Using regulation as a tool for better urban management

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1. Introduction

“In South African cities the 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. The notions of ‘access to land’, ‘housing’ and ‘ownership’ are often conflated. There is confusion over what the triggers for land use planning reform might be - and there is a dearth in the understanding of the differential and overlapping roles of legislation, regulation and enforcement. In practice over the last decade a sloppy understanding of land has meant that land use practice has been subjected to policy imperatives of other sectors, notably housing, but also water and other bulk service imperatives. Within local government the old fashioned planning functions of zoning, regulation and enforcement have been down graded, become outmoded and are considered less important than either strategic planning or service delivery. Tardiness in the Department of Land Affairs to take on the reform of the legislation for urban land compounds the already murky picture of how urban land is currently managed. The impacts of these incoherent land-use management practices on the poor have been poorly understood” (Wendy Ovens and Ass. 2007).

2. Definitions

There are no clear definitions of the concept of land management which might be appropriate here or now. Modernist interpretations of the concept tend to stress the contribution that good land management can make to ordering and regulating the city, to creating what Gotz and Simone call “a sense of coherence”. According to Gotz and Simone, "Municipal administrations are entrusted with ensuring order, equity, and conditions for productive endeavour. They discharge this responsibility by providing some sense of coherence over who does what where. But exactly what 'sense of coherence' is needed for those who inhabit the city? How precisely is this 'coherence' structured?” (Gotz and Simone 2003:123) Which actors contribute to this sense of coherence, and which actors undermine this sense of coherence? Who defines coherence?

The City of Jo’burg conceptualises land management as the “system of legal requirements and regulations that apply to land in order to achieve desirable and harmonious development of the built environment” (City of Johannesburg: Website: 2007, in HSRC:2007). Therefore, land management includes various processes that deal with acquisition, rights, trading, regulation of land, and concerns of participatory governance.

Land use regulation as a component of land management encompasses the legislation, by-laws and codes that govern how land is used. These laws attempt to regulate the conduct of individuals in order to enable society to achieve a common purpose. The purposes of control are varied and relate to the state’s particular agenda in that locale, but regulation may be employed to:

- Protect property values
- Exclude dangerous nuisance uses
- Prevent exploitation
- Foster service delivery (Taylor 1973).
3. Approaches to land use management

Various approaches to land use management exist. These range from practices that focus on absolutes to those practices that are more relative. The former are concerned with strict adherence to a specified set of rules, while the latter are more concerned with facilitating development against a set of parameters that are led by the outcomes and impacts of the development relative to its context. Four broad approaches can be identified (Taylor, 1973):

- **Code Approach:** This approach is based on a master plan approach that dictates closely what uses the land and buildings may be put to as well as the limitations on size and shape of buildings. It is a procedural approach designed to be an “efficient” system. It is not aimed at being “effective” or responsive to individual cases. It is bureaucratic and requires a lot of resources in terms of administration. But once the code has been developed, decision making is based on the firm dictates and procedures of the code. It is therefore inflexible and not well adapted to situations that do not fit the assumptions imbedded in the particular code. It is not suited to fast tracked development or to exceptional circumstances.

  The underlying assumptions that support the code approach to land use regulation are that the state has the power to enforce such a code, and that it has the capacity to regulate land use practice according to the provisions of the code.

  For much of formal land development in South Africa, this assumption held true prior to 1994.

- **Merit:** Control by merit means that a building or land use is assessed in terms of the merit of the particular application and not against a stringent code or development plan. Virtually any scheme could be approved depending on the merit of the proposal.

- **Performance:** The performance standard approach involves qualitative and quantitative measures related to the impact that a development has on the surrounds. So development is not limited by what an owner or developer may or may not do in terms of building or land use but by what impact the development will have on the environment. This approach requires a set of detailed performance standards to be developed. These standards need to be developed within goals and objectives that are set with, and are acceptable to the local community. It is an approach that is suited to area based development.

- **Free market:** This method would allow any development to take place but would be subject to the general laws covering health and safety as well as common law.

4. Trends and practices in the South African approach to land use management

There are two broad trends governing the current approach to land use management which depend on context, the traditional modernist context and the post-modern context.

Traditionally the South African modernist approach has been strongly centred in a code approach. The regulation of land use has been covered by national and provincial legislation and ordinances and by municipal town planning schemes. This approach suited the modernist state. Under such a regime coherence was based on clarity, certainty and orderliness and the assumption that a powerful State could ensure these outcomes. According to this vision, the State, or the municipality, devised particular tools to manage cities. These tools “have been directed at tying identified actors to preferable behaviours in approved territories” (Gotz and Simone 2003:123). Municipalities were expected to govern in the interests of their ‘citizens’ and to regulate space in ways that would raise revenue for the municipality, which in turn would be spent on meeting these citizens’ needs.
This conception of the State ascribes specific roles to specific urban actors in specific places. These roles are then governed by a well-capacitated and legitimate municipality using a set of regulations which are applied in space represented by maps and diagrams such as cadastres and zoning plans.

