

# **LAND MANAGEMENT AND DEMOCRATIC GOVERNANCE IN THE CITY OF JOHANNESBURG**

**JOINT PLANACT AND CUBES STUDY, 2007**

## **SYNTHESIS REPORT**

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# 1. BACKGROUND AND CONTEXT TO THE STUDY

## 1.1 Background to the study

The Land Management and Democratic Governance Study of Johannesburg was born out of deep sense of concern regarding current land management practices, systems and protocols in South Africa. Planact, the Centre for Urban and Built Environment Studies (CUBES) and the School of Architecture and Planning at the University of the Witwatersrand, Johannesburg identified the need for a study that critically interrogated the contemporary land use management systems and their operation at both a policy and practical level. Funded by the Ford Foundation and Urban LandMark the various partners commissioned seven pieces of work in an attempt to investigate land management.

The first element of the study consisted of an Overview Report that looked at land management at the national level and drilled down to the metro level by examining Johannesburg, Mangaung, Cape Town, Buffalo City and eThekwin<sup>1</sup>.

The national and city-wide study of Johannesburg helped to frame and contextualise the five Johannesburg case studies. The five case study areas were chosen in an attempt to get a sense of the various settlement typologies in Johannesburg, in which different systems – social, cultural, formal and informal – are at work. Whilst the study does not make any claims of being comprehensive it does offer a series of accounts focusing on the interaction that Johannesburg residents have with land and the regulations surrounding, governing and limiting land use. The case study sites are:

- Diepkloof, Soweto
- Kliptown, Soweto
- Diepsloot, northern Johannesburg
- Fourways, north-western Johannesburg
- Hillbrow/Berea in the City's centre

Each site constitutes a separate report, which are discrete documents providing greater detail and insight into the land use management systems in operation within these areas, the contrasts, contradictions and conflicts that they result in, as well as the manner in which people make these systems, both formal and informal, "work" for them in ways that constructively contribute to their lives. The findings of the reports have then been brought together into a synthesis report, which will offer some of the details of each of the case studies. This report also examines the findings of each of the case studies and groups them under themes, which describe how land use is or is not contributing to an inclusive and equitable city.

## 1.2 Definition of Land Management

Land Management is generally understood in South Africa as the manner in which land is controlled, managed, planned for, utilised and transacted (Mahubane, 1998; Sisy, 1998). This study saw land management as having a number of dimensions including:

- a. The manner in which land is accessed and acquired;
- b. The process by which individuals, households and communities continue to have and to hold rights to land;
- c. The way in which land use is regulated;
- d. The systems by which land is developed; and
- e. How land is traded.

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<sup>1</sup> Urban Land Mark will be making the full report available in early 2008.

Land Management further embraces systems of land administration, land use management, land information management, and land taxation. In a context such as Johannesburg there are diverse systems of land management ranging from highly formal and legally regulated to entirely informal systems. They also include various hybrids, which bring together the formal, informal, and even within this very urban context, the customary. Land management is also integrally related to broader concerns of participatory and developmental governance.

The case studies focused on these dimensions and attempted to draw out the manner in which these formal, informal, and hybridised systems were being utilised by the communities and households in these areas. Many of the researchers emphasised tenure and tenure-related issues, which influence how land and property is held and protected. In part this relates to the interwoven nature of housing and land in South Africa, which are difficult to separate and often conflated. Ovens, et al, (2007) see that, "...concepts of land, housing, and services are often used interchangeably. Land is often equated with residential development and ignored for commercial, industrial, ecological, transport and recreational purposes". Although the study set out to deal with the broader issue of land, concerns around housing inevitably came to the fore. This represents both a conceptual difficulty when trying to separate out the two issues from each other and the concern of many of the respondents around issues of land and housing. It also reflects the keen sensitivity that many researchers have to matters of tenure, housing and land, and the manner in which these concerns are related to each other.

### 1.3 Key Objectives of the Study

The study was ambitious in its objectives and attempted to address some of the concerns facing low-income communities, policy makers and thinkers around land management issues. The study sought to address the partial paralysis in thinking and action in the field of land management and the anxiety that very little innovation has taken place since 1994. Kihato and Berrisford (2006) support such a perspective and argue in an earlier piece, "...very little has been done to review, revise or reform the regulatory frameworks governing urban land in South Africa. To all intents and purposes the regulatory framework inherited from the Apartheid regime remains in place". The project was also concerned with "making visible" the ways in which land management is happening in contemporary South Africa – as mentioned earlier in its formal, informal, customary and hybrid forms. For the most part the manner in which informal processes and poor people contribute economically and socially to the life of the city by utilising their spaces is either ignored or to put it simplistically under-estimated and misunderstood (Marx, 2006). The project intended to expose how these systems operate and the nature of their operation in order to grasp how they can be supported and facilitated. A further goal of the project was concerned with providing an holistic and integrated perspective on land management. To date most of the enquiries and practical interventions have been either very technically oriented, or focused at a micro-level. The project sought to provide the broader intellectual picture. It also attempted to address the fragmentations currently associated with the practise of land management.

The project has three further highly pragmatic aims, which included building capacity and partnerships within the field of land management. The work is also intended to influence thinking on issues of land management and to advocate these innovations and help to construct new and better land management policy. The final objective of the study was to assist key actors to find ways to manage land differently and better – ways that are more creative, socially equitable, and responsive to context.

With these goals firmly in mind the key normative question that framed the research was:

**"What might a land management system look like that takes seriously questions of inclusive citizenship, rights to land, and social vulnerability?"**

This question was formulated as a response to criticism that current land management systems serve mainly to support the interests and amenity of property owners, rather than addressing the needs of the most vulnerable segments of our society – who are most at risk in terms of health and safety and whose exclusion from the land market may be reinforced by regulative planning regimes (Charlton, 2006; De Groot, 2006 quoted in Charlton 2006). Through empirical evidence, it was hoped an understanding of: the nature of land; its use, management, acquisition and transactability; and its development (for all segments of the population) could be unpacked, to inform policy and practice recommendations at both the specific site and more general scales.

## 1.4 Background & Context: Five Case Study Sites

The five case study areas were chosen as a way of representing specific kinds of communities and contexts in Johannesburg and their response to land management. Initially the study hoped to take a full transect through Johannesburg but due to time and budgetary constraints, choices had to be made as to what would be most informative case studies when thinking about land management and issues of poverty, inclusion/exclusion, social justice and the unequal spread and application of land management systems. As such the chosen sites were intended to provide insights into specific settlement typologies:

- **Hillbrow/Berea** – the ‘inner city’, and older and more densely inhabited area of Johannesburg.
- **Diepsloot** – a younger, peripherally located settlement with both formal and informal aspects.
- **Kliptown** – an established township community with deep historical roots in Soweto and a very significant informal component.
- **Diepkloof** – an older and largely formal township settlement with a large number of residents who have been granted title to their units
- **Fourways** – an example of the burgeoning middle- to upper-income developments on the City’s edge, where formal middle- to high-income mixes with considerable informal enterprises operating in the vicinity.

Providing some background to each of the sites and introducing the formal land use systems in place in these areas will help to understand the dynamics and conflicts around land management, regulation and use in these areas.

### 1.4.1 Kliptown



#### Socio-Economic Conditions

Kliptown is situated in the heart of Soweto and is one of the oldest parts of the city, established in 1903 as a resettlement area for people who were removed from the “non-White” locations close to the Johannesburg CBD. Kliptown was initially intended as a buffer zone between Soweto and Eldorado Park, and for most of its existence fell outside of the City’s municipal boundaries. As a result Kliptown developed fairly autonomously and was excluded from investment in infrastructure. At present the area is still typified by a lack of infrastructure and has large numbers of people living in backyards and shacks. Access to potable water is mainly available through standpipes; sanitation is provided by flush toilets in 16 200 households, and communal mobile chemical toilets in the more informal parts of the settlement. Kliptown enjoys few amenities with no schools of any level, only two informal crèches and the nearest hospital located 15km-20km away. The most recently available statistics for Kliptown are from 2004 and estimate that almost 85% of all households live in informal structures. The Greater Kliptown area is constituted of three wards: Dlamini, Eldorado Park, and Pimville and according to the 2006 City of Johannesburg Report has a total population of 85 378 people (Himlin, et al, 2007).

The area is also characterised by a great deal of unemployment: 60%-70% of a potentially employable 41 994 individuals have been unable to find work. As a result average monthly incomes are extremely low, with almost 16% of the population reporting no monthly income and the average income per household ranging from R1 600 to R3 200 per month (Himlin, et al, 2007). The education levels are significantly low and the consequences of the lack of past educational opportunities and current economic possibilities has meant a large proportion of the residents are living off piece-work, informal activities and government provided social grants.

### Land Management and Land Use

Kliptown has a thriving informal economy but relatively few formal businesses and commercial activities, most of which are situated on the periphery of the area. Most people access transportation either through the Kliptown railway station or mini-bus taxis; both rail and taxis connect Kliptown to other parts of Soweto and central Johannesburg. Open space is somewhat limited and the majority of vacant land is constituted by the Soweto Country Club to the east of the area. It is a free golf course but some of the land has been taken over by the government for rental housing units. There are no recreational facilities in the informal settlements with most of the land committed to housing and informal trading.

