivity (Blomley, 2017). These arguments further demonstrate the shortcomings of planning, in not engaging with the critical question of its relationship to property. Therefore, there is space to expand the understanding of this relationship beyond land use management. Placing this in the context of long-term leaseholds leads me to ask by way of subsidiary research question: **How do long-term leaseholds decentre concerns for private property and utility?**

2.2.3. Utilitarianism and planning

It is argued that utilitarianism is largely influential in land use planning, through the principles of correctness of action and maximising social utility (Blomley, 2017). The utility of land, as well as its improvements, affects a populace, and this dynamic tends to be the primary concern of land use planners (Blomley, 2017). Given that it establishes the idea of land value, it is argued that “value is both collectively generated and collectively generative” (Blomley, 2017: 355), implying that value has a cyclical nature. Thus, valuable land in a utilitarian system is assigned its value through its potential utility. Maximising this utility both generates value, and further improves the overall value of said land. Han et al. (2020) acknowledge this process of value cycles and state that planners can create value cycles through planning interventions such as land regulation and property rights. However, correctness of action and maximising utility imply a hierarchy in value, which leads to the idea of ‘highest and best use.’ This necessitates the question: **How does the idea of the ‘highest and best use’ limit or enable long-term leaseholds?**

2.3. Long-term leasehold arrangements

2.3.1. Long-term tenure security

Analysing the origins and relevant characteristics of long-term leasehold arrangements highlights the advantages of this form of tenure and why it was used. Long-term leasehold arrangements during the mid-seventeenth century are well documented through various legal records, and this era possesses some valuable lessons. Long-term leaseholds, or ‘life leases’ (Clay, 1981), were tenure arrangements that primarily involved granting access to

land held by wealthy individuals to farmworkers, in return for agricultural produce and/or other forms of rent (Walsh, 1985). Life leaseholds were premised on 'buying' tenure security for a farmworker's life, his partner and the life of their immediate offspring (Clay, 1981). This 'three life' understanding of 'long-term' permeated other long-term leasehold arrangements and introduced the notion of 99-year leases (Walsh, 1985).

Walsh (1985) uses the story of the first recorded life-leaseholder, who migrated to Southern Maryland in the 1600s, in what would later become the USA. Tobacco farming was the prominent form of agriculture in the region. The migrant farmer initially began working under the Jesuits but eventually battled to meet produce quotas (Walsh, 1985). He then entered into a long-term lease arrangement, which yielded various benefits for the landowner and himself. Notably, the lease arrangement granted rights to sublease portions of the land (Walsh, 1985). This opened new avenues for effective production and efficiency, as the migrant farmer could then sublet portions to poor labourers in exchange for work or rent (Walsh, 1985). Thus, the long-term leasehold arrangement enabled the farmer to fulfil his obligations to the Jesuits while simultaneously developing the land for them. The long-term arrangement created a sense of tenure security, further creating greater care and investment in the migrant's farming, economic and general settlement practices (Walsh, 1985).

Adenuga et al. (2021) similarly demonstrate how contemporary long-term leases establish more effective and sustainable farming practices. This lease format opens high-valued agricultural land to poorer farmers, and the long-term nature encourages greater investment and care in practice (Adenuga et al., 2021). This greater investment and care thus yields an overall better 'outcome quality.' These case examples demonstrate that greater outcome quality extends beyond the lease's primary activity, which is, agriculture. The long-term socioeconomic development of farmers, ecological sustainability and regional growth are all important factors in outcome quality. When landlords prioritise short-term profit gains through insecure and often escalating rental arrangements, the quality of rental structures rapidly declines (McDonald, 1969). This illustrates how the inverse results in poor outcome quality.

The long-term tenure security and confidence of tenants not only influenced the outcome quality but also created inheritability (Walsh, 1985; Clay, 1981). These long-term arrangements also meant that the children of the original leaseholder would often inherit the land lease and its changes, further encouraging more sustainable practices (Clay, 1981). There is a direct correlation between long-term tenure security and greater outcome quality, which

leads me to ask by way of subsidiary research question: **How are concerns for long-term tenure security and outcome quality conceptualised in the relevant policy discourses on urban state land release and affordable housing?**

2.3.2. Long-term leasehold on state land

The contemporary system of long-term leasehold arrangements involves negotiations between the government and private parties in the assignment of property rights on state land (Bourassa and Hong, 2003). Adenuga et al. (2021) describe the process as the delivery of partial property rights, with the state remaining in control of the title over the land (Adenuga et al., 2021; Bourassa and Hong, 2003). Leases form a middle ground between rental and ownership, by enabling stakeholders to gain long-term access to an expensive asset. As such, leases on state land play an important function in socioeconomic development by granting access to high value land assets at lower costs, through rigorously negotiated conditions (Adenuga et al., 2021). However, these leasehold arrangements on state land are not static and are largely viewed as 'malleable land tenure arrangements' to balance public objectives and changing circumstances (Bourassa and Hong, 2003).

The benefits of contemporary long-term leases in agriculture are numerous. For example, they minimise the risk that comes with owning land (Adenuga et al., 2021). This is accompanied by the advantage of leveraging the leasehold as collateral against loans and the ability to transfer or inherit property rights if desired (Bourassa and Hong, 2003). This is valuable with regards to state land as it reduces the chance of a public asset (and the associated public policy objectives) being lost in perpetuity, while lowering the barrier to entry. An additional benefit to long-term lease arrangements is the ability of the state to leverage long-term incentives encouraging long-term commitment to the development of the piece of land (Adenuga et al., 2021).

2.3.3. Public policy objectives & flexibility

Achieving public policy goals is cited as an advantageous tenet of long-term leases on state land, and for Gerber et al. (2017), this requires going beyond zoning regulations by aligning policy objectives with rights and duties within lease arrangements. These public policy objectives vary and can aid in retaining the land value increments that arise from infrastructure investment to be used for public benefit (Bourassa and Hong, 2003). These policy objectives can also align with reserving land specifically for public use and intervene in stabilising housing prices within high value land markets (Bourassa and Hong, 2003).

However, Parange (2018) warns against the unintended consequences that arise from overemphasising policy objectives, hence the need to implement flexibility into leasehold arrangements and balance trade-offs between private and public objectives (Bourassa and Hong, 2003). Gerber et al. (2017) also recognise that these arrangements in fact enable flexibility, allowing state actors to operate within the stringent environment of property rights and maximise the 'use' value of land.

Failure to account for these intrinsic limitations can negatively affect long-term leasehold arrangements. The increase in land value from policy and planning interventions can be advantageous, however, disproportionately emphasising this can lead to public officials falling into the trap of commodifying state property, viewing it through the lens of 'effective' value as opposed to 'use' value (Stein and Mironova, 2020). Within this context, effective value pertains to financial value, whereas use value alludes to socioeconomic and ecological utility. Therefore, in these instances, local governments run the risk of operating like businesses, which prioritise financial gain, thus compromising the capacity to realise socioecological value (Stein and Mironova, 2020). Additionally, a deficiency in policy alignment and a lack of flexibility can heavily deter the private sector from engaging in these arrangements.

Therefore, given that the public policy objectives are covered in the affordable housing section (see 2.5), the above arguments lead me to ask by way of a subsidiary research question: **How are concerns for flexibility in long-term leasehold arrangement conceptualised in the relevant policy discourses on urban land release and affordable housing?**

2.3.4. Institutional rules

Bourassa and Hong (2003) posit that it is the state that both dictates public policy objectives and defines the institutional rules for long-term leasehold arrangements. There are three levels of institutional rules, namely, constitutional rules, collective decision rules and operational rules, and these can vastly differ between various geographic regions (Bourassa and Hong, 2003). Understanding the institutional rules and capacity when engaging in long-term leasehold arrangements is vital. The Constitution defines property relations in society and thus sets the framework for the 'collective decision' and 'operational' rules for long-term leasehold arrangements (Bourassa and Hong, 2003). The constitution also defines the flexibility to enact unique leasing features thus its potential is contextually dependent.

Collective decision rules form the legislative framework, which regulates lease conditions and establishes security for all stakeholders engaging in the leasehold arrangement (Bourassa and Hong, 2003). It is also noted that these rules do not only comprise formal legislation, but include informal practices that are widely accepted and have been influenced by culture and traditions (Bourassa and Hong, 2003). What is generally recognised is that without these formal and informal rules, long-term leaseholds are left vulnerable, lacking security and credibility (Bourassa and Hong, 2003).

Operational rules define the day-to-day operations for long-term lease arrangements, and are represented in the form of conditions contained in the lease arrangements. These outline- but are not limited to- the terms of the lease, payment structures, development conditions and property restrictions (Bourassa and Hong, 2003). These remain among the most malleable rules and often allow space for flexibility depending on the constitutional framework. These institutional rules are dependent on the overall institutional capacity of the state. If the state is vulnerable in this regard, then long-term leasehold arrangements will be so as well. This leads me to ask via subsidiary research question: **How are institutional rules and capacity conceptualised in the relevant policy discourses on urban land release and affordable housing?**

2.4. Community Land Trusts

The chapter thus far has established a critical understanding of the potential advantages, and limitations, of long-term leasehold arrangements. The chapter turns to a brief discussion on Community Land Trusts (CLT) and the link to long-term leasehold arrangements. A key stakeholder in a system of long-term leasehold agreements on state land is the primary leaseholder that forms the bridge between the state and the users, which in this study, are the households seeking affordable housing. Therefore CLTs present a good fit for this position as they emphasise the notion of holding land long-term in the public interest or for the benefit of a community (Kruger et al., 2020; Meehan, 2014). In various literature, they are cited as effective tools to achieve and maintain affordable housing in perpetuity as well as achieve various other socioeconomic goals (Gray, 2008). There are several discussions on Community Land Trusts covering their different forms, advantages and limitations. Discussions on CLTs in the Global North also conceptualise affordable housing differently. Therefore, for this study, the chapter will explore the fundamental characteristics of CLTs and how they link to long-term arrangements so they may be leveraged in South Africa.

The underlying thinking of CLTs deviates from that of private individual land ownership

in preference for community-governed shared equity in land (Gray, 2008). CLTs are often nonprofit organisations with the role of holding land in stewardship for the public interest or a specific community (Gray, 2008). For CLTs with the primary objective of providing access to affordable housing, Pastel (1991) posits that the objectives of CLTs should be to prioritise preserving access to land and providing access to affordable housing opportunities all over a prolonged period of time through a succession of owners. Therefore, it is evident that some of the underlying thinking of CLTs aligns with that of long-term leasehold arrangements. The potential effectiveness of CLTs in a long-term leasehold arrangement system depends on this.

A prominent advantage of CLTs is their ability to achieve wider community development and socioeconomic objectives while providing access to affordable housing (Gray, 2008). Hackett et al. (2018) build on this notion by discussing the power of ontological security in CLTs. In brief, these authors describe how effective CLT models can enable community agency, allowing members to participate in governance structures and overall development over time meaningfully. Lowe and Thaden (2015) describe three core tenets CLT models need to embody to achieve this. These tenets are resident betterment, community control of land and asset preservation.

2.5. Affordable housing

Different regions have different conceptions of affordable housing to accommodate their specific regulatory systems and policy objectives. However, a general understanding of affordable housing is accommodation that exists outside of market mechanisms, to assist households on a needs basis (Czischke and Van Bortel, 2018). South Africa's conception of affordable housing is accommodation that is financially accessible to low and middle-income households through government-subsidised assistance in the form of financing options or rental stock (DoHS, 2023: 3). Within the National Housing Code (2009), this is facilitated through an income bracket system set between R1 500 and R22 000 (Tissington, 2011). As such, this conceptualisation of affordable housing will be used for the purposes of this research. While there has been progress in the rollout of affordable housing, The Department of Human Settlements (DoHS) reports that there are still several challenges and limitations associated with the current public housing system (DoHS, 2023).

The public housing system in South Africa provides financing programmes such as First Home Finance (FHF), rental programmes in the form of social housing and Community Residential Units, and incremental programmes such as Informal Settlement Upgrading

(Tissington, 2011). Social housing is designed to operate as an urban restructuring mechanism by delivering affordable accommodation close to employment opportunities (city centres) and subsequently enable poverty alleviation, upward mobility and general socioeconomic progress (Scheba et al., 2021). Therefore, in line with the opening statement (see 1.1) and the overarching aim of investigating long-term leaseholds on well located state land, social housing is the central and focused programme for the purpose of this dissertation.

There are several challenges associated with developing affordable housing in well located parts of the city. Massyn et al. (2015) indicate that land price is a residual value, and as such, the greater the value that can be earned from development, the greater the land cost. As a result of all the opportunities and amenities clustered in well-located urban areas, land prices are significantly higher (Massyn et al., 2015). Furthermore, due to the income bracket system for affordable housing, as mentioned above, the fixed rentals and unit requirements result in the cost of land being the dependent variable for developing affordable rental stock (Massyn et al., 2015). Thus, land cost and financing are among the major hurdles to developing affordable housing in well-located urban areas. This is relevant for both affordable market and state-subsidised housing stock. The release of well-located public land is subject to these financing challenges which are experienced predominantly by Social Housing Institutes (Roeland, 2023).

The DoHS (2023) notes that insufficient and declining state funding is among the main challenges for delivering affordable housing. Scheba et al. (2021) place this in the context of social housing, stating that these financial constraints are inhibiting the government from aligning the subsidy grants with inflation and rising construction costs. This increases the cost of delivering stock as well as the rental instalments, affecting Social Housing Institutes (SHIs) and the beneficiaries of social housing. Most SHIs do not have large equity portfolios to leverage and subsequently struggle to attain private loan financing from banks to deliver new stock (Scheba et al., 2021). This is perpetuated by the inefficiency in the institutional and regulatory structures (Scheba et al., 2021). Being largely dependent on government subsidies, in conjunction with a weak operating financial model (primarily reliant on rental collection), SHIs battle to expand their portfolios and often make compromises in housing quality (Scheba et al., 2021).

These challenges associated with delivery, operational sustainability and growth lead me to ask: **How do the discourses on long-term leaseholds in South Africa incorporate concerns for the implementation of social housing and its associated challenges?**

2.6. Regulatory Framework for CDA

Chapter 4 engages a critical discourse analysis of the regulatory frameworks outlined below. Therefore, the following section simply introduces the fundamental aims and objectives of the relevant regulatory documents.

2.6.1. CoCT Human Settlements Strategy 2021

The Human Settlements Strategy (HSS) is a policy drafted by the City of Cape Town to develop a framework for addressing the various housing challenges in the city. This strategy is purposefully broad and has no spatial directives. Thus, it is meant to operate in conjunction with the spatially informed documents developed by the municipality, such as the Spatial Development Framework (SDF) and the Transit Oriented Development Strategy. This policy document emphasises the City's roles as an enabler, regulator and provider in establishing sustainable human settlements. Thus, its strategies and policy positions operate via these three lenses.

2.6.2. WCPG Living Cape Framework 2019 & Five-year strategic plan 2020/2025

The Western Cape Provincial Government uses the LCF (2019) to establish a framework for developing strategic five-year human settlement plans. The objective of the LCF (2019) is not to determine a particular approach but rather to define what changes are needed and how these changes may be implemented within human settlement development. "Improving the quality of human settlements" is the primary strategic shift (WCPG, 2019: 03). Moreover, the LCF (2019) lays out the four critical components of what makes holistic and sustainable human settlements. "Improving the quality of human settlements" is the primary strategic shift (WCPG, 2019: 03). Moreover, the LCF (2019) lays out the four critical components of what makes holistic and sustainable human settlements.