In the post-modern context the situation is radically different and is associated with a number of important questions. What happens, for example when the municipality is weak? What happens when the municipality's desire to raise revenue conflicts with the needs of these citizens? What happens in situations when citizens' needs are met precisely because these regulatory systems have collapsed? What happens when the land values that generate taxes decline? What happens when the municipality is unable to access the rates and taxes that such regulatory systems might generate?

Gotz and Simone argue that modern statecraft, based on assumptions of social and spatial fixity might be thoroughly inappropriate in the face of highly fluid urban conditions that characterise African cities. "Historically, African urban actors have revelled in the interstices of stability and instability, individuation and forms of social solidarity, rural and urban, colonial spaces of domination and spaces of relative autonomy, the material and the spiritual, home and non-home." (Gotz and Simone 2003: 125) Rather than focus on developing particular places 'African urban actors' construct "multiple spaces of operation".

What then is government's role in the context of rapid flux, constrained capacity and unknown actors – in a context where there are few fixes? Equally significantly, what are the roles of other, non-state, urban actors?

The policy frameworks and post apartheid legislation moves more towards a performance measure approach in recognising the need not only to control and direct development but to facilitate development and to address developmental objectives of growth, poverty alleviation and economic development. This legislation has not however translated into performance measures at local government level and the actual mechanisms for land use control remain in the arena of the 'code' approach.

Parnell et al (2007) suggest that the regulatory framework plays a significant role in urban land management. This regulatory framework is a combination of tools inherited from the pre-1994 government as well as more progressive post-1994 legislation. The result of this amalgam is that "there are aspects of the regulatory framework that are inimical to the objectives of the democratic state" (Berrisford 2006 quoted in Parnell et al 2007) which may impede access to the city, exclude the poor and compromise the government's stated commitment to democratic governance.

Parnell et al also point to the fact that incoherent regulatory systems create gaps in which the "private sector is frequently able to develop land without any regard for the needs of the general public." (Development Planning Commission quoted in Parnell et al 2007). While this hints at a landscape in which large, commercial developers run rampant, what about other, less powerful private actors, such as small-scale slumlords, street traders and the like. It is important to note that it is precisely this incoherence that also opened up new spaces of opportunity. These have been avidly seized by the urban poor. This process has, in some ways, made South African cities more equitable places, allowing the poor to access very desirable places. It is the poor themselves rather than the State, who have sometimes been able to actualise the RDP vision for urban reconstruction, albeit through quasi-legal means: “land for housing must be suitably located geologically, environmentally and with respect to economic opportunities and social amenities.” (RDP, 1994, 24)
A number of new opportunities have emanated from a mixed approach to land use management: By occupying space – sometimes illegally, informally or in other unregulated ways – the urban poor have succeeded in gaining a foothold in places that would otherwise be denied them. It is precisely in the space created by the absence of enforcement, institutional flux and ambivalence of municipalities regarding their responsibilities to the poor, that the poor have managed to access the city. The problem that flows from this situation relates to the living conditions that have resulted from this situation and the unstable relationships that have emerged between the actors involved in orchestrating these living conditions.

Inadequate living conditions and unstable relationships are as much a problem for the urban poor as for local governments which seek to fulfil their needs. While inadequate living conditions and unstable relationships might not immediately disadvantage the urban poor, these "could result, over time, in the deterioration of the urban stage on which they themselves are reliant for their livelihoods..." (SACN 2006: 2-27). In addition it should also be noted that, "many participants in the informal sector are often super-exploited because they fall outside of the ambit of... legislation and cannot access the legal system. Lack of access to proper health and education services, alienation from the often highly conspicuous wealth in cities, fear of eviction and a tendency to resolve disputes by violence due to lack of access to legal and policing services, undermines the quality of life of residents in the informal sector and perpetuates the cycle of poverty. (SACN 2006: 2-27)

The HSRC (2007 has found that in Diepkloof, Soweto a combination of practices operates on the ground. Their study into land use management in the township found that land management in Diepkloof operationally responds to both formal and informal processes and practices. Much of land earmarked for business is formally accessed, owned and transferred while much of the activities related to housing ownership, transfer and access respond to both formal and informal processes. Institutions, individuals and groups opt for a practice that maximizes benefits thereby showing that formality or informality is not the fundamental issues in the property market but the benefits derived.

