

# THE LAND USE PLANNING ORDINANCE, 1985

## Facilitator of public participation in the planning process?\*

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*Tot op hede het publieke deelname min aandag geniet in Suid-Afrika as 'n potensieel positiewe en opbouwende instrument in die beplanningsproses. Daar was eerder 'n neiging by owerhede om deelname te onderdruk en te beperk tot die nakoming van die minimum wetlike vereistes soos neergelê in die onderskeie provinsiale ordonnansies rakende stadsbeplanning en dorpsstigting. Hierdie ietwat negatiewe benadering het grootliks bygedra tot die algemene publiek se skeptisisme aangaande beplanningsvoorstelle in die besonder, maar ook teenoor die beplanningsprofessie in die algemeen. Die groeiende tendens van drukgroepe teen beplanningsvoorstelle is 'n verdere manifestasie van 'Jan Publiek' se ontevredenheid met die huidige toedrag van sake.*

*Met die inwerkingtreding in Kaapland van die Ordonnansie op Grondgebruikbeplanning, 1985, is 'n nuwe beplanningsstelsel daargestel. Veral struktuurbeplanning bied 'n geleentheid om die algemene publiek op 'n positiewe wyse in die beplanningsproses te betrek. Dit blyk dat, ten spyte van die feit dat die Administrateur en die tweedevlak-regering steeds 'n redelike mate van beheer sal uitoefen oor fisiese beplanningsaangeleenthede, dit die verantwoordelikheid en reg van plaaslike owerhede is om die inisiatief te neem om publieke deelname aan beplanningsaangeleenthede te bevorder.*

*Hierdie artikel bespreek kortliks die redes hoekom publieke deelname bevorder behoort te word, die impak wat deelname op beplanningsvoorstelle kan hê en die mate waartoe die Ordonnansie voorskriftelik is ten opsigte van publieke deelname aan beplanningsaangeleenthede. Dit word afgesluit met enkele praktiese voorstelle oor hoe publieke deelname op 'n positiewe wyse deel kan uitmaak van die beplanningsproses.*

### INTRODUCTION

*Public participation in the planning process is one of the means available to assist the planner in making realistic assumptions and proposals.* E W N Mallows

The last thirty years have seen a world-wide growth in the extent to which public participation has made an impact on urban planning matters and planning decision-making. The following factors have probably made the most significant contributions to this growing phenomenon: rising educational standards, improved communication media, rising living standards and growing disillusionment on the part of the urban poor of city managers' ability to organise the city to the benefit of all groups. However, public participation, as a positive and constructive instrument in the planning process, appears to have received very little attention to date in South Africa. One of the main reasons for this is the fact that there is very little in local legislation which requires any form of public participation other than providing for the opportunity to object to proposals. Other reasons suggested by Oosthuizen (1980:71) are:

'(a) the South African public, to

date, seem to have accepted planning and management proposals by their local or other authorities as 'inevitable' and beyond the influence of the man in the street;

(b) many planners and urban managers in South Africa are of the opinion that they know what is 'best' for the public and that to involve the public in the planning process is a waste of time and resources, because the general public do not in any event know what they want; and

(c) there is a real fear that the leakage of planning proposals can lead to land speculation, especially because of past experience.'

What is meant by public participation in the planning process? The Skeffington Report (1969:1) defines the concept as follows:

'Participation is the act of sharing in the formulation of policies and proposals. Clearly the giving of information by the local planning authority and of an opportunity to comment on the information is a major part in the process of participation, but it is not the whole story. Participation involves doing as well as talking and there will be participation only where the public are able to take an active part throughout the plan-making process.'

The Report (*loc cit*) draws a clear distinction between 'participation' and 'publicity'. It defines publicity as '... the making of information available to the public. Basically this information will be fact, argument and explanation. Publicity alone is not participation; but it is the first essential step towards it.'

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Participation therefore means that the people of a community need to be involved in the planning process right from the very start.