2.6.3. DoHS Draft White Paper for Human Settlements 2023

The Draft White Paper on Human Settlements aims to present national Governments strategies for "transforming housing and human settlements for sustainable socioeconomic growth and improved livelihoods" (DoHS, 2023: 16). As such, among its objectives is to outline key mechanisms for affordable housing, establishing diverse options for different contexts, strengthening governance capacity and improving implementation strategies.

2.6.4. Social Housing Act 2008 & Social Housing Policy (Housing Code 2009)

The Social Housing Act (2008) is the legislative framework for social housing in South Africa and enables all the relevant aspects of its delivery and operational management. The Act aims to “promote a sustainable social housing environment”, define the roles of all spheres of government and outline the duties of the Social Housing Regulatory Authority (SHRA) and Social Housing Institutions (SHI) as the responsible institutional and delivery agents of social housing (RSA, 2008: 01). The Social Housing Policy (2009) outlines in more detail the principles and strategies for delivering and managing social housing.

2.6.5. Municipal Finance Management Act 2003, Municipal Asset Transfer Regulations 2008 & CoCT Immovable Property Asset Management 2015

The MFMA (2003) is the underlying legislative framework that governs the responsible and sustainable management of municipal financial affairs. The MATR (2008) is derived from the MFMA (2003) and is specifically responsible for outlining the regulations for the disposal and transferal of municipal capital assets. Finally, the IPAM (2015) is Cape Town’s own policy framework to improve the City’s management of immovable property assets. Its key directives are to improve the performance of property assets.

2.7. Conclusion

This chapter reviewed the relevant literature on long-term leaseholds and affordable housing to establish assessment criteria and subsidiary research questions. The chapter opened with a critical discussion on the relationship between property and planning. It is revealed that systems of property and tenure directly affect societal structures and power relations. Plannings direct relationship with property implies that planning interventions directly influence societal structures and power relations. Thus, long-term leaseholds as a system of public land release for affordable housing can potentially establish or change societal structures around housing delivery and human settlement development.

The following section briefly outlines essential characteristics of long-term leasehold arrangements derived from their historical origins and contemporary applications. The advantages of these arrangements have been foregrounded to evaluate their applicability for affordable housing delivery through relevant assessment criteria and subsidiary research questions. This is succeeded by a discussion on CLTs as a medium for long-term leaseholds and its associated benefits for affordable housing delivery.

The chapter then establishes an understanding of affordable housing in the context of this dissertation with an emphasis on affordable rental accommodation (social housing). The relevant challenges associated with delivery and operational management for these affordable housing systems are highlighted to frame the key factors systems of public land release need to consider. Thus, state land release needs to, where appropriate, address challenges around high land values for delivering affordable housing in well-located urban areas, operational maintenance and financing. The chapter then closes with a brief introduction of the relevant regulatory discourses to be analysed in Chapter 4. The following chapter will outline the research method and techniques.

Table 2.1. Subsidiary research question summary table

Main research question	Literature themes	Sub themes	Subsidiary research questions
What are the advantages of implementing long-term leasehold agreements on well-located state-owned land for the delivery of affordable housing?	Land, Property and Planning	- Land and the notion of property - Relationships between planning and property - Utilitarianism and planning	1.) What societal structures and power relations do contemporary leasehold systems challenge or perpetuate in South Africa? 2.) How do long-term leaseholds decentre concerns for private property and utility? 3.) How does the idea of the 'highest and best use' limit or enable long-term leaseholds?
How does the regulatory framework enable such arrangements?	Long-term leaseholds arrangements	- Long-term tenure security - Long-term leasehold on state land - Public policy objectives & Flexibility - Institutional rules	4.) How are concerns for long-term tenure security and outcome quality conceptualised in the relevant policy discourses on urban state land release and affordable housing? 5.) How are concerns for flexibility in long-term leasehold arrangement conceptualised in the relevant policy discourses on urban land release and affordable housing? 6.) How are institutional rules and capacity conceptualised in the relevant policy discourses on urban land release and affordable housing?

	Community Land Trusts	- Effective tool to achieve and maintain affordable housing - Deviate from private individual land ownership. Holding land in stewardship for public good - Achieve wider community and socioeconomic development	
	Affordable housing	- Challenges around the high cost of well-located urban land - Challenges around delivery and operational costs - Emphasis on Social Housing Programme and affordable rental	7.) How do the discourses on long-term leaseholds in South Africa incorporate concerns for the implementation of social housing and its associated challenges?

Chapter 3: Research Methods and Techniques

3.1. Introduction

Chapter 2 introduced the literature review for the research study. It develops the assessment criteria through the establishment of several subsidiary research questions. This chapter aims to introduce the research methodology and techniques used to systematically answer the main and subsidiary research questions. This chapter also outlines the reasons for each method and technique as well as their respective strengths and limitations. It also critically outlines the necessary ethical considerations that have been adopted for the research study and the steps I, as the researcher, have taken to address these. To achieve this, the chapter is structured as follows. It opens with a discussion on the primary Research methodology (Critical Discourse Analysis), highlighting the essential tenets and their application within this research study. It proceeds to introduce the Research techniques and the sampling procedure. A clear outline of the data analysis process follows this. The chapter then closes with the necessary ethical considerations.

3.2. Research method

Critical Discourse Analysis

The primary research method for this study is Critical Discourse Analysis (CDA). McCloskey (2008) expresses that the form, function, and structure of language are critical in the social practice of linguistics. Furthermore, the social practice of language constructs social realities and shared experiences (McCloskey, 2008). Thus, through the critical analysis of language (discourse) and text, it is possible to gain an understanding of various societal constructs and what is driving them (McCloskey, 2008). Jørgensen and Phillips (2011) expand on this idea by stating that the underlying meanings associated with these discourses are not fixed and are consistently changing. Thus, there is space to challenge societal structures by challenging the discourses which make up these structures (Jørgensen and Phillips, 2011). While discourse theory (discourse analysis) is broad, this can be seen as a core tenet of the practice and aids in the justification for this elected research methodology.

Jacobs (2006) helps me begin situating this broad research methodology in the context of urban policy and planning. Jacobs (2006) highlights two advantages of discourse analysis (DA) in urban policy research. The first is that DA research addresses some of the shortcomings seen within 'traditional' policy research. This is the tendency of traditional policy research to fail in explicitly analysing some of the power relations and ideological conflicts within policy development (Jacobs, 2006). The other advantage of DA is how it acknowledges language's critical role in the policy arena. This vital role involves giving

insight into the nuances of how policy documents are interpreted and perceived, how they achieve specific political goals, and the overall policy process (Jacobs, 2006). Jørgensen and Phillips (2011) support this claim in their discussion on the five common components of critical discourse analysis. Therefore, in the context of urban planning and this research dissertation, discourse analysis is broadly defined as a research methodology employed to understand (through the systematic scrutiny of language and text) the social constructs and dynamics resulting from inscribed policy and legislation. Furthermore, it aids in a better understanding of power relations and societal structures through policy discourses.

These foundations enable me to build a systematic process of Critical Discourse Analysis primarily based on the discussions presented by Mendes et al. (2024). Mendes et al. (2024) build on the discussion of CDA within urban planning research by introducing the idea of conceptualisation. In developing a methodology for CDA that is effective for spatial planning research, they desist from emphasising the linguistic and textual analysis often associated with DA as this is often a challenge for urban planning researchers who are not linguistic experts (Mendes et al., 2024). Furthermore, a narrow emphasis on linguistics can deter from the central objectives of CDA within urban policy research. Thus, the idea of conceptualisation is used and describes the process of 'internally' and 'externally' framing an idea or concept(s) reflected in urban planning policy and practice (Mendes et al., 2024). This conceptual framing then aids in understanding how specific societal structures are produced and how policies are interpreted and practised.

As such, this research is primarily structured around this notion of conceptualisation and the associated discussions presented by Mendes et al. (2024). The systematic process of this is outlined in detail in this chapter's Data analysis section. Above all, Mendes et al. (2024) exclaim that there is no fixed methodology to CDA but rather core tenets that make up a framework to conduct effective research. This framework fits this research as it aims to critically understand long-term leasehold arrangements, the regulatory frameworks enabling (or disabling) them, and the challenges associated with delivering affordable housing. However, a few limitations and challenges within this methodology need to be addressed.

The first limitation of CDA is the inherent bias that comes with the selection and interpretation of various literature, policy and legislation. Jacobs (2006) speaks of the selection and interpretive biases held by researchers often adopted prior to the research process. It is, therefore, important to acknowledge these biases and adopt strategies to work around them effectively. I have addressed this limitation through a systematic analysis approach,

outlined in the Data analysis section of this chapter. Establishing assessment criteria has also addressed this limitation (see Chapter 2). Another critique of CDA is that it, as a research method in isolation, cannot capture the complex nature of policy development (Jacobs, 2006). Thus, it is strongly recommended that CDA be supplemented with other qualitative research techniques (Jacobs, 2006). In recognition of this, the research was supplemented with interviews and case examples to uncover greater nuances and understandings of the subject matter. This is detailed in the Research Techniques section of this chapter.

3.3. Research techniques

3.3.1. Interviews (Semi-structured)

To supplement the primary methodology (CDA), the study used interviews as an additional data collection tool. Roulston et al. (2003) describe the interview process within research as “reality-constructing”, whereby the researcher and interview participants “co-construct” data. Therefore, this understanding of the interview process entails producing ‘texts’ (discourse) and is an effective data collection tool for this study. Thus, to supplement the Critical Discourse Analysis, the ‘texts’ that were produced from interviews were similarly analysed to better understand the conceptualisation of the study themes and criteria developed in Chapter 2. The final purpose of the interviews was to understand how participants (various professionals) put into practice or enact within their professions around the study themes (Mendes et al., 2024). This highlights the institutional strengths and limitations around the subject matter (Mendes et al., 2024).

To effectively achieve these three objectives, the study used semi-structured interviews. This entails the combination of set and open-ended questions derived from the literature review (Chapter 2). A combination of structured and open-ended questions allows participants to further elaborate on specific understandings while remaining rooted in the subject matter of the study. This is vital for the notion of co-constructing data. However, while they provide valuable contemporary insight, a limitation of the interview process is its time-consuming nature. I addressed this by selecting one interviewee per relevant organisation or institutional body.

With the literature review (Chapter 2) composed of several distinct themes, I also ensured that the interview schedule included a participant with specialised knowledge and experience in each of these themes. This is done as the proposed long-term lease arrangements have various public and private stakeholders. Additionally, the wide selection of institutional bodies also served toward triangulation of data and more effective analysis.

However, some state institutional procedures and delays limited this strategy.

The interviews conducted were a combination of in-person and online interviews. This brings forward an additional limitation to the interview process. Arranging interviews around the time-limited schedules of various professionals and practitioners presented me with time constraints. I addressed this by confirming the interviewees' participation in advance and arranging the interviews around their schedule. In light of this strategy, I still could not arrange an interview with state officials due to the stringent nature of their schedules. Both in-person and online sessions were recorded for transcription with all participants' signed consent. This is further detailed in the ethical considerations section of this chapter.

3.3.2. Desktop research

Desktop research was used to investigate briefly two relevant case examples for the study. The first case example is the Waterfall City development in Midrand, Gauteng. The second is the Uthingo Park social housing development located in Witbank, Mpumalanga. These case examples were used to further illustrate the advantages and limitations of long-term leases and depict the social practice that arises from past and present policy discourses.

3.4. Sampling procedure

3.4.1. Purposeful sampling

For this study, the sampling procedure involved selecting research participants to interview. Taherdoost (2016) explains that purposeful (or purposive) sampling involves selecting specific participants or settings that would provide unique and important information to the study as well as participants (or settings) that warrant inclusion based on a framework developed by the researcher. Emmel (2013) supports this explanation and adds that purposeful sampling is constrained by the resource limitations of the researcher. The grounds for purposeful sampling are appropriate for this study for a few reasons. The subject matter involves several stakeholders and professional fields. Thus, it is critical to engage professionals and practitioners working in or with expertise in these fields, as well as those representing various stakeholder positions. Additionally (as stated earlier in the chapter), as a student researcher, I had time and resource constraints, which alludes to Emmel's (2013) point. Thus, I used purposeful sampling to choose at least one participant representing a major stakeholder in the subject matter.

3.4.2. Snowball sampling

Taherdoost (2016) describes snowball sampling as the strategic use of limited cases or participants to open avenues to engage other cases (or participants) with relevant information on the subject matter. It is an effective tool in instances where small data populations have barriers to entry or other accessibility challenges (Taherdoost, 2016). This sampling procedure is used to supplement the resource constraints presented by purposeful sampling as well as to access various professionals and practitioners in organisations that are not easily accessible to me as a student researcher.

3.5. Data analysis

The data gathered for this research was attained from a critical discourse analysis of relevant policies, interviews with various practitioners and professionals, and desktop analysis of relevant case examples. The analysis of the CDA is based on the notion of conceptualisation. For this research, conceptualisation involves framing the narrative various policy discourses form around the subject matter under study. As such, assessment criteria gained from the literature review were used to establish the foundation for the subject matter to be analysed. I then reviewed the relevant policies (See Chapter 2.6), searching for keywords pertaining to the subject matter within each assessment criterion to understand how the documents frame the topics. This framing entails going beyond solely understanding the given definition but also understanding the context and closely related fields related to the subject matter. The documents that the policy discourses reference were also crucial in this framing. This establishes a logical framework and consistent position around the subject matter.

The data collected from interviews were 'coded' and analysed according to the same assessment criteria established in the literature review. This is then analysed in conjunction with the conceptualisations gained from the CDA. The case examples are used to further ground findings and illustrate the social realities the current policy discourses have created while substantiating data received via interviews. The analysis serves to understand whether the data collected from the field work is congruent with the conceptualisations in the literature review. The findings within this analysis were then used to answer the research questions and establish recommendations.

3.6. Ethical considerations

When embarking on an academic research project, it is critical for the researcher to adopt a strong ethical ethos that is reflected throughout all parts of the research process. In this, it is essential to practice rigorous justification and adopt clear, detailed frameworks to demonstrate all the influential factors that are involved in the research project (Jacobs, 2011). In recognition, assessing and considering any plausible impacts the study will have throughout and after the research process is critical. Therefore, it is imperative for research to respect, value, and protect data and data sources alike. This is explored through ethical considerations.

Considering that the study used interviews as a supplementary data-gathering technique, a major ethical consideration was the acquisition of permission to record and utilise data from the interviews. In doing so, I first began by explaining the purpose and value of my research study as well as the value behind the insights afforded by the interviewees to the study overall (UCT, 2018). As I interviewed several professionals and practitioners, I omitted the identities of individuals and did not include any compromising information in the dissertation. The relevant organisations and institutions have been included. Secure data storage is thus critical, and I stored all information acquired on a password-protected device with access granted solely to me. The information acquired was relevantly translated to the final dissertation, and this dissertation is the only form of public access. This information was destroyed upon submission to the final dissertation. Furthermore, in pursuit of transparency and validity, I made an effort to return to interview participants to verify my interpretations of the findings. The interview process was voluntary, and candidates were made aware of this.

