



**FIG Commission 7 and 9  
Annual Conference and Meeting**  
4th – 8th December 2017 - Cartagena Colombia



**Land Administration  
Effectiveness and Fit  
For Purpose inclusion  
of Local Institutions:  
State-subsidised  
Housing in Du Noon**

**Michael Barry**

# Land Administration Effectiveness and Fit For Purpose inclusion of Local Institutions: State-subsidised Housing in Du Noon

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# Structure

- What is fit for purpose?
- Questions to guide the case study
- South Africa's housing programme
- Du Noon and hybrid governance – street committees
- Method
- Unintended consequences of simplifying the regulatory environment
- Tenure and transaction securing strategies – original beneficiaries, registered, off-register, swopped houses
- Conclusions

# Fit for Purpose – what is it really?

- A list of things to create utopia or an adaptation to users' strategies? Not new!
- Rational model of strategic planning and land use planning should yield a fit-for-purpose outcome
- Vision - Mission – Alternative Strategies - SWOC – Optimum Choice
  - but .... politics and competing agendas?
- Patrick Geddes- 1890s - "diagnosis before treatment" - no plan before civic survey
- Charles Fortescue Brickdale 1913 – a registration system should be “suitable to circumstances”
- Moral of the story:
  - Do not design record systems until you have done civic surveys as well as surveys of officials
  - Do not issue land tenure certificates and then leave!
  - Resurvey and redesign after implementation!

# Questions to guide the Du Noon discussion

- What strategies do people use to secure their tenure?
- What strategies do they use to secure transactions?
- How effective is land registration?
- Why do people transact off-register?
- What role might community based organisations play in tenure admin?
- What if they are aligned to political parties?
- What happens when there is poor project / operations management?
- Unintended consequences of relaxing building regulations?
- Alternatives to official systems may lead to “dead end” tenure forms.
- Research programme - 12 case studies in Western Cape

# South Africa's State-subsidised Housing Programme

- Since 1994, 2.5 million completed houses, plus 1.2 million “housing opportunities”. Claim of 4.3 million .....houses
- The indicator trap – many are poorly constructed
- Ownership is the tenure form for the majority – a design constraint
- Could end up being more than 50% of registered residential properties
- Possibly largest titling programme ever!
- Many subsidised properties change hands off-register.
- Cloudy titles affect formal land market and general land administration.
- Cloudy titles place the purchaser at risk
- Extremely expensive and cumbersome processes to clean up the title.