### WHY PUBLIC PARTICIPATION?

Generally speaking, the following are some of the reasons for engaging in a programme of public participation in urban planning:

- It increases the likelihood of the acceptance of the planning proposals by the public, since it was involved in the formulation of these proposals.
- It can raise the prospect of successfully implementing plans.
- Planning is made more responsive to community needs and desires.
- It helps planners and politicians to improve their understanding of the complex urban environment, and to know their abilities and limitations.
- It increases public understanding of planning matters and stimulates the formulation of alternative options.
- It can assist in identifying the various socio-economic and environmental needs and opinions within a community.
- The community is educated with respect to planning matters, which can stimulate 'self-planning' at the local level.

Urban planning essentially tries to provide a framework within which people can live happy and useful lives – i.e. an attempt to improve the 'quality of life' of all the inhabitants of the city or region. 'Quality of life' is a multifaceted concept encompassing the economic, social, environmental and physical dimensions of the city. How can you improve peoples' quality of life if you do not know their expectations of their environments, nor how they perceive or experience urban problems? How can you hope to prepare issue-related plans and action programmes if these plans do not solve the real problems of the community? One of the reasons for the growth in protest groups as a worldwide phenomenon is the knowledge that vested interests in land and pro-

perty speculation have created 'urban deserts' (Ginsburg 1973:19).

Statements such as: 'Councillors make policy and officials carry it out' are an over-simplification of a very complex process. Much of planning activity has to do with the distribution of scarce urban resources and facilities – be they houses, open space or whatever. In this context, planning is involved in a power struggle; this power has not just to do with the zoning of land, it also has to do with the fact that certain land uses and activities enhance or constrain people's quality of life.

Whatever form public participation takes, for it to be effective and constructive, it should be 'informed; relevant; and objective in the sense that it should be issue-related and not personality-related.' (Cowen 1980:13-14).

### THE PLANNING PROCESS AND PUBLIC PARTICIPATION

The last few decades have seen a movement away from the viewpoint that planning is simply a physical exercise to do with the preparation of plans and other documentation, to the viewpoint that the planning process is a cyclical, continuative process, comprised of a number of steps. McLoughlin (1969:95) sees the planning process as comprising the following steps: scan the environment; formulate goals; examine possible courses of action; evaluate these courses; select the preferred course; implement proposals; and commence new cycle.

Meaningful public participation requires the public to be drawn actively into the planning process during at least two critical stages: during problem formulation or issue identification (scanning the environment) and during the evaluation of the draft proposals. It is often argued that the planning process is drawn out by the adoption of a time-consuming programme of public participation. However, this argument loses credibility if a well-designed programme of activity is employed. Adherence to a schedule of consultation throughout the participation programme prevents excessive time delays, since it takes the public through the critical steps of the study

with the planners and thereby avoids embittered confrontation at the end.

Notwithstanding the moral, political and democratic arguments in favour of public participation in the planning process, it may nevertheless be possible to argue against it on economic grounds. Although the introduction of a programme of public participation into the planning process increases the time, effort and financial costs of any study, these increases could result in complementary savings at other stages. These savings would have to be balanced against the cost of the participatory process (printing, staff salaries etc.) in order to obtain the net economic benefit. Moreover, the costs that can be generated as a result of public dissatisfaction with proposals that are imposed by planning authorities without consideration of the community's views, can be enormous. This, in itself, is a compelling argument for public participation.

### THE IMPACT OF PUBLIC PARTICIPATION ON PLANNING PROPOSALS

There is a plethora of written material on public participation in the land use planning systems of the USA and Great Britain. Witness to this is Barker's classified bibliography *Public Participation in Britain*, published in 1979, which contains some 1350 separate items. Most research has, however, concentrated on the question of 'how' you do participation and ignored the more germane questions of 'why' and 'what impact' participation has had on planning proposals (Gutch W Thornley, 1980:50).

In the case of the Derbyshire County Structure Plan the actual impact of public participation on the final planning proposals was empirically researched and documented (Alterman et al. 1984; Harris 1979:29-35). The public involvement programme in the Derbyshire planning process was arranged in three stages (Harris 1979:29):

- The initial stage – to publicise the commencement of work on the structure plan and to invite comments on problems and issues.
- The alternatives stage – to publicise and invite comments on alter-

native options for the future development of the County.

- The draft plan stage – to publicise and invite comments on the draft structure plan.

