

# The State of Land Use Management in South Africa

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## Contents

1. Introduction .....	1
2. Background .....	3
2.1 The rationality and nature of current LUM in SA .....	4
3. Current issues in LUM in SA .....	7
3.1 Fragmented, complex, uneven land use management systems in South Africa .....	7
3.2 LUM untransformed to post apartheid situation .....	11
3.3 The potential of public space .....	22
3.4 Land use management for the poor and housing issues .....	25
3.5 Friction between planning, and economic development and the market ..	29
3.6 Unresolved conceptual and ideological issues .....	34
3.7 Institutionally, many actors and contestations .....	36
4. Considerations from a second economy perspective .....	40
Regulatory interventions .....	40
4.1 Legal and regulatory reforms .....	40
4.2 Deeper investigation and conceptualization of what needs to be regulated and how to do this .....	41
Raising debate .....	41
4.3 Discussion, debate and conscientising .....	41
Public space initiatives .....	42
4.4 Interventions in the public realm .....	42
4.5 Fulfilling obligations in poorer neighbourhoods .....	42
Private sector and the market .....	43
4.6 Relationship between planning and economic development and the market .....	43
4.7 Institutions and actors .....	43
Land and housing .....	44
4.8 De-linking access by the poor from association with land and housing .....	44
4.9 Land and housing developments .....	44
Rights and income .....	44
4.10 Property rights and the urban financial system .....	44
Other recommendations .....	46
4.11 Further specific recommendations on land management come from others .....	46
References .....	48

# 1. Introduction

This paper contributes to the urban component of the forthcoming 'second economy'<sup>1</sup> strategy. The brief called for a reflection on the issue of urban land use management (LUM), and extraction of the implications for the urban poor. For the most part the task involved a secondary analysis of work undertaken for the CUBES/Planact-managed investigation into land use management in Johannesburg in 2007: five case studies and the related overview report. These sources have been supplemented with a selection of other documents. The brief notes that the work is intended to focus on extracting the implications for enhancing the access of the poor to urban spaces. Of importance are the implications of the findings of the land use management study for urban investment.

In this paper, the background section briefly locates land use management within broader land and planning activities. The paper then describes the rationality and nature of the current land use management approach in South Africa. The third section discusses a number of key issues raised when considering LUM from a second economy perspective, and elaborates on the consequences of these issues. These issues have a strong metropolitan bias due to the nature of the source information. The last part of the paper draws out the implications of the discussion when considering interventions in urban areas.

LUM at first glance might appear to be a fairly technical and procedural activity. However a consideration of the field quickly reveals its deeper ideological and conceptual underpinnings, and the relevance of this to considerations from a

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<sup>1</sup> Two economies thesis: '...poverty can be beat if sturdy (market-focused) ladders are found in between the second and first economy, which unfortunately at presnt are 'structurally disconnected"' (Bond 2007; introduction). Marx notes that 'for the most part the manner in which informal processes and poor people contribute economically and socially to the life of the city by utilizing their spaces is either ignored or to put it simplistically under-estimated and misunderstood' (Marx 2006 in Rubin 2008: 4). '...the concept of 'two economies' is a short-hand for a dominant 'first' economy that is competitive, globally integrated with an advanced capacity to export high value-added exports and services, and a marginalised 'second' economy that consists of large numbers of the unemployed and 'unemployable that is not able to participate productively in the first economy' (Mpahlwa 2004). 'the third-world economy in South Africa (now sometimes referred to as the 'second economy') is described as structurally disconnected from the first world economy, and hence non-responsive to various attempts at development through macro-economic policy. It would appear that this second economy is, in the minds of policy-makers, equal to the informal sector"' (Harrison et al 2008: 229).

**Addressing Inequality and Economic Marginalisation**

second economy perspective. This paper therefore engages with LUM issues at various levels and in various ways, possibly more broadly than originally envisaged. In fact the paper has very limited engagement with the step-by-step activities involved in land development applications or changes to approved land use. It broadens consideration of LUM partly to flag the limitations of focusing only on 'what activities to regulate' on a particular portion of land, and also to consider the current impacts and outcomes of land management more generally. Whilst widening the set of issues discussed, the paper does however retain a focus on issues of relevance to 'the urban poor', although this term is used loosely without exploring an important set of debates to do with definitions, issues of heterogeneity, diversity, and so on. The paper does not deal with many of the issues in land use management relevant to more wealthy developers.

## 2. Background

Land use management generally refers to the officially recognized system that determines and regulates use of land. It can be seen as a sub-component of the broader concept of land management, which can be conceptualized as having five dimensions:

- 'The manner in which land is accessed and acquired
- The process by which individuals, households and communities continue to have and to hold rights to land
- The way in which land use is regulated
- The systems by which land is developed
- How land is traded'

*(Rubin 2008: 3 with reference to the CUBES-Planact land management study).*

Land use management deals with processes by which land is developed, usage of land is defined, and activities on land are regulated<sup>2</sup>. Berrisford and Kihato provide a useful way of locating LUM activities by suggesting that 'the broad concept of planning' (2008: 383) has two parts: those activities that are 'geared towards shaping development over a period of time' such as IDPs, and those that implement the strategic plans (emphasis added). These implementing and

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<sup>2</sup> Ovens et al (2007: 14) cite the definition of land use management in the White Paper on Local Government. The term is seen to include the following activities:

- The regulation of land-use changes e.g. rezoning of a property from residential to commercial use;
- The regulation of 'green fields' land development, i.e. development of previously undeveloped land;
- The regulation of the subdivision and consolidation of land parcels;
- The regulation of the regularization and upgrading process of informal settlements, neglected city centres and other areas requiring such processes; and
- The facilitation of land development through more active participation of the municipality in the land development process, especially through public-private partnerships. This requires of local government a more proactive approach to land development, beyond that of a regulator or market forces, whereas the first four correspond more closely with the traditional land development regulation role.

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Addressing Inequality and Economic Marginalisation

monitoring instruments include various legal and regulatory mechanisms used to regulate land development and land uses, including zoning schemes, and these are 'also known as land use management systems' (Berrisford and Kihato 2008: 383).

Berrisford and Kihato explain that town planning schemes 'are used for the purposes of land use management on a daily basis. Each scheme also provides the legal basis and definitions for the rights to develop and use any parcel of land in a municipality according to the specified zonings. These rights in turn establish the basis upon which property values are determined, and so are a crucial element in the municipal property rating system' (Berrisford and Kihato 2008: 384). The significance of the property rating system is discussed later in this paper.

In contemporary South Africa, land use management may be considered to be a crucial, but weak link in the transformative project attempted by the overall land management system, and planning activity in general. Land use management is increasingly recognized to have been a neglected area of engagement, and this neglect has had significant consequences.

## 2.1 The rationality and nature of current LUM in SA

Land use management in South Africa has its origins in British town planning activities that developed initially in response to the urban impacts of the industrial revolution. These activities were concerned with improving health and safety of urban residents affected by conditions such as overcrowding, pollution, inadequate services, facilities and amenities. A system of control and regulation was developed aimed at organizing urban space and urban activities into ordered, safe, hygienic environments where uses and activities were prescribed and controlled.

During the 20C town planning as a profession and systems of land use management developed in parallel with ideas about the nature of the future growth of urban areas in Britain and North America. Briefly, these cities and towns were assumed to be places where the majority of economically active people would find formal employment. Workers, it was assumed, would stay in the same job, or the same area of work, for many years as the economy grew, and this employment would occur at a place physically separate from the place of residence. Good transport systems would support the movement of people between distinct parts of the city.

Commenting on the history of Hillbrow and Berea in their study on land management, Silverman and Zack note that the modernist architecture that developed there 'resonated powerfully with social and economic conditions of the time. The manufacturing boom provided full employment for the skilled white workers who inhabited the area, allowing them to pay market-related rentals for their well-serviced apartments. This, in turn, spurred further high-rise construction' (Silverman and Zack 2007: 11, 12). They go on to comment that 'land management practices at the time reflected these modernist practices. The new town planning scheme and building by-laws established rules. These rules, in turn, determined the nature of development. Where infringements occurred, bylaws were rigorously enforced by a well-endowed and well-capacitated municipality, concerned only with the white city' (ibid 2007: 12).

The approach to Land Use Management in most areas in South Africa is largely regulation oriented, aimed at controlling impacts and consequences of activities

perceived to be negative<sup>3</sup>, although newer ideas also place an emphasis on promoting desirable development. This latter type of engagement is more in line with an incentive-based approach aimed at encouraging and shaping development. An example of the approach to LUM taken in SA is the Johannesburg Town Planning Scheme of 1979 which 'focuses on development control rather than performance criteria as a basis to adjudicate development'. Silverman and Zack cite Jaspan and Associates in commenting that 'in general ...it does not in any way encourage or incentivise development' (cited in Zack and Silverman 2007: 10).

Land use management ideas in South Africa, were of course further overlain by apartheid objectives. Mammon notes that 'between the 1960s and the 1980s, 'the contents and object' of local government planning were focused on land use and development control measures that emphasised the separation of land uses in support of modernist planning and at the same time reinforced the intent of the Group Areas Act to separate citizens into racially defined 'group areas' (Mammon 2008: 409). Similarly Rubin (2008: 12) cites Beavon (2004) in noting that 'planning and land management tools were sometimes conceptualized and portrayed as essential elements of health and safety, as necessary for creating 'order out of chaos' and ensuring that 'non-white' populations lived in 'more hygienic' locations'.

Kihato and Berrisford flag that 'the ideological underpinnings that shape these (regulatory) systems are based on certain preconceived notions of an ordered city' (2006:4 in Charlton 2006). The problem is that this may not accord with perspectives of the urban poor on the use and importance of urban land. In his response to their comments De Groot puts it more starkly: 'the largely unchanged apartheid era laws on urban land clearly and definitely favour the rich and influential segment of the population, that is what they were set up to do and that is what they still do' (2006:1) (cited in Charlton 2006: 11).

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<sup>3</sup> The White Paper on Spatial Planning (2001) outlines the two main underlying rationales of land-use management. The first is the widely felt resistance to the idea of uncontrolled land development and the second is the commonly expressed wish by particular sectors in society to promote various types of desirable land development. The resistance to uncontrolled development is motivated by a number of concerns including environmental concerns, health and safety concerns, social control, efficiency of infrastructure provision and traffic management, determination of property values for purposes of rating, and aesthetic concerns. The wish to promote desirable development is also driven by a number of different concerns such as matching the social and political needs of government, or investment promotion. (Ovens et al 2007: 14)

**Addressing Inequality and Economic Marginalisation**

A further dimension of land use management in South Africa is its role as a defender of property values (Abrahams pers comm.). Berrisford and Kihato note that

*'...land use management systems have certain ideological underpinnings based on preconceived notions of ordered spaces. Acquiring land and property is deemed an investment in an asset, and often the only sizeable asset owned by many households. The role of regulatory systems in protecting and enhancing this investment has long been recognized....(this powerful ideology) underpinning planning laws...often competes with the public interest ideology and has often gained ascendancy in its conflicts with the latter' (Berrisford and Kihato 2008: 390).*

In the South African situation, under apartheid there was a separation of the majority of urban residents from ownership of land for residential or business purposes. This creates an overlay of racially based issues of inclusion and exclusion into the property-ownership picture. A further distinction of South African cities, related to this, was the ringfencing of tax generating areas for spending and investment purposes. All of this is relevant to the notion of property ownership underpinning the land use system.

In sum therefore, not only are land use management systems concerned with controlling amenity, but they also play a fundamental role in the property system which underpins our urban areas. In addition, they have historically been used as instruments of social control.



## 3. Current issues in LUM in SA

There are a number of interrelated issues of concern in relation to land use management in South Africa today. The connections between these issues challenge a sequential and simply-ordered discussion of them.

### 3.1 Fragmented, complex, uneven land use management systems in South Africa

#### 3.1.1 Different land use management systems are in operation

There is considerable variation in the LUM systems currently in use across the country and within cities in South Africa. Overall the picture is one of cumbersome procedures and a fragmented and confusing approach. Ovens et al (2007) refer to 'multiple and unequal systems of urban land management' currently in operation. By way of example the City of Johannesburg applies 12 different Town Planning Schemes, each of which is rooted in outdated principles and assumptions' (Ovens et al 2007: 21)<sup>4</sup>, although these schemes are under review as is noted below.