Government itself is ambivalent and does different things at different times. It is likely that municipalities’ own attitudes to regulation are ambivalent. Pro-poor elements within local government may lobby for a lassaiz faire approach with the view that the absence of intense urban management create gaps that the poor would appreciate. Other parties in the same local government tend to argue for the re-instatement of tighter, more modernist urban controls.

At present local government land-use management is governed by a combination of strategic policy and spatial planning and regulatory control of the size, shape and use of land for development. The HSRC (2007) notes that land management in the City of Johannesburg, for instance, is “shaped at the strategic level by the Regional Spatial Development Framework (RSDF), which provides in detail, the "respective strategies and guidelines of the SDF at a local level" (SDF: 2006/7: 3). The SDF is an integral part of the Integrated Development Plan (IDP) and both the SDF and RSDF are revised annually. The SDF of the City of Johannesburg aims to “guide, direct and facilitate both public and private development, investment and growth within the City in a manner that will expand opportunities and contribute towards the tangible upliftment of all communities in the City" (SDF: 2006/7: 7). The Development Management Directorate of the City of Johannesburg uses these Frameworks as well as the relevant Town Planning Schemes to manage the development of land in the municipality (Personal Communication Town Planner: 13/04/07)” (HSRC:2007). The two approaches vary considerably. The strategic approach is focused on desirable options for development and on guiding development in ways that fit with the policies and objectives of local government. On the other hand, the day to day
control of development is conducted in terms of compliance driven, technicist approaches. These approaches are often in conflict with one another and the compliance driven approach is the tool that operates at the level of development applications which will to varying degrees be influenced and directed by strategic planning.

Informal processes, which operate outside of the systems of local government and operate where people have taken initiative in forging their own processes of land acquisition, trade and management, have advantages of cost, and ease of accessibility. They may also offer culturally sensitive practices. However, there a number of problems with informal approaches to land use management from the city's perspective. The costs of irregularity in terms of lack of services and of official recognition are well known. In addition the complexity of formalising processes, of mainstreaming land use activities into local government processes once they have been informalised are very high. These costs are not only borne by local government which loses revenue potential, but also in the long term by the marginalised communities who occupy such land: They are locked out of asset creation, servicing networks and the ongoing area management services of the municipality. In situations of extreme poverty however, it is unsurprising that people take a short term survivalist view and opt for informal, accessible processes.

5. Policy and legislative context

According to Wendy Ovens and Ass (2007) South African policy makers have been grappling since 1994 with land management issues, “with the specific intention to reverse the negative spatial, social, economic and political impacts of the apartheid city. With the work conducted by the National Housing Forum, and thereafter through policies (Reconstruction and Development Programme, Housing White Paper, White Paper on Local Government) and legislation (Development Facilitation Act, the Constitution, Municipal Systems Act) and various urban policy frameworks, a vision of the post-apartheid city was formulated. These post-apartheid reforms represent significant achievements in contributing towards the realisation of integrated and sustainable human settlements. However, given the challenges urban areas continue to face, it has become more apparent that they are not sufficient to address current land management challenges. Parnell (2007) argues that removing the obvious barriers to urban citizenship, like race classification and racialised municipal structures are necessary, but not sufficient, steps for building an inclusive city.

Two aspects have arisen in the literature as areas in which further attention should be directed: first, the weaknesses of the existing legislative framework for land use planning, and secondly, the inadequacy of institutional capacity in municipalities to implement the inclusive ideal of redistribution or the utopian notion of integration (Pieterse in Parnell, 2007).

The regulatory framework provides a useful lens through which to observe some of the shortcomings of urban land management. Berrisford argues that there has been very limited change to the legal framework governing urban planning: land use changes and new developments continue to be approved in terms of pre-1994 legislation (except for those approved in terms of the DFA, 1995), much of which is inimical to the objectives of the democratic state (Berrisford, 2006). Parnell (2007) observes that there has been limited understanding of how the existing regulatory regimes, like zoning schemes, have impeded universal access to the city (or indeed reinforced race discrimination despite the removal of formal segregation). The ideological basis of these regulatory systems are based on certain preconceived notions of an ordered city. The social, financial and political values of urban land consequently shape the manner in which the investment value of land is protected, and determine what land uses are considered permissible. The problem is that this may not accord with perspectives of the urban poor on the use and
importance of urban land (Kihato and Berrisford in Charlton, 2006). Heed should be taken to the warning issued several years ago by the Development Planning Commission: while land management systems continue to remain incoherent, unclear, cumbersome and contradictory, the private sector is frequently able to develop land without any regard for the needs of the general public (DPC). Regulatory reforms, however, have been effected and should be recognised, but while many tools are available to the state to manage urban land better for the poor, there are a variety of legislative and regulatory issues restricting their access. For example, strategic planning through the IDPs should be able to increase the supply of urban land for the poor, but this is restricted by administrative problems with land use management systems, as well as limited tools through which to translate strategic ideas into day-to-day land use decisions. This hampers the availability of well-located affordable land for socially driven land development. Kihato and Berrisford argue that current tools are either not being used adequately or have not been sufficiently well-developed to be useful, and this highlights the critical need for a focus on the integration of the available regulatory instruments into coherent programmes for managing urban land (Kihato and Berrisford in Charlton, 2006).