No objective documentation of the impact that the participatory programme had on the first two stages is available. However, a total of 2134 comments on the draft structure plan was received.

Only 3% of the responses brought about substantive change to the plan, while 76% of the comments effected no change. Many comments were, nevertheless, of a supportive nature, endorsing a particular policy in the plan (Alterman et al. 1984:187).

Four groups of participants were identified: elected representatives, public servants, external agencies/consultants and the public. Of all the participants making a comment which produced a substantive change in policy, the 'public servants' were the most effective – this is not surprising, according to Alterman et al. (1984:180), since the general nature of the responsibilities of public servants require them to be involved in the planning process. Harris (1979:73) draws one general conclusion about public participation in the structure planning process – individuals display both an inability and reluctance to get involved in formulating plans for broad, strategic issues.

A review of overseas case studies does, however, point to the fact that the lay public tends to be more concerned about planning problems of a short-term nature at the local, neighbourhood level. It seems unlikely that many people will be interested in the full range of planning issues and policies. In fact, in the USA public participation in local planning matters '...is not simply a way of winning popular consent for controversial programmes. It is part and parcel of a more fundamental reorganisation of American local politics' (Wilson 1973:421).

## LOCAL PLANNING LEGISLATION

Traditionally, town planning ordinances in South Africa have legislated for public participation primarily in

relation to three matters, namely the preparation of town planning schemes, town planning scheme amendments and township establishment. These provisions require local authorities to publish notices of the proposals in the Provincial Gazette and in the newspapers circulating in their area. Local authorities are usually also required to post and maintain a similar notice in a conspicuous position on their notice boards for the duration of the advertising period and, in some cases, such notices have to be posted and maintained on the property concerned.

On the assumption that the provisions for public participation in the respective ordinances have as their common intent the fostering of democracy and public participation in the planning decision-making process, the format that these notices inevitably take on in practice in South Africa cannot but be construed as an evasion of this intent. It very often happens that major land use planning decisions are advertised in official notices in the Provincial Gazette and small notices in the classified sections of the daily newspapers, neither of which are usually read by the average member of the public. The general public therefore very often only become aware of major developments once the contractors start preparing the construction site, by which time it is usually far too late to make any positive input to the concept or content of the development proposal.

The opportunity for public participation within the parameters set in the respective ordinances appear to be very limited. Generally, the public has a very limited opportunity, if at all, to participate in such activities as problem identification, the formulation of planning goals and objectives and the consideration of alternative planning strategies. Humphry (1978:31) states that this limited right to make objections to planning proposals is, in fact, of a negative nature. It does not provide for positive input and consequently does little to develop the individual's concern for the general public welfare. She is of the opinion that 'participation by objection' is one of many mechanisms that inadvertently weaken this concern.

However, it is pertinent to make note of the viewpoint of Mr W W B Havemann, a former Administrator of Natal, that the provisions in the respective ordinances to advertise planning proposals '... are *minimum* requirements and that there is nothing to prevent a local authority from widening the scope of publicity. The Administrator-in-Executive Committee is reluctant to take steps towards amending the (Natal) Ordinance to make it obligatory for planning authorities to publicise these matters more widely, believing that local authorities are responsible bodies with the welfare of their ratepayers at heart and anxious to take the public fully and freely into their confidence' (Havemann 1973:51).

It is evident, therefore, that there are no legal restrictions which prevent a local authority from striving for greater public participation in its urban planning affairs. In fact, the responsibility rests squarely on local authorities to become more aware of its advantages and to voluntarily provide for a greater measure of public participation in its planning decision-making.

## THE LAND USE PLANNING ORDINANCE

Section 4(4) of the Land Use Planning Ordinance (Ord 15 of 1985) provides that the Administrator may determine the manner in which local authorities should make it publicly known that a structure plan is being prepared and that representations can be made by inhabitants of the area concerned as well as the other interested parties. Furthermore, in terms of section. 4(5), a structure plan must, before it is submitted to the Administrator for approval, be made available for inspection and the lodging of objections or the making of representations by the inhabitants of the area concerned.