As Critical Discourse Analysis is my elected research methodology, there are relevant ethical considerations I, as the researcher, need to acknowledge. Despite the intrinsic biases I possess when interpreting the relevant literature, I have still made an effort to investigate a variety of critical perspectives on the subject matter to effectively evaluate the value of my research proposition. It is critical to remain ethical even when gathering and analysing data not received from human participants.

3.7. Conclusion

This chapter established the overall research design for this study by outlining the methods, techniques, analysis and ethical considerations. It also established why these methods and techniques were selected, their associated limitations, and the steps I have taken to mitigate them. The following chapter will present the critical discourse analysis, research findings and analysis.

Chapter 4: Research Findings and Analysis

4.1. Introduction

This chapter engages the research findings that were collected via the research methods and techniques discussed in Chapter 3. To this end, it utilises a critical discourse analysis (CDA) of the policies outlined in Chapter 2. This CDA follows the approach outlined in Chapter 3 and includes or excludes, relevant policies where appropriate. Chapter 2 set out the assessment criteria against which the findings in this chapter are analysed. To achieve this, each criterion opens with a CDA of the relevant policies, which is then followed by a discussion that incorporates data collected from interviews as well as the case examples.

The overall aim of this chapter is to assess the research findings against the literature reviewed to establish appropriate recommendations in Chapter 5. To achieve this, the chapter is structured as follows. An analysis of power relations and societal structures opens the chapter, then, 'decentering' concerns for private property and utility are addressed, followed by long-term tenure security and outcome quality. Institutional rules and capacity are then analysed. Concerns for affordable housing are addressed and the chapter concludes with brief descriptions of the two case examples and a summary table of the findings.

4.2. Assessing based on the criteria of power relations and societal structures

4.2.1. Discourse Analysis

Human Settlements policy discourse (National, Provincial and Local)

To conceptualise concerns of power relations and societal structures within human settlements policy, it is useful to analyse the narrative created around access and control of land. Within the City of Cape Town Human Settlements Strategy (HSS) (2021), access to, as well as the ability to restrict access to land, is understood through the definition of tenure security. Here tenure security enables a household to be "legally recognised" in the property with a "right to occupy" (CoCT, 2021: 08). Regarding control, every piece of property within the city boundary is regulated by the Development Management Scheme (DMS) which designates property rights and privileges (CoCT, 2021: 28). Furthermore, the DMS is meant to be guided by spatial planning policy which would direct property-related decisions (CoCT, 2021). The establishment of these systems is required by law through the Spatial Planning and Land Use Management Act (SPLUMA) (2013), therefore it can be said that various other municipalities have similar systems.

This sets the framework for understanding the narrative within contemporary human settlement policy with regards to state land and affordable housing. The national Department of Human Settlements (DoHS) Draft White Paper for Human Settlements (2023) highlights the challenges relating to land for human settlement development and access to adequate housing. As such, it commits to improving access to well-located, affordable land (DoHS, 2023: 45). These improvements include mechanisms of access and control, namely “facilitating the rapid release of public land, inclusionary zoning and ToD” (DoHS, 2023: 45). The Draft White Paper (2023) also emphasises that this process needs to balance the short-term gains with the long-term objectives of all relevant stakeholders (DoHS, 2023: 45). Moreover, this is to be facilitated through effective collaboration and participatory processes with the private sector, as well as government and relevant departments (DoHS, 2023). The CoCT HSS (2021) similarly recognises the need for programmatic land release to serve affordable housing. Thus, it can be said that the state aims to address access and the systems around access to state land to improve human settlement development.

However, there are several institutional and operational limitations affecting this, and the HSS (2021) highlights the current Municipal Asset Transfer Regulations (MATR) (2008) as one of these limitations. This limitation pertains to the discounted release of state land in municipalities. Additionally, the Western Cape Provincial Government (WCPG) Strategic Plan (2020) points out that because there exists no official policy managing land release, it occurs on a case by case basis without accounting for various departmental mandates and a holistic spatial vision. Nonetheless, the human settlements policy discourses recognise the need for, and limitations with, state land release.

RSA – Social Housing Act 2008 and DoHS Social Housing Policy 2009 (Housing Code part 3)

Within the guiding principles for social housing, there are those that emphasise resident engagement prior to occupation, and also supporting the economic development of low-income communities (DoHS, 2009: 24). The foundation for resident engagement is a focus on empowering households as “consumers of housing” thus engagement, education and skills transfer are geared towards this (DoHS, 2009: 25). Furthermore, the development of low-income households is primarily based on proximity and access. It is noted that economic development will occur by households being close to economic opportunities and industries having access to a larger labour pool (DoHS, 2009: 24). It is found that these principles do not have clear provisions for other forms of capacity building in households and are primarily based on providing access while improving households’ understanding

of rental accommodation and its associated responsibilities.

A key feature within the policy discourses for social housing is performance/partnership agreements that municipalities enter into with Social Housing Institutes (SHIs) or Other Delivery Agents (ODA) (DoHS, 2009). These partnership agreements inform how municipalities support the delivery of social housing (DoHS, 2009). This is because municipalities do not manage SHIs directly, in order to avoid conflicts of interest and various other deficiencies (DoHS, 2009: 51). These agreements outline the mechanisms and incentives municipalities provide to the prospective SHI or ODA, and such mechanisms include discounted as well as preferential access to state land (DoHS, 2009).

In establishing the target market for social housing, the DoHS Social Housing Policy (2009) recognises a wide range of scenarios in which a social housing unit may be needed. However, the subsidy programme is tied to an individual's income status and income bracket, even when these individuals represent a broader household with dependents.

RSA – National Treasury MFMA 2003, MATR 2008, and CoCT IPAM 2015

Leasehold arrangements on state land within municipalities have no dedicated policy and fall within the ambit of the MATR (2008) and municipal policies such as the CoCT Immovable Property Asset Management (IPAM) (2015). Due to this structure, the same principles that govern municipal capital assets apply to land release, which for this study is leasehold. One of the strategic intents of the CoCT IPAM (2015) is to create an enabling environment for investment and to leverage its assets to address social issues (CoCT, 2015: 07). Therefore, one of its key positions on immovable capital assets is to create an enabling environment and improve access for the purpose of economic growth, addressing social issues and overall efficiency.

4.2.2. Discussion

To further understand the power relations of long-term leases in South Africa, research Participant 3, a researcher based at a housing rights NGO, Ndifuna Ukwazi (NU), contrasts the state leasing land versus donating land.

A lease, comparing it to a donation, those are two different things. The lease is whatever years and with whatever conditions, right. And a donation is a pure thing that is going to go to a specific community without strings attached... The power

that comes with leases is that the land still belongs to the state... Because after whatever years, the piece of land goes back to the state, and they [can] do whatever they feel like doing.

(Participant 3, interview, 14 August 2024)

Thus, it is understood that the ultimate ownership of land, despite the lease conditions and timeframe, puts the state in a position of power. This is congruent with Fawaz's (2017) and Harvey's (2006) discussions on the social power afforded through ownership over land (see Section 2.2.1). The state during and after a lease can enact forms of control such as inclusion and exclusion. Participant 3 (NU) holds the position that contemporary "leases [do not] actually change the status quo of South African history" (Participant 3, interview, 14 August 2024). While these lease arrangements can aid in providing housing, if the underlying objective is to redress historic imbalances, then these arrangements do not accomplish this and in fact perpetuate existing power relations (Participant 3, interview, 14 August 2024). This is supported by Blatman-Tomas and Porter (2018) in their discussions of displacement caused by the emphasis on property in settler colonies (see 2.2.1).

For a different perspective, we can turn to the insights provided through an interview with research Participant 2, a professor and researcher at the Urban Real Estate Research Unit (UCT), on how leasehold arrangements present an opportunity to change societal structures around home ownership. He notes that historically "banks were fairly reluctant to get involved with developments where there [were] land lease structures", however, this has begun to fundamentally change (Participant 2, interview, 12 August 2024). Now, there is precedence within the Waterfall City development in Johannesburg whereby residents hold leases, and when a property is sold, the lease moves forward (Participant 2, interview, 12 August 2024). It is critical to note that this precedent is a private-sector development. However, the social structure around property can be learned from. This scheme moves away from ownership by individual households to one of subleasing. This type of system could possibly prove effective for the state in some circumstances.

Another perspective was offered in an interview with research Participant 5, who is based at a multidisciplinary consulting firm, Pegasys Global Consulting (PGC), on the topic of leaseholds challenging societal structures.

I suppose what [leasehold] challenges is the assumption that the state loses control of that asset forever. It means that the state, theoretically at least, could

come back and realise the appreciated value of that asset in 100 years' time or 50 years' time... So, I think in theory it certainly challenges the notion that affordable housing neutralises an asset that the state might want to use in the future.

(Participant 5, interview, 23 August 2024)

Leasehold arrangements in this instance enable the state to maintain control of an asset's changes in value over time. Maintaining this control allows the state to intervene in future if need be or to allow it to continue if it is effective. This can be supported by insights from Participant 2 (URERU). They similarly note that "with the long-term lease, you've got another shot at the land value over time rather than to sell it once off. It keeps society engaged with that piece of land" (Participant 2, interview, 12 August 2024). The ability to keep the broader society engaged with land consistently over time is how leaseholds challenge the conventional structures of freehold disposal.

The final point relates to the state's position of influence with leasehold arrangements. In this regard, Participant 2 provocatively asks and answers (URERU, interview, 12 August 2024):

To what degree [should] the state be a player in the property market or not? [There has] always been that discussion between the state as being an adjudicator on the one hand, and a player in the property market on the other.

Leasehold arrangements bring these 'adjudicator' and 'player' positions closer and allow the state to engage with both simultaneously. The state holds the position to influence regulation as well as the ability to participate in the property market without losing its assets. Participant 2 (URERU) notes that "a land lease from a valuation perspective gets very close to buying the land outright" (Participant 2, interview, 12 August 2024). As such, the state can leverage and regulate value where appropriate through leaseholds. This emulates the position held by the Waterfall Investment Company (see 4.7.1).

In summary, there are a few advantages and trade-offs to how long-term leasehold arrangements affect power relations and societal structures in the context of affordable housing. The national government holds the position that rapid land release is one of the key mechanisms to enabling more affordable housing, especially in well-located areas. However, the most developed of the affordable housing policies is the social housing programme (see 2.5), and these have their own limitations, which are explored throughout

this chapter. Moreover, the bundling of leaseholds with other capital assets in the Municipal Finance Management Act (MFMA) (2003) and MATR (2008) results in leasehold arrangements being bound to similar social structures between the state and private stakeholders.

In the private sector, however, leasehold arrangements are changing the social order of home ownership, and commercial financing systems are beginning to support this. In the appropriate contexts, the state can realise similar structures. Furthermore, the ability to engage value at different time periods keeps the broader public engaged with state property in the long-term. This can be supported by Blomley (2017) and Fawaz (2017) in their discussion on the ability of planning interventions to affect social structures beyond land use (see 2.2.2). Thus, planning entities within the state can use long-term leasehold arrangements to further affect spatial interventions across different periods of time. However, because these leaseholds are still tied to contemporary systems of property, they have limited potential for radical redress in social inequity. This is also argued by Blatman-Tomas and Porter (2018) in their discussions on the limitations of property in settler colonies (see 2.2.1). Therefore, recommendations need to account for these trade-offs (see Chapter 5).

4.3. Assessing based on the criteria of private property, utility, and highest and best use

4.3.1. Discourse Analysis

Human Settlements policy discourse (National, Provincial and Local)

In the various proposed solutions for land release within the CoCT HSS (2021), “improving land use processes” and “proactively zoning land” are among the priority concerns for reducing the overall costs of implementing affordable (inclusive of social) housing. This is similarly reflected in the policy positions for social housing (CoCT, 2021: 84). This is because all land parcels within the City of Cape Town’s boundary are subject to the DMS (see 4.2.1). Therefore, while there are concerns for integrated human settlements and reducing cost barriers for affordable housing, land release is still underpinned by the DMS.

The WCPG places less of an emphasis on land use and utility in its policy positions. The WCPG Living Cape Framework (2019) notes that state (Provincial and Municipal) assets need to ensure progress toward social objectives. This takes the form of prioritising low and middle-income households in the delivery of housing options spanning both ownership and rental (WCPG, 2019: 22). Furthermore, it notes that the current land release process is

fragmented and argues for a more comprehensive approach that balances development objectives with an emphasis on social and ecological value (WCPG, 2019: 22).

RSA – Social Housing Act 2008 and DoHS Social Housing Policy 2009 (Housing Code part 3)

Restructuring zones play a significant role in the delivery of social housing within the relevant policy discourses. While development in restructuring zones provides access to the ‘capital grant’ funding, what is relevant is the requirement for developments to take the “form of medium density multi-unit complexes” (DoHS, 2009: 19). It is also critical for restructuring zones to align with municipal Integrated Development Plans (IDPs) (DoHS, 2009: 23). Therefore, the predetermined density requirements can either align with the land use scheme or override it. Moreover, these restructuring zones are also meant to aid in the spatial restructuring of urban areas to bring low-income households into more well-located areas (DoHS, 2009). Thus, it is most likely that these density requirements will align with the land use scheme.

RSA – National Treasury MFMA 2003, MATR 2008, and CoCT IPAM 2015

The policy discourses for municipal asset disposal emphasise two factors in its regulatory concerns. The first pertains to overall municipal financial sustainability. Under this, all capital assets under consideration for disposal need to factor in the “fair market value” of the asset as well as the “realisable value or depreciated cost” of the asset (MATR, 2008: 14). Therefore, compensation for disposal needs to consider the potential financial costs or benefits to the municipality resulting from the transfer of an asset (MATR, 2008: 15). The second pertains to the relevant community that will be affected by the disposal of the municipal asset. It underlines that the correct participatory procedures and engagement must be followed to address local community concerns (MATR, 2008: 16). Within these policy discourses, there is a disproportionate emphasis on the economic and financial value of transferring or disposing of municipal assets.

4.3.2. Discussion

Private Property and Utility

Land release in all forms still falls under the effects of land use/utility planning in some manner. This is highlighted in the CoCT HSS (2021) because it is at the municipal level in which land use planning systems are established and regulated. Therefore, long-term

leaseholds, as a form of land release, are ultimately subject to land use planning schemes. To expand on this, we can turn to a discussion with Participant 5 (PGC, interview, 23 August 2024):

So, land use planning is probably the most important restriction on private property... That's a really important state tool [which] the state has to regulate private property in the public interest... [However], no municipality is [going to] regulate private property excessively because then people won't be able to realise value. And if you can't realise value, then there's no value in the property... If you've got land under a long-term lease, then you've got two restrictions on how that land can be used... But it's different because it's public property, not private property.

Here, long-term leaseholds present an opportunity to enact different degrees of regulation in conjunction with land use. This also reinforces the fact that land use schemes will always underpin land release. Participant 3 (NU, interview, 12 August 2024) supports this by noting that lease conditions need to align with the zoning. Therefore, leasehold arrangements do not decentre concerns for utility. In fact, it is argued that land use planning enables or strengthens leasehold arrangements. Thus, while it does not decentre concerns for utility, it does present the potential to affect the terms of regulation and how the utility is practised. This corroborates Gerber et al.'s (2017) argument on leases 'going beyond' zoning regulations (see 2.3.3).

