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Comment on the best use of state property assets: the case of Tafelberg, Sea Point

Submission to the Western Cape Province
Kecia Rust, 9 June 2016

The challenge of managing and putting to best use state property assets has been put into sharp focus with the recent debate over the Tafelberg property in Sea Point, Cape Town. At issue is whether (and how) state land should be used to further objectives of social integration, so critical to the transformation of our society and our capacity to overcome our apartheid legacy of spatial segregation. The problem (and opportunity), in this case, is that the land is valuable – extremely so. How can this value be used towards the benefit of the province so that it can meet the breadth of its competing responsibilities?

In this case, it would seem that the Province applied a rather narrow conception of value to what it felt it could derive from the land. By offering it up for sale to the highest bidder, the Province was clearly seeking to realise revenue which presumably it will apply towards meeting its developmental responsibilities – education, health, social welfare, perhaps also housing. Land is different from any other asset, however, in that its value is derived not only from its size and quality, but also from its location, and the opportunities that this offers in achieving other, less tangible goals of social integration and redistribution. This is particularly significant given the spatial nature of our apartheid legacy.

Guidance from the legislative framework

The policy and legislative framework is clear: both the Public Finance Management Act (the PFMA), 1 of 1999, and the Government Immoveable Asset Management Act (GIAMA), 19 of 2007, offer the state the opportunity to recognize the multiple values of land[1]:

The PFMA commits the State to a high level of transparency and accountability in relation to financial and asset management. The Treasury Regulations, 2005, in terms of the PFMA, require that (16A.7.3) "[a]ny sale of immovable state property must be at market-related value, unless the relevant treasury approves otherwise." On the face of it, this would seem appropriate, as the State should not undersell its resources. However, the regulations also offer that the relevant Treasury can choose another approach. This would require a strategic policy framework for making such a decision, however – something it would appear the Province does not currently have. Indeed, an earlier sale of land in Sea Point to a French School, in 2013, went ahead similarly, emphasizing financial returns without realising the social and economic development opportunities that the land might also offer.

[1] Insights from Stephen Berrisford, 9 June 2016

The PFMA regulations are superseded by the much more detailed provisions of GIAMA, which also elaborates on the principles set out in the State Land Disposal Act, 1961. Section 5(1)(e) of the GIAMA prescribes that where an 'immovable asset is ... disposed of best value for money must be realised'. This requirement is however qualified by three important provisos:

1. 'best value for money' is defined in the Act as "the optimisation of the return on investment in respect of an immovable asset in relation to functional, financial, economic and social return, wherever possible';

2. section 5(1)(f) which prescribes further in relation to land disposal that the department doing the disposal 'must consider whether the immovable asset concerned can be used
   i. by another user [i.e. national or provincial department] or jointly by different users;
   ii. in relation to social development objectives of government; and
   iii. in relation to government's socio-economic objectives, including land reform, black economic empowerment, alleviation of poverty, job creation and the redistribution of wealth'.

3. Section 13(3) specifically empowers a department to 'dispose of a surplus immovable asset - ... by the allocation of that immovable asset to another user [i.e. another national or provincial department]'.

GIAMA also requires national and provincial departments that hold land to draw up Immovable Asset Management Plans (section 6(1)). This plan should be binding on all land disposals that that department carries out. This suggests that there could be a time delay in accessing land that has not already been identified for disposal in the relevant Immovable Asset Management Plan.

It is not clear if the Province considered "best value" in terms of the three provisos set out by the GIAMA, and if it did, if the conclusion supported its decision to call for bids and disposing of the Tafelberg site to the highest bidder. Its responsibilities in terms of the management of its land assets are, however, much wider than the realization of a financial return, and the potential to use the site for social housing would certainly fall within the "social return" objectives in the GIAMA's definition of "best value for money".