An anticipated benefit of structure plans is that they are capable of taking widely different social and economic characteristics into consideration during the formulation of policies which address these issues. Acknowledging the uniqueness of different areas and allowing local residents to see that they have been recognised, should enhance local pride and interest and

stimulate improved contact and interaction between the planners and those being planned for.

It is, nevertheless, disappointing to take note of the Cape Provincial Administration's (CPA's) perception of the role and extent to which allowance should be made for public participation in the structure planning process. In its document entitled *Handleiding vir Struktuurbeplanning* (1986:43) the CPA suggests that public representations or objections should only be called for once a draft plan has been prepared. The CPA does not see the public being drawn into the planning process at an earlier stage. This is considered to be a weakness, since the public will not be drawn into the vitally important aspects of identifying planning issues and problem definition. Although the CPA approach would appear to be based on the philosophy expressed by Havemann, namely that local authorities should provide voluntarily for greater participation, experience in practice seems to indicate that there is little likelihood of this actually happening. Experience has shown that local authorities are inclined only to comply with the minimum statutory requirements. Provincial Administrations should actively encourage a more positive approach by local authorities to involve the public from the early stages of the planning process.

However, also evident from the CPA's manual, is the fact that it sees structure planning occurring at three different levels: sub-regional, urban and local. Judging by overseas experience, briefly discussed above, it would appear that a programme for public participation in structure planning will more than likely tend to be successful only at the local level. As with guide plans, sub-regional and urban structure plans will address broad, strategic issues in which the general public appears to display both an inability and reluctance to get actively involved. Numerous case studies have shown that the lay public tend to identify more readily with planning issues at the local neighbourhood level.

The Land Use Planning Ordinance

has retained the basic principles of the Townships Ordinance (33/1934) with regard to public participation in matters such as applications for departures from zoning schemes (sect. 15(2)), for re-zonings (sect. 17(2)) and for sub-division (sect. 24(2)), in terms of such proposals having to be advertised for public comment and objection. However, an interesting and welcome innovation contained in Regulation 8 (Provincial Notice 333/1986) is the requirement that the town clerk must now advertise such applications before the matter is reported to and decided upon by the local authority. In this way the public will, hopefully, be less likely to be presented with *fait accompli* situations. Moreover, public opinion on an issue, which can be a major determinant in government decision-making, will now also be known before the local authority makes a decision on it. A further interesting provision in the Ordinance (definition of 'advertise') is that the serving of personal notices is prescribed in all cases and that the publication of notices in the Provincial Gazette and in the local press will be left to be decided upon the merits of each individual case.

In a way these innovations serve as an acknowledgement that the traditionally-used converse procedures are of little practical value and certainly come well short of bringing planning proposals to the timeous attention of the members of the public most directly affected. In cases where the general public would have an interest in the proposals, they should invariably be alerted simultaneously through the publication of notices in the press and be given the opportunity to comment.

However, neither the Ordinance nor the Regulations make provision for the public to have an opportunity of reviewing or commenting on an application once the local authority has approved it and prior to its submission to the Administrator. This is inconsistent with the principle applicable to structure plans, which has a two-stage procedure of alerting the public and subsequently giving it the opportunity of commenting on the draft proposals. The final scheme very often differs substantially from the original submission, albeit as a result of com-

ments from affected property owners or conditions imposed by the local authority. This shortcoming in the legislation may well lead to autocratic decision-making.

Clearly, the above-mentioned provisions in the new Land Use Planning Ordinance underline the fact that second-tier planning legislation in South Africa generally makes provision for public participation in a permissive, rather than prescriptive manner.

## ROLE OF LOCAL AUTHORITIES

From the foregoing discussion it is obvious that the Land Use Planning Ordinance, and in fact also the other three provinces' town planning ordinances, simply lay down broad parameters without unduly inhibiting local authorities. A move towards allowing for a greater measure of public participation in planning matters would therefore have to emanate from one of two possible sources. Firstly, local authorities must become more aware of its advantages and voluntarily provide for greater participation. The various Provincial ordinances prescribe minimum requirements for public participation and advertising and there are no legal restrictions which prevent a local authority from widening the scope of the participatory process. Secondly, with the introduction of legislation concerning structure plans, a new planning instrument has been created that will hopefully be used by local authorities to enhance local community pride and interest and to stimulate greater contact and interaction between the planners and those being planned for. Even the most modest of policies, if developed in conjunction with the inhabitants of the area concerned, could be a practical way of increasing public involvement in the planning affairs and decision-making of the city or town.