Additionally, leasehold arrangements can affect 'value.' This aligns with the arguments made by Han et al. (2020) in their discussion on how property rights, regulations and interventions create cycles of value (see 2.2.3). Moreover, it is noted through an interview with Participant 1, who is based at the Human Sciences Research Council (HSRC), that leaseholds operating through the state do not necessarily undermine or reinforce private property (Participant 1, interview, 05 August 2024).

Highest and Best use

The land release regulatory systems place a disproportionate emphasis on the economic and financial value of disposing of land (see 4.3.1), thus following the conventional thinking behind 'highest and best use.' However, the research participants demonstrate a greater nuance to the idea of highest and best use in the context of long-term leaseholds.

Participant 2 (URERU, interview, 12 August 2024) argues that "highest and best use determines what is physically and legally possible, as well as the best overall financial

outcome". In principle, it is always important to determine and know the highest and best land use because you need to understand what you are giving up in place for something else (Participant 2, interview, 12 August 2024). Nevertheless, and ultimately, the notion of 'highest and best' does not make much of a difference regarding leasehold arrangements, and a more prudent question to ask is whether leases result in a 'lower' highest and best use (Participant 2, interview 12 August 2024). Depending on the lease length, concerns for the highest and best land use are immaterial, according to Participant 2 (URERU), as financial returns are often made back within thirty to forty years.

Participant 5 (PGC) offers a different perspective, noting that the interpretation of highest and best use determines whether it limits or enables leases. This is because within the regulatory systems of South Africa (Government Immovable Asset Management Act 2007), social, economic and environmental values are also considered within the framework for 'highest and best use' (Participant 5, interview, 23 August 2024). Moreover, Participant 5 notes that highest and best land use is 'very time-dependent'.

I [emphasise] time-dependent because it depends on where things are in the market phasing. And also, if you've got lots of land, and you release it all (say to like the highest bidder) you're [going to] get a lower price per hectare than if you do it in smaller parcels because of supply and demand... The more state land you put on the market, the lower the price will be.

(Participant 5, interview, 23 August 2024)

By analysing and reflecting on these two points it can be said that long-term leasehold arrangements are either not affected by the notion of 'highest and best' land use or are, in fact, partially enabled through them. Firstly, the long-term nature of such lease arrangements results in realising social value at present with the economic value realised at a later stage. This point affirms Blomley's (2017) argument relating to the hierarchy of use (see 2.2.3), however, it is not limited by this as the long-term nature allows for multiple values to be realised or changed. Secondly, depending on the interpretation, the notion of 'highest and best' land use can enable long-term leases depending on the objectives of the state. This also affirms Blomely's (2017) discussion on maximising the correctness of action (see 2.2.3). An additional point to note is the creation of value in regulating supply against demand. Highest and best use is also contingent on supply, and as such, supply can be strategically utilised to change value. This can be detrimental or beneficial to affordable housing delivery, and is recognised via suggested recommendations (see 5.4.4).

4.4. Assessing based on the criteria of long-term tenure security and outcome quality

4.4.1. Discourse Analysis

CoCT Human Settlements Strategy 2021

Long-term tenure security

The CoCT HSS (2021) presents an understanding of tenure security that is underpinned by the base definition provided at the beginning of the document (see 4.2.1), and the core principle of the HSS (2021). It is within this framework that 'long-term tenure security' is conceptualised in the HSS (2021).

An important factor reflected in the HSS (2021) is the City's encouragement and support for diverse tenure and property rights options. The City accepts and acknowledges that "full ownership or full rental" models are "undesirable and unrealistic" (CoCT, 2021: 34). This is highlighted under the sub-principle of "diversity" (CoCT, 2021: 34) and seen throughout the document even with respect to housing typologies. However, while the HSS (2021) is in support of diverse tenure options, it does not explicitly address the notion of 'long-term tenure security'. The policy's underlying principles and strategies do however give a reasonable understanding of the City's position on long-term tenure security.

CoCT recognises various forms of tenure documentation outside of title deeds, and Tenure Certificates are one of these. These tenure certificates constitute part of a step-by-step process to achieve an end goal of full title ownership that would integrate into the DMS (CoCT, 2021). As such, the City does not recognise this as full ownership and instead serves as a strategy to "enhance a sense of tenure security" (CoCT, 2021: 87). Moreover, in its discussion on social housing, the HSS (2021) does not address tenure security for households but does make mention of clarifying and improving land release mechanisms for SHIs (CoCT, 2021: 84). The HSS (2021) does not explicitly challenge the tenure structures underpinning affordable rental and instead emphasises strategies to make SHIs more operationally sustainable through land release mechanisms.

Therefore, the HSS (2021) recognises the importance of a market with diverse tenure options, however, it clearly segments rental arrangements and full ownership arrangements in a system that aims to transition households into a form of full ownership over time. Thus, it can be said that the City's position on long-term tenure security strongly lies within forms of full ownership. This notion is congruent with the fundamental principle of the HSS (2021) which aims to enable housing to act as a social and economic asset to be leveraged.

This clear segmentation is a key factor, and its implications are elaborated upon in the discussion section of this criterion.

Outcome quality

According to the HSS (2021), the City has three important roles in cultivating effective human settlements. These roles- City as a Provider, City as an Enabler, City as a Regulator- all emphasise strategies toward attaining a particular outcome of human settlements (CoCT, 2021). These are further discussed under seven key objectives (CoCT, 2021: 32). These seven objectives effectively conceptualise the City's perspective on the 'outcome quality' of human settlements by highlighting health, safety, diversity, and sustainability, all while enabling households to realise socioeconomic development through improved accessibility to opportunities (CoCT, 2021: 32). This conceptualisation is also heavily influenced by the WCPG Living Cape Framework. Therefore, the narrative established around the 'outcome quality' of human settlements involves providing good quality homes that ensure health and safety, while remaining sustainable through improved access to socioeconomic opportunities.

WCPG - Living Cape Framework 2019 and Western Cape DoHS Strategic Plan 2020

Long-term tenure security

The WCPG Strategic Five-year Plan (2020) and the Living Cape Framework (LCF, 2019) are congruent and share a similar position on 'long-term tenure security'. To begin to understand this position, it is important to note that these two policy documents do not explicitly define or address what 'long-term tenure security' entails. Instead, the narrative around tenure security is formulated by concerns for affordable rental and for home ownership. Regarding government rental stock, it is noted that rental collection rates are extremely low, making current rental tenure structures unsustainable for municipalities. In response, alternative strategies that are explicitly geared toward strengthening municipal property management are sought after (WCPG, 2020: 30). Moreover, there is a push for improved home ownership with programmes to facilitate this (WCPG, 2020: 31). However, in recognition of this, the policy frameworks still emphasise the importance of diverse and mixed tenure arrangements in future developments (WCPG, 2020: 17). Therefore, through its strategic objectives, the WCPG's position on long-term tenure security similarly lies in full ownership.

Outcome quality

The WCPG Strategic Five-year Plan (2020), underpinned by the WCPG LCF (2019),

recognises that over the years there has been an emphasis on quantity as opposed to quality in the delivery of human settlement. Thus, the WCPG LCF (2019) explicitly emphasises the importance of focusing on improving the quality of human settlements. In its understanding of human settlements, it highlights four critical components. These are housing and land, social and economic services, networked infrastructure, and communities and social fabric (WCPG, 2019: 03). Therefore, improving the quality of human settlements entails improving the quality of these critical components. The policy's various strategies are geared towards this and as such the 'outcome quality' is broadly conceptualised as focusing on improving these four components.

National DoHS Draft White Paper for Human Settlements 2023

Long-term tenure security

The Draft White Paper for Human Settlements (2023) does not explicitly address concerns for 'long-term tenure security'. However, it does draw correlations between tenure security and overall 'outcome quality', particularly regarding ownership and how this has the potential to build wealth. As such, the conceptualisation of long-term tenure security within the Draft White Paper (2023) can be understood through a few key points. The first is in its prescribed definition of 'adequate housing' (which is defined differently from 'affordable housing') and 'sustainable human settlements'. The Draft White Paper (2023) views the security of tenure as an important element for fulfilling adequate housing and should be improved upon for sustainable human settlements "irrespective of ownership or rental" (DoHS, 2023: 04). The final points relate to the separation of affordable rental through rental tenure as well as a push for land and home ownership mechanisms in rural areas as it pertains to human settlements (DoHS, 2023). These points evaluated together illustrate the national departments' position on 'long-term tenure security'. Thus, it can be said that the DoHS, through its broad policy positions, aims to ensure forms of ownership to guarantee long-term tenure security, with rental arrangements being a stepping stone to attain this.

Outcome quality

The Draft White Paper for Human Settlements (2023) recognises the importance of improving the quality of households and sustainable human settlements through the provision of, adequate housing that is safe, affordable and well located, basic infrastructural services, tenure security (as mentioned earlier), and access to socio-economic opportunities (DoHS, 2023: 04). This is the established 'outcome quality' for sustainable human settlements and within its legislative mandate, the DoHS recognises that improving the quality of households entails an understanding of adequate housing which includes access to

well-located land (DoHS, 2023). It further emphasises the responsibility of municipalities to both enable this as well as to regulate health and safety standards for a more holistic approach to the planning and implementation of human settlements (DoHS, 2023).

The Draft White Paper (2023) expands on this by emphasising public-private partnerships for the improvement of human settlements. It recognises that all relevant stakeholders need to play a role in the production and maintenance of human settlements. To this end, it aims to streamline the financial efficiency of developing quality human settlements while simultaneously facilitating the building of human capacity via skills development (DoHS, 2023).

RSA – Social Housing Act 2008 and DoHS Social Housing Policy 2009

Long-term tenure security

Social Housing Institutions (SHI) are the delivery agents and operators of social housing in South Africa. As delivery agents that operate between the state and individual households, two elements of tenure are considered when conceptualising tenure security. The first is that the state, predominantly local authorities, provides access to land for the development of social housing stock on a freehold or leasehold basis (RSA, 2008: 14). Thus, SHIs are owners or lessors of land provided by the state. The second element is related to households and the rental agreements they enter into with SHIs for a housing unit.

There are little to no explicit concerns related to ‘long-term tenure security’ for SHIs. However, there are provisions for the discounted or free release of land in accordance with the MFMA 2008 (DoHS, 2009: 50). The implications of this are addressed in greater detail within the discussion section for this criterion. Regarding households, the Social Housing Act 2008 and the associated Social Housing Policy 2009 are primarily structured around the concept of rental tenure. This system of rental tenure is regulated by the Rental Housing Act 1999.

While the regulatory documents do not explicitly address ‘long-term tenure security,’ rental tenure is how it can be reasonably conceptualised. Social housing is not meant to serve individual ownership but to operate as a means by which households can position themselves while they prepare to move into the formal market or other forms of rental. This is reinforced by the Rental Housing Act 1999. This conceptualisation is further supported through an interview with Participant 4 from Ndifuna Ukwazi (NU):

A social house is meant to be affordable. In its affordability, you should be able to save and maybe at a later stage buy [a home]. It's meant to set you up. Stay here while you are still figuring things out. It's meant for that kind of thing. But we are not ruling out that people will stay forever. It entirely depends on people. But it's set to give you a start-up because you are renting at a lower rate.

(Participant 4, interview, 14 August 2024)

Affordability is at the root of this rental tenure conceptualisation as this is where the element of subsidisation is most relevant. Therefore, 'long-term tenure security' is predominantly structured around rental tenure and the ability of a household to pay the monthly instalments. There are provisions for collective ownership, however these are often deterred.

Outcome quality

The desired 'outcome quality' reflected in regulatory documents for social housing considers three important scales. These are: the actual housing units themselves, the building and property, and the immediate surroundings or environment (DoHS, 2009). The regulatory documents emphasise quality, which includes health and safety. The Social Housing Act (RSA, 2008: 8) goes on to stipulate the importance of "household empowerment" via consultation, engagement, education, and skills transfer (RSA, 2008: 08). However, the Social Housing Policy (2009) clarifies what is meant by empowerment, which is to educate households so that they may become "more responsible housing consumers" (DoHS, 2009: 25). 'Outcome quality' is thus reduced to a consumerist standpoint at the cost of other household empowerments.

At the intermediate scale of building and property, the policy highlights two additional important factors for the outcome of social housing. Sufficient space needs to be provided as well as living amenities that are necessary for 'high-density living' (DoHS, 2009). The other factor is to ensure a 'graduation' of quality that is accompanied by a mix of income (DoHS, 2009). This is done to establish a degree of financial sustainability. At the final scale, the desired immediate surroundings also need to guarantee a degree of health and safety in conjunction with necessary amenities and social facilities (DoHS, 2009). Overall, social housing developments need to "balance quality with long-term maintenance" (DoHS, 2009: 40).

4.4.2. Discussion and Analysis

The policy discourses predominantly reflect a desire to assure tenure security via a variety of tenure options. However, the long-term nature thereof is conceptualised under two separate categories of full ownership and rental arrangements. Furthermore, the policy discourses outline clear outcomes and standards in the delivery of affordable housing and the management of state capital assets, i.e. land. However, there are no explicit concerns for the critical relationship between long-term tenure security and its significant influence on outcome quality regarding affordable rental accommodation.

Rental tenure systems (via Social Housing or Community Residential Units) have specific implications for long-term leasehold arrangements. It is helpful to begin this discussion using an extract from an interview with Participant 3 (NU) and their critiques of social housing.

There is no tenure security within social housing. I've always critiqued it by saying what happens if someone who is staying in social housing loses their job because that is based on rental... In Argentina, [state subsidised rental accommodation] is working because even if a person doesn't work there is 'sweat equity'... That is where you clean the communal areas; you're responsible for this; [someone else is] responsible for that; etc.

(Participant 3, interview, 14 August 2024)

Legislatively, rental tenure does assure tenure security through the Rental Housing Act 1999. However, what can be inferred from this is that using the same system that was designed for regulating market rentals within the context of social housing, presents challenges. There is a sense of tenure insecurity due to it being tied to rental instalments, which in turn is tied to employment. This sense of tenure insecurity creates different issues around rental collection (see 4.7.2) as well as issues in operational performance. Furthermore, policy documents and news articles note that the rental collection rate for social housing is alarmingly low across various social housing projects (WCPG, 2020), thereby severely affecting operating costs (Roeland, 2023). Thus, the logic of long-term tenure security operating through rental tenure contained in the policy discourses is causing challenges and perpetuating particular social realities.

This is expanded upon through a discussion with Participant 5 (PGC) on the implications of rental tenure on those who succeed in the social housing system, as quoted below;

There's a real problem with social housing that... If it works and you've got a social housing institution with people in that gap income bracket, and they've now got a stable home, and their lives [improve], they're better located and spending less on travel. Their economic situation improves. Then what do you do?... And if you look at [it in] planning terms, you know social cohesion, you're building a community, and then now you break the community when people have succeeded in life. When social housing has given them the leg up that they needed to succeed in life.

(Participant 5, interview, 23 August 2024)

These two examples represent two opposite ends of a spectrum. The rental tenure system does not account for these two different situations wherein households fall out of the income bracket. This also conflicts with the principles of cultivating community (i.e. social cohesion) and socioeconomic development. If there are no housing systems in the immediate vicinity to catch households who experience the above scenarios, then the underlying principles and objectives of social housing are nullified.