The historical significance of Kliptown – as the place where the Freedom Charter was adopted at the Congress of People in 1955 – has been recognised and capitalised on. The Walter Sisulu Square of Dedication and its surrounds, located on the original Freedom Square, has been redeveloped to attract the tourist trade and create a residential and commercial node. The redevelopment of Kliptown, driven by the Gauteng Provincial Initiative Blue IQ as well as various City of Johannesburg departments, has thus far included:

- The construction of a 250 bay taxi rank;
- The relocation of 300 informal traders to the north block of the Square;
- The establishment of business support and environmental centres;
- The completion of the “People shall govern” museum;
- An operational tourist centre;
- Upgrading of the sewerage system; and
- The recent opening of a four-star hotel.

There are a number of other plans, most of which are around the upgrading of roads, facilities and housing according to the Johannesburg Development Agency’s (JDA) Kliptown Development Framework Masterplan. The plans for the Walter Sisulu Square of Dedication do not seem to address the realities of spontaneous trading, home-based enterprises, community gardens and public space that are part of daily life in Kliptown. Although the plans have been made in consultation with a number of stakeholders and community members, there is still a general feeling amongst residents that the needs of the poor remain excluded from the plans and masterplans the city is devising.

### 1.4.2 Diepsloot





## Socio-economic Conditions

Diepsloot is a much newer low-income settlement that was established in 1994, in order to accommodate a number of people who were relocated from Alexandra township and other informal settlements. It is located on the far north-eastern edge of Johannesburg, 20km from the Johannesburg CBD, and is comprised of two wards (wards 95 and 96) and a total of almost 6km<sup>2</sup>. It currently hosts between 21 000 – 23 000 households, 76% of whom live in informal housing. Unemployment levels are at about 54% and almost three-quarters of the population are living below the poverty line, with most people reporting that they have no monthly income. Those earning an average monthly income are on the lowest rungs of the economic ladder earning between R800-R1 600 per household (Himlin, et al, 2007).

Water is supplied through standpipes to the majority of residents and there are problems with water pressure and supply. The earlier sub-standard infrastructure that was put in place when the settlement was first established has meant the sewerage system is both inadequate and dangerous, as the manhole covers have a tendency to come off and flood the streets with raw waste. Tared roads, street lighting and drainage have also been identified as either lacking or inadequate for the settlement. There are more facilities and amenities in Diepsloot than in other low-income communities, and the area boasts one library, two informal playgrounds, three community centres, two clinics, and four primary schools. These facilities are useful, but woefully inadequate for the current 60 000 inhabitants of Diepsloot – or the large numbers of new residents joining the settlement every year.

## Land Use and Management

Diepsloot West was proclaimed according to the Less Formal Township Establishment Act in 1994, to try and accommodate large numbers of displaced families very quickly. In 1996, with the displacement of residents from Alexandra's Far East Bank, a further parcel of land was created as a reception area. The official status of Diepsloot was clarified in 1999 when the Northern Metropolitan Local Council, who were in charge of the area, recognised Diepsloot as a permanent area and in terms of the provisions of LFTEA were able to transfer the ownership of stands to residents. The original plans to accommodate the people who had been moved to the area fell apart after 2001, when more and more people were 'dumped' in Diepsloot as they were removed from other areas. The different parts of Diepsloot have, therefore, been established, proclaimed and developed using a range of different regulations and legislation:

- Diepsloot West (the original township) was proclaimed using LFTEA and has 1 124 formal units, and almost 4 000 backyard shacks.
- The Diepsloot West Extensions were developed in a co-operative project between Elcon Developers and the Council and accommodate 6 015 households in formal townships established under the Township Ordinance of 1985.
- The Reception area was recognised by Council and has 7 000 informal structures.
- There are also parcels that have been proclaimed using the Development Facilitation Act but the location of these remains unclear.

Informality of land use predominates; informal traders, mostly of a survivalist nature, are established along most of the main roads and taxi routes. Although a taxi rank does exist it is considered too far out of the way, and taxi drivers prefer to solicit business by driving through the settlement and picking up customers. Unlike other parts of Johannesburg, by-laws regarding informal trading have not yet been developed for the area but they are apparently in the process of being developed and will soon be implemented. There are formal commercial businesses along Informal Settlement Road, and there are plans to provide a shopping centre and more formal commercial activities within the settlement. A further issue concerning land management is the location of settlement on the City's contested urban development boundary, which restricts any further northern or eastern development. The logic governing this regulation is concerned with trying to curb the worst excesses of urban sprawl and associated problems. Unfortunately, the reality is that if the housing backlog is to be addressed using the current "one household, one stand" policy, a space approximately double that of the existing settlement will be needed to accommodate the existing informal population of Diepsloot (Himlin, et al, 2007).

### 1.4.3 Hillbrow/Berea



#### Socio-Economic Conditions

The suburbs of Hillbrow and Berea, which are located very close to Johannesburg's CBD, are two of Johannesburg's oldest suburbs. First proclaimed in the 1890s they originally housed middle- and upper-income white families. They were considered well-located and had excellent transport links to the city centre and the amenities and facilities that original CBD provided. At first both areas consisted of series of semi-detached row houses, but by the close of the 1920s Hillbrow saw the beginnings of densification with the growth of low rise three-four storey blocks. In the 1950s these gave way to high rise, high density living of multi-storied apartment blocks (Silverman and Zack, 2007). The high density lifestyle was supported by a range of recreational and commercial uses, with a number of bars, restaurants and small shops and boutiques supplying the middle classes with their entertainment and goods. Hillbrow attracted many of the City's European immigrants, who found echoes of the modern lifestyles of their native cities in this very chic suburb. Berea by contrast retained its more residential character with larger numbers of schools, religious buildings, and parks (Ibid.).

By the 1970s banks were offering low-interest bonds to first time home buyers, who were moving out to the suburbs; coloured, Indian and black Johannesburg residents, desperate for housing, moved into the vacant housing stock in the high-density zones. These new residents, wary of their illegal status (Hillbrow and Berea were 'whites only' areas), generally chose not to pursue complaints regarding maintenance and upkeep and of their buildings, by then over 30 years old. As such many of the buildings began to deteriorate. Unscrupulous landlords also charged non-white tenants rentals well above the market rate, encouraging an informal system of sub-letting in order to afford the high costs. Progressively bad relations between landlords and tenants led many property owners to abandon their buildings and abscond, completely relinquishing all responsibility. Local government chose not to intervene in a situation that was deteriorating rapidly and so, by the 1990s, the area became an uncontrolled and 'lawless' community. Plagued by criminality and social pathologies it became a haven for immigrants, both legal and illegal, local migrants, and people escaping township life and looking for cheap accommodation and easy access to the city (Silverman and Zack, 2007).

The demographics of the area show a population that is young (68% are between 20-40 years old), black and transient, with almost 38% having moved into the area over the last two years. There are reportedly more men than women in the area and the average household income is slightly higher than other parts of the city. Only 10% of households report incomes of less than R1 500 a month and over a third earn between R3 000 and R5 000 a month (Silverman and Zack, 2007).

Many of the flats have been subdivided and partitioned into family and individual quarters; as such densities are estimated at about one person per 15m<sup>2</sup>. The density throughout the area is put at 135 000 in just over 2km<sup>2</sup>. Many of the buildings have not had the necessary investment in infrastructure or maintenance needed to sustain their systems. As a result, many buildings have malfunctioning or completely non-functioning sanitation pumps and lifts, as well as no water or electricity supply. The lack of these services causes detrimental affects on both the tenants and the neighbouring buildings that are affected by overflowing sewerage and blocked drains. Crime is also a concern with a number of cases of violent crime being reported in the area and many people feeling unsafe to leave their flats after dark (Silverman and Zack, 2007).

## Land Use and Management

The current land management system that is officially in place for Hillbrow and Berea is the formal cadastre and town planning scheme established in 1975. Although the formal zoning scheme is still officially in place, it has little to no bearing on the current land use and management within the Hillbrow/Berea area. The vast majority of land use is residential with formal retail activity along some of the main roads, and informal trading taking place outside of buildings, on the pavements and in open spaces. Although there are some parks intended for recreational use they are unkempt and used as taxi ranks, informal trading spaces, and places where the indigent take refuge (Silverman and Zack, 2007). There are also a number of religious institutions in these areas; they have taken over flats, houses and in some cases shops in which they hold their services and events. Shebeens, laundries, spaza shops, hairdressing services and informal crèches are also operating from any available space in these buildings.

Both areas have seen a great deal of dilapidation in the physical environment, but are now seeing large property owners and developers coming into the area and re-developing large buildings with 100 units and over. Smaller buildings have failed to attract investment as they do not pose significant profit-making opportunities. Property owners take on the role of not only renting out units, but have also instituted and agreed to alternative uses of their units including commercial home-based enterprises and religious activities. Property owners have also clubbed together and negotiated with the City of Johannesburg waste removal service, Pikitup, and other service providers to take care of the services such as waste collection that they need. In addition they have employed private security companies to guard their buildings and the streets in front of their buildings, which has meant that they control access to public space and decide whether informal trading is acceptable or not. In many ways the private property owners have taken on the role of local government and have redeveloped and are currently managing these areas.