The weakness of planning capacity within municipalities is also cause for concern. Berrisford observes that while the substantive scope of what planners should do, in terms of various policy prescriptions, has grown rapidly, the ability of the profession to respond to this re-definition of its work has been weak (Berrisford, 2006). As skilled professionals, planners are often deployed to other municipal functions, and due to the lack of understanding and importance accorded to land use planning functions, a great deal of planning work is being done by people who do not hold planning qualifications (Berrisford, 2006). Practically this means that planning officials in many municipalities lack appropriate skills, particularly in land use management and spatial development. A lack of understanding means that officials are unable to conduct integrated and strategic planning and often simply attempt to conform to minimum requirements of regulations (Wendy Ovens and Associates, 2006). Berrisford highlights the main institutional problems: the planning profession in South Africa is currently weak. There is uncertainty as to the scope of the skills required of members of the profession, the regulatory system for ensuring a high quality of planning skills and for regulating the profession is in a state of flux, there is very limited knowledge as to the number of people with planning qualifications in the country and there is considerable anecdotal evidence that there is a brain-drain, especially amongst planners with experience and knowledge of land use management and development control (Berrisford, 2006).

6. Diverse managers and styles of management

While the regulatory framework is undoubtedly a very important aspect of urban management, it is only one of the tools at the disposal of one of the urban actors – albeit a particularly important one, i.e. the State. But this tool may in fact be somewhat ineffective in that
- it is most often framed in negative terms where regulations prescribe what is not permissible and what cannot be done
- it is wielded by an institution with serious capacity constraints, both in terms of human resources and funding (Parnell et al 2007)
- it is regularly dismissed by other urban actors who have developed considerable skill at acting outside of regulatory frameworks.

The State can also act in a variety of positive ways by:
- Devising progressive policies
- Seeding development through investment of its own resources
- Contributing public infrastructure and services, and then maintaining these to an acceptable standard
• Providing incentives to other actors so that they can perform what the State deems to be socially/ economically desirable actions.

Residents, traders, property owners, slumlords, drug-dealers, shoppers, tenants and sub-tenants also engage in the process of urban management, in both the public and private realms and in the blurred and overlapping spaces between these realms. In some instances the interactions are harmonious, in others combative and conflicting.

It is important to understand that there is a complex lattice of relationships between a range of urban actors. Rather than succumb to problematic dualities of formal vs. informal (Royston, Rakodi), legal vs. illegal (Durant Leserve), it is important to understand that there is a spectrum of relationships, and as a result, “formal legal and administrative systems recognise and work with or resist informal practices.” Thus, according to Rakodi and Leduka, “in urban areas, the social institutions that regulate transactions in land and relations between the actors involved are hybrids of formal and informal rules.” (Rakodi and Leduka 2005?:4)

Land management therefore is a mechanism for facilitating and regulating a complex lattice of relationships among diverse urban actors in a particular place. These actors include the municipality, the property owners, the residents, the traders and a host of other actors who pass through the area on a daily basis – taxi drivers, school children, shoppers. While this list of urban actors is by no means comprehensive, the landscape is further complicated by the fact that each set of actors is by no means homogenous. Various departmental structures within the municipality, for example, have conflicting views about the nature of land management. This is equally so for the diverse property owners. In an inner city area of a South African city, for example, residents range from middle class gentrifiers to impoverished foreign nationals.

7. Urban Renewal interface: what's different about these projects?

Urban renewal projects interface with land use management at both a strategic planning level and a regulatory level. They face the same constraints and issues as other urban projects, but have particular characteristics that make urban land use management that much more complex in that:
• The projects are ring-fenced in terms of geographic area, time frames and implementation budgets.
• Dedicated funding is committed to these areas
• The projects enjoy political support
• There is a need for projects to be undertaken in an integrated way. This requires undertaking various projects and various components of the same project simultaneously.
• The area-based character of projects increases the opportunities for getting the focused attention of various local government units on land use management issues in one area
• Project deadlines for implementation are fixed and are tight. The pressure for delivery is high. Strategic planning, spatial planning and development control planning often have to be undertaken concurrently.