This conceptualisation of long-term tenure security under rental tenure operates in contrast to that outlined by Walsh (1985) in Chapter 2. A key characteristic of long-term leases for agricultural practice during the 17th century was the long-term confidence and flexibility afforded by life-leases which positively influenced the long-term farming and settlement practices (see 2.3.1). This greatly benefited the landowners as well as the lessees because all stakeholders had a long-term vested interest in the betterment and management of the property (see 2.3.1). This is further corroborated by Participant 3 (NU, interview, 14 August 2024):

Depending on the terms of the lease, there's going to be sustainability. Meaning there's something that the government is also going to do to sustain whatever the lease is for (*to sustain agriculture if it's for agricultural purposes*) ... It's going to be easy for the government to meet you halfway with whatever you need in that lease agreement... I think what is important, is the 'founding documents' if I may put it like that. What the terms and conditions of the lease are.

This statement highlights that through leasehold arrangements the state would have a greater investment in realising the full potential of a leased property. It also notes that the document representing the lease agreements plays a pivotal role in realising the long-term desired outcomes. The criterion of 'flexibility and institutional capacity' is addressed in

greater detail under Section 4.5, which further emphasises the importance of establishing appropriate institutional rules (more specifically, collective and operational rules) as stated by Bourassa and Hong (2003) (see 2.3.4).

Nonetheless, this suggests why long-term leaseholds tend to be favoured for agricultural development, since growing the agricultural sector while uplifting rural residents is of great value to the state. This also points to why there is a dedicated lease and disposal policy developed for the Department of Agriculture, Rural Development and Land Reform, as opposed to urban regions, whereby land release is coupled with other immovable capital assets owned by municipalities (see 4.2.1). Moreover, regulatory measures governing municipal capital assets are underpinned by principles such as 'Valuation' and 'Risk Transfer'. These principles are in conflict with the principles of long-term shared and vested interests in a piece of urban land (see 2.3.1).

This is an effective point at which to pivot to the other component of the outcome quality criterion. As understood through Walsh (1985), 'outcome quality' encompasses multiple factors involving greater care and investment for a piece of land (see 2.3.1). This represents both practices on and around a piece of property with longer-term goals. The policy discourses similarly present multiple factors in the outcome quality of human settlements and affordable housing. These go beyond health and safety to a more holistic conceptualisation involving socioeconomic development, community, empowerment and spatial transformation. As such, the policy discourses align with the criteria outlined in the literature review (see 2.3). However, the policy discourses don't explicitly recognise the pivotal role that 'long-term tenure security' plays in enabling these 'outcome quality' factors within rental arrangements. This is particularly relevant for affordable housing stock, as human settlements can encompass a wide range of tenure options, however social housing in its current form is rental tenure. Given that the issues relating to rental tenure have already been explored, to further understand this, I turn to a discussion around Community Land Trusts (CLTs) that arose during the interview with Participant 4 from Ndifuna Ukwazi (NU). It included their explanation for why such Trusts have not been successful in South Africa:

I spoke to a guy called Jim Duke. He did a lot of work trying to get [CLTs] set up here because he's run several of them in Canada. And the big thing he said (*when I asked him why they didn't work*) is that; firstly, our systems are not set up for that. Like the government systems in terms of monitoring and support and all of that. There aren't these support organisations like in Canada and the global north.

These organisations whose only mandate is to help CLTs get set up in different places. And then secondly (*which he said is probably the main reason*) was this difficulty with the people involved. If someone's already struggling, they don't have much time, they don't have much money, they haven't been given access to good education, it's difficult to manage this thing together because it can get quite technical.

(Participant 4, interview, 14 August 2024)

CLTs are effectively parcels of state land that are held in Trust by a community for the purpose of fulfilling affordable housing and other socioeconomic objectives (see 2.4). According to the regulatory discourses, CLTs can also operate as SHIs. Nonetheless, what is important to note is that the current institutional system is not set up to support social -or other state-subsidised- housing programmes via CLTs, and, as suggested by Participant 4, residents are not equipped to effectively engage in them. So, while policy discourses reflect desires for the establishment of CLTs, there seems to be a dissonance between this desire and the current rental tenure structures. Contemporary land release and market rental systems are not structured to achieve successful CLTs because monthly rental instalments remain the primary (sometimes only) method for SHIs to maintain operational efficiency.

4.5. Assessing based on the criteria of flexibility and institutional capacity

4.5.1. Discourse Analysis

Human Settlements policy discourse (National, Provincial and Local)

As stated earlier, the MATR (2008) does not provide an effective regulatory framework for land release, resulting in "legal and organisational uncertainty" (CoCT, 2021: 82). An effective regulatory framework enables transparency and predictability, which alleviates the non-construction costs of development (CoCT 2021: 82). Thus, there is a deficiency within the 'collective decision rules' of municipal land release. The strategies outlined to streamline land release are also 'upfront heavy', making this stage the primary determinant of flexibility. These strategies include improved project packaging and feasibility, proactive zoning, and other mechanisms to reduce non-construction costs (CoCT, 2021: 82). The CoCT is also seeking alternative measures to maintain the affordability of housing units developed through state land release (CoCT, 2021: 82).

The WCPG also point to deficiencies in 'operational rules' through the lack of a policy

guiding effective land release, resulting in 'ad hoc' disposal (see 4.3.1). The Draft White Paper for Human Settlements (2023) recognises the various challenges afflicting affordable rental accommodation. These include the "institutional and financial delivery of rental stock, increases in rentals, maintenance of rental stock, inadequate rules for private (for profit) entities participating with government subsidies, and a lack of intergovernmental cooperation in the release of public land and buildings" (DoHS, 2023: 52). In response to these identified challenges, the DoHS aims to 'harmonise' the regulatory processes for affordable rental programmes and improve support to low-income rental service providers (DoHS, 2023).

RSA – Social Housing Act 2008 and DoHS Social Housing Policy 2009

The management and partnership agreements between municipalities and SHIs were discussed in an earlier section (see 4.2.1). Thus, I now draw attention to the operational structure of social housing. The CoCT HSS (2021) notes the small margin for operational sustainability of social housing due to it primarily being maintained through rental. The City takes the initiative to improve incentives around land release to assure long-term sustainability (CoCT, 2021: 83). Therefore, the current degree of 'flexibility' is low in both the operational capacity of social housing and land release procedures.

RSA – National Treasury MFMA 2003, MATR 2008, and CoCT IPAM 2015

With the lack of a definitive municipal leasehold regulatory framework, the capacity for 'flexibility' is associated with the principles of disposing of all capital assets in the MATR (2008). The Risk Transfer principle entails the transfer of all risks relating to a capital asset when disposing or transferring the asset (National Treasury, 2008: 12). Moreover, when a municipality decides it no longer requires an asset for a minimum service and disposes or transfers it, the municipality may not revert this decision once the disposal process is complete (National Treasury, 2008), thereby further curbing concerns for flexibility.

4.5.2. Discussion

The conceptualisation of 'flexibility and institutional capacity' for long-term leasehold arrangements is deficient in the policy discourses, as evidenced above and by the Uthingo Park case example, which is discussed in Section 4.7.2. For now, it is important to note that the Land Availability Agreement (LAA) that the eMalahleni Housing Company entered into with the local government to lease state land for social housing involved ulterior motives

by the private sector. This resulted in legal challenges and resident frustrations (see 4.7.2). As noted by Bourassa and Hong (2003) in Chapter 2, operational rules define the day-to-day operations and use of land under lease arrangements (see 2.3). Thus, it is critical for the operational rules of a leasehold arrangement to be clear and understood by all parties from the get-go, and for the development process to be regulated, if the desired outcomes are to be met.

This is echoed by Participant 5 (PGC):

The terms [and] conditions of the [long-term] lease [represent] the confidence you've got as the private sector in the owner. [As a] lessor... If you don't trust the government, you'd probably prefer to own the land... Rapid land release is super important but it's absolutely the modalities. It's how you do it.

(Participant 5, interview, 23 August 2024)

This statement demonstrates the importance of clear, regulated 'operational rules' (i.e. lease conditions and LAAs) for successfully implementing leasehold arrangements. It also reflects the accountability and responsibility held by both the state and private sector developers (profit or non-profit) in securing effective outcomes for all stakeholders. This is also important for facilitating 'flexibility' in changing situations. Participant 1 (HSRC) similarly highlights how disposal or leasehold without legally binding agreements or institutional structures leaves projects vulnerable to corruption years down the line (Participant 1, interview, 05 August 2024). Institutions that are vulnerable to corruption are similarly a risk for leasehold arrangements (Participant 1, interview, 05 August 2024). Therefore, Bourassa and Hong's (2003) discussions on collective decisions and operational rules are critical to effective leasehold arrangements on public land (see 2.3.4).

Another critical point by Participant 2 (URERU) concerns the state's tendency to distance itself from the leasehold arrangements. This is somewhat reflected in the principles of the MATR (2008).

The other issue, which I've sometimes wondered [about], is that the state does this lease and then almost gets out. What the state could also do is to say [but it needs the capabilities to do this] that we're staying in here, and we want to influence what's going to happen.

(Participant 2, interview, 12 August 2024)

Evidently, there is a need for institutional structures and regulatory measures to effectively employ long-term leasehold arrangements. The deficiency in the current regulatory system makes these arrangements vulnerable. We can further turn to discussions on flexibility. Participant 5 (PGC) assists by stating the importance of recognising the implications of 'long-term'

So I think, (*again potentially*) there's enormous potential in leasing to achieve a range of policy objectives. The thing with a long-term lease is that it's long-term. And the longer the term is the harder it is to read the future... You want to be careful that your lease conditions are not too restrictive. [That they're not] too much tied to the concerns of today.

(Participant 5, interview, 23 August 2024)

The conditions of leases need to be flexible enough to accommodate the social objectives of the present and enable space for development. Alternatively, leases can also operate as a platform into which other developments grow. Flexibility can accommodate changes in and out of the leasehold arrangement. Participant 5 (PGC) alludes to this by emphasising that lease agreements need to consider both "people who do well and people who don't do well" (Participant 5, interview 23 August 2024).

4.6. Assessing based on the criteria of fulfilling public policy objectives in affordable housing

4.6.1. Discourse Analysis

Human Settlements policy discourse (National, Provincial and Local)

The CoCT HSS (2021) aims to drive strategies around programmatic land release, and briefly makes mention of developing specific systems around disposing and leasing land. The first system the HSS (2021) seeks to tackle is developing procedures for discounting land for affordable and social housing through leasehold or freehold (CoCT, 2021: 82). There are no specific provisions for long-term leasehold, however, the HSS (2021) recognises this as a potential strategy for certain situations. Finally, it emphasises that land release needs to be premised on principles of integrated human settlements, and that mechanisms are required to maintain affordability (CoCT, 2021).

The WCPG and DoHS do not have explicit concerns for long-term leasehold arrangements in the delivery of affordable housing policy objectives. Interestingly, the Draft White Paper (2023) does draw attention to the fact that the rental share of housing is in high demand with rapid urban migration (DoHS, 2023). Thus, the Draft White Paper (2023) emphasises the need for affordable rental options and rental systems to accommodate those who cannot enter the private market or full ownership.

RSA – Social Housing Act 2008 and DoHS Social Housing Policy 2009

Apart from noting the responsibility of municipalities to make land available for social housing developments, the discourses on social housing do not contain concerns about long-term leasehold arrangements and its utilisation to fulfil social housing objectives.

RSA – National Treasury MFMA 2003, MATR 2008, and CoCT IPAM 2015

The legislative discourses on urban land release do not contain explicit or direct concerns for fulfilling affordable housing objectives. The regulatory framework is structured as to set regulations that do not compromise a municipality's financial sustainability. Thus, the regulations simply denote procedures to be followed and protections for the municipality's service provision capacity and finances.

4.6.2. Discussion

The land release policy discourses do not incorporate explicit concerns for implementing affordable housing under long-term leasehold and addressing its associated challenges through tenets of leasehold arrangements. This is reflected above and throughout the chapter.

To gain a better understanding of the limitations and requirements relating to fulfilling policy goals pertaining to affordable housing and their implementation, it is practical to expand on the discussions with Participant 5 (PGC) presented earlier (see 4.2. and 4.5) regarding households falling out of the social housing bracket be it above or below. If it is that lease agreements need to account for both circumstances, then it is important to adopt creative strategies to accommodate for the mix of socioeconomic pressures (Participant 5, interview 23 August 2024). Participant 5 (PGC) suggests that perhaps after a stipulated period, units are sold to the lessors at a particular price, and these funds are reinvested into other social housing projects (Participant 5, interview, 23 August 2024). This illustrates how

flexibility can be combined with fulfilling affordable housing policy objectives. With regards to the discussion on the relationship between implementing affordable housing and long-term leaseholds, a critical point to evaluate is the effect that leasehold structures have on the delivery of social housing and the financial implications. Participant 4 (NU) notes that;

When an SHI leases a property, they can't have that property on their balance sheet in the same way you own it. [And] the strength of your balance sheet usually determines how much it costs to take a loan.

(Participant 4, interview, 14 August 2024)

SHIs can utilise a combination of the social housing subsidy and bank loans to deliver social housing stock onto the market (see 4.6.1). This is seen as a limitation by SHIs and operates as an additional deterrence to engaging in leasehold arrangements with the state. This brings into question the notion of equity afforded with land ownership and its leverage in attaining better financing arrangements. The research findings demonstrate two points that present a broader discussion around this limitation and the considerations to be factored in to address this. The first point presented by Participant 2 (URERU) relates to collateral.

The bigger question is not so much as [to] whether you see it as equity or not. The bigger question [is] whether the banks can use it as collateral. That's the issue. If this thing goes belly up, [the bank cannot] sell this development. So, the bank would need to find some other collateral over this. Or a [transfer] of the lease to the bank. However, the banks don't want to find themselves in a scenario where they've got this long-term lease over this piece of land... [That being said, in the past] banks were always fairly reluctant [of these arrangements] but I think that view has very much changed

(Participant 2, interview, 12 August 2024)

The second point made by Participant 5 (PGC) regards the relationship between bank financing confidence and social housing management. When prompted with a similar question, he notes as follows;

I mean I'm not a banker, but I don't think it would make a huge difference to the bank... I don't think [SHIs] borrow against their asset I think they borrow against

their income stream. And the income stream is rental. And that makes no difference whether you own or lease a property as an SHI... I'm pretty sure when the banks lend to an SHI, they say how secure is your revenue stream. They will look at how you're collecting rent, what are your costs, how much your revenue exceeds your costs, have you budgeted properly for maintenance, and what you do about people [who] don't pay their rent.

(Participant 5, interview, 23 August 2024)

What is critical in this argument is that management and operations play a critical role in the bank's confidence in issuing financing. The above two points work in conjunction with one another. Collateral and effective management operations are at the root of bank confidence in financing social housing developments. Therefore, long-term leasehold arrangements need to factor in this component of delivering affordable housing and how it affects public policy objectives. Moreover, Participant 5 notes it is due to this particular issue of effective operational management that there are not many SHIs (Participant 5, Interview 23 August 2024).

4.7. Case Examples

4.7.1. Waterfall City development – Johannesburg, Gauteng

Waterfall City is a 2200 Ha development on land held in Trust by the Waterfall Islamic Institute (WII). The land cannot be sold due to strict religious requirements. Thus, the owners have engaged in 99-year leasehold developments premised on a religious endowment. This endowment entails that profits from land must be used and shared for the public good (Duprez and McGaffin, 2018). However, this unpopular land development model resulted in several challenges that needed to be addressed. One of the key challenges was balancing the desires of financing institutions, developers, and commercial and residential users. This was addressed by enabling leasehold arrangements to emulate full ownership as closely as possible (Duprez and McGaffin, 2018).

