BENCHMARKING CASE STUDIES ON PUBLIC PARTICIPATION IN SPATIAL PLANNING PROCESSES IN FOUR COUNTRIES:

AUSTRALIA, CHILE, SOUTH AFRICA AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

URBAN GOVERNANCE CASE STUDIES | VOLUME 2

UN-HABITAT
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Benchmarking case studies on public participation in spatial planning processes in four countries: Australia, Chile, South Africa and the United Kingdom of Great Britain and Northern Ireland

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Land readjustment is made participatory when the community is included. © UN-Habitat

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Cerro San Cristóbal from Balta Bridge, Lima_2021_10_23 by Valentina Rioja/UK Herald

INTRODUCTION

Since late 2021, UN-Habitat and the Sultanate of Oman, through its Ministry of Housing and Urban Planning, have been collaborating on the project "Strengthening the Urban Planning Legal and Institutional Frameworks in the Sultanate of Oman". The project will ensure that Oman takes advantage of urbanization opportunities to bring about social and economic transformation and enhances effective service delivery for sustainable urban development. This entails assessing the legal and institutional framework in Oman that is related to urban planning with a view to starting a discussion that will lead to proposals for urban law and governance reform. Specifically, the project will propose a green paper for developing a new and functional Spatial Planning Act and strengthen the country's institutional framework and capacity to facilitate sustainable urban development. Among the elements of the proposed reform is a participatory planning process to make urban development more inclusive, equitable, sustainable, active and meaningful. UN-Habitat's best practices support the drafting of plans using public participation mechanisms that facilitate negotiations between the State and its citizens around the management of the urban and rural environment. Ultimately, this dialogue serves to legitimize political decision-making at all levels of government.

This report showcases benchmarking case studies on public participation in four countries and includes a comparative analysis of best practices for meaningful public participation practices in spatial planning that are relevant and applicable to the Oman context. The selection of the country case studies is based on the principles of effective public participation derived from the Sustainable Development Goals and the New Urban Agenda, which contain both quantitative and qualitative selection criteria. These criteria aim to ensure that the study contains relevant and innovative practices on public participation and that the selected countries are comparable to Oman with respect to their social, economic and political contexts. In sum, these case studies will provide a spectrum of regulatory and governance models on public participation for the country's legal and institutional reform agenda.

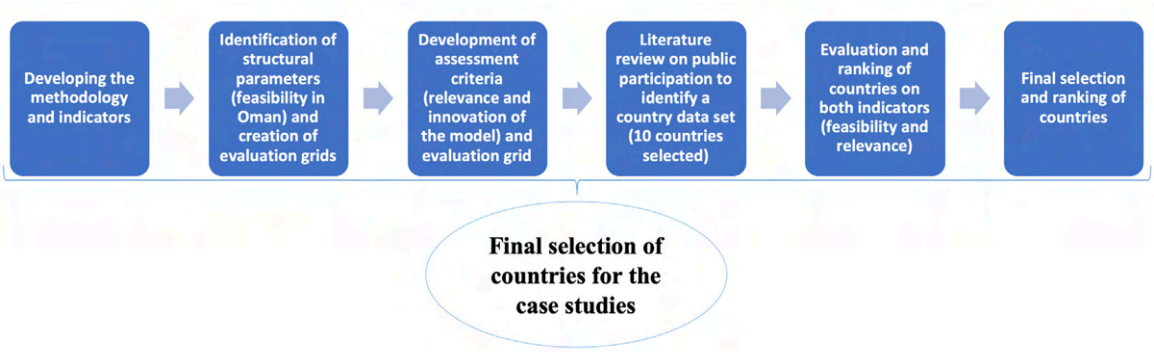
METHODOLOGY

For the comparative analysis to produce meaningful results, the scope of selected case studies must be limited since certain legal systems or social contexts may simply be incommensurable with those in Oman. Thus, to identify public participation models that are relevant, successful and comparable to the Omani context, a methodology to select the countries was developed. This methodology contained indicators, parameters and variables for assessment.

First, to ensure comparability with the context in Oman, a set of structural parameters was developed focusing on the social, institutional and economic aspects of each country. Qualitative criteria were prepared to assess the countries in terms of relevance, i.e., which countries had the most innovative and effective governance practices on public participation in spatial planning. A thorough literature review was carried out to identify relevant and successful country examples in the field of public participation. This review identified ten countries with promising public participation models in spatial planning. These countries formed the dataset for country selection and were the

following: Australia, Brazil, Canada, Chile, India, Italy, Netherlands, Philippines, South Africa, and the United Kingdom of Great Britain and Northern Ireland.

Figure 1: Illustration of the country selection process. Source: Author.



The final selection was made considering a weighting of the score achieved in each of the indicators identified in the methodology:

- Feasibility and comparability with the context of Oman
- Relevance and innovative public participation mechanisms
- Regional diversity

The following countries made the final selection as they scored the highest: United Kingdom, Chile, Australia, and South Africa (listed from the highest to the lowest score).

1. INDICATORS FOR COUNTRY SELECTION

The selection of countries for the case studies was based on a weighting of the following indicators:

A. Feasibility and structural similarities with Oman: This indicator ensured that the countries selected were comparable to the institutional and socioeconomic context of Oman.

B. Thematic relevance (public participation): This indicator guaranteed that the selected countries had innovative and best practices in public participation.

C. Regional diversity: This indicator aimed to achieve regional diversity and balance in the country selection. The first two indicators had more weighting than the regional diversity indicator. However, based on the results from the two indicators above, the highest scoring countries from each region were allocated an additional point to ensure regional diversity in the final selection.

Table 1 summarizes what each indicator contains while table 2 shows the evaluation grids for each indicator. The minimum requirement for the selection of a country is an overall score of 5/10 and a minimum of 50 per cent in indicators A and B. This result could be interpreted as a viable and relevant case study for Oman.

Table 1: Summary of indicators

Indicators	Parameters	Type of assessment	Weighting
A. Feasibility and structural similarity	Institutional framework Socioeconomic variables	Qualitative Qualitative and quantitative	4
B. Thematic relevance	Innovative and good public participation approaches from legislation and practice	Qualitative	5
C. Regional diversity	Geographical region	Qualitative	1

Table 2: Evaluation grids for the indicators

Indicators	Parameters
Feasibility and structural similarity to Oman	
The current context of Oman (as at 2020-2021) is: **I.Institutional framework** a.Form of State: unitary State b.Centralization of planning mandates: highly centralized **II.Socioeconomic parameter variables:** a. Urban population: 87 per cent b. Urban population growth: 3.1 per cent c. GDP per capita (US$): 16,439.3 d. Literacy rate: 96 per cent e. Individuals using the Internet: 95 per cent f. Inequality-adjusted Human Development Index: 0.70 (high human development) g. Population aged between 0 and 14: 23 per cent	3-4/4 The country has an institutional and socioeconomic context similar to Oman and is a good comparator. 1.75-2.75/4 The country has an institutional and socioeconomic context that is moderately similar to Oman and can be comparable. 0-1.5/4 The country does not have enough elements to be comparable to Oman.

B. Thematic relevance	
Effective public participation approaches in legislation and practice, from analysing the following substantive criteria: a) Mechanisms for public involvement and participation in planning decisions /4 b) Effective mechanisms (considering timelines, cost, etc.) to challenge planning decisions and resolve disputes /4 c) Existence of digital governance mechanisms and possibility to provide feedback (two-way communication) /4 d) Existence of effective oversight and accountability mechanisms/4 e) Participatory budgeting /4	4-5/5 The country has excellent examples or models of public participation in urban planning. 2.5-3.5/5 The country has several examples of good public participation. 0-2/5 The country does not have good models of public participation in urban planning in any of the five areas.
C. Regional diversity	
I. Oman geographic region*: Asia II. Oman geographic subregion*: Western Asia *According to the United Nations Statistics Division	1/ Based on the results from the first two indicators above, the highest scoring countries from each region is rewarded with an additional point to ensure regional diversity in the final selection.
Indicator	**Results**
A. Feasibility and structural similarity to Oman	/04
B. Thematic relevance	/05
C. Regional diversity	/01
Total	**/10**

2. STRUCTURAL PARAMETERS

Country	Form of State	Level of decentralization of planning mandates	Urban population (per cent of total pop., 2021)	Urban population growth (annual per cent in 2021	GDP per capita (current US$, 2021	Literacy rate (adult, per cent of people ages 15 and above, 2018-2019	Inequality-adjusted Human Development Index 2021 value	Individuals using the Internet (per cent of total pop., 2020)	Population aged between 0 and 14 (per cent of total population, 2021)	Geographic region
Oman	Unitary State	Mostly national; some functions at subnational	87	3.1	16 439.3	96	0.70	95	23	Asia – Western Asia
Australia	Federal State	3 tiers involved, but mostly State/ regional level	86	0.3	59 934.1	-	0.88	90	19	Oceania
India	Federal State	Mostly State/regional and local level	35	2.3	2 277.4	74	0.48	43	26	Asia – southern Asia
Brazil	Federal State	Local level - highly decentralized	87	1.0	7 518.8	93	0.58	81	20	Latin America and Caribbean – South America
South Africa	Unitary State	3 tiers	68	2.0	6 994.2	95	0.47	70	29	Sub-Saharan Africa – Southern Africa
Philippines	Unitary State	All tiers	48	1.9	3 548.8	96	0.67	50	30	Asia - south-eastern Asia
United Kingdom	Unitary State	(England)Decentralized with strong control by national Government on subnational plans	84	0.7	47 334.4	-	0.85	95	18	Europe – Northern Europe
Canada	Federal State	State/regional level (provinces and territories) and local level Decentralized	82	0.7	52 051.4	-	0.86	97	16	Northern America
Netherlands	Unitary State	3 tiers Control by national and regional governments over local.	93	0.9	58 061.0	-	0.88	91	16	Europe – Western Europe
Italy	Unitary State	All 4 tiers	71	-0.2	35 551.3	99	0.79	70	13	Europe – Southern Europe
Chile	Unitary State	3 tiers, the national Government participates in the formulation of lower-level plans	88	0.60	16 502.84	96	0.72	88.3	19	Latin America and Caribbean (LAC) – South America

3. EVALUATION OF STRUCTURAL PARAMETERS FOR "FEASIBILITY"

Country	Form of State	Level of decentralization of planning mandates	GDP per capita (current US$, 2021) +/- 30 = 1 +/- 50 = 0.5 > +/- 50 = 0	Urban population (per cent of total pop., 2021) 80-100 =2 65-80 =1 < 65 = 0)	Urban population growth (annual per cent in 2021) 2-4 = 2 1-1.9 = 1 < 0.9 = 0	Inequality-adjusted Human Development Index 2021 value +/- 0.10 = 1 +/- 0.15 = 0.5 > +/- 0.15 = 0	Population aged 0-14 (per cent of total population, 2021) +/- 5 = 1 +/-7 = 0.5 +/- 10 = 0	Literacy rate (adult, per cent of people aged 15 and above, 2018-2019) > 90 = 1 < 90 = 0	Individuals using the Internet (per cent of total pop., 2020) > 90 = 2 > 80 = 1 < 80 = 0	Score
Oman	Unitary State	Highly centralized	16,439.3	87	3.1	0.70	23	96	95	//
Chile	1	0.5	1	2	0	1	1	1	1	2.83
United Kingdom	1	0.5	0	2	0	0.5	1	1	2	2.67
Netherlands	1	0.5	0	2	0	0	0.5	1	2	2.33
Australia	0	0.5	0	2	0	0	1	1	2	2.17
Brazil	0	0	0	2	1	0.5	1	1	1	2.17
South Africa	1	0.5	0	1	2	0	0.5	1	0	2
Canada	0	0	0	2	0	0	0.5	1	2	1.83
Philippines	1	0.5	0	0	1	1	0.5	1	0	1.67
Italy	1	0.5	0	1	0	1	0	1	0	1.50
India	0	0.5	0	0	2	0	1	0	0	1.17

4. EVALUATION GRID FOR THE ASSESSMENT CRITERIA OF THE RELEVANCE INDICATOR

	0	1	2	3	4
Public participation and involvement	Citizens are not involved in urban planning processes. Information on urban planning is not publicly available and citizens are completely excluded from decision-making.	Some rules on public participation in urban planning decision-making exist but they are not transparent and can be easily manipulated.	- Public participation in urban planning is clearly established in law / regulations, although not in all stages of planning (e.g., usually, the public have a role in the post-design phase but do not participate in the initiation, preparation or design of the plan). - Mechanisms, timeframes and modalities for this participation to take place are not clear, not established or one of these components is entirely missing. - Priority groups are not taken into consideration (i.e., women, young people, Indigenous People, people with disabilities, etc.). - There is a right to access information, but in practice not all information is available or shareable.	- Public participation in urban planning is clearly established and there are mechanisms in place that effectively allow the public to participate. - Mechanisms, timeframes and modalities are all clearly defined although the public has a role in some stages of the planning but not in all stages. - Priority groups can be taken into consideration. - There could be forms of public-private partnerships or other partnerships for service delivery among State and non-State actors. - There could also be forms of civic education. - Citizens have a right to access information which is publicly available and transparent.	- Non-State actors are effectively involved in urban planning: they are required to engage and consult at all stages, meaning a) preparation and design; b) post-design (i.e., once plan is complete); c) implementation; d) monitoring/evaluation; e) post-implementation. - Mechanisms, timeframes and modalities for this participation to take place are all clearly established (these could range from town halls, public charrettes, questionnaires and interviews). - Participation is effective because the public is well informed: citizens have the right to access information and the process is easy, timely and cost-effective. - Public information is transparent and publicly available in several ways (including digital platforms, but also gazette notices, noticeboards in the city office). - Participation is effective because it is informed in the sense that citizens receive training/civic education from the Government. - There are specific mechanisms in place to allow for participation of priority groups. - There are mechanisms for non-State actors to be involved/partner with State actors in delivering urban services and implementing projects (e.g., public-private partnerships; service delivery partnerships).
Procedures to challenge urban planning decisions	There is no way to challenge urban planning decisions or there are complex and non-transparent processes that can be easily manipulated, leaving decisions at the discretion of public officials.	Challenging urban planning decisions is possible and procedures are partially defined. However, there is a fair amount of discretion in practice that could be given to lack of clear procedures or indication of responsible institutions.	- Challenging urban planning decisions is possible and procedures are clearly defined. However: - Timeframes are not clearly established, so there is discretion on the length of the procedure; the applicant has uncertainty on the deadline to solve the case. Or: - Costs are not clearly established or are prohibitive, or there are important limitations on the possibility to appeal a decision (e.g., see the case of India).	- Challenging urban planning decisions is possible and procedures are clearly defined. - Special bodies are created and they are clearly in charge of determining the case/appeal. - Timeframe, costs and modalities are clearly established. In particular, timeframes to decide the case are provided in the law or communicated at the beginning of the procedure. - However, the stipulated timeframe to decide an appeal are lengthy (more than 6 months) and/or costs are not accessible to everyone.	- The planning system allows urban planning decisions to be challenged: procedures are clearly defined, transparent and the decisions are evidence-based and not discretionary. - Special bodies in charge of determining the case/appeal are clearly established, as well as timeframes and modalities. - Timeframes are short to allow the applicant to have a quick resolution of the case and certainty of his/her rights. - Costs are accessible or there are support schemes for the poorest people.

Feedback mechanisms and digital governance	There are no mechanisms for the public to provide feedback on government's performance and quality of urban services.	Feedback processes exist; however they are complicated and costly (mostly in person - difficult to reach the office in charge from remote zones).	The public can provide feedback on the government's performance and about the quality of urban services provided through digital platforms. There is no requirement for the government to take this feedback into consideration, nor to provide a response on the feedback. Internet access is not equally spread among the country, and this gap is not addressed.	The public can provide feedback on government performance and about the quality of urban services provided through digital platforms. The government needs to consider the feedback received, although there is no provision requiring a reply from the government to the person who gave the feedback. Internet access is not equally spread among the country and mechanisms in place do not allow to bridge the service gap.	- The public can provide feedback on government performance and the quality of urban services, through various mechanisms, including digital platforms. - The feedback must be taken into consideration and there is a specific requirement for the Government to reply to the feedback provided. A specific timeframe to provide a reply may be foreseen. - Where Internet access is poor, there are alternative mechanisms to collect feedback in traditional ways or the provision of support from the Government in enhancing access to the Internet.
Oversight and accountability	There are no mechanisms to hold public officials accountable: decisions and actions are left at their discretion.	Some rules on conduct of public officials exist but in practice they can be manipulated, so it is difficult to hold officials accountable.	There are rules on conduct of public officials, but no action through which citizens or civil organizations can control the conformity of conducts of public officials with those rules. Or there are no provisions on consequences if the rules are not respected.	- Rules on conduct of public officials are clearly established and transparent, a code of ethics/conduct is in place. - The legal framework includes an effective anti-corruption law. - There is room for citizen-led and civil society activities and actions to hold public officials and their service providers accountable in undertaking their urban duties.	- Rules on conduct of public officials are clearly established and transparent, a code of ethics/conduct is in place. - The legal framework includes an effective anti-corruption law. - Citizen and/or civil society not only have actions at their disposal to hold public officials and their service providers to account in undertaking their urban duties, including whistleblowing on wrong-doing and corruption, as necessary. - They may also have the possibility to create bodies, like "special committees" or other kind of agencies, used to hold public officials accountable. - They may also have mechanisms to protect citizens and reprisals who report improper conduct and corruption from reprisals.
Participatory budgeting (PB)	There are no mechanisms for citizens to be involved in the process of deciding and monitoring how public money is spent.	Some rules on public monitoring of public expenditures in urban planning exist but they can be neglected. In practice, public officials have full discretion on how public money is spent.	Citizens have a role in monitoring budgetary allocations and how public money is spent (e.g., through digital platforms that provide information on expenditures, etc.), but they do not actually participate in the budget formulation and allocation.	Citizens have a role in budget allocations but not through traditional participatory budgeting models: for example, they do not vote directly, only a mini-public can deliberate (such as one composed of appointed representatives /panels), not a mass voting process. Or: There are also examples of traditional participatory budgeting models (where people vote directly), but this is not the usual practice (sporadic and exceptional examples).	Citizens are granted adequate opportunities in budget allocation, scrutiny and monitoring. Participatory budgeting is the norm in the country, and it is used in several cities. Deliberation is open to all citizens who can vote directly and is not restricted.

5. ASSESSMENT OF COUNTRIES ACCORDING TO "RELEVANCE"

Country	Public participation and involvement /4	Procedures to challenge urban planning decisions /4	Feedback mechanisms and digital governance /4	Oversight and accountability /4	Participatory budgeting/4	Score /20	Score /5
United Kingdom	4	4	4	4	2	18	4.5
Australia	4	4	3	4	3	18	4.5
South Africa	3	3	3	4	4	17	4.25
Canada	3	3	4	4	3	17	4.25
Italy	3	2	4	4	4	17	4.25
Chile	4	2	4	4	3	17	4.25
Netherlands	4	3	3	3	3	16	4
Brazil	4	2	3	2	4	15	3.75
Philippines	3	3	2	3	4	15	3.75
India	2	2	3	2	1	10	2.5

6. FINAL SELECTION OF COUNTRIES FOR THE CASE STUDIES

Country	Score for the structural parameters /4	Score for the assessment criteria /5	Final score /9	Score after regional diversity additional point /10
United Kingdom	2.67	4.5	7.17 (+1)	8.17
Chile	2.83	4.25	7.08 (+1)	8.08
Australia	2.17	4.5	6.67 (+1)	7.67
South Africa	2	4.25	6.25 (+1)	7.25
Canada	1.83	4.25	6.08 (+1)	7.08
Philippines	1.67	3.75	5.42 (+1)	6.42
Netherlands	2.33	4	6.33	6.33
Brazil	2.17	3.75	5.92	5.92
Italy	1.50	4.25	5.75	5.75
India	1.17	2.5	3.67	3.67

Ranking	Final selection after adding the extra point for regional diversity
1	United Kingdom
2	Chile
3	Australia
4	South Africa

COMPARATIVE ANALYSIS

As previously mentioned, Australia, Chile, South Africa and the United Kingdom (England) served as the best practice models for Oman on legal and governance frameworks for meaningful public participation in spatial planning.

Figure 2: Map showing the case study countries

This comparative analysis outlines similar approaches to legal frameworks among the countries analysed, some distinct features and best practices. Additionally, recommendations are made to better guide the application of the information in each section.

The aim is to identify a pattern for the successful reform of planning frameworks by introducing participatory planning processes to make urban development more inclusive, equitable, sustainable, active and meaningful, by taking note of the legislative and governance mechanisms that characterize such development.

To better appreciate the impact of the legislation and governance mechanisms identified for each category, the country-specific planning contexts are briefly outlined. Below are social, economic and planning characteristics of the four countries, which serve as a comparative base to assist any country to determine the applicability of the legislative and governance mechanisms for public participation.

Summary of country planning contexts

Australia

Australia is a federal State constitutionally composed of six States and two self-governing Territories. There are three levels of government: the national Government, usually called the federal Government, Commonwealth Government or Australian Government; the State/Territory Governments; and the local councils. Although each of the three tiers of government has a role in urban planning, the State/Territory Governments have most responsibility for urban and land-use planning and land management. Each State/Territory has its own planning system: the case study is intended to show the most relevant public participation models and best practices provided mainly by three of the States: New South Wales, Victoria and Western Australia.

Chile

Chile is a unitary State where urban planning operates at the three levels of government: national, regional and local. The national Government provides planning guidelines to the lower levels of government; the regional governments produce regional plans for urban development and the intermunicipal land-use plans, and approve the local land-use plans developed by local governments, who also participate in the drafting of the intermunicipal land-use plans.

South Africa

South Africa is a unitary State (although with some elements of a federal system), with three main spheres of government – national, provincial and local. All three spheres have spatial planning mandates, although most responsibilities reside at the local level of government that produces the integrated development plan, containing the municipal spatial development framework and a legally binding land-use scheme. The provincial government produces the provincial spatial development framework, while the national Government is responsible for issuing the spatial development plans, including the national spatial development framework, a long-term national spatial planning instrument. The national Government also defines national visions and binding development principles, norms and standards for land use and management, ensuring uniformity of spatial planning throughout the country. Henceforth, spatial planning can be considered to be decentralized in South Africa, but with firm control maintained by the national Government.

United Kingdom (England)

The United Kingdom is a unitary State formed by four constituent countries with asymmetrically devolved administrations. The case study focuses on only one of the countries: England. Spatial planning is administratively highly decentralized to local governments, although local development frameworks are scrutinized, and processes and procedures are heavily regulated by the national Government to ensure the conformity with national policies and priorities. Hence, there is significant central control and scrutiny over local plans. The regional level still exists only for the Greater London area, (the Greater London Authority maintains planning powers after the abolition of the regional scale in the country and produces the London Plan). The English planning system also includes neighbourhood planning, allowing English communities to adopt planning decisions at the lowest level possible.

1. Public participation and involvement in spatial planning

Mechanisms, modalities and timelines for public participation

Public participation refers to the interaction between government, citizens and other stakeholders.[1] It plays a crucial role in promoting democracy, the rule of law, social inclusion and economic development. Citizen empowerment is essential for the reduction of inequalities and social conflicts.[2] The 2030 Agenda on Sustainable Development and its 17 Sustainable Development Goals implemented a focus on decision-making with particular emphasis on the inclusion of vulnerable groups. Of relevance is Goal 16, target 16.7: "Ensure responsive, inclusive, participatory and representative decision-making at all levels".

"The Future We Want" – the outcome document of the United Nations Conference on Sustainable Development held in Rio de Janeiro in 2012, a conference also known as Rio+20 – is recognition that it is important that there are "opportunities for people to influence their lives and future, participate in decision-making and voice their concerns are fundamental for sustainable development" (p.14), as well as "the continued need for the full and effective participation of all countries, in particular developing countries, in global decision-making" (p.19). The document also underscores "commitments to ensure women's equal rights, access and opportunities for participation and leadership in the economy, society and political decision-making" (p.31).[3] Reference can also be made to the United Nations Convention on the Right to Development, which recognizes the importance of public participation in economic, political and cultural development (Article 1) and the obligation of States to promote participation as a relevant factor in all spheres of development (Article 8).[4]

The focus on inclusiveness through broad and meaningful participation of all stakeholders leads to the effective implementation of the right to participate in public affairs as set out in the International Covenant on Civil and Political Rights (Art. 25). Inclusiveness is also closely linked to the full realization of the right to peaceful assembly, association and information, along with the right to freedom of expression.[5] In the sphere of spatial planning, a technocratic planning approach risks leaving little room for progress and innovation, while lowering the implementation rate and the policy ownership. Indeed, spatial planning is "more than a technical tool; it is an integrative and political participatory process that addresses and helps to reconcile competing interests regarding city form and functionality within an appropriate urbanization perspective".[6] In other words, rather than a technical tool, spatial planning is first and foremost a cross-sectoral and multi-stakeholder participatory decision-making process.

1 Organisation for Economic Co-operation and Development (2020a). OECD Public Integrity Handbook, Paris: OECD Publishing, https://doi.org/10.1787/ac8ed8e8-en.

2 Office of the United Nations High Commissioner for Human Rights (2021). Guidelines for States on the effective implementation of the right to participate in public affairs, https://www.ohchr.org/sites/default/files/2021-12/GuidelinesRightParticipatePublicAffairs_web.pdf.

3 Sustainable Development Goals Knowledge Platform, Information for integrated Decision-Making and Participation, https://sustainabledevelopment.un.org/topics/information-integrated-decision-making-and-participation.

4 United Nations General Assembly (1986). Resolution 41/128 - Declaration on the Right to Development. www.ohchr.org/en/instruments-mechanisms/instruments/declaration-right-development.

5 Office of the United Nations High Commissioner for Human Rights (2018). Guidelines for States on the effective implementation of the right to participate in public affairs, https://www.ohchr.org/en/calls-for-input/report-guidelines-right-participate-public-affairs

6 UN-Habitat (2020). The Strategic Plan 2020 – 2023, p.57, https://unhabitat.org/the-strategic-plan-2020-2023.

Chile at Anti-Personnel Mine Ban Convention source : Flickr

Given this context, citizens are increasingly demanding more transparency and accountability from Governments while seeking opportunities to actively participate in shaping the policies that affect their lives[7] such as urban laws and policies. Public participation in spatial planning is key to identifying needs, selecting priorities and designing context-specific solutions with the contribution of the community.[8]

Public participation in spatial planning is regulated by different legal and governance frameworks at the national, subnational and local levels. In the four countries analysed, the most recurring model involves the definition, by national legislation (or subnational in the case of Australia), of community engagement principles to which local planning authorities must conform, including guidelines on mechanisms and modalities that local governments should implement. In this way, local authorities can have a certain flexibility to define and innovate on implementation mechanisms, but following principles and priorities established by law. For instance, in the United Kingdom (England), this approach is found in the United Kingdom Planning and Compulsory Purchase Act, which establishes the obligation for local planning authorities in England to develop their participation policy, meaning the Statement of Community Involvement, for planning applications and local development documents, following minimum requirements set by the Town and Country Planning (Local Development) (England) Regulations, 2004. Local planning authorities are also obliged to report on how they have undertaken community involvement through the Statement of Consultation and, if the authority fails to comply with the Statement of Community Involvement, the inspectors who examine the plan may recommend the withdrawal of the development plan document. Even planning at the neighbourhood level is contained in legislation: the Neighbourhood Planning (General) Regulations 2012 ensure that communities are involved in neighbourhood planning and describe how the engagement process should be conducted. In Australia, participation principles are mainly defined at the subnational level, as each State has its own planning system and legislation. For instance, in New South Wales, the Environmental Planning and Assessment Act 1979 subjects planning authorities to mandatory requirements for community participation and to the obligation to adopt a community participation plan in relation to their planning functions. The plan must respect five community participation principles, set out in section 2.23(2) of the Act (among them, the early involvement of community and the need to give a motivation to planning decisions).

Slight differences to the United Kingdom and Australia approach are found in South Africa and Chile. The latter has a more centralistic spatial planning and public participation framework, regulated by the national Government through the General Law on Urbanism and Construction of 1976 (last updated in 2022) and dedicated legislation on public participation in urban planning (Law No. of 2022 on Social Integration in Urban Planning, Land Management and Emergency Housing Plan, which introduces specific participatory mechanisms at different levels of implementation), as well as through regulations on public participation in spatial planning. For instance, the Ministry of Housing and Urban Development's General Regulation on

7 OECD (2005). Evaluating Public Participation in Policy Making, Paris: OECD Publishing, https://doi.org/10.1787/9789264008960-en.

8 UN-Habitat (2014). Guidelines for public participation in spatial planning, https://unhabitat-kosovo.org/wp-content/uploads/2019/07/3._Guidelines_for_Public_Participation_in_Spatial_Planning_335630.pdf.

Citizens' Participation outlines the forms of citizen participation in the design, execution, evaluation and development of the ministry's policies, specifying concrete participation bodies, like the National Council of Civil Society – a diverse, representative and pluralistic working body, which is made up of non-profit organizations' representatives – and mechanisms, such as citizens consultations to assess the opinion of an affected or target population on a specific matter and for which the regulation also specifies mandatory elements to be included. Citizens' participation is also regulated at the local level through municipal participation ordinances which include specific mechanisms and bodies for public participation.

In South Africa, the Spatial Planning and Land Use Management Act No. 16 of 2013 establishes that the preparation and modification of planning documents (including plans, policies, land-use schemes, etc.) should include transparent processes for public participation giving all interested parties the opportunity to provide inputs. Similarly, the Municipal Systems Act of 2000 requires municipalities to consult, engage and ensure the participation of local communities in governance, including in spatial planning processes (S. 16.1.a).

Box 1. Principles guiding public participation in spatial planning, land-use management and land development in South Africa

- The right to access information pertinent to land use and development plans.
- The enhancement of affected communities' capacities to participate meaningfully and informedly.
- The obligation to adopt decisions publicly, providing written reasons and within statutorily specified timeframes.
- The publication of contact details of officials to refer to in relation to spatial planning, land use management and land use development matters.
- The creation of accessible participatory structures to ensure participation at a sufficiently early stage in the decision-making process.

At the same time and similarly to Chile, concrete participation mechanisms are provided at the municipal level through municipal by-laws: for example, the eThekwini Planning and Land Use Management By-law of 2016[9] establishes that direct participation in the preparation of the Municipal Spatial Development Framework should be through public meetings, public exhibitions, public debates and discourses in the media and any other forms or mechanisms that promote such direct involvement (A.9.o). Prior to the adoption or amendment of the land use scheme, the municipality must:

- Give notice of the proposed land-use

9 KwaZulu-Natal Province (2017). eThekwini Planning and Land Use Management By-law of 2016, KwaZulu-Natal Provincial Gazette no. 1871, 31 August 2017, https://commons.laws.africa/akn/za-eth/act/by-law/2016/planning-land-use-management/media/publication/za-eth-act-by-law-2016-planning-land-use-management-publication-document.pdf.

scheme in two newspapers.

- Invite the public to submit written representations in respect of the proposed land use scheme to the municipality within 60 days of the publication of the notice.
- Consider all representations received in respect of the proposed land-use scheme.

However, and with the exceptions highlighted above, mechanisms for participation are usually not mandated by law. The pattern is for the laws to set the minimum requirements, but the specific implementation modalities are usually left to the discretion of the planning authorities (England) or included in strategies, plans (Australia) or guidelines (South Africa). For example, the Land Use Scheme Guidelines[10] of South Africa, in addition to guiding the general process to prepare a land-use scheme, foresees a public consultation phase on the draft scheme which includes requirements for publicly advertising the scheme and issuing public notifications to the affected parties. The guidelines also propose holding meetings between traditional authorities (the chiefs) and the community to discuss the land-use map and indicate specific themes that should be discussed.

10 Ministry of Rural Development and Land Reform (2017). Land Use Scheme Guidelines, https://csp.treasury.gov.za/csp/DocumentsToolbox/322.SA.DRDLR.Land%20Use%20Scheme%20Guide%202017.pdf.

Box 2. Examples of modalities for community engagement: Australia

Australia, through the Community Participation Plan of the New South Wales Department of Planning and Environment, shows examples of implementation modalities on community engagement, which allows the community to provide:

1. Informal feedback: e.g., through online forums, surveys, feedback sessions and workshops, social media, written correspondence, verbal discussions, site visits.
2. Attend events: e.g., walking tours, lectures and symposia, open days, public meetings and hearings, information sessions, digital engagement initiatives, shopfronts near key sites, digital feedback maps, surveys and other methods, before and during public exhibition.
3. Formal feedback: by making a formal submission during public exhibition (a consultation period to provide suggestions, raise concerns or objections) of a planning proposal (e.g., a draft plan or policy) or project. During public exhibition, a range of community participation activities (e.g., workshops or focus groups) may be organized.

The community should not only be involved in the preparation of plans and documents, but also in the development of public engagement strategies and policies. For example, in the United Kingdom (England), communities are involved in the preparation of the Statement of Community Involvement which involves six weeks of public consultation. In this way, the public has the potential to influence the scope and form of community involvement that the

local planning authority intends to adopt. In Australia, the New South Wales Integrated Planning and Reporting framework adopted in 2009 includes a Community Engagement Strategy which explains how the council will engage the community in all aspects of council engagement. On the other hand, the Community Strategic Plan (the community's vision, priorities and aspirations for a period of ten or more years) is subject to public scrutiny for at least 28 days.

Unlike the mechanisms for public participation where the country case studies seem to offer flexibility, public participation timeframes have been established by law in most of the cases, to offer predictability and transparency. For example, in Australia, the New South Wales Environmental Planning and Assessment Act 1979, Schedule 1, sets minimum mandatory public exhibition timeframes depending on the planning proposal (e.g., 45 days for draft regional or district strategic plans). In the United Kingdom (England), the Town and Country Planning Regulations of 2004 divide the preparation process for local development plan documents into four stages and envisages community involvement from the first phase of pre-production (conducting surveys). The public is consulted on planning issues to be addressed and policy options which are available to deal with those issues, usually for six weeks; then, during the preparation of the plan and before its approval, the public is consulted for another six weeks on preferred options. Before the approval, the plan is submitted to the Secretary of State for the independent examination, which is preceded by the possibility to "make representations" (e.g., written representations, representations by way of electronic communications) within the period of six weeks from the submission to the Secretary of State (Article 29 of the above-mentioned Regulations of 2004).

Box 3. Timeframes for public involvement in urban planning

All four countries exhibit the draft versions of local plans to allow the community to review and provide feedback and input, either physically at the responsible planning office(s), online through a website, or both. For example, in Chile, the General Law on Urbanism and Constructions of 1976 (last updated in 2022) establishes the formulation of a preliminary draft of the plan, called "target image", which is published on the websites of the corresponding public institutions and publicly displayed in visible and freely accessible places in the affected communities, so that interested parties may submit comments during a 30-day period.

This model of public involvement in each stage of the planning process is replicated at the neighbourhood level in England, as the Neighbourhood Planning (General) Regulations 2012 require that communities are involved in neighbourhood planning from the onset. For example, in addition to the six weeks of consultations already mentioned for local development plan documents, at the neighbourhood level communities are involved in establishing operational details of the process, in defining problems and setting agendas. Most importantly, after the independent examination of the plan or document arranged by the local planning authority, this is submitted to a community referendum before the adoption:

the plan or document will be adopted only if it achieves local support through a majority vote in the referendum. This is a concrete modality of public involvement provided by law that ensures the endorsement and validation by the community of the plan or document being adopted.

Some good practical experiences are also found in Australia, which could be a model for inspiration on modalities and timeframes to implement engagement processes in spatial planning. In the suburb of Beaconsfield in the city of Fremantle (Western Australia), from 2017 the community was engaged in a two-stage process to develop a masterplan to guide and connect plans for development on the various sites in Beaconsfield. The first phase of this engagement process included visioning and concept design workshops, open days, walking tours and online surveys to share ideas on what should be included in the masterplan; the second phase involved online submissions for feedback as well as in-person information sessions on the draft masterplan.

Box 4. An example of community engagement in the State of Victoria: Australia

All four countries exhibit the draft versions of local plans to allow the community to review and provide feedback and input, either physically at the responsible planning office(s), online through a website, or both. For example, in Chile, the General Law on Urbanism and Constructions of 1976 (last updated in 2022) establishes the formulation of a preliminary draft of the plan, called "target image", which is published on the websites of the corresponding public institutions and publicly displayed in visible and freely accessible places in the affected communities, so that interested parties may submit comments during a 30-day period.

The Future Melbourne 2026 Plan (Victoria), which outlines Melbourne's long-term values and goals to guide the action of the Melbourne City Council, is the result of an extensive engagement process characterized by:

- The use of online consultations and face-to-face meetings and workshops to collect initial ideas.
- The designation of a citizens' jury of 50 citizens of Victoria (through a random selection process but aimed at ensuring the representation of the municipal demographic) in charge of the final deliberation.
- The selection of "ambassadors" (including senior academics on law and architecture, public servants and business experts) to guide the development of the plan, review the document submitted by the citizens' jury and submit a reviewed document to the council.

In particular, the use of a citizens' jury in the engagement process as a representative of the different groups in the community (including priority groups) has promoted meaningful participation as the jury represents the needs of the entire community.

Recommendations:

i. Community engagement principles and mandatory requirements should be provided in planning legislation to provide binding obligations to be followed during the entire spatial planning process.

ii. The legislation should outline the mechanisms for community engagement and clearly define the stages and timeframes of the engagement process to avoid discretionary decision-making. For the participation to be meaningful, adequate time for public scrutiny should be allocated; providing visual aids, translations and other aids will increase accessibility and allow informed participation and decision-making.

iii. Discretion may be left to planning authorities on the specific implementation modalities that should be adapted to the specific context they operate in and the needs of the specific community affected. However, it is important that these modalities are identified together with the community (e.g., having walking tours for the public to visualize the impact of the proposal). At the same time, public participation mechanisms established by law, as in the case of Chile where legislation at the national and local level regulates the engagement process, could ensure the respect of community engagement requirements in contexts where there is not a strong culture of public participation.

iv. Indeed, communities should be also involved in the development of public engagement strategies and policies so that they can have a say on the modalities for their involvement.

v. Mechanisms such as local referendums could be used to validate plans and documents being adopted at the lowest level.

Leticia Human Settlement, Cerro San Cristóbal, Lima, 2022_03_27, Credit: Valentina Ricca, UN-Habitat

vi. Public consultations should take place both online and in-person to guarantee a broader participation which would cater to the needs of the diverse population.

vii. The identification of representatives of the community (following the model of Victoria, Australia) who can exercise a relevant role in the planning process, such as the review of community's ideas collected ("ambassadors") and the deliberation on a plan or document proposal to be presented to the council ("citizens' jury") could be used as an innovative mechanism to increase meaningful participation as the entire community is represented.

Inclusive participation and digital governance

The digital era is changing the schemes of governance and power relations. According to the Open Government Partnership, digital tools have empowered the population through access to information and global connections.[11,12], There is evidence of how the integration of information and communication technologies in the exercise of governments' activities support the implementation of the 2030 Agenda for Sustainable Development. However, these initiatives must commit to addressing the trust, security and privacy concerns that are often major barriers to digital government implementation because of the threats they pose to the rights of citizens.[13]

Overall, decision making in public policy must consider aspects of social inclusion, which refers to improving the terms of participation in society for structurally disadvantaged groups based on age, sex, disability, race, ethnicity, origin, religion, economic or other status. Social inclusion is thus the process and goal of removing these barriers and taking active measures to facilitate access to participation.[14] This is particularly relevant within the context of the new equity challenges that arise with digital transformation. The new face of inequality is digital and it is underpinned by structures of prevailing socioeconomic inequality. According to the United Nations Department of Economic and Social Affairs, the principle of "leaving no one behind" in this context means considering factors such as cost and access, as well as discriminatory practices that can emerge and which have a great impact on the most vulnerable, including those living in poverty, women, elderly people and people with

11 Open Government Partnership (2022). Digital Governance:https://www.opengovpartnership.org/policy-area/digital-governance/

12 OECD (2021a). The E-Leaders Handbook on the Governance of Digital Government, OECD Digital Government Studies, Paris: OECD Publishing, https://doi.org/10.1787/ac7f2531-en.

13 Manda, M. I. and Backhouse, J. (2016). "Addressing trust, security and privacy concerns in e-government integration, interoperability and information sharing through policy: a case of South Africa", CONF-IRM 2016 Proceedings. 67, https://aisel.aisnet.org/confirm2016/67.

14 United Nations Department of Economic and Social Affairs (DESA) (2016). Leaving no one behind: the imperative of inclusive development, Report on the World Social Situation 2016, ST/ESA/362, Chapter 1, www.un.org/esa/socdev/rwss/2016/chapter1.pdf.

disabilities. It is important to recognize that while the approach of increasing public participation with digital tools is inclusive, it can also aggravate inequalities if there is a lack of recognition of unequal access to technologies[15] and if the digital divide is not addressed.

Three out of the four countries in this paper's case studies (Australia, Chile and England) present specific provisions and mechanisms to involve at least one priority group and ensure inclusive participation in spatial planning. South Africa is the exception; specific mechanisms were not detected at any level of government.