Depending on the management model applied to the projects they may have an advantage of bypassing some local government procedures and of ‘jumping’ some land use management queues. Where this occurs it is often for a limited period however as the aim is to mainstream the activities within urban renewal areas into the normal governance and management procedures of cities.

Given that the context for urban renewal projects are the neglected, former black townships they tend to be hampered by historically weak planning and severe physical
constraints such as sprawl, the absence of social amenities and infrastructure, numerous portions of vacant land, a shortage of significant sites for commercial, office, retail and industrial development, many illegal uses and by-law infringements and a preponderance of informal activities especially, spaza shops. At the same time there is a need to establish a balance between good planning practice and need for local economic development.

Julian Baskin, CEO of the Alexandra Renewal Project has said that he pressure to deliver a multi-sectoral programme strains the states resources considerably. He argues that It would be more realistic to ask what capacity is available and fit the projects accordingly. Alternately it might be more appropriate to build capacity first and then define more ambitious projects. This does not mean that integration is not achievable. But integration should be an aim of projects rather than an inflexible requirement for multiple objectives to be met and multiple projects to be achieved at once. Integrated development can only follow capacity, not vice-versa.

The nature of urban renewal projects which sit within and yet are separate from the normal processes of local government calls for a strategic attitude to land use management. Often professionals are required to make calculated judgments and to take calculated risks in relation to the bureaucratic procedures and regulations. (The sorts of issues that face professionals in undertaking land use management in urban renewal projects and in township areas are explore more in the next section.)

8. The land development process and related land use management mechanisms

This section highlights some of the challenges that confront officials in undertaking land use management in township areas and specifically in urban renewal projects. The issues are discussed in terms of a 5-stage view of land development, namely:

- Land ownership
- Township establishment
- Layout, urban design, development plan
- Settlement of site
- Habitat management

Case studies and anecdotes provided in Annexure 2 illustrate the complexity of land use management in these areas.

8.1 Ownership and rights to land – contested terrain

The fundamental conflict between rights to private property and the right to housing which emerges from the Constitution cascades through much of the legislation. These legislative instruments include the Housing Act; The Sectional Titles Act; the Rental Tenure Act, the Prevention of Illegal Evictions and Unlawful Occupation Act (PIE), The Building Standards Act. These laws seek to balance the rights of property owners, residents and the State.

The existence of these laws and regulations should not distract from various other practices which impact on residents continued rights to space. Lack of access to the law; the efficiency of some extra-legal processes; and the high costs of compliance are serious incentives for urban actors to circumvent the law or to ignore it completely. The result is that many urban actors tend to rely on extra-legal methods in their interactions with each other. On the part of residents these may involve occupation. On the part of landlords, these might include lock-outs, attaching tenants' goods and other possibly more violent mechanisms.

Land ownership is contested terrain in many township areas. Case Study 1, for example, highlights the complexity of attempting to resolve land ownership issues in Alexandra in order to move forward on other planning activities necessary for urban renewal, for land
servicing and for ongoing management of the area. The case study highlights the importance of normalisation of title was to gaining buy-in from residents, and for the success of urban renewal. It also emphasises how delays in this process cause frustration. Once expectations have been raised in the complicated area of land title transfer there needs to be follow through and clarity on the stages achieved in the process.

See Case Studies 1 and 2 in Annexure 2

8.2 Township establishment – the perfect is the enemy of the good

In relation to township establishment and to development control in Johannesburg, Wendy Ovens and Ass report: “As elsewhere in the country, most of the land-related legislation that is applied in Johannesburg originated in the apartheid era. In the absence of review and transformation, the dualistic regulatory framework that remains in place means that the processes and patterns of land development perpetuate the parallel systems characteristic of the apartheid period. Thus 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. 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.