Harrison et al note that types of land-use management 'are frequently fragmented along apartheid lines, with different levels of control, as well as forms of participation and decision-making around land-use decisions' (Harrison et al 2008: 163). In addition, whilst in theory all change in land use requires planning permission, in practice in many areas no planning control exists at all (Berrisford 2005 cited in Harrison et al 2008: 163). Reasons for this include areas – some of which have been in existence for many years - that have not yet been proclaimed.

Diepkloof and its extensions provide examples where the City of Johannesburg is seeking to finalise outstanding general plans and compile conditions of establishment, as part of completing the process of township establishment (Johannesburg Property Company's Township Status Report cited in Hoosen et al 2007). These processes are part of the city's land regularization programme, aimed at 'enhancing the economic and social life of Soweto' and incorporating

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<sup>4</sup> Ovens et al note that 'the majority of the town planning applications that the CoJ processes are dealt with in terms of the Town Planning and Townships Ordinance (1985), and the remainder are processed in terms of the Less Formal Townships Establishment Act (LFTEA, 1991) and the Development Facilitation Act (DFA, 1995), both of which were designed to expedite low-income housing development in the wake of civil unrest and rapid urbanisation'.(2007: 21)

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Addressing Inequality and Economic Marginalisation

townships 'into the fabric of the City of Johannesburg' (Hoosen et al 2007: 20). This involves the creation or formalization of stands for various kinds of land uses, such as business, as well as the transfer of stands to residential beneficiaries (ibid). This approach flags the perceived importance of land being brought 'into the system', of cadastral definition, ownership identification, and control of use. In terms of the current perspective of the City this is considered essential for linking existing and potential land use activities to the formal land sale and transfer system, and to financial and legal services.

### 3.1.2 Unevenness experienced differently for rich and poor

There is not just geographic variation, but at times the different land development systems being accessed appear to be a reflection of the nature of the beneficiaries and actors involved. For example a number of new developments initiated by the wealthy private sector are making use of the Development Facilitation Act. The DFA was introduced in a particular context to facilitate rapid delivery, and it supports an approach to land use development which is more flexible and normatively-based (Berrisford and Kihato 2008). However Berrisford and Kihato (2008: 382) note that subsequent legal reform in line with DFA-type thinking has not happened as anticipated, and in the absence of this a number of 'unintended consequences' of the application of the DFA have arisen (Ovens 2006 in Ovens et al 2007: 11), in part due to control of these processes lying outside of local authorities.

*'(The DFA) is seen by some as suiting large scale developers, as the development tribunal set up under the auspices of the Act has the power to set aside other legislation such as national building regulations and reportedly often ignores decisions taken by municipalities in terms of the town planning scheme (Wendy Ovens and Associates 2006). In eThekweni and probably other areas of the country, while the DFA was initially appropriately used for RDP related land and housing projects, subsequent to 2000, a number of private applications have been fast-tracked through the DFA to bypass the executive powers of veto of local government hence creating the crisis that undermines the executive authority of municipalities to govern in their own right' (Wendy Ovens & Associates 2006 cited in 2007: 11)*

Ovens et al (2007) and Klug and Naik (2007) make similar points in relation to the use of the DFA by private developers.

The un-evenness in the systems being applied extends also to the issue of enforcement of land use regulations. With reference to Diepsloot and Kliptown Himlin et al (2007) note that

*'it is evident that there is little regulation or active management in these settlements at all. Services are either inferior or non-existent – poor waste management and sanitation pose health threats to residents and pollute the environment. Overcrowding fuels the possibility of dangerous shack fires, and many residents of the settlements currently reside below the floodlines. Regulation of land uses in areas of new housing development is apparently only now being considered, and given the poor's need to survive, any manner of activity to generate an income is present. Those who*

*have formally secured a site (and some who have informally done so), with or without a house, quickly venture into the rental of backyard shacks, or the opening of spaza shops or other businesses. While it would be difficult in this context to argue for strict regulation to prevent survivalist enterprises, it might rather point us to questioning the lack of other economic opportunities for residents of these settlements, given the lack of proximity to commercial and industrial development and the often high transportation costs to areas they might get work'.(Himlin et al 2007: 59)*

In these areas poorer people have little financial or other capacity to negotiate the private provision of infrastructure and other services – be it healthcare, plumbing or tuition - when the public systems fail or are inadequate

Ovens et al suggest that there is very little enforcement in poorer areas and that

*'The absence of land use management enforcement in poor black areas of the city is only tolerated because of low expectations by poor people who do not expect state protection, and is racist. Differential practices of enforcement also perpetuate segregation in the quality of life in neighbourhoods and the failure to enforce the public good implied by normal land use management regulations mitigates against both race and class integration and precludes neighbourhood improvement and the development of a positive land market '(2007: 30).*

Mammon (2008) argues that 'separate laws and standards that are administered by the public sector at local and provincial government level are applied to regulate the development of settlements for the poor and for the wealthy. It can therefore be argued that land use regulation plays a key role in retaining apartheid in economic and class terms' (Mammon 2008: 411).

In sum Ovens et al argue that 'what the land use management systems applied to the poor have in common is that they present a weak regulatory environment that is also based on lower services levels. A further characteristic is the much weaker enforcement capacity of the state for land use management in poor neighbourhoods'. (2007: 32).

### **3.1.3 Debate on one system approach**

Given this uneven patchwork of regulation, for some time debate on the future of land use management has considered whether 'the same kind of land-use regulations should apply in all parts of the city' (Harrison et al 2008: 211). This is a complex issue, given the historical differences in land-legal systems within cities, and the vastly differing characters that have evolved in areas within cities.

Harrison, Todes and Watson note that as racial integration has been occurring in some residential areas, there have been 'an increasing number of land-related intercultural disputes', such as whether animal sacrifices can be carried out on residential properties, and whether shebeens are culturally acceptable in a particular residential area (Harrison et al 2008: 211). A further example of different ground conditions and community attitudes is provided by traditional leadership areas in KZN. Harrison et al note that land in these areas is held under communal

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Addressing Inequality and Economic Marginalisation

tenure, with particular kinds of uses by community members permitted by agreement. LUM in these areas 'obviously presents very different problems and issues to that of urban land management'<sup>5</sup> (Harrison et al 2008: 212).

The City of Johannesburg has been grappling with the issue of providing a uniform land management system: 'While there is recognition among officials that parallel land management systems present problems, they are struggling with the complexity of resolving "how first and third world planning regimes can co-exist?" There are concerns that a rigid "onesize-fits-all" system will not be appropriate in a city as diverse as Johannesburg, and applying the same standards across all areas would not be feasible' (Ovens et al 2007: 49). Recent thinking in the City has been that the new system will focus on 'common and simplified use zones; designation of key areas as Special Development Zones; streamlined advertising procedures; direct linkages to the policy procedures of the City; enabling a single enforcement system; and promoting mixed use and densification incentives.(Ovens et al 2007: 49)<sup>6</sup>. The City suggests the system is 'a middle of the road proposal' which doesn't 'rock the boat too much' (Ehlers pers comm.).

Smit (2008) cautions against an overly simplified understanding of the potential of a unitary system, citing the experience of the City of Cape Town in applying a single zone across areas very diverse in history, ground conditions, and community expectations, and the conflict that was generated by this.

Ovens et al contend that 'a flexible but unitary system of land use management is desirable. Such a system would provide for basic minimum and maximum practices in line with national policy, but allow for local specificity in application' (2007: 16). Ovens et al are clear that radical reform is needed. This must include

*'a conscious rejection of existing urban land use management practice across the spheres of government .....as current practice does not serve the interests of the poor....A paradigmatic shift on urban land use needs to be defined that will frame the various reforms that are required to make urban land work better for the poor. This should include both a value-based position, an understanding of what tools are available to manage land*

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<sup>5</sup> Here extension of land use management systems 'has been regarded with suspicion by those associating it with the expansion of municipal control, as well as the levying of rates and service charges where none exist at the moment' (Harrison et al 2008: 211)

<sup>6</sup> 'In the meantime, planning officials consult the RSDFs in conjunction with the Schemes to assess applications in an effort to incorporate new approaches into their decision-making' (Ovens et al 2007: 23).

*differently and an empirically informed understanding of the status quo'.(Ovens et al 2007; 34)*

Others are more circumspect and caution against 'throwing out the baby with the bath water' in the context of dire capacity constraints in local government (Abrahams 2008.) The importance of at least a common language in future systems is also flagged, to avoid ambiguities in terminology such as has occurred with informal settlements: the term 'eradication' can be interpreted in many different ways (Abrahams cited by Zack pers comm.). Berrisford and Kihato caution that simply reforming the regulatory framework in LUM will be insufficient, as it needs an integrated implementation framework including regulatory and fiscal tools (Berrisford and Kihato 2008: 386).

In their book on planning and transformation in South Africa, Harrison et al consider these issues under a section heading entitled 'Debates on equity versus difference' and conclude that planners may need to 'pay attention to the emerging critique of a simple application of the equity principle' (Harrison et al 2008: 213). Here it is important to flag that confusion that can easily happen with mixing the notion of 'equity' with that of uniformity. Uniformity is one of the easiest ways for a bureaucracy to achieve equity because bureaucracy can't easily confront particularity and variation. However an equitable approach to an issue does not necessarily need to take a uniform form (Glaser 2008 pers comm.)

### **3.2 LUM untransformed to post apartheid situation**

Clearly, therefore land use management systems are critiqued as being untransformed to the post-apartheid situation. This lack of transformation is in two senses. One is that within urban planning activities, LUM and strategic planning are not closely aligned, with the result that that LUM is not well positioned to support strategic approaches. The second sense in which LUM can be critiqued is that 21 century urban South Africa presents a vastly altered urban context to that in which our LUM systems are rooted, and that there has been limited innovation in LUM approaches. Contestations around land use are rife, and specifically LUM approaches to informality and unregulated areas are inadequately conceptualized.

#### **3.2.1 Character untransformed**

Fundamentally the character of LUM remains untransformed. Whilst there is a vast array of land management and planning legislation, representing major policy change post apartheid, there has been 'little innovation and thinking and practice around land management' (Rubins 2008: 13 citing Ovens et al 2007). Mammon notes that '..land use regulation is still about development rules, property rights and obligations, and procedures. It has very little room for fundamental changes in urban structure and form...' (Mammon 2008: 418). Berrisford and Kihato comment bluntly that our complex town planning ordinances and their underlying zoning schemes are part of legislation that 'established and now preserve apartheid land-use rights patterns, which have often obstructed socially driven land development' (Berrisford and Kihato 2008: 383).

A key reason for this lack of reform appears to be the legislative quagmire existing in certain aspects of planning. The comprehensive legislative structure needed to support the 'indicative' nature of Integrated Development Planning, is lacking (Berrisford and Kihato 2008). ' Instead, what are routinely used to make decisions

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Addressing Inequality and Economic Marginalisation

with regard to land use management are old-order laws like the town-planning ordinances, with their associated entrenched perceptions of the role of local government in performing traditional 'town-planning' functions...' One aspect of the problem is fundamental in nature, as in legal terms there is no clarity on 'which sphere of government should proceed with the revision of this legal framework and the design of one more suited to current needs and conditions' (Berrisford 2006 cited in Ovens et al 2007: 19). (Berrisford and Kihato 2008: 382). One step needed is the improvement of and then finalization of the much-awaited Land Use Management Bill of 2003.

Berrisford and Kihato (2008) suggest other reasons for the lack of reform, which they characterize as 'an enigma' (2008: 391). A critical issue they refer to is the 'untouchability' of entrenched property rights and vested interests in the South African land legal system. Harrison et al note that some municipalities in attempting to rationalize land-use management systems 'have been unable to develop innovative approaches which might impact on the rights of landowners in the absence of a national framework which tackles this constitutional issue' (Harrison et al 2008: 132). This matter is elaborated further below.

### 3.2.2 Lack of alignment with other aspects of planning

#### *Gap between strategic vision and conditions on the ground*

The consequence of this lack of transformation is that LUM systems run counter to a variety of what might be seen as pro-poor initiatives. Rubin (2008) cites both Berrisford (2006) and Parnell (2007) in arguing that 'the current land management systems are effectively 'inimical' to many of the goals of the post-Apartheid state and are obstructive in providing the poor with access to land or supporting activities that effectively maintain and/ or better their quality of life' (Rubin 2008: 13).