Mechanisms for the inclusion of young people and children have been found at the municipal level in Chile. For example, the municipality of Peñalolén encourages the participation of children and young people by establishing, through municipal ordinance, a Municipal Advisory Council of Children and Youth, composed of 25 children between the ages of 10 and 17 years. The ordinance requires that their views on municipal policy issues of interest to them are taken into consideration and included in the design of public spaces.[16] The other countries assessed do not provide similar "stable" mechanisms, although workshops targeted at young people may be organized ad hoc as part of engagement processes (e.g., in Australia, in preparation of the Future Melbourne 2026 Plan).

Box 5. Ensuring access for people living with disabilities: England

During the examination of planning documents by independent inspectors, when in-person public feedback is requested, the responsible authority should ensure this happens at an adequate venue that must be suitable for people with all forms of disability and accessible by public transport.

The English planning system pays more attention to fostering the accessibility of services for people with disabilities: it does this not only by requiring local planning authorities to consider accessibility (such as access to and into buildings[17]) both in development plans and in determining planning applications, but also by issuing a good practice guide on planning and access for disabled people,[18] which makes several suggestions to guarantee inclusive access. Although inclusive policies, good practices and principles exist, there is no clear indication of how this should be done, as it is left to the discretion of public officials. In Australia, the Community Participation Plan of the New South Wales Department of Planning and Environment[19] promotes accessibility by prompting a series of actions, such as the translation of relevant information and the incorporation of visual representations of proposals.

15 DESA (2022). E-Government Survey 2022. The Future of Digital Government, https://desapublications.un.org/sites/default/files/publications/2022-09/Report%20without%20annexes.pdf.

16 Biblioteca del Congreso Nacional de Chile, Decreto 31 de 2022, Agrega Título V a la Ordenanza de Participación ciudadana, civismo y corresponsabilidad de la comuna de Peñalolén: https://www.bcn.cl/leychile/navegar?idNorma=1181082.

17 General Policies and Principles (PPG1) of 1997, par. 33.

18 Department for Communities and Local Government, Planning and access for disabled people: a good practice guide, 2003, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/7776/156681.pdf

19 New South Wales Department of Planning and Environment, Community Participation Plan (2019). https://shared-drupal-s3fs.s3-ap-southeast-2.amazonaws.com/master-test/fapub_pdf/Community+Participation+Plan/DPIE+CPP.pdf.

With regard to Indigenous People's participation in spatial planning, specific provisions have been found in Australia aimed at guaranteeing and enhancing the participation and representation of Aboriginal Australians and Torres Strait Islanders. These provisions include the use of culturally appropriate practices in the engagement process and the translation of relevant information when engaging linguistically diverse communities (Community Participation Plan of the New South Wales Department of Planning and Environment) and the organization of engagement activities and events to meet Aboriginal communities (e.g., the consultation of the Local Aboriginal Land Councils in New South Wales about how Aboriginal community-owned land can best be planned, managed and developed), as well as of workshops to share knowledge and promote better land-use planning and informed decision-making.

No specific mechanisms related to the inclusion of women in spatial planning have been found.

Trainings and civic engagement activities to empower the community and ensure informed participation in spatial planning is not prominent in the countries assessed, although there are some initiatives meant to train the public on the system of government, democratic values and participatory democracy in general. For example, in Australia, the Constitutional Centre of Western Australia offers this kind of training and provides information, exhibitions, teaching, seminars, and events related to civic education, giving citizens in that State the opportunity to learn about the State and Commonwealth government systems and explore current issues. Similarly, the United Kingdom Government announced in 2018, through the Civil Society Strategy, that it will launch the Innovation in Democracy programme, which will allow the trial of face to-face deliberation (such as citizens' juries, a participatory democracy method), to empower people to deliberate and participate in decision-making affecting their communities. In South Africa these kinds of general trainings are often offered to government officials and the public usually by non-State actors.

Digital capacity trainings are found in Australia and England out of the four countries, focusing on building the local community's digital skills and tackling the digital gap to enhance public participation. For example, in Australia, the Future Melbourne 2026 plan foresees the need to organize training, education and having resources to ensure people can acquire the skills required to understand and use new technology. Moreover, to ensure that the digital governance approach increases public participation instead of widening an already existing gap, the same plan, while promoting the use of new technologies to collect people's feedback and, more generally, to participate in decision-making, also ensures access for all people to the municipality's universal wireless Internet connection, and that services replaced with new technology will still be easily available to people who are not comfortable with or do not readily use new technology.

Box 6. Improvements on digital governance: Australia

In 2013, an online platform called "Participate Melbourne" was launched in the city where citizens can search for open consultations in their neighbourhood and vote to shape future neighbourhood plans.

Similarly, in England, digital tools are used to collect feedback, to publish relevant information and for public consultations, e.g., through online platforms. However, to ensure an informed public participation for all, the local planning authorities are required to make all the information available not only online, but also at the authorities' principal offices, and to advertise the opening of public consultation and the publication of relevant information also on at least one local newspaper circulating in the area.

The digital governance approach is also used to provide several digital public services to the community, for example in Australia (Victoria), through the online platform "Participate Melbourne",[20] citizens of Melbourne can find important information on the services provided in their neighbourhood. In England with the Integrated Communities Strategy – Action Plan,[21] the Government committed to work with mySociety and Power to Change (two non-profit organizations) to launch a new online platform for local authorities and community groups to track usage of local assets such as parks. In South Africa, the National e-Government Strategy was adopted in 2017 with the purpose of achieving a "people-centred, development orientated and inclusive digital society", where all citizens can benefit from the opportunities offered by digital technologies to improve their quality of life and to make government processes more efficient, strengthen public service delivery and enhance participation by citizens in governance matters.[22]

20 Participate Melbourne, https://participate.melbourne.vic.gov.au/.

21 HM Government, Integrated Communities Strategy - Action Plan, February 2019, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/778045/Integrated_Communities_Strategy_Govt_Action_Plan.pdf.

22 Government of South Africa, Department of Telecommunications and Postal Services (2017). National e-Government Strategy and Roadmap, www.gov.za/sites/default/files/gcis_document/201711/41241gen886.pdf.

Recommendations:

i. Inclusive public participation in spatial planning should be pursued by providing concrete mechanisms for the involvement of priority groups, among them, young people, elderly people, women, people with disabilities, Indigenous People (or, depending on the context of the country, ethnic groups who are the minority and traditionally marginalized). Targeted informative and consultation workshops have been one of the most used practices that could be replicated in spatial planning engagement processes, both in preparatory stages and in most advanced phases of the process.

ii. Stable mechanisms such as advisory bodies composed of a specific priority group could be established to ensure the views of that group are captured in key laws and policies.

iii. Civic engagement activities, such as seminars or exhibitions, could be organized to foster informed and meaningful participation.

iv. Culturally appropriate practices and translated information should be the norm when engaging culturally or linguistically diverse communities such as Indigenous People or ethnic groups.

v. Accessibility of modalities and spaces needs to be taken into consideration: for example, by providing information in different formats based on different needs (e.g., visualized with maps and images) and by choosing venues that meet the accessibility standards for people with disabilities.

vi. Digital tools and platforms need to be used to collect feedback, consult and grant extensive access to information and services to all (e.g., people living in remote areas). At the same time, training on the use of new technologies should be organized to tackle the digital divide. Support schemes for people without access to internet should be provided (e.g., free wi-fi connection in some places of the municipality). Information and services should continue to be available in traditional forms (local governments' offices, local newspapers, etc.) for those who are not comfortable with using the Internet or cannot access it.

Multi-stakeholder approaches

Stakeholder engagement is one of the pillars of open government. It refers to the involvement of the main relevant stakeholders in the policy-making process, in all steps of the policy cycle, and in design and delivery.[23] UN-Habitat recognizes multilevel governance as a decisive element to achieve the commitments of the 2030 Agenda for Sustainable Development and the New Urban Agenda.[24] Therefore, the need for multi-stakeholder approaches is directly related to Sustainable Development Goal 17: Strengthen the means of implementation and revitalize the Global Partnership for Sustainable Development, and specifically target 17.17: "Encourage and promote effective public, public-private and civil society partnerships, building on the experience and resourcing strategies of partnerships".[25]

Three of the countries assessed (South Africa, United Kingdom (England) and Chile) present multi-stakeholder approaches in the form of public-private partnerships that are worth mentioning: in South Africa, the public-private partnership process is established by law (Public Finance Management Act No. 1 of 1999 and the Municipal Finance Management Act No.56 of 2003), stating specific requirements for entering into such a partnership agreement, as well as the need for a feasibility study conducted by the interested municipality (e.g., the capacity of the municipality to effectively monitor, manage and enforce the agreement should be assessed, as well as the affordability of the public-private partnership project for the municipality). For example, public-private partnership projects are being developed under the Infrastructure Fund announced in 2018 using blended finance. In the United Kingdom (England), there are public-private partnerships, called local enterprise partnerships, which aim to guide the economic growth of the city regions of wider functional areas. In Chile, public-private partnerships for urban development are regulated by Law 19865 of 2003 on joint urban financing. According to this law, urban planning and development authorities can celebrate collaboration contracts for the execution, operation and maintenance of urban projects with private parties. Additionally, can public-private partnerships take the form of asset transfers, temporary usufruct rights and monetary compensation.

Recommendations:

i. Introduce the possibility of creating public-private partnerships to increase stakeholders' engagement. However, there is a need to provide clear requirements for their creation, as well as mechanisms to monitor their activity to ensure accountability

23 OECD (2020b). Transparent and Inclusive Stakeholder Participation through Public Councils in Kazakhstan, OECD Public Governance Reviews, OECD Publishing, Paris, https://doi.org/10.1787/d21f1e98-en.

24 UN-Habitat (2022b). Multilevel governance https://www.multilevelgovernance.org/about.

25 DESA (n.d.). Strengthen the means of implementation and revitalize the Global Partnership for Sustainable Development: https://sdgs.un.org/goals/goal17.

José Manuel Infante 1428, Providencia, Chile by Antenna source: Unsplash

and transparency and assess in advance the affordability of the project for municipal finance.

Participatory budgeting

Participatory budgeting is a form of decision-making in which citizens participate directly in the allocation of public resources. This mechanism emerged in the city of Porto Alegre in Brazil in 1989 and has since expanded to more than 40 countries, accounting for more than 6,000 experiences as of 2018. It is considered to be one of the most important innovations in participatory governance.[26] This mechanism is key to the expansion and contribution of the Sustainable Development Goals, specifically Goal 16, target 16.7: "Ensure responsive, inclusive, participatory and representative decision-making". It also contributes to Goal 11: "Make cities inclusive, safe, resilient and sustainable", given its relation to public service provision. In addition, participatory budgeting asserts the Goals' imperative to "leave no one behind" and increases inclusiveness in public decision-making.[27] Participatory budgeting also contributes to strengthening social resilience: as indicated in the UN-Habitat report "Innovation and digital technology to re-imagine participatory budgeting as a tool for building social resilience", participatory budgeting empowers citizens with knowledge, promotes equal opportunities, creates a basis for transparency in governance, improves decision-making processes and reduces social conflicts based on local responsiveness.[28]

26 Cabannes, Y. (2018). "A powerful and expanding contribution to the achievement of SDGs and primarily SDG 16.7", in UCLG Gold Policy Series #02 https://www.gold.uclg.org/sites/default/files/02_policy_series-v3.pdf.

27 Ibid.

28 UN-Habitat (2021). Innovation and digital technology to re-imagine Participatory Budgeting as a tool for building social resilience, https://unhabitat.org/sites/default/files/2021/08/innovation_and_digital_technology_to_re-imagine_participatory_budgeting.august.2021_mp57813rh_1.pdf.

All the countries analysed have had participatory budgeting experiences, especially at the local level. The implementation of the mechanism may vary greatly from territory to territory within the same country. Overall, two types of governance for this mechanism have been identified. The first is one that is driven by a strategy or policy from the national or subnational level guiding local governments. Examples of this type are seen in England and South Africa, both of which promoted a national strategy to drive the mechanism through outreach, guidance and support to local governments. This strategy responds to a limited presence of participatory budgeting mechanisms in participation policies. The second governance framework is a more bottom-up approach, where participatory budgeting emerges and spreads as a local initiative. In this model, there is little or no guidance from the national level, that has produced a wide variety of experiences adapted to local contexts. Such is the case in Chile and Australia, where this mechanism emerged in relatively small cities, which then served as a laboratory to be exported to the largest cities in each country.

Box 7. Models of participatory budgeting

Chile and England followed a similar model to that of the original participatory budgeting model that emerged in Brazil: a vote is held for citizens to select budget priorities for the territory where they live, either through specific categories or projects. Another model was found in Australia or South Africa, and involves a group of citizens in a consultative role, either through assemblies or councils, but without holding a general vote.

Every model of involving citizens, whether in a binding or consultative way, is not in itself a good practice. The quality of participation for each model may vary depending on the context and the existing culture of participation. For example, the model in Australia, where a random group of citizens is selected to co-draft the local budget, is an innovation to improve the quality of information obtained from citizens in a context of low direct participation. In a similar way, in South Africa ward assemblies are used to engage citizens and they have strengthened ties within the community, and between the community and the local authorities. In Chile, neighbourhood assemblies are used for the deliberation and co-creation of community solutions. The portfolio of pre-selected projects in different categories is also put to a vote in each neighbourhood.

Recommendations:

i. Promote participatory budgeting from the national level by raising awareness, guiding and building capacities of local governments to implement best practices.

ii. National strategies or policies to increase participation should leave room for local government to adapt the participatory budgeting mechanism to its context and needs. Indeed, the local context should be assessed to design the participatory budgeting mechanism that best ensures citizen involvement in decision-making.

iii. Creating dialogue structures at the neighbourhood level, such as councils and/or assemblies, is a good mechanism

to create ties among its inhabitants, and between citizens and the Government. In this way, the needs of citizens can be better understood, and tailored solutions can be created.

iv. The implementation of these mechanisms is a process that requires citizen feedback and learning from other experiences.

2. Transparency and accountability

Access to information

Transparency and access to information is a basic principle of open government. The Organisation for Economic Co-operation and Development defines it as the stakeholder access to and use of public information and data regarding the entire public decision-making process. Access to information is recognized as a "fundamental right and touchstone of all freedoms" by the United Nations General Assembly Resolution 59 (1946).[29] Transparency is also key to achieving the Sustainable Development Goals; target 16.6 recognizes the importance of developing effective, accountable and transparent institutions at all levels, and target 16.10 the importance of ensuring public access to information and protecting fundamental freedoms, in accordance with national legislation and international agreements.[30]

All four countries recognize the public's right to access information held by public institutions and have a law granting this access and the freedom of information. Three of the countries assessed (Australia, Chile and the United Kingdom) recognize both the need to share information upon request, as well as to actively publish information to ensure transparency and alleviate the burden created by access requests over public institutions. For example, the United Kingdom Freedom of Information Act of 2000 creates a general right of access to all types of recorded information held by most public authorities in that country (government departments, local authorities, police forces, etc.). It does this in two ways:

a. Public authorities are obliged to publish proactively certain information about their activities.

b. Members of the public are entitled to request information from public authorities.

In Chile, some information needs to be publicly and permanently accessible, such as the institution's regulatory framework, organizational structure, information on personnel and their salaries, public procurement processes and engagements, and transfers of public resources (Law 20285 on Access to Public Information of 2008, Art. 7). Access to information in Australia is regulated both at the national and subnational levels. The federal Freedom of Information Act 1982, as well as the Freedom of Information Act of the same year in Victoria, clearly define the types of information that can be accessed and promote proactive and informal release mechanisms, obliging every agency to make the maximum amount of government information available to the public promptly and inexpensively. An example of proactive release is the tender, contractual and financial information published on "Buying for Victoria".[31]

It is worth highlighting that all four countries establish exemptions from the obligation to

29 OECD (2021b). Transparency and Access to Information, https://www.oecd.org/governance/open-government-dashboard/.

30 DESA (n.d.a), Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels. https://sdgs.un.org/goals/goal16https://sdgs.un.org/goals/goal17.

31 Buying for Victoria. www.tenders.vic.gov.au/.

disclose public information, mainly for public interest reasons. The most common practice is to subdivide the exemptions between mandatory exemptions (absolute) and conditional exemptions (relative). For example, privacy matters are not usually considered absolute exemptions, but they need to be evaluated to see whether their disclosure infringes regulations on personal data protection; indeed, the handling of personal information is usually regulated by data protection legislation, as it is in the United Kingdom, with the General Data Protection Regulation. The institution which needs to take the decision (to disclose or not disclose the personal information) has to balance the case for transparency and openness (and so, the public interest) under the Freedom of Information Act against the individual's right to privacy under the data protection legislation.

Box 8. Exemptions to the access to information: South Africa

The Promotion of Access to Information Act No. 2 of 2000, which aims to give effect to the constitutional right of access to any information, regulates exemptions to this right and include, among the reasons for mandatory refusal, the protection of commercial information of third parties and safety of individuals, inter alia. Among the reasons of potential refusal, include the request to access information which disclosure could reasonably be expected to cause prejudice to the defense, security and international relations of the Republic.

Moreover, according to the Freedom of Information Act of Victoria (Australia), business, commercial or financial information of an agency is exempt from release under section 34(4)(a)(ii). In Chile, exemptions are stated in article 21 of the Law 20285 of 2008 on Access to Public Information, and include security of the country and national interest, among others.

Information and documents that are not made publicly available in an active manner can be accessed upon request and free of charge in Chile. In the United Kingdom most requests are free, but a small amount may be required to pay for photocopying or postage. The organization will give the applicant a notice in writing in case a fee needs to be charged (Section 9 of the Freedom of Information Act). South Africa, on the contrary, sets the fee for requesting records from a public body at 35 rand (US$1.90), while the fee for requesting records from a private body is R50 ($2.76), although requesters who earn less than R14,712 ($850.25) per year if single and R27,192 ($1571.18) per year if married or in a

Box 9. Timeframes to provide the requested information

All four countries set a mandatory requirement to respond to the request for information within a specific timeframe: 20 working days in Chile and the United Kingdom; 30 days in South Africa and Australia, according to both the federal law and the State (Victoria) law analyzed.

life partnership do not have to pay request fees.[32]

The four countries assessed provide remedies for the failure of public officials to comply with the legal provisions on access to information. Chile establishes sanctions that can consist of fines based on their remuneration or suspension from their duties and are applied by the Council for Transparency. The United Kingdom provides for the possibility to file a complaint or an appeal to the Information Commissioner's Office when the request to access information is denied, when a motivation for the refusal is not provided and when the organization was already requested to review its decision, but it continues to be negative and deny the access. In Australia, the Australian Information Commissioner, at the federal level, and the Information Commissioner in Victoria, as an example at the State level, intervene by reviewing decisions taken by responsible authorities. The decisions can be appealed to the State Administrative Tribunal. In South Africa, if the information officer or deputy information officer denies permission to access the information, it is possible to lodge an appeal with the relevant minister of the department or public body concerned in the first instance, and to the court in the second instance.

All countries assessed publish planning instruments on their websites or at planning offices, and so they are publicly and freely available without the need to submit a request. For example, in Chile, the General Law on Urbanism and Constructions (Article 28) establishes that the approved planning instrument must be published on the website of the promulgating agency (together with the ordinance promulgating and entering the planning instrument into force) as well as in a newspaper with circulation in the corresponding area.[33]

Recommendations:

i. Promote the proactive release of information to reduce resources required to administer access to information requests, increase public trust and confidence in decision-making, enhance public accountability and integrity, and increase informed and meaningful public participation.

ii. Exemptions to access to information should be introduced to protect the public interest. When introducing an exemption, it is a good practice to distinguish between absolute and relative exemptions to ensure that access can be granted when there is no real interest to protect in the specific case.

iii. Access to public information should be free of charge to enhance public participation and trust in public institutions. A nominal fee can be charged for photocopying or postage.

iv. It is important to establish specific timeframes to respond to the request for access to information; the case studies show that a period of between 20 and 30 working days is good practice to respond to the request.

v. Remedies should be provided to ensure the protection of the requester's right to information when public officials fail to

32 South African Human Rights Commission, Guide on How to Use the Promotion of Access to Information Act 2 of 2000, 2014, https://www.sahrc.org.za/home/21/files/Section%2010%20guide%202014.pdf. Requesters are also required to pay fees for accessing the records of public and private bodies. This fee covers the costs of searching for the record and copying it. The breakdown of fees for accessing records of public bodies are indicated in the table on p.33.

33 Biblioteca del Congreso Nacional de Chile, Ley General de Urbanismo y Construcciones (2022a). https://www.bcn.cl/leychile/navegar?idNorma=13560.

comply with the legal provisions on access to information; these should not consist only of sanctions (fines and suspension from duties), as sanctions may still leave an individual unsatisfied, so the sanction measure can be accompanied by the possibility to access the information requested. The possibility to appeal the decision to a tribunal in the first instance and a court in the second instance should be provided.

Public accountability

Accountability refers to the relationship between rulers and ruled and involves the following three fundamental concepts: transparency or access to information; answerability, which refers to the citizen's ability to ask for justification of the state's actions; and enforceability, which refers to the citizen's ability to sanction the State. In addition to the vertical relationship between State and citizens, accountability also has a horizontal dimension in which there is a system of checks and balances among state institutions.[34]

All countries in the case studies have provisions in place requiring public officials to be accountable for their decisions and actions. In England for example, "accountability" and "openness" are two of the Seven Principles of Public Life, applicable to anyone who works as a public office holder.

Codes of conduct are both generally formulated for the public service (e.g., the Code of Conduct for Public Servants as contained in Chapter 2 of the Public Service Regulations of 2016, South Africa; the Public Service Code of Conduct in Australia) or specifically for each institution or body (e.g., the Planning Inspectorate in England has its own Code of Conduct of 2017 that regulates its action; The Ministry of Housing and Urban Development in Chile has a code of conduct for its employees; municipal councillors in South Africa have two codes of conduct, provided by two different municipal acts, which largely overlap in content). Provisions in the code of conduct included in the Municipal Systems Act of 2000 are meant, inter alia, to avoid unnecessary delays (requiring the adoption of a decision in reasonable timeframes) and to be fair and taken in the public interest (not influenced by other considerations).

In case of violations of codes of conduct, in Chile there is the possibility for employees to report wrongdoing and unethical conduct that is investigated by an internal commission of the Ministry of Housing and Urban Development. In South Africa, this is an obligation; in addition to adopting a guide on the reporting of unethical conduct, corruption and non-compliance based on the Public Service Act of 1994 and Public Service Regulations of 2016, and in addition to issuing a National Anti-Corruption Strategy for 2020–2030, South Africa has a Prevention and Combating of Corrupt Activities Act of 2004, which obliges employees of the public service in terms of the above-mentioned code of conduct to report corruption, unethical conduct and non-compliance. Failure to do this is a violation of the code and treated as misconduct. If an employee is aware of wrongdoing, but chooses to ignore it, he or she is guilty of an offence (Art. 34). In Australia, Public Service Act No. 147 of 1999, section 15 establishes the sanctions of breaching the code, which are imposed by an agency head and can result in the termination of employment, re-assignment of duties, reduction in salary, fines or reprimands. All these provisions increase public accountability.

34 OECD (2014). Accountability and Democratic Governance: Orientations and Principles for Development, DAC Guidelines and Reference Series, Paris: OECD Publishing. https://doi.org/10.1787/9789264183636-en.

Box 10. Accountability mechanisms at the subnational level: the case of Victoria, Australia

The Freedom of Information Act 1982 of Victoria provides accountability mechanisms such as an ombudsman, who investigates complaints about administrative actions and decisions taken by government authorities and about the conduct or behaviour of their staff (lawfulness of actions and decisions as well as their reasonableness and fairness in the circumstances).

Anti-corruption legislation is also in place in the United Kingdom and in Australia. Both countries have also established independent bodies or agencies to investigate and prosecute cases of corruption in the public sector (e.g., the Serious Fraud Office in the United Kingdom; the National Anti-Corruption Commission in Australia). Moreover, Australia has a Public Interest Disclosure Act of 2013 which creates a framework that facilitates the disclosure and reporting of misconduct, wrongdoing and maladministration in the Commonwealth public service and ensures a timely and effective investigation, promoting integrity and accountability. This Act is overseen by the Commonwealth Ombudsman and the Inspector-General of Intelligence and Security.[35]

Recommendations:

i. Accountability, transparency and openness should be established as guiding principles of the public sector action and conduct.

ii. Codes of conduct should be formulated; if formulated for a specific body or institution, provisions can be framed to reflect the specific activities carried out by the specific body or institution. For example, a planning authority could have its own code of conduct and establish standards for its specific services.

iii. To increase public accountability, as well as public trust in institutions, violations of codes of conduct should be carefully investigated and sanctions should be foreseen, such as termination of employment, re-assignment of duties, reduction in salary, fines or reprimands.

iv. Anti-corruption legislation should be enacted, including the establishment of an independent authority investigating and prosecuting corruption cases.

Oversight and feedback mechanisms

Oversight is a central element of integrity and efficiency in public administration. It is a type of accountability that relates an actor to a forum to

35 Government of Australia, Public Interest Disclosure Act No. 133, 2013. www.legislation.gov.au/Details/C2013A00133.

which it is obliged to respond about its conduct. As with accountability, it involves concepts such as answerability, which refers to the obligation to provide information, clarification, explanation and justification; and enforcement, which refers to formal action against illegal, incorrect, inefficient or ineffective conduct of the accountable institution or public official. These principles require an institutional setup with internal and external mechanisms that at the same time deter misconduct and ensure independent and impartial control.[36] Also, as information is key to making evidence-based decisions and improving the quality of public policies[37] participatory processes should operate to obtain inputs from citizens that should be integrated throughout the public policy cycle and should therefore be understood as iterative processes. Feedback mechanisms are thus a good practice in spatial planning to design tools adapted to the context.

All the countries assessed have established mechanisms through which the community can provide oversight over public actions and provide feedback on the service delivered (or not delivered) to improve the quality and innovation of public services. The most used mechanisms are feedback platforms or forms on institutional websites; in some cases, it is also possible to submit the feedback via telephone or in-person at the office of the competent institution. A good example is provided by South Africa: the Ekurhuleni Municipality's "budget tips" campaign encourages the public to provide feedback and suggestions on priorities for the municipal budget by means of e-mail, notes deposited in boxes at libraries and letters to the mayor.[38] In Australia, the Australian Public Service uses to conduct the Citizen Experience Survey, which is one of the regular and nationally implemented surveys to measure satisfaction, trust and experiences across the service and to improve service delivery.[39]

Box 11. Public oversight in Chile

In Chile, the Ministry of Housing and Urban Development's citizen participation regulation foresees the creation of a "public account", meaning an annual forum in which government institutions take stock of their public policy decisions and engage in dialogue with citizens, social leaders and civil society actors to include their visions for the future. In addition to exercising an oversight function by allowing citizens' supervision of actions taken by the ministry to improve the quality of public services, this mechanism enhances public accountability of public officials.

36 OECD (2020a). OECD Public Integrity Handbook, Paris: OECD Publishing. https://doi.org/10.1787/ac8ed8e8-en.

37 Howlett, M. (2019). The Policy Design Primer. Routledge, www.routledge.com/The-Policy-Design-Primer-Choosing-the-Right-Tools-for-the-Job/Howlett/p/book/9780367001650.

38 World Bank, Participatory Budgeting, Public Sector Governance and Accountability Series no. 39498, 2007. https://documents1.worldbank.org/curated/en/635011468330986995/pdf/394980REVISED0101OFFICIAL0USE0ONLY1.pdf.

39 Government of Australia, Department of the Prime Minister and Cabinet (2021). Citizen Experience Survey. www.pmc.gov.au/public-data/citizen-experience-survey.

Santiago, Chile by Antenna source: Unsplash

In England, in addition to traditional ways to provide feedback, the Planning Inspectorate makes available a complaint procedure (Government of the United Kingdom, n.d.)[40] that allow the oversight of its action from the public; the procedure covers standards of service provided, conduct of staff, any action or lack of action by staff affecting individuals or groups, circumstances in which staff have not properly followed government planning policy or guidance, relevant legislation and procedural guidance. The procedure is also valid to complain about planning appeals decisions by the Planning Inspectorate (or the inspector, or the way the case was administered). It is important to note that the effectiveness of this procedure is guaranteed by:

- The impartiality and independence of the Costumer Quality Team which takes care of the complaint.
- The possibility to submit the complaint in several ways (online form, e-mail, telephone).
- The specified timeline for the Costumer Quality Team to answer complaints (40 working days).
- A publicly available "Costumer Charter" that provides information about service standards of the Planning Inspectorate.
- The possibility to request the review of the Costumer Quality Team's decision to the Costumer Team Manager.
- The possibility, in case the complaint remains unsolved, to bring it to an ombudsman free of charge.

40 Government of the United Kingdom Planning Inspectorate, Complaints Procedure.

Since it is not always clear the office to contact and refer to for each specific case, a good practice is to provide a centre of information for citizens to understand the relevant ombudsman to contact as well as procedures to complain (e.g., the Citizens Advice Bureau[41] in England).

Recommendations:

i. Provide feedback mechanisms to improve the quality of public services; to expand the community's possibilities to provide feedback, include different modalities (online, in-person, via telephone).

ii. Conduct regular surveys at the national, regional and local level in order to measure satisfaction and improve service delivery.

iii. Establish stable mechanisms (e.g., annual forums) to engage in dialogue with citizens, facilitate public oversight over public action and get the opinions of the community on how services are being delivered and how to improve them in the future.

iv. Provide a complaints procedure for planning authorities' actions, decisions and services, such as the one in England, with a specific timeline to respond.

v. Provide the possibility of last instance recourse to an ombudsman free of charge and support in finding the right office to address when the case remains unresolved.

Protection mechanisms against retaliation

Public administrations that function in an open, transparent and fair manner are also committed to protect against retaliation, meaning any direct or indirect detrimental action threatened or taken for the purpose of punishing, intimidating or injuring a person who has reported misconduct (a violation of the administration's rules, regulations and codes of conduct) or wrongdoing (an action or inaction that harms the interests, activities and governance of the administration).

Two out of the four countries (Australia and South Africa) clearly set out protection mechanisms to encourage disclosure and reporting of misconduct, wrongdoing and maladministration. In Australia, the Public Interest Disclosure Act of 2013 provides mechanisms for the protection of disclosers, including protection from reprisals and protection of disclosers' identity (Part 2). The Act is overseen by the Commonwealth Ombudsman.

Box 12. Protection mechanisms in South Africa

The Protected Disclosures Act of 2000 states that the head of a department shall establish a system that allows and encourages employees and citizens to report allegations of corruption and other unethical conduct, and that such system shall provide for: confidentiality of reporting; the recording of all allegations of corruption and unethical conduct received through the system. Employees designated to receive disclosures should know that reports must be kept confidential and breaches of confidentiality are considered a type of administrative misconduct. Physical protection may be arranged in extreme cases to protect an employee reporting corruption or serious wrongdoing.

41 Citizens Advice Bureau. www.citizensadvice.org.uk/

A similar model is present at the subnational level: the Protected Disclosure Act 2012[42] of the State of Victoria ensures that people who report improper conduct and corruption in the State's public service can do so without reprisals. The Independent Broad-based Anti-corruption Commission assesses complaints made under the Protected Disclosures Act and can investigate State Government, councils, police, Parliament and the judiciary sector.

Recommendations:

Disclosure and reporting of misconduct, wrongdoing and maladministration should be promoted and facilitated by providing protection mechanisms in law: for example, protection from reprisals and protection of the identity of disclosers. Failure to respect confidentiality should be considered misconduct and investigated as well.

6. Dispute-resolution mechanisms

Review and appeal processes

The nature of urban planning decisions and the diverse range of involved stakeholders, as well as the potential to affect proprietary interests and cultural aspects of life, make disputes very likely. A strong urban governance system needs to include dispute-resolution and appeal mechanisms for affected people and communities.[43]

The central role of land to the social and economic well-being as well as the sense of identity for many individuals and communities, makes land disputes and conflicts very likely. As security of tenure is fundamental to the realization of human rights, poverty reduction and economic prosperity, and it is linked to the Sustainable Development Goals, especially Goal 11, target 11.1: "access to adequate, safe and affordable housing", and the New Urban Agenda,[44] the settlement of land disputes is crucial to enforce rights, hold institutions accountable on procedural and substantive rights, and to ensure the smooth implementation of plans, informal settlements upgrading, planned relocations and implementation of adaptation options.[45] The State must provide mechanisms that give certainty to citizens on the exercise of their property rights, in case of property disputes, expropriations, land readjustment and urban planning permits, among others.

Some countries create specialized bodies for urban planning and land disputes, while other countries rely on their general court system.

The four countries assessed manage planning dispute resolution through their general court system, with the following exceptions: in South Africa there is a specialized court for disputes that arise out of laws that underpin the country's land reform initiative; in Australia, beyond the two general judicial bodies analysed for Western Australia and Victoria, the Land and Environment Court is the focus of the analysis for the New South Wales case study, representing the first world specialist environmental court; the United Kingdom can be considered as using a mixed approach, with the prominent role of the Planning Inspectorate.

Beginning with the countries dealing with planning disputes through their general court system, in Australia, for example, the Victorian Civil and Administrative Tribunal resolves planning disputes in the State of Victoria, including the review, cancellation or amendment of planning permit decisions; the enforcement of planning schemes; and managing other planning disputes,

42 Victorian Protected Disclosure Act 2012. www.legislation.vic.gov.au/as-made/acts/protected-disclosure-act-2012.

43 UN-Habitat (2022c). Urban Planning Law for Climate Smart Cities: Urban Law Module, https://unhabitat.org/sites/default/files/2022/10/final_urban_planning_law_for_climate_smart_cities.pdf.

44 UN-Habitat (2022a). Land Tenure Security, https://unhabitat.org/topic/land-tenure-security.

45 UN-Habitat (2022c). Urban Planning Law for Climate Smart Cities: Urban Law Module.

such as construction and land valuations disputes (e.g., disputes about compensation for acquisition of land).[46] In Western Australia, the State Administrative Tribunal reviews and determines, among others, the following: local governments' decisions (e.g., about the conduct of council members), building and construction (e.g., the State Administrative Tribunal can review some decisions of the Building Commissioner), and planning, development and valuation (including town planning, compensation for the compulsory acquisition of land, applications regarding heritage agreements, land uses, among others).[47]

In Chile, according to the General Law on Urbanism and Construction of 1976 (last updated in 2022), in case of explicit or implicit refusal of a building permit, the interested party may file a complaint with the corresponding Regional Secretariat of the Ministry of Housing and Urban Development. The municipality, the Regional Secretariat of the ministry, or any person may submit a complaint to the competent Local Police Court – a first instance court appointed by each municipality upon proposal of the court of appeals[48] – regarding any violation of the provisions of the General Law of Urbanism and Constructions, its general ordinance or of territorial planning instruments (Art. 20).

In, South Africa, decisions on land-use and development applications taken by a Municipal Planning Tribunal may be appealed against by giving written notice and supporting reasons to the city manager, who places the appeal before the executive authority of the municipality, who acts as the appellate authority. Moreover, the Land Claims Court is a specialized court competent to hear disputes that arise out of laws that underpin the country's land reform initiative.

Box 13. Accessibility of appeal procedures

Remarkably, England provides for a different procedure to appeal a planning decision (written representations, hearing and inquiry) and, while promoting and supporting online appeals through the Appeals Casework Portal, also provides for potential appellants without access to the Internet to contact the Planning Inspectorate and ask to receive the appeal form(s) in a different format.

In Australia, the Victorian Civil and Administrative Tribunal offers several disability support services to allow people with disabilities to attend a hearing, as well as a dedicated "Koori" Support team to support Aboriginal Australians and Torres Strait Islanders. Moreover, citizens can present themselves without a lawyer.

New South Wales (Australia) has established a special body, through the Environmental Planning and Assessment Act 1979 No. 203; this body is the Land and Environment Court, which has competence on development appeals, residential development appeals and claims for compensation after the compulsory acquisition of land, among other competences. Moreover, the Court may restrain the use of buildings and rule on demolition or removal of specific buildings. The Land and Environment Court operates in addition to the general court system existent; indeed, the Civil and Administrative Tribunal deals with a broad and diverse range

46 www.vcat.vic.gov.au/land-valuation.

47 www.sat.justice.wa.gov.au/.

48 Biblioteca del Congreso Nacional de Chile (2021), Decreto 307 fija el texto refundido, coordinado y sistematizado de la ley 15.231, sobre organizacion y atribuciones de los juzgados de policia local (1978). www.bcn.cl/leychile/navegar?idNorma=12193.

of cases, including, for example, housing and property disputes (e.g., tenancy, strata, social housing, etc.).

Lastly, the United Kingdom (England) provides the right to appeal planning decisions to the Secretary of State under section 78 of the Town and Country Planning Act 1990. The Planning Inspectorate, an executive agency sponsored by the Department for Communities and Local Government, decides most appeals on behalf of the Secretary of State.

Out of the four countries, England and Australia (in relation to the State Administrative Tribunal of Western Australia), make it clear that only the applicant can file an appeal, meaning that a third party cannot commence review proceedings if unhappy with the outcome of the planning application. However, they also provide for the opportunity to make written comments on the appeal (England) and to be involved in a review commenced by an applicant, including a right to make a submission to the State Administrative Tribunal (Western Australia). In South Africa, however, in addition to allowing the petition of any interested person to intervene in an existing application, there is also the possibility for any person whose rights are affected by a decision taken by a Municipal Planning Tribunal to appeal against it by giving written notice and supporting reasons to the city manager. If third parties' appeals have the potential to encourage democratic and participatory development decisions but, at the same time, they could overburden adjudicatory bodies and the judicial system (especially in countries where no specialized bodies or courts exist), the opportunity to intervene in proceedings initiated by the applicant or to submit observations does not seem to have any drawbacks but only the advantage of increasing the democratic nature of the decisions taken. In cases of third-party appeals of planning decisions affecting the larger public, decisions taken may be open to public review, as in Chile, where the law establishes that both the urban planning authorities and any citizen may file a complaint before a judge in the first instance for non-compliance with the urban planning law and the planning instruments, meaning that the definition of third party encompasses all citizens regardless of their relationship or grievance with the decision.

There is no fee to appeal planning decisions in England (although there is a cost that can be considerable for challenging planning appeal decisions in front of the High Court) and in Chile. In Australia (Western Australia and Victoria), there may be fees depending on the request and these are publicly available: e.g., the website of the Victorian Civil and Administrative Tribunal (Victoria) provides for a fees' simulator so that, by answering a few questions, the requester would know the fees that may apply.[49] The eCourts Portal of the State Administrative Tribunal (Western Australia) gives the applicant the information on the fee through the function "Application Overview", visible when making an application on the Portal.[50] In both Western Australia and Victoria there is the possibility of fee reduction in case of financial hardship.[51] It is also important to highlight that the Victorian Civil and Administrative Tribunal allows citizens to present themselves without a lawyer, thus reducing the economic burden for the appellant. The costs of the Supreme Court of Victoria are also publicly available on the website of the court.[52] To initiate a case in the Land Claims Court of South Africa, court fees must be paid in the form of revenue stamps, under Section 5 of the Restitution of Land Rights Act. If a party is assisted or represented by a legal aid board or proves to be indigent, court costs are not due (S. 5.3.b).

49 Fees of the Victorian Civil and Administrative Tribunal: www.vcat.vic.gov.au/fees.

50 Fees of the State Administrative Tribunal: www.sat.justice.wa.gov.au/F/fees.aspx?uid=5680-3217-80-40.

51 Ibid for the SAT. The following link for the VCAT: www.vcat.vic.gov.au/fees/concessions-fee-relief.

52 Fees of the Supreme Court of Victoria: www.supremecourt.vic.gov.au/forms-fees-and-services/fees.

The four countries provide timeframes and procedures to ensure that the decision is taken without any delay. Chile sets precise deadlines for certain steps of the procedure to challenge decisions on permits; for example, the Regional Secretariat, within three days of receiving the complaint, orders the municipality that had not responded to rule on the case within 15 days; failure to respond is considered as a denial. Within 15 days of this explicit or implicit denial, the Regional Secretariat shall decide on the complaint (Article 118 of the General Law of Urbanism and Constructions, 1976). In England, detailed guidance on appeals' average timescales is provided on the website of the Government, to allow the timely submission of information. The whole process from submission to decision should take around three months (based on the strict timeframes provided for each step of the procedure).[53] In South Africa, the timeframe for the appeal authority to decide the case is defined by each local authority: for example, Johannesburg Local Authority Notice No. 1240 of 2016, establishing the Municipal Planning By-law of 2016, states that the appeal authority shall decide the appeal within 30 days from the date of receipt of the appeal documents from the city manager or from the date of the formal oral hearing.[54]

Box 14. Timeframes: Victorian Civil and Administrative Tribunal of Australia

The time it takes to come to the VCAT and get a decision depends on the type of case and how complex it is; for example, for a simple residential tenancy case, it would be possible to get a decision in under four weeks. Other cases will take longer, but when applying to the VCAT, the applicant receives a notice telling them how long the case will possibly take. The VCAT website also offers a simulator of timeframes and costs for each type of application: in the page "before you apply", by using the function "tell us more about your dispute" and replying to questions in the guided procedure, the potential applicant will be able to know more about foreseen timeframes for the application. For instance, an application to review a decision on a permit application, including failure to decide, can take around six months for the permit applicant to get a decision (21 weeks if the case is eligible for the "major cases" list, and from 12 to 14 weeks if the case is eligible for the short cases list).