### 1.4.4 Diepkloof



#### Socio-economic Conditions

Diepkloof (located in Soweto) was established in 1959 as a resettlement township for people who were forcibly removed from Alexandra. The settlement has a reputation for a strong tradition of political activism, which came to the fore in the previous regime. Residents of Diepkloof protested vehemently against the injustices of the Apartheid system and students from the local schools were an integral part of the 1976 protests. Today the community is still characterised by a spirit of coherence brought about by a shared history of activism and protest (Hoosen and Mafukidze, 2007).

The area is spatially divided into a number of different sections, including the original settlement typified by Apartheid-built three- and four-bedroomed houses, which house a number of the older residents of the area. Most of these homes have backyard shacks and structures, which house both relatives and tenants [of the owners]. There is also the newer and wealthier suburb known as Diepkloof Extension, which was built in the 1980s for the more affluent members of Soweto society. Diepkloof Extension has tarred roads, good services and no backyard shacks. The third part of Diepkloof is an

informal settlement of 1 289 informal structures previously called Mandela Village but now known as Elias Motsoaledi Informal Settlement, which lacks basic services and infrastructure. Diepkloof is also home to a number of hostels that since 1994 have moved from single sex accommodation to family residences (Hoosen and Mafukidze, 2007).

Diepkloof is approximately 2,5km<sup>2</sup> in size and holds a population of just under 105 000 people. It is relatively well provisioned with amenities and has a library, recreational facilities, community halls, clinics and religious facilities. However, these services are now getting old and have not been effectively maintained; they are also difficult to reach from many parts of the settlement. The population ranges from the relatively affluent in Diepkloof Extension to the poor and indigent in Elias Motsoaledi and in the dilapidated hostels most of which are considered structurally unsound (Hoosen and Mafukidze, 2007).

### Land Use and Management

The Township was originally established under the Black (Native) Laws Amendment Act, No. 46 of 1937 and later influenced by the Black Communities Development Act of 1984 both of which named the area as a place of residence for black people but firmly maintained it as an area in which black South Africans could not own land. At present the Black Communities Development Act has all but for Annexure F been repealed. The provision within Annexure F allows for residential property to be used for other purposes, including recreational, religious and commercial uses at the discretion of the local authority. Whether the authorities will grant these activities or not remains an open question. There is, however, one rather large snag regarding land and its use and management in Diepkloof, namely that Diepkloof Extension 2 has not had its general plan approved and a register has thus not been opened. As such it remains a leasehold township whereby ownership is impossible. Diepkloof Extension and Diepkloof Extension 10 have been established according the Black Communities Development Act and are deemed "freehold townships" except where indicated. Extension 2 remains a leasehold title as the conditions for township proclamation have not yet been met and until that happens free-hold title will not be available to the residents (Hoosen and Mafukidze, 2007).

Under the Land Regularisation Process the local authorities, led by the Johannesburg Property Company, are attempting to formalise property rights by identifying Council-owned properties, occupied land, and land that is still zoned as agricultural or farm portions. The final aim would be to make this land available for development and use by the public and in a range of public-private partnerships (Hoosen and Mafukidze, 2007). A commercial area designated as the Diepkloof Business District has also been approved. It is a 10ha area of Council-owned land in the middle of Diepkloof that is intended be a mixed-use area of residential, commercial and public facilities including a hospice, office park, community centre, and housing developments of various densities and types. The issue of housing is also very much in the minds of the settlement's planners, and upgrading projects for the informal settlement and re-development projects for the hostels are very much on the agenda (Ibid.).

### 1.4.5 Fourways



## Socio-Economic Conditions

Fourways is one of the most rapidly developing areas of Johannesburg, located north of the Sandton CBD. It is a generally middle- to upper-income area that is constituted of recreational, residential, and commercial land use. Of the 250 000 strong community 24% are between the ages of 20-29, marking the area as extremely young; and with house prices averaging at about R650 000, extremely affluent. Housing in the area includes boomed-off areas and gated communities, security complexes and low-density cluster housing. From the street the houses are fenced off and invisible as well as difficult to access. Private security companies employed by individual households and community organisations patrol the streets and guard the entrances to the complexes and the gated communities (Klug and Naik, 2007).

Fourways lacks public schools, clinics, and libraries, in part due to the fact that private developers dominated the area's development and designed a settlement for middle- to upper-income households, who do not generally use public facilities. It also has inadequate sewerage, water and electricity provision, even though all of these services have been upgraded over the last few years. This is due to rate at which the area has grown and the inability of the City to increase bulk services at the required pace. In stark contrast to the affluence of the majority of Fourways' residents there are also a small number of people who are sleeping rough. Evidence of people sleeping near the river and erecting temporary shelters has been found (Klug and Naik, 2007). There is also an efficient taxi system, which is a vital and necessary part of the current infrastructure; there has been no provision for the taxis needs and currently there are no ranks, taxi stands or ablutions for either drivers or their passengers. There is also a great deal of informal trading as hawkers sell goods to the motorists driving by and informal kiosks service workers in the area with food and other goods and services that they need.

## Land Use and Management

The current town planning scheme that is applicable to Fourways is the Sandton Town Planning Scheme of 1980. It designates four different residential zoning schemes, all of which include provision for other uses mainly to do with recreation and religious observances. The Town Planning Scheme also identifies four types of business zones that are wide ranging but exclude noxious industries and require special consent for liquor stores. Home-based enterprises are not disallowed by the scheme but permission is required in order to change the land from residential to business rights. Existing by-laws and decisions taken by the local community have outlawed all informal activities and hawking in the area. Signs and harassment by the SAPS are used to try and curtail, if not halt, all informal trading in the area. Public spaces other than pavements and road reserves have either been fenced off and incorporated into the housing developments or access is blocked by boom gates (Klug and Naik, 2007).

There are large commercial sections in Fourways and it boasts 60 336m<sup>2</sup> of office space all of which is A-grade and there are a number of retail developments, with well-established anchor tenants. There are also plans afoot for even more retail space to be built, including expanding the existing Fourways Mall and building the Fourways Boulevard with an adjoining office park of a further 30 000m<sup>2</sup>, the Cedar Square centre and the Fourways Lifestyle Centre. The rapid growth in commercial enterprises has resulted in a great deal of traffic congestion. There is public transport available but the majority of people living in Fourways are private car owners, and the majority of people working in the suburb use taxis as their main form of access (Klug and Naik, 2007).

## 2. LAND MANAGEMENT IN SOUTH AFRICA

### 2.1 What is Land Management? .....

Traditionally Land Use Management, its systems, devices, and regulations were used in the service of racial and spatial segregation in South Africa (Bollens, 2005). The aims of the Apartheid system were for the most part carried out through the dire efficiencies of the planning legislation and its implementation, which maintained spatial segregation and entrenched a racial hierarchy through reserving the provision of rights and services for the white minority. The irony of the Apartheid Land Management systems were that they “worked”, in the sense that the goals and objectives of the Apartheid system were for the most part successful. That is not to say that pockets of resistance did not occur and that as the old regime was drawing to a close more and more areas “greyed” (McCarthy, 2006). Johannesburg, like its urban siblings, was configured and reconfigured using the tools of planning that were at the disposal of the local authorities, in order to ensure it conformed to the segregationist and racist thinking of the government of the day.

The efficiency of the system can be clearly seen in the histories of the sites under discussion. The formal cadastre and the modernist planning of Hillbrow effectively attracted the white aspirant classes it was intended to from 1950s onwards (Silverman and Zack, 2007). The same can be said of Berea, whose more suburban landscape, with its lower densities and range of facilities attracted white, nuclear families in the 1960s and 1970s. In both cases the zoning laws and layout achieved their ends: regulated, modern spaces set aside for middle class white families and providing access to employment and facilities. By the same token, spatial laws in other parts of the City maintained and encouraged segregated spaces in which black South Africans could effectively be denied any form of franchise. Urban planning with intended divisive outcomes was disguised and camouflaged under a wide variety of linguistic and semantic euphemisms. Almost from the beginning of Johannesburg’s establishment the “non-white” population was displaced and re-settled in ways that were depicted as being “for their own good”. Beavon (2004) argues that planning and land management tools were sometimes conceptualised 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. The end result, however, was a land management system that effectively de-humanised a wide sector of the SA population (Himlin, et al, 2007; Hoosen and Mafukidze, 2007).

Although Apartheid land management systems did “work” for certain agents at certain times, they were not completely successful (Sapire, 1992; Crankshaw, 1993). They “worked” in the sense that Apartheid planners could claim large swathes of land were dominated by one “race” group, and one rates base or another; and that the minimum services, facilities and expenditure on infrastructure was certainly apparent in the “black” areas of South Africa. The groups who were on the losing end of the land management policies protested and contested these spaces through open opposition – protests, riots, and illegal occupation of land – or subversively, by quietly infiltrating and staying in areas that they were barred from (Sapire, 1992). In the late 1980s, the dissolution of certain Apartheid policies reflected a slow departure from the earlier stance of absolute legal enforcement. Some areas, such as Hillbrow, Berea, Yeoville, and the Johannesburg CBD, rapidly changed their racial demographics as the Apartheid system began to crumble and there was a need for greater access to the economic opportunities of the city (Beavon, 2004).