One key issues is that there is a significant gap between strategic vision and conditions 'on the ground' in SA cities. As a result of the difficulties of translating visions into actual land uses, it is difficult to create well-planned settlements. This affects the ability both to create positive environments for the poor, and to contain and direct development driven by the wealthy. Zack et al comment that 'while there may be pro-poor thinking apparent in some strategic plans, there is a cumbersome and difficult process to realize these into particular activities on the ground and limited ability to withstand the vigour of other development pressures' (Zack et al 2007: 20). With regard to upmarket activity, Berrisford and Kihato note the

pressure for many new developments in recent years<sup>7</sup> but comment that ‘municipal IDPs have... failed to exert the required influence upon this rapid development, not necessarily because of any inherent weakness with the idea of an IDP per se, but because the legal framework directly blocks efforts at translating planning visions into actual changed patterns of land development’ (Berrisford and Kihato 2008: 385).

Some suggest that part of the problem is the control and regulation orientation of our LUM systems. Whilst ultimate development rights for a parcel of land are determined, it may be that these are not optimized by the land owner. The end vision for an area may not reach fruition, at least not within anticipated timeframes. Zack and Silverman comment that ‘townplanning schemes establish particular rights on particular parcels of land but fail to guide urban outcomes. They are prescriptive about what cannot be done on a particular piece of land rather than what should be done on the land. In this they often conflict with strategic and spatial planning goals’ (Zack and Silverman 2007: 10). A number of alternative approaches could be considered, such as prescribing timeframes within which rights would need to be exercised. The alternative approaches would have to tackle the entrenched nature of land rights in the South African legal system.

### *Planning processes and other legislation not in sync*

It is not only strategic planning and LUM which are out of sync: other areas of development activity are in friction. For example, planning applications and environmental assessments have different legislation and different processes (Harrison et al 2008). Whilst this issue is a wide topic in its own right, for the purposes of this discussion two points are pertinent. One is about the content and procedures associated with major land use decisions. Harrison et al comment that ‘despite the difficulties associated with a parallel set of processes, the introduction of EIAs has at least provided a forum in which major land-use decisions are beginning to be debated’ (Harrison et al 2008: 165).

The second point Harrison et al make is about the moral and ethical engagement of planning professionals with the evident disjunctures between planning vision and practice. Few planners seem to have reacted publically to developments which appear to run counter to the principles embodied in vision, policy and strategic planning documents, development such as gated communities, shopping malls and decentralized office parks. ‘...environmental groups have been active around EIAs, whereas planners have not organized self-consciously around

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<sup>7</sup> Driven in part by relatively low interest rates and high demand for residential land (Berrisford and Kihato 2008).

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Addressing Inequality and Economic Marginalisation

particular visions or ideas, in ways that translate into activism around site-specific planning decisions' (Harrison et al 2008: 166). It should be noted however that environmental legislation and activity in some instances has been perceived to be pitted against developments for the poor.

With reference to Johannesburg, Ovens et al contend that the most important determinants of urban form and investment continue to lie with central or provincial government:

*'the DFA, environmental legislation and housing subsidies have had a far greater impact on spatial restructuring in the City than local policies and regulation. The DFA has had an overwhelming influence in facilitating urban sprawl, thereby reducing the opportunity for pro-poor re-organisation and improved efficiency. Environmental legislation has inadvertently reversed this trend, and with the increased redevelopment activity, land costs have risen, further marginalizing the poor from central areas' (2007: 59).*

### 3.2.3 Relationship to context

The second sense in which LUM can be critiqued is that 21 century urban SA presents a vastly altered urban context to that in which our LUM systems are rooted, and that there has been limited innovation in LUM approaches.

#### *Changed urban context*

As noted earlier much LUM is rooted in a conception which envisages a separation of land use activities, an assumption of general formal employment, and the desirability and feasibility of a certain kind of order and control. This is underpinned by a strong promotion of the ownership of property, and the protection of property rights, for those permitted to enter into ownership arrangements.

Harrison et al comment on the mixture of continuities and discontinuities in South African planning: 'what is significant about planning in the post-1994 period is that while there is radical change in the values underlying official approaches to the planning process ...as well as in the goals of planning...faith in the project of modernization remains largely unchallenged' (Harrison et al 2008: 207). Inter alia this has translated into extensive efforts to extend land ownership, at least for residential purposes, to those previously unable to own land, an issue that is explored further below.

However in the interim significant aspects of the urban context have changed. High rates of unemployment are a feature of all urban areas, and prospects of formal employment in the foreseeable future remain the privilege of only some economically active urban residents. Self employment and informal economic activity have swelled in importance. Along with this has come a blurring of the clear distinctions in land use in many areas, on both public and private land. Responses from the state have varied but have not provided clear direction in this regard, particularly from a planning and land use management perspective. This issue is elaborated on later on in this document. In addition, public transport systems are by and large not able to transport people cheaply, conveniently and safely across the large distances that frequently separate areas of economic vibrancy from low income residential environments.



Godehart in her study of KwaMashu in Durban comments that the 2004 zoning scheme 'does not reflect the current land use pattern and character of Kwamshu ...but is rather based on principles of separation of functions rather than on the principles of integration and increasingly mixed use land use areas, objectives stated in the IDP and several development policies' (Godehart nd: 9). She notes that the planners say the intention is to 'preserve the residential amenity of townships. This is based on an understanding that townships are residential suburbs'. Godehart argues that the idea that townships are, or must become, suburbs, is a common approach taken. She contends that whilst indeed townships may have the physical form of suburbs 'ie free standing houses on individual sites' they have never functioned as suburbs. One important difference she cites is that suburbs (in former white areas) are car dependent, whilst townships have historically been public transport and foot dependent. Godehart cites Tipple et al (2003) in commenting that the utopian dream of suburban residential areas that arose as a reaction to poor housing conditions of the industrial revolution in Europe and North America is so far removed from reality 'as to be useless in policy formulation' (Tipple et al 2003: 74 cited in Godehart nd).

With reference to Hillbrow/ Berea Silverman and Zack note that 'The radical juxtaposition of a superficially ordered, modernist physical environment with fluid, informal and superficially disordered social conditions has made the ability to manage land and ensure democratic governance in the area particularly challenging (Silverman & Zack 2007: 4, 5). Under these conditions, they argue that at a conceptual level

*'There are no clear definitions of the concept of land management that might be appropriate here or now. Modernist interpretations of the concept tend to stress the contribution that good land management can make to ordering and regulating the city, to creating what Gotz and Simone call "a sense of coherence" ...But exactly what 'sense of coherence' is needed for those who inhabit the city? How precisely is this 'coherence' structured?' (Gotz and Simone: 2003) Which actors contribute to this sense of coherence, and which actors undermine this sense of coherence? Who defines coherence?' (Silverman and Zack 2007: 8)*

Harrison et al note that 'here, as elsewhere in the world, the substantive and procedural aspects of planning, each driven by a different set of values, co-exist uneasily....it is possibly inevitable, therefore, that the nature of planning environments in post-apartheid South Africa reflects above all the norms and priorities of the market and of private developers, as well as strong continuities with modernist approaches of the past' (Harrison et al 2008: 210). These planning environments both reflect and reinforce inequalities, both spatially and economically. Apart from the huge discrepancies that remain around residential land ownership (in terms of size, location and value of land holdings, as well as substantial numbers of people who own no land at all) despite massive efforts to extend ownership to the poor, land ownership specifically geared towards economic activity remains largely in the hands of elites. Harrison et al note that 'South Africa's property and retail industry is highly concentrated in terms of ownership and control, and its development patterns are similar across cities. It is largely focused on middle income consumers, and favours the development of car-orientated shopping centres and decentralised offices, which locate along highways , distant from areas of poverty' (Harrison et al 2008: 155).

*Contestations around use of land*

Some degree of contestation and conflict around land use might be expected in many contexts. The example of Johannesburg however suggests that contestation is substantial and ongoing. Rubin concludes from the CUBES-Planact land management study of 5 sub-areas across the city that 'a large proportion of Johannesburg's population live in situation of incessant tensions and conflict over space and over resources' (Rubin 2008: 24). Contestations take a wide range of formulations. This includes conflict between the formal regulation of an area and the actual activity that is taking place (Rubin 2008).

Other conflicts occur when formal developments in areas are perceived to be marginalizing some people. Kliptown provides an example in this regard: Himlin et al comment that 'the fact that the medium-density social housing was delivered through a fasttracked process and that it can be accessed only by higher income 'outsiders' has led to perceptions amongst poor residents of Kliptown that they have been treated unfairly, and that the social housing must have involved financial gain on the part of big business and government, hence its prioritisation'. (Himlin et al 2007: 22).

Other examples include upgrading or formalization of backyard shacks which causes conflict with landlords; upgrading of informal settlements creating 'insiders' and 'outsiders' (for example between migrants vs 'established' informal settlement residents). Himlin et al put it thus

*'Councillors, community leaders and residents are also enlisted, to varying degrees, in enforcement of (the zero-growth) strategy – evidence was strongest from the Kliptown case that some type of enforcement is attempted. The promise of proper housing is held out to existing residents, and it is made clear that their interests are served by preventing new arrivals, which would only delay the planned housing strategy. Thus, the politics of 'insiders' versus 'outsiders' develops or is reinforced. This modern form of influx control by coercion, directed only at those too poor to adequately house themselves, in the context of a City that has shown explosive growth in population over the past 10 years, seems cynical at worst and at best unlikely to succeed. It seems to result from either a serious lack of capacity or political will, or both, on the part of the City to manage land resources to proactively accommodate migration and household formation, particularly for the poor... And so far, the benefits of new housing development for the poor in the CoJ have gone to a small proportion of those who*

*qualify for the subsidy, while most have yet to see improvement in their living conditions. Thus, the promise, even for those who have accepted the rules, may appear elusive' (Himlin et al 2007: 57).*

Hillbrow/Berea demonstrates the particular contestations taking place around the use of private space<sup>8</sup>. Silverman and Zack note that 'Since the 1990s there has been significant blurring of the boundaries between private and public space and the radical re-occupation of space within existing buildings' (Silverman and Zack 2007:16). New ways in which space is being used within buildings are significant from a land use management point of view. Activities include the running of shebeens, laundries, religious gatherings and crèches, as well as drug dealing and prostitution. Businesses operating within residential buildings create particular management challenges. 'All business uses within residential buildings compromise the safety and security of residents in that they inevitably invite non-residents into the buildings'. (Silverman and Zack 2007: 26). Silverman and Zack note that 'the zoning map remains totally silent on the reconfiguration of zoned retail space and presence of retail activities within buildings. Generally the trend within zoned retail space is for subdivision of the older and larger retail spaces into smaller shops'. (Silverman and Zack 2007: 25).

A common form of contestation occurs over the appropriation use of public space for private use (Rubin 2008: 24). This is done by a range of actors. Examples include taxis occupying road reserves, pavements and public paths; traders taking over pavements and road reserves; homeowners blocking off parks, roads and pavements; and nearby residents growing crops on public land (eg along the spruit in Klipspruit). Rubin notes that land use is taking place in a wide variety of ways 'that are ignoring the official land use schemes and zoning regulations precisely because they do not support a range of activities that are in demand by the people living and working in these areas' (Rubin 2008: 22, 23)

With reference to Kliptown and Diepsloot, Himlin et al comment that

*'both cases highlight the competition for land resources to meet various City and Provincial agendas, agendas which often conflict, even within the same City administration. In Kliptown, broadly speaking, the conflict for land resources revolves around the need for land to house the area's informal settlement population (most of whom have been given a de-facto commitment against*

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<sup>8</sup> According to Gotz and Simone, Johannesburg's inner city has changed more rapidly than any other inner city in modern history, but this social and economic reconfiguration has been largely invisible because it has taken place within a dense and arcane physical environment (2003 cited in Silverman and Zack 2007: 26).