A particular case is that of New South Wales (Australia), because the Land and Environment Court has developed its own standards,[55] for the different classes of its jurisdiction, that it aims to meet and that are stricter than the standards established at the national level. The court reports on its performance in meeting these standards in its annual reviews, ensuring overall control by the public. For example, Class 1 (environmental planning and protection appeals) and Class 3 (valuation, compensation and Aboriginal land claim cases) appeals should respect the following standard: 95 per cent of applications should be settled within six months of filing. Thanks to the annual review report, it is possible to know that, in 2019, 77 per cent of Class 1 appeals were finalized within 12 months of commencement

53 www.planningportal.co.uk/planning/appeals/types-of-appeal/planning-appeals.

54 Johannesburg Municipal Planning By-law, 2016. https://openbylaws.org.za/za-jhb/act/by-law/2016/municipal-planning/eng/#chp_7__sec_50.

55 Land and Environment Court of New South Wales. https://lec.nsw.gov.au/lec/about-us/service-standards.html.

and 25 per cent were finalized within six months of commencement. The average timeframe for completion for all Class 1 appeals is 254 days.

All the four countries have mechanisms to challenge a planning appeal decision and request a judicial review; in England, the appellant has the possibility to bring the case to the High Court within 42 days of the date of the decision (under Part 54 of Civil Procedure Rules). The High Court is the only authority that can formally identify a legal error in an inspector's or Secretary of State's decision and require that decision to be re-determined. Timeframes can vary considerably. Many challenges are decided within six months, some can take longer. In Australia, decisions of the State Administrative Tribunal (Western Australia) can be appealed against in the Supreme Court on a point of law under s105 of the State Administrative Tribunal Act 2004; decisions of the Victorian Civil and Administrative Tribunal (Victoria) can be appealed within 28 days to the Court of Appeal or to the Trial Division of the Supreme Court of Victoria (based on who made the tribunal decision). The case of the Land and Environment Court (New South Wales) is slightly different, as its decisions should be first appealed to the State's Court of Appeal, and then, against decisions of the latter, the judicial review jurisdiction of the Supreme Court can be invoked. In South Africa, once internal remedies before the administrative authority are exhausted, and if the parties are not satisfied with the decision taken, they can institute proceedings in the District Magistrate's Court within whose area of jurisdiction the land in question is situated, or before the Land Claims Court. Finally, the decision of the Land Claims Court can be appealed before the Supreme Court of Appeal, and if appropriate, before the Constitutional Court. In Chile, proceedings heard by the Local Police Courts in the first instance are subject to a justified appeal filed with the corresponding Court of Appeal.[56]

Recommendations:

i. Include an administrative appeal process for planning decisions (e.g., Planning Inspectorate in England; Regional Secretariat in Chile), before going to court, and establish specialized courts (e.g., the Land and Environment Court of New South Wales in Australia; the Land Claims Court in South Africa) for land- or planning-related matters to ease the pressure on the judicial system and reduce the case load of the civil courts, to allow faster and more efficient resolution of disputes.

ii. Provide different ways to appeal a planning decision, including online appeals, but also the possibility to send the appeal form in another format (such as hand delivery to the appropriate body office or via post office), as well as support services for priority groups such as people with disabilities or Indigenous People, in order to enhance inclusive participation and accessibility.

iii. Although the possibility for a third party to appeal planning decisions can encourage democratic and participatory development decisions, at the same time it can also lead to an abundance of claims which overburden adjudicatory bodies and, where no specialized bodies or courts exist, the judicial system more generally. Therefore, where specialized adjudicatory bodies for planning-related disputes are not in place, providing third parties with the opportunity to intervene in the initial (administrative)

56 Biblioteca del Congreso Nacional (2022b). Ley 18287 establece procedimiento ante los juzgados de policia local (1984), https://www.bcn.cl/leychile/navegar?idNorma=29705.

decision-making process by submitting observations may be the best option to increase the democratic nature of the decision-making without overwhelming the judicial or ad hoc adjudicatory systems. Third-party submissions can apply to planning decisions directly implicating a neighbourhood or the city more broadly, such as the issuance or amendment of neighbourhood or city-wide zoning or layout plans, as well as to individual planning permission decisions, such as building and demolition permits.

iv. As a best practice to enhance participatory planning processes, there should be no fee for challenging a planning decision; because this is not a sustainable solution everywhere, at least administrative costs could be paid and financial relief could be provided in the event of economic hardship. It is important that fees are made publicly available before submitting the appeal, either publishing the cost for each specific application on the website of the institution or body (e.g., the fees' simulator of the Victorian Civil and Administrative Tribunal, Australia), or informing the appellant before the submission.

v. Similarly, foreseen timeframes to obtain a decision should be provided before submitting the application or at the moment of submitting it, to avoid unnecessary and unmotivated delays of the administrative or judicial body (e.g., publishing average timescales for each step of the appeal procedure like in England; providing a foreseen duration of the procedure through an online simulator and informing on the estimate duration once filed the case, like in Victoria, Australia; set specific timeframes in the legislation like in Chile and South Africa). An additional good practice identified on timeframes is the one of setting and publishing standards on duration of proceedings, compromise to respect them and allow public oversight through reporting on the respect of these standards.

vi. Provide the possibility to challenge planning decisions both through the appeal and through the judicial review jurisdiction.

Alternative dispute resolution

In addition to the formal judicial system, the legal framework should recognize and encourage alternative dispute resolution, as the formal court system often includes lengthy and costly processes with complex procedures that limit access for most of the population. The formal court system is often technical in nature and obliges litigants to be represented by lawyers, thus making it more expensive. In contrast, alternative dispute resolution has several advantages. It is relatively speedy, less costly, more flexible and has fewer technicalities.[57]

The possibility of using alternative dispute resolution mechanisms is found in the four countries assessed; in South Africa, this is especially mentioned in relation to land disputes, for which mediation and arbitration can be requested under the Restitution of Land Rights Act 1994, the Land Reform Act 1996, and the Extension of Security of Tenure Act 1997. Overall, arbitration is regulated by the Arbitration Act of 1965,[58] establishing that, unless the arbitration

57 UN-Habitat (2022c). Urban Planning Law for Climate Smart Cities: Urban Law Module.

58 Arbitration Act of 1965. www.wipo.int/edocs/lexdocs/laws/en/za/za062en.pdf.

agreement otherwise provides, the arbitration tribunal shall make its award within four months after the date on which such arbitrator or arbitrators entered on the reference or the date on which such arbitrator was, or such arbitrators were called on to act by notice in writing from any party to the reference (Article 23). Regarding costs, if not fixed by the arbitration agreement, they are at the discretion of the arbitration tribunal (Article 35).

In England, it is also possible to settle disputes through alternative dispute resolution, including mediation and binding or non-binding evaluations by an expert. Arbitration is also encouraged and regulated by the Arbitration Act of 1996, with the "object to obtain the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense" (Section 1a). However, no strict timeframes are foreseen by the Act, and there seem to be several indefinite fees and expenses. There is also no provision on confidentiality of information in the Act or a duty of independence of arbitrators, which could compromise the success of the mechanism. In Chile, there are cases for which arbitration is mandatory before going through a judicial process, and these are recognized in the legislation (e.g., disputes between the State and a concessionaire in public works).[59]

The most successful example in the use of alternative dispute resolution seems to be Australia, where all the three States analysed (New South Wales, Western Australia and Victoria) encourage and facilitate the use of alternative dispute resolution, in particular mediation and court-ordered mediation, ensuring the fast, inexpensive and confidential resolution of disputes without going to court. The State of Victoria, for instance, established a Dispute Settlement Centre of Victoria providing free services. Remarkably, the centre operates in partnership with the Victorian Civil and Administrative Tribunal, for example, through the Fast Track Mediation and Hearing Program, ensuring the smooth resolution of disputes and easing the pressure on the judicial system. Similarly, the New South Wales Government established the Community Justice Centres, which provide free and confidential mediation services. It is also important to underline the establishment of the New South Wales Alternative Dispute Resolution Directorate, with coordination and management functions across the State. Very often the alternative dispute mechanisms are provided and facilitated by the same court, as in the case of the Land and Environment Court of New South Wales and of the Western Australia State Administrative Tribunal.

Recommendations:

i. Provide alternative dispute resolution mechanisms (e.g., mediation, arbitration, conciliation) to promote the fast and inexpensive resolution of disputes. These mechanisms should ensure confidentiality in order to be effective and would benefit from partnership and coordination with the judiciary (in some cases, they are provided and facilitated by the courts, in other cases there are mandatory steps to be fulfilled, e.g., court-ordered mediation).

59 Jequier, E. (2013). "The arbitrability of the contentious administrative controversy in the field of the state´s contractual relations", in Revista Chilena de Derecho, vol. 40, No. 1, Santiago, http://dx.doi.org/10.4067/S0718-34372013000100007.

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Integrated_Communities_Strategy_Govt_Action_Plan.pdf.

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CASE STUDIES

Brisbane Australia by Morris Zawada, source : flickr

AUSTRALIA

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The Commonwealth of Australia country profile: quick facts	
Form of government	Constitutional monarchy
Form of State	Federal State
Surface area	7,741,220 km²
Gross domestic product (2021)	$1.54 trillion
Gross domestic product per capita (2021)	$59,934.10
Inequality-adjusted Human Development Index (2021)	0.88 (very high)
Population (2021)	25 million
• per cent of population aged between 0 and 14 (2021)	19 per cent
• per cent of individuals using the Internet (2020)	90 per cent
• per cent of urban population (2021)	86 per cent
Urban population growth (annual per cent, 2021)	0.3 per cent
Population density (2020)	3 inhabitants per km²
Literacy rate, adult (2018–2019)	N/A
Geographic region and subregion	Oceania

1. INTRODUCTION

GENERAL COUNTRY BACKGROUND

Australia is a federal State constitutionally composed of six States (New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia) and two self-governing territories (Northern Territory, and Australian Capital Territory), which have their own constitutions, parliaments, governments and laws[60] as well as political culture. As a constitutional monarchy and representative democracy, the executive power of the Commonwealth is officially assigned by the Constitution to the Queen and exercisable by the Governor-General (Queen's representative). However, in reality, the executive power lies in the hands of the prime minister and Cabinet (although they are not mentioned in the Constitution: this system is inherited from the United Kingdom). In addition to custom and tradition, the prime minister and Cabinet derive their powers, constitutionally, from their membership in the Federal Executive Council and status as advisers to the Governor General, and politically, from the people through the House of Representatives elections.

With a population of about 25 million (2021)[61], it is one of the less densely populated countries in the world[62] averaging three people per km^2; indeed, the population of Australia is concentrated in the major cities, which are home to 72 per cent of the total population. By contrast, 26 per cent live in inner and outer regional Australia, with the remainder (around 2 per cent) living in remote and very remote areas.[63] Out of the total population, the 86 per cent live in urban areas, with an urban population growth of 0.3 per cent annual in 2021.[64] Regarding population composition by age and by gender, the country's population has grown older, with the median age increasing from 32.4 years in 1991 to 38.2 years in 2021.[65] Of the total population, 19 per cent is aged less than 15 years. The female population accounts for 50.2 per cent. From an economic perspective, Australia is a highly developed country, with a gross domestic product of US$1.54 trillion (2021).[66] Regarding overall human development, Australia is currently ranked fifth (United Nations Development Programme's Human Development Index, 2021) and has an Inequality-adjusted Human Development Index classified as "very high development".[67] A high percentage (90 per cent) of the total population uses the Internet (either via a computer, mobile phone, personal digital assistant, games machine, digital television, etc.)[68], and thus, many Australians have the potential to access digital information and existent digital governance mechanisms.

60 Parliament of Australia, Infosheet 20 – The Australian system of government, www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/00_-_Infosheets/Infosheet_20_-_The_Australian_system_of_government.

61 World Bank Data. https://data.worldbank.org/indicator/SP.POP.TOTL?locations=AU-CL-GB-ZA.

62 World Bank Data. https://data.worldbank.org/indicator/EN.POP.DNST?locations=AU.

63 Remote and very remote areas are two categories of Remoteness Areas, which divide Australia into five classes of remoteness on the basis of a measure of relative access to services. Remoteness Areas are intended for the purpose of releasing and analysing statistical data to inform research and policy development in Australia. Source: Australian Institute of Health and Welfare, Profile of Australia's population, 7 July 2022, www.aihw.gov.au/reports/australias-health/profile-of-australias-population.

64 World Bank Data. https://data.worldbank.org/indicator/SP.URB.TOTL.IN.ZS?locations=AU & https://data.worldbank.org/indicator/SP.URB.GROW?locations=AU.

65 Australian Institute of Health and Welfare (2022). Profile of Australia's population.

66 World Bank Data, https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=AU.

67 United Nations Development Programme (2021). Inequality-adjusted Human Development Index, https://hdr.undp.org/inequality-adjusted-human-development-index#/indicies/IHDI.

68 World Bank Data on Individuals using the Internet (per cent of population): https://data.worldbank.org/indicator/IT.NET.USER.ZS?locations=OM-AU-GB.

Australia has three levels of government: the national Government, usually called the Federal Government, Commonwealth Government or Australian Government; the State/Territory Governments, competent for matters like roads, housing, public transport, among others; the local councils, competent for local matters such as town planning, sewerage, local roads, etc. The federal Government raises money mainly through collecting taxes on incomes, goods and services, and company profits. State/Territory Governments receive more than half of their money from the federal Government and collect taxes, while local councils collect taxes (rates) from all local property owners and receive funds from the federal and State Governments.[69] It is worth mentioning that the local level of government is not recognized in the Australian Constitution, but since 2005 it has been recognized in the State Constitutions. However, the lack of legitimate recognition at the national level has relegated local government to a "lesser" or subordinate level of government.[70]

SPATIAL PLANNING SYSTEM

Each of the three tiers of government has a role in urban planning: the Commonwealth Government can influence policies and outcomes at a national level; the State/Territory Governments have most responsibility for land-use planning and land management, and have all the powers not specifically assigned to the federal Government by the Constitution (residual competence). For example, States/territories are competent for: allocation of infrastructure, management of the public estate, powers to control land use and design, etc. States/territories work together with local governments in the implementation of their planning and urban development responsibilities. Local governments regulate day-to-day land use and are primarily responsible for drawing up and approving local land-use plans.

Each State/territory has its own legislation for urban planning as well as its political culture:

a. In Western Australia, land-use planning is overseen by Planning Western Australia, which implements the Planning and Development Act 2005.

b. In New South Wales, land use planning is overseen by the Department of Planning and Environment, which implements the Environmental Planning and Assessment Act 1979.

c. In Victoria, land-use planning is overseen by the Department of Transport, Planning and Local Infrastructure which implements the Planning and Environment Act 1987.

d. In South Australia, land-use planning is overseen by the Department of Transport, Planning and Infrastructure, which implements the Development Act 1993.

e. In Queensland, land-use planning is overseen by the Department of State Development, Infrastructure and Planning, which implements the Sustainable Planning Act 2009.

f. In Tasmania, land-use planning is overseen by the Tasmanian Planning Commission, which administers the Land Use Planning and Approvals Act 1993.

g. In the Northern Territory, land-use planning is overseen by the Department of Lands,

69 Parliamentary Education Office, https://peo.gov.au/understand-our-parliament/how-parliament-works/three-levels-of-government/three-levels-of-government-governing-australia/.

70 Christensen, H. "Legislating community engagement at the Australian local government level", in Commonwealth Journal of Local Governance, April 2019, www.researchgate.net/publication/332129669_Legislating_community_engagement_at_the_Australian_local_government_level.

Sydney NSW, Australia by Andy Wang source : Unsplash

Planning and the Environment, which implements the Planning Act 1999.

2. PUBLIC PARTICIPATION AND INVOLVEMENT IN SPATIAL PLANNING

Community engagement is gaining prominence in legislation in Australia, although the approaches vary from State to State. The first comprehensive local government acts of the Australian States (e.g., Local Government Act 1919 (New South Wales); Local Government Act 1958 (Victoria)) included provisions on announcements and public notice of activities during the various phases of the planning process, by way of gazette and newspaper. However, they did not specify methods for community engagement.[71] The first reference to community engagement comes from the Northern Territory Local Government Act 1978, which provided for the creation and administration of community government councils and the opportunity for "any person to make a submission … in relation to a draft community government scheme" (s.433) and stipulated that "the minister shall cause consultation to be carried out with residents" (s.434). With the citizen-led social and environmental justice movements of the 1960s, and the rise of the "urban problem", disputes between councils and communities over environmental and development matters increased, resulting in the enactment of the Environmental Planning and Assessment Act 1979 (NSW), the first dedicated land use statute in Australia, which states the need "to provide increased opportunity for public involvement and participation in environmental planning

71 Christensen H., "Legislating community engagement at the Australian local government level", in Commonwealth Journal of Local Governance, April 2019.

and assessment" (S.1.3, letter j) and sets the following requirements for community participation: public exhibition of, for example, the spatial plan for a minimum period, public notification requirements and the giving of reasons for decisions by planning authorities (S.2.22).

In the 1980s and 1990s, all the local government Acts went through substantial reviews. Just to mention a few of them: in Victoria, the Local Government Act 1989 incorporated a standardized public submission process (in the prescriptive Section 223) for several types of decisions taken by local governments, that includes the following: public notice in a newspaper; a specific window of time in which submissions are to be advertised and received; the right for submitters to appear in person at a meeting to speak in support of their submission; and the obligation for the committee or council to inform submitters of the outcome by writing. This Act passed through several reforms; with the democratic reform of 2003, councils have been required to produce council plans (s.125) and council budgets (s.129) that are subject to the prescriptive Section 223 on public submission processes outlined above. In New South Wales, the Local Government Act 1993 established that local communities can influence the affairs of local government (ex S.7) by the means of "making submissions, including comments on or objections to proposals" (among others, on land reclassification, on draft plans of management, local policies, leases, licences and other estates in respect of community land) that local governments need to consider. Similarly, the Local Government Act 1993 of Tasmania fostered community engagement. It does not contain a specific approach to public participation, but gives the local government the possibility to develop, implement and monitor consultation procedures and deliver the engagement as it sees fit (S.20). The Act also mandates a participatory process for strategic plans by providing "a statement of procedures to be carried out in relation to consultation with the community" when developing a strategic plan (S.67). In South Australia, the Local Government Act 1999 requires a consultation process for the development of strategic management plans (s.122), and it also requires local governments to "prepare and adopt a public consultation policy" (s.50), which can be reviewed only via a prescriptive public submission process. These provisions refer to reclassification of land, land management plans, lease of community/council land, council meeting code, permits for using roads and footpaths for business purposes, and planting trees. With an amendment in 2005, the consultation requirement was extended to budgets (s.123).

From mid-2000s to mid-2010s, the trend for councils to develop strategic community plans emerged, with the requirement, included through various amendments to the local government Acts, that these plans be accompanied by a community engagement strategy. In 2006, the Australian Local Government Association commissioned the National Financial Sustainability Study of Local Government[72] report, which highlighted issues relating to the financial sustainability of the nationwide local government sector. Consequently, the Local Government and Planning Ministers Council decided to develop a series of national sustainability frameworks that[73] the States agreed to adopt, updating their

72 PricewaterhouseCoopers (2006). National Financial Sustainability Study of Local Government, https://pdfslide.net/documents/national-financial-sustainability-study-of-local-government-national-financial.html?page=4.

73 One example: Queensland Government, Proposed local government sustainability framework, www.statedevelopment.qld.gov.au/local-government/for-councils/finance/sustainability-and-reporting/proposed-local-government-sustainability-

legislation to incorporate the standards outlined in the frameworks.

To this end, Western Australia adopted the Planning and Development Act in 2005 and released the Integrated Planning and Reporting Framework and Guidelines in 2009, which was updated in 2016,[74] providing considerable detail on how to design a tailored engagement process. The New South Wales Government did the same, releasing the Integrated Planning and Reporting Framework in 2009 (last updated in 2021).[75] The State of Victoria introduced the Local Government (Planning and Reporting) Regulations 2014 meaning planning and reporting regulations to align to the Local Government and Planning Ministers Council frameworks and which require councils to report on the status of their community engagement policy as well as community engagement guidelines "to assist staff to determine when and how to engage with the community" (Sch. 1). The law requires that they should also incorporate the reporting of community satisfaction scores on the "consultation and engagement efforts of council" (Sch. 2). The scores from this rating and others from the framework are available online so that citizens can compare the performance of Victorian councils.

Among recent reforms, it is worth mentioning the Local Government Act 2020 (Victoria), which includes five community engagement principles on how engagement should be supported and enabled. These are: the need for a clearly defined objective and scope; the need for timely information for participants; the need for participants to be a representation of those affected; the right for participants to have support to enable participation; and the need for participants to be informed of how their participation will influence the decision (Section 56). The Act also contains (Section 55) the obligation for councils to adopt and maintain a community engagement policy, developed in consultation with the municipal community and that gives effect to the community engagement principles. The community engagement policy must describe the type and form of community engagement proposed, include deliberative engagement practices, and specify a process for informing the municipal community of the outcome of the community engagement. Furthermore, the Environmental Planning and Assessment Amendment Act 2017 (New South Wales) requires planning authorities, inclusive of local governments, to produce community participation plans, outlining when and how authorities will engage on their various planning functions.

Mechanisms, modalities and timelines for public participation

The general overview on the evolution of community engagement in Australian States' legislation given in the previous paragraph will now be followed by an analysis of some exemplar models of public participation in spatial planning mainly taken from three of the States: New South Wales, Victoria and Western Australia.

framework.

74 WA Department of Local Government and Communities, Integrated Planning and Reporting (IPR) Framework and Guidelines, 2016 https://www.dlgsc.wa.gov.au/docs/default-source/local-government/integrated-planning-and-reporting/integrated-planning-and-reporting-framework-and-guidelines-september-2016.pdf?sfvrsn=4f3cff8_2

75 NSW Office of Local Government, Integrated Planning and Reporting (IP&R) Framework, 2009

https://www.olg.nsw.gov.au/councils/integrated-planning-and-reporting/

New South Wales

As mentioned, the New South Wales planning system is primarily regulated by the Environmental Planning and Assessment Act 1979 and its Amendment of 2017. The system can be divided into two broad areas: land-use planning and development control. Planning authorities, in charge of making planning instruments and development control, include: the Minister for Planning, the Planning Secretary, the Independent Planning Commission, the Greater Sidney Commission, Sidney district or regional planning panel, council, local planning panel.[76]

According to the aforementioned Act, the authorities above are subjected to mandatory requirements for community participation, which include public exhibition of planning instruments for a minimum period, public notification requirements of planning instruments and the issuing the justification for their decisions (Section 2.22(1)). In addition to these requirements, every council and New South Wales planning authority (listed above) must adopt a community participation plan in relation to the following planning functions: the making of planning instruments; the development approval process under part 4 of the Act; the environmental impact assessment process under Division 5.1 of the Act; the State Significant Infrastructure approval process under Division 5.2 of the Act; and the making of a local infrastructure contribution plan. The community participation plan makes it easier for citizens to understand how they can participate in planning decisions, as it sets out how planning authorities will engage with their communities across their statutory planning functions. Each community participation plan must meet community participation principles set out in section 2.23(2) of the Act, for example:

a. Planning information should be in plain language, easily accessible and in a form that facilitates community participation in planning.

b. The community should be given opportunities to participate in strategic planning as early as possible to enable community views to be genuinely considered.

c. Community participation should be inclusive and planning authorities should actively seek views that are representative of the community.

d. Planning decisions should be made in an open and transparent way and the community should be provided with reasons for those decisions (including how community views have been considered).

e. Community participation methods (and the reasons given for planning decisions) should be appropriate having regard to the significance and likely impact of the proposed development.

In 2009, the Integrated Planning and Reporting framework came into practice and changed the way councils in New South Wales planned, documented and reported on their plans for the future. It was first issued by the Office of Local Government in 2010 but was then updated to reflect legislative changes enacted through the Local Government Amendment (Governance and Planning) Act 2016 and to include the requirements under the Local Government (General) Regulation 2021.

76 Montoya D., The NSW Planning System, NSW Parliamentary Research Service, July 2019, https://www.parliament.nsw.gov.au/researchpapers/Documents/The%20NSW%20planning%20system.pdf

A handbook for local councils in New South Wales[77] was published in September 2021, and guidelines for local governments in the State[78] have been issued under the Local Government Act 1993 and the Local Government (General) Regulation 2021.

According to this framework, a council may choose to meet the requirement to make a community participation plan as part of a community strategic plan or community engagement strategy, required under section 402 of the Local Government Act 1993. In this way, it would incorporate the community participation plan requirements into the broader community engagement strategies it prepares under local government legislation. The community engagement strategy sets out how the council will engage the community in creating and reviewing their strategic plan. Pursuant to the Local Government Amendment (Governance and Planning) Act 2016 No 38, the strategy has been expanded to all aspects of council engagement, including all plans, policies, programmes and activities (section 402A), not just the community strategic plan. This strategy must be guided by the principles of access, equity and participation; must identify relevant stakeholder groups in the community; must outline the methods the council will use to engage each of these groups; and must allow sufficient time to effectively undertake the engagement.[79] Other essential requirements are set under the Local Government Act 1993, the Local Government (General) Regulation 2021, and the Environmental Planning and Assessment Act 1979, and they are also summarized in the Appendix A-1-2 of the above-mentioned handbook.

In contrast, the community strategic plan describes the community's vision, priorities and aspirations for a period of ten or more years. Its creation is led by the mayor and councillors and through engagement with the community, in line with the community engagement strategy. The community strategic plan is endorsed by council after being on public exhibition for at least 28 days.[80] Mandatory requirements are set for the community strategic plan under the Local Government Act 1993 and the Local Government (General) Regulation 2021, and are summarized in the Appendix A-1-1 of the above-mentioned handbook.

Any community endorsed changes to council's strategic direction and priorities should be reflected in the resourcing strategy, which is a document showing how the council will resource its strategic priorities. The other components of the framework that need a mention are: the delivery programme, i.e., the council commitment to the community about what it will deliver during its term in office to achieve the community strategic plan objectives; the operational plan, i.e., a plan of individual projects and activities a council will undertake in a specific year; and, the annual report, used by the council to report back to the community on the work undertaken by a council in a given year to deliver on the commitments of the delivery programme via that year's operational plan. Councils also report on their financial and asset performance against

77 New South Wales Office of Local Government (2021). Integrated Planning & Reporting, Handbook for Local Councils in NSW, September, www.olg.nsw.gov.au/wp-content/uploads/2021/11/Integrated-Planning-Reporting-Handbook-for-Local-Councils-in-NSW.pdf.

78 New South Wales Office of Local Government (2021). Integrated Planning & Reporting, Guidelines for Local Governments in NSW, September, www.olg.nsw.gov.au/wp-content/uploads/2021/11/IPR-Guidelines-2021.pdf.

79 www.olg.nsw.gov.au/councils/integrated-planning-and-reporting/framework/community-engagement-strategy/.

80 www.olg.nsw.gov.au/councils/integrated-planning-and-reporting/framework/community-strategic-plan/

the annual budget and longer-term plans.[81]

A list of community participation plans by council (117 plans) and by agency (4 plans) is available on the New South Wales planning portal.[82] Among the plans adopted by agencies[83], the Department of Planning and Environment has a Community Participation Plan,[84] adopted in 2019, which foresees:

a. Community participation in strategic planning, planning framework reforms and planning assessment process.

b. The possibility to provide informal feedback (through online forums, surveys, feedback sessions and workshops, social media,

81 New South Wales Office of Local Government, Integrated Planning & Reporting, Guidelines for Local Governments in NSW, September 2021.

82 https://www.planningportal.nsw.gov.au/exhibitions-publications/community-participation-plans

83 The others are the CPPs adopted by: the Greater Sidney Commission, the Landcom Community (i.e., the NSW Government's land and property development organization), and the Independent Planning Commission.

84 NSW Department of Planning and Environment, Community Participation Plan, 2019 https://shared-drupal-s3fs.s3-ap-southeast-2.amazonaws.com/master-test/fapub_pdf/Community+Participation+Plan/DPIE+CPP.pdf

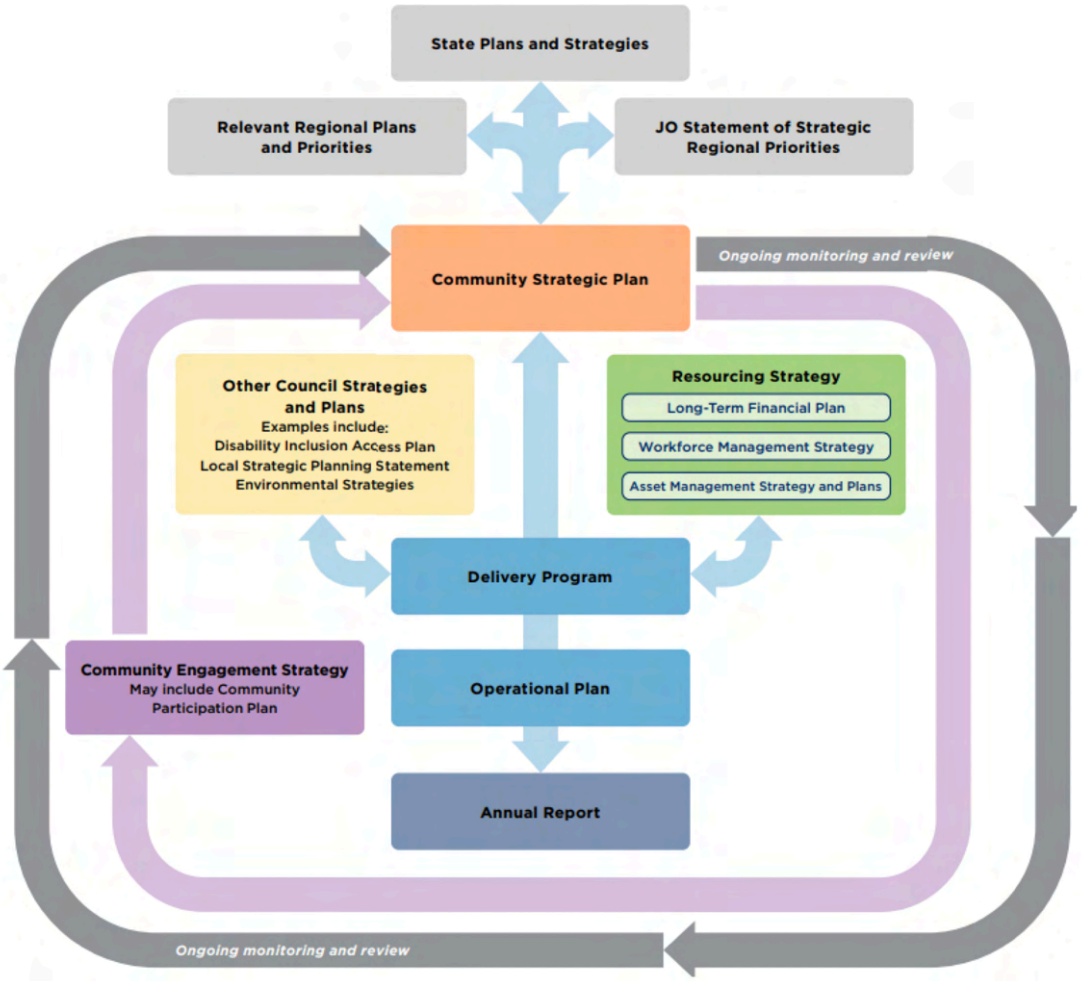

Figure 3: The Integrated Planning and Reporting Framework.

written correspondence, verbal discussions, site visits).

c. The possibility to attend events (e.g., walking tours, lectures and symposia, open days, public meetings and hearings, information sessions, digital engagement initiatives, shopfronts near key sites, digital feedback maps, surveys and other methods, before and during public exhibition).

d. The possibility to provide formal feedback, by making a formal submission during public exhibition (a consultation period to provide suggestions, raise concerns or objections) of a planning proposal (e.g., a draft plan or policy) or project. For example, when an application for a major project is lodged, the application is exhibited and during this period the community can make a written submission which outlines their views on the project. During public exhibition, a range of community participation activities (e.g., workshops or focus groups) may be organized.

The minimum mandatory public exhibition timeframes are set by the Environmental Planning and Assessment Act 1979 (New South Wales), Schedule 1; some of them are provided below:

a. 28 days for the draft community participation plans.

b. 45 days for draft regional or district strategic plans.

c. 28 days for draft local strategic planning statements.

d. 28 days for draft development control plans.

e. 28 days for the application for development consent for designated development and for State significant development.

Some planning functions do not have a mandatory public exhibition timeframe, established by law. However, according to its community participation plan of 2019, the Department of Planning and Environment typically exhibits documents related to the exercise of these functions and proposals for the timeframes indicated in table 3 of the plan, e.g., 28 days for draft legislation, regulation, policies and guidelines; six weeks for plans for urban renewal, etc.[85]

The community participation plan requires that community participation is started as early as possible, to provide regular project updates to the community, and to ensure the community has reasonable time to provide input. Also, community input must be given proper consideration and must be integrated into the evaluation process; at the end of the project, an explanation must be given regarding how community views were considered in reaching the decision, and the decision will be also notified to the community.

A local example of community engagement in New South Wales:

To encourage community engagement and participation, the Department of Planning and Environment facilitates early engagement activities and organizes events to meet local and regional communities. For example, the Department's regional team as well as the Aboriginal Community Land and Infrastructure Program actively consulted in 2019 with the Local Aboriginal Land Councils in New South Wales about how Aboriginal community-owned land can best be planned, managed and developed.[86]

85 NSW Department of Planning and Environment, Community Participation Plan, 2019

86 https://www.planning.nsw.gov.au/About-Us/Our-Work/Our-Community-Participation-Plan

The La Perouse Local Aboriginal Land Council get some outdoor training at the Introduction to the New South Wales Planning System workshop. Source: www.planning.nsw.gov.au/About-Us/Our-Work/Our-Community-Participation-Plan

During the engagement process, the land councils expressed their needs, for example that a strategic assessment of land held by land councils is needed to allow them to identify priority sites that would assist them to prosper economically. Therefore, a series of workshops titled "Introduction to the NSW Planning System" have been organized by the department's Aboriginal Community Land and Infrastructure Program team for all Local Aboriginal Land Councils across the State. In this way, the councils have gained knowledge on the New South Wales Planning System and have been empowered to make better land-use planning and informed decision-making.

Western Australia

In Western Australia, the Planning and Development Act 2005 provides a comprehensive system of land-use planning and development, with several bodies covering different aspects of urban planning; for example, the Western Australia Planning Commission is the statutory authority with state-wide responsibility for urban, rural and regional land-use planning and land development matters.

Spatial planning in Western Australia is done at four levels:

a. Regional level (with the regional planning and infrastructure frameworks having replaced regional strategies).

b. Sub-regional level (with the sub-regional structure plans, which are strategic spatial plans covering planning issues such as location of urban growth, etc.).

c. District level (with district structure plans, which show in more detail the general pattern of development in a particular part of a subregion).

d. Local level (with the local structure plans and the local development plans).[87]

Sub-regional structure plans are prepared by the Western Australia Planning Commission and must be advertised for "public comment", before being modified and adopted by the

87 Western Australia Planning Commission Department of Planning, Introduction to the Western Australian Planning System, www.dplh.wa.gov.au/getmedia/58e41b53-1db3-4ff4-a5b4-96592cc1fb35/WAPC-intro_to_planning_system

commission.[88] District structure plans and local structure plans are prepared by local government, landowners, or a landowner representative, in liaison with the Western Australia Planning Commission and in consultation with other affected government agencies. They are advertised by local governments for public comment and are required to be assessed and endorsed by the commission. Local development plans are prepared, assessed and endorsed by local governments with the Western Australia Planning Commission not normally having a role in this process. The advertisement for public comments happens through the Department of Planning, Lands and Heritage's Citizen Space Consultation Hub,[89] where all consultations (forthcoming, open and closed) and related information can be found.

The Western Australia Environmental Protection Authority grants opportunities for public participation and consultation as a part of the environmental impact assessment and developing environmental policies. This institution also has a website for open consultations.[90]

Instead of highlighting public participation requirements in statutory (legal) plans, for this case study, the focus will be on the masterplan that is being developed since 2017 for the suburb of Beaconsfield, in the City of Fremantle, in the frame of the Heart of Beaconsfield project,[91] as the process for its development is a good model of community engagement at the lowest level. A masterplan is a strategic document made up of a spatial plan and supporting information, that takes input and information such as community aspirations, population, housing, transport, connections, facilities, land use and site characteristics to develop a vision for the future of an area. As such, it can guide how an area may develop or redevelop in the future to inform further detailed structure planning and development proposals.[92] The aim of the Heart of Beaconsfield project is to create an over-arching masterplan that will help to guide and connect plans for development on the various sites in Beaconsfield. This masterplan contains ideas (on open and green spaces, housing types, transport links, community facilities) provided by the community during the two-stage engagement process:[93]

1. In the first step (2017–2018), community members participated in visioning and concept design workshops, attended open days to share ideas, attended working group meetings, including a walking tour of the Heart of Beaconsfield site, and shared their thoughts and ideas through online surveys about what should be included in a masterplan for Beaconsfield.

2. In a second step (early 2021), after a feasibility study, a draft masterplan was presented to the community for feedback, collected through online submissions on My Say Freo and an in-person information session at the Freo Farmers Market. Eighty-two submissions were received and reviewed; about half of them raised

88 Ibid.

89 Department of Planning, Lands and Heritage's Citizen Space Consultation Hub, https://consultation.dplh.wa.gov.au/.

90 Western Australia Environmental Protection Authority, Consultation Hub, https://consultation.epa.wa.gov.au/.

91 https://mysay.fremantle.wa.gov.au/the-heart-of-beaconsfield.

92 For the definition of masterplan: https://mysay.fremantle.wa.gov.au/the-heart-of-beaconsfield/widgets/162766/faqs#question73078

93 City of Fremantle, The Heart of Beaconsfield, Community Engagement Report, March 2021, https://ehq-production-australia.s3.ap-southeast-2.amazonaws.com/4a3f2e16c591d608730018d50e18f621b6ddb545/original/1617160985/76425a6fbb2e82ddaef27a2002b4c1b4_Heart_of_Beaconsfield_-_Engagement_Report.pdf.

building height and residential density as a concern. In response to these concerns, the revised plan proposed some reduction to both building heights and density to a more moderate/balanced level.

Feedback received from the community has been fundamental in establishing the direction for the masterplan and underpinning key elements to be addressed.

Walking tours to achieve community engagement in Australia. Source: Creating Communities (2018). "Why is quality community engagement so important?"

Victoria

The planning system in the State of Victoria is derived from the Planning and Environment Act 1987, supported by the Planning and Environment Regulations 2015. The Act provides for a single instrument of planning control for each Victorian municipality, the planning scheme, a legal document which sets out the way land may be used or developed. Planning schemes must include: state standard provisions (i.e., state policy, zones, overlays, particular provisions and general provisions), which must be selected from the Victoria Planning Provisions; and local provisions (i.e., a municipal strategic statement and local policies).[94] The Planning and Environment Act also provides for the Victoria Planning Provisions – a template document of standard state provisions for all planning schemes to be derived from (it is not a planning scheme and does not apply to any land). [95] Below, is an in-depth look at the city Melbourne.

94 Richardson K. and Merner B. (2013). An Introduction to Victoria's Planning System: A Guide for Members of Parliament, Department of Parliamentary Services, Parliament of Victoria. www.parliament.vic.gov.au/publications/research-papers/send/36-research-papers/13746-planning.

95 More information can be found at: The State of Victoria Department of Environment, Land, Water and Planning, Using Victoria's Planning System, October 2022, www.planning.vic.gov.au/__data/assets/pdf_file/0020/604064/UVPS-Using-Victorias-Planning-System-2022.pdf.

Melbourne case study

Melbourne is the capital city of Victoria and is the country's second-largest city. Greater Melbourne's area is extensive – approximately 9,900 km², including suburbs. The Municipality of Melbourne includes metropolitan Melbourne's innermost suburbs, including the central city.[96]

The Victorian Government has developed a metropolitan planning strategy, called "Plan Melbourne 2017–2050,[97] which sets out the Government's vision for the area until 2050 and addresses Melbourne's infrastructure, housing, employment and environmental challenges with an integrated approach to planning and development that includes land use, transport and social and community infrastructure.[98] Plan Melbourne identifies the need for six land-use framework plans (one for each of the six metropolitan regions identified in Plan Melbourne) to be developed to guide strategic land-use and infrastructure development for the next 30 years. The plans will provide a means of aligning state and local planning strategies and working collaboratively across government to implement Plan Melbourne.

Plan Melbourne builds on an extensive consultation process carried out when drafting the first version of the Plan Melbourne Strategy in 2013, following the release of the discussion paper, "Melbourne, let's talk about the future".[99]As a new version of the plan was prepared in 2017 and a new public consultation process was conducted.[100] Plan development workshops were organized in 2018; between 2018 and 2020, comments and feedback were sought from council officers to ensure the emerging plans align with local policies. In 2021, the actual public consultation stage started. Community information sessions about Plan Melbourne were held in key metropolitan locations and the six draft land-use framework plans, that collectively form Melbourne's Future Planning Framework, have been shared with stakeholders and the community for feedback, given through a specific platform called Engage Victoria[101] and which is currently being considered by the minister. Following this step, the plans will be updated and approved by the Minister for Planning.[102]

At the city level, planning in Melbourne includes:

- The Melbourne Planning Scheme: a legal document that sets out policies and provisions for the use, development and protection of land in the City of Melbourne Municipality; planning schemes are prepared by the local council or the Minister for Planning and then approved by the minister.
- The Future Melbourne 2026 Plan[103]: the 2016 updated version of the Future Melbourne plan developed in 2008, which outlines Melbourne's long-term values and goals to guide the action of the Melbourne City Council.