The value of the Tafelberg site

The financial value of the land in question is important. Can the state afford to make this land available for social housing, and on what basis? Sea Point is one of the wealthiest neighbourhoods in South Africa – comprising 7 679 residential properties worth a total of R20,5 billion. The average property value in 2014 was R2,67m. The majority of properties in the suburb (82%) have a value in excess of R1,2m – and in this category the average property value is R3m. Fifteen percent of the market (1 204 properties) are valued between R600 000 – R1,2m; and less than 2% are worth less than R600 000.[2]

The bid for the Tafelberg site is R135 million, and the developers propose to use the 1,7 hectare site for a private school and other community facilities. A 2011 feasibility study exploring the application of social housing on the site estimated a maximum yield of 214 social housing units – 204 new build and 10 refurbishment. At the time, the land value was

[2] Data from the Centre for Affordable Housing Finance in Africa, using Citymark.

considerably lower: it was estimated that sale of the land on the open market would realise R8,9m and yield 142 units and 1,120m2 of retail space. To achieve the 214 units proposed in 2011 in the current market would effectively mean a land subsidy of about R630 000 per unit. Even if one supported a higher density option – say 425 units – given the high land value, it is unlikely that a land subsidy of less than R300 000 per unit would be achieved. This is substantially higher than the per unit value of the Restructuring Capital Grant offered by the Social Housing Regulatory Authority for social housing – and this is before construction costs. Given the extent of demand for affordable housing, is this a "best value" outcome of the land?

At the same time, in the case of Tafelberg, the Province is likely to have an obligation to the buyer, who entered into and won the bid in good faith. Overturning the transaction creates other messages and risks: the buyer will likely seek damages, and possibly be less enthusiastic about engaging with the state in future transactions. By not being clear about the basis on which decisions regarding the sale of state land are made, the state has unwittingly left all future land sales open to dispute. This will quite significantly reduce private sector interest in working with the state – just when such partnerships are so clearly needed. The potential value of the state's land assets, and the ability of the state to achieve the desired outcomes whether financial, social, or both, is thus diminished.

And then there is the very real potential that the 2011 social housing proposal sought to achieve, and which is critical to the transformation and democratic growth of our society: the opportunity to redress spatial dysfunctionalities and serve the needs of all citizens, to leverage the private sector, to shift the properties in question to a best use option, to create jobs and opportunities for empowerment, and a place for socially mixed communities, to improve livelihoods and afford lower income residents better access to jobs and facilities, and so on.[3] The opportunity of the Tafelberg site to realise these objectives is significant and cannot – according to our laws and our principles – be dismissed lightly in favour of a financial return.

Clearly this is complex – there are so many issues to consider. And the legislation notwithstanding, we seem to miss a strategic policy framework – whether from national, provincial or local level – to deal effectively with this issue in a way that is acceptable to all parties.

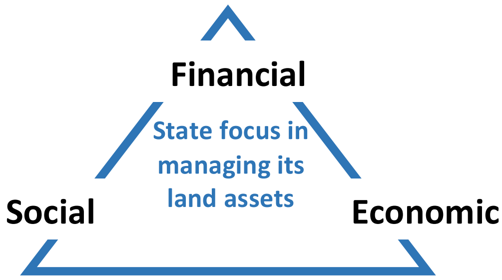
A strategic policy framework for managing state land assets

A strategic policy framework for managing state land assets allows for a comprehensive overall understanding of the value, economically and functionally, of all public real estate assets. A framework also allows for the uniform application of generally accepted accounting principles, improving transparency and connection to other municipal systems and frameworks, such as IDPs, SDFs, BEPPs etc. In this, the framework should consider the three components of land asset value together: the financial value, social value and economic value – in relation to the full property portfolio that the State holds, rather than a single piece of land in isolation. It may be the case that some land parcels are best suited for the maximization of financial value, whereas others offer opportunities to realise social benefits, or to stimulate economic growth. By considering the full portfolio of land assets, the state can better balance the costs and benefits of specific land use choices within the constraints of its available resources. The cost of not managing public real estate

[3] Presentation: Western Cape Public Land & Cape Town Inner City Regeneration: A Feasibility Report, November 2011. Presented by Michael Lagus and Jac Snyman

strategically in this way, is the wasted opportunity of not realizing the multiple and and diverse benefits that land can have. And this too, has financial, social and economic cost implications, all of which must be considered.