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Addressing Inequality and Economic Marginalisation

*displacement), and an urban regeneration agenda involving a serious investment of infrastructure to create a tourism and economic hub around the heritage site. In Diepsloot, the conflict revolves around expansion possibilities for the settlement directed, again, at housing the area's informal settlement population, and the constraints imposed by the City's Urban Development Boundary – the little City-owned land within the boundary available for development is also the site of competing agendas amongst different City agencies, and there is no guarantee that this will be used to relieve the housing demand. (Himlin et al 2007: 59, 60)*

*Unresolved approach to 'informality'*

Informal activities have challenged land use management conceptualizations. Informal trade and economic activity is a major source of conflict. In their study of Hillbrow and Berea Silverman and Zack notes that 'there is a general and quite pervasive idea that informal trading is the first step in a slippery slope from disorganization to anarchy. Government officials or private sector property owners have argued that the mess left behind by informal traders means 'first grime and then crime' (Silverman and Zack 2007 in Rubin 2008: 22).

Part of the problem relates to the existing dichotomy or binary between formal and informal: 'whilst formality is privileged within policy circles as the best amongst a variety of options then informality will always be seen as something that is wrong, second-best and which should be disposed of as soon as possible' (Rubin 2008: 22). Whilst the term 'informal' is therefore not particularly helpful, as definitions vary and its sets up the formal/ informal binary above, it is used here to denote a range of activities and practices which are perceived by officials to be outside officially designated activities and land uses<sup>9</sup>. These are activities elicit a range of responses from authorities.

In their study of Diepkloof Hoosen and Mafukidze describe some of the activities that are taking place within a predominantly residential areas: 'pre-schools, motor car repair shops, saloons, fast food outlets, phone shops, fruit and vegetable markets, spaza shops, beer outlets, night clubs, taverns and pap and meat outlets' (2007: 4) The authors note that these businesses range from one-person operations to those employing up to 10 people. Motor mechanic businesses, pre-schools and nightclub businesses occupy bigger spaces.

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<sup>9</sup> Harrison et al note that the terms 'informal sector' and 'informality' 'have more or less disappeared from South African economic policy discourse in the last ten years' (Harrison et al 2008: 237), and have been replaced by 'small business'.

*'In numerous instances, motorcar maintenance ventures stretch well outside the borders of the operator's area of jurisdiction and into public space – for close to 40 meters away from the business operator's private property' (Hoosen et al 2007: 40).*

In her study of land use in Kwamashu Godehart highlights the difficulties anticipated in applying a zoning proposal in the town planning scheme approved for Kwamashu in 2004 – for example in defining what is legal and what is not. A failure to accommodate many small and often informal businesses in residential areas in the schemes for townships, she argues 'reflects the principle tension between regulatory planning and informality' (Godehart nd 10). Officials interviewed by Godehart indicated the municipality does not have capacity or intention to enforce the town planning regulations everywhere 'but will mainly use it to resolve conflicts between neighbours over land use' – as a tool, for example to close down illegal shebeens where criminal activities take place (Godehart nd:10). Godehart challenges an approach to using town planning mechanisms to police criminal activities. She argues that where there are 'criminal economic activities'<sup>10</sup> (defined as per Castells and Portes (1989) as when the products of the activity are illicit, such as drug trafficking and dealing in stolen cars) only 'policing can respond', whether these activities take place at formal or informal venues (Godehart nd 11).

Others noted that for the applicant, legalizing 'anything' in townships areas is expensive and attracts a variety of costs. It also requires an engagement with a sophisticated and complex legal and regulatory system, in which there are many possible barriers such as language, accessing basic technical knowledge, and potentially even issues such as accessing to the physical location of the clusters of land-legal professionals and so on (Abrahams pers comm.).

Harrison et al note that 'official attitude to the informal in South Africa has been highly ambiguous' (2008: 233) and that 'there appears to be a failure to understand or accept the role that informality plays in the survival strategies of the poor, and a failure to accept that it has a form and logic which may not confirm to the norms of modernity, but is nonetheless a rational response to poverty and marginalization in its own terms' (Harrison et al 2008: 234). Implicit in most approaches to informal practices is the assumption that these need to be brought under the control of 'the system'.

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<sup>10</sup> In contrast to criminal economic activities, informal activities are those where the products are legal but the processes of production are not; and formal economic activities are those where both the process of production and the product are licit (Godehart citing Castells and Portes 1989)

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Addressing Inequality and Economic Marginalisation

Silverman and Zack argue in relation to Hillbrow/ Berea that it is 'precisely in the space created by the absence of enforcement, institutional flux and ambivalence of the council regarding its responsibilities to the poor, that the poor have managed to access the city' (2007: 107). However the authors do not take an anti-regulation stance. They note that the conditions they describe in Hillbrow are not unproblematic, especially in a high density high rise living environment: problems include the physical living conditions, 'the unstable relationships that have emerged between the actors involved in orchestrating these living conditions', and the gradual erosion of irreplaceable building stock'. (Silverman and Zack 2007: 10?) The authors note that 'Well-functioning high-rise environments are heavily reliant on sophisticated infrastructural systems, which in turn require stable, highly formalised systems of building management and uninterrupted supply of municipal services'<sup>11</sup> (2007: 20). With regard to land use management, the zoning diagram does not capture 'the significant land use changes that have taken place on the street and that have taken place within buildings' (Silverman and Zack 2007: 23).

Informal activity is by no means confined to 'less formal' areas, former township areas, or areas of transition but is also contesting for space in upmarket, ostensibly formal areas. In their study of Fourways, Klug and Naik (2007: 40) note that the area appears to be 'an environment exclusively catering for the upper middle classes, an area where middle income and wealthy people, live, work and recreate' (2007: 40). However a poorer cohort of supporting workers commute into the area or reside in the area at least some of the time, and a range of informal services and activities have sprung up in response. These include minibus taxi transportation and informal traders. Most of these activities are not catered for in official land use terms. By and large they take place within the road reserves, and are a source of conflict with residents and authorities. There is no provision of 'taxi stops and lay-bys...(a) lack of adequate pedestrian sidewalks, street furniture, and pedestrian street lighting' (Klug and Naik 2007: 40).

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<sup>11</sup> These systems include:

- Lifts (dependent on electricity);
- Waterborne sewerage (dependent on constant water-supply);
- Sewerage pumps, if the level of the lowest sewerage point is below the level of the municipal sewer (dependant on both water and electricity supply); and
- Rain-water and ground-water pumps, if the lowest level of the building is lower than natural ground level (dependent on electricity supply).
- Some Hillbrow/Berea buildings also rely on communal coal-fired or electrical geysers (dependent on staff to man the geysers in the former and electricity supply in the latter).' (Silverman and Zack 2007: 20)

Pedestrians have a particularly hard time in the area: not only is their passage along the secondary roads in the suburb constrained by roads gated-off by property owners, but they are not even properly accounted for on the main roads. 'While there are pedestrian walk-ways on either side of William Nicol Drive and along Witkoppen, the actual roads are so wide that one often observes pedestrians having to run across the road in order to cross the road before the traffic lights change (Klug and Naik 2007: 36). A gendered perspective on these users of space would no doubt reveal particular needs and difficulties associated with women users: Harrison et al point out that women and women headed households are 'strongly represented in the informal sector' (Harrison et al 2008: 226).

Klug and Naik note that 'overall, despite City macro policies promoting informal activities, the realities on the ground in Fourways is that almost all the officials from the CoJ as well as the developers<sup>12</sup>. expressed negative sentiments towards the traders' (Klug and Naik 2007: 48). Whilst traders are routinely the subject of law enforcement by the JMPD this does not appear to deter them: 'no matter how many times the traders are removed they keep coming back because it is financially feasible to do so. In some cases these traders live on the side of the road with their goods..' (Zed Mangaliso JMPD cited in Klug & Naik 2007: 32). Traders themselves dispute the characterisation of their activities as dangerous to traffic: 'Trading is not a traffic hazard and no accidents have occurred along the trading sites. Trading should be recognised and supported alongside the road though the building of road signage, toilets and storage facilities. The traders are prepared to contribute financially' (Traders cited in Klug and Naik 2007: 33). The attitude of officials remains one of criminalizing informal activity.

A further dimension of the engagement with informal practices pertains to informal settlements.<sup>13</sup> Although informal settlements have been features of South African cities for many years, cities struggle to relate to them. From a land use management perspective many of these areas are simply ignored by authorities, and activities within them are largely unregulated. Residents of these areas have diverse relationships with city authorities, but in general residents are unable to

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<sup>12</sup> It should be noted that there are major land use development and management concerns from formal residents of Fourways: Klug and Naik comment that 'the formal residents of the area appear to be very unhappy with the local authorities in terms of problems of roads congestion, development application delays etc. The nature of development in the area is complex and difficult for the Metropolitan Council to respond to with respect to infrastructure, i.e.the conversion of smallholdings into medium density residential developments. The sporadic nature of these developments results in increased impacts such as traffic congestion, however the City has to wait for an infrastructure threshold to be reached before it becomes cost effective for them to install the infrastructure. (Klug and Naik 2007: 24)

<sup>13</sup> This is the subject of another paper and so is only briefly referred to here.

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Addressing Inequality and Economic Marginalisation

access a range of city services if they are not associated with a formally defined and registered parcel of land.<sup>14</sup> Ovens et al note that 'In terms of current arrangements, the only way in which the poor can receive the (city's) social package (and be visible to the CoJ) is once they appear on the municipal valuation roll. For poor households, this means that they would need to have accessed subsidised housing (Ovens et al 2007: 37).

### 3.3 The potential of public space

In the early 1990s it was noted that much informal activity may be survivalist in nature and the sector offers no universal panacea to the problems of material deprivation (Dewar and Watson 1991 cited in Harrison et al 2008: 231). Nevertheless the authors argued then that it is important to facilitate this form of activity 'via generic strategies which aim at improving its operating environment and removing obvious obstacles to its presence' (ibid). Whilst a significant amount of informal activity nowadays may be more than survivalist in nature, the principle of facilitation remains relevant. In this regard one key opportunity is offered by public space – land that is in public ownership and which performs certain roles in the city.

In a recent issue of Habitat Debate, Chen cites (ILO) International Labour Organisation figures which indicate half or more of urban workforce in developing countries 'operate informally...of this vast urban informal workforce, probably half are street vendors or street workers of other kinds' (Chen 2007: 6). Mitullah concurs: 'the most visible manifestation of informal economic activities is street vending and informal trade....most of these service providers are in conflict with urban authorities .... A critical challenge relating to urban informality in Africa is the allocation and use of contested urban spaces' (Mitullah 2007: 10)

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<sup>14</sup> Ovens et al note that in Johannesburg 'Municipal officials currently estimate that between 150 000 to 220 000 households live in informal dwellings. Until such time as they enter the City's records as account-holders, they remain invisible and unable to access the CoJ's 'social package', which comprises subsidised housing, household services, rates rebate, etc. and amounts to approximately R500 per month. In terms of current arrangements, the only way in which the poor can receive the social package (and be visible to the CoJ) is once they appear on the municipal valuation roll. For poor households, this means that they would need to have accessed subsidised housing. In a situation in which the CoJ has made very slow progress is addressing the housing backlog, the weakness of this approach is evident. It has resulted in a situation in which the support mechanisms designed for the poor cannot be accessed by the very poor or at a scale commensurate with demand, and in so doing deepening their vulnerability. (2007: 37)



Brown notes that

*'...urban space in fast-growing cities is undervalued by city officials and, as a result, fails to support the livelihood needs of the urban poor. The lack of recognition of urban space as a critical urban resource, and its potential contribution towards improving the quality of life for the urban poor, is a major constraint on the achievement of sustainable development' (Brown 2002: 263)*

In her article on urban spaces in Zimbabwe, Brown points out that 'in many cities, public space occupies about 20 per cent of the urban realm.... and has many competing functions: as a channel for communications, source of livelihood, or place for social interaction. It is a crucial resource for poor households, particularly those engaged in informal sector employment who suffer from harassment, crime, insecurity of trading location, lack of shelter, and lack of facilities'. Yet planning regulations, economic development decisions, and highway improvements create physical space that take no account of the needs of the poor, while municipal policing and control inhibit the legitimate attempts of poor households to support themselves' (2002 277). Himlin et al note that in Kliptown 'access to the more public space for informal trading near the Square, and gardening near the river, are also of critical importance' (2007: 30).