Typically LFTEA has been used in applications for subsidised low-income housing projects, and the DFA for large-scale private developments. Their main impact has been the provision of sprawling residential developments on the outskirts of the urban area with little concern for related services and facilities (such as social, economic and recreational activities), or the carrying capacity of existing infrastructure networks. Until recently ongoing municipal institutional restructuring resulted in chaotic and burdensome bureaucratic procedures, and as a result developers turned to the DFA procedures as it offered an easier alternative to hasten the approval process of their development applications. Not only did it mean that their applications were more easily approved, but also that municipal policy requirements were circumvented and spatial policies ignored. In this respect, it has meant that many of the City’s major land decisions have been taken by the Gauteng Planning Tribunal. With the increasing efficiency of municipal operations and mounting costs of urban sprawl, the CoJ is currently challenging the DFA’s authority over the municipal competence of land use management in a landmark court case. The operations of property developers are being seriously influenced by the onerous and time-consuming requirements of national environmental legislation, and they are having a far greater impact on the property market and the nature of private development than the CoJ’s land policies. They have effectively curbed greenfields development and its encroachment on agricultural land, and developers have shifted their attention to the redevelopment of brownfields sites. These changes have inadvertently facilitated densification and compaction around existing nodal centres, as well as further escalating the price of well-located land and reducing the poor’s access to these areas” (Wendy Ovens and Ass 2007).

See Case Study 3 in Annexure 2

Many of the best practices in urban renewal projects involve ‘bending the rules’. The manipulation of town planning procedures is common in urban renewal projects. Case Study 3 in Annexure 2 outlines such action in the Alexandra Renewal Project. In Kliptown there were also extensive town planning delays on the construction of the Walter Sisulu
Square of Dedication. Even after construction of the square the building plan was not approved because of town planning delays that in turn delayed building plan approval! Town planning can delay projects by years, and not because the plans are not in line with council bylaws, but just because the approval processes take so long. Planning officials are often compelled to use their professional judgment, and go ahead, but have to be prepared to take risks in the process.

In many instances, environmental laws operate in a management vacuum. Strict laws for the protection of species or wetlands may inadvertently result in the creation of buffer areas or dangerous, inhospitable sites. Many such areas are fenced off (Cosmo City). The ongoing management of open land is often not addressed in the environmental legislation.

While there is some acknowledgment that URPs are special places, in many instances they are not treated differently. But there is also a management dilemma around whether or not to make a special case of these areas within city governance as the long terms goal is reincorporation of these areas of neglect into the normal functioning of the city.

8.3 Layout, urban design, development plan

Town planning schemes establish particular rights on particular parcels of land but fail to guide urban outcomes. They are prescriptive about what cannot be done on a particular piece of land rather than what should be done on the land. In this they often conflict with strategic and spatial planning goals.

But layout schemes are also assessed in terms of the strategic and spatial plans of the local authority. These may also be problematic. In many instances they are based on idealised notions such as ‘corridor development’ or ‘multi-nodal’ development. Such rhetoric is not helpful if it does not fit realities on the ground. It can also be manipulated by developers and local authorities who are seeking approval and who may justify all sorts of development against the same rhetoric.

Town planning schemes address only a limited range of formal, identifiable uses. Other informal uses are not addressed at all. Nor are many uses that exist in township areas. Although some attempts have been made to increase the flexibility of some town planning schemes (e.g. by including Residential 5 in the Johannesburg Town planning Scheme), these are mostly rigid regulations. Their application is also expensive and time consuming and no accommodation is made for poor areas of the city. The same procedure and fees apply across the board.

See further discussions in Annexure 1

The Johannesburg Town Planning Scheme of 1979 for example, is based on a colonial system of planning and focuses on development control rather than performance criteria as a basis to adjudicate development. Jaspan and Associates argue that “in general... it does not in anyway encourage or incentivise development”.

Jaspan and Associates raise a number of concerns regarding the application of the scheme:

- The document is too complex
- Procedures are time consuming and costly
- It is inflexible
- It is not user friendly enough to facilitate projects
- It is outdated
- It requires complex procedures of rezoning for relatively straightforward adjustments to zoning or density
• It does not use performance criteria or standards recommended by later legislation such as the DFA

Town planning schemes earmark maximum development rights. These rights are often not taken up. Where a town planning scheme may grant the rights for a multi-storey building, but a single storey development is undertaken on the ground, the development potential is underutilised. Allied objective such as densification are then not achieved and thresholds for public transport and efficient service delivery are compromised.

Town planning schemes are the chief point of interaction for the public with the planning face of the municipality, even though development plans are seen as a more strategic tool. This means that development plans run the risk of being part of an ‘internal dialogue’ while business as usual in development of land in the city is operating according to the individual wishes of developers acting in terms of development rights available through the scheme.

8.4 Settlement of site

The Building Standards Act establishes artificially high standards for building construction particularly in low density environments made up of single detached dwellings. Local residents tend to ignore building standards completely. This may have serious consequences for the long term stability of structures and it may compromise resale value.