Under this model, the WII trust retains land ownership and leaves operational management to the Waterfall Investment Company (WIC), which operates as the head corporate entity and proprietor (Murray, 2015). It is noted that, in its conception, the Waterfall City development is a brand of "planned and highly regulated real estate capitalism" (Murray, 2015: 506). It serves as a new model for urbanism that desists from establishing highly competitive markets in favour of regulated capitalism. These profits are reinvested into

the shared development of the region (Murray, 2015). Thus, strict guidelines and principles created under the WIC direct much of the development while maintaining the profit-driven capacity of end users.

Regarding residential use, the development enables end-user lessees to sublease properties under 99-year leasehold arrangements with the capacity to sell and transfer the property (Duprez and McGaffin, 2018). This is a new form of subleasing model that is mortgage backed by financial institutions (Duprez and McGaffin, 2018). Overall, various positive lessons can be adapted from this case example. Firstly, leaseholds have the capacity to emulate the property rights and tenure security of full ownership. Second is the governance model that influences the overarching principles of development while accommodating various stakeholders. Finally, there is space to explore creative models around subleasing residential property.

4.7.2. Uthingo Park Social Housing Project – eMalahleni, Mpumalanga

The Uthingo Park Social Housing project procured land on a lease arrangement with the state before the Social Housing Act (2008) and the National Housing Code (2009) were promulgated. Insights pertaining to this case example are derived from Participant 1's personal notes which they shared with me during our interview, in conjunction with desktop research. Permission has been granted to include excerpts from these notes.

This social housing project was built in 2002 on fairly well-located state land (8 km from eMalahleni CBD) under a lease arrangement (Participant 1 personal notes, 2020). The project emphasised the core principles of social housing and went beyond strictly providing places to live, to establishing settlements of human development. Thus, the project included various facilities, communal areas and other recreational activity spaces (Participant 1 personal notes, 2020). Upon completion, the development yielded many positive results, including skills development and community building. However, the development became compromised due to various flaws in the institutional system under which it was built (Participant 1 personal notes, 2020).

The instrumental institutional failure that caused challenges for the Uthingo housing project was the flawed Land Availability Agreement (LAA) between the developer, SHI and the state. It is reported that the LAA was invalid and unlawful (Participant 1 personal notes, 2020). Residents were misled to believe that their properties were rent-to-own arrangements. As a result, there have been several rental boycotts and court appearances

(Participant 1 personal notes, 2020). This demonstrates the deficiency in the institutional system around land release and its implications, causing vulnerabilities throughout the project.

4.8. Conclusion

This chapter aimed to engage a critical discourse analysis of the relevant policy discourses, as well as analyse the research findings against the assessment criteria developed in Chapter 2. Under the first criterion of power and social structures, it is found that contemporary leaseholds both challenge and perpetuate existing structures, giving rise to clear trade-offs. In the following criterion, many of the relationships between regulation and value are revealed, as well as its associated advantages. The next criterion illustrates the deficiencies of long-term tenure security and outcome quality in the policy discourses and how these can potentially be addressed. Thereafter, institutional capacities and flexibility are elaborated, outlining the clear limitations of the MATR (2008) and the overall regulatory framework around public land release for affordable housing. The final criterion directly analyses the concerns of affordable housing and land release, as well as the important considerations to be taken into account to leverage the advantages of long-term leasing. The following chapter synthesises the research findings and answers the main and subsidiary research questions. It also provides practical recommendations based on the findings and reflects on some limitations of the research process.

Table 4.1. Research findings summary table

Literature themes	Subsidiary research question	Research findings	Case example findings
<u>Land, Property and Planning</u> - Land and the notion of property - Relationships between planning and property - Utilitarianism and planning	1.) What societal structures and power relations do contemporary leasehold systems challenge or perpetuate in South Africa? 2.) How do long-term leaseholds decentre concerns for private property and utility? 3.) How does the idea of the 'highest and best use' limit or enable long-term leaseholds?	- Maintain control of assets change in value over time and keep broader society engaged with a piece of public property. - Brings state role as adjudicator and player in the property market closer together. Leverage and regulate value to better deliver affordable housing and instil better operational performance - rethink social structures around housing and home ownership - limited capacity for radical redress in historical inequity - Household empowerment in the policy discourses under rental tenure is limited. Emphasises strengthening households as consumers of housing under rental arrangements - Leaseholds do not decentre concerns for utility. Strengthened by them allowing additional layers for regulation in achieving affordable housing policy objectives - Long-term leasehold establish value cycles (social, ecological and economic)	- Waterfall City (WC) enabled leases to emulate full ownership as closely as possible without granting it - WC model is based on highly regulated capitalism for shared development and growth. - WIC is a corporate entity that operates as a 'pseudostate' guiding development principles and engaging in partnerships. - WC establishes sublease arrangements that creatively changes the social structure around home ownership

<u>Long-term leaseholds arrangements</u> - Long-term tenure security - Long-term leasehold on state land - Public policy objectives & Flexibility - Institutional rules	4.) How are concerns for long-term tenure security and outcome quality conceptualised in the relevant policy discourses on urban state land release and affordable housing? 5.) How are concerns for flexibility in long-term leasehold arrangement conceptualised in the relevant policy discourses on urban land release and affordable housing? 6.) How are institutional rules and capacity conceptualised in the relevant policy discourses on urban land release and affordable housing?	- There are no explicit concerns on the critical relationship between long-term tenure security and its significant influence on outcome quality regarding affordable rental accommodation. - Logic of long-term tenure security operating through rental tenure is causing challenges and perpetuating particular social realities around affordable rental. - Affordable rental tenure does not account for households falling out of the income bracket system (above or below) - MATR (2008) does not provide an effective regulatory framework for long-term leasehold arrangements catering to affordable housing - Difficulty around discounting land release and narrow operating principles - MATR (2008) disproportionately emphasises economic value and municipal financial sustainability - Lack of policy guiding holistic land release at local and provincial level - Current operational flexibility for affordable rental is low. Additional mechanisms are required	- Uthingo Park (UP) embodies the principles of social housing, going beyond simply providing places to live. Project included various facilities and amenities while being fairly well-located. - flawed institutional arrangements hindered UP. LAA enabled ulterior motives by the private sector developer. - Residents being misled to believe they were under rent-to-own arrangements. Caused frustrations, leading to rental boycotts.
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<u>Community Land Trusts</u> - Effective tool to achieve and maintain affordable housing - Deviate from private individual land ownership. Holding land in stewardship for public good - Achieve wider community and socioeconomic development		- According to the regulatory discourses, CLTs can operate as SHIs. - the current institutional system is not set up to support social -or other state-subsidised-housing programmes via CLTs - Residents are not equipped to effectively engage in them	
<u>Affordable housing</u> - Challenges around the high cost of well-located urban land - Challenges around delivery and operational costs - Emphasis on Social Housing Programme and affordable rental	7.) How do the discourses on long-term leaseholds in South Africa incorporate concerns for the implementation of social housing and its associated challenges?	- There are no explicit concerns for long-term leasehold arrangements in implementing social housing - SHIs cannot have lease arrangements on their balance sheet the same way as owning the property - Proving collateral and effective operational management is key for attaining financing from banks, not necessarily land ownership. - Lease arrangements would need to incorporate considerations for households falling out (over or below) of the income bracket systems.	

Chapter 5: Recommendations and Conclusion

5.1. Introduction

The overarching aim of this dissertation was to critically evaluate the advantages and limitations of implementing long-term leasehold arrangements on underutilised, well-located state land for the delivery of affordable housing. Moreover, it also aimed to critically assess how the regulatory frameworks enable (or disable) these arrangements. To achieve this, the research is framed under a critical discourse analysis grounded in the context of the City of Cape Town and the Western Cape Provincial Government. To systematically answer the two main research questions, Chapter 2 reviewed relevant literature to establish subsidiary research questions and formulate assessment criteria to analyse the research findings. The research methodology and techniques utilised to collect data were outlined in Chapter 3. Research findings were then analysed in Chapter 4 against the established assessment criteria, and this analysis is used to inform the basis of this chapter.

The purpose of this chapter is to synthesise the research findings and provide answers to the main and subsidiary research questions, as well as suggest practical recommendations. To achieve this, the chapter is structured as follows: The main research question is answered first, followed by the subsidiary research questions. The subsidiary research questions provide additional information and elaborate on what is highlighted in the main research question. The recommendations follow this, opening with suggested amendments to the Municipal Asset Transfer Regulations (2008). Thereafter, recommendations to amend the regulatory policies for social housing policy are presented. Recommendations for local and provincial governments follow with reference to useful precedence. Finally, suggestions for planners, policymakers, and NGOs (working in the field of affordable housing) conclude the recommendations section. In recognition of this, suggestions for further research are provided. This is followed by an outline of the limitations associated with conducting the study and some reflections on the research process.

5.2. Answering the main research question

5.2.1. What are the advantages of implementing long-term leasehold arrangements on underutilised state land for the delivery of affordable housing?

In discerning systems for public land release, long-term leasehold arrangements offer additional benefits for the delivery and operation of affordable housing (especially for affordable rental). However, long-term leaseholds currently have limitations. Thus, if long-term leaseholds are to be valued as additional options for state land release in the delivery of affordable housing in well-located urban contexts, then clear and intentional applications

need to be supported by a functional regulatory framework.

Long-term leasehold arrangements bring the state's role as an 'adjudicator' and 'player' in the property market closer together (see 5.3.1). The state can leverage the high value of well-located public land assets through lease arrangements to attract affordable housing delivery agents. This is because a lease, from a valuation perspective, comes close to buying the land outright (see 4.2.2). The state can then regulate these property arrangements through additional lease conditions to improve affordable housing delivery and maintain its affordability in the long term. The advantages of these roles being brought closer together are illustrated in the Waterfall City development, where the model combines high regulation with capitalism in pursuit of shared profitability (see 4.7.1). Thus, through long-term leaseholds, the state influences and establishes development principles by leveraging value. However, considerations for shared social and economic returns are not neglected, as is often the case with conventional freehold disposal. This also points to the fact that through leasehold arrangements, the state has a greater investment in realising the full, long-term outcome potential of the land (see 4.4.2). Moreover, these long-term leaseholds operate as an additional layer of regulation in conjunction with land use management.

Long-term leasehold arrangements present an opportunity to change the social structures around housing and, more specifically, affordable rental accommodation. These arrangements offer a middle ground between conventional rental and absolute ownership through subleasing systems (see 5.3.1). This middle ground alleviates challenges around operational performance experienced by affordable housing delivery agents and rental tenure insecurity experienced by households residing in these developments (see 5.3.1). Moreover, commercial financing institutions now support these systems, widening the scope for potential delivery agents.

The long-term nature of these arrangements enables cycles of social, ecological and economic value (see 5.3.3). In the case of affordable housing delivery, long-term leaseholds enable the state to bring more affordable housing into well-located urban areas at present (social value) while recouping the costs with additional returns (economic value) in the long term (see 5.3.3). Maintaining control of these opportunities and changes in value over time presents an opportunity for the state to keep the broader society consistently engaged with a piece of public land over time (see 4.2.2). Thus, there is space for broader human settlement development when engaging in these arrangements.

Long-term leasehold arrangements establish long-term tenure security without the

need for absolute ownership, resulting in greater 'outcome quality' for human settlement development. Lease arrangements offer the state the ability to achieve the holistic human settlement objectives outlined in policies by strengthening the long-term tenure security of affordable rental accommodation. Additionally, the characteristics of long-term leaseholds serve as an effective medium for affordable housing delivery through urban Community Land Trusts (see 4.4.2). Lease arrangements overcome many challenges for these non-governmental institutions (see 4.4.2), thus enabling the full benefits of operating partnerships with CLTs (see 2.4). These benefits include maintaining affordability in perpetuity, wider socioeconomic development, community agency and communal governance (see 2.4).

In conjunction with the above, long-term leases also possess strong potential for flexibility, long-term spatial transformation, its ability to improve systems around discounted land release, and periodic returns depending on the conditions. However, long-term leases have a few limitations, which are predominantly seen throughout the regulatory framework.

5.2.2. How do the regulatory frameworks enable (or limit) these arrangements?

Research findings demonstrate that the regulatory frameworks largely limit long-term leasehold arrangements in the delivery of affordable housing. At a fundamental level, long-term leaseholds have inherent ties to property systems, reinforcing planning that is "propertied" (see 2.2.2). Therefore, it has limited potential for 'radical' redress of historical inequities in South Africa (see 4.2.2).

In contrast to rural and former homeland areas, there is no dedicated lease and disposal policy for public urban land. Thus, long-term leasehold arrangements are subject to all the principles and procedures under the MATR (2008). This limits long-term leases for affordable housing because the regulatory framework places a disproportionate emphasis on economic value and municipal financial sustainability (see 4.3.1 and 4.6.1). There are little to no considerations for social objectives (affordable housing) when releasing public land to non-governmental stakeholders. Moreover, various principles of the MATR (2008), such as 'valuation' and 'risk transfer', conflict with the characteristics of long-term leasehold arrangements. Thus, the advantages of leaseholds cannot be fully realised.

The regulatory framework further represents deficiencies in institutional capacity and flexibility. Research findings demonstrate the importance of 'institutional rules' when engaging in effective long-term leasehold arrangements (see 2.3.4 and 4.5). At present, the regulatory systems do not uphold these principles, as evidenced in the Uthingo Park case

example, whereby deficient Land Availability Agreements (LAA) enabled ulterior motives by the private sector (see 4.7.2). Furthermore, the human settlements policy discourses echo the lack of effective institutional rules regulating private sector agents engaging in state-subsidised housing programmes.

Additionally, the regulatory framework for affordable rental housing limits the potential for long-term leasehold arrangements (see 4.4). Research findings demonstrate that the regulatory frameworks do not recognise the important relationship between long-term tenure security and greater outcome quality of human settlements (see 4.4). Furthermore, the human settlement policies have a limited scope for 'household empowerment' under rental tenure, inhibiting the long-term growth of households, which is a core component of long-term leasehold arrangements. This is due to the stringent regulatory framework around conventional rental tenure.

In recognition of the above, there are a few ways in which the regulatory frameworks enable long-term leasehold arrangements. Leases, being tied to contemporary systems of property, are enabled or even strengthened by land use management systems (see 4.3.2). Furthermore, the human settlement policies do recognise a holistic approach to attaining a greater 'outcome quality' of human settlement development (see 4.4.1). Thus, there is a need for additional mechanisms and strategies to achieve these holistic outcomes.

5.3. Answering the subsidiary research questions

5.3.1. What power relations and societal structures do contemporary leasehold systems challenge or perpetuate in South Africa?