To develop the Future Melbourne 2008 plan, five public forums were held in 2007 touching

96 www.melbourne.vic.gov.au/about-melbourne/Pages/about-melbourne.aspx.
97 State Government of Victoria, Plan Melbourne 2017–2050, www.planmelbourne.vic.gov.au/?_ga=2.136466930.397964050.1629415355-1489831605.1578281750.
98 www.melbourne.vic.gov.au/building-and-development/urban-planning/city-wide-strategies-research/Pages/plan-melbourne-strategy.aspx.
99 https://melbourne.org.au/cms_uploads/docs/cfm-submission-metropolitanplanningstrategy.pdf
100 https://engage.vic.gov.au/mfpf
101 https://engage.vic.gov.au/project/mfpf/participate
102 https://engage.vic.gov.au/project/mfpf/timeline/19667
103 The Future Melbourne 2026 Plan https://hdp-au-prod-app-com-participate-files.s3.ap-southeast-2.amazonaws.com/6814/7027/1508/Future_Melbourne_2026_Plan.pdf

upon different themes to help inform the plan, with over 500 people participating.[104] In 2015, the council decided it was time to revise the 2008 plan and started an extensive community engagement process in 2016. As mentioned in the acknowledgments, the "Future Melbourne 2026 Plan has been enriched by the thousands of people who participated in public forums, roundtables and community events and engaged online via the Future Melbourne website". Indeed, six leaders from Melbourne's community – called "ambassadors" and including senior academics on law and architecture, public servants and business experts – were selected to guide the development of the plan, in partnership with several organizations, universities and research centres. A citizens' jury of 50 Victorians was designed and facilitated by MosaicLab organization, specialists in participation and engagement. The designation happened through a random selection process that saw 7,000 invitations sent out to people who were identified as living, working or owning a business in the Melbourne area. This resulted in a jury that broadly represented the municipal demographic, with a good mix of business owners, employees and residents, and a matching gender and age distribution profile.

The process was conducted in three phases from February to June 2016:

1. During the first phase, people were encouraged to share ideas through online consultations or discussions and a series of face-to-face meetings and workshops. Almost 2,000 people engaged in conversations on an online platform where ideas were posted and others could comment, like or dislike. An additional 2,000 people took part in a series of 30 sessions in person; some of these events were open to all; most events were tailored to different audiences including stakeholders and young people. All together, these sessions generated 970 ideas for the future.

2. The second phase was meant to bring all the ideas collected. Ideas were grouped into different themes including future economies, climate change and urban growth and density, and a consolidated report was drafted by an independent company.

3. During the third phase, a final deliberation took place; the citizens' jury was called to meet for three and a half day-long sessions to consider the question "How should the Future Melbourne vision, goals and priorities be refreshed to prepare our city for the next decade?" Prior to meeting in person, jurors had deliberated online for three weeks. The outcomes of the first two phases were used to rewrite the 2008 plan. The jury's report, outlining 9 goals and 53 priorities,[105] was then presented to the ambassadors for review. The ambassadors endorsed all the principles and goals and made minor revisions to the plan. The plan was then submitted by the ambassadors to the council at a meeting in August 2016.[106]

Future Melbourne 2026 seems to have had a positive response and, overall, citizens' juries, used in the State of Victoria and Australia so far seem to bring several benefits to the community.[107] Melbourne's leading role in participatory

104 https://participedia.net/case/4562

105 https://participate.melbourne.vic.gov.au/future/creating-future-melbourne-2026-plan

106 http://www.melbourne.vic.gov.au/about-council/committees-meetings/meeting-archive/MeetingAgendaItemAttachments/747/13448/AUG16 FMC1 AGENDA ITEM 6.4.pdf

107 Edmunds S. (2016). "Citizen juries & new democracy: Farrelly, Doyle, Walker, Belgiorno-Nettis, Brokman", in The Fifth Estate, 2016, https://thefifthestate.com.au/business/government/are-citizen-juries-the-new-way-forward-for-democracy/

democratic approaches to decision-making has also been consolidated in goal 7 of the plan "A deliberative city", that is meant to inform and empower local communities to be involved in decision-making and to deliver a collaborative city (priorities 7.1, 7.2, 7.3).

Inclusive participation and digital governance

In addition to the examples already mentioned in the previous paragraph (e.g., workshops specifically targeted at young people during the Future Melbourne 2026 engagement process; the existence of accessibility provisions in the Community Participation Plan in New South Wales, etc.), it is worth highlighting some specific provisions that pursue a more inclusive process of participation. The Community Participation Plan of the New South Wales Department of Planning and Environment[108] contains provisions and requirements to make participation open, inclusive and easy to access.

For instance, it requires the department to:

- Use culturally appropriate practices when engaging Aboriginal Torres Strait Islander and culturally and linguistically diverse communities.
- Make relevant information available in plain English and translate information when engaging linguistically diverse communities or people with disabilities.
- Outline in advance how and when the community can participate and conduct participation initiatives in a safe environment.
- Incorporate visual representations to clearly illustrate possible impacts of a proposal.

As mentioned, the Future Melbourne 2026 Plan invited individuals, groups and organizations to share their ideas for the future of Melbourne. The plan foresees a "Melbourne designed by the people and for the people (…) where decisions reflect the priorities and views of an inclusive community" (priority 2.3), and, as an inclusive community, "Melbourne encourages and responds to different voices, needs, priorities and rights", particularly encouraging contributions from all communities, including marginalized and disenfranchized groups, as well as the free participation of individuals with diverse backgrounds, ages and abilities (priority 2.7). The plan contains specific provisions related to Aboriginal Australians (i.e., the Indigenous Peoples of Australia mainland, who, together with Torres Strait Islanders, compose the Indigenous Australians). In particular, the plan refers to the need to engage Aboriginal people, with a specific reference to the Kulin nation (i.e., the five Aboriginal nations in south-central Victoria), in urban land management (priority 9.4).

To make all the Australian government services available digitally and accessible to all, the federal Government adopted a Digital Government Strategy,[109] meaning the Commonwealth strategy to deliver simple, helpful, respectful and transparent public services for all Australians. According to this strategy, by 2025 all government services should be available digitally. In this regard, some innovative digital governance tools can be mentioned. For example, the Sydney City Dashboard is a single point of access to government data that is important to

108 New South Wales Department of Planning and Environment, Community Participation Plan (2019). https://shared-drupal-s3fs.s3-ap-southeast-2.amazonaws.com/master-test/fapub_pdf/Community+Participation+Plan/DPIE+CPP.pdf

109 Australian Government, Digital Government Strategy, 2021, https://www.dta.gov.au/digital-government-strategy

understanding what is happening across Greater Sydney (New South Wales). It is an interactive tool that provides links to a wide range of data sources to help monitor growth and change. The City of Melbourne, on its part, has developed an online platform called "Participate Melbourne" [110] where citizens can search for open consultations in their neighbourhood and vote to shape future neighbourhood plans. The platform includes new digital neighbourhood portals where the community can find important information on the services provided in their neighbourhood, learn more about neighbourhood priorities, and keep up to date on work already underway.[11]

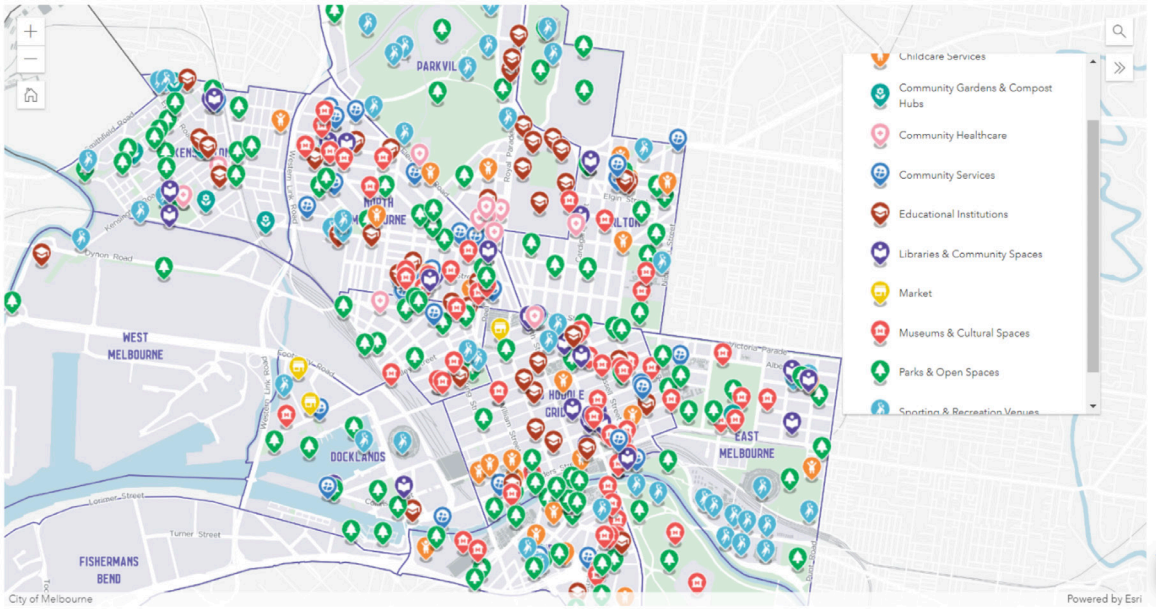

Figure 4: Neighbourhoods map in the neighbourhood portals. Source: Participate Melbourne platform.

Moreover, Priority 7.4 of the Future Melbourne 2026 Plan states that to enable citizens to be deeply engaged with local governance processes, "new technologies will be used to harness people's feedback and enable participation in government decision making, through open and transparent processes". To ensure the accessibility of services to all, priority 8.2 foresees that all the people will have access to the municipality's universal wireless Internet connection. Priority 8.6 adds that "if services are replaced with new technology, the services and functionality will still be easily available to people who are not comfortable with or do not readily use new technology". Training, education and resources will be available to ensure people can acquire the skills required to understand and use new technology.[112]

Civic engagement is also pursued through the Constitutional Centre of Western Australia[113] which builds knowledge and awareness of the systems of government in Australia through trainings such as the following: voting in the community; democracy; three levels of government. The centre provides information,

110 https://participate.melbourne.vic.gov.au/.

111 https://participate.melbourne.vic.gov.au/neighbourhoods.

112 City of Melbourne, Future Melbourne 2026 Plan. www.melbourne.vic.gov.au/SiteCollectionDocuments/future-melbourne-2026-plan.pdf.

113 Constitutional Centre of Western Australia. www.wa.gov.au/organisation/the-constitutional-centre-of-western-australia.

exhibitions, teaching, seminars and events relating to civic education, and gives the citizens of Western Australia the opportunity to learn about the State and Commonwealth government systems and discuss current events.

Participatory budgeting

According to the Participatory Budgeting World Atlas, Australia does not have any general law regulating public budgeting at the national, state or local level; the power of budget allocation that local councils hold cannot be legally delegated. In practice, participatory budgeting mechanisms are operational under a scheme of political agreement with constituents. Several participatory budgeting experiences involved 100 per cent of a city's budget, but there are also participatory budgeting mechanisms that function through more traditional schemes, with a small proportion of the total budget to allocate.[114]

The first milestone in the practice of such budgeting was carried out by the City of Canada Bay in Metropolitan Sydney, New South Wales, in 2012. This was the first time a local council used deliberative democracy to obtain input from citizens regarding public services and funding. The participatory budgeting in Canada Bay can be distinguished from traditional participatory budgeting processes because it uses a mini-public, i.e., a randomly selected group of citizens. The idea was to have a representative panel to deliberate and provide recommendations to the council.[115] The initiative emerged from

114 Australia. Participatory Budgeting World Atlas (2019). www.pbatlas.net/australia-pt-2019.html.

115 Thompson N. (2012). "Participatory budgeting - the Australian way", in Journal of Public Deliberation, https://

civil society, the newDemocracy Foundation that acted as a non-partisan intermediary organization in the process. This organization set the broad design, recruited the panellists and oversaw the process.[116]

The first state capital city to carry out a similar process was Melbourne (Victoria) in 2016 with the allocation of 5 billion Australian dollars ($A) (US$3,241,474,274.36) funds in its 10-year financial plan.[117] The participatory budgeting underwent two different participatory mechanisms: a people's panel and broad community engagement. The latter refers to different community events that took place across the city to gather information on citizen's views,[118] while the former was a panel composed of 43 randomly selected citizens formed to issue recommendations to the city council on its spending and revenue strategy. The selection of the panel was made in a representative manner to include business owners, residents and young people.[119]

A more traditional participatory budgeting process is the one developed in the city of Melville in Western Australia). Called the Robin Hood project, the programme provides a fund of $A100,000 (US$65,135.50) for community projects. The participatory process is open to any citizen group to make a proposal for a local project. A workshop is organized with the community to disseminate the idea, incorporate more visions and technical assistance. An online project application is submitted along with a preliminary budget, then the community votes on an online platform for the projects they want to see implemented. Accepted projects will be developed within 12 months by the proponent team under the direction of a member of the city staff. Projects not accepted may be eligible for another funding source.[120]

3. TRANSPARENCY AND ACCOUNTABILITY

Access to information

Since 2001, the Australian Public Service has undergone a series of reforms aimed at strengthening its mission.[121] Measures related to the openness and transparency of the Government included the endorsement of the Declaration of Open Government (2010),[122] the appointment of the Australian Information Commissioner who oversees freedom of information and privacy matters, and the commissioner's promulgation in 2011 of the Principles on Open Public Sector Information, which are the following: open access to information, engaging the community, effective information governance, robust information asset management, discoverable and useable information, clear reuse rights, appropriate charging for access, and transparent enquiry and complaints processes.[123]

delibdemjournal.org/article/417/galley/4657/view/.

116 Ibid., p.5.

117 Australia, Participatory Budgeting World Atlas (2019). www.pbatlas.net/australia-pt-2019.html.

118 City of Melbourne, 10-Year Financial Plan. https://participate.melbourne.vic.gov.au/10yearplan.

119 Participedia, City of Melbourne People's Panel (2020). https://participedia.net/case/4372.

120 City of Melville, About Project Robin Hood www.melvillecity.com.au/our-community/grants-scholarships-and-sponsorship/project-robin-hood/about-project-robin-hood.

121 Holmes B. (Politics and Public Administration Section), Citizens' engagement in policymaking and the design of public services, Research Paper no. 1, 2011-12, https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/rp/rp1112/12rp01#_ftn44.

122 https://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/AKCX6/upload_binary/akcx60.pdf;fileType=application%2Fpdf#search=%22media/pressrel/AKCX6%22.

123 Office of the Australian Information Commissioner (2010). Principles on open public sector information, www.oaic.gov.au/information-policy/information-policy-resources/principles-on-

The Freedom of Information Act, 1982 is a federal law that gives the right to access Australian Government's information to every person, regardless of the reasons for requesting it. Anyone can make an information request; thus, this right is not limited to Australian citizens or people in Australian territory. The request must be submitted in writing to the relevant agency or minister, indicating the document that is being sought and supporting information to facilitate the identification process.[124]

Some documents are exempt from the Freedom of Information Act, such as documents that affect national security, law enforcement and public safety, documents to which secrecy rules of a law apply, such as those that contain confidential material or disclose trade secrets. There is also a set of conditional exemptions (personal information, information about operations, information that could damage federal and State Governments, information about financial property or interest), for which the relevant authority must decide on the disclosure of the document under a public interest criterion.[125]

If the information applicant is not satisfied with the institution's response a request for an internal review or a review by the Australian Information Commissioner may be filed. The relevant agency has 30 days after receipt of the internal review to provide a response, in case of non-satisfaction or that the original decision emanates from a minister, a review by the commissioner may be filed. The latter may decide to make a new decision, affirm the original decision or vary the decision. This new response may be appealed in an Administrative Appeals Tribunal.[126]

In the state of Victoria, for example, the Office of the Victorian Information Commissioner is the primary regulator for information privacy, information security and public access to information in Victoria. The commissioner enforces both the State's Freedom of Information Act 1982 and the Privacy and Data Protection Act 2014. The Freedom of Information Act covers all the documents (i.e., files, emails, text messages case notes, draft material, handwritten notes, maps, discs, photographs and others) held by government departments, ministers, local councils, Victoria police, and statutory authorities, among others, except for specific kinds of documents that are exempt from release (e.g., business, commercial or financial information of an agency is exempt under section 34(4)(a)(ii)).[127] The freedom of information request must respect certain requirements to be valid: if such a request is not valid, the agency has an obligation to provide the applicant with at least 21 days to make a valid request and must provide advice or guidance to assist the applicant in making a valid request (Section 17 (3)-(4)). Once a valid request is received, an agency has 30 days to process the request and provide a decision to the applicant about whether the documents will be released. The 30-day timeframe includes weekends and public holidays and can be extended by an additional 15 or 30 days in limited circumstances (for example, to fulfil the requirement to consult with a relevant third party about the possible release of their information). The website of the Office of the Victorian Information Commissioner

open-public-sector-information.

124 Office of the Australian Information Commissioner, Freedom of information https://www.oaic.gov.au/freedom-of-information.

125 Office of the Australian Information Commissioner, What is freedom of information? www.oaic.gov.au/freedom-of-information/your-foi-rights/what-is-freedom-of-information#ConditionalExemptions.

126 Office of the Australian Information Commissioner, Reviews and complaints. www.oaic.gov.au/freedom-of-information/reviews-and-complaints.

127 Office of the Victorian Information Commissioner, Freedom of Information https://ovic.vic.gov.au/freedom-of-information/resources-for-agencies/practice-notes/.

provides a due date calculator tool[128] to assist in determining the due date for the request.

In addition to the obligation to provide information under a freedom of information request, the Act also obliges every agency to make the maximum amount of government information available to the public promptly and inexpensively. In this way, the Act promotes the proactive and informal release mechanisms, wherever possible (Section 16). An example of proactive release is the tender, contractual and financial information published on "Buying for Victoria"[129] (Victoria Tenders Portal). In this way, agencies and public governments would gain several benefits, like the reduced resources required to administer freedom of information requests; the increased public trust and confidence in decision-making by government and public institutions; the enhanced public sector accountability and integrity, the increased public access to information and, thus, public participation in policy development and government decision-making.

Moreover, according to the Local Government Act 2020 in Victoria, local councils must follow public transparency principles (Section 58) and must adopt and maintain a public transparency policy (Section 57) to give effect to the public transparency principles; describe the ways in which council information is to be made publicly available; specify which council information must be publicly available, including all policies, plans and reports; include any other matters prescribed by the regulations. Among the public transparency principles, it is worth mentioning the following: council decision making processes and council information must be transparent except when the council is dealing with information that is confidential and when public availability of the information would be contrary to the public interest.[130] In this regard, Melbourne City Council, in the Future Melbourne 2026 Plan, committed to open up government data in innovative ways (priority 7.5), meaning to make government data as a readily available public resource through digital technologies, to deliver a more efficient and transparent government.

Public accountability and protection mechanisms against retaliation

The Public Service Act No. 147 of 1999 gives an overview of the guiding values of the Australian Public Service, which are the following: commitment to service, ethics, respect, accountability and impartiality (paragraph 10).[131] Following the Australian Public Service values, in Section 13 of the same Act (Public Service Act No. 147 of 1999), the code of conduct and the employees principles are also established. Section 15 establishes the sanctions of breaching the code, which are imposed by an agency head and can result in the termination of employment, re-assignment of duties, reduction in salary, fines or reprimands.[132]

The Public Interest Disclosure Act No. 133 of 2013 promotes integrity and accountability in the Commonwealth public sector; it creates a framework that facilitates the disclosure and reporting of misconduct, wrongdoing and maladministration in the Commonwealth public service and ensures a timely and effective investigation. The Act also provides mechanisms

128 https://ovic.vic.gov.au/freedom-of-information/resources-for-agencies/due-date-calculator/.
129 www.tenders.vic.gov.au/.
130 Local Government Act No. 9 of 2020 https://content.legislation.vic.gov.au/sites/default/files/2020-03/20-009aa authorised_0.pdf.
131 Public Service Act No. 147 of 1999, as amended in 2018 through the Australian Government Compilation No. 20 of 2018 www.legislation.gov.au/Details/C2019C00057.
132 Public Service Act No. 147 of 1999, as amended in 2018.

for the protection of disclosers, including protection from reprisals and protection of disclosers' identity (part 2). This Act is overseen by the Commonwealth Ombudsman and the Inspector-General of Intelligence and Security.[133]

On 28 September 2022, the National Anti-corruption Commission Bill 2022 and National Anticorruption Commission (Consequential and Transitional Provisions) Bill 2022 were introduced to Parliament, establishing a powerful, transparent and independent National Anti-corruption Commission, with broad jurisdiction to investigate public sector corruption, as well as prevention and civic education functions to bolster anti-corruption efforts in the Commonwealth public sector.[134]

This model is replicated in subnational legislation, for instance, Victoria's Freedom of Information Act 1982[135] provides accountability mechanisms like the Victorian Ombudsman, which investigates complaints about administrative actions and decisions taken by government authorities and about the conduct or behaviour of their staff (lawfulness of actions and decisions as well as their reasonableness and fairness in the circumstances). The Protected Disclosure Act 2012 (Victoria)[136] ensures that people who report improper conduct and corruption in the State's public service can do so without reprisals. The Independent Broad-based Anti-corruption Commission assesses complaints made under the Protected Disclosures Act and can investigate State Government, councils, police, Victorian Parliament, judiciary sector.

Oversight and feedback mechanisms

In 2008, the Government established an Advisory Group on Reform of Australian Government Administration, which published a report in 2010 called "Ahead of the Game: Blueprint for Reform of Australian Government Administration". The document states that to achieve an open government, the Australian Public Service Commission – meaning the government agency within the Department of the Prime Minister which oversees the strengthening of public workforce management, upholding high standards of integrity and conduct, and promoting accountability, effectiveness and performance – will, among other activities, conduct a survey of citizens' views on their satisfaction with government programmes, services and regulations (recommendation 2.2.).[137]

Citizen Experience Survey is one of the regular and nationally implemented surveys. It measures satisfaction, trust and experiences across the Australian Public Service. The survey is led by the Department of the Prime Minister and Cabinet and its main objective is to use the information gathered to improve service delivery.[138]

133 Australian Government, Public Interest Disclosure Act No. 133, 2013. www.legislation.gov.au/Details/C2013A00133.

134 National Anti-Corruption Commission legislation. www.ag.gov.au/integrity/anti-corruption/national-anti-corruption-commission-legislation.

135 Victorian Legislation, Freedom of Information Act 1982. www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982.

136 Victorian Legislation, Protected Disclosure Act 2012. www.legislation.vic.gov.au/as-made/acts/protected-disclosure-act-2012.

137 Advisory Group on Reform of Australian Government Administration (2010). "Ahead of the Game: Blueprint for reform of Australian Government administration". www.apsreview.gov.au/sites/default/files/files/Ahead%20of%20the%20Game%20-%20Blueprint%20for%20the%20Reform%20of%20Australian%20Government.pdf.

138 Department of the Prime Minister and Cabinet, Citizen Experience Survey (2021). www.pmc.gov.au/public-data/citizen-experience-survey.

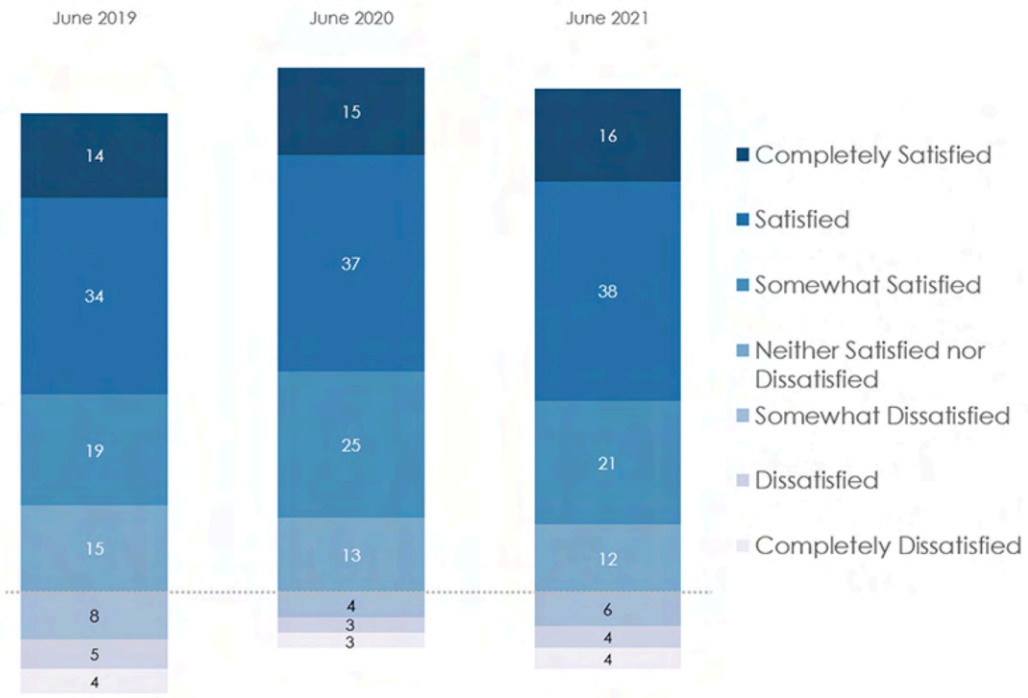

Figure 5: Percentage of people by their rating of satisfaction or dissatisfaction with Australian Public Service services. Source: Department of the Prime Minister and Cabinet. www.pmc.gov.au/public-data/citizen-experience-survey

Service delivery at the subnational level is also subject to feedback mechanisms and oversight. In New South Wales, these are foreseen by community participation plans, for example, by the Community Participation Plan of the New South Wales Department of Planning and Environment.[139] Since 2018, all planning authorities are required to give and publicly notify reasons for their planning decisions; they need to explain how decision-makers addressed key considerations in an assessment report; to summarize the reason(s) for why a development proposal has been refused; and to explain how the decision-makers have taken submissions into account in making their decision.[140] This requirement helps to deliver greater transparency and community confidence in the State's planning process, as it allows any stakeholders to understand how their input was considered and how it informed decisions on development applications.[141] Furthermore, in Western Australia, almost all government institutions run online surveys on their webpages on the quality of services provided. The Department of Water and Environmental Regulation, for example, provides an online feedback and complaint form for service delivery.[142]

139 New South Wales Department of Planning and Environment, Community Participation Plan, 2019.

140 New South Wales Department of Planning and Environment, Notifying Planning Decisions - Guidelines for local councils and other consent authorities, June 2018, www.planning.nsw.gov.au/-/media/Files/DPE/Guidelines/Notifying-Planning-Decisions-guidelines-for-local-councils-and-other-consent-authorities-June-2018.pdf?la=en.

141 www.planningportal.nsw.gov.au/exhibitions-publications/community-participation-plans.

142 https://kumina.water.wa.gov.au/feedbackandcomplaints/Add_New_Contact.aspx.

4. DISPUTE RESOLUTION, APPEAL AND JUDICIAL REVIEW

Victoria

The Victorian Civil and Administrative Tribunal resolves planning disputes in the State of Victoria. Once a local council (e.g., the City of Melbourne) has decided on a planning application, an application for review can be lodged to the tribunal which can:

- review a planning permit decision made by a responsible authority, including a failure to make a decision
- can cancel or amend a permit
- can enforce a planning scheme
- can take care of other planning disputes, as well as of building and construction and of land valuations disputes (e.g., disputes about compensation for acquisition of land)[143]

Citizens can present themselves without a lawyer and there are several disability support services[144] to allow people with disabilities to attend a hearing. A dedicated Koori support team is also present to support Aboriginal Australians and Torres Strait Islanders.[145]

Fees[146] are usually lower than the cost of going to court (and there is the possibility of fee relief in case of financial hardship[147]). If the case is not successful, there is no obligation to pay the costs of the other party. A rehearing can also be requested by applying for a review within the 14-day timeframe and the fees for this are also publicly available at the same webpage.

The Victorian Civil and Administrative Tribunal order can be appealed within 28 days to the Court of Appeal or to the Trial Division of the Supreme Court of Victoria (based on who made the tribunal decision). Fees for the appeal are also publicly available on the website of the Supreme Court.[148]

The time it takes to come to the Victorian Civil and Administrative Tribunal and get a decision depends on the type of case and how complex it is; e.g., for a simple residential tenancies case, it would be possible to get a decision in under four weeks. Other cases will take longer, but when applying to the tribunal, the applicant receives a notice telling them how long the tribunal thinks the case will take. The Victorian Civil and Administrative Tribunal website also offers a simulator of timeframes and costs for each type of application: in the page "before you apply", by using the function "tell us more about your dispute" and replying to the questions in the guided procedure, the potential applicant will be able to know more about foreseen timeframes and fees for the application. For example, an application to review a decision on a permit application, including failure to decide, can take around six months for the permit applicant to get a decision (21 weeks if the case is eligible for the "major cases" list, and from 12 to 14 weeks if the case is eligible for the short cases list).

The State of Victoria also encourages alternative

143 www.vcat.vic.gov.au/land-valuation.

144 www.vcat.vic.gov.au/help-and-support/support-services-vcat/disability-support-services.

145 www.vcat.vic.gov.au/help-and-support/support-services-vcat/koori-support. Note that "Koori" is a term denoting an Aboriginal person of southern New South Wales or Victoria. "Koori" is not a synonym for "Aboriginal". There are many other Aboriginal groups across Australia (such as Murri, Noongar, Yolngu) with which Indigenous Australians may identify themselves. Source: www.indigenousteaching.com/glossary-terms.

146 www.vcat.vic.gov.au/fees.

147 www.vcat.vic.gov.au/fees/concessions-fee-relief.

148 www.supremecourt.vic.gov.au/forms-fees-and-services/fees.

dispute resolution mechanisms of the following types: negotiation, mediation, facilitation, conciliation and arbitration. Moreover, it facilitates these resolution mechanisms through the establishment of the Dispute Settlement Centre of Victoria, which is meant to empower and assist the Victorian community to prevent and resolve issues, ease pressure on the judicial system and help the community to thrive.[149] Alternative dispute resolution is usually quicker than going to court and the Dispute Settlement Centre services are free. The centre is currently focused on resolving residential tenancy disputes listed for consideration by the Victorian Civil and Administrative Tribunal, so it is not operational in all its general services, but still offers general information on the resolution of other disputes (such as neighbourhood disputes) on its website.

Remarkably, the Dispute Settlement Centre of Victoria and the Victorian Civil and Administrative Tribunal are operating in partnership to deliver alternate dispute resolution processes and have established the Fast Track Mediation and Hearing Programme, which improves access to justice for all Victorians. Under this programme, customers who start an action with tribunal that falls within the threshold suitable for mediation are referred for a compulsory mediation session with a Dispute Settlement Centre mediator, who will work with parties to try and assist them to resolve their issue. This service is a quick and inexpensive way for the parties to resolve their claim without having to go through a full hearing.[150] Indeed, the mediation takes up to one hour, but can be extended to five hours on the day in case the dispute goes to a hearing. If the dispute cannot be resolved at mediation, a Victorian Civil and Administrative Tribunal hearing will be scheduled for either later that day or another day. A professional representative is not needed, so people can present themselves without a lawyer. The mediation can also take place by phone or by video conference. Accessibility and support services are available, like interpreters, audiovisual equipment, wheelchair access, etc.

New South Wales

In New South Wales, the Civil and Administrative Tribunal[151] deals with a broad and diverse range of cases, including, for example, housing and property disputes (e.g., tenancy, strata, social housing, etc.). For the case study on this State, there will no be an analysis of the general court system but there will be a focus on the specialized court on land and environment matters, as a functional and successful example for consideration. The Land and Environment Court, established by the New South Wales Environmental Planning and Assessment Act 1979 No. 203, is the first world specialist environmental court and has competence on development appeals, residential development appeals and claims for compensation after the compulsory acquisition of land, among other competences. The court may also restrain the use of buildings and rule on the demolition or removal of specific buildings.

The Land and Environment Court aims to meet its own standards[152] (highlighted below) for the different classes of its jurisdiction. These classes and standards are:

- Class 1 (environmental planning and protection appeals), Class 2 (trees disputes and local government appeals), Class 2 and 3 (Strata Scheme Development Proceedings),

149 Dispute Settlement Centre of Victoria. www.disputes.vic.gov.au.

150 www.vcat.vic.gov.au/the-vcat-process/mediations-and-compulsory-conferences/fast-track-mediation-and-hearings.

151 www.ncat.nsw.gov.au/case-types.html.

152 lec.nsw.gov.au/lec/about-us/service-standards.html.

and Class 3 (valuation, compensation and Aboriginal land claim cases): 95 per cent of applications should be disposed of within six months of filing.

- Class 4 (judicial review and civil enforcement), Class 5 (criminal proceedings), Classes 6 and 7 (criminal appeals from the New South Wales Local Court) and Class 8 (mining): 95 per cent of applications to be disposed of within 8 months of filing.

The above standards are far stricter than the national standards used by the Productivity Commission in its annual Report on Government Services. The national standards are:

- No more than 10 per cent of lodgements pending completion are to be more than 12 months old (that is, 90 per cent disposed of within 12 months).
- No lodgements pending completion are to be more than 24 months old (that is, 100 per cent disposed of within 24 months).

The court reports on its performance in meeting these standards in its annual reviews.

A few fast facts are: in 2019, Class 1 appeals were 68 per cent of the court's finalized caseload; 69 per cent of all Class 1 matters finalized were appeals under S. 8.7 of the Environmental Planning and Assessment Act 1979 relating to development applications; 61 per cent of the appeals under S. 8.7 were applications where councils had not determined the development application within the statutory time period (deemed refusals). The types of Class 1 appeal the court dealt with in 2019 are illustrated in figure 9:[153]

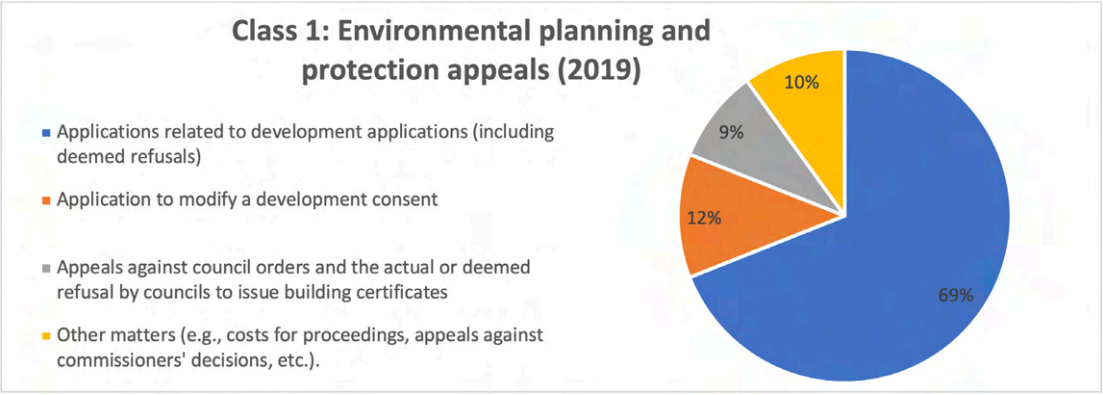

Figure 6: Class 1: Environmental planning and protection appeals (2019) Source: Author, based on data on the Land and Environment Court website

It is also worth highlighting that, in 2019, 74 per cent of Class 1 appeals were finalized by alternative dispute resolution processes and negotiated settlements, without the need for a court hearing. Also, 77 per cent of Class 1 appeals were finalized within 12 months of commencement and 25 per cent were finalized within 6 months of commencement. The average timeframe for completion for all Class 1 appeals is 254 days.

153 https://www.lec.nsw.gov.au/lec/types-of-cases/class-1---environmental-planning-and-protection-appeals.html

A party to proceedings in Classes 1, 2, 3 or 8 of the court's jurisdiction may appeal against an order or decision of a Judge of the Court on a question of law to the New South Wales Court of Appeal (s.57(1) of the Land and Environment Court Act), within 28 days after the date on which the court gave judgment. If the order or decision was issued by a Commissioner of the Court, this is appealed to the Land and Environment Court and heard and determined by a judge (s.56A(1)). Against the decision of the New South Wales Court of Appeal, the judicial review jurisdiction of the Supreme Court can be invoked.

New South Wales also encourages the use of alternative dispute resolution before, during or after court, as a "quicker, cheaper, more flexible, less stressful and more confidential" option.[154] To this end, the State Government established the Community Justice Centres, funded by the same Government, and which provide free and confidential mediation to help people solve disputes without going to court, including mandatory court referrals.[155] There is no waiting list and 75 per cent of matters presented to centres resulted in mediation within 60 days of first contact from at least one party to the dispute. The New South Wales Government's commitment to increasing awareness and use of alternative dispute resolution and Community Justice Centres to resolve disputes is remarked through the establishment, in 2009, of the Alternative Dispute Resolution Directorate, which coordinates, manages and drives government policy on alternative dispute resolution mechanisms, strategy and growth in the State.[156] Among the functions carried out by the Alternative Dispute Resolution Directorate there are: the coordination and management of significant alternative dispute resolution reform projects, the building of constructive partnerships across the alternative dispute resolution sector, and the conduction and publication of an annual survey on the use of these mechanisms by the State's government departments.

In the specific case analysed, the Land and Environment Court promotes several dispute resolution mechanisms (e.g., adjudication, conciliation, neutral evaluation, mediation, referral to a referee) and facilitates the matching of the appropriate method with the particular dispute. Among the dispute resolution mechanisms, conciliation in the court is undertaken by an impartial conciliator, meaning a commissioner or registrar of the court. This method is available for all proceedings in Classes 1, 2 and 3 of the court's jurisdiction and is provided by Section 34 of the Land and Environment Court Act 1979, as well as mandated for proceedings pending in Class 1 under Section 34AA. Mediation is another of the alternative dispute resolution mechanisms provided by law, under Section 26 of the Civil Procedure Act 2005. It is available for all proceedings in Classes 1, 2, 3, 4 and 8 of the court's jurisdiction and is undertaken by a commissioner or registrar of the court who is a trained mediator or by a mediator external to the court.

154 https://www.courts.nsw.gov.au/courts-and-tribunals/alternative-dispute-resolution/what-is-alternative-dispute-resolution.html

155 https://courts.nsw.gov.au/courts-and-tribunals/community-justice-centres.html

156 https://www.courts.nsw.gov.au/courts-and-tribunals/alternative-dispute-resolution/alternative-dispute-resolution-directorate.html

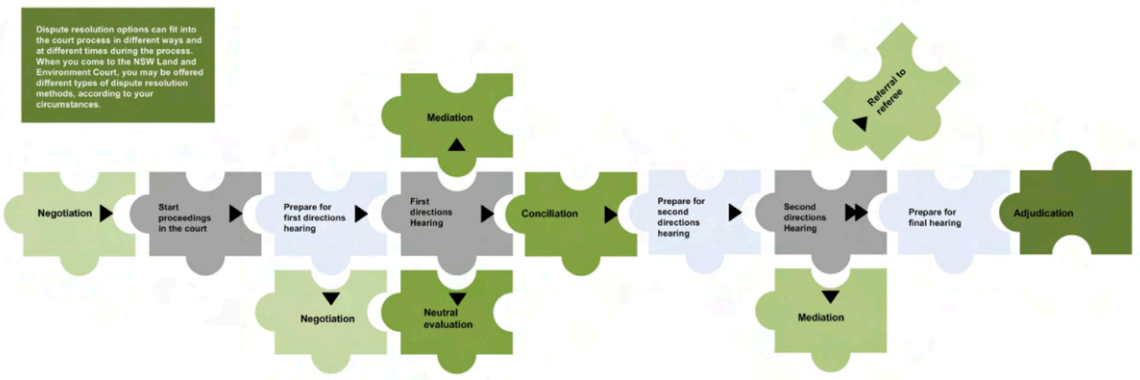

Figure 7: Dispute resolution methods and how they fit into the Land and Environment Court system Source: Land Environment Court website

Western Australia

In Western Australia, the State Administrative Tribunal, regulated by the State Administrative Tribunal Act 2004, is an independent body that reviews a wide range of government decisions and determines disputes. Among the application types to the tribunal, there are local governments' decisions (e.g., about the conduct of council members), building and construction (e.g., the State Administrative Tribunal can review some decisions of the Building Commissioner), and planning, development and valuation (including town planning, compensation for the compulsory acquisition of land, applications regarding heritage agreements, land uses, among others).[157] With regards to planning, development and valuation, the State Administrative Tribunal can review planning decisions relating to applications for development and sub-division, including decisions of a local government, the Western Australia Planning Commission, the Metropolitan Redevelopment Authority and development assessment panels.[158] For example, any applicant to the planning commission may, within 28 days of a decision on their proposal, request in writing that the commission reconsider a refusal or conditional approval of the plan. On receiving such a request, the planning commission must either review its decision or confirm its original decision, which can be then reviewed by or appealed to the State Administrative Tribunal. The right to commence review proceedings is generally available to the person who applied for the relevant planning decision in the following circumstances:

a. the application was refused

b. the application was approved subject to conditions which are not satisfactory to the applicant

c. the decision-maker has failed to make a decision within the prescribed time period, and the relevant scheme states that such a failure amounts to a deemed refusal

No right exists in Western Australia for a third party (such as an adjacent landowner) to commence review proceedings if they are unhappy with the outcome of a planning application.[159] There is, however, some scope under the State Administrative Tribunal Act for

157 www.sat.justice.wa.gov.au/.