Project implementation needs to be guided by, and often is required to comply with, policy direction. These are not always in alignment. After early experiences of relocating households from unsafe conditions within Alexandra to available land and projects at some distance from the township, a new policy directive was given. This stated that relocations were not to take place outside of Alexandra and its immediate environs. The new directive raised new and competing issues for housing development. It implies a revised approach to the density of housing – where future housing projects will need to be developed at a high enough density to accommodate substantially more households than current housing projects are achieving. It also implies that existing facilities within Alexandra be planned to accommodate the current population and its growth and not a smaller, ‘de-densified’ population.

Politically, the new policy raises unanticipated consequences. Officials report that while the relocation of households to date has inspired some objection and negative media coverage around the distances of relocation and the inadequacy of facilities provided in reception areas, there was no significant protest from ‘settled’ residents of Alexandra. In fact an official reported that the settled residents of Alexandra had no sympathy with the ‘squatters’. “They were perceived to be involved in crime and residents were relived that shack settlements were being removed”. The new policy that will govern future removals, however, raises a threat to settled residents. When households need to be relocated, for reasons of emergency or for reasons of development, they now have to be accommodated as a matter of urgency within Alexandra. The land set aside for subsidised housing within Alexandra would normally be allocated according the provincial housing waiting list. In order to accommodate relocatees, this list would have to be adjusted and “persons who have been waiting for housing on the list would be pushed further back in the queue” (municipal official, Alexandra). This has altered the dynamic within the community and has raised objections which may not stem from empathy with relocatees but rather from the enormous pressure for housing in the area.” People say, “You are rewarding people who illegally occupy land ahead of rewarding us who have been on the waiting list for years." (Municipal official, Alexandra quoted in DPLG (2006): Documenting
8.5 Habitat management

The nature of applications that are received in the ongoing management of township areas are varied. The HSRC (2007) found that “The City of Johannesburg Registry Department has received numerous individual development applications for Diepkloof from both residents and developers. A large number of these applications are for minor extensions to residential property like that of a garage or one or two rooms. Other applications consist of township applications and rezoning applications. Tavern applications have also been received, however these have not been processed as yet by the Development Planning Department as there is no law or legislation to guide the approval of these applications as yet”.

The ongoing management of settlements is hampered by the 'silo-nature' of land use management functions in local government. Once a settlement is established land use management relies on the co-operation of many departments. In Alexandra a partnership approach has been forged through monthly, area-based meetings of all the service departments. The value of these is that problems can be reported, trouble shooting can take place and that all departments are made aware of the problems and constraints of other units. The area-based nature of urban renewal means that one official who is in the area for a particular function can readily pick up a problem that relates to another council department or entity and can feed the information through quickly.

A partnership approach and joint agreement on problems is not automatic. It is in this arena of land use management (habitat management) that the conflicts of growth vs. development, of formality vs. informality and of regulation vs. innovation are most prevalent. In the Kliptown project attempts to accommodate informal traders have, with the best will of designers and land use regulators, failed. Whether this is a design issue, a regulatory issue, or an issue of participation in decision-making is not clear. It is clear that neither spatial determinism nor forced regulation will work, and that partnership approaches are required.

The Johannesburg By-Laws are a response to the Constitution and by the Local Government Transition Act 209 of 1993 which prescribe the functions and powers of Municipalities. These pieces of legislation give municipalities the right, inter alia, to make a set of by-laws which are for the effective administration of the matters which it has the right to administer (Memeza, undated?).

These by-laws are intended to be implemented by the Johannesburg Metro Police Department. Memeza notes that “Johannesburg’s decision to establish a Metro Police Service came at a time (towards the end of 2000) when the metro council was experiencing major problems with the enforcement of by-laws”. At that stage coordination was one of the key problems. There were approximately 16 law enforcement agencies/units operating in the Metro and Local Councils in Greater Johannesburg. Each substructure and the Metropolitan authority each had their own by-laws, and enforced these to various degrees, in the areas of electricity, fire, health, housing, inner city, licensing, parks, planning, roads and storm water, security, street trading, traffic, transport, treasury, water and waste.

The multiple agencies responsible for land use management makes coordination difficult. The granting and regulating of liquor licences is a key problem. In a study in the inner city of a Johannesburg it was found that the regulating authority on these activities is too
permissive. The lesson are translatable for township areas where applications for taverns are the amongst most problematic land use management challenges facing planners.

A split of functions between spheres of government is implicated in one of the most problematic of land uses in the Hillbrow/Berea study area - liquor outlets. Liquor licenses are granted by provincial government. Municipal officials, social organizations and property owners complain that provincial government is too permissive in granting such licenses and that these are often granted in contravention of the town planning rights of properties. This provincial-level licensing function seats a critical land use management decision at too far a distance from the law enforcement and land use management functions of the study area.