# Housing Opportunities



# RDP Houses



# RDP Houses – evolving suburbs



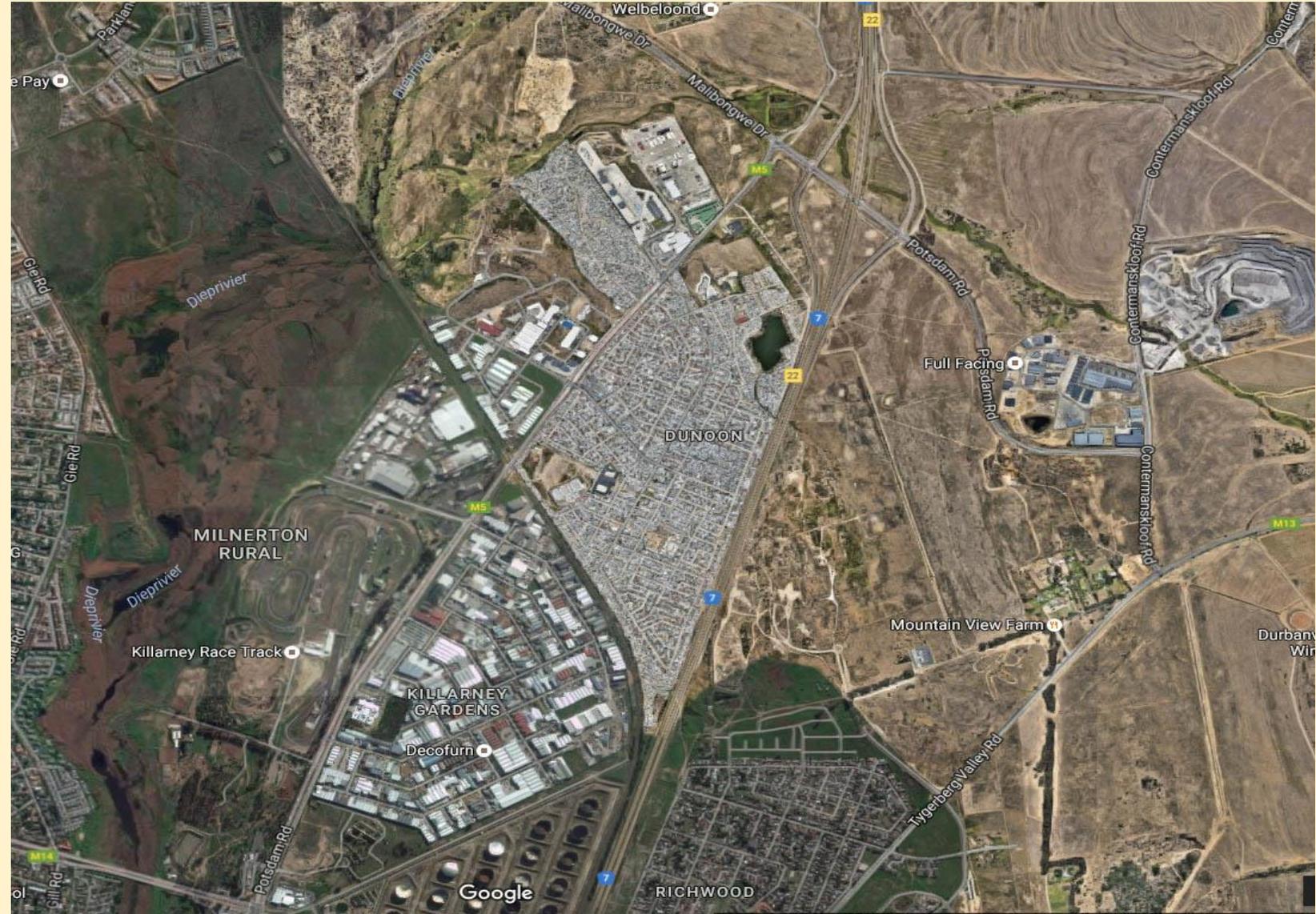
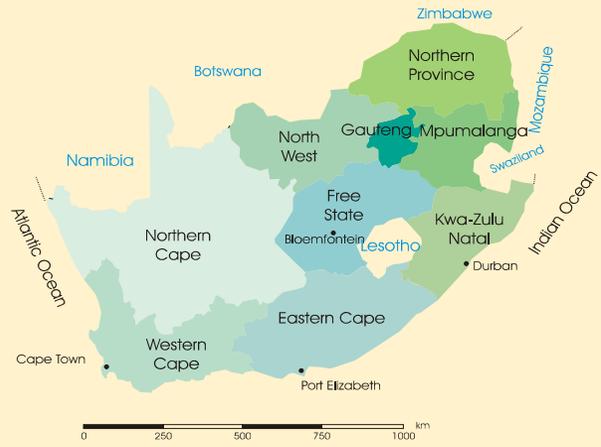
# Du Noon & Hybrid Governance

- North western fringe of Cape Town
- ±3000 houses built constructed between 1996 and 2000 – Phases I, II and III.
- Housed people from nearby informal settlements.
- Most were in-migrants from the Eastern Cape province.
- Population > 30,000
- Context fragile state, major political change
- Street committees active in feeder informal settlements
- Continue to be active in local level land administration
- SANCO used as a vehicle to assume political power – connected to national political party
- A system of hybrid governance – official system and street committees - land governance is evolving to a harmonised hybrid governance situation