In the post-Apartheid era there has been a directive to ensure that all parties benefit from land and its multiplicity of uses (Bollens, 2005). In 1993, new thinking in land use came to the fore within what was the old Central Witwatersrand Region: the Central Witwatersrand Metropolitan Chamber (CWMC) developed the Interim Strategic Framework, which emphasized the fact that thinking around land use must change:

“The ISF must [...] seek to engender the patterns of urban complexity that undermine the strength of exclusionary areas (and hence conflict) and actively seek the blurring of zone boundaries and the integration of hitherto isolated areas into the mainstream of the urban system”.

(CWMC, 1993)

Post-Apartheid thinking about land management noted that cities needed to be densified and buffer zones “infilled”, whilst upgrading and renewing areas that had previously been ignored or disregarded. To add to the challenge, all of these new land management activities were taking place in an environment where land and housing policy and legislation were being rethought and re-written (van Wyk, 1999). There were in fact many prongs to the rethinking of cities and the use of space, which impacted on land management systems. Greater emphasis was placed on secure tenure, ownership, and title both as a way of the ANC entrenching its position within the hearts of a number of the previously dispossessed (Charlton and Kihato, 2006). At the same time there was an attempt to restructure the housing and property markets, through the national housing programme and its various subsidies (McCarthy, 2006). Privatising Council housing and publicly owned land had two main objectives: the first was to make sitting tenants and people of record into property owners, with the hope that home ownership would contribute to their socio-economic upliftment. The second aim was to try and ensure that municipalities and provincial governments divested themselves of the financial drain of maintaining the stock, administering rental collection and writing off any losses due to non-payment (Morkel, 2005).

South Africa’s political history has resulted in the development of urban landscapes that are enormously socially and spatially inequitable; a further significant urban feature is the existence of a number of uni-purpose nodes and settlements. Townships were essentially considered large dormitories, which intentionally lacked any business or recreational activities, and certainly no office parks. New legislation, regulation and policy had to be put in place to ensure that Apartheid cities were transformed into spaces of equity, integration, and sustainability. This meant a significant change to the way land was thought about, regulated and managed.

There have been a number of consequences to this change in land management approaches, which have had to respond to the new directives, pragmatic and technical challenges and new international and global forces. The five case studies that were undertaken in Johannesburg offer a great deal of insight into what has happened on the ground and within the institutional environment in terms of land use management in the City. They have thrown light on a range of processes that are happening at a range of levels and with a variety of actors. What follows is an analysis of the major themes and commonalities that the studies have thrown up, followed by a series of recommendations taken from the work and its synthesis.

## 2.2 Current Land Use Management: An Overview

One of the issues that becomes clear from the outset when examining land management in South Africa is the vast array of land use management and planning legislation. At the national level, there is an uninviting range of policy that has come to pass over the last 14 years. The wide variety of Acts include the tenets of the Constitution and its requirements and obligations regarding housing, land, property, and the principles of social justice (Ovens, et al, 2007); the Development Facilitation Act of 1995; the Housing Act (1997); Housing Code (2004); the Municipal Systems Act (2000); the various shades of papers from Green to White of Development and Spatial Planning (2001); and the Land Use Management Bill (2006)<sup>2</sup>. Each of which purports the noblest of intentions: to create urban areas that dispel and rid cities of Apartheid’s segregated planning ideals, and reconstruct cities of integration and equal economic and social opportunity (Ovens, et al, 2007).

Although policy has proliferated at a national, local level and micro level, “... there has been little advancement and innovation in thinking and practice around land management, and South Africa’s towns and cities continue to develop without an adequate framework for managing land development in a way that supports the goals of democracy, equity, efficiency and sustainability” (Ovens, et al, 2007). There is a general sense that little has been done to change underlying considerations and foundations upon which legal, regulatory and policy thinking has been laid. Berrisford (2006) and Parnell (2007) both argue 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.

There are other problems facing land management and, at a far more pragmatic level, there is a lack of capacity within municipalities to actually cope with land management systems. The lack of capacity occurs in two forms: the first is the

<sup>2</sup> For a full discussion of each, please see Ovens, et al, 2007 overview report

shortage of people with appropriate qualifications in land management to deal with the current demand. Those who are professionally qualified are often shuffled to other positions, leaving the least qualified to deal with complex policy and technical requirements for which they have neither the training nor the skill (Berrisford, 2006). The second aspect is the inability of those in the planning departments to have the time to access the newer legislation and to be trained in its application and implementation. Such training or support is frequently either unavailable or literally inaccessible to planners and land management professionals in smaller municipalities.

### 2.3 Land Management in the City of Johannesburg

Most of Johannesburg's land policy originated in the Apartheid era. Although some policy has been added to the previous canon, the entirety has yet to be reviewed; as such the processes and patterns of land development are very similar to those of the Apartheid period. Effectively "the City of Johannesburg (CoJ) continues to apply 12 different Town Planning Schemes across the metropolitan area, each of which is rooted in outdated principles and assumptions" (Ovens, et al, 2007). 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.

The CoJ with the Gauteng Provincial Government have added further policies and plans that attempt to respond to the changing demands of residents and developers, and the aims and goals of a post-Apartheid state and society. The list is extensive and includes: the Human Development Strategy (HDS), Jo'burg 2030, the Growth and Development Strategy (GDS), the Johannesburg Integrated Development Plan (JIDP), and the Spatial Development Frameworks for each Region (now designated by letters of the alphabet). Although many of the intentions in the mountainous documentation are broadly similar and some do align and slot in with each other, there is still a great deal to consider when even trying to think about land use planning in Johannesburg.

The land management systems have become difficult to navigate and only the most seasoned professionals with a great deal of experience have been able to attain the land and the approval that they need. 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. Thus the distinction in planning regimes between the poor and the wealthy is further, but unintentionally, supported by the provisions of LFTEA and the DFA (Ovens, et al, 2007).

The planning function in the CoJ is undertaken by the Development Planning and Urban Management Directorate who at present employ about 50 town planners but could do with another 20 at least to reach their staffing requirements. The directorate is responsible for a number of functions, including land use management, planning control and enforcement, building plans, legal administration, and outdoor advertising. In spite of its vast array of obligations they are able to process about 500 applications per month, of which 2%-3% are DFA applications that require an inordinate amount of processing time (Ovens, et al, 2007). The Development Planning and Urban Management Directorate is partnered by the Development Planning and Facilitation Department who are responsible for Spatial Development Frameworks for the City's regions. The relevant departments and staff members are stretched thin and are generally unable to devote energy, time or attention to reviewing current land management policies or coming up with creative ways of addressing obstacles and issues within the current policy (Ovens, et al, 2007).

Having said that the City is not unaware of the challenges it is facing. By way of illustration, the City is making substantive attempts to address the historical disinvestment in the Johannesburg CBD by proactively engaging in a range of inner city innovations, as well as seeking to compact the City and control the north and north-westward expansion through the Urban Development Boundary. It is also engaged in the large scale Alexandra Renewal Project and has recently set its sights on the suburbs surrounding the inner city. At the same time, the City has taken on board critiques of its housing programme and the peripheralisation of low-income communities in housing developments on the urban edges. Encouragingly the recognition of these issues is leading to discussions with parastatals, private land owners as well as other public entities around the provision of well-located land for low-income and affordable housing. The question of how that land is proclaimed, zoned and finally regulated remains one of the key issues to be considered.





**Top left:** Dilapidated apartment building, Hillbrow

**Top right:** High density living of multi-storied apartment blocks, Hillbrow/Berea

**Middle left:** Informal settlement along floodline area, Diepsloot

**Middle right:** Freedom Charter Square informal settlement and Walter Sisulu Square of Dedication, Kliptown

**Bottom left:** Informal chicken trading, Hillbrow lane



**Top left:** Narrow refuse-filled alleyways, Hillbrow / Berea

**Top right:** Informal trading, Diepsloot

**Bottom left:** Informal and formal trading, Kliptown

**Bottom right:** RDP house, Diepsloot





**Top left:** Informal settlement along floodline, Diepsloot

**Top right:** Freedom Charter Square informal settlement along railway line, Kliptown

**Bottom left:** Informal trading, Fourways

**Bottom right:** Freedom Charter Square informal settlement, Kliptown



**Top left:** Walter Sisulu Square of Dedication, Kliptown

**Top right:** Informal street trading, Quartz Street, Hillbrow

**Middle left:** Freedom Charter Square, Kliptown

**Middle right:** Rental units, Kliptown

**Bottom left:** Social Housing Units, Kliptown

# 3. FINDINGS FROM THE CASE STUDIES

## 3.1 Introduction

The previous sections have attempted to provide a context for the case study findings, which are organised around a series of themes that are common to the various sites, although may manifest in slightly different ways. The thematic areas attempt to reflect how, within certain contexts, land has been accessed and acquired, as well as what occurs once acquisition has taken place; where the conflicts and contestations lie over land use; and how regulations are implemented, ignored or in some manner distorted by both the officials and the residents for their own ends. Further, the section has attempted to show how land is developed, for whom, and what the consequences and costs of such choices have been for the people living in the case study areas. The intention is that through understanding these processes, recommendations can be made to effectively support a land management system that is considerate of the needs of low-income communities, as well as the ends of a developmental state.