The research findings suggest that contemporary leasehold arrangements challenge and perpetuate various power relations and social structures within South Africa. Thus, it is crucial to recognise that trade-offs arise from this dynamic, and as such, the application of these arrangements need to be specific and appropriate. The research findings indicate that long-term leasehold arrangements enable the state to maintain control of an asset's 'value' change over time while keeping the broader public consistently engaged with that piece of land (see 4.2.2). This affords the state (and its planning entities) the ability to affect strategic spatial interventions over extended periods of time. This includes affordable housing delivery and human settlement development. Thus, long-term leaseholds challenge the logic and practices behind strictly engaging in freehold land disposal and its long-term consequences for serving the public interest. Additionally, long-term leaseholds bring the state's role as an adjudicator and player in the property market closer together. This

enables the state to leverage and regulate value where appropriate (see 4.2.2).

The research findings also suggest that long-term leasehold arrangements can potentially rethink the social structures around conventional housing systems by providing an adequate middle ground between rental arrangements and full title ownership through subleasing (see 4.2.2). This is evidenced in the Waterfall City development, whereby subleases grant property rights that emulate absolute ownership as closely as possible without issuing freehold title (see 4.7.1). In the context of affordable housing, subleasing systems, and associated conditions, can aid in overcoming challenges around rental tenure insecurity. Moreover, it is also noted that there is growing support from financial institutions to engage in long-term leasehold arrangements despite historic deterrence, which further challenges these social structures (see 4.2.2). In recognition of the above advantages, it is critical to note that because the ultimate ownership resides with the state, the capacity for long-term leases to 'radically' redress past injustices in the context of South Africa is limited (see 4.2.2). Thus, the research findings suggest that these arrangements perpetuate certain power relations around urban land redistribution in South Africa.

Several institutional limitations also exist in this regard. While the policy discourses on social housing mention partnerships between SHIs and municipalities that enable preferential and discounted access to land for social housing, specific regulatory procedures (MATR 2008) limit or inhibit these arrangements (see 4.2.1). Furthermore, the current social housing policy discourses reinforce particular social structures and do not explicitly account for the mode of land release (see 4.2.1). As such, contemporary leasehold arrangements do not address these concerns even if they possess the mechanisms to do so (see 5.4.2 for recommendations on employing these mechanisms).

5.3.2. How do long-term leaseholds decentre concerns for private property and utility?

The research findings indicate that long-term leaseholds are still compliant under land use planning systems and do not necessarily 'decentre' concerns for utility (see 4.3.2). However, the findings also indicate that long-term leaseholds present an opportunity to enact different degrees of regulation in conjunction with land use planning (see 4.3.2). This allows the state to guide development and achieve affordable housing policy objectives by having multiple options for creative regulation. Additionally, while long-term leaseholds do not decentre concerns for utility, it has been found that leaseholds operating through the state do not reinforce or undermine private property (see 4.3.2). This notion is dependent

on the application of leasehold arrangements and is better determined on a case by case basis.

5.3.3. How does the idea of 'highest and best use' limit or enable long-term leasehold arrangements?

It is found that concerns for 'highest and best use' have negligible impacts on limiting or enabling long-term leasehold arrangements since developers aim to recoup costs within roughly forty years of the development lifecycle (see 4.3.2). Nevertheless, this research finding does not limit long-term leasehold arrangements to economic values alone. Rather, such arrangements can also include social and/or ecological values, especially if these non-monetary values are realised at the onset of state land disposal, as suggested in national policy discourse (see 4.3.2).

The research findings also suggest that 'highest and best use' is time-dependent and contingent on supply (see 4.3.2). This means that value can be created by regulating supply against demand. This can be detrimental or beneficial for affordable housing depending on the application. Research findings indicate that this is currently detrimental due to the regulatory framework of municipal land release (MATR). This is because the policy discourses place a disproportionate emphasis on the economic and financial value of transferring or disposing of municipal capital assets (see 4.3.1). As such, municipalities engage in practices of holding land to improve their balance sheets and borrowing capacity (see 1.1).

5.3.4. How are long-term tenure security and 'outcome quality' conceptualised in the relevant policy discourses?

Long-term tenure security

At large, the relevant policy discourses do not explicitly recognise the critical connection between long-term tenure security and desired 'outcome quality' within human settlement development. This is especially evident within affordable rental accommodation (see 4.4.1). It is found that the relevant policy discourses have two different perspectives on long-term tenure security under full ownership versus rental arrangements. Furthermore, they recognise that effective land markets contain a diverse mixture of these arrangements, which operate in a system that aims to cycle households from rental into full ownership or higher rental forms (see 4.4.1). However, long-term tenure security within rental is predicated on the ability to pay monthly instalments as regulated by the Rental Housing Act (1999). In

conjunction with an income bracket subsidy system (as in the case of social housing), this has resulted in undesirable socioeconomic pressures (see 4.4.2). The policy discourses fail to account for the long-term pressures of households falling out of the stipulated income bracket (above or below) and the detrimental effects on social cohesion and socioeconomic progress (see 4.4.2). As such, the research findings suggest that alternative measures must be established to account for these circumstances.

Outcome quality

All the analysed policy discourses present multifaceted conceptualisations of effective outcome quality in delivering human settlements. These address concerns for housing, safety, community, socioeconomic development and the importance of stakeholder involvement (see 4.4.1). However, research findings also indicate that within the social housing policy discourses, household empowerment is limited to educating social housing beneficiaries on being better housing consumers within a system of rental tenure (see 4.4.1). This disproportionate emphasis comes at the expense of other forms of household empowerment reducing outcome quality to a consumerist standpoint (see 4.4.1). This is detrimental to the long-term sustainability of these developments.

Findings reveal further nuances between land disposal policy in urban regions versus rural/former homeland areas. Rural regions yield greater outcome quality in agriculture due to having a dedicated land lease and disposal policy curated to support said developments. This is in contrast to urban land release, which is bundled with various other capital assets at the municipal level and regulated under principles that conflict with long-term shared interest in land (see 4.4.2). For long-term lease arrangements to be effective, all stakeholders (especially the state) must have a vested interest in the ongoing processes of achieving a desirable outcome quality for human settlement. At present, the policy discourses and institutional capacities do not effectively support this.

5.3.5. How are concerns for flexibility in long-term leasehold arrangements conceptualised in the relevant policy discourses?

The relevant policy discourses do not address concerns for ‘flexibility’ in long-term leasehold arrangements. However, research findings suggest a few key points regarding its conceptualisation. The strategies outlined in the human settlement policies frontload all the capacity for flexibility in the packaging of land without accounting for mechanisms of flexibility throughout the lifespan of the transferred asset (see 4.5.1). While the packaging of land release is important, the lack of concern for mechanisms that enable flexibility

throughout the lifecycle of a lease leads to potential limitations and vulnerabilities. It is also found that there is deficient flexibility in the operational capacity of social housing as it is primarily maintained through rental arrangements (see 4.5.1). Finally, research findings also demonstrate how the principles of the MATR (2008) work in contrast to the principles of flexibility, subsequently limiting the effectiveness of lease arrangements (see 4.5.1). The research findings further reinforce the importance of flexibility as the long-term nature of these arrangements needs to accommodate present-day social objectives while enabling space for development and progression. Furthermore, this flexibility can exist both in and around these arrangements to maximise its potential (see 4.5.2).

5.3.6. How are institutional rules and capacity conceptualised in relevant policy discourses?

Research findings indicate a deficiency in land release systems' collective decision and operational rules (see 4.5.1). This is reflected in a few ways in the relevant policy discourses. It is first noted that the MATR (2008) does not provide an effective regulatory framework for municipal land release, resulting in legal and organisational uncertainty (see 4.5.1). This lack of effective guiding policy is also experienced at the provincial level, resulting in land release in an 'ad-hoc' manner with no clear, holistic spatial vision. There are also inadequate systems to regulate private (for-profit) entities engaging in state subsidisation programmes, as well as a lack of intergovernmental coordination as it pertains to land release (see 4.5.1). These institutional capacities and rules are critical to the effective implementation of long-term leaseholds and possess detrimental consequences if not accounted for.

The adverse effects of negating these important systems are reflected in the case of Uthingo Park, whereby mismanagement and a defective LAA resulted in resident frustrations and ulterior motives by the private sector (see 4.5.2). The research findings indicate that the long-term lease terms and conditions drive private sector confidence and instil a degree of responsibility (and accountability) held by both the state and other relevant stakeholders (see 4.5.2). It is reinforced that deficient legally binding documents and institutional structures leave long-term leasehold arrangements vulnerable to misconduct and corruption.

5.3.7. How do the discourses on long-term leaseholds in South Africa incorporate concerns for the implementation of social housing and its associated challenges?

The research findings indicate limited concerns for the implementation of social housing in the discourses around long-term leaseholds. Other valuable findings have been discovered

while scrutinising these discourses. The time afforded by the lease's long-term nature can be used creatively to develop or change the housing conditions of existing residents. Furthermore, in the land release processes related to affordable housing delivery, it is found that land ownership can play a role in the quality of attainable private financing (see 4.6.2). However, as stated earlier, financing institutions' perception of leasehold arrangements is fundamentally changing (see 5.2.1), and additional research findings have built on this.

It is found that two essential points nullify the need for land ownership (as equity) in confirming private financing. These are collateral and operational performance. The research findings suggest that a form (or system) of collateral employed without significantly altering the development can assure confidence within banks (see 4.6.2). Moreover, a development (or evidence of prior development) characterised by effective and efficient operational performance can also assure confidence in the banks in financing long-term leasehold arrangements (see 4.6.2). The characteristics of long-term leaseholds aid in improving this operational performance, however, it is encouraged that entities that can demonstrate evidence of effective management are best for the state to partner with in undertaking long-term leasehold arrangements (see 5.4.3 for recommendations employing this). It is also found that this high standard of operational performance is why there is a deficiency in the number of functioning SHIs. Creative strategies must be adapted to address the socioeconomic pressures in social housing developments, and combining flexibility with affordable housing policy objectives is an effective means to achieve this.

5.4. Recommendations

Answers to the research questions highlight some of the advantages these arrangements present in delivering and operating affordable housing. However, due to the limitations mentioned earlier, clear trade-offs lead me to present recommendations geared toward the social housing programme and enabling long-term leasehold arrangements to fully leverage the advantages highlighted above. The presented recommendations are intended to be integrated and function congruently to enable long-term leasehold arrangements as this proposed additional mechanism of public land release in delivering affordable housing.

5.4.1. Recommendations for Municipal Asset Transfer Regulations 2008

Review and amend the Municipal Asset Transfer Regulations 2008

The MATR (2008) sets the regulations for local authorities granting rights to or disposing of municipal capital assets (which includes granting leasehold), making this legislation

critical for land release processes (see 2.6.5). The research findings indicate that the underlying principles of this regulatory framework are causing limitations in contemporary application for urban land release (see 4.3 and 4.4). Therefore, it is recommended that this legislation be reviewed and amended in key areas. The review is required in light of the broad objective of rapid land release across South Africa (see 1.1), while the amendments are targeted at better enabling long-term leasehold arrangements. It is found that the scope of the underlying principles is limited and disproportionately emphasises economic/financial values, ultimately narrowing the possibilities for land release. Therefore, these amendments aim to widen the scope of the principles and guidelines to establish regulations that enable more effective long-term leasehold arrangements.

The proposed long-term leasehold arrangements require various degrees of flexibility in its systems and mechanisms of compensation. In the MATR (2008), sub-regulation 13 largely covers these processes. Thus, it is recommended that this (and other relevant sections) be amended to include considerations for socio-ecological valuations. At present, the regulation only considers long-term economic value and sustainability. This amendment needs to recognise the potential for socioeconomic value cycles (see 4.3.2) afforded through long-term leaseholds, thereby enabling it to be considered when deciding on compensation mechanisms for lease arrangements. This will contribute to easing the process of discounted land release for housing programmes. It is essential to note that this should not replace considerations for long-term economic value but rather widen the scope.

The research findings suggest that the long-term vested interest of the state, in conjunction with effective mechanisms for flexibility, is required for successful long-term leasehold arrangements (see 4.5). Thus, it is recommended that the 'Risk Transfer' principle be reviewed to reevaluate the dynamic between the state and the stakeholder receiving a municipal capital asset. This is critical as complete risk transfer and removal of the state hinder its capacity for influence and leave long-term leasehold projects vulnerable. Vested interest, risk and outcomes need to be reasonably shared for effective long-term leasehold arrangements under various conditions. At present, this principle primarily considers freehold disposal of capital assets and thus needs to be reevaluated to enable long-term leasehold arrangements.

5.4.2. Recommendations for Social Housing Act 2008 and Social Housing Policy 2009

a.) Amend the Social Housing Act 2008

To effectively establish recommendations for the Social Housing policy (National Housing Code 2009), it is prudent to address the underlying legislation regulating and enabling this policy. While the literature review highlights long-term tenure security's significant role in enabling desirable outcome quality (see 2.3.1), the research findings illustrate that the relevant policy discourse lacks this recognition and perpetuates undesirable outcomes in social housing developments (see 4.4). This is primarily reflected in the emphasis on conventional rental tenure regulated through the Rental Housing Act (1999) (see 4.4). This emphasis on conventional rental systems hinders the operational management of social housing developments and the respective households residing in the development (see 4.4). As such, the Social Housing Act (2008) needs to be amended in two areas to enable additional systems of long-term tenure security. Subsections 2 (1) (h) and 14 (2) (g) of the Social Housing Act (2008) address the aforementioned emphasis on rental tenure. These sections enforce compliance with the Rental Housing Act (1999) with little to no room for alternative tenure arrangements. As such, it is recommended that these subsections be amended to allow exemptions from this act (RHA), which are triggered by entering into long-term leaseholds and when households experience certain socioeconomic pressures under these arrangements.

The objective of this amendment is not to erase conventional rental tenure from social housing but to allow for exemptions in specific instances so other tenure models can exist to improve the delivery and operation of social housing. To this end, the conditions which trigger these exemptions should cover a few key areas. Firstly, when state land is released through a long-term leasehold arrangement, an exemption should be triggered, enabling and protecting leasing and subleasing structures within social housing developments that opt for this alternative tenure model. This is to allow space for creative subleasing structures that enable long-term tenure security without requiring full ownership, as seen in the research findings. These subleasing systems need to be distinguished between upmarket and affordable rental units, and a few key considerations must be taken into account. These considerations are outlined under the recommended amendments for the social housing policy (see 5.4.2.b). Overall, these recommendations address concerns of long-term confidence and flexibility.

Secondly, as the research findings indicate, the rental tenure structure fails to account for households that fall under the income bracket due to loss of employment (see 4.4). Therefore, cases in which social housing beneficiaries under the conventional rental model lose their monthly income are recommended to be exempted for a 'grace period'. This grace period must be protected under the conditions of the long-term lease arrangements. As

suggested in the research findings, this grace period should allow residents to engage in a form of 'sweat equity' (see 4.4), which contributes to the operational performance of the social housing development until stable employment is acquired. This grace period should not compromise the long-term operational sustainability of the development but should afford a reasonable amount of time to gain formal employment. The social housing policy needs to outline the guidelines for these arrangements with greater detail defined in the agreements between Social Housing Institutions (SHIs) and local municipalities.

b.) Amend the Social Housing Policy (National Housing Code 2009)

According to the National Housing Code (2009), the social housing programme has two overarching objectives. The first is to restructure South African society by addressing spatial and socioeconomic 'dysfunctionalities' (DoHS, 2009: 11). The second is to intervene in the overall functioning of the housing sector (DoHS, 2009: 11). A significant function to intervene in both of these objectives is the building of household capacity through education and skills development, and the social housing policy recognises this. However, the research findings indicate that household empowerment within social housing is limited and lacks meaningful long-term capabilities (see 4.4). The Social Housing Act (2008) emphasises and enables the involvement of residents in social housing developments (RSA, 2008: 11). Thus, it is up to the policy to set meaningful guidelines for this. Therefore, it is recommended that the guiding principles and relevant implementation strategies in the social housing policy (2009) be amended in a few crucial ways.