*To maximize **financial returns and revenue, improve efficiency** in respect of property owned and/or occupied by the State.*



*To maximize the **social benefit** of property in that this is a State asset to be used for the public good.*

*To maximize the **economic development opportunities** that the property offers – how can the land be used to stimulate economic growth.*

While South Africa's regulatory framework allows for such a view, the human settlements policy framework provides insufficient practical guidance on how this might be achieved. This is an important area for attention, not unique to this country. In a (very old) review of public sector property management approaches by municipalities world-wide, the World Bank (Kaganova et al, 1999) identified the following problems as common to how governments manage their land assets:

- Few governments think of their holdings as a "portfolio" whose composition might be modified to better serve public purposes.
- Few cities undertake a comprehensive strategic asset management of all their real property
- Municipalities are inefficient in using surplus property for generating revenue for municipal budgets
- Local governments often lack financial and human resources for the initial development of an asset management system
- In many countries, a legal and institutional framework for development of local public asset management is insufficient
- Public real estate is one of the most under-utilised local resources. Under-investment in maintenance and repair of municipal property is common.
- The analytical techniques, accounting tools and practical approaches of asset management developed in the private sector are generally applicable to most publicly owned real property

Both international and local experience suggests that the cost of not managing public real estate strategically is overspending, lost income and poor service delivery. Ultimately, realising the financial value of land without engaging strategically with its social and economic opportunities is a wasted opportunity that itself has real costs, as the asset is not being used to its full effectiveness.

Years ago, the Johannesburg Property Company went through an exercise where it evaluated each of its land assets and scored these in terms of best use – for sale (i.e. high value, unstrategic land where the proceeds from the sale could supplement an investment budget for JPC's developmental goals), for lease (i.e. high value and strategic land that JPC didn't want to dispose of but which it could still use to realise a revenue that might cross subsidise other developmental goals), for development (i.e. land that directly contributed towards JPC's developmental goals), etc.[4] With this framework, JPC was able to be strategic about how it used, managed, or disposed of its land assets. It was not simply a search for the highest bidder – unless of course, that was the primary objective determined for the particular land parcel.

What this means is that the state must shift its approach to property as falling within a public works service function to one that views state property as falling within an asset management function. By viewing property as an asset that must be managed, the strategic role that it can play in achieving the broader objectives of social transformation and economic development can be identified and amplified.

Tools to understand "best use"

A few years ago, Urban Landmark grappled with this issue, in cooperation with the Western Cape Province. Their work led to the development of a land use assessment framework, and is available on http://www.urbanlandmark.org.za/research/x54.php From the overview "*The assessment framework consists of three components made up of a preliminary assessment framework and a qualitative and quantitative framework. The preliminary assessment framework can be used to quickly assess the suitability of a particular residential land use on a specific site. The qualitative framework can be used to identify and rank the importance of those costs and benefits resulting from a particular residential land use that cannot easily be quantified. The quantitative framework is an excel-based financial model which undertakes a cost/benefit analysis from the perspectives of the state, developer and resident households. The overarching framework was developed and first tested in two case study areas in the Western Cape.*"

Presumably, the tools developed, which are available on the Urban Landmark website as noted above, could be modified to respond to the current contexts and developmental objectives of the players.

Another tool available is Citymark, a web-based dynamic dashboard that uses Deeds Registry, census and other data to build local housing market intelligence for use by the public and the private sectors in making local housing investment decisions. CAHF is currently working with the City of Cape Town to build a city-focused dashboard that highlights affordable housing investment opportunities throughout the City. We would be very happy to work with the Province in exploring the particularities of the Tafelberg and other sites and how these might resonate with a social housing objective.

A key benefit of a tool approach is that all stakeholders – the province, the City, local residents, the bidders, and advocates of social housing – can all debate the issues off of a common platform and with the same data, so that decisions, whether made in preference of financial or social value, or indeed both, are transparent in terms of tradeoffs and costs, social and other. The point is that the financial value of the land matters, and offers the

[4] Johannesburg Property Company, March 2003: Strategic Review – Final Report

State substantial benefits for value capture and cross subsidisation, as well as for socio-economic integration. Without a mechanism to properly calculate this, all players loose the opportunity to maximise the developmental opportunities this value creates. This approach would enable stakeholders to ask a series of questions to guide their ultimate decision, while also highlighting other issues that require attention.