## 3.2 The Institutional Environment – Profusion, Confusion and Contusions

Land management at a general level in Johannesburg is typified by a range of different policies, programmes, and actors who are all trying to improve the area in question according to the specific logic of their particular programme. The profusion of these activities within certain areas results in confusion and conflict as to what the exact outcome of the projects will be and who exactly will be involved in them.

In almost all cases that were studied, each local site has another generous number of documents, plans, and strategies for the local government official, developer or average citizen to consult. The Hillbrow/Berea area alone has eight different documents, namely: the Golden Heartbeat of Africa Vision Statement (1997); the Inner City Regeneration Strategy (2003); the Urban Development Zone Initiative (2004); the Better Buildings Project; the Hillbrow/Berea Economic Regeneration Strategy (2004); the Proposed Housing Action Plan for the Inner City (2007); the Draft Inner City Charter (2007); and the Hillbrow/Berea Regeneration Initiative (2007) (Silverman and Zack, 2007). Diepsloot has an equally diverse assortment of documentation, beginning with the RSDF for the region, which includes plans for Diepsloot; the principles of the Upgrading and Marginalised Areas Programme (UMAP); the current Development Programme for Diepsloot; the terms of the Sustainable Communities Programme; and the Spatial Planning and Housing Framework for the Northern Areas of the City of Johannesburg. Once again there is alignment between some of the documents but they do not seem to speak directly to each other.

The wealth of documentation is joined by an equally abundant number of actors, agents, interested parties and departments involved in land use management, which seems to increase on a consistent basis. Diepsloot is effectively directed by the City of Johannesburg, Department of Development Planning; it is a focus area of the Premier of Gauteng as one of his special projects; the Development Bank of SA are also partnering with the City; and the City and Provincial Departments of Housing are all working in the Diepsloot area. Negotiations around the future of the settlement are made more difficult by the multiplicity of actors in the area. (Himlin, et al, 2007). The same systems are at work in Kliptown and Diepkloof, whereby the variety of documentation and the profusion of actors aid in making the systems cumbersome and generally limit coherence.

There are other elements which add to the confusion. The new legislation has been overlaid onto the pre-existing lattice of land legislation and regulation that has not yet been taken off the books e.g. Annexure F of the Black Communities Development Act (1984); the Town Planning Ordinances 15 of 1986; the Johannesburg Town Planning Scheme (1979) and the City Of Johannesburg's by-laws (Kihato and Berrisford, 2006).

The consequences are inevitable and as the Soweto Investor Prospectus of 2005 puts it, the result is "...a fragmented and disjointed administrative process" that exists both within areas of the City and across the city itself (cited in Hoosen and Mafudikze, 2007). In the Hillbrow/Berea study a number of respondents mentioned how little coordination there is within

and across the various departments, as various directorates who are generally uncertain of the overall strategy carry out their respective and discrete operations with little to no communication with other government officials or interested parties. The profusion of both policy and departmental, state, NGO and parastatal involvement has meant that there is a great deal of confusion regarding what should be done and by whom. The confusion has meant that limited changes have taken place in some areas and that the potential usefulness of land management for positive change has been severely retarded or lagged behind what is actually needed on the ground (Mpondo, 1999). The lack of coherence and the constantly shifting environment, combined with little or no results for those on the ground has meant that certain communities have lost faith in the Municipality and are increasingly unwilling to engage with the Council or its representatives arguing that it is quite simply a waste of time (Hoosen and Mafudikze, 2007).

### **3.3 Accessing and Acquiring Land and Property: Empowerment, Disempowerment and Maintaining The Status Quo**

The consequences of the current system are many and are often in direct conflict with the intentions of the system. Land management and new spatial policies were intended to change the shape and segregated morphology of SA cities (Bollens, 2005). Part of the project was to change the existing structure of power so that those who had previously been disempowered by the land and property laws could gain some sense of self-determination in the new dispensation. Unfortunately the project has not been as successful as could be hoped for. At two different scales, the macro and the micro, or households, level, the system does not appear to have achieved its aims.

By way of example private developers have realised the enormous value of utilising the Development Facilitation Act as opposed to Land Use Management Act (2006) or Annexure F or the Town Planning Scheme. The DFA is a faster and more efficient tool by which private developers are able to quickly access land and rezone it, as the Act defines specific timeframes for government officials to work to. The profusion of legislation and regulation makes planning and land use management fertile ground for experts, consultants and professionals who are able to understand the system and exploit it to their best advantage. On the other side, local government officials who are responsible for the development of low-income housing are faced with land use and housing policy that is long, drawn out and highly inefficient, whilst being riddled with countless expectations and obligations. The end result is that across the case study areas there are repeated patterns of good delivery of higher-income, privately developed housing, and slow delivery of low-income housing. The end result is simply that the large companies with their host of consultants are able to maintain power and profits whilst the local authorities and communities have benefited little from the new legislation.

The same can be said for the micro or household level. Two processes of intended land use management and formalisation have, in some communities, effectively backfired. The involvement of the banks as a source of credit for low-income home-buyers within the formal market has been seen as only working in favour of the buyer. The banks, generally unaware of the local property prices, evaluate the house purely in terms of its structural and other physical assets and defects and as such offer potential clients lower bonds or loans than the sellers are demanding (Hoosen and Mafudikze, 2007). The result is that home owners who previously could have attracted higher amounts to their properties when left to informal processes, feel penalised by having to go through legal and formal transactions. Formal sales are also seen by community members as having to involve lawyers and other experts who are not always sensitive to the needs of their clients and who “usurping decision-making powers, demanding payments and sometimes pushing down prices” (Hoosen and Mafudikze, 2007). The end results are home-owners who, instead of feeling empowered through the formal transactional process, feel disempowered and their needs unmet through the formal process.

### **3.4 Gaining access? Fragmenting, Enclaving and Fortifying the City**

The consequences of the current land management system are quite diverse and some of the social and communal elements have already been discussed. The spatial consequences also bear analysis. Land management has contributed to the re-creation of a series of territories across the city; in some cases these have meant that class structures have become apparent in spaces where the differentials were previously not as stark. These include the development of certain kinds of precincts, such as the heritage zone in Kliptown, with its social housing units, which have meant that the area is now socially and economically fragmented into those who have access to these spaces, utilise them, and those who quite

simply derive limited or little benefit from them. The support of only formal activities and the consistent criminalisation of informal activities has re-inforced a mythical dualism between the two sectors and ensured that only one kind of activity is spatially legitimised.

The fragmentation is also apparent in informal settlements, where newcomers are looked at with suspicion and chased away due to the threats and promises of the local Council. The competition for resources is thus so fierce that the notion of “us/them” becomes entrenched and manifests spatially as informal communities literally close their doors to new households seeking shelter. Older communities, both formal and informal, see themselves as having to protect their interests from younger generations, newcomers and foreigners. The consequences of these land use changes and the existing system has been to reconfigure to some extent the idea of who is and who is not part of a particular group/interest and thus who should be allowed access and who should be denied it. Essentially the new system has fragmented society along new fracture lines and has entrenched other longer-standing divisions.

Spatially, the result has been a series of enclaves or even more extreme versions, where communities are fortifying themselves against external influences. Enclaving may be seen as a series of activities and communal actions that promote the spatial and other resource interests of a specific group within a certain area. It could be argued that the manner in which the older generation in Kliptown and Diepkloof is looking after their best interests, through denying certain kinds of outside interventions, are forms of what is referred to as “enclaving”. Enclaving can be described as a way of fortifying certain areas, such that they are spatially ringed off/divided from the surrounding areas, and in some very profound ways are cut off from the rest of the surrounding community. On reflection there seem to be some extreme forms of enclaving taking place in other areas of Johannesburg. Diepsloot seems to have elements of that within its larger informal constitution. Certain areas seem politically and socially dominated by some groups, the Councillor from Ward 96 identified, “we have blocks that are controlled and owned by foreigners. The leadership of the Community Policing Forums (CPFs) of these areas are also foreigners” (Himlin, et al, 2007). It would seem that the social fragmentation in these areas has become so marked that it has manifested through a series of spatial expressions, in which foreigners and locals have divided themselves up. In Fourways the sense of fortification is even stronger as the gated communities are very much in evidence and much has been written on the fortification of these higher income communities<sup>3</sup>.

It is the Hillbrow/Berea area where enclaving is probably at its most extreme. Due to the threat of crime and violence, and the sense of having similar class and resource interests, certain buildings owners in the area are attempting to provide their residents with a range of activities, such as hairdressing, crèches, churches, and small spaza shops within the confines of the buildings themselves. The intention is to ensure that residents do not have to go outside their buildings to have their needs satisfied (Silverman and Zack, 2007). In other cases, where there is less organised control, enterprising individuals have realised that there is literally a captive market for certain goods and services and have set up shop in some of the units. The buildings seem to harbour fairly homogenous communities. This is due to a system of self selection, where individuals and households who are able to pay similar rent live in specific buildings. The process also goes a step further as the choice of where to live is influenced by an individual’s sense of identity, and a person may choose to live surrounded by other people who he/she sees as similar. Many of the buildings in the area are fortified against the outside world; who is allowed in or out is controlled; and these buildings contain homogenous and in many ways self-sufficient communities (Silverman and Zack, 2007).