158 www.sat.justice.wa.gov.au/P/planning_development_and_valuation.aspx.

159 www.sat.justice.wa.gov.au/H/how_sat_handles_review_applications_of_planning_decisions.aspx.

a third party to become involved in a review commenced by an applicant, including a right to make a submission to the tribunal. The review is on the merit of the planning matter only (the tribunal will not review whether the decision maker has acted appropriately).

An applicant who wishes to have a planning decision reviewed by the State Administrative Tribunal must lodge an application for review with the tribunal within 28 days of the relevant decision being made. Many original applications do not have time limits. The eCourts Portal gives information on the time limit that applies to specific applications.[160] Fees are publicly available on the State Administrative Tribunal website[161] and there is the possibility of reduction in case of financial hardship.

After a hearing, the tribunal will consider the matter and may deliver an order or decision immediately orally or may reserve the decision for detailed consideration (for up to 90 days). The reviewed decision is final and replaces the original planning decision (although a right of appeal to the Supreme Court does exist on a point of law and is regulated by s105 of the State Administrative Tribunal Act 2004). The tribunal publishes written reasons for each review decision and such decisions form a precedent for determining future planning applications or reviews.[162]

In Western Australia, alternative dispute resolution mechanisms are also encouraged, e.g., through court-ordered mediation. Mediation can take place inside court proceedings or outside court proceedings ("pre-trial mediation"). In particular, the State Administrative Tribunal provides mediation and compulsory conferences as alternative methods of dispute resolution to parties in a proceeding. The mediator or conference convenor is a State Administrative Tribunal member. With respect to mediation, the fee for the tribunal's mediation service is included in the application fee (unless the applicant chooses to engage an expert or lawyer, who is paid by the applicant). Mediation sessions can generally take three hours but may be longer if required. It is worth highlighting that mediation is confidential; sessions are not recorded and information or any evidence used during the mediation cannot be later used in a hearing, with very few exceptions.[163] Similarly, through compulsory conferences, issues can be resolved before a final hearing and are scheduled by a State Administrative Tribunal member or judge. Parties may also request the tribunal to make a compulsory conference order.

5. KEY TAKEAWAYS AND LESSONS

I. Australia is a constitutional monarchy and representative democracy with strong democratic institutions and, as such, it offers model practices of good governance which made it an excellent case study. Land-use planning and development functions are mostly done at the subnational level (States/Territories); community engagement is fostered throughout the planning process and several mechanisms, varying from State to State, are provided for its implementation.

II. In New South Wales, the Environmental Planning and Assessment Act 1979 sets mandatory requirements for community participation (for example, public exhibition for minimum periods established by law,

160 www.sat.justice.wa.gov.au/T/time_limits.aspx.

161 www.sat.justice.wa.gov.au/F/fees.aspx?uid=5680-3217-80-40.

162 Western Australia Planning Commission Department of Planning, Introduction to the Western Australian Planning System.

163 www.sat.justice.wa.gov.au/M/mediations.aspx.

e.g., 45 days for draft regional and district strategic plans) that planning authorities need to respect, as well as the obligation for every council and New South Wales planning authority to produce a community participation plan outlining when and how authorities will engage on their various planning functions (e.g., making of planning instruments). Each plan must meet community participation principles set out in legislation (section 2.23(2) of the Act). The Community Participation Plan of the New South Wales Department of Planning and Environment foresees community participation in strategic planning, planning framework reforms and planning assessment process, and provides for the possibility to attend events (e.g., walking tours, lectures, etc.) and to provide informal (e.g., through online forums, surveys, workshops, etc.) and formal (submission during public exhibition) feedback, specifying concrete modalities for these mechanisms to happen and be effective.

III. In Western Australia, sub-regional structure plans, district structure plans and local structure plans are advertised for public comments through the Department of Planning, Lands and Heritage's Citizen Space Consultation Hub, where all consultations (forthcoming, open and closed) and related information can be found. A good model of community engagement at the lowest level is the one provided by the suburb of Beaconsfield, City of Fremantle; the community has been engaged in a two-stage process to develop a masterplan to guide and connect plans for development on the various sites in Beaconsfield. This engagement process included visioning and concept design workshops, open days, walking tours and online surveys in the first phase, to share ideas on what should be included in the masterplan, and online submissions for feedback as well as in-person information sessions on the draft masterplan in the second phase.

IV. The Government of Victoria, on its part, has developed a metropolitan planning strategy (Plan Melbourne 2017–2050), that builds on an extensive public consultation process (plan development workshops and collection of comments and feedbacks in the first phase, then community information sessions where six draft land-use framework plans have been shared with the community for feedback). At the local level, the City of Melbourne also engaged the community in an extensive participation process (through public forums, roundtables, community events, online forums, etc.) to develop the Future Melbourne Plan 2026. It is worth highlighting the use of a citizens' jury (broadly representing the municipal demographic) in the engagement process (deliberative phase) that could be proposed and used as a means to increase meaningful community participation.

V. Several provisions exist to pursue inclusive participation, that is open and easy to access, e.g., for people with disabilities, Aboriginal Australians and linguistically diverse communities. Moreover, to extend the availability of public services, digital governance mechanisms are being implemented: the Government of Australia adopted a Digital Government Strategy that makes all government services available digitally to all. New technologies are also

being used to harness people's feedback and enable participation in decision-making. To ensure the accessibility of digital services to all, the Future Melbourne 2026 Plan, for example, foresees that all people will have access to the municipality's universal wireless Internet connection; services replaced with new technology will still be easily available to people who are not comfortable with or do not readily use new technology; training, education and resources will be available to ensure people can acquire the skills required to understand and use new technology.

VI. Australia has a distinct approach to participatory budgeting. The most common practice is to select a representative sample of citizens (business owners, residents, young people) who can deliberate on the allocation of public resources to projects in a territory. This could be an interesting option to explore to increase the quality of citizen involvement in decision-making in contexts where there is not a strong culture of public participation.

VII. Access to information is regulated both at the national and subnational levels. The federal Freedom of Information Act 1982, as well as the Victorian Freedom of Information Act of the same year, clearly define the types of information that can be accessed as well as the exemptions and the time limits within which the authorities must respond (30 days). The Australian Information Commissioner, at the federal level, and the Victorian Information Commissioner, as an example at the state level, intervene by reviewing decisions taken by responsible authorities.

VIII. The Australian Public Service has been reformed in recent years to integrate open and transparent government principles. This is seen also at the subnational level, with the State of Victoria, as an example, introducing public transparency policy and principles through the Local Government Act 2020. Overall, the country has set an Australian Public Service code of conduct as well as robust transparency, anti-corruption and accountability laws and institutions, including the recent establishment of a National Anti-Corruption Commission. The legal framework facilitates the disclosure and reporting of misconduct, wrong-doing and maladministration by public officials, ensuring the protection from reprisals both at the national level – through the Public Interest Disclosure Act 2013, overseen by the Commonwealth Ombudsman – and at the subnational level in the case assessed, meaning the case of Victoria, where complaints can be made under the Victoria Protected Disclosure Act 2012 and are assessed by the Independent Broad-based Anti-corruption Commission.

IX. The analysis of subnational legislation shows remarkable frameworks on dispute resolution that promote transparency and accessibility; fees are publicly available and there is the possibility of fee relief in case of financial hardship for both tribunals, the Victorian Civil and Administrative Tribunal and the Western Australia State Administrative Tribunal. The Victorian Civil and Administrative Tribunal also foresees support services for people living with disabilities and for Aboriginal people and Torres Strait Islanders. Timeframes to obtain a decision are not stated in

the legislation but, referring to the good model proposed by the Victorian Civil and Administrative Tribunal, applicants can use a simulator on the tribunal's website to obtain a foresight of timeframes and cost for each application; in addition, they receive a notice informing them of the expected feedback. New South Wales also established the Land and Environment Court, which, inter alia, has competence on development appeals. This court has its own standards to dispose applications based on classes of jurisdiction (e.g., the 95 per cent of Class 1 applications, meaning environmental planning and protection appeals, should be disposed of within six months of filing), and self-evaluates its performance in meeting these standards in its annual reviews.

X. In all the three subnational level cases analysed (New South Wales, Western Australia and Victoria), the State Government encourages and facilitates the use of alternative dispute resolution, in particular of mediation and court-ordered mediation, ensuring the fast, cheap and confidential resolution of disputes without going to court. As an example, the state of Victoria established a Dispute Settlement Centre of Victoria whose services are free. Remarkably, the centre operates in partnership with the Victorian Civil and Administrative Tribunal, e.g., through the Fast Track Mediation and Hearing Programme, ensuring the smooth resolution of disputes and easing the pressure on the judicial system. Similarly, the Government of New South Wales established the Community Justice Centres, which provide free and confidential mediation services. It is also important to underline the establishment of the New South Wales Alternative Dispute Resolution Directorate, with coordination and management functions across the State. Very often the alternative dispute resolution mechanisms are provided and facilitated by the same court, as in the case of the Land and Environment Court of New South Wales and of the Western Australia State Administrative Tribunal.

XI. transparent government principles. This is seen also at the subnational level, with the State of Victoria, as an example, introducing public transparency policy and principles through the Local Government Act 2020. Overall, the country has set an Australian Public Service code of conduct as well as robust transparency, anti-corruption and accountability laws and institutions, including the recent establishment of a National Anti-Corruption Commission. The legal framework facilitates the disclosure and reporting of misconduct, wrong-doing and maladministration by public officials, ensuring the protection from reprisals both at the national level – through the Public Interest Disclosure Act 2013, overseen by the Commonwealth Ombudsman – and at the subnational level in the case assessed, meaning the case of Victoria, where complaints can be made under the Victoria Protected Disclosure Act 2012 and are assessed by the Independent Broad-based Anti-corruption Commission.

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Valparaíso, Chile by Loïc Mermilliod source : flickr.com

CHILE

Santiago de Chile. Source: https://www.undp.org/blog/lessons-chile-how-cities-can-improve-quality-life

Republic of Chile Country Profile: Quick facts	
Form of government	Presidential Democratic Republic
Form of State	Unitary State
Surface area	756,700 km^2
Gross domestic product (2021)	US$317.06 million
Gross domestic product per capita (2021)	US$16,502.80
Inequality-adjusted Human Development Index (IHDI) (2021)	0.72 (high)
Population (2021)	19 million
• per cent of population aged 0–14 (2021)	19
• per cent of individuals using the Internet (2020)	88.3
• per cent of urban population (2021)	88
Urban population growth (annual per cent, 2021)	0.6
Population density (2020)	26 inhabitants per km^2
Literacy rate, adult (2018–19)	96 per cent
Geographic region and subregion	Latin America and the Caribbean – South America

1. INTRODUCTIONS

General Country Background

Chile is a country located along the west coast of South America. It is a presidential republic and a unitary State. The president of the republic is both the head of Government and head of State and appoints the Cabinet of ministers. The legislative branch is composed of a bicameral legislature, with a Senate and a Chamber of Deputies elected by proportional party lists in multi-seat constituencies.[164]

Chile has one of the most prosperous economies in South America. It records the second highest gross domestic product per capita, in the region of US$16,508.80,[165] and with an Inequality-adjusted Human Development Index of 0.722, Chile is also considered the country with the best quality of life in Latin America.[166] The country has a market economy with high levels of international trade and strong financial institutions. Its primary industries are copper, lithium, other minerals, foodstuffs, fish processing, iron and steel, wood and wood products, transport equipment, cement and textiles.[167]

In demographic terms, Chile has a population of 19 million, of which 88 per cent live in urban areas. The capital city, Santiago, is the most populated urban area in the country with almost 7 million inhabitants, representing more than a third of the country's total population. The population of Chile has a median age of 35.5 years, with 19 per cent of the population under 14 years old.[168]

Spatial planning system

Urban planning is a government competence operating at the three levels of public administration. At the national level, the main actor is the Ministry of Housing and Urban Development. It provides planning guidelines to the lower levels of government in accordance with the General Law on Urbanism and Construction of 1976 (last updated in 2022). At the subnational level, regional secretariats of the ministry are responsible for formulating the regional plans for urban development and the intermunicipal land-use plans, as well as for approving the local land-use plans developed by local governments. Municipalities are responsible for determining urban boundaries, preparing local land-use plans and participating in the drafting of intermunicipal land-use plans.[169]

2. PUBLIC PARTICIPATION AND INVOLVEMENT IN SPATIAL PLANNING

The right of civil participation is inscribed in Article 1 of the Political Constitution of the Republic of Chile, where it states that "it is the duty of the State [...] to ensure the right of people to participate in the national life with equal opportunities". Chile has made important efforts to consolidate principles of public participation into its legislation. The cornerstone of these legal texts is Law No. 25500 on Civil Associations and Participation, which recognizes "the duty of the State to promote and support civil society initiatives and the right of people to participate

164 The World Factbook. Chile: www.cia.gov/the-world-factbook/countries/chile/#economy.

165 World Bank Data (2021). Chile: https://data.worldbank.org/country/chile?most_recent_value_desc=true.

166 UNDP (2021). Exploring IHDI. https://hdr.undp.org/inequality-adjusted-human-development-index#/indicies/IHDI

167 The World Factbook. Chile: www.cia.gov/the-world-factbook/countries/chile/#economy.

168 Ibid.

169 OECD (2017). The Governance of Land Use. Country Factsheet Chile: www.oecd.org/regional/regional-policy/land-use-Chile.pdf.

in public administration".[170]

Important progress has also been made regarding public participation in urban planning, starting with the recently enacted Law No. 21450 (2022) on Social Integration in Urban Planning, Land Management and Emergency Housing Plan. This law aims to promote social integration in urban areas and support the development of social housing. It defines the responsibilities of the Ministry of Housing and Urban Development, the regional governments, and the municipalities in this matter. Other provisions of the law introduce specific participatory mechanisms at different levels of implementation.

Mechanisms, modalities and timelines for public participation

The elaboration and modification of planning instruments, whether inter-municipal, municipal or intramunicipal stipulates that the views of affected residents and the main stakeholders of the planned territory (defined by municipal ordinance) must be consulted prior to the preparation of the draft of the plan. Thus, the General Law on Urbanism and Construction of 1976 (last updated in 2022) establishes the elaboration of a preliminary draft called "target image" of the planning instrument to be developed and publicized in the concerned community. The participation procedure as provided for in Article 28 octies is as follows:[171]

1. The Regional Secretary of the Ministry of Housing and Urban Development or the mayor of the relevant municipality formulates a preliminary draft proposal of the urban development in the territory ("target image") containing an executive summary, diagnosis, technical rationale, general objectives, main elements of the instrument, alternatives and explanation of the changes with respect to the existing situation. These contents must be supported by maps and use clear and simple language.
2. The target image is then submitted to the municipal or regional council, as applicable, for approval.
3. Upon its approval, the documents must be published on the websites of the corresponding public institutions and publicly displayed in visible and freely accessible places in the affected communities. Interested parties (affected residents and other stakeholders defined by each municipal ordinance) may submit comments to the relevant planning authority during a 30-day period.
4. Two public hearings are held during the first 15 days of the public review period and involve the participation of civil society organizations, affected residents and other stakeholders (defined by each municipal ordinance).
5. The relevant planning authority (i.e., municipality or regional ministerial secretariat) presents a report summarizing the observations submitted by the public during the 30-day review period and during the public hearings to the regional or municipal council (as the case may be).
6. The regional or municipal council (as the case may be) makes an agreement on the terms of preparation of the draft plan taking

170 Biblioteca del Congreso Nacional de Chile (2019). Participación Ciudadana Avances y desafíos en la legislación nacional: https://obtienearchivo.bcn.cl/obtienearchivo?id=repositorio/10221/27719/1/BCN_Participacion_Ciudadana_Legislacion_Nacional_2019_def.pdf.

171 Biblioteca del Congreso Nacional de Chile. Ley General de Urbanismo y Construcciones (1976), updated in 2022), https://www.bcn.cl/leychile/navegar?idNorma=13560.

the relevant observations into account. It must provide a well-founded response to each of the observations made during the public review period.

In addition to the General Law on Urbanism and Constructions, the Ministry of Housing and Urban Development and its regional secretariats are bound by its own regulation on citizen participation: "Norma General de Participación Ciudadana del Ministerio de Vivienda y Urbanismo y de sus Secretarías Regionales Ministeriales". This regulation outlines the forms of citizen participation involved in the design, execution, evaluation and development of the ministry's policies. The mechanisms included in this regulation are the following:

i. Integral Information and Citizen Service System: internal management area through which the existing citizen service spaces are coordinated; it establishes referral procedures, registration and monitoring systems, dissemination plans, mechanisms for evaluating performance and information processing to provide feedback and establish actions for improvement.

ii. Participatory public account: with the aim of improving accountability and transparency, each public authority presents the results of their institutional work to the citizens and social organizations and collects their concerns/ grievances.

iii. Citizen consultations: an instrument to assess the opinion of the affected or target population about a specific matter; every citizen consultation must include the following elements:

a) Public notice and dissemination, at minimum through the institutional website, which informs the public of the background information necessary to be able to give an opinion and of the deadlines associated with the public consultation.

b) A system for registering the opinions and contributions made by the public.

c) The processing, evaluation and weighing of the opinions and contributions formulated.

d) The external communication of the results of the process and of the responses to the opinions and contributions received.

iv. National Council of Civil Society: diverse, representative and pluralistic working body, which is made up of non-profit organizations representatives. The council has a consultative role in the process of the design, execution and/or evaluation of sectoral policies, plans, programmes and budgetary programming.

At the municipal level, all Chilean municipalities have a Participation Ordinance that regulates citizen participation in municipal governance. For instance, the Las Condes Municipality issued an ordinance in 2013 to recognize the right of citizen participation in public affairs and promote the exercise of this right in the design and formulation of municipal policies and actions. The ordinance includes specific mechanisms and bodies to achieve this, such as public hearings and consultations, and the establishment of a council of civil society and plebiscites.[172]

172 Municipalidad de Las Condes (2013). Ordenanza de participación ciudadana https://archivos.lascondes.cl/descargas/transparencia/diario_oficial/2013/web/decreto.3546.29jul2013.pdf.

Región de Valparaíso, Chile by Tyler Gooding source: Unsplash

Inclusive and informed participation

The legal framework in place in Chile lacks provisions for affirmative action in urban planning processes which would require, incentivize or enable the inclusion of underrepresented, vulnerable groups in decision-making related to urban development. However, participatory mechanisms fostering the inclusion of vulnerable groups are not foreign to Chile. In 2020, within the framework of the Constituent Assembly project, a constitutional reform was carried out to, inter alia, reserve parliament seats to guarantee the participation and representation of indigenous peoples. Likewise, the reform established a minimum threshold requiring at least 5 per cent of parliamentary candidates in the electoral lists of each political party to consist of persons with disabilities.[173]

Mechanisms for the inclusion of vulnerable groups in policy and decision-making also exist at the municipal level. The Peñalolén Municipality, for example, added a section to its Ordinance on Citizen Participation, Civility and Co-responsibility in 2022 specifically to encourage the participation of children and young people. The ordinance established a Municipal Advisory Council of Children and Youth, composed of 25 children between the ages of 10 and 17. Council members are appointed by human rights advocacy groups, based on the representation of all districts of the municipality. The function of

173 Biblioteca del Congreso Nacional de Chile (2020). Ley 21298 - Modifica la carta fundamental para reservar escaños a representantes de los pueblos indígenas en la convención constitucional y para resguardar y promover la participación de las personas con discapacidad en la elección de convencionales constituyentes: www.bcn.cl/leychile/navegar?idNorma=1153843.

the council is to hold meetings with the Technical Committee for the Participation of Children and Youth and the Municipal Planning Secretariat to consider their views on municipal policy on issues of interest to them. Also, Article 65 of the ordinance establishes the obligation to include the views of children and young people in the design of public spaces.[174]

Multi-stakeholder approaches

Law 19865 of 2003 on joint urban financing regulates the system of joint financing between the urban planning and development authority, whether municipalities or housing and urbanization services, and third parties. The law allows these authorities to celebrate partnership agreements for the execution, operation and maintenance of urban works, in exchange for compensation, which may consist of rights over public assets, among which is exploitation. This mechanism must be compliant with the policies, plans and programmes of the Ministry of Housing and Urban Development and local plans. They are also subject to the authorization of the Regional Ministerial Secretary of Housing and Urban Development or the mayor and the municipal council, as the case may be.

The public-private partnership derived from this collaboration framework may take the form of:

1. Execution, operation and maintenance contract.
2. Full transfer of the asset.
3. Temporary usufruct rights.
4. Monetary compensation, or compensation plus any of the above schemes.[175]

Participatory budgeting

Participatory budgeting is a form of decision-making in which citizens participate directly in the allocation of public resources.[176] It is a relatively recent practice in Chile, but it has become deeply ingrained in local participation policies. Mechanisms for participatory budgeting date back to 2003, and through the support of civil society it has been possible to extend the practice.[177] Currently, one regional government and 37 municipal governments have adopted participatory budgeting processes.[178]

The main feature of participatory budgeting in Chile is that it has been largely developed by the political will of local authorities, and thus their institutionalization in local and national legislation is still a pending matter.[179] This mechanism has been used in Chile to define budget priorities for projects in a municipality, or in neighbourhoods. Generally, this is done through assemblies, where projects are pre-selected, and then a general voting process is

174 Biblioteca del Congreso Nacional de Chile (2022). Decreto 31 de 2022, Agrega Título V a la Ordenanza de Participación ciudadana, civismo y corresponsabilidad de la comuna de Peñalolén: www.bcn.cl/leychile/navegar?idNorma=1181082.

175 Biblioteca del Congreso Nacional (2011). Ley 19865 sobre financiamiento urbano compartido (2003): https://www.bcn.cl/leychile/navegar?idNorma=208927.

176 Cabannes, Y. (2018). A powerful and expanding contribution to the achievement of SDGs and primarily SDG 16.7: https://www.gold.uclg.org/sites/default/files/02_policy_series-v3.pdf.

177 Pagliai, C. et al. (2020). Presupuestos participativos en Chile. Friedrich Ebert Chile: http://portugalparticipa.pt/upload_folder/table_data/9445d3a3-a112-4bde-acad-9890c94ff919/files/PP_chile_experiencias_y_aprendizajes.pdf.

178 Simone, J. (n.d.). Chile. Participatory Budgeting Atlas: www.pbatlas.net/chile.html.

179 Pagliai, C. et al. (2020). Presupuestos participativos en Chile. Friedrich Ebert Chile: http://portugalparticipa.pt/upload_folder/table_data/9445d3a3-a112-4bde-acad-9890c94ff919/files/PP_chile_experiencias_y_aprendizajes.pdf.

held in which all citizens over 15 years of age can participate to make the final selection.[180]

The municipal government of the capital city, Santiago, recently carried out a participatory budget exercise from June 30 to July 9, 2022. The budget process was first developed in 36 neighbourhood assemblies throughout the municipality where different alternatives to solve community problems were discussed and assessed. This process resulted in a list of project proposals grouped into different categories, such as security, infrastructure, environment, heritage and mobility. The listed projects were submitted to universal and direct voting in each of the neighbourhoods wherein everyone over 14 years of age could participate.

The voting process was carried out both online and with in-person polling locations to increase accessibility and thereby promote community participation.

180 Ibid.

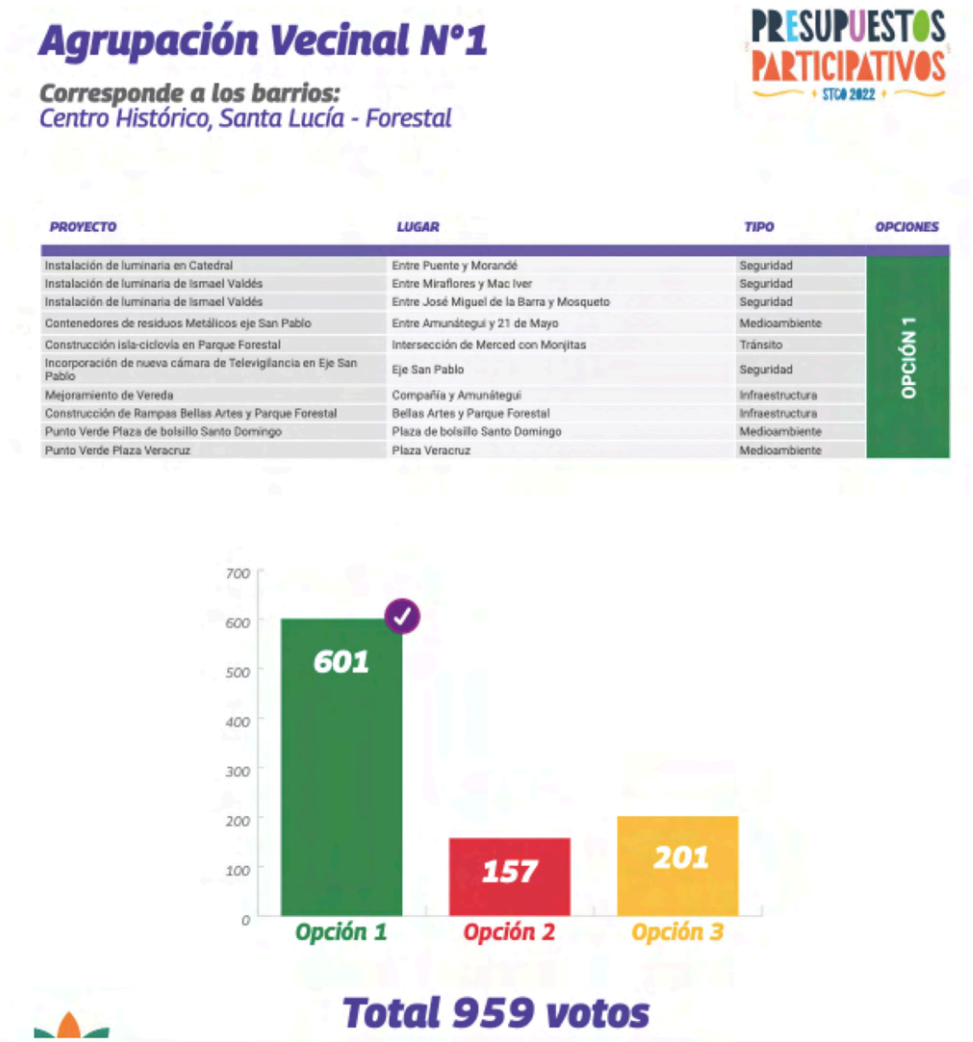

Figure 8: Sample of participatory budgeting results in Santiago, Chile, 2022. Source: https://www.munistgo.cl/presupuestos-participativos-2022/.

In this manner, the inhabitants selected the budget priorities for projects in their community.[181] Figure 12 illustrates the results of the participatory budget process for neighbourhood 1 (Historic Centre, Santa Lucia, Florestal) of Santiago. Of the three "project packages" options, most voters (601) chose option 1, which contained 10 different projects spanning several distinct categories: 4 projects in the safety category, including the installation of streetlights and security cameras; 3 projects related to the environment, such as adding vegetation to public squares and the installation of recycling containers; 2 projects dealing with infrastructure, including improvements to pavements and ramps; and one project regarding traffic, which includes the construction of a bicycle lane.[182]

3. TRANSPARENCY AND ACCOUNTABILITY

Access to information

Law 20285 on Access to Public Information (2008) upholds the principle of transparency in the civil service and recognizes the public's right to access information from state administration bodies (art. 1, 10). Public institutions are obliged to make accessible in a permanent and updated manner information related to "active transparency" such as, inter alia, the institution's regulatory framework, organizational structure, information on personnel and their salaries, public procurement processes and engagements, and transfers of public resources (art. 7). All other information contained in acts, resolutions, minutes, records, contracts and agreements, as well as any information produced using the public budget, regardless of the format, may be requested by any person free of charge (art. 10).

Article 21 defines the causes for withholding information. An institution may refuse to share information if it determines that it may jeopardize the completion of its functions, that it violates the rights of third parties or that it affects national security or national interest.[183]

The public institution is obliged to respond to the request for information within a maximum term of 20 working days and, in the case where it does not have the requested information in its possession, to refer the request to the corresponding institution (Title IV). Public officials who fail to comply with these legal provisions may incur fines based on their remuneration or be suspended from their duties; such sanctions are applied by the Council for Transparency, after a summary inquiry (Title VI).[184]

Institutions responsible for land-use planning are subject to the terms of the Law on Access to Information, and consequently have a duty to make land-use planning instruments publicly and freely available to citizens. Moreover, the General Law on Urbanism and Constructions establishes that upon the approval or modification of a planning instrument, the instrument and its promulgating ordinance must be published on the website of the promulgating agency (art. 28 septies).[185]

181 Municipalidad de Santiago (2022). Presupuestos Participativos: https://www.munistgo.cl/presupuestos-participativos-2022/.
182 Ibid.
183 Biblioteca del Congreso Nacional de Chile (2008) Ley 20285 de 2008 sobre Acceso a la Información Pública, www.bcn.cl/leychile/navegar?idNorma=27636.
184 Ibid.
185 Biblioteca del Congreso Nacional de Chile (2022). Decreto 458 - Ley General de Urbanismo y Construcciones: www.bcn.cl/leychile/navegar?idNorma=13560 and www.bcn.cl/leychile/navegar?idNorma=13560.

Public accountability

The Government of Chile has made significant efforts to strengthen and consolidate the country's legal-institutional framework on public integrity and transparency.[186] For example, the open budget platform (Presupuesto Abierto) serves as an effective accountability mechanism. It is an open data platform that publishes the public spending of central government institutions and municipalities. The platform allows users to monitor and visualize the expenditure by dependent institutions, by budget denomination, by service providers and by remunerations to civil servants.[187] Below is a breakdown of the Ministry of Housing and Urban Development's spending by dependent institutions, showing that almost a quarter of the ministry's budget is executed through the Regional Secretariat of the Santiago Metropolitan Area.[188]

The Government has also developed a platform to consolidate procurement in public institutions called Chile Compra, which is managed by a decentralized public entity under the Ministry of Finance. This open data platform brings together the requests of public procurers and the offers of thousands of suppliers.[189]

186 Inter-American Development Bank (2021). Chile to continue strengthening public integrity and transparency systems with IDB support. www.iadb.org/en/news/chile-continue-strengthening-public-integrity-and-transparency-systems-idb-support.

187 Ministerio de Hacienda (2022). Presupuesto Abierto: https://presupuestoabierto.gob.cl/.

188 Ministerio de Hacienda (2022). Ministerio de Vivienda y Urbanismo. Presupuesto Abierto: https://presupuestoabierto.gob.cl/institutions/18.

189 Dirección Chile Compra (2022). Datos Abiertos Chile

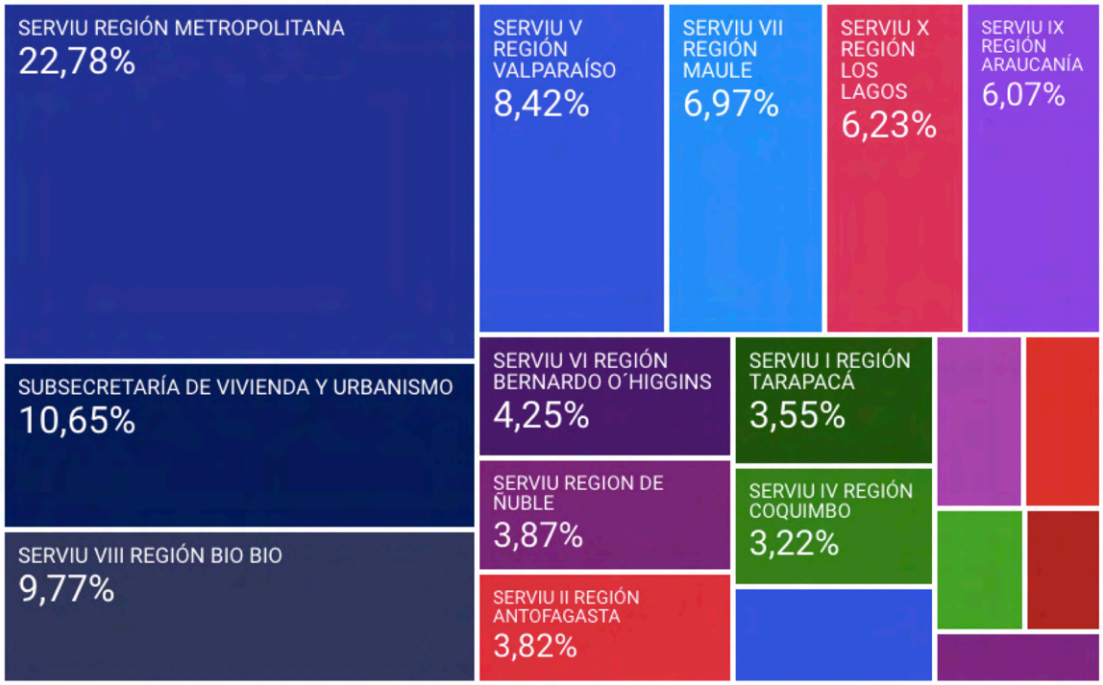

Figure 9: Public expenditure of the Ministry of Housing and Urban Development broken down by dependent agencies. Source: Presupuesto Abierto, 2022, https://presupuestoabierto.gob.cl/institutions/18

With regard to ethics in public service, the Ministry of Housing and Urban Development has a code of conduct for public servants. This code establishes commitments regarding conflicts of interest, influence peddling and the safeguarding of institutional information, amongst other issues, which are binding upon all employees in the ministry. Violations of the code are investigated by an internal commission of the ministry; the corresponding head of service may issue recommendations to the relevant staff members to reinforce their commitment to the established values and principles. In the event of administrative misconduct, a summary inquiry is carried out, which may result in fines, suspension or dismissal from office in accordance with the Administrative Statute. In the event of criminal liability, the authorities are obliged to file a complaint with the Public Prosecutor's Office.[190]

Chile has also an advanced piece of legislation regulating lobbying. Law 20730 establishes the duty of authorities and public officials to register and disclose meetings requested by representatives of interest groups, as well as any trips made, and gifts received by a public official in the performance of his or her duties.[191]

Oversight and feedback mechanisms

Citizen oversight is one of the central axes of the Ministry of Housing and Urban Development's citizen participation regulation (Norma General de Participación Ciudadana del Ministerio de Vivienda y Urbanismo y de sus Secretarías Regionales Ministeriales, 2015).[192] This approach seeks to promote permanent citizen participation in the supervision of actions taken by the ministry to improve the quality of public services (Art. 2). For these purposes, the regulation foresees the creation of a public account mechanism, an annual forum that allows civil society organizations and citizens to publicly formulate observations and proposals, and directly consult with the competent authorities. The ministry and the regional secretariats are obliged to give a formal response within 10 days to the interested parties (Art. 6). This mechanism is designed to ensure that the competent authorities account for the decisions taken in the different policies, plans, programmes and actions of the Ministry of Housing and Urban Development and its regional secretariats.

Under the objective of providing feedback mechanisms for public service delivery the Laboratorio de Gobierno (Government Lab), a public agency under the Ministry of Finance which aims to develop innovation capabilities in state institutions so that they improve their public services and their engagement with citizens.

In the case of Ministry of Housing and Urban Development, the Government Lab is collaborating to improve the practices of the Housing Choice Solidarity Fund, the main housing policy programme for vulnerable households. The Government Lab has supported the development of methodologies which leverage the experiences of civil servants and users to identify needs, expectations and opportunities for innovation.[193]

Similarly, collaborative schemes between the Government and academic institutions have been

Compra: https://datos-abiertos.chilecompra.cl/.

190 Ministerio de Vivienda y Urbanismo (2019). Código de ética. www.minvu.gob.cl/wp-content/uploads/2019/06/Codigo-de-Etica-Subsecretaria-Minvu.pdf.

191 Gobierno de Chile (n.d.). Plataforma Ley del Lobby. www.leylobby.gob.cl/.

192 Biblioteca del Congreso Nacional de Chile (2015). Norma General de Participación Ciudadana del Ministerio de Vivienda y Urbanismo y de sus Secretarías Regionales Ministeriales. www.bcn.cl/leychile/navegar?idNorma=1077273.

193 Laboratorio de Gobierno (2022). Proyecto MINVU: Primeros pasos. www.lab.gob.cl/noticias/178.

established to carry out an evaluations of public services based on user satisfaction surveys. The Ministry of Housing and Urban Development was recently assessed by a team of experts from the Pontificia Universidad Católica de Chile, and feedback and recommendations were issued to improve the institution's performance.[194]

Workshop of the Ministry of Housing and Urban Development and Laboratorio de Gobierno, 2022. Source: www.youtube.com/watch?v=yPV4N5dryWI.

4. DISPUTE RESOLUTION, APPEAL AND JUDICIAL REVIEW

Dispute settlement in the field of urban planning with respect to municipal permits is regulated by the General Law of Urbanism and Constructions (Ley General de Urbanismo y Construcciones) (1976). It states that all new constructions, reconstructions, alterations, expansions and demolitions of buildings require a permit granted by the Municipal Construction Department (art. 116). The municipalities establish the specific procedures for obtaining the requisite permit in their ordinances, however, the General Law of Urbanism and Construction specifies that the competent authorities have a period of 30 days to issue the permit. In case of an explicit or implicit refusal (non-response), the interested party may file a complaint through an administrative process with the corresponding regional secretariat. The secretariat may order the municipality to rule on the case (in case of no response) within three days of receiving the appeal. The competent authority has 15 days to respond; failure to respond will be considered as a denial. Within 15 days of this explicit or implicit denial, the regional secretariat shall decide on the complaint (art. 118).

The municipality, the regional secretariat of the

194 Pontificia Universidad Católica de Chile (2019). Estudio de medición de satisfacción de los usuarios respecto de los servicios entregados por los Servicios de Vivienda y Urbanización y por la Subsecretaría de Vivienda y Urbanismo. https://biblioteca.digital.gob.cl/bitstream/handle/123456789/3686/16.%20Estudio%20de%20medici%C3%B3n%20de%20satisfacci%C3%B3n%20neta%20respecto%20de%20los%20servicios%20entregados%20por%20Serviu%20y%20Subsecretar%C3%ADa%20de%20V.%20y%20U..pdf?sequence=1&isAllowed=y.

Ministry of Housing and Urban Development or any person may submit a complaint to the Local Police Court – which are courts of first instance appointed by the municipality upon proposal of the court of appeals[195] – regarding any violation of the provisions of the General Law of Urbanism and Constructions, its general ordinance or of territorial planning instruments (art. 20). Public officials who commit illegal acts, resolutions or omissions in the application of the law are civilly, criminally and administratively liable (Art. 22), and the failure of a mayor to comply constitutes cause of removal (Art. 23).[196] According to Law 18287 on proceedings before the Local Police Courts, all matters heard in this first instance are subject to a justified appeal filed with the corresponding Court of Appeals within five days of receipt of the resolution, which in turn has six days to decide the appeal.[197]

In Chile, the Constitution and Law 2186 regulate expropriation for reasons of public utility or national or social interest. These causes may be, inter alia, the building of public construction works, compliance with urban planning instruments, and social housing. The expropriated party is entitled to indemnity covering patrimonial damages which must be determined by agreement of the parties. The damages that can be taken into account for compensation are those linked to a direct and real economic damage, not based on moral damages, future damages or expectations of future profits. In the absence of agreement, the amount of compensation is determined by the courts and, once settled, the expropriating party may request the judge's order for authorization to take possession of the property. The amount of the compensation must be settled in cash and in full prior to taking possession.[198] Within a period of 30 days following the publication of the expropriation announcement, the affected party may request a judge for the suspension or revocation of the expropriation if it is deemed that it is not duly motivated; a review of the act to expropriate may also be requested in order to modify the scope of the expropriation or of the compensation.[199]

Concerning alternative dispute resolution mechanisms related to urban matters, the law in Chile recognizes cases in which arbitration is mandatory before resorting to judicial adjudication.[200] This happens, for example, in contractual disputes between the State and a concessionaire in public works; in such cases, the parties must bring the dispute before a technical panel that may issue non-binding recommendations. The same dispute may be taken to an appeal court, and the recommendation may be used as a non-binding precedent for issuing a decision.[201] In a similar manner, the Law on Joint Urban Financing creates conciliatory commissions that may arbitrate disputes arising from public contracts.[202]

195 Biblioteca del Congreso Nacional (2021). Decreto 307 fija el texto refundido, coordinado y sistematizado de la ley 15.231, sobre organizacion y atribuciones de los juzgados de policia local (1978). www.bcn.cl/leychile/navegar?idNorma=12193.

196 Biblioteca del Congreso Nacional (2022). Decreto 458 - Ley General de Urbanismo y Construcciones: https://www.bcn.cl/leychile/navegar?idNorma=13560.