The Warwick Junction initiative in Durban provides an example of a positive interaction with informal workers using public space, and demonstrates the advantages of an area-based approach to management of the urban economy (Skinner 2007: 11). The initiative engaged with issues such as 'kerbside cleaning, ablution facilities, child care facilities, pavement sleeping' (Skinner 2007: 11), for traders involved in activities such as traditional medicine, mealie and meat cookers. Here, relatively small capital investments were made by the municipality on various infrastructure improvements relative to the significant turnover of various traders, and in some cases (eg cardboard collectors) significant and demonstrable impacts on earnings. One of the keys to success were targeted sector by sector support – nuanced, focused initiatives specific to the activity/ work areas.<sup>15</sup> Skinner notes that this involved a crucial 'shift in mindset to regard the informal economy as an economic asset' (Skinner 2007: 11). This includes a recognition that 'street traders themselves create employment, in storage, transport, and for assistants' (Lund 2003: 4). Similarly Lund emphasises the need to change public perceptions of informal workers: in Durban effort was put into

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<sup>15</sup> A range of other success factors have been identified by Lund (2003) and Skinner (2007) including, 'Participatory engagement by traders in 'a low-key way, often on an issue-by-issue basis' (trader cited in Skinner 2007: 11)

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Addressing Inequality and Economic Marginalisation

exposing media to positive stories about contribution of informal workers to the city (Lund 2003).

Facilitating the use of public space for traders also involves protecting the rights of other users of the space. Hoosen and Mafukidze note that some users do not respect the rights of others. In Diepkloof, they say, 'it is apparent that business owners worry very little about the legality of using public space for their businesses; they treat passers by as intruders, passing unwarranted comments and even obstructing the way' (Hoosen et al 2007: 40).

It is critical to note also that public space interventions can assist poorer people in a variety of ways, not only limited to facilitating informal trade. Public transport interchanges are recognized as key sites of opportunity not only for trade, as the Warwick Junction example demonstrates, but as areas which could potentially offer much more support to low-income commuters who spend much both in forms of transport and waiting for transport. This support could take the form of toilets and wash facilities, child care facilities, storage and lock up space, localized portage assistance (transport of goods), safe doss houses, good public lighting, pavements that offer safe and easy passage, and initiatives to keep users safe from crime and violence. Another important initiative would be to support the passage of both pedestrians (through functioning, accessible, well-lit pavements, safe crossing-points over intersections etc), and the various hand-propelled trolleys and carts that are used for transport of goods. In fact, localities such as these offer the potential for city users to access basic services in a form de-linked from an officially recognized place of residence, if city management could be convinced of the merit of this approach.

In Fourways traders noted that storage of goods is important. A number of traders have negotiated for storage facilities with businesses in the area.<sup>16</sup> Apart from roads reserves, other forms of 'public' space in Fourways, such as parks and recreation space are in fact not available to the public. Either these are fenced off, or are no longer provided in new developments in a form accessible to the public (see also Landman and Ntombela 2006 for a fuller discussion of these issues). 'Developers don't give any open space to Council because they don't maintain it. Instead the open spaces are included into the development site and are zoned as private open space – this has an impact on the poor. (Developer Currie cited in Klug and Naik 2007: 41). Klug and Naik note too that public pavements outside walled developments in the area are often poorly maintained and neglected, and

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<sup>16</sup> In Fourways, '...some traders keep their stock overnight in the nearby school while others have an arrangement to do so with certain petrol filling garages. Those who stay in the vicinity simply convey their goods on trolleys and in some instances trailers' (Klug and Naik 2007: 28).

there appears to be a marked contrast in access to space between property owners and the many non-owner users of the wider residential area.

Landman and Ntombela (2006, cited in Charlton, 2006) also point to the relevance and importance of public space in cities for promoting human contact, social interaction and tolerance, in a context currently marked by widening inequalities, thus providing a social and moral argument for access to urban land by the poor. In her response to their paper Todes concurs, flagging the importance of thinking about 'more than just access to residential land for the poor; rather good public space, access to facilities, and more generally rights to the city are important..... it is important that (these points) are not lost in an emphasis on access to land for the poor' (2006:1). She notes that in the early 1990s several organizations explored mechanisms in this regard and that this line of thinking needs to be revived' (Todes 2006:2, cited in Charlton 2006).

One key issue in this regard is the stratification of use of public space by class and income that typically occurs in South Africa: a key example of this is that wealthy people do not use public transport much and therefore are rarely in the same interchange and waiting areas, or modes of travel as poorer people. The opportunity for economic interaction between rich and poor in the ritual of daily commuting is therefore severely limited. One attempt at this interaction occurs at traffic lights and intersections, where vendors of various kinds attempt to tap into the disposable income of motorists. Other kinds of 'public spaces' (eg shopping malls) also offer limited opportunity for engagement. By contrast, a key example of a site of opportunity is offered by the Durban beachfront promenade, which is used by an extremely diverse constituency, and where rich and poor interact in a variety of ways.

A further dimension of the public space issues is that the development of public space in newly established poorer areas is problematic, with little appreciation of the further layer of public investment needed to transform a bare-bones state-subsidised low income housing development into a fully functioning neighbourhood (Charlton 2003). Ovens et al comment that in low income areas

'Once the site is serviced and the house is built, there is no clearly understood further land use enforcement role for the state for poor areas. This is in marked contrast to more affluent areas where government invests in land that it develops for public spaces and where government is expected to uphold bylaws that underpin quality of life issues and contribute to the regulation of spaces in such a way that mediates conflict between economic, industrial and other competing land uses. It is also this form of government intervention that ensures investment by the private sector, the absence of which is a key driver of enduring poverty in disadvantaged sections of town. (Ovens et al 2007: 30)

### **3.4 Land use management for the poor and housing issues**

#### **3.4.1 Land, housing, ownership**

A key issue is that land issues for the poor tend to be conflated with the notion of housing, and the notion of housing tends to be conflated with ownership. The overview study on land management undertaken in relation to the CUBES-Planact UrbanLandMark study notes that

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Addressing Inequality and Economic Marginalisation

*'Much of the international literature on land management in developing countries is concerned with analysing and responding to the challenges of access to urban land for the poor. In response to the reality of expanding informal settlements and weak local government in these contexts, the focus of research has lain almost exclusively on the issue of access to land for housing (overview 2007: 5).*

Similarly Zack et al note that 'land debates in cities of the south are characterized by the enormous need for tenure security; for access to well located land; for resources to develop land, and for alternative processes to engage the many and hybrid processes that characterise the land markets' (Zack et al 2007: 21)

Ovens et al (2007) point out that not only are the notions of access to land, housing and ownership conflated, but that 'in South African cities the concepts of land, housing and services are often used interchangeably, by both politicians and professionals (2007: 17). Similar conflations can be found in the CUBES-Planact land management project. Hoosen et al note that when they approached the planners currently working on development applications in Diepkloof for interviews, they 'were advised that the Housing Department would be of better assistance.. regarding the Land Management processes in Diepkloof as Diepkloof predominantly consists of residential property' (Hoosen et al 2007: 13, 14). In this instance land issues in the area were reduced solely to housing concerns.

As noted above the Johannesburg Property Company is involved in formalising property rights in areas such as Diepkloof. They see a major benefit as "extension of property ownership as the basis for providing shelter and wealth to thousands of residents in the former black townships" (JPC Annual Report cited in Hoosen et al 2007: ). Further the programme 'aims to create a property market through private sector investment and also to "increase the rates, taxes and service repayment base of the City", (JPC Website).<sup>17</sup>.

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<sup>17</sup> From the late 1950s up until 2002 all houses in Zones 1-6 belonged to the Municipality. The Municipality reserved ownership rights and could allocate and withdraw a house from anyone for various reasons. As such, the Municipality enjoyed ownership rights and also carried the obligation to make sure that the houses were well maintained while it got very little in the form of revenue from the occupants. In 2002 the Municipality decided to grant full ownership rights to all the residents it had allocated the houses to and to those who had gained possession of any house for not less than twenty years. The rationale was, on the one hand, to empower residents with property ownership and on the other to rid itself of the problem of incurring costs through the maintenance of these houses. Since then, a significant proportion of the residents of Diepkloof 1-6 have embraced this "generosity" by applying for title deeds. There are still many others who are still to do so due to various

Himlin et al comment that 'land management issues in the Diepsloot and Kliptown settlements, though evolving in some significantly different ways, are framed in both locations mainly by the dominance of government-led housing development as the major planned development path. In each settlement, the imperative has been to provide RDP housing to large populations residing in informal settlements' (Himlin et al 2007: 58).

Thinking about this issue from a land use management perspective, there is an attractive logic: land uses flow from rights given to land via title deeds and mechanism such as zoning schemes; in our land-legal system rights are conferred to a large extent to owners; land ownership is underpinned by the cadastral system and deeds registry. Ultimately, who owns land becomes deeply significant in a discussion of rights to use land in particular ways. From this perspective a focus on conferring ownership to those without land seems appropriate, and is reinforced by the approach taken in the government's low-income housing programme. Himlin et al reiterate 'the finding from the overview study that government's involvement in providing opportunities to the poor to access land has largely been driven by the housing subsidy programme' (Himlin et al 2007: 5)

However there are critiques of this approach from various perspectives. Critiques pertain both to whether ownership of a residential stand necessarily translates into an asset for the beneficiary, and second whether it does so for the local authority, as this assumption can be undermined by various circumstances (see for example discussion in Charlton and Kihato 2006).<sup>18</sup> For the beneficiary there may be various costs associated with ownership, and it is also not clear that ownership of housing is the correct match with self-identified priorities of some poor people – or that 'ownership' necessarily has the financial logic assumed by wealthy property investors. In addition, large number of people, and households remain without ownership of residential land, and are unlikely to get it in the short term in South Africa (for a variety of reasons including large backlogs, slow delivery etc). This suggests that for practical reasons ownership of housing should not be the only thrust of land redistribution.

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reasons ranging from family failure to agree on the right person under whose name the house had to be registered to reluctance based on a limited understanding of the significance of title deeds despite the advice given by the Municipality. (Hoosen et al 2007: 35)

<sup>18</sup> For example 'housing assets may also depreciate in value , due to factors which are both inside (poor location, poor settlement design, poor building standards, bad alterations) and outside (economic climate, interests rates, urban transformation or inner city decline) the control of ...professionals' (Zack et al 2007: 18)

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Addressing Inequality and Economic Marginalisation

Furthermore, an overemphasis on this approach ignores other problems and issues which are structural in nature. One of these is the geography or spatiality of economically-productive land available to poor people. Whilst there have been a number of initiatives aimed at assisting the economic circumstances of poor people, few of these appear to have had an explicitly spatially oriented redistributive component. In the absence of this, and driven by various other imperatives, ownership of a residential plot increasingly gets overlaid with expectations of how this provides a route into the mainstream economy. However ownership of much economically significant land in urban areas remains in the hands of elites. Brown notes that 'land for shelter is only one facet of the land resource so crucial to low-income households, and ... land for livelihoods or social interaction is equally necessary in contributing to quality of life' (Brown 2002: 265).

In Kliptown, Himlin et al note that 'Although various development plans supporting the development of business and entrepreneurial opportunities have been implemented in Kliptown, poor people in the area feel that they were left out when government planned for such business developments. Many voiced their concerns that the City allocated business sites mainly for bigger businesses, neglecting the needs of the poor for space to cater for small business opportunities.(Himlin et al 2007: 28).

From the perspective of the local authority, a further important dimension of the discussion of land and housing relates to the urban financial system. Ovens et al characterize issues in this regard as both 'on the revenue and expenditure sides' ( They note that there is not a full understanding of the costs associated with the location and form of the development of new land for the poor. As a result, they argue 'long-term service subsidies generated by the spatial mismatch of land for housing and work will erode the long-term financial viability of the Municipality'. Other costs not budgeted for include further physical development of the area (as noted above). In addition, they argue the 'lower bulk service levels provided for residential areas developed under fast track routes for the poor mean that commercial rates can never be applied. The poor who run enterprises from homes developed on inferior zoning platforms may also not qualify for bank finance, a potential factor in scaling up SMME output of the future.' (Ovens et al 2007: 31). Ovens et al contend that 'failure to understand the fiscal implications of land use management in poor areas will turn out to be a major critique of government performance in the first decade and a half of democracy'.