### 3.5 Land Use: Regulation and the Modernist State

There is clearly a huge variety of legislation, policy, strategic documentation, and a proliferation of bodies. Silverman and Zack (2007) following Gotz and Simone (2003) argue this is the result of the South African State attempting to create a modernist enterprise. In this “...the State ascribes specific roles to specific urban actors in specific places” (Silverman and Zack, 2007) and relies on the “spatial and social fixity” of the communities and challenges that it is trying to deal with.

<sup>3</sup> See for example; Ballard, R., 2005: *Bunkers for the Psyche: How Gated Communities Have Allowed the Privatisation of Apartheid in Democratic South Africa*, Dark Roast, Occasional Paper Series, No. 24, [http://www.isandla.org.za/dark\\_roast/DR24Ballard.pdf](http://www.isandla.org.za/dark_roast/DR24Ballard.pdf); Landman, K., 2005: *Private space – ‘private citizen’: what kind of cities are we creating? Paper for seminar on Enclosed Communities: property and public space in post-Apartheid South Africa*, 7 November 2005, Constitutional Hill, Johannesburg; Lemanski, C., 2005: *Spaces of exclusivity or connection? Linkages between a security village and its poorer neighbour in a Cape Town master plan development* Dark Roast, Occasional Paper Series No. 21, [http://www.isandla.org.za/dark\\_roast/DR21%20Lemanski.pdf](http://www.isandla.org.za/dark_roast/DR21%20Lemanski.pdf)

The five case studies capture numerous moments when the State and its agents attempt, through the regulation and regularisation of space, to control the actions and activities of its citizens. There are a number of examples of control in the site: within the informal settlements, the Johannesburg Property Company (JPC) or one of the other local bodies has issued bar codes to each of the shacks, in order to create a waiting list of households who need formal accommodation and to try and ensure some degree of “fixity” within these fluid environments. The general thinking is that by matching a shack to a household, to a stand and to a number, the household in question will be tied to that space, easily found, identified and will thus benefit from the housing process (Hoosen and Mafudikze, 2007). Households in Kliptown, Diepkloof and Diepsloot have all been given bar codes or B-forms or C-forms, which are used by the authorities to identify them as having a place on the housing list; or being an orderly queue that allows people to be given housing in an systematic and organised fashion (Himlin, et al, 2007; Hoosen and Mafudikze, 2007). Informal communities have also been made complicit in this control as they have been forced to manage or stop new entrants into their settlements. Backyard shacks have also been targeted for regulation, and in Kliptown there are now some rules as to how many shacks may be built in a formal home’s back yard.

It is, however, not only housing and informal dwellings that are being monitored and controlled, but also informality in other guises. There is a general and quite pervasive idea that informal trading is the first step in a slippery slope from disorganisation 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). Such thinking implies that there is a set of stages that lead to crime and criminality, and which begin with littering and dirt. Royston and Narsoo (2006) have commented on the fact that the existing dichotomy or binary that regards “informal” as something which is opposed to or opposite to the formal means that informality in all of its formulations can only be seen as that which is illegal or oppositional to order and notions of modernism. Formality and informality could probably be more usefully understood as standing in a number of complex relationships to each other, in some cases mutually dependent or mutually beneficial. However, 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.

In Kliptown, by way of illustration, a list of projects that have been completed include: “the construction of a 250-bay taxi rank; 300 traders have been allocated space ... at the north block of the Square” (Himlin, et al, 2007). In Diepsloot, the Development Programme identifies “the formalisation of existing small businesses” as a key intervention (Himlin, et al, 2007). The Fourways area hosts a number of informal traders, whose activities are not catered for other than the provision of a single taxi rank in the area. The method of control is far more direct and involves the Johannesburg Metro Police Department simply fining and confiscating the informal traders’ goods and telling the informal traders to leave (Klug and Naik, 2007). The police have the authority and are supported by the city’s by-laws, which state that hawking and begging are illegal. Officials indicate that Kliptown and Diepsloot, which have been un-regulated up until now are in the process of developing by-laws to control informal trading (Himlin, et al, 2007).

There are further elements in terms of the control of land use in Johannesburg. In Diepsloot and in Fourways there is the need for more land for development for all sectors of society. Land is generally difficult to access and its cost makes it prohibitive for low-income households or housing projects, but there is another issue that is exacerbating the land shortage in these areas. The Urban Development Boundary (UDB) means that there cannot be any development beyond a certain designated point (Klug and Naik, 2007). The land use logic behind the UDB is to ensure that the already sprawling city of Johannesburg maintains a more compact configuration into the future. There are further complications surrounding the UDB due to the lack of agreement between the City and the Province as to exactly where the line should be drawn (Klug, 2007). In the end it is low income housing projects that suffer. In the case of Diepsloot, those in charge of the development programme have realised that the mass of people who have been “dumped” into the area have essentially nullified previous housing plans as they are insufficient to deal with the new entrants into the settlements and the natural growth that the area is experiencing (Himlin, et al, 2007). However, due to the UDB new land for housing development is unavailable and will not be released for development.

The laws and regulations that are on the books are certainly an attempt to control the use and management of land use in the city; it is the manifestation of the underlying belief that the city must be ordered and controlled. A system where informal activities and uncontrolled growth at any scale are dangerous and should be stopped. The reality is 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. Land use regulation and management currently tries to order what it sees as disorder but in doing so creates obstacles for informal entrepreneurs and potentially jeopardises survivalist strategies.

### **3.6 Community Conflict and Cohesion: The Cadastral and Zoning Schemes**

Another feature of the current land-use environment is the wide range of conflicts and contestations that various land use and land use practises are causing across the landscape. One of the issues is the conflict between the formal regulation of an area and the actual interaction that is taking place, whilst more commonly it has to do with the social and communal expectation of land use and how it is carried out versus what has been traditionally sanctioned. The conflicts in many respects point to the varying needs of the different sectors contained within geographical areas.

Issues between the Municipality and the local communities take a wide range of formulations. These include the sense that the economic activities and opportunities that have been set up within low income areas, such as the Diepkloof Business District or the Kliptown precinct surrounding the Square of Dedication, do not offer sufficient benefit to the existing community. They are seen as promoting outside and higher-income interests whilst ignoring the needs of the pre-existing communities (Himlin, et al, 2007). Even the housing opportunities such as the rental and social housing that is proposed, or in the Hillbrow/Berea case already in place, does not seem accessible to the lowest income groups in these areas (Himlin, et al, 2007; Silverman and Zack, 2007). The situation is made worse in some areas where the system by which people are housed seems opaque at best, and informal dwellers from other areas that have been relocated are seen to get houses ahead of local community members.

Within the older parts of Soweto old township housing with backyard renters is considered a “normal”, acceptable and even desirable addition to most households, providing housing for extended kin-networks or main or additional income (Himlin, et al, 2007; Hoosen and Mafudikze, 2007). The regulation and formalisation of these backyard shacks is seen by some home owners as unwelcome interference into a system that has been quite functional for a number of years. The system creates a great deal of tension between the various communities, the developers and the Municipality as well as a mistrust of “new” people moving to the accommodation, either RDP or social housing, that is provided. The end result is a lack of communal cohesion and an entrenchment of the sense that the community is alone struggling against a series of external forces and the Municipality takes on the guise of that which needs to be struggled against rather than worked with.

There are also a series of intra-community dynamics and conflicts which are raised through the question of land and housing. In Diepkloof, a younger generation of home-seekers supported a Municipal project to build higher density flats on a piece of open ground. The older residents in the area objected and effectively halted the project, which meant that the younger residents had no choice but to carry on renting backyard units from the older generation (Hoosen and Mafudikze, 2007). In Kliptown, tension also arose due to the illegal selling of shacks, B-forms, C-forms, government bar codes and a myriad of other housing documents. People buy documents and barcodes, with the belief that they are purchasing a place on the housing waiting list or the right to a house. Unfortunately none of the documents are actually transferable in this way. As a result households may be evicted by original tenants who want to come back and who have a legal claim. Alternatively they come up against the authorities, who do not recognise the purchase of the document as conferring a right and households have to then formally apply for their own place on the waiting list (Himlin, et al, 2007).

There is a general dislike of newcomers into well-established areas, whether they are “foreigners” or migrants from other parts of the country or city. In some cases the dislike seems, if not justifiable, then certainly understandable. In Diepsloot the original housing plans, which were for the existing 1200 households in the settlement, were thrown into complete disarray when, in 2001, the Gauteng MEC for Housing forcibly removed 4 522 people from Alexandra to Diepsloot and effectively disrupted the entire housing programme that had been agreed to by residents and was, at that point going ahead (Himlin, et al, 2007). The result was a series of rumours that the original community was to be relocated to Brits, some 45 kilometres away. The community in Diepsloot has thus been polarised between older and newer residents, with there being a great deal of mistrust and antagonism between the two. Due to a strong xenophobic sentiment foreigners

are consistently unwelcome; there is a generally misguided opinion that they are criminals and miscreants who damage their surrounding community (Hoosen and Mafudikze, 2007; Silverman and Zack, 2007). Silverman and Zack (2007) report that foreign tenants in the high density area of Hillbrow suffer xenophobic attacks and slurs from local residents and unwarranted harassment by the police and private security guards. Even within the foreign community, there is conflict as one group blames another for the deterioration of the buildings and the crime that seems to run rampant in the area. A possible reason why there is so much xenophobia is the scarcity of resources, especially housing and land, which can contribute to a sense that some communities are taking away something that the others deserve or need.