197 Biblioteca del Congreso Nacional (2022). Ley 18287 establece procedimiento ante los juzgados de policia local (1984): https://www.bcn.cl/leychile/navegar?idNorma=29705.

198 Ponce de Leon, S. (n.d.). El expropiado y su derecho a indemnización: https://derecho.uc.cl/en/noticias/derecho-uc-en-los-medios/18741-profesora-sandra-ponce-de-leon-el-expropiado-y-su-derecho-a-indemnizacion-05052017.

199 Biblioteca del Congreso Nacional (1992). Decreto Ley 2186 - Ley Orgánica de Procedimiento de Expopiaciones: www.bcn.cl/leychile/navegar?idNorma=6848.

200 Jequier, E. (2013). The arbitrability of the contentious administrative controversy in the field of the state´s contractual relations: http://dx.doi.org/10.4067/S0718-34372013000100007.

201 Biblioteca del Congreso Nacional (2017). Decreto 900 fija texto refundido, coordinado y sistematizado del dfl mop n° 164, de 1991 Ley de Concesiones de Obras Publicas (1996). www.bcn.cl/leychile/navegar?idNorma=16121.

202 Jequier, E. (2013). The arbitrability of the contentious

5. KEY TAKEAWAYS AND LESSONS

I. Chile is a country that recognizes public participation in its Constitution and in a legal framework that recognizes the active participation of civil society organizations in decision-making. The procedures for public participation in spatial planning are established in the urban planning law, by ministerial regulation and by municipal ordinances.

II. The different territorial planning instruments are prepared and/or approved by the Ministry of Housing and Urban Development and its regional secretariats. This centralized competence ensures coherence in urban and territorial planning. At the same time, the decentralization of the ministry and the agency of the municipalities ensures that the plans reflect local objectives, priorities and knowledge.

III. Participation mechanisms such as the Civil Society Councils that exist in the Ministry of Housing and Urban Development and in the municipalities consolidate the place of non-governmental actors in public decision making.

IV. The participatory budget process presents an interesting approach to determining budget priorities. The deliberation phase strengthens community ties and mobilizes local organizations. While the direct voting phase allows citizens to select, based on their needs, a portfolio of projects for their community. This "portfolio" selection approach enables projects from different categories to be represented, achieving greater public engagement in the materialization of comprehensive solutions.

V. The inclusion of young people is a central issue for local participation in Chile. The voting age for local participation processes, which in Santiago for instance is 14 years of age, promotes the civic education of citizens from an early age. In addition, mechanisms were identified to include children and young people in local decision-making, such as the youth advisory councils, which succeed in including the voices of this group in municipal policies and in the design of public spaces.

VI. Chile has adapted the regulatory framework for concessions and public tenders to address the specifics of urban development. The law on joint financing for urban development provides legal certainty on public-private partnerships and gives a guideline to planning and urban development authorities to develop projects more efficiently.

VII. An innovative law on access to information and another on lobbying are the cornerstone of transparency and integrity in public service in Chile. This regulatory framework has led to the creation of platforms for transparency in the use of public resources and public procurement, which have the potential to prevent acts of corruption.

VIII. An accountability practice worth highlighting is the public accounts, meaning an annual forum in which government institutions take stock of their public policy decisions and engage in dialogue with citizens, social leaders and civil society actors to include their visions for the future, exercising also an oversight function.

administrative controversy in the field of the state´s contractual relations: http://dx.doi.org/10.4067/S0718-34372013000100007.

IX. The design and evaluation of urban policies that considers feedback from users and public officials has been key to improving the quality and innovation of public services and multilevel governance. The creation of specialized institutions such as "Government Labs" to develop methodologies for improvement and innovation has been particularly effective.

X. The shared competence of the municipality and the regional secretariat of the Ministry of Housing and Urban Development to issue municipal permits facilitates the administrative appeals process and creates a harmonized and streamlined decision-making procedure.

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Women working for a safer South Africa, photo by Lindsay Mgbor via Flickr

SOUTH AFRICA

South African Parliament on extensive public participation process. Source: www.polity.org.za/article/sa-parliament-on-extensive-public-participation-process-2018-03-22.

Republic of South Africa Country Profile: Quick facts	
Form of government	Presidential and Parliamentary Republic
Form of state	Unitary State
Surface area	1,219,090 km²
Gross domestic product (2021)	US$419.95 billion
Gross domestic product per capita (2021)	US$6,994.20
Inequality-adjusted Human Development Index (IHDI) (2021)	0.47 (low)
Population (2021)	60 million
• per cent of population aged between 0 and 14 (2021)	29 per cent
•per cent of individuals using the Internet (2020)	70 per cent
•per cent of urban population (2021)	68 per cent
Urban population growth (annual per cent, 2021)	2 per cent
Population density (2020)	49 inhabitants per km²
Literacy rate, adult (2018–19)	95 per cent
Geographic region and subregion	Sub-Saharan Africa – Southern Africa

1. INTRODUCTION

General Country Background

The Republic of South Africa is a constitutional presidential and multiparty democracy. The president serves as both the head of the State and the head of the national executive. The Cabinet, which consists of the president, the deputy president, and the elected ministers, constitutes the country's executive authority. The legislative authority is vested in the Parliament at a national level, in the provincial legislatures at a regional level, and in the municipal councils at a local level. The Parliament comprises the National Assembly and the National Council of Provinces. The municipal council, which is responsible for appointing the mayor, is locally elected. South Africa has adopted fiscal decentralization models in the Constitution to safeguard the political autonomy of each level of governance and to give effect to the principles of independence, cooperation and subsidiarity on which the relationship between devolved government and national Government is based. The Constitution also defines the public expenditures for which each level, or "sphere", of government is responsible.

Geographically, South Africa is located in sub-Saharan Africa and is composed of nine provinces. The country has three main cities which serve as the seats of each branch of government: Pretoria (administrative capital), Cape Town (legislative capital) and Bloemfontein (judicial capital). Overall, there are 278 municipalities comprising 8 metropolitans, 44 districts and 226 local municipalities. As directed by the Constitution, the Local Government Municipal Structures Act No. 117 of 1998[203] contains criteria for determining when an area must have a category-A municipality (metropolitan municipalities) and when municipalities fall into categories B (local municipalities) or C (district municipalities). District municipalities are made up of several local municipalities that fall into one district.

South Africa currently has one of the most developed economies in the sub-Saharan region. As of 2021, the country recorded a gross domestic product of US$419.95 billion (exceeded only by Nigeria), an annual percentage growth rate of 4.9 per cent, and a GDP per capita of US$6,994.20, which has been experiencing a sharp increase since 2020.[204] Demographically, the country has a steadily growing population (1.2 per cent per annum as of 2021) of more than 60 million people occupying a total surface area of 1,219,090 km², corresponding to a population density of 49 inhabitants per km².[205] A majority (68 per cent) of the population lives in urban areas, meaning that South Africa has an urban population which is a considerably greater, in relative terms, than that found across the sub-Saharan region and comparable to the average found in the North African and Middle Eastern countries (66 per cent).[206] The largest city in South Africa is Johannesburg, with a population of 4.4 million, followed by Cape Town (3.7 million).[207] In terms of age and gender composition, young people (aged between18–34) represented almost a third of the population in 2019[208] and about 28.8 per cent of the population was younger than 15 years at that time; in 2021, the

203 Local Government Municipal Structures Act. www.gov.za/documents/local-government-municipal-structures-act.

204 World Bank: https://data.worldbank.org/country/south-africa.

205 Ibid.

206 World Bank – Urban population. https://data.worldbank.org/indicator/SP.URB.TOTL.IN.ZS.

207 World Atlas. www.worldatlas.com/articles/biggest-cities-in-south-africa.html.

208 Stats SA - Department of statistics of South Africa, Mid-year population estimates, statistical release No. P0302 of 2019, www.statssa.gov.za/publications/P0302/P03022019.pdf.

female population accounted for 50.8 per cent of the total population.[209]

Spatial planning system

There are three main spheres of government in South Africa: the national, the provincial and the local.[210] All three spheres have spatial planning mandates, although the local level of government is entrusted with the greater share of responsibilities in this area. For spatial planning purposes, the Minister for Rural Development and Land Reform, after consultation with the premier and the municipal council responsible for a geographical area, may declare any circumscribed geographical area of the country to be a region, thereby adding a fourth administrative level responsible for spatial planning hierarchy. As such, spatial planning can be considered decentralized in South Africa, but with a certain degree of control maintained by the national Government. The Spatial Planning and Land Use Management Act No. 16 of 2013 is the main legislative instrument regulating spatial planning, while the Local Government Municipal Systems Act No. 32 of 2000 regulates the process of assigning powers and functions to local government and plays an important role in defining spatial planning at a local level.

Development principles and standards for land use and management are set at the national level to promote the normative basis for spatial planning, land-use management and the land development system. These principles apply to all the spheres of government, state organs and other agencies involved in spatial planning. The national Government is also responsible for issuing development plans, including the National Spatial Development Framework, a long-term national spatial planning instrument that must be aligned with the National Development Plan.[211] The National Spatial Development Framework is prepared by the Ministry of Rural Development and Land Reform and approved by the Cabinet. At the provincial level, the premier of each province must draft and publish the Provincial Spatial Development Framework that is then adopted by the Provincial Executive Council. The framework defines provincial development policy and integrates national policies and plans at the geographic scale of the province.

At the local level each municipal council must adopt an integrated development plan, which includes a municipal spatial development framework and a land-use scheme. The municipal spatial development framework is a strategic and flexible policy instrument that guides and informs all decisions of the municipality relating to the use, development and planning of land, and it further determines the purpose, desired impact and structure of the land-use scheme. The land-use scheme is a binding legal instrument, implemented through by-laws, that zones areas to allow or restrict certain types of land uses. It records the rights and restrictions applicable to erven (land plots), and sets regulations according to the vision, strategies, and policies of the integrated development plan and spatial development framework prepared at all levels. Lastly, each district municipality, after following a consultative process with the local municipalities within its area, must prepare a framework for integrated development planning in the relevant district. The framework, approved by the municipal council, binds both the district municipality and the local municipalities in the district.

209 World Bank - 2021: https://data.worldbank.org/indicator/SP.POP.TOTL.FE.ZS?locations=ZA.

210 South African Government overview: www.gov.za/about-sa.

211 The National Development Plan is a vision for 2030 that serves as an action plan for securing the future of the people of South Africa as charted in the Constitution by eliminating poverty and reducing inequality.

Currently, land reform is being pursued in South Africa[212] through the National Development Plan and the National Spatial Development Framework, the latter of which is in its final stages of approval. The land reform aims, inter alia, to transform the rural and urban economy, redistribute lands which were unequally accumulated under apartheid law, and reform the land tenure system to reduce informality.

2. PUBLIC PARTICIPATION AND INVOLVEMENT IN SPATIAL PLANNING

Mechanisms, modalities and timelines for public participation

Public participation is a constitutional imperative (S. 195.1.e) and legislative mandate imposing duties on public bodies in all spheres of government. The Spatial Planning and Land Use Management Act No. 16 of 2013 includes transparent processes for public participation and informed communities in its development principles (S.7.e). The principles establish that the preparation and amendment of spatial plans, policies, land-use schemes and procedures for development applications should include transparent processes for public participation giving all interested parties the opportunity to provide inputs. In addition, under the principle of good administration, policies, legislation and procedures must be clearly stated to inform members of the public of their content.[213] Therefore, when public authorities formulate new plans, they must put in place processes that actively involve citizens, interest groups, stakeholders and others. Interested parties must have an opportunity to express their views or to object when land development projects are initiated by the private and non-governmental sectors.[214]

The Principles Guiding Public Participation in Spatial Planning, Land-use Management and Land Development comprise the following:[215]

- Affected parties have a right to access information pertinent to land use and development plans that are being considered by land-use regulators.
- Capacities of affected communities should be enhanced to enable them to understand and participate meaningfully in development and planning processes affecting them.
- Decisions must be made in the public domain, with written reasons available to any interested party on request and no planning decisions taken behind closed doors.
- The names and contact details of officials with whom the public should communicate in relation to spatial planning, land-use management and land development matters must be publicized.
- Land use and development decisions must be taken within statutorily specified timeframes.
- Accessible participatory structures should be created to allow interested and affected parties to express their concerns or support for any land use or land development decision at a sufficiently early stage in the

212 www.gov.za/issues/land-reform#rural.

213 Minister for Rural Development and Land Reform. Land use scheme guidelines of 2017, p.9: https://csp.treasury.gov.za/csp/DocumentsToolbox/322.SA.DRDLR.Land%20Use%20Scheme%20Guide%202017.pdf.

214 Ibid. Principle of good administration.

215 Spatial planning and land use management white paper https://www.gov.za/documents/spatial-planning-and-land-use-management-white-paper.

decision-making process.

According to the Spatial Planning and Land Use Management Act, municipalities are required to consult the public prior to the preparation of a spatial development plan, and before an amendment is made to the land-use zoning scheme (S. 28.2). The Minister of Rural Development and Land Reform may, after public consultation, regulate the process for public participation in the preparation, adoption, or amendment of land use schemes (S. 54). Similarly, the Municipal Systems Act requires municipalities to consult, engage and ensure the participation of local communities in governance, including in spatial planning processes (S. 16.1.a).

The general process to prepare a land-use scheme, as defined by the Land-Use Scheme Guidelines[216] issued in 2017, foresees a public consultation phase which includes requirements for publicly advertising the scheme and issuing public notifications to the affected parties. The guidelines apply to the development of the scheme and state that the local community should be consulted from an early stage in the process of drafting the land-use maps for the land-use scheme.[217]

For the community to understand the implications of local land-use designations the guideline proposes holding meetings between traditional authorities (the chiefs) and the community to discuss the land-use map and, more specifically, to:

- Discuss each group of land uses, understand the land use, and try and derive specific management characteristics.
- Derive development controls for land uses.
- Discuss environmental concerns and issues.
- Determine the growth direction, the infill development, and where new residential development should be allocated.
- Determine the average stand (land plot) size.
- Determine land uses with nuisance standards (e.g., noise, pollution etc.).

The aim of the consultation process is to establish consensus between the authorities and the community on the designation of land uses (e.g., agricultural, residential, industrial, etc.) as well as the extent of the management intervention required.

216 Land-Use Scheme Guidelines. https://csp.treasury.gov.za/csp/DocumentsToolbox/322.SA.DRDLR.Land%20Use%20Scheme%20Guide%202017.pdf.

217 See Land-Use Scheme Guidelines, p.63 et seq.

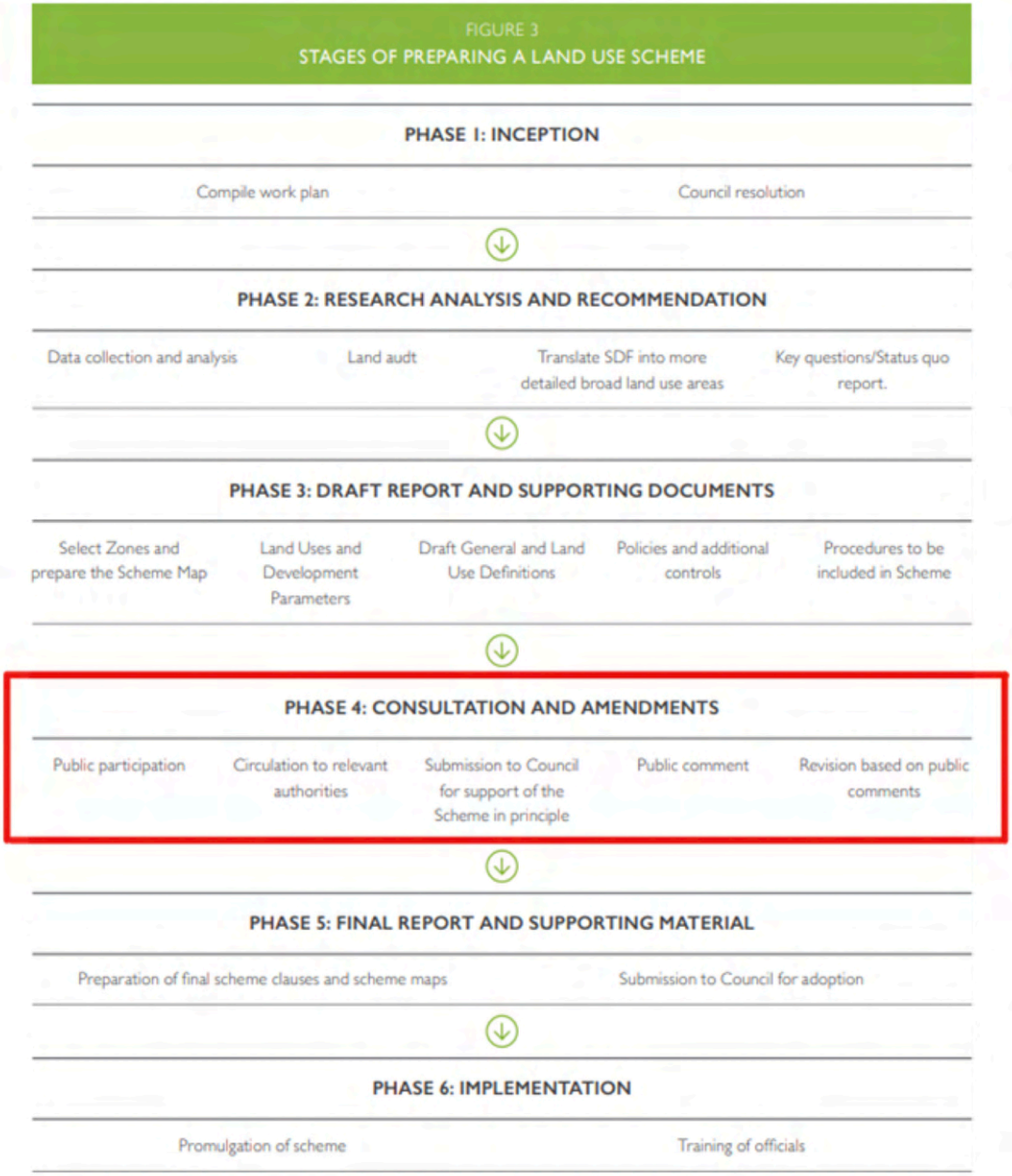

Figure 10: Stages of preparing a land-use scheme. Source: Land-use Scheme Guidelines

Under the Land Use Management Bill No. 27B of 2008, issued by the Minister for Agriculture and Land Affairs, a traditional council may participate in the development, preparation and adoption or amendment of a land use scheme by a municipality (A.40.2). Similarly, Section 23.2 of the Spatial Planning and Land Use Management Act states that a municipality, in the performance of its duties, must allow the participation of a traditional council. Accordingly, the Land Use

Scheme Guidelines recommend that planning practitioners and municipalities consider the traditional authorities in their area of jurisdiction and notify the traditional councils of the intention to develop a land use scheme. The roles and responsibilities of both the municipality and that of the traditional council are set out (for each step in the process) in figure 17.[218]

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TABLE 12
ROLES AND RESPONSIBILITIES OF TRADITIONAL AUTHORITIES

PHASE	MUNICIPALITY	TRADITIONAL COUNCIL
01 **Inception**	• Prepare work plan, obtain council resolution • Present principles of land use management to Traditional Councils • Present Work Plan to Traditional Councils	• Understand the principals of land use management. • Review work plan and provide inputs • Traditional Council resolution to participate in the compilation and implementation of the municipal Land Use Scheme.
02 **Research analysis and recommendations**	• Collect and analyse data • Conduct land audit • Translate SDF into detailed broad land use proposals • Compile status quo report • Present to traditional council.	• Review land use information • Review and update land use maps (with the assistance of the municipality). • Discuss land uses and management implications of land uses.
03 **Draft report and supporting documents**	• Select Zones and prepare the Scheme Map • Land Uses and Development Parameters • Draft General and Land Use Definitions • Policies and additional controls • Procedures to be included in Scheme	• Participate in the selection of zones • Develop (with the assistance of municipality) develop parameters. • Assist in the development of local land use definitions and local terminology. • Review and participate in the development of additional policies (e.g. for Taverns). • Adopt draft scheme maps and clauses.
04 **Consultation and amendments**	• Conduct public participation • Circulate to relevant authorities • Submit to council for support of the scheme in Principle • Receive public comment • Revise draft scheme based on public comments	• Conduct participation in traditional authority areas. • Submit comments to municipality.
05 **Final report and supporting material**	• Prepare final scheme clauses and maps • Submit to Council for adoption	• Review final scheme clauses and maps.
06 **Implementation**	• Promulgate scheme • Train officials • Monitor, review and update scheme	• Assist municipality for implementation and enforcement of the Land Use Scheme • Allocate land in accordance with the Land Use Scheme maps

Figure 11: Roles and responsibilities of traditional authorities.

Traditional councils are local municipal levels traditional structures that mainly operates under customary and statutory law. In South Africa there are 12 traditional councils. The composition is as follows: 60 per cent of the council is selected by the senior traditional leaders and 40 per cent is democratically elected by members of the community. One-third of those elected should be women. Among other functions, traditional councils:

- Assist and support traditional leaders while administering the affairs of the traditional community in accordance with customs and tradition;
- Support municipalities in the identification of community needs and facilitate the involvement of the traditional community in the development or amendment of the integrated development plan of a municipality;
- Participate in the development of policy and legislation at local level and of programmes at all levels;

Section 81 of the Municipal Structures Act No. 117 of 1998 enjoins 20 per cent of traditional leaders to participate in municipal councils.

In concreate terms, the process to include public participation in spatial planning is often defined in municipal by-laws. For instance, the eThekwini Planning and Land Use Management By-law of 2016[219] establishes that the municipality must prepare a municipal spatial development framework that, inter alia, considers and where necessary, incorporates the outcomes of substantial public engagement including direct participation in the process through public meetings, public exhibitions, public debates and discourses in the media and any other forms or mechanisms that promote such direct involvement (A.9.o). The by-law states that prior to the adoption of the land-use scheme, and before any proposed amendments to the land use scheme, the municipality must:

- Give notice of the proposed land-use scheme in two newspapers.
- Invite the public to submit written representations in respect of the proposed land use scheme to the municipality within 60 days of the publication of the notice.
- Consider all representations received in respect of the proposed land-use scheme.

The municipality must also allow the participation of a traditional authority in the manner agreed upon between the municipality and the traditional authority (traditional council). Article 14 establishes the procedure to be followed for the adoption of a land use scheme by the municipal council after public consultations have been conducted.

Civic participation in South Africa takes place mainly through a ward committee system or a sub-council participatory system for large cities. Ward committees consist of a ward councillor and 10 members elected by the community. The participation of ward committee members is voluntary and they receive no remuneration for their service. Ward committees largely serve as advisory committees, making recommendations on any matter affecting the ward to the ward councillor, who submits the recommendations to the municipal council. Ward committees focus on grassroots participation. Sub-councils

219 eThekwini Planning and Land Use Management By-law of 2016, Published in KwaZulu-Natal Provincial Gazette no. 1871 on 31 August 2017, https://commons.laws.africa/akn/za-eth/act/by-law/2016/planning-land-use-management/media/publication/za-eth-act-by-law-2016-planning-land-use-management-publication-document.pdf

consist of councillors representing each ward as well as other councillors, to ensure that each political party is represented according to the proportion of votes received in a ward. Other mechanisms for enhancing community participation include public meetings, public hearings, consultative sessions, report-back meetings, advisory committees, focus or interest groups, announcements in well-circulated newspapers community radio and e-government platforms.

Furthermore, the Integrated Development Planning Representative Forum facilitates broader participation in the discussion of municipal issues. The forum includes Government, civil society, the private sector and academic institutions. An example is the Municipality of Ekurhuleni that implemented the ward committee system as the primary vehicle for civic participation to obtain feedback from the community for the integrated development plan. The municipality also has several consultative structures to ensure stakeholder input into policymaking and budget processes from different sectors.[220]

Inclusive participation and digital governance

In 2017, the Department of Telecommunications and Postal Services of South Africa, published the National e-Government Strategy and Roadmap.[221] The purpose of strategy is to achieve a "people-centred, development orientated and inclusive digital society", where all citizens can benefit from the opportunities offered by digital technologies to improve their quality of life and to make government processes more efficient, strengthen public service delivery and enhance participation by citizens in governance matters.[222] The intention of the action programme is to support the State Information Technology Agency, the information communication technology agency for the Government, to provide e-services to citizens.

The e-government framework objectives include ensuring digital access to information, developing monitoring and evaluation frameworks for e-governance services, and overall make the Government more accountable and transparent.

At the same time, to promote a participatory and transparent democracy and enhance informed participation, training to both to government officials and the public is often conducted, funded and supported by non-governmental state actors, such as the South African Local Government Association[223] and the South African Cities Network.[224] This training takes

220 The World Bank, Participatory Budgeting, Public Sector Governance and Accountability Series no. 39498, 2007, p. 226 of the pdf. https://documents1.worldbank.org/curated/en/635011468330986995/pdf/394980REVISED0101OFFICIAL0USE0ONLY1.pdf

221 National e-Government Strategy and Roadmap, Department of Telecommunications and Postal Services of the Republic of South Africa, 2017, https://www.gov.za/sites/default/files/gcis_document/201711/41241gen886.pdf

222 Ibid.

223 The South African Local Government Association (SALGA) is an autonomous association of all 257 local governments, comprising of a national association, with one national office and nine provincial offices. The elected councillors that compose the National Executive Committee are primarily mayors and office bearers in municipalities. SALGA is listed as a Schedule 3A public entity and is therefore accountable for its revenue and expenditure in terms of the Public Finance Management Act of 1999. It aims to promote and protect the interests of local governments, raise their profile and support its members to fulfil their developmental obligations. www.salga.org.za/About%20Us%20W.html.

224 The South African Cities Network was established in 2002 as a network of cities and partners that encourages the exchange of information, experience and best practice on urban development and city management. SANC aims to achieve the objectives of the vision outlined in the Integrated Urban Development Framework and the National Development Plan through research, knowledge sharing, peer learning and innovation. www.sacities.net/who-we-

place in different municipalities based on their extant capacity needs. In 2018/19 South African Local Government Association issued a learning publication on governance structures, learning platforms and study tours,[225] providing a comprehensive overview, highlights and outcomes of its events held from January 2018 to September 2019. As an example, in 2018 the association organized the National Communicators Forum dedicated to "bringing local government closer to the people".

As a full partner in government and listed as a Schedule 3A public entity, the South African Local Government Association is expected to be an active participant in the intergovernmental relations system, to provide common policy positions on numerous issues and to voice local government interests, as well as provide solutions to the challenges facing local government more generally.

Multi-stakeholder approaches

A public-private partnership is defined as a contract between a public-sector institution and a private party, where the private party performs a function that is usually provided by the public sector and/or uses state property in terms of the public-private partnership agreement. Most of the project risk (technical, financial and operational) is transferred to the private party. The public sector pays for a full set of services, including new infrastructure, maintenance and facilities management, through monthly or annual payments. In a traditional government project, the public sector pays for the capital and operating costs and carries the risks of cost overruns and late delivery.[226]

In South Africa, public-private partnerships are regulated by the Public Finance Management Act No. 1 of 1999 and the Municipal Finance Management Act No. 56 of 2003, which establishes the conditions and process of such partnerships in article 120. Under this provision, a municipality can enter into a public-private partnership agreement only if the municipality can demonstrate that the agreement will (a) provide value for money to the municipality; (b) be affordable for the municipality; and (c) transfer appropriate technical, operational and financial risk to the private sector.

Before a public-private partnership is concluded, the municipality must conduct a feasibility study[227] that explains the strategic and operational benefits of the public-private partnership for the municipality in terms of its objectives. The feasibility study must also describe in precise terms:

- The nature of the private party's role in the public-private partnership;
- The extent to which this role, both legally and by nature, can be performed by a private party;
- How the proposed agreement will:

a. Provide value for money to the municipality

b. Be affordable for the municipality

c. Transfer appropriate technical, operational and financial risks to the private party

- The impact on the municipality's revenue flows and its current and future budgets.

are/.

225 www.salga.org.za/Documents/Knowledge-products-per-theme/Municipal%20Capabilities%20n%20HR/SALGA%20Learning%20Issue%201.pdf.

226 National Treasury Department, 2021 national budget, Annex E www.treasury.gov.za/documents/National%20Budget/2021/review/Annexure%20E.pdf.

227 The national Government may assist municipalities in carrying out and assessing the feasibility study.

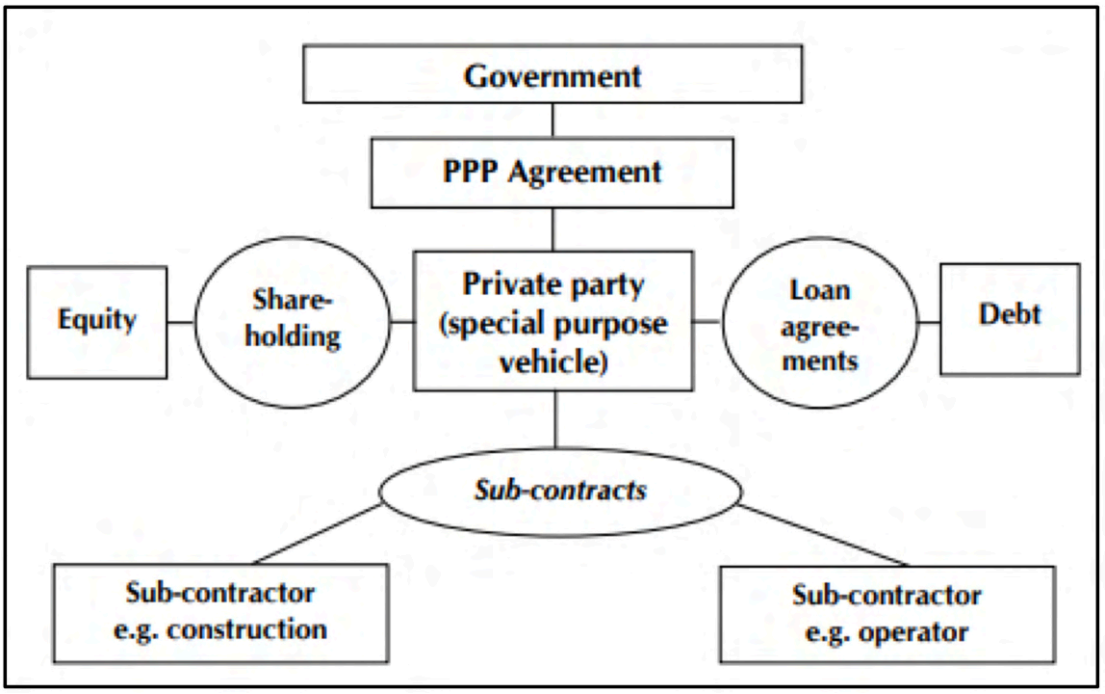

Figure 12: Generic structure for public-private partnerships. Source: South African National Treasury

Finally, the feasibility study is also required to consider "all relevant information" and explain the capacity of the municipality to effectively monitor, manage and enforce the agreement. Additionally, if the public-private partnership involves the provision of a municipal service, the provisions contained in Chapter 8 of the Municipal System Act on the responsibility of municipal officials must be respected.

When the feasibility study has been completed, the accounting officer of the municipality must:

I. Submit the report on the feasibility study together with all other relevant documents to the municipal council for a decision in principle on whether the municipality should continue with the proposed public-private partnership;

II. At least 60 days prior to the meeting of the council at which the matter is to be considered:

a. Make public particulars of the proposed public-private partnership, including the report on the feasibility study;

b. Invite the local community and other interested people to submit to the municipality comments or representations in respect of the proposed public-private partnership.

III. Solicit the views and recommendations of the National Treasury; the national department responsible for local government; the national department responsible for the provision of water, sanitation, electricity, or any other service (if the public-private partnership involves the provision of these services); and any other national or provincial organ of state as may be prescribed.

Figure 13: PPP Project Cycle. Source: South African National Treasury PPT on Public Private Public-Private Partnerships in South Africa

First announced in 2018, the Infrastructure Fund created opportunities for more partnerships between the Government and the private sector using blended public-private finance. A pipeline of economic and social projects, most of which are expected to be public-private partnerships,

is currently being developed in coordination with the private sector.

Since its introduction in 1998 until 2021, 34 public-private partnership projects valued at US$4,92 billion have been completed in South Africa.[228] These projects have been in the health, transport and roads, and tourism sectors, as well as head office accommodation (headquarters accommodation).[229]

Participatory budgeting

The Constitution promotes the idea of developmental local government, with each municipality giving priority to the basic needs of the community and promoting its socioeconomic development (S. 153). It also encourages the involvement of communities and community organizations in local government. Article 215 states: "national, provincial and municipal budgets and budgetary process must promote transparency, accountability and the effective financial management of the economy debt and the public sector".

The Municipal Structures Act of 1998 entrenches community participation in local governance by stating that the executive committee must report on the involvement of communities in municipal affairs, ensure public participation and consultation, and report the effects of such participation and consultation on decisions made by local councils. Chapter IV of the Municipal Systems Act of 2000 deals with community participation by requiring municipalities to develop a culture of municipal governance that complements formal representative government with a system of participatory governance. Community participation is required in the integrated development planning process, the performance management system, the municipal budgeting process and strategic decisions around service delivery.

The Municipal Finance Management Act No. 56 of 2003 provides that when the annual budget has been tabled, the municipal council must consider any views of the local community (S. 23). The accounting officer of the municipality makes the budget and all supporting documentation public and invites the local community to submit comments on the budget. The municipal council is obliged to consider the views of the local community regarding the budget. After considering all budget submissions, the council must give the mayor an opportunity to respond to the submission and, if necessary, to revise the budget and table amendments for consideration by the council. In case of non-compliance with the provisions contained in the Act or any other legislation on the approval of the annual budget or compulsory participation process, the mayor must inform the Member of the Executive Council for finance in the province. However, non-compliance by a municipality with a provision of the chapter on the municipal budget does not affect the validity of an annual or adjustments budget (S. 27).

Overall, mayors in South Africa are responsible for coordinating the processes for preparing the budget and for reviewing the municipality's

228 For some case studies of public-private partnerships in South Africa see the Peter Farlam, South African Institute of International Affairs, Nepad Policy Focus Series, Working Together Assessing Public–Private Partnerships in Africa, 2005:

-Case Study 1: N4 Toll Road from South Africa to Mozambique, pp.9–12.

-Case Study 3: Prison Contracts in South Africa, pp.15–17.

-Case Study 8: Eco-tourism Concession in South Africa's Kruger National Park, pp.29–31.

229 Ibid. A list of all the 34 public-private partnerships is contained in the mentioned Annex E.

integrated development plan and budget-related policies. At least 10 months before the start of the financial year, the mayor must table in council a time schedule outlining key deadlines, including deadlines for consultative or participatory processes (S. 21.1.b Municipal Finance Management Act). Immediately after the annual budget is tabled at a municipal council meeting (at least 90 days before the start of the financial year), the municipality must make public the annual budget together with any supporting documentation and invite submissions to the council on the budget from the community (S. 22 Municipal Finance Management Act). The council must then consider any views put forward by community representatives or any other organs of state and, if necessary, revise the budget and table amendments for consideration by the council (S. 23 Municipal Finance Management Act). Each municipality may prepare its own budget process within this framework.

The participation of Finance and Public Accounts Committees in the budget process has promoted greater openness, frequency and depth of budget hearings, and ensures the committees' involvement in the development of budget legislation. Civil society has also participated more actively in the budget process, with increasing numbers of budget-related submissions being made to portfolio committees. Citizens have also engaged in fiscal debates via several public campaigns. Additionally, non-state actors, such as the South African Local Government Association and the South African Cities Network, play a pivotal role in mobilizing communities to hold officials accountable and be involved in participatory budgeting.

Local experiences

1. The participatory budgeting of the Mangaung Municipality:

The budget preparation process for Mangaung Municipality represents a standards example of successful participatory budgeting. For the 2004/05 budget cycle in Mangaung, communities were asked to comment and provide input only on the capital budget. The city manager[230] has acknowledged the need to strengthen participation and expressed his intention to solicit input on the operational as well as the capital budget. The city manager has also agreed to provide the clusters with more information on project backlogs, service levels in different areas, trends and patterns of expenditure, and growth projections.

In Mangaung, the use of community-based planning in ward committees has seen the focus of budget funding shift from infrastructure development to local economic development, a higher priority for citizens. More people have become informed about projects, policies and decisions taking place in the municipality and can now demand accountability by regularly asking questions regarding issues raised at meetings. There has been continual participation among the ward committees, which provide the municipality with regular feedback and input from the community. These interactions have also led the local community to perceive the municipality as being more transparent.[231]

230 The city manager is the head of the administration of a municipality and is not a political figure as the mayor is; indeed, the city manager is appointed by the municipal council. Functions and responsibilities of the city manager are defined by article 55 of the Municipal Systems Act.

231 World Bank, Participatory Budgeting, Public Sector Governance and Accountability Series no. 39498, 2007, p. 214, https://documents1.worldbank.org/curated/en/635011468330986995/pdf/394980REVISED0101OFFICIAL0USE0ONLY1.pdf.

Stage	Activity
1. External and internal environment consultation	Budget parameters are established to make revenue projections. Municipality is divided into clusters of wards. Wards are notified of the dates of cluster meetings well in advance of the meetings. Cluster meetings are held, at which development priorities and projects are discussed and prioritized for each cluster. Refined community proposals are presented to the broader stakeholder forum to solicit additional input.
2. Screening of projects and programs	All submissions from the clusters and stakeholder forums are submitted to the mayor, the mayoral committee, and the executive management team, which discusses them and prepares the budget bill. Budget bill is publicized, so that stakeholders and the public can prepare for the budget conference, which provides another opportunity to provide input into the budget. After the budget conference, the draft budget is submited to the National Treasury for input and comments. Budget committee finalizes the budget.
3. Approval and reporting	Final budget is tabled and approved by the council. Final budget is submitted to the auditor-general and the national and provincial governments. Stakeholders are informed of the budget cycle for the forthcoming budget year.

Figure 14: Budget process in Mangaung. Source: Adapted from Mangaung Local Municipality 2004

Finally, submissions received from the budget conference on various budgetary issues have been seriously considered and taken into account when finalizing the city's budget.

2. The participatory budgeting and integrated development framework in the King Sabata Dalindyebo Municipality

The integrated development plan and budget formulation process are means through which the municipalities prepare their strategic development plans for a five-year period. To ensure certain minimum quality standards in the plan and budget review process, and proper coordination between and within spheres of government, municipalities are obliged to prepare an IDP Review and Budget Formulation Process Plan (Process Plan). The Process Plans must include the following:

A. A programme specifying the timeframes for the different planning steps.

Soweto, South Africa by Global Leadership Network via Flickr

B. Appropriate mechanisms, processes and procedures for consultation and participation of local communities, organs of state, traditional authorities, and other role players in the IDP review and budget formulation processes.

C. Cost estimates for the review process.

King Sabata Dalindyebo Municipality held a participatory process to prepare and issue the process plan wherein citizens were involved from the earliest stages of plan development.

The phases of the process were as follows:

- The municipality convened the integrated development plan citizens' representative forum to present the draft budget process plan. The citizens' representative forum consists of ward and proportional representative councillors, ward committees and stakeholders (businesspeople, community members, etc.) and it is chaired by the executive mayor supported by the plan / budget steering committee (composed of municipal officials directed by the municipal manager). The composition of the citizens' representative forum is based on criteria which ensure both geographical and social representation.
- The resulting budget process plan was then published in the local print media.
- Following print media advertisement, the plan / budget steering committee, which heads the citizens' representative forum, met to review the situational gap analysis.
- Following this meeting, a ward-to-ward budget outreach programme was held to consolidate the needs analysis and prioritization of resource allocations.

Such outreach programmes are known as izimbizo in South Africa. An imbizo is an initiative of the municipality where its management is expected to meet citizens in a public forum and take questions, listen to their concerns, and receive their proposals concerning the municipality's programmes and services. The outreach programme allows the community to participate in the affairs of the municipality, including in the budget preparation process.

- The chief financial officer and senior managers of the municipality then undertook a technical preparation of the which resulted in the formulation of the first draft budget.
- The draft budget was then advertised for public comments, through local print media, public meetings and consultations. The King Sabata Dalindyebo Municipality supported the mayor's 'roadshows' (public rallies), during which the mayor, accompanied by heads of the department, further explained budget procedures to citizens.
- The integrated development plan / budget steering committee formulated a synthesis of all the observations, concerns and needs reported by the public.
- The budget steering committee formulated a synthesis of all the observations, concerns and needs reported by the public to consider them into the budget to produce the final draft budget.
- The mayor then tabled the draft budget to the municipal council, which considered the draft budget for final approval. Upon approval, the manager responsible for budgeting submitted the approved budget in both printed and electronic formats to the National Treasury and the Provincial Treasury and posted it on the municipal website.

3. TRANSPARENCY AND ACCOUNTABILITY

Access to information

Access to information is needed to foster a culture of transparency and accountability in both public and private bodies. It is essential to promote a society in which citizens can fully exercise and protect their fundamental rights and fully participate in democratic governance. In terms of spatial planning and urban development, access to information ensures that members of the public can monitor public decision-making and private projects which impact the city's management and future development. It also enables community members to be better informed when engaging in public consultations and other forms of participatory exercises such as participatory budgeting and public reviews of spatial plans under development.