They elaborate further:

*'The City did not cost the long-term implications of the ongoing exclusion of the even of sub-standard houses from the city rates base of the future, despite evidence that once low income areas like Soweto are now an important part of the rates pool and not just a cost centre. Failure to cost land as a non renewable resource in the land use management system privileges the rich who consume large portions of land, reducing its long term availability, increasing price and increasing sprawl at the expense of the poor. (Ovens et al 2007: )31)*

### 3.5 Friction between planning, and economic development and the market

The focus on housing issues when land for the poor is considered is in some senses a reflection of a wider tension in our current context. This is embodied in the approach taken to economic redistribution and the poor. Key contradictions manifest in the approach taken to private sector formal economic activity, versus 'pro-poor' initiatives, and ultimately play themselves out in the arena of land use management.

Zack et al note that 'the current economic context privileges economic growth as a major priority. Although this focus on growth is accompanied by well-meaning initiatives in support of the poor, these sometimes suffer from limited tangible support'<sup>19</sup> (Zack et al 2007: 9). Silverman and Zack comment that

*'Johannesburg faces the very real and conflicting demands of promoting growth and all the formalisation that such an ambition requires, while simultaneously promoting pro-poor development. Urban management is caught at the crossroads of these agendas. The very act of regularising informal traders for example may help to 'clear' an area and support private investment in that zone, but the same time may significantly undermine the livelihoods of traders and the State's concern for growing the second economy (2007: 92)<sup>20</sup>.*

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<sup>19</sup> Drawing on the example of Johannesburg, they note that 'despite positive pro-poor sentiments in city strategy, the current focus is largely on the 2010 World Cup, the Gautrain, and on maintaining orderly development and the use of the city –'law and order and control'. These priorities translate into targets on officials' scorecards, limiting the extensive pursuit of other activities' (Zack et al 2007: 10).

<sup>20</sup> Silverman and Zack notes that 'Within a single interview, we found one official who took a lenient attitude to informal traders or illegal foreign nationals while discussing social needs, poverty and vulnerability, but then called for the policing and regulation of informal trading activity in the interests of health or cleanliness. For officials it is difficult to digest and process the shifting philosophies in the City. The strategic planner for Hillbrow and Berea indicates that much of her time is devoted to reworking strategic documents to bring them in line with new policies and positions. Other officials who are involved in day-to-day operations within the Municipality said in interviews that these shifting messages are confusing. There has been so much institutional and ideological change in the City that it is unclear which philosophy should inform action (2007: 92)

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Addressing Inequality and Economic Marginalisation

In the current context, almost any formal construction activity – residential, retail and so on – is equated with the notion of ‘development’, which has positive overtones and is equated with economic growth. This activity is seen to be automatically positive, needing to be supported by the local authority. However at the same time some of those trying to benefit from spinoffs from these developments are not catered for, as the example of Fourways demonstrates.

Marx argues that the economic contribution of ‘the poor’ is not valued. Marx (2006) advocates the need to reconceptualise dominant understandings of the economy and of economic growth. He promotes a shift in economic focus to activities rather than outputs, noting the need to include poor people’s economic activities in understandings of ‘the economy’ (Marx 2006). This approach tackles the urban land market head-on, by challenging widely held views of economic growth and how this is a function of certain types of land use. Confronting the dominant understanding of the economic ‘logic’ of the land market, Marx’s concern is how urban land markets can be ‘related to supporting networks of innovation and productivity rather than immediately reducing all issues to profitability and outputs’ (Marx 2006:19). One form of this would be to ‘value land in terms of its ability to create new forms of interdependencies between economic activities’ (Marx 2006 cited in Charlton 15, 16 2006).

Returning to the activities of the formal market, Harrison et al note that the ‘relationship between planning and the market are contested internationally’ (Harrison Todes Watson 2008: 143). Under apartheid, planning both ‘constrained and promoted’ the location of economic activity (Harrison Todes Watson 2008: 144). Post- apartheid, the authors comment ‘assumptions that the state and planning could direct economic activity continued...but in practice, the extent to which government and planning can and does influence the location of economic activity has been limited’ (Harrison et al 2008: 144). In the meantime, the ‘private sector able to develop land without regard for the public good’ (Ovens et al 2007: 6). This does not only extent to new developments, but also to the management of existing environments: with respect to initiatives such as Business Improvement Districts ‘concerns have been raised that these initiatives represent a privatization of urban planning and management and service to exclude the interests of the poor, such as informal traders and the homeless’ and displace crime to other areas (Pirie 2006 cited in Harrison et al 2008: 151).

Harrison et al (2008) identify 4 different strands that embody the relationship between planning and the market and the economy in post apartheid South Africa<sup>21</sup>. These include both a more ‘laissez-faire’ approach to major private sector

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<sup>21</sup> The first is characterized by less regulation and more facilitation of development...as a result, the authors argue ‘less attention has been given to land-use management, and de



developments whilst at the same time trying to direct economic activity in some (mainly poorer or run-down) areas. Spatial planning in particular is fingered by some as having misjudged economic development and the market, with a reliance on concepts and interventions whose power and appropriateness has not been thoroughly understood: Harrison et al note that 'the nodes/ corridors approach and the emphasis on broad design to facilitate development also does not come to grips with the way large-scale capital is structuring space.'<sup>22</sup> (Harrison et al 2008: 155).

It is also not clear that spatial strategies have been well targeted to poor areas 'it could be argued that both earlier and later spatial plans tend to 'drop' spatial concepts such as corridors and nodes onto an urban reality which is highly complex and fluid. As such they fail to engage sufficiently with conditions of everyday life and the survival strategies of the poor in cities, and have promoted spatial strategies which are often at odds with the strategies of marginalized groups' (Harrison et al 2008; 133) So 'although these concepts might be useful for addressing the spatial needs of the informal economy, they do not seriously engage with the contemporary dynamics of urban space economies, and thus are ineffective in responding to the spatial patterns of wealthy residents and large business which are structuring much new development in cities. The privileging of this approach to spatial planning has also meant that planners' understanding of the space-economy relationships is weak, and thus the emphasis on LED ironically goes along with a limited ability to engage with the real economy in space' (Harrison et al 2008: 145).

Harrison et al conclude that 'despite the many ways in which South African municipalities have attempted to give voice to the poor, the privileging of economic

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facto, a relatively laissez-faire approach has been adopted to the market and major private-sector-driven developments' (Harrison et al 2008: 144). At the same time there has been second, the assumption that the state 'can and should direct economic activity – in the interests of creating more integrated cities, redressing the effects of apartheid, and countering economic decline' (Harrison et al 2008: 145). This has resulted in a focus on 'urban regeneration' in inner cities, townships etc

<sup>21</sup> . Third has been the focus on LED as a key aspect of developmental local government. Whilst this is connected to planning, it is not the sole preserve of planners and 'is often separated from spatial planning' (Harrison et al 2008: 145). The fourth strand has a design and strategic spatial planning orientation – such as creating nodes and corridors 'on the assumption that economic activity will accumulate there'.

<sup>22</sup> 'the first generation of spatial plans, such as the Cape Town Metropolitan Spatial development Framework (MSDF), thus proved to be hopelessly naïve in their assumption that formal business and upmarket investors would agree to locate in or near poor and marginalized township areas (Harrison et al 2008: 132)

Addressing Inequality and Economic Marginalisation

development and urban competitiveness as discourses and the uneasiness with planning as control, have given greater effective power to business interests' (Harrison et al 2008: 156), particularly where the notion of valuable economic activity has a certain conceptualization as demonstrated by Marx (2007). Nevertheless it is noted that the 'land-use regulatory system does make demands on developers...thus South African land-use management sits in a rather ambiguous position in relation to the market: there are claims of too much control, but outcomes are largely in accordance with the market' (Harrison et al 2008: 156).

Kliptown provides an interesting example of some of these issues. Himlin et al contend that

*'Kliptown is a fairly clear case of land management processes not working, at least in favour of the poor, at least not yet. This is mainly because despite plans to build 5 700 houses through the subsidy programme, aimed at current informal settlement residents, less than 1 000 have been built thus far, after long delays due to three contractors having been appointed and failed before one was successful. Meanwhile there has been an impressive investment of land and resources in the JDA-developed Walter Sisulu Square of Dedication heritage site, and in the adjoining social housing and rent-to-buy units, which by all accounts are entirely out of the price range for Kliptown's poor. The investment in the 'urban regeneration' agenda rather serves, for poor residents, to highlight the inequality with which their concerns are treated, and fuels a perception of unfairness since people who benefited from housing first were from outside the community. The unaffordable social housing units also represent a 'lost' resource that could have aided in the implementation of the housing strategy, as it was envisaged that those who didn't qualify for the subsidies but were unable to secure housing on the market could have access to low income rental housing. And while the residents are certainly proud of Kliptown's status as a heritage site, it is clear that the projects aimed at 'urban regeneration' that have been developed by the Johannesburg Development Agency directly compete with the needs for land accessible by the poor. Many residents living in the informal settlements of Kliptown view this heritage development with some resentment as a result. (Himlin et al 2007: 30)*

At the same time cities have been caught up in the focus on city competitive approaches. This has resulted in 'concerns with new upmarket developments in locations determined by the market and 'disconnected from the poor, often in contradiction to spatial plans' (Harrison et al 2008: 148). In the drive to prepare for 2010, the need for capital investment for stadiums may be siphoning away 'investment from more basic infrastructural needs, such as bulk water and sewerage capacity and maintenance of infrastructure, ...sorely needed after years of focusing on increasing delivery' (Harrison et al 2008: 148).

Ovens et al note that

*'the CoJ has made some efforts to positively influence the property market, by highlighting development opportunities in strategic areas and offering financial incentives. This has occurred through land identification, packaging and planning at Gautrain stations, strategic projects managed by the Johannesburg Development*

*Agency, as well as through the tax incentives offered in the Urban Development Zones. Property development in these areas, however, has largely targeted its attention on higher-income residents rather than the poor. Generally, the CoJ has been slow to consider innovative ways of obtaining value from developments for the higher end of the market. For example, it could have extracted a social contribution through taxing the increased value in property as a result of the Gautrain, and in this way, the transport system can be paid for through real estate (2007: 25)*

The City of Johannesburg's Growth Management Strategy offers ideas on how to start shaping and directly investment and development in the city.

### **3.5.1 Uneven relationship between actors in economic development and actors in planning and LUM**

Part of the reason for the uneasy interaction between planning activities and economic development and the market centers around the relationships between key actors in the various fields. Seemingly there are key differences in mind-set, in approach and in the skills base of the various players. Zack et al cite Fernandes in commenting that 'planning activity, whether undertaken by planners or other professionals, is – in this minds of the planning practitioners – mostly dissociated from the urban land market' (Fernandes cited in Zack et al 2007: 27). Planners have little skills in understanding and using many aspects related to land markets and those who make decisions about land 'have few criteria for development (especially development that is just), little accountability and little control over development' (Zack et al 2007: 27). In particular planners are weak in understanding property economic, property financial literacy, as well as land legal issues. In addition planners lack 'skills related to optimizing the regulatory tools and opportunities available to planners' (Zack et al 2007: 29)

In their study on professional development issues in relation to land for the poor, Zack et al comment that

*'many...developments are driven by a profit motive with the key direvers being those who understand and are able to manage the risk and return variables – often a combination of financiers, economists and developers. The intersection between these players and strategic thinking is mediated by development application processes and requirements managed by officials in both local and provincial government. Some of these developments are politically charged but are often seen to be contributing to the inviolable priority of 'economic growht' (Zack et al 2007: 20)*

As a result 'municipal planners (interviewed) felt at a strong disadvantage in negotiations with developers and financiers around parceling of land and around committing developers to proved access for the poor to their developments. Planners could not counter the financial arguments presented by their developers or bankers' (various interviewees and Shisaka 2003 cited in Zack et al 2007: 27).

Part of the problem lies in the history of planning activity in South Africa, and the influence of this on planning education. Todes notes that 'prior to the 1980s, planning education tended to reflect planning practice which focused on the control

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Addressing Inequality and Economic Marginalisation

orientation of apartheid thinking. More recently however, the rejection of such thinking has been coupled with an avoidance of addressing any kind of regulatory systems. The result has been a conscious avoidance by planning schools to address any kind of Land Use Management System (LUMS)" (Todes cited in Zack et al 2007: 27). Viruly comments that teaching in planning schools does not typically offer a perspective of the 'very real effects of land use management decisions on property values' (Viruly cited in Zack et al 2007: 28).