It has been pointed out that participatory programmes can occur at two distinctly different levels: broad, strategic planning and local, neighbourhood planning. The approach and emphasis in each case will be different. The composition of the 'public' will vary according to the particular project under consideration. Experience both locally and overseas

has indicated that the 'public' in the case of strategic planning (guide plans, sub-regional and urban structure plans) will tend to be comprised of the so-called 'urban elite', namely organised commerce and industry, professional bodies and civic leaders. In the case of local, neighbourhood planning the 'public' will more than likely be comprised of church and school organisations, ratepayers' and civic associations and 'the man on the street'.

How can public participation be set up in the case where a structure plan is being prepared for an area which is rural and relatively undeveloped such as, for example, in the case of Mitchells Plain or the Lower Kuils River Valley (Blue Downs) area? The most logical way would appear to be for a multi-disciplinary team of professionals to undertake the broad, overall planning and then to allow for public participation in the same way as was done in the case of the Mitchells Plain project.

From the outset, the planning of Mitchells Plain was viewed from a human level, the smallest detail being of importance. An innovative and useful device was used to check responses to the design of new house types. Completely furnished, full-sized models or 'mock-ups' of selected house types were constructed, where one could check everything from the swing of a door to the height of a wall switch. Over a period of five months, some 500 families were invited to view and comment on these prototypes. These consultations took place over weekends, to enable family groups to become involved. The opinions expressed by the prospective homeowners assisted in modifying some designs and justified proceeding with others. This enabled the multi-disciplinary planning team to establish direct contact with their ultimate clients and to foster their goodwill towards the project.

Mangaung in Bloemfontein is another interesting local case study, which has shown that communities can be drawn into the pre-design phase of urban layout planning if appropriate participation techniques are used (Hardie et al. 1986).

Based on the experience gained with the preparation of a structure plan for Alberton, Van der Merwe (Van Zyl 1986:77) identifies six pre-requisites for subjecting a draft plan to a public participation programme:

- 'Elke alternatief moet vooraf ondersoek gewees het.
- Dit vereis multi-dissiplinêre deelname sodat vrae en voorstelle van die publiek behoorlik beantwoord en geëvalueer word.
- Dit vereis dat elke moontlike regsimplikasie ondersoek moet word.
- Die plan moet geloofwaardigheid hê.
- Dit moet prioriteite uitspel.
- Dit moet die finansiële implikasies uitspel.'

### CONCLUSIONS

It must be accepted that structure planning activities lend themselves to becoming highly politicised. Masters (1973:462) states that:

'... policies are influenced by the complex interaction between the various groups in society, and a lot depends on how effectively various groups can articulate and make their views felt to the policy makers. It is then open to the politicians working within various constraints (e.g. Central Government, political dogma and finance) to produce 'politically' acceptable plans.'

In conclusion, it can be stated that the process of building up public interest in planning projects, as a forerunner to meaningful participation by the public in these projects, essentially requires an educational effort on the part of the planning authority. To be helpful the educational effort should make clear to the public the limitations or choices imposed on planning by available resources and the time required and cost involved in implementing planning policies and programmes. People must be aware that the methods and extent of urban planning are rooted in such fundamental products of the democratic process as existing equities (or inequities), acceptable powers of control and the respective roles of government and private enterprise.

Furthermore, it should also not be forgotten that South Africa does not have a tradition of participatory planning – in fact, the non-White communities do not have a tradition of influencing local government decision-making, whilst they enjoy limited representation on local government bodies. Under these circumstances, and bearing in mind that particularly in the metropolitan areas planning resources and capital expenditure will increasingly have to be directed at these communities, the challenge of fostering public participation in order to maintain the credibility of the planning process becomes daunting.

Significantly, in an era of constitutional reform in South Africa, local authorities are charged with the responsibility to develop ways and means of involving the public in land use planning decision-making to a far greater extent than has been the case in the past.

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