In Fourways the conflict is slightly different as it is over land-use rather than residential/ownership and property contests. The suburb, in the first instance, is mostly middle- to upper-income, with only a few indications of people living in informal dwellings scattered in some of the more out of the way places. The conflict is between the formal residents of the area and the informal day traders and taxis, most of whom have been working in the area for more than two years. The formal residents claim that the traders contribute to criminality, they obstruct traffic and contribute to traffic congestion (Klug and Naik, 2007). The Johannesburg Metropolitan Police Department (JMPD) are called in and occasionally raid the area at both their own instigation and at the residents' request. The traders, although consistent and generally contributing members of the community, are seen as unwelcome interlopers by those who would prefer a greater degree of regulation and formality to the high-income suburb.

The lack of housing and the inefficiencies of the land use management system mean that large numbers of people have to take shelter wherever they can. Hillbrow/Berea is now one of the highest density areas in the world, with more people per square kilometre than both Hong Kong and New York (Silverman and Zack, 2007). The relocation of people to Diepsloot from other parts of Johannesburg, and the unwillingness of older portions of the population in some areas to consent to new/higher density homes close to their own have resulted in situations of overcrowding across Johannesburg (Himlin, et al, 2007; Hoosen and Mafudikze, 2007). Small spaces shared by different households and individuals inevitably lead to lack of privacy and rising conflict. The consequences seem clear: a large proportion of Johannesburg's population live in situations of incessant tension and conflict over space and over resources and the current land systems are just not helping to deal with the situation.

### **3.7 Privatising Public Space and the Reprivatisation of Private Space**

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A further situation of conflict but of a slightly different nature is the contestation of the use of public space for private use by a range of parties. Taxis in Kliptown and Diepkloof take over road reserves and public parks to create taxi ranks to get the required maintenance and service that they need (Himlin, et al, 2007). The informal traders in Hillbrow/Berea and Fourways colonise pavements and open spaces to sell their goods to passing pedestrians and motorists (Klug and Nail, 2007; Silverman and Zack, 2007). Streets are blocked off and other public spaces are used to create and sustain survivalist and profit-generating businesses for a whole host of people across Johannesburg. Alternatively public parks are simply locked and access barred, due to the Council's inability to maintain them and keep them safe (Klug and Naik, 2007). These activities do have consequences; for example, litter due to the lack of solid waste bins, leaking oil and petrol, and pavement congestion, which restricts pedestrian traffic.

The zoning laws and the cadastral systems are not able to cope with these informal activities. The best that is generally seen is a response by the local authorities to remove informal traders into stalls and markets where they are cut off from passing trade (Silverman and Zack, 2007). Alternatively taxis have been provided with ranks and spaces but there has been little to no consultation with the taxi drivers regarding their location or their size and as a result they have been consistently too small and unsuitable to the taxi drivers or their passengers needs (Himlin, et al, 2007). In Hillbrow/Berea the pavements, which are privatised by small informal trader are then "re-privatised" by the landlords who own the buildings contiguous with the pavements. Whether the traders stay or go, therefore is not a matter of by-law contravention, but is at the discretion of the landlords and their specific and particular attitude to informal trading (Silverman and Zack, 2007). If they deem it to be acceptable then the informal traders stay if not then the private security guards remove the trader and their goods and ensure that they do not come back.

### 3.8 Conclusion: Is the Land Management System Hitting the Mark?

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The discussion above suggests that the appropriateness of the land management system is questionable. In Kliptown, alongside the Kliprivier low-income households utilise public space to grow vegetables for sale and for home-use. In Fourways, public parks are locked, road reserves are used by taxis, and public streets are used by hawkers and informal traders. The pavements outside the buildings in Hillbrow/Berea are also used by informal traders for myriad uses. In each of these cases there is some kind of conflict, at the first level between the State through by-law contravention regarding hawking in Johannesburg and through the illegal use of public land in terms of the urban agriculture conducted in Soweto. There is the additional sense of conflict between the local residents in Fourways and the hawkers, and private landlords and the informal traders who operate in front of their buildings. The closing of the public park is a further site of conflict as the City of Johannesburg has not maintained the parks in Fourways and as such they pose a threat to the residents of the area.

These examples point to a number of different things; the first is the inappropriateness of the regulations governing the areas in question when contrasted against the people living and operating in these areas. The system attempts to maintain a unified and coherent modernist planning paradigm over areas that do not necessarily benefit from such an approach. There is clearly a severe disjuncture between what the people are doing in these areas out of senses of necessity and the kind of regulation that is in place, which appears at the level of rhetoric to be supportive to the needs of the poor but is in reality at best neutral but in most cases is actively obstructive. The raiding and occasional harassment of hawkers and beggars in Fourways, the lack of acknowledgement of the importance of urban farming are all indicative of a system that is not able to address the competing needs and goals of poor households and the organising principles of government.



# 4. RECOMMENDATIONS

## 4.1 General Comments

The recommendations that conclude this report reflect the starting point of the study which is to answer: *“What might a land management system look like that takes seriously questions of inclusive citizenship, rights to land, and social vulnerability?”*. Part of what must be mentioned at this point is the fact that the national government and the City of Johannesburg are aware of some of the issues that have been discussed in earlier sections. They are also both trying to move towards a more developmental and progressive state in some ways. However, none of the spheres of government are completely cogniscent of the impacts of their policy, and reports such as these help keep in mind questions and issues that may otherwise fall off the radar as other political and economic priorities take precedence. In keeping with this question the recommendations are divided into a number of key sections that try and address this question at a variety of scales. The first section attempts to put in place principles that need to be considered when thinking about a land management system that may usefully include all sectors of society, their needs, ambitions and strategies, whilst ensuring a competent and efficient set of policies and programmes that reflect such thinking.

## 4.2 National Policy Principles

There is a sense from some commentators that the most beneficial path to be taken when considering a new land management system would be the “conscious rejection of existing land use practise across the spheres of government” (Ovens, et al, 2007). There is also the acknowledgement that some of the systems are functional and do provide workable, if not perfect, ways of managing land. The City of Johannesburg is not unaware of the issues confronting it and is certainly in the process of attempting to restructure South African cities through some innovative project planning and policy. Unfortunately, what has been demonstrated is that the present system simply does not consider the wide variety of people’s, households’, and communities’ needs confronting it. As such the next section presents some thinking about how to make the land management paradigm a better fit to the current realities of urban South Africa.

### 4.2.1 Principles for Land Management:

- The current system has too many policies, pieces of regulation, ordinances and schemes. A coherent system, which has at its foundation a common understanding of land management and its intentions, needs to be put in place.
- A balance needs to be consistently struck between managing the public realm and enabling people to realise their rights within these spaces (particularly the poor segments of our society).
- Informality in its wide variety of manifestations should be considered as part of the national economy, which should be supported without necessarily being formalised.
- Reconsider the privileged position and role that property ownership has in the canon of land rights. As such the existing cadastre could be recast in light of a system in which ownership is considered to be just one in a number of land management rights.
- Use rights by individuals, households and communities who are engaged with productive use of land and property but who are not necessarily owners need to be creatively supported and entrenched.
- There needs to be a consistent acknowledgment that planning and land management is not neutral and makes physically manifest the existing ideology of the state.
- Land needs to stop being confused and conflated with housing. Although integrally linked and it is important to understand the impact that housing policies and programmes have on land use, they are not one and the same thing and by conflating the two, vital issues are missed.

## 4.3 National Recommendations

- Review land management policies and regulations at all spheres of government, old policies that contribute to spatial dysfunctionalities need to be amended or disposed of.
- The entire system needs to be simplified and unified to get rid of spatial inequities inherent in current land management systems.
- Integrate all land use planning so that land management can include considerations of transport, communication and infrastructure at a strategic level. This may be a matter of getting the existing IDP and RSDF systems to work more efficiently and to be concerned with greater technical details.
- Capacity needs to be built at all levels of government in order to:
  - -effectively engage with the technicalities of land management;
  - -constructively negotiate with the private sector in a manner that allows for the city to extract “planning gains” from the private sector; and
  - -understand the complexities of the communities in which they work.
- Well-located land needs to be released for the utilisation of the poor from State-owned entities, parastatals and the private sector. Mechanisms and systems of attainment and release must be established.
- Participatory processes must be developed whereby all land users and owners can directly influence the shape and nature of land management systems and how they are implemented. Decisions taken around land by government must be transparent and open to debate before they are finalised and implemented.
- Monitoring of the impact of land management by neutral parties is essential in order to ensure that the goals, aims and hopes of the citizens and the authorities are actually being met by the programmes and policies that have been put in place.
- Reconsider urban densities and encourage mixed land use zoning in order to ensure settlements have a good distribution of income generating opportunities as well as re-thinking the one house one stand policy.
- Support individuals and households who are being introduced into formal systems for the first time. Households that are receiving formal title for the first time or who have received title and are now using formal transaction processes such as banks and estate agents need to be empowered by the process rather than left feeling powerless and disenfranchised through these processes.