### 3.6 Unresolved conceptual and ideological issues

There are clearly some key conceptual and ideological issues that are unresolved in relation to land use management. Ovens et al note that the LUMS Bill of 2003 has as its general principle that spatial planning, land development and land use management must promote and enhance equality, efficiency, integration, sustainability and fair and good governance (Ovens et al 2007: 10).

However it is clear that there is not necessarily common understanding of some of these terms, or what it means to translate these concepts into interventions on the ground. The state sends out confusing and contradictory messages around 'pro-poor and pro-GEAR strategies but with little clarity on how they play out in terms of urban land' (Zack et al 2007; 70). One consequence of this is that specific project initiatives can become protracted battle grounds where existing interests are fought over, rather than sites with a clear set of non-negotiable parameters interpreting policy objectives (see for example Charlton 2003).

The Urban LandMark programme commissioned a study looking at the skills needed to deal with urban land market issues. The study noted that urban land issues span a number of disciplines, and found that

*'the interviews revealed no common understanding of issues relating to urban land markets and no broadly agreed principles about whether the poor should access land markets; how the poor manage to access land markets; and what can be done to ensure that the land markets work better for the poor...even the terms 'land' and 'markets' proved to be problematic' (Zack et al 2007: 7).*

Berrisford and Kihato (2008) warn that there is an 'inherent logic' to the status quo. Major reform of the LUM system bumps up against quite fundamental vested interests. The first of these concerns the role of LUMS as protectors of property values, value which is of deep importance not only to the land owner but to both

national and local government through taxes<sup>23</sup>. The authors note that 'tampering with the current spatial form through regulatory reforms that may be perceived as negatively affecting property values, for instance, to provide for certain types of land uses in traditionally exclusive areas constitutes a substantial risk in this context' (Berrisford and Kihato 2008: 391). Ultimately there are no specific and concrete mechanisms 'to deal with the resistance of vested interests in the property market' (ibid 392). This hampers attempts to engage with '...the ideal of redistribution of exclusive spaces' with NIMBYism a major factor 'in a regulatory context that emphasises control and regulation over principled decision making based on visions and objectives such as sustainable development and spatial integration..' (ibid 392). Attempts to tackle these entrenched interests have generally either had limited success – (for example Gauteng's Rapid Land Development Programme, described in Bremner 2000) – or have resulted in very protracted battles (for example Gauteng's Cosmo City project). Exceptions to this general trend can be found inter alia, in localised infill development evident in places such as Durban and Pietermaritzburg, and the highly significant urban renewal projects such as Cato Manor (see for example McCarthy, Robinson & Forster 2003), and Alexandra (Charlton 2008)

At an institutional and regulatory level 'part of the problem is that the issue of land spans several national departments and has no clear institutional home' (Berrisford cited in Zack et al 2007: 11). In the meantime, Zack et al note that cities are disposing of their land assets for profit. 'Currently there are no traditions or incentives for land banking, land rights swaps and other techniques to secure land for the poor. While state-owned land has the potential to be levered for the poor, there are ongoing, conflicting initiatives and financial incentives to dispose of this land' (Zack et al 2007: 13). However various considerations are underway of how these sorts of approaches could assist. Papers by Harrison (2008) on land banking and Brown-Lutango (2006) on 'value capture' commissioned by Urban LandMark are examples of these discussions.

In Planact's study of Kliptown Himlin et al comment that

*At this stage, it is difficult to conclude with any certainty the answer to the 'who benefits/who loses' question that is of central importance to this review of land management and democratic*

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<sup>23</sup> + the benefit that accrues to government from property values – national govt: prop transactions taxed by prop value; capital gains tax; - local govt – property tax...local govt gains 'by applying regulatory systems that emphasise the protection of private property' (390) – 'on av just over 20% of municipal revenue is funded by property tax' and likely to increase in future inter alia due to restructuring of utility services plus loss of RSC levies being abolished (Berrisford and Kihato 2008: 391)

Addressing Inequality and Economic Marginalisation

*governance. Certainly, the existing residents of the informal settlements are set to benefit from the City's commitment to house them in the Kliptown area, with some important qualifications – that enough land is made available and/or that housing typologies that increase densities are developed, and that the pace of delivery increases. There are some serious concerns that new entrants into the settlements may lose out, and that those who don't qualify for the subsidy will have no options available to them to improve their living conditions. There are also indications, certainly evidenced by perceptions amongst the poor themselves, that the poor have been losing out as the apparently competing priorities in City plans for the use of land in Kliptown are unevenly implemented. The level of investment and the pace of development around the heritage site that has taken place painfully contrast with the delays in producing housing for the poor. It will only be seen over time whether economic benefits from these developments will accrue to the poor, or eventually result in their displacement. (Himlin et al 2007: 31)*

### 3.7 Institutionally, many actors and contestations

A key problem cited in the terrain of LUM is the lack of capacity in local authorities to cope with various aspects of land use management. A shortage of people with experience and qualifications (Rubin 2008, Ovens et al 2007) is coupled with the many demands placed on planning departments, who have little time to absorb new legislation, and to rethink land use management issues. Berrisford (2006) identifies a range of capacity problems, including that non-planners are doing planning work (indicating that the importance of land use management not understood), and that there are indications of an exodus of planning professionals skilled in land use issues (cited in Ovens 2007: 7).

Importantly Silverman and Zack point out that it may be more useful to think of the local authority as just one player in land management. They note that

*'Land management is a mechanism for facilitating and regulating a complex lattice of relationships among diverse urban actors in a particular place. In the Hillbrow/Berea area these actors include the Municipality, the property owners, the residents, the traders and a host of other actors who pass through the area on a daily basis – taxi drivers, school children, shoppers. While this list of urban actors is by no means comprehensive, the landscape is further complicated by the fact that each set of actors is by no means homogenous. Various departmental structures within the Municipality, for example, have conflicting views about the nature of land management challenges in the area. This is equally so for the diverse property owners in the area (2007: 85)*

Others emphasise the central role of 'the State, and particularly local government in ensuring universal access to urban rights for the poor' (Parnell 2007 cited in Ovens et al 2007). Parnell contends that this 'requires a paradigm shift to introduce a more radical form of the neo-welfare local state.....She argues that key sites for negotiating the principle of universalism in practice include land tenure, public housing waiting lists, zoning schemes, and other land use management issues. These 'technical' parameters are the sites where

universalising notions of the good city will be defined and resolved (Parnell 2007 cited in Ovens et al 2007: 7).

However 'the state' is of course not a uniform or necessarily cohesive body. Importantly there may be different agendas at play within a city administration. An example from Johannesburg is that the Johannesburg Property Company is seen to have been concerned with the strategic disposal of property or stimulating land opportunities for private development, rather than retaining strategic parcels for the poor. In Fourways responsibility for road reserves lies with departments whose mandate is nothing to do with informal traders, who see traders as interference with road and traffic management in a mobility corridor, and who therefore may not even see the pro-poor opportunities potentially available in this regard. Other conflicts arise between different spheres of government, such as between province and local government. It seems that the respective roles between the CoJ's housing department and the provincial one are confused and problematic (Ovens et al 2007: 25). Also, the Provincial powers to issue liquor licences (Silverman and Zack 2007) means that the local state is not in control of this important issue. And with planning development procedures Ovens et al (2007) indicate that the introduction of the DFA has also meant that the City lost control over much of its planning as approval of applications in terms of the DFA are through the provincial rather than the local government structure'.

Of key importance, it seems, is who is in de facto control of spaces. The case studies in the CUBES-Planact study show that in different contexts those in control include private sector land owners, informal occupiers, the municipality and others. The case studies also show useful examples of forums or organizations which assist with land mediation. In Fourways for examples there used to be a Development Forum, attended by all 'the major players' and Council representatives and officials. A developer interviewed argued that the forum was successful in placing peer pressure on developers to be socially responsible. For example they could apply pressure on developers to provide footpaths in the Monte Casino area'. However since 2002, these meetings are no longer held, apparently because the officials and councilors stopped attending (Developer cited

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Addressing Inequality and Economic Marginalisation

in Klug and Naik 2007: 43)<sup>24</sup>. In Diepkloof, the city's rental dispute forum plays an important role in negotiating between tenants and landlords (Hussein et al 2007)<sup>25</sup>.

In conclusion, a summary from some earlier research commissioned by Urban LandMark remains relevant when considering LUM issues. The orientation of the study was conceptualized slightly differently from the current one, and was framed as the problem of access to land by the urban poor. This problem of access was seen

*'as a normative question by Kihato and Berrisford (2006), as the underlying regulatory framework is based on a set of assumptions about the perceived 'value' of urban land. For Marx (2006), the problem is seen to be stemming from underlying conceptual issues with the way the poor are seen to relate to the economy. Significant gaps in knowledge about existing practices of the poor impede pro-poor deliberations, Royston (2006) argues, at both a conceptual and practical level. Within current frameworks legislative and*

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<sup>24</sup> In Fourways most respondents (amongst the traders) regarded their relationship with the Local Authority as strained, not good and tense due to the police raids that often take place (52%) . About 24% of the respondents thought that they had a good relationship with the Local Authority, while the rest said that they were not aware that there was a relationship between them and the authorities. (12%) Klug & Naik 2007: 30) 76% had no permit.

<sup>25</sup> As outlined by Area Manager of Region D, there is a tribunal system that monitors and manages complaints of conflict and disputes between landlord and tenant (backyard rooms and shacks). The Housing Department has Tribunal Officers, three in the vicinity of Soweto, who see to these complaints on a case-to-case basis and try to solve these disputes locally. From a telephonic conversation with the Tribunal Officer for Diepkloof, Ms Mary Mathabane, the Tribunal System was initiated in May 2005. If complaints cannot be resolved locally then it is referred to the Provincial Tribunal, which is a more formal system. Therefore the management of disputes is facilitated by the formal system through the existence of a Tribunal System. However the Tribunal System engages in an 'informal' and interactive process that has, to date, resolved all disputes (even though these are small in nature) between landlords and tenants. Informal interactions take place in the form of one-on-one discussions with the respective parties. This reinforces the fact that the Housing Department has and is currently managing disputes effectively, using an 'informal' and interactive process that involves other formal structures like Ward Committees and councilors (Hoosen et al 2007: 28) The Municipality has earned itself a lot of respect from residents who appreciate its intervention in the resolution of issues relating to inheritance and negligence of obligations that result in debts. Residents note that the Municipality has succeeded many a time not only in assisting stakeholders in identifying a legitimate heir but also in processing title deeds. The municipality is also respected for coming up with bearable terms of servicing debts after a house accrues a backlog in paying for services. (Hoosen et al 2007: 45)



*regulatory issues limit the effectiveness of potentially positive regulatory tools (Kihato and Berrisford 2006), whilst for Brown-Luthango (2006) urban development policy mechanisms are inadequate. In practice McCarthy (2006) sees opportunity in current residential filtering trends, whereas Landman and Ntombela (2006) view the privatization of public space as a key component of the problem. Cross (2006) sees the low value accorded to state provided housing as a key part of the problem' (Charton 2006: 11,12).*

## 4. Considerations from a second economy perspective

It is clear that LUM is a neglected area of engagement and attention. It is however increasingly recognized as essential:

*'questions about how land is used and its social implication – gated communities, divided cities, and the like – are beginning to attract considerable debate, and it may be time for planners to take land-use decision-making and the way it shapes life in cities much more seriously' (Harrison et al 2008: 166).*

As the discussion in this document indicates, land use management is a complex area of engagement and hard to confine to its narrow 'technical' parameters. Many issues have been raised above, and considering these from a 'second economy' perspective in order to propose recommendations for urban investment or interventions is challenging. This section considers some suggestions in this regard, grouped into the broad categories of regulatory intervention, raising debate, public space initiatives, the private sector and the market, land and housing, an rights and finance.

### Regulatory interventions

#### 4.1 Legal and regulatory reforms

The legislative impasse around certain land and planning issues needs high level leadership and resolution. There are deep complexities here, and several issues involved. These include the relationship between spheres of government and identification of competencies and responsibilities. Stephen Berrisford Consulting (2008) caution however that law reform is not a quick fix, and that it can have unintended consequences. They argue that regulatory impact assessments are useful tools in carefully thinking through what essential, specific and targeted interventions are worth doing that will be of assistance.