# Du Noon

- Phase I still problems with unregistered houses.
- Building contractor was on time and built good quality houses
- Municipality managed housing subsidy and housing allocation.
- Failed to manage / could not manage the process properly
- Allocation assigned to community leadership – the municipality owned the problem!
- Delays: people without complete documentation allocated a subsidy & house
- Houses were completed and stood empty - then invaded by queue jumpers.
- Many houses sold / grabbed and new “owners” do not qualify for a subsidy
- Phases II and III – whole project managed by one corporate entity
- Lessons learned and registration completed early in Phases II and III

# Du Noon 2016



# Du Noon – Phase I Construction



# Method: 37 Door to door Interviews Phase II



# Simplify things by relaxing Regulations: Unintended consequences



- Downward raiding
- No Building Regulations
- No building lines
- No building inspectors
- Encroachments?
- Have to consult a land surveyor and a lawyer
- Safety concerns? “Buildings are skew”
- No title restriction on selling
- Investors and speculators

# Tenure Security Strategies: Original Beneficiaries

- 14 narratives – “this house is not yours”.
- Carol – converting to block of flats - unemployed
- I have a title deed
- I will never sell – I need the house for my children.
- Janet – subsistence trader – title deed, the street committee and the municipality
- Jonathan – SANCO / street committee leadership position - I listen to legal advice on the radio
- Amy has a RDP house. Her mother sold and purchased next door to get away from gangs in Delft.
- I will use official structures – there a court case involving a swapped house down the road

## Registered secondary transactions

- 8 narratives
- Desiree – went to street committee, then to police to sign an affidavit and seller handed over the title deed and other papers – a private conveyance
- Mother in law warned of risk of seller reclaiming
- Then went to a lawyer and registered– fortunately seller was traceable and cooperated.
- Jennifer – went to municipality to check the papers – officials advised her to go to lawyer

## Off-register transactions

- 8 narratives
- Jack – used a deed of sale form from stationary store – a contract
- Thought seller was original beneficiary
- Street committees advised the affidavit strategy
- Had package of at least 5 transactions and there was a gap in the chain of title
- Standard private conveyancing / deeds registration problem
- Now he is worried – family told him to register and he has heard the horror stories.
- But ... he is at a dead end.

## Off-register transactions

- Francis – bought house from a family and has the title deed and the death certificate
- Signed affidavit at police station
- Deceased sister has reclaimed the house and sold it twice
- Street committee has sold it twice
- Councillor – worked his way up through SANCO – opened fraud case
- Advised him to go to lawyer
- But he believes it will cost R3,500
- Gladys bought a house off-register because she thought it was illegal to buy RDP houses. Built a double story house and rents out the bottom.
- Jack and Janet – “please interview us – we need help”

# Swopped Houses

- Elizabeth – father swopped first house –then she swopped that for this house
- Original beneficiary died.
- Son claimed the house
- Took her to court – magistrate told her to swop back to the 2<sup>nd</sup> house
- Maggie swopped within Du Noon
- Affidavit at police station – “I took his house, he took mine”
- Worried – he may sell her old house and then reclaim this house
- Appears street committees promoted the witnessing / affidavit strategy – also took commissions on the sales.
- Today street committees promote registration

# Analysis and Conclusions

- Community based organisations promoted off-register strategy and then changed.
- What should be the role of street committees twenty three years after full democracy?
- How do we improve governance if CBO's involved in governance are major political players and they promote strategies that differ from the official legal route.
- No point sprouting a list of fit for purpose attributes if the state is fragile / weak – dedicated officials and policy makers will dismiss you.
- Other case studies – only option was the official route
- Off register – private conveyance is expedient but fraught with risks
- Perceived tenure security is low.
- There is no visible land administration involving street level bureaucrats
- There are proposals for alternatives to registration system
- Most sensible strategy is to make current system work – people like paper documents!
- Title maintenance and visible administration
- Relaxation of regulations – have to have guidelines / purposive interpretation of the law