## 4.4 Specific Recommendations

In certain of the case study areas very specific recommendations have been made regarding the areas in question:

### 4.4.1 Kliptown



Kliptown demonstrates the conflict that can arise when the urban regeneration agenda directly confronts the basic needs paradigm. A greater balance needs to be struck between what is considered good for the city and its image and what the local community is stating that they need or want. These two outcomes are in no way mutually exclusive, and through open conversation and participation both needs can be satisfied. In Kliptown there is still time to bring the local community more into the heritage and urban regeneration programme and to see if there is some way for all parties to benefit.

#### 4.4.2 Diepsloot



The impact of the Urban Development Boundary on the low-income communities of Diepsloot needs to be seriously considered. Although intended to curb urban sprawl and the costs associated with the extension of infrastructure it may well end up ensuring that the low-income community associated with this area is not sufficiently serviced. In addition the constant disagreement between the main actors as to where the UDB should be located mean that the potential of Diepsloot residents being able to swiftly access government services is being denied.

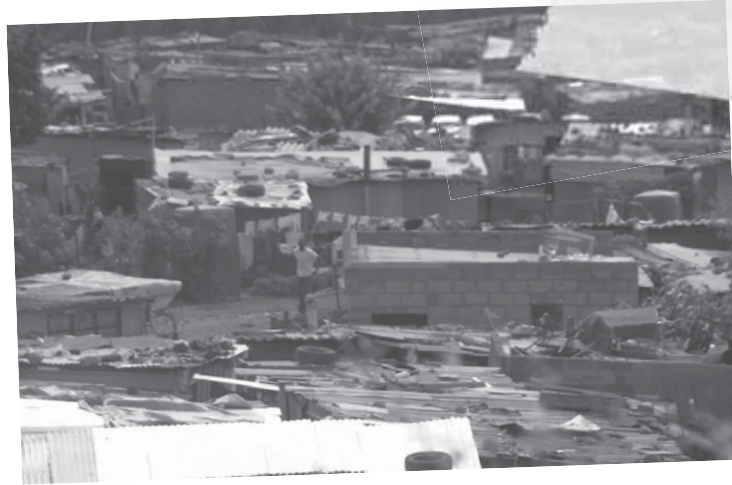
#### 4.4.3 Hillbrow/Berea



The Hillbrow/Berea team came up with very strong recommendations to identify appropriate buildings for a pilot project that would test to see how an amendment to the City's Indigency Policy would impact on the residents of the identified buildings.<sup>4</sup> It is recommended that such a project be monitored on an on-going basis and that between the various departments the study is continuously funded. The sense was that such a project could be useful in understanding the dynamics of land use in high-density areas and the potential that policy has in impacting on low income and vulnerable residents.

<sup>4</sup> The full recommended process and discussion is too long for this report but appears in Silverman and Zack's 2007 case study.

#### 4.4.4 Diepkloof



The stringent formalisation and upgrading tack that has been undertaken in the area has not necessarily allowed the residents of the area to feel fully integrated into the City. Nor has it supported the current need for many households to operate home-based enterprises, which are integral to the survival strategies and upward mobility of many households. The needs of the community regarding land and its use could be effectively supported by a system that takes the informal into account and sees it as a contributing component of life in the settlement and not as something to be controlled and formalised. At the same time, the manner in which land and the land tribunal have dealt with issues in the area is a useful model that could be documented and considered for replication, with appropriate adaptations, in other areas.

#### 4.4.5 Fourways



Fourways is extremely traditional in its consideration of land management and land rights. At present it ignores the vast numbers of people who are formally or informally employed in the area but whose needs are not being met by the current formal transport, recreational or commercial activities. The reality is that there is a thriving informal sector in the area, which is stable and productive; some serious thought and consideration should be given as to how the area can partner with its informal sector to increase growth, improve safety and ensure sustainable productivity for everyone who uses the area and not just the residential and commercial property owners. A set of further recommendations, mentioned earlier, centre around the need for capacity to be built at all levels of government in order to ensure that the government and private sector negotiate from positions of equal power.

## 4.5 Concluding Remarks

The land management study has attempted to examine land management, in all of its incarnations, through a pro-poor and inclusive lens. Effectively the study has attempted to see what is and what is not supporting the lives, livelihood strategies, and aspirations of low-income households within land policy. The findings of the various reports seem to indicate there are significant issues that must be addressed if land management is to be a significant tool in restructuring the spatial order of cities and the social and economic divisions within society. Much of what is necessary is a serious re-thinking of how some fundamental concepts are regarded. The existing planning schemes, zonings and the cadastral system are in many ways exclusive of the needs of low-income households and communities and seem to result in the disempowerment and alienation of those that they intend to include and empower. The recommendations contained in this series of reports provide both a range of general principles that could be used to guide land policy thinking, as well as site-specific recommendations for each of the case study areas.

Although this work constitutes a useful study when thinking about land management, there is a great deal more work that needs to be accomplished for other metros and urban centres in South Africa. Alternative land management systems could also be usefully explored and piloted in order to see what the potential impact of other kinds of land management could be in the progressive project, which is seeking to make cities more integrated, inclusive and socially aware spaces that are able to effectively meet the needs of all their citizens.





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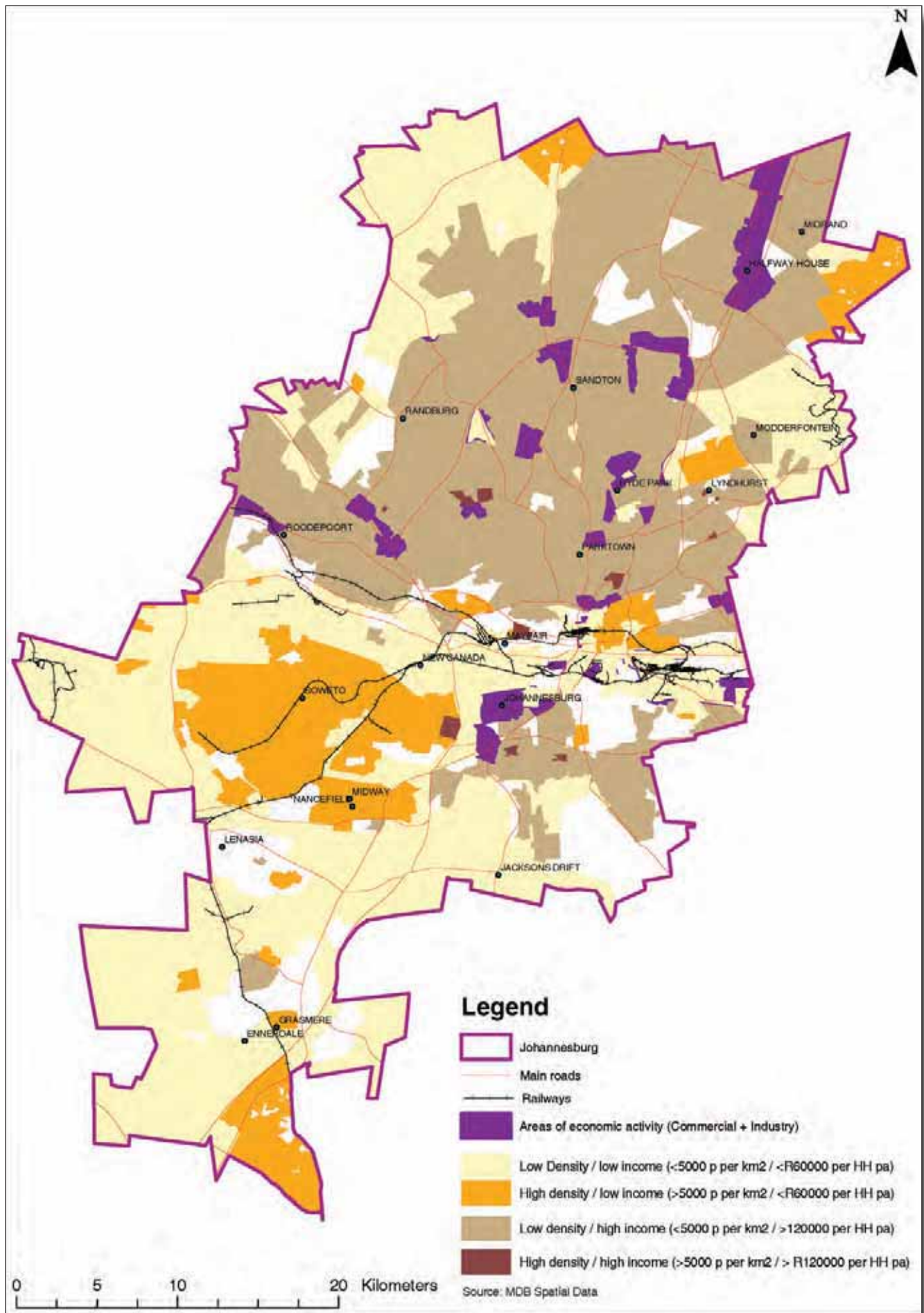
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# MAP: JOHANNESBURG, LOCATION OF INCOME GROUPS





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