In South Africa, municipalities are legally obligated to ensure the public has access to government-held information in a language commonly used in the area. This obligation is based on both constitutional provisions and statutory legislation. The Constitution of South Africa guarantees the right of the public to access information held by the State and to access information held by any other person that is required for the exercise or protection of any rights (S. 32). Access to information in South Africa is primarily regulated by the Promotion of Access to Information Act No. 2 of 2000, which aims to give effect to the constitutional right of

access to information.

The Act makes it possible for members of the public to request documents or records held by any government department, its officials or any other public or private body, though records from a private body may only be requested on the grounds that such information is needed "for the exercise or protection of any rights" (S.50.1.a). Members of the public are entitled to access to the requested documents to the extent that the documents or records concerned are not exempted under the Promotion of Access to Information Act and none of the grounds for the refusal defined in the Act apply in the given circumstances. Requested information, once delivered, can be publicly disseminated through media such as local newspapers, local radio, noticeboards, websites and so forth. The types of documents and records subject to public access include the following:

- Personal records held by a government department or a public body.
- Third party information or records only with permission from the relevant third party, especially if the documents contain confidential or private information.
- The records of the Cabinet and its committees.
- Records that relate to the judicial functions of a court.
- Information:

o obtained by a special tribunal that was established in terms of the law

o held by a judicial officer of such a court or tribunal

o held by an individual member of parliament or of a provincial legislature

o to which access is not restricted by the Promotion of Access to Information Act[232]

To access information a citizen can:

- Approach the deputy information officer of the relevant government department and ask for the relevant documents.
- Complete and submit the "form 2"[233] to request access to the records of the public body. It is possible to obtain the form from the office of the relevant department or by downloading it from the website of the relevant government authority.

If the information sought is not freely available, the requesting party will have to pay a request fee, which is set by law. Moreover, if the request is granted, the citizen may also have to pay access and a search fee for the reproduction of records, depending on the means of reproduction of the documents containing the requested information, and for time more than one hour to search and prepare the records for disclosure.[234] The fee for requesting records from a public body is R35 ($1.90), while the fee for requesting records from a private body is R50 ($2.76), although, requesting parties in economic need do not have to pay request fees.[235] When

232 South African Government webpage, Access to information: www.gov.za/services/information-government/access-information#:~:text=The%20purpose%20of%20the%20Promotion,another%20person.

233 Promotion of Access to Information Act Forms: https://inforegulator.org.za/paia-forms/

234 The indication of the amount and typology of payable fees are contained in Annexure B of the Promotion of Access to Information Act.

235 South African Human Rights Commission, Guide on How to Use the Promotion of Access to Information Act 2 of 2000, 2014, www.sahrc.org.za/home/21/files/Section%2010%20guide%202014.pdf. Requesters are also required to pay fees for accessing the records of public and private bodies. This fee covers the costs of searching for the record and copying it. The breakdown of fees

Soweto, South Africa by Global Leadership Network via Flickr

requesting information from a public body, there is no obligation to justify the request by providing the reason motivating the access request.

The deputy information officer of the department must respond within 30 days of receiving the request. If the information officer or deputy information officer denies permission to access the information, it is possible to lodge an appeal with the relevant minister of the department or public body concerned. If still dissatisfied with the outcome, the person requesting information can take the matter to court. Where the requested information is not held by the relevant department, but by any other public body, the law obliges the deputy information officer to transfer the request to the information officer of the relevant public body within 14 days.

Article 12 of the Promotion of Access to Information Act regulates exemptions to the public's access to information privileges by providing that the Act does not apply to a record of:

a. The Cabinet and its committees

b. The judicial functions of a:

i. Court referred to in section 166 of the Constitution[236]

for accessing records of public bodies are indicated in the table contained at p.33.

236 Under section 166 of the Constitution, the courts are:

a.The Constitutional Court

b.The Supreme Court of Appeal

c.The High Court of South Africa, and any high court of appeal that may be established by an Act of Parliament to hear appeals from any court of a status similar to the High Court of South Africa

d.The Magistrate's Court

e.Any other court established or recognized in terms of an Act of Parliament, including any court of a status similar to either the High Court of South Africa or the Magistrate's Court.

ii. Special Tribunal established in terms of section 2 of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996)

iii. judicial officer of such court or Special Tribunal

c. Individual members of Parliament or of a provincial legislature in their official capacity.

Grounds for refusal of access to records are stipulated in chapter 4 of the Promotion of Access to Information Act. The information officer of a public body must refuse a request for access to a record in case of mandatory protection of:

A. Privacy of third party who is natural person (S.34)

B. Certain records of the South African Revenue Service (S.35)[237]

C. Commercial information of third parties (S.36)

D. Certain confidential information, and protection of certain other confidential information, of third parties (S.37)

E. Safety of individuals and protection of property if its disclosure could reasonably be expected to endanger the life or physical safety of an individual (S.38.a)

F. Police dockets in bail proceedings, and protection of law enforcement and legal proceedings (S.39)[238]

G. Records privileged from production in legal proceedings (S.40)

H. Research information of third party and protection of research information of public body (S.43)

Moreover, under Sections 41 and 42, the information officer of a public body may refuse a request for access if its disclosure could reasonably be expected to cause prejudice to (i) the defence of the Republic; (ii) the security of the Republic; or (iii) the international relations of the Republic (S.41.1.a). Other grounds for refusal include where the disclosure of information would:

1. Reveal information (i) supplied in confidence by or on behalf of another State or an international organization; (ii) supplied by or on behalf of the Republic to another State or an international organization in terms of an arrangement or international agreement with that State or organization which requires the information to be held in confidence; (iii) required to be held in confidence by an international agreement or customary international law (S.41.1.b).[239]

2. Be likely to materially jeopardize the economic interests or financial welfare of the Republic or the ability of the Government to manage the economy of the Republic effectively in the best interests of the Republic (S.42.1).[240]

However, the Promotion of Access to Information prescribes that a record may not be refused on

237 The information officer of the South African Revenue Service must refuse a request for access to a record of that service if it contains information which was obtained or is held by that service for the purposes of enforcing legislation concerning the collection of revenue as defined in section 1 of the South African Revenue Service Act No. 34 of 1997.

238 If access to that record is prohibited in terms of section 60.14 of the Criminal Procedure Act No. 51 of 1977.

239 Section 41.2 provides for some examples of records which may be protected from disclosure based on these principles cited form Section 41.1.

240 The information referred to in subsection 1 includes, inter alia, information about a contemplated change in or decision not to change customs or excise duties, taxes or any other source of revenue (b(ii)) and the sale or acquisition of immovable or movable property (c(i)).

grounds prejudice to international relations if it came into existence more than 20 years before the request (S.41.3). Furthermore, section 46 of the Act establishes that a request for access to a record must be granted if:

1. The disclosure of the records would reveal evidence of:

i. a substantial contravention of, or failure to comply with, the law

ii. an imminent and serious public safety or environmental risk

2. The public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question.

Section 39 of the Protection of Personal Information Act 4 of 2013 establishes the Information Regulator,[241] an independent body (subject only to the law and the constitution and accountable to the National Assembly) empowered to monitor and enforce the compliance of public and private bodies with the provisions of the Promotion of Access to Information Act and the Protection of Personal Information Act.

In June 2021, the Information Regulator issued the Promotion of Access to Information Act Manuals,[242] prepared in accordance with Section 14 of the Promotion of Access to Information Act 2 of 2000 (as amended). The manual can be used, inter alia, by the public to:

- Establish the nature of the records which may already be available without the need for submitting a formal Promotion of Access to Information Act request
- Understand how to make a request for access to a record held by the Regulator
- Access all the relevant contact details of the people who will assist the public with the records they intend to access
- Be aware of all the remedies available from the Regulator regarding request for access to the records, before approaching resorting to seeking judicial remedy through the courts
- Describe the available services from the Regulator and how to gain access to those services
- Understand if and which kind of personal information the Regulator will process, to which purpose that information will be processed as well as whether the Regulator has appropriate security measures to ensure the confidentiality, integrity and availability of the information which is to be processed

Public accountability

South Africa has ratified the United Nations Convention against Corruption and the country's Constitution calls on public employees to maintain and promote high standards of professional ethics in public administration (S. 195.1.a). The constitutional imperative is carried through to the Code of Conduct for employees in the public service, as contained in Chapter 2 of the Public Service Regulations of 2016, which expects public service employees to report observed unethical conduct, non-compliance with the code of conduct and acts of corruption.[243]

241 Information Regulator's webpage: https://inforegulator.org.za/about/.

242 Promotion of Access to Information Act Manual: https://inforegulator.org.za/wp-content/uploads/2020/07/InfoRegSA-PAIA-Manual-2021-Eng.pdf.

243 Under Regulation 13.e, an employee shall immediately

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At the local level, the Local Government: Municipal Systems Act No. 32 of 2000 includes the code of conduct for councillors and municipal staff members (Ch. 12, Schedules 1-2). The code also applies to traditional leaders participating in municipal council proceedings (S. 15).

The code of conduct aims to ensure that councillors (and traditional leaders) fulfil their obligations to their communities. It holds that councillors, as individuals elected to represent local communities on municipal councils, must be accountable to their constituencies and report back at least quarterly on council matters, including the performance of the municipality in terms of established indicators (Municipal Systems Act, schedule 1, code of conduct for councillors, preamble). Under section 2 of the code, councillors must perform the functions of office in good faith, honestly and in a transparent manner; they must act in the best interest of the municipality and in a way that upholds the credibility and integrity of the municipality.

Among others, the code includes obligations for councillors regarding the disclosure of conflicts of interest, financial disclosures, the acceptance of rewards, gifts and favours, the nondisclosure of confidential or privileged information; it also includes prohibitions on public profiteering, administrative interference, subordination, maladministration, and bribery and corruption (Municipal Systems Act, Code of Conduct, S. 5-12).

If the chairperson of a municipal council has reason to believe that a provision of the code

report to the relevant authorities, fraud, corruption, nepotism, maladministration and any other act which constitutes a contravention of any law, or which is prejudicial to the interest of the public, which comes to his or her attention during his or her employment in the public service. While under Regulation 14.q, employees shall immediately report any non-compliance with the Act to the head of the department.

has been breached, he/she must authorize an investigation of the facts and circumstances, give the councillor a reasonable opportunity to reply to the alleged breach, and report the matter to a meeting of the municipal council. The municipal council is the competent authority to investigate and make findings on any alleged breach of the code. The municipal council can also establish a special committee to investigate and then make recommendations to the council. Whenever a councillor has been found to have breached a provision of the code, the municipal council may:

- Issue a formal warning to the councillor
- Reprimand the councillor
- Request the members of the executive council for local government in the province to suspend the councillor
- Fine the councillor
- Request the members of the executive council to remove the councillor from office

Within 14 days of any of the aforementioned decisions, the implicated councillor can appeal the decision before the members of the executive council.

Schedule 2 of the Municipal System Act provides for a similar code of conduct that applies to staff members of a municipality. This code likewise recognizes that as public servants, staff members must act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised. Whenever a staff member of a municipality has reasonable grounds for believing that there has been a breach of the code, the staff member is obliged to report the matter to a superior officer or to the speaker of the council without delay.

The Local Government: Municipal Structure Act of 1998 also provides a code of conduct for municipal councillors (Ch. 6, Schedule 5), which largely overlaps in content with the code for councillors found in the Municipal System Act.

In 2018, the South African Parliament published a guide on the reporting of unethical conduct, corruption and non-compliance[244] based on the provisions of the Public Service Act, 1994, and the Public Service Regulations, 2016. The purpose of the guide is, among other things, to assist employees and workers to report wrongdoing, assist departments to draft a policy for the reporting of unethical conduct, corruption and non-compliance with the Public Service Act, 1994 and the Public Service Regulations, 2016. The guide outlines systems and procedures for reporting which seek to strengthen the protection of "whistle-blowers" in the public service who report unethical conduct, corruption and non-compliance. The government is obliged to ensure that all allegations of corruption are properly investigated and that misappropriated public funds are recovered from those who are found guilty of wrongdoing.

Similarly, the Prevention and Combating of Corrupt Activities Act, No. 12/2004 requires employees in the public service to report corruption, unethical conduct and noncompliance to an official from the competent police force. Those employed in the public service, the South African Police Service, the South African National Defence Force and the State Security Agency, are obliged under the Code of Conduct for the Public Service to report corruption, unethical conduct and non-compliance. The failure to report these actions constitutes a contravention of the code of conduct and is treated as misconduct. Moreover, if public sector

244 Guide on the reporting of unethical conduct: https://www.dpsa.gov.za/dpsa2g/documents/iem/2018/eim_06_09_2018_guide.pdf

employees who are found to have been aware of wrongdoing and chose to ignore it are guilty of a criminal offence. Specifically, any person who fails to comply with the duty to report corruption valued at R100,000 (US$5,722.90) or more is guilty of an offence (S. 34).

Oversight and feedback mechanisms

The public is also encouraged to report all criminality using platforms such as the South African Police Service Crime Stop and all government anti-corruption hotlines.[245] The law enforcement agencies rely on the credible information provided by members of the public in order to launch investigations. Citizens can pass information linked to any fraud or corruption through the hotlines or the emails of 17 different agencies such as the South African Anti-corruption Hotline, the Special Investigating Unit Whistle-blower Hotline, the Directorate of Priority Crime Investigation (Hawks), and the National Health System Ethics Line.

To promote citizen oversight in municipal administration, municipalities provide platforms for feedback from the public, such as suggestion boxes, in relation to service provision and governance. Municipalities with ward committees are required to use the aforementioned mechanisms to receive feedback to communities. A good example of the use of feedback mechanisms is the Ekurhuleni Municipality's "budget tips" campaign, which encouraged the public to provide feedback and suggestions on priorities for the municipal budget by means of email, notes deposited in boxes at libraries and letters to the mayor.[246]

In 2015, the Government of South Africa launched a campaign to stop corruption called, "I know – I Act – I Stop (fighting corruption is everyone's business)". The campaign led to an increase in corruption cases being reported, with 126 corruption cases reported in the 2017/2018 financial year and 254 in the 2019/2020 financial year via the National Anti-Corruption Hotline. [247] In the context of the launched campaign, the Government issued the National Anti-corruption strategy for 2020-2030.[248]

245 South African Government webpage – hotlines: www.gov.za/anti-corruption/hotlines.

246 World Bank, Participatory Budgeting, p.226 of the pdf document, p.201 of the report.

247 South African Government webpage – I know, I Act, I stop: www.gov.za/anti-corruption/campaign.

248 National anticorruption strategy: www.gov.za/sites/default/files/gcis_document/202105/national-anti-corruption-strategy-2020-2030.pdf.

Type of conduct	Reporting channel (e.g)
Corruption and related offences, improprieties	Head of Legal Head of Security
Unethical conduct	Ethics Office (r) Ethics Committee Ethics Champion
Non-compliance to the PSR,2016 and public service act,1994	Head of Department (or delegated official, such as Ethics Officer)

Figure 15: Example of reporting channel. Source: Guide on reporting unethical conduct, corruption, and non-compliance.

Protection mechanisms against retaliation

Regulation 22(c) of the Public Service Regulations provides for a head of department to establish a system that encourages and allows employees and citizens to report allegations of corruption and other unethical conduct, and that such system provide for "confidentiality of reporting". Through this system the identity of employees in both the public and private sector remains confidential when reporting flagged conduct to public authorities unless the reporting party gives permission otherwise. This provision places an onus on public service departments to take active steps to keep the identity of the reporter confidential and to reveal their identity only with the permission of the person who reported the wrongdoing. This provision aims to allay fears of victimization and to encourage employees to report wrongdoing without fear of retaliation.

Moreover, under the Protected Disclosures Act No. 26 of 2000, every employer must authorize appropriate internal procedures for receiving and dealing with information about improprieties and take reasonable steps to bring the internal procedures to the attention of every employee or worker. The Act also states that the head of a department shall establish a system that allows and encourages employees and citizens to report allegations of corruption and other unethical conduct, and that such system shall provide for:

I. confidentiality of reporting;

II. the recording of all allegations of corruption and unethical conduct received through the system or systems.

Overall, the protection of employees in the public service reporting corruption and related offences, unethical conduct and improprieties are the main driver for a successful reporting system and to change the culture of keeping silent. For this reason, the Public Service Regulations require reporting systems to ensure confidentiality. The policy establishing the reporting system in a given public administration must state that everything possible will be done to keep all reports confidential and outline the measures for ensuring that. For example, employees designated to receive disclosures should know that reports must be kept confidential and breaches of confidentiality are considered to be a type of misconduct that can be sanctioned.

A public department should also consider if physical protection must be arranged in extreme cases to protect an employee reporting corruption or serious wrongdoing. This will depend on the risks inherent to the department and the case at hand. An Ethics Committee[249] may play a role in identifying criteria and requesting protection for that employee. In cases where the life or security of the individual and their family is at risk, the Office of the Witness Protection Unit (under the National Prosecuting Authority) may provide protection for those in life-threatening danger. The Ethics Committee must also consider measures to protect investigators and auditors investigating serious misconduct. This is especially relevant when there is evidence of undue pressure exerted to stop investigations or to influence the outcome of investigations.

Regarding the protection of citizens who report misconduct and corruption, whenever a citizen comes forward with the information, it is the responsibility of the law enforcement agencies

249 The concept Ethics Committee refers to a regulatory structure that is set up to provide strategic direction and oversight on the ethics management of a department. For more information see the 2019 Ethics Committee Guide issued by the South African Department of Public Services and Administration: www.dpsa.gov.za/dpsa2g/documents/iem/2019/eim_25_09_2019_guide.pdf.

to protect his/her identity and to ensure that the reporting person and those close to him/her are not exposed to any harm. Law enforcement agencies have been trained to ensure that they protect the identity of the whistle-blower and to always keep this secret. If agencies break the confidentiality code, they may face disciplinary action which can lead to them being fired from their employment. They can also face prosecution and receive hefty sentences for releasing confidential information.[250]

4. DISPUTE RESOLUTION, APPEAL AND JUDICIAL REVIEW

The Spatial Planning and Land Use Management Act (Chapter 6, Parts B, C and D) provides for the establishment, composition, processes and powers of municipal planning tribunals, which should be established by each municipality to determine land-use and development applications within the municipal area under its jurisdiction (S. 35). A municipal planning tribunal must consider and determine all land-use and development permission applications lawfully referred or submitted to it, without undue delay and within a prescribed period, and provide reasons for any decision made (S. 40). Conditional approval of a decision is also possible under Section 43 of the Act. The timeframes for the consideration and determination of an application before a tribunal must be prescribed by the Minister for Rural Development and Land Reform, after first conducting public consultations on the matter. These timeframes may be differentiated according to the types of land development applications (S. 44).

A land development application may only be submitted by (i) an owner of the land concerned, including, where applicable, the State; (ii) a person acting as the duly authorized agent of the owner; (iii) a person to whom the land is concerned has been made available for development in writing by an organ of the State or such person's duly authorized agent; or (iv) a service provider responsible for the provision of infrastructure, utilities, or other related services (S. 45). However, any interested person can petition to intervene in an existing application and, if granted intervener status, the interested person may be allowed to participate in such proceeding and oppose to the approval of the land-use application (S.45.2). If objections are lodged against the application, meetings can be held between the objectors and applicant(s) to resolve the underlying dispute and possibly have their objections withdrawn. If the objections are not withdrawn, a municipal planning tribunal hearing between the parties will be scheduled. During the hearing every objector, interested person or body and the applicant, including the municipality or any of its departments, may state their case and adduce evidence.

A person whose rights are affected by a decision taken by a municipal planning tribunal may appeal against it by giving written notice and supporting reasons to the city manager within 21 days of the date of notification of the tribunal decision. Within the period prescribed under the relevant local regulation,[251] the city manager then places the appeal before the Executive Authority of the municipality, who acts as the appellate authority (S. 51). The procedure for appeals before the Executive Authority of the municipality is provided for by municipal law.

250 South African Government webpage – Whistle-blowing: www.gov.za/anti-corruption/whistle-blowing.

251 Within 7 days after the expiry of the prehearing process, under Johannesburg municipal Municipal Planning By-law, 2016, Section 49. https://openbylaws.org.za/za-jhb/act/by-law/2016/municipal-planning/eng/#chp_7__sec_50.

The Johannesburg Local Authority Notice No. 1240 of 2016 establishing the Municipal Planning By-law, 2016, for example, states that the appeal authority shall decide the appeal within 30 days from the date of receipt of the appeal documents from the city manager. The appeal authority may confirm, vary, or reverse the decision being appealed. The by-law states that an appeal shall be heard by the appeal authority by means of a hearing based only on the comprehensive written submissions received. The appeal authority is required to decide the appeal within 30 days from the date of the formal oral hearing.[252]

Under Section 62 of the Municipal Systems Act, the same procedure is valid also to appeal any other decision taken by a political structure, political office bearer, councillor, or staff member of a municipality affecting the rights of the appellant. Therefore, the interested person should give notice of the appeal and reasons to the municipal manager within 21 days from the date of the notification of the decision.

Under Section 6 of the Promotion of Administrative Justice Act No. 3 of 2000,[253] any person may institute proceedings in a court or a tribunal for the judicial review of an administrative action. Any proceedings for judicial review must be instituted without unreasonable delay and not later than 180 days after the date on which any proceedings instituted in terms of internal remedies have been concluded, or in case no such remedies exist, on which the person concerned was informed of the administrative action, became aware of the action and the reasons for it or might reasonably have been expected to have become aware of the action and the reasons.[254]

No court or tribunal shall review an administrative action until all judicial or administrative remedies provided for in any other law have first been exhausted (S. 7.2.a Promotion of Administrative Justice Act). However, a court or tribunal may, in exceptional circumstances and on application by the person concerned, exempt such person from the obligation to exhaust any internal remedy if the court or tribunal deems it in the interest of justice (S. 7.2.c Promotion of Administrative Justice Act).

The Land Claims Court[255] is the court specialized in dealing with disputes that arise out of laws that underpin the country's land reform initiative. These includes the Restitution of Land Rights Act, No. 22 of 1994,[256] the Land Reform Act, No. 3 of 1996[257] and the Extension of Security of Tenure Act, No. 62 of 1997.[258]

The Land Claims Court has the same status as the High Courts.[259] Therefore, any appeal against

252 Ibid, Section 50.

253 Promotion of Administrative Justice Act. www.justice.gov.za/legislation/acts/2000-003.pdf.

254 Under article 9 of the Promotion of Administrative Justice Act, the period of 180 days may be extended for a fixed period, by agreement between the parties or, failing such agreement, by a court or tribunal on application by the person or administrator concerned. The court or tribunal may grant the adjusting of the timeframe where the interests of justice so require.

255 The Land Claims Court of South Africa www.justice.gov.za/lcc/about.html.

256 The Restitution of Lands Rights Act provides for the restitution of rights in land in respect of which persons or communities were dispossessed under or for the purpose of furthering the objects of any racially based discriminatory law. www.justice.gov.za/legislation/rules/lcc-rules.pdf

257 The Land Reform Act is intended (a) to provide for the security of tenure of labour-tenants and those people occupying or using land as a result of their association with labour tenants; and (b) to provide for the acquisition of land and rights in land by labour tenants. www.justice.gov.za/lcc/docs/1996-003.pdf.

258 The Extension of Security of Tenure Act is intended to provide measures to facilitate long-term security of land tenure and regulate (a) the conditions of residence on certain land; (b) the conditions on and circumstances under which the right of people to reside on land may be terminated; and (c) the conditions and circumstances under which people, whose right of residence has been terminated, may be evicted from land. www.justice.gov.za/lcc/docs/1997-062.pdf.

259 The High Court is the authority determining appeals from all decisions in a Magistrate's Court within its area of jurisdiction, and overall, is competent for deciding on civil and criminal cases.

a decision of the Land Claims Court lies with the Supreme Court of Appeal and, if appropriate, with the Constitutional Court. The Land Claims Court has jurisdiction throughout the country.

Under Section 5 of the Restitution of Land Rights Act, the initiation of a case in the Land Claims Court is subject to the payment of court fees in the form of revenue stamps in accordance with the tariff contained in Schedule 2. Overall, the cost of the revenue stamp is R80 ($4.64) for each original document, including power of attorney and notice of appeal, requiring a stamp; while every bill of costs to be taxed which is not related to an action or application already registered in the court requires a revenue stamp of R50 ($2.90). Additionally, every Registrar's certificate or certified copies of documents, and each copy of any document have a cost of R1 ($0.06). However, no court fees are payable (a) in respect of proceedings initiated by the Commission or by the Director-General (S. 5.3.a); or (b) if a party is assisted or represented by a legal aid board or proves to be indigent, court costs are not due (S. 5.3.b). A party is indigent if he or she does not own property to the value of R30,000 ($1,740.23) or more (except for household goods, wearing apparel and tools of trade), or if the party will not be able to provide that amount from their income within a reasonable time (S. 5.4).

The State or any person whose rights may be affected by the relief claimed in a case and who is not a party in the case may, within a reasonable time after he or she becomes aware of the case, apply to the court for leave to intervene in the case (S. 13 Restitution of Land Rights Act).

Applicants might refer to the Land Claims Court also to bring under review any decision or action of (a) an inferior court; (b) an arbitrator; (c) the commission; (d) the minister; (e) any tribunal or board; or (f) any functionary (S. 35 Restitution of Land Rights Act).

Under the Extension of Security of Tenure Act, a party willing to appeal against a decision regarding one of the matters delineated in the act, can institute proceedings in the District Magistrate's Court within whose area of jurisdiction the land in question is situated, or the Land Claims Court (S. 17.1), and if all the parties to proceedings consent thereto, proceedings may be instituted in any division of the High Court which has territorial jurisdiction over the land in question (S. 17.2). A District Magistrate's Court has subject-matter jurisdiction over proceedings for evictions or reinstatement and criminal proceeding in terms of the Extension of Security of Tenure Act (S. 19.1). Civil appeals from a Magistrate's Court for claims based on provisions of the Extension of Security of Land Tenure Act must be filed with the Land Claims Court (S. 19.2).

If the parties are not satisfied with the decision of the Land Claims Court, they can appeal to the Supreme Court of Appeal and Constitutional Court.[260] The functioning of the Supreme Court of Appeal and Constitutional Court is further regulated by the Superior Courts Act, No. 10 of 2013.[261] Under article 69 of the Restitution of Land Rights Act and article 16 of the Superior Courts Act, a party that wishes to appeal against an order of the court must apply to the court for leave to appeal the decision. Article 17 of the Superior Courts Act further clarifies that if leave to appeal is refused by the court against

There are 9 territorial Divisions.

260 See also articles 16.1.c of the Superior Courts Act, No.10 of 2013, which states that an appeal against any decision of a court of a status similar to High Court, as the Land Claims Court is, lies with the Supreme Court of Appeal upon leave having been granted by that court or the Supreme Court of Appeal.

261 Superior Courts Act, www.gov.za/sites/default/files/gcis_document/201409/36743act10of2013a.pdf.

whose decision an appeal is to be made, it may be granted by the Supreme Court of Appeal if an application is filed with the registrar within one month after such refusal. The execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal (S. 18 Supreme Court of Appeal).

With regard to alternative dispute resolution, a party may request the Director-General of the Department of Land Affairs to appoint one or more persons with expertise in dispute resolution to facilitate meetings of interested parties and to attempt to mediate and settle any dispute (S. 21.1 of the Extension of Security of Tenure Act). Section 22 of the Extension of Security of Tenure Act states that parties can also refer the dispute to arbitration in accordance with the Arbitration Act, No. 42 of 1965.[262] The Land Reform Act likewise provides for the possibility to refer the dispute to an arbitrator (Sections 19 et seq.).

The Arbitration Act provides that the arbitration tribunal shall, unless the arbitration agreement otherwise provides, make its award (i) within four months in case of an award by one or more arbitrators; or (ii) within three months in case of an award made by an umpire. Time starts running the day on which they referred the issue to the arbitrator or umpire. The time limit for issuing an award may be extended by an order of a court or by agreement of the parties. (S. 23 Arbitration Act). Under Section 35 of the Arbitration Act, the award of damages in connection with the arbitral referral and proceedings shall be at the discretion of the arbitration tribunal, unless the arbitration agreement provides otherwise. If the arbitration tribunal recognizes such damages, it provides guidance on the scale for allocating the costs and may determine by whom and how such costs or part thereof are to be paid.

Alternative dispute resolution mechanisms can also be used to settle disputes relating to environmental matters. The National Environmental Management Act 107 of 1998[263] states that where a difference or disagreement arises concerning the exercise of any of its functions which may significantly affect the environment, or before whom an appeal arising from a difference or disagreement regarding the protection of the environment is brought under any law, any minister, Member of the Executive Council, or municipal council may, before reaching a decision, consider the desirability of first referring the matter to conciliation. If the conciliator considers the conciliation appropriate, the authority must either:

A. Refer the matter to the Director-General for conciliation under the Act.

B. Appoint a conciliator on the conditions, including time limits, that the conciliator may determine.

C. Where a conciliation or mediation process is provided for under any other relevant law administered by such minister, Member of the Executive Council or municipal council, refer the matter for mediation or conciliation under such other law.

If the conciliator considers conciliation inappropriate or the conciliation has failed, the mentioned authority must decide the matter.

Anyone may request the minister, a Member of the Executive Council or municipal council to appoint a facilitator to call and conduct meetings of interested and affected parties with the purpose

262 Arbitration Act of 1965, www.wipo.int/edocs/lexdocs/laws/en/za/za062en.pdf.

263 National Environmental Management Act 107 of 1998, www.gov.za/documents/national-environmental-management-act.

of reaching agreement to refer a difference or disagreement to conciliation in terms of the National Environmental Management Act. The minister, Member of the Executive Council or municipal council may appoint a facilitator and determine the way the facilitator must carry out his or her tasks, including time limits.

Finally, a court or tribunal hearing a dispute regarding the protection of the environment may order the parties to submit the dispute to a conciliator appointed by the Director-General and suspend the proceedings pending the outcome of the conciliation.

5. KEY TAKEAWAYS AND LESSONS

I. Although all three spheres of government are responsible for spatial planning and must produce a spatial development framework, spatial planning and land-use management are defined mainly at a local level in South Africa. Indeed, it is the municipality that has to produce and implement the land-use scheme according to the vision, strategies and policies set at the national and provincial levels. As a result, the planning system takes a decentralized structure, but remains under the control of the central Government, which defines the national framework and visions, the binding development principles, norms and standards for land-use and management, and ensures uniformity of spatial planning throughout the country.

II. Public participation is a constitutional imperative and legislative mandate binding all spheres of government; it is also included among the development principles that guide spatial planning. This translates into citizens' right to access information pertinent to land use and development planning and to be consulted in the early stages of the preparation of a plan through participatory practices (e.g., town hall, public meetings and debates etc.). The outcomes of consultations and other participatory practices must be considered by the competent authority when adopting a planning instrument such as land-use schemes. Civic participation in South Africa primarily takes place through a ward committee system or a sub-council participatory system for large cities. Furthermore, the Integrated Development Planning Representative Forum allows broader participation in the discussion of issues of municipal administration.

III. To foster a culture of transparency and accountability and to promote a society in which citizens have effective access to information which enables them to fully exercise their rights, public bodies must ensure access to information in a language commonly used in the area. The Promotion of Access to Information Act No. 2 of 2000 gives effect to the constitutional right of access to publicly held information and allows anyone to request access to all documentation and records held by any government department, its officials, or any other public body. The deputy information officer of the department concerned must respond within 30 days of receiving the Promotion of Access to Information Act request. If the information officer or deputy information officer does not respond or denies permission to access the requested information, it is possible to lodge an appeal with the relevant minister of the department

or public body concerned. If still dissatisfied with the outcome, the requester can take the matter to court. However, certain documents and types of information are exempt from public disclosure requirements to protect national interests or the privacy of private bodies and citizens (inter alia).

IV. The attention given to public participation in the country's legal framework is also reflected in provisions regarding the adoption of municipal budgets in the Municipal Finance Management Act of 2003. This law states that when the annual budget has been tabled, the municipal council must consider any views of the affected citizens by inviting local communities to submit comments on the budget. The municipal council is then obliged to consider the views of the local community regarding the budget. Therefore, participatory budgeting must be used across the country, even if specifically defining the definition of the process to adopt budgets remains a competence of each municipality.

V. South Africa has a well-established code of ethics and conduct for councillors and municipal staff members, and it provides guidelines for reporting unethical conduct, corruption and non-compliance with the code of conduct. Moreover, non-governmental actors, such as the South African Local Government Association or the South African Cities Network, have a paramount role in mobilizing communities to hold officials accountable through the hotline system to report corruption, non-compliance and misconduct by public officials and they can also be involved in participatory budgeting. Mechanisms to protect whistle-blowers are also provided by law to encourage reporting of misconduct and similar offences.

VI. South Africa has a two-tier land-use planning dispute resolution system, one internal and the other external. Under Section 62 of the Municipal Systems Act, any person whose rights are affected by a decision taken by a political structure, political office bearer, councillor or staff member of a municipality (including a land field application or an order of eviction), must firstly appeal to the municipal manager, and only if and when not satisfied with the decision of the municipal manager, can the appellant bring the case to court. In addition, South Africa has a specialized court, the Land Claims Court, which is equal in status to a High Court and responsible for dealing with disputes that arise out of laws that underpin land reform. Decisions taken by the Land Claims Court or by a Magistrate's Court can be appealed before the Supreme Court of Appeal, and if appropriate, to the Constitutional Court. Overall, the dispute resolution system allows for the settlement of disputes within a short timeframe and at an affordable cost. Alternative dispute resolution mechanisms, such as arbitration and conciliation, are also provided for by law, especially with regard to land tenure disputes and disputes related to environmental matters.

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Oxford Street, London, United Kingdom. Photo: Sabrina Mazzeo - source: Unsplash

UNITED KINGDOM (ENGLAND)

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The United Kingdom Country Profile: Quick facts	
Form of government	Constitutional Monarchy
Form of state	Unitary State
Surface area	243.610 km²
Gross domestic product (2021)	US$3.19 trillion
GDP per capita (2021)	US$47,334.40
Inequality-adjusted Human Development Index (2021)	0.85 (very high)
Population (2021)	67 million
• per cent of population aged between 0 and 14 (2021)	18
• per cent of individuals using the Internet (2020)	95
• per cent of urban population (2021)	84
Urban population growth (annual per cent, 2021)	0.7
Population Density (2020)	277 inhabitants per km²
Literacy rate, adult (2018-2019)	N/A
Geographic region and subregion	Europe – Northern Europe

1. INTRODUCTION

General country background

The United Kingdom of Great Britain and Northern Ireland is a constitutional monarchy and parliamentary democracy, where elected ministers govern in the name of the sovereign, who is the head of State and Government. The sovereign appoints the prime minister, who leads the executive together with the Cabinet. The Constitution is unwritten and relies on a combination of statutes, common law and customs/conventions. The United Kingdom is a unitary State formed by four separate "home countries": England, Scotland, Wales and Northern Ireland. From 1998, the political governance structure has undergone a longstanding process of devolution of powers, which led to asymmetrically devolved administrations (Northern Ireland, Scotland and Wales have their own elected assemblies and Governments).

With a population of about 67 million (2021) , it is one of the most densely populated countries in the world averaging 277 people per km^2. Its population growth rate is about 0.4 per cent per annum (2021) driven by both net immigration and natural growth. Out of the total population, 84 per cent live in urban areas and, in 2021, the country had an annual urban population growth of 0.7 per cent. Looking specifically at England, both rural and urban areas saw an increase in population between 2011 and 2019. The rural population increased by 5.2 per cent while the urban population did so by 6.2 per cent. In 2019, 56.3 million people lived in urban areas (82.9 per cent of the population of England).

Regarding the population composition by age and by gender, the United Kingdom population is generally ageing. In 2019, the average age of the population was 40 years (up from 35 years in 1985). Of the total population, 18 per cent is aged less than 15 years. The female population accounts for the 50.6 per cent of the total.

From an economic perspective, the United Kingdom remains one of the top economies in the world, with a GDP of $3.19 trillion (2021). Concerning overall human development, the United Kingdom is currently ranked eighteenth in the United Nations Development Programme's Human Development Index of 2021 and has an Inequality-adjusted Human Development Index classified as "very high development". A very high percentage, 95 per cent of the total population uses the Internet (either via a computer, mobile phone, personal digital assistant, games machine, digital television etc.) , and so the population has the capacity to access digital information and participate in digital governance mechanisms.

Spatial planning system

In the United Kingdom, there are four planning systems given that there are four devolved Governments: England, Scotland, Wales and Northern Ireland. This case study focuses solely on England and it will explore legislation and governance arrangements on public participation in spatial planning for this nation. Planning objectives are achieved in the United Kingdom through two main levels: the national level and the local level. This is a relatively new structure as the intermediate tier (the regional scale) was abolished as recently as 2012. However, the regional level still exists in England, only for the Greater London area, where the Greater London Authority maintains planning powers and develops the London Plan, which is a spatial development strategy for London.

At the national level, the United Kingdom Government is responsible for preparing the

National Planning Policy Framework, containing policy priorities and principles for spatial development and guidance to the local planning authorities.

The preparation of spatial plans and decision making are left to the planning departments of local planning authorities (Localism Act of 2011). Many parts of England have three tiers of local government, indicating that spatial planning is administratively highly decentralized. These are: county councils; district, borough or city councils; and parish or town councils. However, whilst there is a great deal of autonomy at the local level to prepare the local development frameworks (meaning the local land-use plans and local core strategies) and make decisions regarding whether development should occur or not, processes and procedures are heavily regulated by the national Government. The scrutiny is done to ensure that local plans, before they are adopted, are in accordance with national policies (and with the London Plan, if the city is under the jurisdiction of the Greater London Authority). The scrutiny is performed by an inspector appointed by the Secretary of State for Levelling Up, Housing and Communities and this process is dealt with by the Planning Inspectorate. Hence, there is significant central control and scrutiny but local plans and decisions to a large extent are managed at the local level.

Since 2011, a sub-national like structure, called "Combined Authorities", was introduced in England, by the Local Democracy, Economic Development and Construction Act 2009. This type of legal body is emerging as a coordination mechanism between two or more local authorities, which are being offered the opportunity to reconfigure themselves based on the idea of more functional city regions. Local planning authorities work together on a voluntary basis, collaborating and taking decisions across local councils' boundaries; in the area covered by a combined authority, the city region would prepare a structure plan for the whole region within which the local plans for the metropolitan boroughs would be expected to fit. Currently, there are ten combined authorities in England.

Lastly, in England, communities have a direct power to develop a shared vision for their neighbourhood and shape the development and growth of their local area through neighbourhood planning. This is not a legal binding requirement, but more a framework for English communities to adopt planning decisions at the lowest level possible.

2. PUBLIC PARTICIPATION AND INVOLVEMENT IN SPATIAL PLANNING

Mechanisms, modalities and timelines for public participation

The United Kingdom Planning & Compulsory Purchase Act 2004, for England, Wales and Scotland, establishes in Section 18, the requirement that local planning authorities should state their promise to consult in a statement of community involvement, which should be a clear public statement setting out the local planning authority's policy for involving the community in the preparation and revision of local development documents and planning applications. This commonly means a six-week public consultation. The minimum requirements for community involvement are set by Town and Country Planning (Local Development) (England) Regulations, 2004, in particular by Regulations 25 and 26 for development plan documents and Regulation 17 for supplementary

planning documents. Since 2012, in addition to the statement of community involvement, English local authorities must also prepare a statement of consultation, which sets out how they have undertaken community participation and stakeholder involvement in the production of their local development plan.

According to the Planning Policy Statement 12: Local Development Frameworks, local planning authorities are expected to fulfil several obligations in terms of openness and transparency in the plan-making process. This means that the community should be involved at an early stage in the preparation of local development documents to achieve local ownership and legitimacy for the policies that will shape the future distribution of land uses and development in an authority's area. This would help to minimize the need for a lengthy and controversial examination process (S. 3.2). At the same time, the local planning authority should continue to involve the community throughout the process of preparing local development documents and should tailor the techniques to engage the appropriate parts of the community at the various stages, meaning identifying appropriate type and scale of involvement (S. 3.4).

Since communities are normally involved in the preparation of the statement of community involvement, they have the potential to influence the scope and form of community involvement that the local planning authority intends to adopt. The draft statement is published by the local planning authority and observations are to be provided over a six-week period, in accordance with Regulation 26. After that, the authority should revise the statement and submit it to the Secretary of State for an independent examination of soundness, who invites anyone to comment on the document within six weeks, in accordance with Regulations 27 and 28. If one or more of those making representations wish to be heard, a hearing is organized (S. 3.9). For the statement of community involvement to be sound, the inspector will determine whether:

i. The local planning authority has complied with the minimum requirements for consultation.

ii. The local planning authority's strategy for community involvement links with other community involvement initiatives, e.g., the community strategy.

iii. The statement identifies in general terms which local community groups and other bodies will be consulted.

iv. The statement identifies how the community and other bodies can be involved in a timely and accessible manner.

v. Methods of consultation to be employed are suitable for the intended audience and for the different stages in the preparation of local development documents.

vi. Resources are available to manage community involvement effectively.

vii. The statement shows how the results of community involvement will be fed into the preparation of development plan documents and supplementary planning documents.

viii. The authority has mechanisms for reviewing the statement of community involvement.

ix. The statement clearly describes the planning authority's policy for consultation on planning applications.