Framing a way forward for Tafelberg

Towards the broader development objectives against which the Province is being challenges – specifically, to use the site for social housing – is the Tafelberg land best used for its financial value, or for its integration value? Or, put otherwise, would it be better to (a) sell the Tafelberg property for a profit and use these profits to subsidise the purchase of other land, with different value dynamics, that might also realise the housing target goals; or (b) forgo these profits to enable the target market to access housing on this land – and given this, what would the land subsidy (the opportunity cost of not realizing the sale) actually be, and can the state afford this?

If the answer is (a) then the Province should have a policy framework in place for the collection, allocation and distribution of funds raised from the strategic sale of state land assets. If the answer is (b), one would presumably not make the land available for ownership – neither to the individual nor to the social housing institution – as this would be an inequitable allocation of the state's limited resources to a lucky few. At a projected yield of 214 units, the Tafelberg opportunity will not address the city's housing backlog, and it is unlikely the city has sufficient resources, land or otherwise, to repeat the benefit for all in need. So, in this case, an approach towards managing leasehold would need to be explored; as would the feasibility of funding the operational costs of the social housing on an ongoing basis – whether from State or household resources.

Or, is there a (c) - a win-win situation which achieves socio-economic integration within Sea Point, drawing on the financial value of the land to create a cross-subsidisation opportunity that makes accommodation accessible for lower income earners? Some social housing could be included on the site itself – cross subsidised by the revenue realised from the sale. Rates payments realised from high value properties – and indeed, the whole of Sea Point – could then be used to cross-subsidise the operational costs of managing the social housing. Taking a step further, one could adopt a portfolio approach beyond the Tafelberg site. There are existing, under-utilised sites in Sea Point, or even more broadly in high value Cape Town, that have fallen into neglect: are there development opportunities here? Could the opportunity for offering social housing in the wider Sea Point area be explored, to maximise the yields on all fronts: housing delivered, socio-economic integration achieved, financial benefit realised. It is not clear if the Province's tender documents required the exploration of such opportunities.

A best-use approach like this could change the dynamics of land development on high value land considerably. Rather than getting stuck in a simple fight between the relative value of financial and social objectives, it could support the realisation of both by gearing land values to mobilise the resources of the private sector in support the State's development objectives. This would change the land development game considerably, and could also posit the Tafelberg site as a best practice example – a true public-private partnership initiative that realises the full opportunities of a land asset for all parties concerned.

Conclusion

The Tafelberg sites offers a tremendous opportunity to demonstrate and further the potential for real integration and development in our cities, with the public and the private sectors working together to achieve outcomes that serve all parties' interests and realise all elements of land value held by the State. However, in order to realise this, clear work needs to be done:

- Guidelines on the use of state land for social and affordable housing, and how this might be sustainably achieved given the competing demands on land and the costs involved, must be developed. There are so many options that could be considered in this regard – the experience of social housing in this country, and of Community Land Trusts, cooperative and social housing in other countries, all offer insights into the land use management challenges that the Province is currently facing, and how these might be overcome in the developmental interests of the State. Critically, in order for the private sector to participate, there must be clarity on the rules, and certainty in their implementation.

- Government capacity to measure and engage creatively with the value of their land assets must be strengthened to support the breadth of "best use" objectives envisioned in the legislation.

- And, in terms of Tafelberg in particular, the Province should explore the potential of realizing its social housing objectives in partnership with the buyers of the land.

There is a wealth of international and local experience to support a renewed approach that engages creatively and pragmatically with the opportunities and challenges that land parcels such as the Tafelberg site offer. It would seem that in the current case, this experience was not drawn upon and we are in the unfortunate position where a dispute has had to be lodged in order to call the State to attend to the breadth of its responsibilities when dealing with its land assets. This has placed the private sector in a defensive position, and undermined the potential for collaboration that the very nature of the land and its value demands. Of course, all of this is magnified in our particular context where the claims by different parties reflect our painful apartheid history. There is a very real potential to use state land to create an integrated, non-racial society – and Tafelberg offers an excellent opportunity for a test case towards this vision.