Encouragingly, 'planning and land-use management were identified with ASGI-SA as key areas requiring institutional reform' ...because many investment projects are held up by the weakness of systems or cumbersome procedures (Harrison et al 2008: 71)

Ovens et al offer some hope words at the end of their analyses of the nature of the 'ongoing institutional exclusion of the poor from land in South African cities'. They claim that this institutional exclusion 'is a result of both the failure to rid cities of Apartheid land use management and the unintended consequences of the introduction of new land use management practices (and that ) the nature of the exclusion stems primarily from the differential treatment of the poor by government in land use management and not from the existence of a parallel informal urban land system'. They suggest that 'with the requisite political will, government has the potential to rectify the situation and improve the access of the poor to urban land through institutional reform. Achieving this change requires a paradigmatic shift in how urban planning is conceptualised, funded and applied. (Ovens et al 2007: 28, emphasis added). Political will is key however.

## **4.2 Deeper investigation and conceptualization of what needs to be regulated and how to do this**

Seemingly we could have much to learn about approaches to regulation from similar contexts such as in Latin America, South East Asia and other parts of Africa. In addition more focused investigation and learning from many of our own neighbourhoods would be of value. Ovens et al (2007) indicate there is little in the international literature to offer with regard to land management, but other forms of investigation and sharing of experiences need to deepen our understanding and to inform what activities to regulate, and how to do this (Abrahams 2008). Further 'intelligence' is needed. Those cities and provinces crafting new approaches in land use management offer sites of learning. Pilot projects in specific localities are also important in testing ideas, and in informing and educating all parties on new approaches.

## **Raising debate**

### **4.3 Discussion, debate and conscientising**

There are many people involved in aspects of land use management or whose activities intersect with land use management. However people have very different perspectives on the matter. An important move would be to raise debate on various issues, to assist in the process of identifying key contestations, deepening discussion on these and ultimately in changing mindsets in this regard. Part of this involves engaging in the debates and interpretations about the nature of the current context. Several examples could be found in the issue of 'informality' in various forms, where starting to 'see things differently' could have much value: seeing opportunity in the symbiotic relationships between formal trade and unauthorized activities on the fringes for example. A key part of this is making people and activities visible – 'seeing' people involved in second economy activities with spatial components/ consequences, such as informal recyclers. At the moment much informal activity is potentially labeled by many key players in the urban arena as bad, lawless, anarchic, and the possibility of seeing things differently needs to be explored. This debate is needed at many levels, including discussions in particular areas of the city amongst users, discussions with politicians and key decision makers, and amongst professionals. Discussions could take a variety of forms, and need careful conceptualising and targeting. Some of the ideas contained the 'land professional development' document by Zack et al (2007) could be drawn on here, including the need for a champion, for

appropriate ‘hooks’ and appealing entry points into the debate for particular participants<sup>26</sup>.

## Public space initiatives

### 4.4 Interventions in the public realm

The use of public space in support of some activities of poor people needs to be taken much further. Specific targeted interventions in key sites could fairly easily be conceptualized, and implemented (although there would be jurisdictional and other difficulties to negotiate amongst property owners and authorities). Capital expenditure on various facilities and amenities in public spaces (as described earlier) would in some instances need to be supported by operational expenditure. This would be aimed at supporting informal traders in some instances, but also at supporting commuters and other users of these public spaces. The experiences of Durban, and other cities could be drawn on in this regard.

### 4.5 Fulfilling obligations in poorer neighbourhoods

Poorer residential neighbourhoods suffer from various conditions that represent a failure of the state to fulfill all its obligations (Himlin et al 2007: 67). This has three aspects to it. Some conditions in these neighbourhoods relate to the lack of additional investment into the area – such as street lighting, pavements and parks; some relates to the lack of maintenance of public infrastructure, such as stormwater and roads; and some relates to the lack of operating budgets to run facilities and amenities. These concerns raise a variety of issues in relation to the notion integrated development, a subject of much discussion in recent years, but which could be given a fresh impetus when considered from a ‘second economy’ perspective.

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<sup>26</sup> Crime and the economy is also a fruitful area for debate, through understanding the impact on poor people of the paralysis caused by fear of crime (translating into fear of employing casual labour, fear of picking up hitchhikers and assisting people with transport etc).

## Private sector and the market

### 4.6 Relationship between planning and economic development and the market

This is a complex area which lacks debate at the moment. Many problems have been identified but few solutions. Ideas on how to tackle this drawn from Zack et al (2007) include specific training of certain public sector planners in property market and economic issues, as well as the targeted deployment of skilled professionals into certain local authorities to negotiate and drive particular negotiations with the private sector. This would be around possible contributions or 'planning gain' to be negotiated with developers. This negotiation takes a level of skill, experience and application of judgement, and is an area where aspects of current thinking (eg those initiated through the UrbanLand Mark programme – see Brown-Lutango (2006) and Harrison (2008)) could be taken forward and applied.

### 4.7 Institutions and actors

In certain identified pilot areas various parties could be brought together into a forum-type situation, to negotiate the creation of wider opportunities generated by a particular private sector or state-led development. There is considerable experience with development forums in some cities, and this needs to be extracted for application to this context. Professionals could be allocated to play an advocacy role in support of certain stakeholders in negotiating their benefits from such developments<sup>27</sup>.

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<sup>27</sup> many of those involved in some aspect of thinking about land and the poor in the Zack et al study 'highlight the important role that NGOs have played in the career paths of professionals involved in making land markets work better for the poor' (Zack et al 2007: 25) - but NGOs are now short staffed and have lost many experienced professionals (ibid: 32)

## Land and housing

### 4.8 De-linking access by the poor from association with land and housing

Access by the poor to the opportunities of the city needs de-linking from an automatic conflation with land and housing ownership. Whilst the low-income housing programme remains an important initiative of government, access by the poor needs to be much more broadly conceptualized, and supported. This includes access to and co-use of some sites of economic opportunity in the city. Some projects, and some local authorities have initiatives in this regard and this learning needs to be built on. Ovens et al note that 'Pro-poor spatial policies and land use interventions should be informed by the multiple requirements of the poor, and specifically their need for access to economic and social opportunities and services (Ovens et al 2007: 17).

### 4.9 Land and housing developments

There is much critique of the low density one-house-one plot nature of RDP housing in South Africa. However this approach could offer some benefit if it facilitated forms of economic activity on the site, including sub-letting of outside rooms. However the economic linkages possible through housing delivery are weakly developed and deserve some focused attention and engagement, from a variety of perspectives.

## Rights and income

### 4.10 Property rights and the urban financial system

Some of the underpinnings of the land management system relate to the seemingly untouchable nature of private property rights. This is an extremely sensitive area for engagement, but unless it is tackled and confronted, prospects for significant redistribution remain limited. Experience needs to build on those few pro poor developments in contested parts of the city which have managed to proceed, and on how negotiations with adjacent land owners can be handled.

In addition, and critically, this issue needs to engage with the relationship between property values and the financial system of local government. Berrisford and Kihato offer direction in this regard:

*'it must be demonstrated that the individual losses suffered by certain property owners and developers are outweighed by the overall savings for the system as a whole. This in turn requires a much more sophisticated and nuanced understanding of the relationship between land use regulation and property-based taxation. From this, a cogent argument can be proposed around the various ways in which the state can and should influence the land market forces' (Berrisford and Kihato 2008; 395)*

The suggestion is thus to investigate the financial implications, perhaps in relation to a specific pilot project, and from this to develop the 'cogent argument' needed. Presumably the financial argument that is made needs to be conceptualized widely, and to engage with a range of costs to both the city and the individual that can ultimately be linked to location and income-based agency, including costs of transport, the cost of health, education, bulk services and so on.

This needs engagement between cities and other spheres of government. In this regard Smit notes that big cities are very weakly represented in South Africa's intergovernmental decision-making structures. There is a general weakness of municipal representation in provincial ministerial and MEC meetings (MINMECs) plus an absence of a big city agenda there (Smit 2007: 9, 12). Smit notes that there is insufficient awareness at national of the importance of the 'functioning' of major urban areas to the achievement of ASGISA targets. The 'production platform (infrastructure, service delivery etc and associated urban management issues are crucial in this regard' (Smit 2007: 16, 17).

Land management systems contribute to the financial sustainability of municipalities, in both direct and indirect ways. The payment of rates by property owners provides a direct source of revenue to the cities. Selling off land or rights to develop and occupy public land are also other revenue generating options, but caution must inform such decisions. Simply regarding public land as an investment asset can have detrimental long-term implications and can run counter to operating in the 'public interest'. The implementation of effective land management systems can also ensure that cities' ongoing operational costs are reduced, for example, through the promotion of more compact, multiuse spaces, reducing the ecological footprint of future city development, and explicit targeting of poverty alleviation through spatial planning and development and redistributive measures (Ovens et al 2007: 18).

'the property rights focus in the South African constitution reflects a preoccupation with the rights of landowners. This contrasts with Latin American balance in focus between rights and responsibilities. The social responsibility of landowners in relation to surrounding land uses and to the needs of poorer communities is highlighted in land practice in several Latin American countries (Fernandes cited in Zack et al 2007: 10)

Several of the suggestions above lend themselves to a 'pilot project' approach, where a specific site is identified for testing of new approaches: a particular form of housing in an established well-located area, with a related cost-benefit analysis; an experimental land use zoning; pro-poor initiatives on a key public site and so on. This approach allows progress to be made in the face of several large, complex issues which need to be tackled but which can induce paralysis due to their sensitivity or embedded structural nature.

## Other recommendations

### 4.11 Further specific recommendations on land management come from others

From Ovens et al (2007):

- A conscious rejection of existing urban land use management practice across the spheres of government is essential, as current practice does not serve the interests of the poor.
- A paradigmatic shift on urban land use needs to be defined that will frame the various reforms that are required to make urban land work better for the poor. This should include both a value-based position, an understanding of what tools are available to manage land differently and an empirically informed understanding of the status quo.
- Within the increasingly sophisticated strategic planning process that rests on the IDP, the role of land needs to be given greater prominence so that the comprehensive land-linked interests of the poor are presented.
- Treasury needs to better understand the fiscal implications of the cost associated with differential forms of land development for the poor and the long-term effects on the financial sustainability of municipalities.
- The land assets of the State Owned Enterprises can be much more effectively harnessed to achieve meaningful urban poverty reduction and integration. Land released for the urban poor may need to be excluded from the imposition of market related pricing by State Owned Enterprises.
- Co-operation on the State's own land release and development needs to become an intergovernmental priority.
- The urban land use management system nationally needs to be radically reformed and simplified to ensure a unitary, transparent and implementable system.
- The integration of heritage, planning and environmental professionals within the unitary land use management process must be addressed.
- Land use enforcement in poor areas needs to be resourced and capacity needs addressed. (Ovens et al 2007: 34)

Klug and Naik suggest there is a need to better integrate land use planning and transportation policies and their associated legislation when planning land uses and activities, both formal and informal within road reserves – with reference to strategic planning and controls.

- The CoJ needs to build skills capacity around negotiating with private sector developers in order to better extract concessions for additional public goods from developers, possibly by using bulk infrastructure provision as a bargaining tool;
- The CoJ and Provincial government need to build skills capacity around improving communication mechanisms between the various stakeholders within the various spheres of state as well as outside stakeholders dealing with land management issues.



- The CoJ needs to build capacity to keep up their property improvement valuation records in order to ensure the appropriate revenue is being paid, to better meet the city's social goals (Klug and Naik 2007: 57)

Abrahams (2008) says that 'poor households share many common concerns with those of wealthier residents around the use of and enjoyment of their living space and do want some protection from nuisance, from unscrupulous landlords, and want certain safety and health standards upheld'. More research is needed on what the needs of the poor are in this regard and how these can be facilitated.

In considering these issues from within a planning perspective, at least, it is important to confront the limitations of planning. Zack et al note that 'all too often the outcomes of planning are not predictable. Rather they are actions taken in a vibrant force-field where many other actions, processes and factors influence the impact and outcome of planning initiatives' (Zack et al 2007: 6).

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## **Discussions**

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