The inspector may provide binding recommendations for how the statement of community involvement should be changed and

the local planning authority must incorporate the changes and then adopt the statement. When preparing local development documents, the authority must comply with the statement; failure to which the inspectors may recommend the withdrawal of the development plan document.

Before going to the actual plan-making, it is worth mentioning that the Planning Policy Statement 12: Local Development Frameworks (PPS12) foresees that a "sustainability appraisal" should be fully integrated into plan-making process: this is a systematic and iterative appraisal process aimed at evaluating the social, environmental and economic effects of plan strategies and policies, from the outset of the preparation process, so that decisions can be aligned with the objectives of sustainable development (S. 3.17). It consists in identifying and appraising the different policy options to understand which ones will be promoted in local development documents to promote sustainable development objectives. First, issues and policy options pass for a pre-submission consultation stage, during which the local planning authority should consult the bodies specified in Regulation 25 on an initial sustainability appraisal report which will inform the decision-making process and the development of the preferred options, which will then be passed for a pre-submission public participation stage. At this point, the local planning authority develops a final sustainability report for consultation alongside the document with the preferred policy options. When submitting a development plan document to the Secretary of State, local planning authorities must also submit the final sustainability appraisal report, having considered any changes because of the public participation on preferred options.

In relation to public participation in the actual plan making, the Planning Policy Statement 12: Local Development Frameworks (PPS12) clearly states that the local planning authority should prepare a development plan document taking into consideration the process of continuous community involvement in accordance with the statement of community involvement, facilitating early involvement and securing inputs from the community and all stakeholders. By not doing so, the authority would not be able to produce a plan which delivers sustainable communities, and which has been prepared with all interests considered.

The preparation process for development plan documents can be divided into four stages (S. 4.5), as detailed in the figure below and regulated by the Town and Country Planning Regulations of 2004. These stages are:

I. **Pre-production** – survey and evidence gathering leading to decision to include a development plan document in the local development scheme.

II. **Production** – preparation of preferred planning and policy options in consultation with the community, formal participation on these, and preparation and submission of the development plan document to the Secretary of State for the independent examination, considering the representations on the preferred options. The local planning authority also shares a copy of the statement of community involvement and a statement of compliance detailing how they have complied with the statement of community involvement (how they have dealt with consultation and representations requirements and how they have addressed the representations received).

III. **Examination** – the independent examination by the Secretary of State into the soundness

of the plan or plan document (Regulation 34) and its preparation in line with relevant legal requirements. After the plan is reviewed by the inspector appointed by the Secretary of State (Planning Inspectorate), there is an examination in public and hearing of evidence by the Planning Inspectorate (lasting several days normally): the inspectors can consider representations received by written representations, round table discussions, informal hearing sessions and formal hearing sessions (Annex D, Section 15). The authority will provide accommodation for the examination session for all participants, the general public and the press (D. 18).

IV. **Adoption** – After the examination, the inspector will produce a report with recommendations which will be binding upon the authority (S. 4.27), which has to adopt the plan document as soon as possible, preparing an adoption statement and advertising the adoption, and where and when it can be inspected. A copy of the adoption statement will be sent to those who have asked to be notified of the adoption (Regulation 36).

The main public participation mechanisms that are evident in this process are:

- a public consultation on planning issues and options paper, lasting six weeks normally, during which the local planning authority should seek the involvement of relevant groups and organizations to identify the issues which the development plan document needs to address and planning options which are available to deal with those issues;

- a "pre-submission" consultation on preferred options, meaning a formal process to give people the opportunity to comment on how the local planning authority is approaching

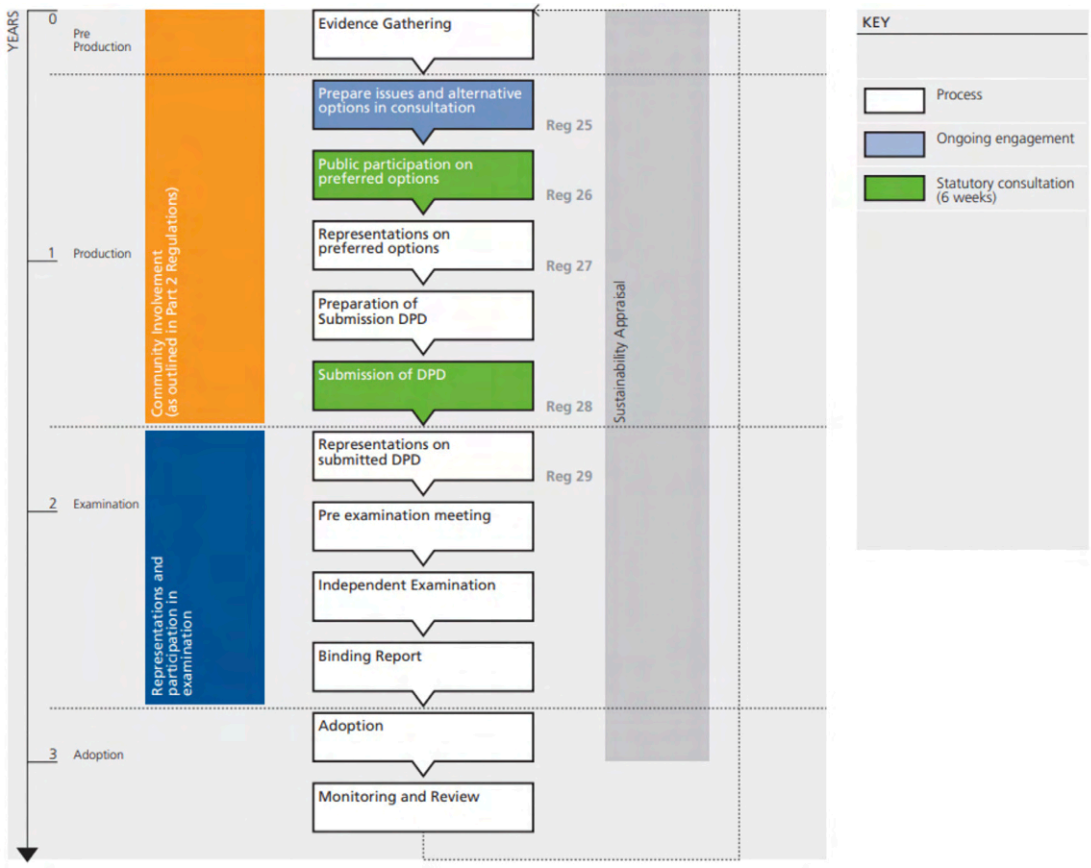

Figure 16: The Development Plan Document Process. Source: Planning Policy Statement 12: Local Development Frameworks (PPS12).

the preparation of the development plan document and to ensure that the authority is aware of all possible options before they submit the development plan document. This also lasts six weeks during which the community is invited for feedback and comments on preferred options as well as the sustainability appraisal report. Where local planning authorities have effectively engaged the community, they should be able to move efficiently to the production of preferred options and the publication of the sustainability appraisal report (4.13).

It is important to note that there are provisions attempting to grant the informed participation of citizens: the local planning authority will have to provide sufficient information including maps and diagrams to ensure that people can understand the implications of their preferred options. In addition, any documentation identifying the preferred options should be placed on their website together with any supporting information which is needed to enable people to understand what they are being asked to comment upon

and state where and when the preferred options documentation can be inspected. At the same time, the local planning authority shall make all the relevant material available for inspection at their principal offices and other suitable places for the whole of the six-week period. In addition, the authority has to advertise in at least one local newspaper circulating in the area where and when the relevant material can be inspected, how copies can be obtained, the closing date for feedback and comments and where to send these. A copy of the relevant material is also sent to statutory consultees.

The illustrated governance model for public participation in spatial planning is replicated at the neighbour level, with some specificities: as mentioned earlier, England is the only United Kingdom country where neighbourhood planning takes place, and this process foresees the participation of the community in each stage of planning and in setting out proposed areas for new development.

To do this, communities, through a parish or town council, or through establishing a neighbourhood forum (if parish and town councils do not exist), have two options:

i. they can set planning policies through a neighbourhood plan (introduced by the Localism Act of 2011 and regulated also by The Neighbourhood Planning (General) Regulations 2012);

ii. or can grant planning permission through Neighbourhood Development Orders for specific development, which can be used to permit building operations, material changes of use of land and buildings, and/or engineering operations.

The Neighbourhood Planning and Infrastructure Bill 2016-17 has provisions to strengthen neighbourhood planning by making the local government duty to support neighbourhood groups more transparent by improving the process for reviewing and updating plans. Communities can prepare plans with real legal weight and can grant planning permission for the development they wish to see through a neighbourhood development order. They are involved in each stage of the process: they are invited to develop their own statutory plan and curate the process; they define problems and set agendas; organize public consultation; develop policies and actions for the neighbourhood and enable the plan to pass through its local referendum. This process is foreseen by the Neighbourhood Planning (General) Regulations 2012 and described below.

First, through a parish council or a neighbourhood forum (meaning a community organization formed by individuals who live or work in the particular area for which the community organization is established and who hold the majority of voting rights, according to article 13), designated in case there is no parish council in the area, the community applies for a neighbourhood area to be designated (art. 5). Both the area application and the area designation are published by the local planning authority as soon as possible on their website and in such other manner as they consider is likely to bring the area application and designation to the attention of people who live, work or conduct business in the related area.

After the designation of an area for which the plan needs to be developed, the community starts to prepare the plan, which can be specific covering particular types of policy, e.g., affordable housing, spatial design or retail uses, etc., or more general and comprehensive looking at a diverse range of

policies and site allocations for housing or other development. Operational details are established together with the community and statutory consultees, and those who live, work or carry out a business in the area. The local community formulate vision and objectives, gather evidence and draft details of the plan proposals. Before submitting the plan proposals to an LPA, a pre-submission consultation must take place for six weeks, consulting any consultation body referred to in paragraph 1 of Schedule 1 of the Neighbourhood Planning (General) Regulations 2012, as well as publishing the following details "in a manner that is likely to bring it to the attention of people who live, work or carry on business in the neighbourhood area:

i. details of the proposals for a neighbourhood development plan;

ii. details of where and when the proposals for a neighbourhood development plan may be inspected;

iii. details of how to make representations; and

iv. the date by which those representations must be received, being not less than 6 weeks from the date on which the draft proposal is first publicized" (Article 14).

The plan proposal is then submitted to the local planning authority and must include, among other details, "a consultation statement, which is a document which:

i. contains details of the persons and bodies who were consulted about the proposed neighbourhood development plan;

ii. explains how they were consulted;

iii. summarizes the main issues and concerns raised by the persons consulted;

iv. describes how these issues and concerns have been considered and, where relevant, addressed in the proposed neighbourhood development plan" (Article 15).

The local planning authority receiving the plan proposals must publicize as soon as possible the plan proposals for a minimum of six weeks and invite feedback and comments. Article 16 provides that the details (of the plans proposal, of when and where the plan proposal may be inspected, of how to provide feedback and comments, etc.) should be published in a similar manner as discussed above (pre-consultation submission). The local planning authority must also notify any consultation body which is referred to in the consultation statement submitted, that the plan proposal has been received (art. 16.b).

Afterwards, an independent examination is arranged by the local planning authority, with an examiner appointed by the Secretary of State (Article 17), verifying if the plan respects the basic conditions (fits with local and national policy; has special regard for listed buildings and conservation areas; is compatible with human rights obligations; and contributes to sustainable development). Consultees can provide written observations on major issues. According to Articles 18 and 19, the examiner's report and plan proposal decisions must be publicized as soon as possible, including a specification of the reasons for the decision taken (the "decision statement"). A copy of the decision statement is also sent to the qualifying body (meaning the parish council or, in a non-parish area, the designated neighbourhood forum) and any person who asked to be notified of the decision.

After the check, the plan is submitted to a community referendum: only a neighbourhood plan that appropriately fits with local strategic

and national policies and complies with important legal conditions (and, thus, has passed the examination) may be put to a referendum. If the plan achieves local support by passing the referendum (a simple majority is required), it is "formally" made and adopted by the local planning authority, and forms part of the statutory "development plan" which is used by the authority in deciding planning applications. The neighbourhood development plan is publicized by the planning authority in the same modalities established for the plan proposal, including details of where and when the plan may be inspected, and it is also notified to any person who asked to be notified during plan making (Article 20). The same publication requirements apply to the case of modification of a neighbourhood development plan, including the details of where and when the modification document may be inspected. The modification is also notified to the qualifying body or community organization, and to any person the authority previously notified of the making of the plan (Art. 30). Similar consultation rules apply to the development of neighbourhood orders, which the community has a right to build (articles 21–27).

Inclusive participation and digital governance

As demonstrated in previous sections, several public participation mechanisms (public consultations, publication of information and invites for feedback and comments, among others) happen via the websites of the institutions, online platforms and, in any case, in ways that presuppose the use of the Internet. For example, planning applications are available online for consultation, so that individuals can see the basis for any decisions made. A digital governance approach is widespread in the United Kingdom and this has resulted in an extended and enhanced public participation, e.g., for people living far from institutional offices, such as the local planning authority's principal office where the information is available for the inspection; however, it is also worth noticing that some people, such as elderly people, may not be able to use it and remain excluded. However, the option of visiting the planning authority's offices as discussed earlier, and the advertisement in at least one local newspaper circulating in the area, allow people who are not comfortable with using the Internet, or have no access, to still participate in an informed manner. The same possibility is granted while appealing a planning decision, which is discussed in the dispute resolution section; indeed, the planning appeal procedure encourages online submissions, but also foresees the possibility, for potential appellants without access to the Internet, to receive the appeal form in other formats.

Nevertheless, the United Kingdom Government, through the Civil Society Strategy: building a future that works for everyone – recognizing the positive impact of digital governance on public participation and that civil society is uniquely placed to reach the most excluded and could play a crucial role in helping others to be able to use digital technology – showed its intention to work in partnership with civil society to tackle the digital skills gap, and in future will aim for interventions and learnings to reach digitally excluded groups.

To enhance digital governance and, thus, meaningful participation, most local authorities have interactive maps where key policies and planning applications can be visualized. In addition, with the Integrated Communities Strategy – Action Plan, the Government

Hertsmere summer crowd, East of England by Big Local source: Flickr

committed to work with mySociety and Power to Change (two non-profit organizations) to launch a new online platform, Keep It In The Community, for local authorities and community groups to track usage of local assets such as parks.

Regarding the consideration of priority groups, it has been already mentioned that the independent inspectors while requesting public feedback, should ensure that this happens in an adequate venue to accommodate all the participants which is provided by the authority. This venue must be suitable for people with all forms of disability and be accessible by public transport.

Particular attention is paid to people with disabilities by the English planning system, although not in a binding way. The National Planning Policy Framework has a social objective, which aims to foster accessible services, among others. The General Policies and Principles (PPG1) of 1997 already acknowledges the need for local planning authorities to consider, both in development plans and in determining planning applications, access issues such as to and into buildings (par. 33). In addition, a private developer and the planning authority should consider the needs of people with disabilities at an early stage in the design process (par. 34). Later on, the United Kingdom Government recognized the existence of unnecessary physical barriers and exclusions imposed on people with disabilities by poor design of buildings and places, and commited to promoting an inclusive society where the needs of disabled people were considered as an integral part of the process.

To this end, the Government published a good practice guide on planning and access for people with disabilities, which is applicable only in England. A number of key suggestions are

made in this guide; for example, Point 2 says: If a development proposal does not provide for inclusive access, and there are inclusive access policies in the development plan and in supplementary planning guidance, bearing in mind other policy considerations, consider refusing planning permission on the grounds that the scheme does not comply with the development plan. Similarly, Point 12 seeks to appoint an access officer, called upon to provide appropriate professional advice as necessary. Although the existence of policies, good practices and principles on the need to consider people with disabilities in spatial planning, the Government is not too prescriptive about how this should be done.

There are no specific provisions to ensure the engagement of women in spatial planning and, overall, gender representation in the country (calculated based on the proportion of seats held by women in national parliaments) is still halfway, amounting to 34 per cent of the total elective seats. This percentage may indicate that women do not have an equal democratic representation in the country.

With regard to young people, the Government committed itself through the Integrated Communities Strategy – Action Plan to build educational settings that prepare all children to become active citizens. In addition, some civic education activities are in place through the Civil Society Strategy: building a future that works for everyone, as the Government announced (in 2018) the launch of the Innovation in Democracy programme, which ran from November 2018 to March 2020. This programme piloted participatory democracy approaches, whereby people are empowered to deliberate and participate in the decision-making that affects their communities. The Government worked with local authorities to trial face to-face deliberation (such as citizens' assemblies, a participatory democracy method) complemented by online civic tech tools to increase broad engagement and transparency. Specific attention is paid to young people in the Civil Society Strategy, developed with the engagement of young people through workshops and an online platform; it states that it is essential that central Government engages meaningfully with young people when it is creating policy or designing programmes which affect them. To this end, a Civil Society Youth Steering Group would be set up within the Department for Digital, Culture, Media and Sport to oversee the development and implementation of policies affecting young people. New digital solutions will be explored to enable large numbers of young people to play a role in consultations and government programmes.

Multi-stakeholder approaches

There are public-private partnerships involving a range of stakeholders working together to deliver action on the ground. Partly depending on market conditions, it might be much more private sector led, managed, facilitated and guided by the public sector. For example, the defunct Regional Development Agencies in 2010 have been replaced by 38 local enterprise partnerships which are public-private partnerships intended to guide the economic growth of the city regions of wider functional areas. They cover the whole country and seek to shape the economic growth potential of particular areas based on endogenous assets and seek to improve the human capital to take advantage of new employment opportunities. The above-mentioned "Civil Society Strategy: building a future that works for everyone" announced a process of reform of the local enterprise partnerships that will constitute an opportunity

to strengthen the role of local stakeholders and civil society in local decision-making structures.

Participatory budgeting

Building on the Governance of Britain agenda launched in July 2007 and on the White Paper, Communities in control: real people, real power, the Department for Communities and Local Government has published a national strategy for participatory budgeting "which provides local people with an opportunity to get involved and influence how money is spent in their area". The definition of participatory budgeting developed by the Communities and Local Government, in conjunction with the Participatory Budgeting Unit, the delivery partner of the Communities and Local Government), is the following: "Participatory budgeting directly involves local people in making decisions on the spending priorities for a defined public budget. This means engaging residents and community groups representative of all parts of the community to discuss spending priorities, making spending proposals and voting on them, as well as giving local people a role in the scrutiny and monitoring of the process." The strategy recognizes that the use of participatory budgeting is still relatively new in England and identifies four key elements to increase its use: promoting awareness; creating opportunities; providing guidance and support; learning from evaluation and research. The Participatory Budgeting Unit also published in 2010 a Participatory Budgeting Toolkit which provides the background and context for this type of budgeting in the United Kingdom, process matrices and case studies, and a section with tools.

Later on, the Communities and Local Government commissioned an independent national evaluation of how participatory budgeting has been implemented in England. This national evaluation was published in 2011 and, according to it, in the United Kingdom, most participatory budgeting arrangements operated at a small scale – neighbourhood or ward level – and few were (local) authority-wide. The most common approach to engaging people was running events open to all residents ("universal events"), with direct votes by the public rather than events targeted on specific groups or events where votes were cast indirectly via representatives. In addition, most of the study areas demonstrated similar levels of control, meaning collective choice and control over commissioning, as opposed to consultation.

Dimension	Manton	Newcastle	Southampton	Stockport	Tower Hamlets
Control	Collective Choice	Collective Choice/Service Control	Service Control	Responsible accountability/Collective Choice	Collective Choice
Geography and Governance	Neighbourhood	Ward and city-wide	Neighbourhood	Neighbourhood	Several wards
Targeted/open participation	Open to all	Open to all	Open to all	Open to all	Open to all
Source of funding	Delegated budget plus mainstream funding	Delegated and mainstream service budgets	Mainstream service budget	Multiple sources	Mainstream service budget
Scale of resources	Small-medium scale	Small-medium scale	Small-medium scale	Small scale	Large scale
Voting mechanism	Direct voting	Direct voting	Direct voting	Direct voting	Direct voting

Figure 17: Basic characteristics of participatory budgeting in the case study areas. Source: Communities and Local Government, Communities in the driving seat: a study of Participatory Budgeting in England (2011).

The different mechanisms by which participants made their decisions included the following: electronic voting systems (to provide privacy and immediate results); run-offs between projects after an earlier "elimination round" (to avoid block voting); facilitated deliberation on tables prior to votes (to build community cohesion and the sharing of ideas); anonymous proposers (to ensure the best ideas not the most influential or popular bodies received funding), etc. "Effective marketing and outreach were essential to the process, with prior registration helping to monitor equalities issues and inform further outreach work to make sure attendees reflected the local population profile".

According to the survey conducted in 2010, among the main themes budget had been allocated to, there were also environmental improvements (21 initiatives), public realm improvements including parks (14 initiatives) and housing improvements (1 initiative).

One of the cases worth mentioning, included in the above study, was the Tower Hamlets, "You Decide!" initiative, which was implemented in March 2009. It was the first project in England to develop a participatory budgeting model similar to the original model in Brazil. Funding had been allocated by residents to mainstream services in their areas, and the process was carried out across the entire borough but devolved to ward areas. Tower Hamlets collected data primarily at voting events in the form of participant questionnaires, equalities information, feedback and observations from the events. More details on the process are given by the Local Government Association, whose article is cited below:

- Tower Hamlets was split into eight local area partnership areas which together formed the basis of the project. Dividing boroughs into smaller areas contributed to the creation of a local focus and manageable budget. A single You Decide! event was held in each local partnership area and Steering Groups for these partnerships (made up of residents, councillors and service providers) helped to monitor and shape the services which would be delivered in their local area.
- The process began with an organizing team asking for bids for delivering council services which could appear on a list of choices. The bids had to meet one of the five council priorities or one of the local area partnership's own priorities identified over the past year. After being presented to Cabinet, the bids were shortlisted by council staff.
- An advertising campaign using a mix of traditional methods (such as posters and leaflets) and networks (such as those of the councillors and steering group members) were employed to reach as many in the community as possible. Through the campaign, people were encouraged to register for participatory budgeting events, with a capacity of at least 100 people at the events in each local partnership area. Overall, 815 people attended the events and the range of advertising techniques engaged a diverse group.
- Each local area partnership was given £280,000 (almost $314,000) to buy projects offered on the shortlists. The events themselves were split into three stages. First, participants were informed about each of the projects on the list in detail. Second, they deliberated with each other about which services they liked and why they considered them to be important for

their local area. Third and finally, they voted in an interactive manner, buying the most popular items in the list over a series of rounds.

Dimensions	Characteristic	Description
Control	Collective choice	Representative and democratic forms which service providers consult/ empowerment of the community to choose between service options
Geography and governance	Several wards	Operated at the level of the Local area partnerships
Targeted or open participation	Open to all	The process was open to all residents within the local area partnerships
Source of funding	Mainstream service budget	Area based grant
Scale of resources	Large scale	£2.4m per annum
Voting mechanism	Direct voting	All citizens had the right to participate directly and each participant took part in the vote/scoring system

Figure 18: Basic characteristics of participatory budgeting in Tower Hamlets. Source: Communities and Local Government, Communities in the driving seat: a study of Participatory Budgeting in England (2011).

These case studies of participatory budgeting analysed in the national evaluation were credited by the national evaluation of 2011 with improving the self-confidence of individuals and organizations, improving intergenerational understanding, encouraging greater local involvement through increased volunteering and the formation of new groups, increasing confidence in local service providers, and increasing control for residents over the allocation of resources.

3. TRANSPARENCY AND ACCOUNTABILITY

Access to information

All the provisions and mechanisms already discussed, in relation to information sharing (e.g., on planning applications, on consultations, etc.) to guarantee the participation of citizens can be traced back to a general right to access information that the public does have in England. Indeed, the United Kingdom Freedom Of Information Act of 2000, entered into force in 2005, creates a general right of access to all types of recorded information held by most public authorities in the country (government departments, local authorities, police forces, etc.). It does this in two ways:

a. Public authorities are obliged to publish proactively certain information about their activities.

b. Members of the public are entitled to request information from public authorities.

The Act covers all recorded information,

including printed documents, computer files, letters, emails, photographs and sound or video recordings. The Act also covers information that is held on behalf of a public authority even if it is not held on the authority's premises. For example, although individual councillors are not public authorities in their own right, they do sometimes hold information about council business on behalf of their council. When a public authority subcontracts public services to an external company, that company may then hold information on behalf of the public authority. Some of the information held by the external company may be covered by the Act and for that information, a freedom of information request may be received. The company does not have to answer any requests for information it receives, but it would be good practice for them to forward the requests to the public authority, for it to share the information requested.

Disclosure of information should be the default, meaning that the information should be kept private only when there is a good reason (public interest) and it is permitted by the Act. Indeed, there are some exemptions (23) in the obligation to provide the information requested, e.g., for personal information (Section 40 of the Freedom of Information Act). The United Kingdom General Data Protection Regulation and the Data Protection Act 2018 give rules for managing information about people and exist to protect people's right to privacy. If people request access to their personal data, then the General Data Protection Regulation would be the applicable regulation, and not the Freedom of Information Act. However, when someone makes a request for information that includes someone else's personal data, the organization would need to carefully balance the case for transparency and openness (and so, the public interest) under the Freedom of Information Act against the individual's right to privacy under the data protection legislation. Based on this balancing act, a decision can be made whether the information can be released without infringing the General Data Protection Regulation data protection principles.

Other exemptions include the following: information supplied by, or relating to, bodies dealing with security matters (Section 23, FOIA), court records (Section 32, FOIA), parliamentary privilege (Section 34, FOIA), among others. In these three cases, the exemption is absolute.

The Freedom of Information request should be in writing, by letter, email, social media, online form (if present on the organization's website) and fax. People with disabilities can contact the public authority and make the request another way, for example over the phone. Most requests are free, but a small amount may be required to pay for photocopied or postage. The organization will give the applicant a notice in writing in case a fee needs to be charged (Section 9 of the Freedom of Information Act).

The public authority that is requested to provide the information has the obligation to firstly respond in writing informing whether they hold the information requested and then provide the information by responding within 20 working days of receiving the request. The organization will tell the requester when to expect the information if they need more time.

The requester does not need to provide justification for the request, while the public authority must provide a motivation for the refusal to provide the information. Public authorities should follow a code of practice under the Freedom of Information Act 2000. When the request is denied, as a first step he or she should first request the organization to

review its decision. If the organization continues to deny the access to the information, the requester can file a complaint or an appeal to the Information Commissioner's Office. This right also contributes to openness and transparency since it acts as a public oversight mechanism over the conduct of public officials, which is analysed in the next section.

Public accountability

In England, the Seven Principles of Public Life (also known as the Nolan Principles) apply to anyone who works as a public office holder. Among these principles, it is possible to note:

- "Accountability": holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
- "Openness": holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

The Bribery Act 2010 regulates misconduct by public officials such as bribery and corruption. The law establishes the Serious Fraud Office as the primary agency to investigate and prosecute cases of corruption.

As will be seen in the next paragraph, the Planning Inspectorate is an Executive Agency in the Department of Communities and Local Government responsible for handling a wide range of casework under planning, housing, environment, highways and related legislation. It deals with most planning appeals on behalf of the Secretary of State. In carrying out its activity, the Planning Inspectorate should follow and respect, in addition to the Seven Principles of Public Life, a Code of Conduct of 2017, that has additional principles to the general principles of public life. For example, decision-makers in the Planning Inspectorate must avoid unnecessary delay in reaching decisions and recommendations: where not governed by a statutory timetable, they should make every reasonable effort to ensure that decisions and recommendations are made as soon as possible after the relevant evidence has been considered. Moreover, Planning Inspectorate decisions must be made fairly and in the public interest, must not be fettered by pre-determined views, must not be influenced by irrelevant considerations (e.g., identity, status or personality of the party). In this sense, it is also worth noting that citizens have an "oversight" power over openness and transparency for the actions of planning inspectors during the planning appeal procedure thanks to the possibility – that will be mentioned in the dispute resolution paragraph – of reporting, recording and filming proceedings (hearings and inquiries), including the use of digital and social media during and after the end of the proceedings. This possibility may be prevented or restricted by the inspector in exceptional circumstances, e.g., where there is a danger to the safety of the individual or where there are factors (such as the application of the General Data Protection Regulations (European Union) 2016/679 brought into United Kingdom law by the Data Protection Act 2018) to sensitive information which outweigh the public interest in allowing hearings and inquiries to be filmed or recorded.

Oversight and feedback mechanisms

Most institutions in England have a "feedback section" on their website, to provide feedback on the service provided, or not provided. In some cases, there is also the possibility to start complaint procedures. For example, besides furnishing an email address to provide feedback, the Planning Inspectorate makes available a complaint procedure; after a decision or recommendation of the Planning Inspectorate has been adopted the appellant may complain against a decision or the inspector or the way a case was administered, by submitting the complaint through an online customer contact form, or via email or by telephone. The case will be then processed by the Customer Quality Team, that works independently and investigates all complaints thoroughly and impartially. Complaints procedure covers standard of service provided, conduct of staff, any action or lack of action by staff affecting individuals or groups, circumstances where staff have not properly followed government planning policy or guidance, relevant legislation and the procedural guidance. The procedure is also valid to complain about planning appeals decisions adopted by the Planning Inspectorate (or the inspector or the way the case was administered), although the only way to obtain a legal review of the decision and to identify an error in law is to challenge the decision in front of the High Court.

The Customer Quality Team can take up to 40 working days to answer complaints, unless relevant persons are unavailable for comment; in that case they can take longer. In a few cases, parties outside the Planning Inspectorate (such as a local authority) may also be contacted for their general observations on what occurred. A Customer Charter is also publicly available for information about service standards of the Planning Inspectorate.

If a complainant considers that the reply from the Customer Team Officer has not adequately responded to their concerns, a Customer Team Manager will review the complaint and how it was handled and provide a final reply. Remedies include an apology and explanation, with acknowledgement of responsibility, and, in some cases, a remedial action, such as reviewing or changing the service standards or procedures or guidance, or trainings staff, and others. In exceptional circumstances, they may provide compensation for additional costs incurred as a direct result of an acknowledged error by the Planning Inspectorate, where valid claims are made.

When a complaint to a specific organization remains unresolved, a person can complain to an ombudsman. The public have at their disposal a Citizens Advice Bureau providing information on procedures to complain to the relevant ombudsman, which is usually through online form. The ombudsman service is free and it can be sought via email or through a customer helpline. To submit a complaint against the Planning Inspectorate, in case the complainant remains unsatisfied, he or she can ask his or her Member of Parliament to take the complaint to the independent Parliamentary and Health Service Ombudsman to review the handling of the complaint. The Parliamentary and Health Service Ombudsman aims to complete investigations withing three to six months. More complex investigations may take longer than this, but they aim to complete 95 per cent within a year. To express concerns on the service or provide feedback, the complainant can inform the service provider within a month of the decision, or within a month after the service was rendered.

According to Annex F of the Planning Policy Statement 12: Local Development Frameworks (PPS12), any person who considers that he or she has suffered an injustice because of maladministration by an authority (referring to the way in which an authority acted, or failed to act, and not to the merits of decisions or actions taken), in connection with a local development document, can request for the matter to be investigated by an independent local commissioner (sometimes referred to as the local ombudsman, currently named "Local Government & Social Care Ombudsman"). A local commissioner, however, cannot normally investigate any matter about which the aggrieved person has, or had, a remedy in any court of law. The local ombudsman will also investigate a complaint if the organization takes too long to resolve the complaint submitted through their procedure (usually, up to 12 weeks is considered a reasonable time) but will not accept complaints after 12 months of becoming aware of the matter. Their services are free.

Focus on a local experience: Greater Manchester

Looking at a local experience, in the frame of the United Kingdom City Deal, Greater Manchester established a statutory combined authority, the Greater Manchester Combined Authority, made up of the ten Greater Manchester councils and mayor, who work with other local services, businesses, communities and other partners to improve the city-region. The Greater Manchester Combined Authority gives local people more control over issues that affect their area. It means the region speaks with one voice and can make a strong case for resources and investment. The authority is accountable to the leaders of the 10 local governments of the area and has the authority to compel the 10 local authorities to deliver agreed programmes. Greater Manchester has established a range of equalities panels (7) and other networks to engage with diverse communities.

A view of Manchester. Source: Unsplash by Josh Taylor

Interestingly, the Greater Manchester Combined Authority foresees a clear and straight forward complaint procedure, as well as the possibility to contact the Local Government and Social Care Ombudsman. The authority also adopted specific Greater Manchester Combined Authority Anti-Fraud and Corruption Policy documents, meaning a whistle-blowing policy to protect individuals who make disclosures. The authority also supplies a way to provide feedback, comments and suggestions via email.

4. DISPUTE RESOLUTION, APPEAL AND JUDICIAL REVIEW

In England, property, land, and community disputes can be resolved through alternative dispute resolution. For example, land boundary complainants have four main options before litigation:

a. Mediation

b. A binding evaluation by an expert

c. A non-binding evaluation by an expert

d. A pre-litigation protocol

Also, the Arbitration Act of 1996 foresees the possibility to resolve disputes by appointing a third person as an arbitrator, instead of going to court, with the "object to obtain the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense" (Section 1a). Section 59 of the Act sets the following costs for the arbitration:

a) the arbitrators' fees and expenses

b) the fees and expenses of any arbitral institution concerned

c) the legal or other costs of the parties

Although the object is to resolve disputes without unnecessary delay or expense, no strict timeframes are foreseen by the Act, and there seem to be several and indefinite fees and expenses. In addition, there is no provision on confidentiality of information in the Act or a duty of independence of arbitrators, which could compromise the success of the mechanism.

Under section 78 of the Town and Country Planning Act 1990 (England), planning applicants in the United Kingdom have the right to appeal planning decisions to the Secretary of State (national Government), e.g., in case planning permission is refused or in case of non-determination (application has not been determined within the relevant statutory period). There are three main procedures to appeal a planning decision: written representations, a hearing or an inquiry. Hearings and inquiries are open to the wider public, as well as to interested people. Provided that it does not disrupt proceedings, anyone will be allowed to report, record and film proceedings, including using digital and social media. The hearing is an inquisitorial process led by the inspector who identifies the issues for discussion based on the evidence received and any representations made. The hearing may include a discussion at the site, or the site may be visited independently by the inspector or accompanied by other people. An inquiry is open to the public and provides for the investigation into, and formal testing of, evidence, usually through the questioning (cross examination) of expert witnesses and other witnesses. Parties may be formally represented by advocates. The site may be visited before, during or after the inquiry.

There are different time limits to make an appeal depending on the type of appeal and the circumstances; for example, for refusal of

a householder planning application, the time limit is set to 12 weeks from when the original decision was made. Most planning applications decisions must be appealed within six months of when the original decision was made.

"Wherever possible" the appellant should make their appeal(s) online through the Appeals Casework Portal. The United Kingdom Government encourages and supports appellants, local planning authorities and interested people to work electronically. However, the Government also foresees the possibility, for potential appellants without access to the Internet, to contact the Planning Inspectorate and ask to receive the appeal form(s) in another format.

The planning inspectors decide most appeals on behalf of the Secretary of State. The Planning Inspectorate will be responsible for setting the hearing or inquiry date. This should occur between 10 and 14 weeks from the start date (from which the date for receipt of documents and representations will be calculated), although for the inquiry there is flexibility for it to start within 13 to 16 weeks. There are strict timeframes and procedures in place to ensure that relevant information is submitted in a timely manner and to enable all parties the opportunity to comment. Other parties involved in the appeal process will include the local planning authority and people who may have an interest in the application, such as neighbours. All will have an opportunity to make written comments on the appeal. The whole process from submission to decision should take around three months, pointing to a reasonably simple and rapid system for resolving planning appeals that guarantees the appellant's right to a decision and certainty about his or her claim. There is no fee to appeal a planning decision. This applies to appeals for full planning decisions. It also applies to householder planning decisions, which are smaller projects like loft conversions or extensions. The inspector may consider applications for costs (in case anyone has behaved unreasonably) which can also be awarded at the initiative of the inspector.

There is no opportunity for the aggrieved party (which could include interested people, local planning authorities, landowners, etc.) to have the merits of a statutory planning document or a planning decision reconsidered. This would involve an appeal, and only the applicant can appeal for a public inquiry on the grounds of planning merit (and make subsequent appeals to the High Court).

There is the possibility to challenge planning appeal decisions within 42 days from the date of the decision, through the judicial review procedure (under Part 54 of Civil Procedure Rules); the High Court is the only authority that can formally identify a legal error in an inspector's or Secretary of State's decision and require that decision to be re-determined. The legal costs involved in preparing and presenting a case in court can be considerable, and if the challenge fails the challenger will usually have to pay the Inspectorate costs as well as their own. However, if the challenge is successful, the Inspectorate will normally be required to meet their reasonable legal costs. Timeframes can vary considerably. Many challenges are decided within 6 months, some can take longer. While a local planning authority can be challenged for not meeting consultation requirements, it is for the courts to assess the adequacy of consultation.

5. KEY TAKEAWAYS AND LESSONS

I. Although planning is administratively highly decentralized in England and there

is a great deal of autonomy at the local level to prepare the Local Development Frameworks, processes and procedures are heavily regulated by the national Government, who scrutinizes local activity and plans and controls the conformity with national principles and priorities, as well as the meeting of consultation requirements.

II. Public involvement and consultation in the preparation of local development documents and planning applications are clearly established at the national level through the provision of the statement of community involvement by the United Kingdom Planning and Compulsory Purchase Act (2004), and the statement of consultation. These documents ensure that the community is involved at an early stage, such as in the formulation of the statement of community involvement, and mechanisms to consult at each step of the process are stated, including clearly stipulated timeframes.

III. English communities have a right to adopt planning decisions at the lowest level possible through neighbourhood planning. Through this tool, communities are involved in each stage of the process because they are invited to develop their own statutory plan and curate the process; they define problems and set agendas; organize public consultation; develop policies and actions for the neighbourhood and enable the plan to pass through its local referendum.

IV. Informed participation is provided in legislation which requires planning authorities to provide supporting information to citizens (such as maps and diagrams) to ensure that they can understand what they are being asked to comment on and the implications. Information is available both via website and in other traditional ways (at the physical offices, advertisement in local newspapers, etc.) to allow people who are not comfortable in using the Internet, or who lack access, to still be involved. At the same time, the use of digital technologies to provide public services is widespread in England, resulting in enhanced public participation, efficiency and greater access that increases inclusivity. To this end, the Government has published several strategies showing its commitment to tackle the digital skills gap. Good practices are also in place to grant the accessibility of people with disabilities.

V. The Freedom of Information Act of 2000 creates a general right of access to all types of recorded information held by most public authorities. It obliges public authorities to publish proactively certain information about their activities and entitles the members of the public to request information from public authorities. Some exemptions relate to public interest obligations. Information is usually provided free of charge (a small amount may be required for photocopies or postage) and should be granted within 20 working days of the request. There is the possibility to file a complaint or an appeal to the Information Commissioner's Office in case of refusal or lack of action.

VI. Public officials in England should act by respecting the Seven Principles of Public Life and the eventual codes of conduct specifically formulated for each institution or body. The Planning Inspectorate has a Code of Conduct of 2017 that regulates its actions; some feedback, oversight and

accountability mechanisms are provided to keep the Inspectorate and its inspectors accountable for their standards of service, conduct of staff, action and inaction (e.g., there is a complaint procedure processed by an independent Customer Quality Team who answers complaints within 40 working days). The complaint can be also filed with an ombudsman; people can use the Citizens Advice Bureau to find the relevant ombudsman to submit the complaint.

VII. An effective planning appeal procedure is in place in England. The Planning Inspectorate decides most appeals on behalf of the Secretary of State. There are three main procedures to appeal a planning decision and strict timeframes are set to ensure that relevant information is submitted in a timely manner and to enable all parties the opportunity to comment. The whole process from submission to decision should take around three months. The appeal should be made online, but there are other methods available for appellants without access to the Internet. There is no fee to appeal most of planning decisions. Planning appeal decisions can be challenged through the judicial review procedure at the High Court. Alternative dispute resolution mechanisms are present, although the Arbitration Act should be reviewed to be more accessible and functional.

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BENCHMARKING CASE STUDIES ON PUBLIC PARTICIPATION IN SPATIAL PLANNING PROCESSES IN FOUR COUNTRIES: AUSTRALIA, CHILE, SOUTH AFRICA AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

UN-Habitat provides technical assistance and advisory services to member states in legal reform processes to bring about social and economic transformation and enhance effective service delivery for sustainable urban development. Benchmarking case studies and comparative analysis are key aspects of the UN-Habitat methodology for legal and governance reform.

This report showcases benchmarking case studies on public participation in four countries prepared for the project "Strengthening the Urban Planning Legal and Institutional Frameworks in the Sultanate of Oman". It includes a comparative analysis of best practices for meaningful public participation in spatial planning to make urban development more inclusive, equitable, sustainable, active and meaningful.

The selection of the country case studies is based on the principles of effective public participation derived from the Sustainable Development Goals and the New Urban Agenda, which contain both quantitative and qualitative selection criteria. These criteria aim to ensure that the study contains relevant and innovative practices on public participation and that the selected countries are comparable to Oman with respect to their social, economic and political contexts. In sum, these case studies provide a spectrum of regulatory and governance models on public participation for the country's legal and institutional reform agenda.

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