To capacitate social housing beneficiaries beyond strictly being housing consumers (see 4.4), it is recommended that the guiding principles for household empowerment include concerns for the following: firstly, households should be educated in the public housing process and the options residents have, as well as how to operate effectively in these programmes. This is to guide households who, over time, exceed or fall below the income bracket of the existing social housing policy. Secondly, households living in SHI-operated projects need to be capacitated in the general operational maintenance of the development, including introducing the operational responsibility of a subleased property. This prepares households for the 'grace period' exemption and the ability to move to the next tier of social housing operating subleasing systems as mentioned above (see 5.4.2.a).

The research findings illustrate various deficiencies in the land-release regulatory framework, especially for long-term leasehold arrangements. These have been addressed in section 5.4.1. Further, essential clarifications are required to amend the social housing

policy to open a new avenue for delivery. It is found that the for-profit private sector (ODAs) possesses valuable skills in the delivery of housing stock (see 4.6.2), but the inadequate ruleset regulating the private sector within social housing developments is leaving projects vulnerable (see 4.5.2). Therefore, it is recommended that the social housing policy distinguish land release systems between non-profit SHIs and ODAs. In this instance, there must be different guidelines for long-term leasehold arrangements for SHIs and ODAs.

The guidelines for long-term lease arrangements for ODAs need to address a few critical aspects. Firstly, long-term lease arrangements need to allow ODAs to operate subleasing structures, enabled through the amendment of the Social Housing Act (see 5.4.2.a). These arrangements must be targeted toward (and enable) ODAs seeking to accommodate a wide mix of upmarket and social housing units to achieve effective cross-subsidisation. These social housing units operate as a tier above units within SHIs and serve as the next step in the housing process when households move above the stipulated social housing bracket, but remain in the overall affordable housing bracket. It is critical for the lease arrangements to contain mechanisms for substantially discounting land release (see 5.4.1) to reduce non-constructive costs and improve delivery.

Secondly, long-term leasehold arrangements for social housing developments operated by ODAs must establish creative sublease systems to serve the needs of upmarket and affordable units. Taking precedence from British Columbia in Canada as well as that seen in Waterfall City, it is possible to outline the necessary considerations that need to be taken into account when developing these systems. Long-term leases in British Columbia are exempt from the region's 'Residential Tenancy Act' and grant the 'right to occupy' with extended property rights and responsibilities (British Columbia, 2024). As such, sublease arrangements for upmarket units need to emulate ownership without granting title over the unit. On the other hand, sublease agreements for subsidised units need to be structured to maintain long-term affordability. Furthermore, beneficiaries of subsidised units must be enabled to transfer the right to occupy to their immediate family. This is guided by the concept of establishing 'hereditary tendencies' (see 2.3.1). An additional benefit to this is that households remain in the social housing 'ecosystem', minimising the complexities associated with qualifying for other housing programmes.

5.4.3. Recommendations for Local and Provincial Government

Literature on Community Land Trusts (CLT) demonstrates the advantages these organisations have regarding affordable housing (see 2.4). These advantages are expanded

upon when evaluating the Waterfall City development and its long-term leasehold arrangement (see 4.7.1). Thus, it is recommended that local governments establish partnerships with Land trusts, NGOs, or corporate entities and grant them state land through long-term leasehold agreements to develop social housing (and other affordable housing) as part of their portfolio. It is recommended that provincial governments work with municipalities to identify and assist with these partnerships, which should all align with local and provincial public property plans.

The Garden Cities Cape Town is an example of an entity suitable for such a partnership. The Garden Cities Cape Town is a non-profit entity that has developed suburbs with associated amenities and infrastructure in and around Cape Town since 1919 (Garden Cities, 2021). The model at the core of their development is the garden cities approach by Ebenezer Howard (Garden Cities, 2021). This entails developing pleasant neighbourhoods with access to various amenities such as schools, healthcare and parks (Garden Cities, 2021). From its initial inception in 1919, the company has grown substantially and reinvests all its profits from housing into infrastructure and quality amenities (Garden Cities, 2021). This entity emulates similar principles as seen within the Waterfall City development regarding reinvesting profits into public goods (see 4.7.1). Implementing long-term leasehold arrangements on public land with entities that have these principles serves the broader objectives around human settlement development as well as affordable housing, while leveraging the advantages of leaseholds.

5.4.4. Recommendations for Planners and Policymakers

The research findings reflect the lack of an official policy managing land release processes (see 4.2). Thus, recommendations are directed to considerations in the development of such a policy strategy, with an emphasis on long-term leasehold arrangements. It is recommended that municipal and provincial planners/officials organise an integrated portfolio of well-located state land that is planned to be released for public housing programmes, be it freehold or leasehold. It is critical that this portfolio aligns with municipal Spatial Development Frameworks (SDFs) and Integrated Development Plans (IDPs) and need to factor in the strategic long-term objectives of relevant departments. It is also recommended that municipal planning officials be capacitated to make decisions over processes of land valuation in line with the suggested amendments under 5.4.1. This portfolio is critical to monitor and manage the modes in which long-term leasehold arrangements are deployed to balance the distribution between non-profit and for-profit social housing development. The research findings suggest that long-term leases are tied to land use

planning systems (see 4.3). It is recommended that long-term leasehold agreements be packaged effectively to reduce non-construction costs and time delays of these land use processes. Therefore, municipal planning officials need to incorporate additional development rights, upfront zoning and discounted land mechanisms into the lease agreements. Recognising that valuation cycles often occur between thirty and forty years (see 4.3.2), it is recommended that these long-term lease agreements be opened for new negotiations without compromising the principal objectives and rights of the existing inhabitants. These negotiations would need to facilitate representatives from all relevant stakeholders. To address the concerns of private financing institutions seeking forms of collateral. It is recommended that national policymakers and legislators investigate mechanisms to enable banks to transfer long-term leases in rare instances where the responsible SHI or ODA cannot repay the loan. This would allow municipal officials the ability to account for these conditions in the lease agreements. Moreover, these transfer processes cannot compromise the rights and livelihoods of the social housing renters or sublessees.

5.4.5. Recommendations for SHIs and NGOs

To accommodate the aforementioned recommendations, SHIs and NGOs need to engage with households to capacitate them in moving in and out of the rental-based income bracket system. Therefore, it is recommended that SHIs work with relevant housing advocacy NGOs to educate residents and build skills that can contribute to the operational performance of the social housing development. This aims to reduce the outsourcing costs of these maintenance tasks. This can also be extended to providing services to other households. This accommodates households under the 'grace period' mentioned earlier in the chapter (see 5.4.1). Thus, the SHI is responsible for compiling a portfolio of specialised and non-specialised skills necessary for operational maintenance and management. NGOs then have to establish partnerships and host training workshops. This can be achieved by working with academic and skills development institutions. It is also recommended that education and skills development be extended to households in positions to move into the next tier of social housing. These households need to be equipped to understand and manage sublease arrangements and the various advantages that come with them.

5.5. Recommendations for further research

In light of the strengths and successes of the dedicated state land and disposal policy for rural and agricultural land, it is recommended that extensive research be done to explore

the possibilities of a dedicated state land lease and disposal policy developed by local governments that incorporates all land uses. This is recommended to allow municipalities to move beyond solely responding to land release regulations and into strategic forward planning for state property. Strong government and departmental coordination are required to achieve this. The aforementioned recommendations are geared toward improving affordable housing delivery, whereas this policy will widen the overall scope. As the research findings suggest, clear institutional rules are necessary for establishing functional leasehold arrangements, and this type of policy will cover a substantial portion of these concerns.

5.6. Research limitations

A few key limitations in conducting this research potentially affected the overall outcomes. These limitations are related to time, research participants and the elected methodology. The time constraints resulted in me limiting the scope and depth of the policy discourse analysis. While critical information was not omitted to the best of my ability, the overall potential for deeper analysis was constrained by the time limitations. The limitations associated with time also played a factor in the number of research participants I could interview. Furthermore, due to institutional time delays, the research study lacked valuable insights that could have been attained through interviews with state officials. Lastly, while the elected research methodology provided valuable research findings, it also limited the study in other ways. The use of a case study could prove valuable in attaining additional research findings to support this study and build on the subject matter.

5.7. Reflections

My inclination to pursue this research and subject matter originated from work done in a studio project. Working closely with the challenges of well-located affordable housing in Cape Town, I sought to further explore ways to improve the delivery of public housing programmes on state land. Possessing minimal exposure to the intricacies of long-term leasehold arrangements, I had a limited and preconceived perception of how it could be applied to improve affordable housing delivery. Thus, I went into the research attempting to prove this capacity. As I began understanding the history and characteristics of leasehold arrangements in the literature review and assessed this against the research findings, my perception of this capacity has largely changed. The research findings highlighted the more nuanced constraints of tenure and property in South Africa and the constraints associated

with the current public housing systems. The research findings indicate that these systems still have valuable capacity as an additional tool for the state, however, this is largely not the application I originally envisioned. Nonetheless, the research process deepened my knowledge of leasehold tenure, planning, property and public housing in South Africa.

5.8. Conclusion

The overall aim of this study was to critically evaluate the advantages of implementing long-term leasehold arrangements on underutilised, well-located state land for the delivery of affordable housing. Furthermore, it aimed to critically assess how the regulatory frameworks enable (or disable) these arrangements. Chapter 1 opened the discussion by presenting the details of the issue under investigation and establishing the main research questions. This chapter also briefly outlined the structure and process of the dissertation. Chapter 2 engaged a literature review of the topic under study and developed assessment criteria that are utilised to analyse the research findings. This is achieved through establishing subsidiary research questions. Chapter 3 presents the research methodology and techniques that were used to collect data. This chapter included the strategies used to analyse the findings. Chapter 4 then outlined and analysed the research findings against the assessment criteria developed in Chapter 2.

Chapter 5 aimed to synthesise the research findings and provide succinct answers to the established subsidiary and main research questions. This, in conjunction with the literature reviewed in Chapter 2, was used to provide practical recommendations. Some of the recommendations were derived directly from the research findings. The chapter then concluded with limitations and overall reflections on the research process.

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Appendices

Appendix 1: Ethics approval



2024/05/10

EBE/00754/2024

RE: Research Ethics Committee Project Approved with Condition(s) Letter

Dear Raevaldo Van Rooyen,

Your application for ethics review of your project titled

Unlocking opportunities for delivering affordable housing by leasing underutilised, well-located state land

has been reviewed and evaluated by the

Engineering & Built Environment Committee.

Based on the information supplied your application has been conditionally approved.

Please note the following additional conditions associated with this approval:

- (i) It is hard to judge ethical risk in its completeness as you have not included all instruments particularly the interview questions. Approval is granted subject to you providing to and discussion with your supervisor the list of interviewees and interview plan and lead questions, ahead of the actual field work. Additionally, please note that professional staff at Academic Institutions will need gatekeeper's clearance, particularly if UCT staff may be included. Also please discuss with your supervisor whether gatekeepers clearance is needed at the institutions and NGOs where participants are housed.

Proof that you have met these conditions, in the form of letters of permission or other relevant documentation, should be supplied to the REC, via the eRA system.

Once you have met with the above condition(s), you may proceed with your research project titled:

Unlocking opportunities for delivering affordable housing by leasing underutilised, well-located state land

Please note that should:

- (i) any serious or adverse effects to participants occur and/or,
- (ii) aspect(s) of your current project change and/or
- (iii) any unforeseen events that might affect continued ethical acceptability of the project occur then you should immediately report this to the approving REC. You may be required to submit an amendment to this application, in order to determine whether the changed aspects increase the ethical risks of your project.

Regards,

Engineering & Built Environment Committee.

RE: MCRP Dissertation Ethics Approval

From Harro Von Blottnitz <harro.vonblottnitz@uct.ac.za>

Date Thu 10/10/2024 1:48 PM

To Tanja Winkler <tanja.winkler@uct.ac.za>; Raivaldo Van Rooyen <VRYRAE002@myuct.ac.za>

Thank you Tanja for confirming.

I am happy that the conditions attached to the approval were adhered to.

If a formal letter confirming this is required, please let me know.

Otherwise, please feel free to use this email exchange for relevant administrative processes.

Regards, Harro

Prof. Harro von Blottnitz (Pr.Eng.)

Chair: Ethics in Research Committee

Faculty of Engineering and the Built Environment

University of Cape Town

From: Tanja Winkler <tanja.winkler@uct.ac.za>

Sent: Thursday, 10 October 2024 13:27

To: Harro Von Blottnitz <harro.vonblottnitz@uct.ac.za>; Raivaldo Van Rooyen <VRYRAE002@myuct.ac.za>

Subject: RE: MCRP Dissertation Ethics Approval

Dear Harro,

Thank you for including me in the email correspondence. As the supervisor, I can confirm that Rae established subsidiary research questions from an in-depth review of the relevant literature, and that these questions were used to gather data, via interviews, from research participants. The interviewing process was undertaken in accordance with EBE's ethics guidelines, and none of the questions posed any harm on any of the research participants. The entire approach adopted throughout the research process was of the highest ethical standards.

Warmly,

Tanja



Tanja Winkler (PhD)

Professor

City & Regional Planning Programme Convenor

School of Architecture, Planning + Geomatics

Faculty of Engineering and the Built Environment

University of Cape Town

+27 (0)21 650 2360

she/her

Appendix 2: Interview consent form used

Consent form for the recording of the interview

Title of project: Unlocking opportunities for delivering affordable housing by leasing underutilised, well-located State land

Name of interviewer: Raevaldo van Rooyen

Title of degree: MCRP

University of Cape Town

I, confirm the following:

1.	I have read the information sheet provided by the researcher and thus understand the projects aims and objectives.	
2.	I am participating in this project voluntarily and understand that I may withdraw from the interview at any time if I so do wish.	
3.	I acknowledge and understand that confidentiality will be maintained.	
4.	I have been asked permission to record this interview and have given my permission.	
5.	I understand that this data is accessible to other researchers only if they honour the confidentiality agreement.	

Participant

Date

Signature of participant

Name of participant

Organisation of participant.....

Researcher:

Name:

Signature:

Date:

Appendix 3: Editors letter

Cynthia Ncube, Editor



083 774 8093
xoli.ncube@gmail.com

UCT School of Architecture, Planning and Geomatics
Faculty of Engineering and the Built Environment
University of Cape Town
Rondebosch
7701

23 October 2024

TO WHOM IT MAY CONCERN

RE: MCRP DISSERTATION SUBMITTED BY MR RAEVALDO VAN ROOYEN

This is to confirm that I, Cynthia Ncube, edited and proofread Chapters 2 and 4 of the academic paper titled *Scrutinising public land release: An investigation into the advantages of long-term leasehold arrangements in the delivery of well-located affordable housing*, submitted by the above-mentioned candidate.

The chapters have been edited for clarity, flow, syntax, grammar and consistency.

I am satisfied that they meet the required standards for academic writing and are fit for submission.

Signed by candidate

Kind regards,

Cynthia L. X. Ncube
083 774 8093