The remaining case studies in Annexure 2 highlight other concerns of ongoing habitat management.

See Case Studies 5, 6, 7, 8 and 9 in Annexure 2

Ongoing habitat management also faces the constraints of over-regulation. One area where these constraints are particularly evident is in the field of early childhood development (ECD). Here the regulations are so onerous that they deem the majority of facilities to be illegal and therefore not qualified for funding or support. The effect is that there is not a facilitative environment for ECD in spite of this being the cornerstone of the human development strategy of Johannesburg and a proven tool for intercepting cycles of intergenerational poverty. This is an example of regulation impeding the developmental goals of local government.

9. Some concluding thoughts

Based on their overview of land use management practices in five cities, particularly with regard to increasing the access of the poor to urban land, the following recommendations are proposed by Wendy Ovens and Ass (2007):

• “A conscious rejection of existing urban land use management practice across the spheres of government is essential, as current practice does not serve the interests of the poor.
• A paradigmatic shift on urban land use needs to be defined that will frame the various reforms that are required to make urban land work better for the poor. This should include both a value based position, an understanding of what tools are available to manage land differently and an empirically informed understanding of the status quo.
• Within the increasingly sophisticated strategic planning process that rests on the IDP, the role of land needs to be given greater prominence so that the comprehensive land-linked interests of the poor are presented.
• Treasury needs to better understand the fiscal implications of the costs associated with differential forms of land development for the poor.
• The land assets of the State Owned Enterprises can be much more effectively harnessed to achieve meaningful urban poverty reduction and integration. Land released for the urban poor may need to be excluded from the imposition of market related pricing by State Owned Enterprises.
• Co-operation on the state’s own land release and development needs to become an intergovernmental priority.

The urban land use management system needs to be radically reformed and simplified to ensure a unitary, transparent and implementable system.

The integration of heritage, planning and environmental professionals within the unitary land use management process must be addressed.

Land use enforcement in poor areas needs to be resourced and capacity needs addressed".
REFERENCES
DoH (2002) Towards sustainable settlements: Case Studies from South Africa
DPLG (2006): Documenting Emerging Practice: Lessons Learnt, Part four, case studies prepared by Mike Morkel and Tanya Zack
HUMAN SCIENCES RESEARCH COUNCIL URBAN, RURAL AND ECONOMIC DEVELOPMENT DEPARTMENT (2007); Land Management and Democratic Governance in Johannesburg Report, Diepkloof Case Study, report prepared for Planact, CUBES and Urban Landmark
Taylor, R 91973): Development Control Systems for Group and Cluster housing, a dissertation submitted to University of Witwatersrand as part requirement for Post-graduate Diploma in Town Planning
Annexure 1: Key legislation and policies impacting on land-use management


The Black Communities Development Act of 1984 has been repealed, however Annexure F of this Act is the only part still being used in land use development for township areas within the City. Annexure F outlines regulations that relates to Township Establishment and Land Use and outlines conditions of title or township conditions. The Department Management Directorate is currently using Annexure F, in facilitating land use management in townships like Diepkloof and other township areas within its jurisdiction.

Annexure F also outlines the Building Restrictions and the permitted uses for a zoned area. It states for example, that areas zoned as residential can be used for other purposes with the consent of the responsible authority, such as the use of this land as a place of worship, recreational purposes, places of instruction and special purposes as defined in the Annexure.

Therefore, people in the former townships are permitted to undertake community activities like a school, crèche, or recreational activities within a residentially zoned area. The Development Planning Department has to therefore take into consideration all of these restrictions when it approves development proposals or changes in the use of land for areas within a township including the Regional Spatial Development Framework (RSDF), which is developed for each administrative region of the city of Johannesburg. It outlines the development strategies that aim to guide and align development within the specific region.

The Town Planning and Townships Ordinance 15 of 1986

This creates the mechanisms to establish Townships Boards, Compensation Courts and Town Planning Schemes. It sets out what should be contained in these Schemes. The Ordinance also outlines procedures to be followed for various applications. Times for objections, comments, and procedures to hear objectors and process applications are specified. Furthermore, it provides for appeal procedures. Jaspan and Associates (2004) note that an appeal can be submitted as long as 56 days after a Council has taken a negative decision or 56 days after proclamation, resulting in considerable development delays. The ordinance also establishes principle of levy payments. It has been recommended that these levies be reviewed by the City to encourage development in particular areas (Jaspan and Ass, 2004).

National Environmental Management Act (NEMA)

This Act ‘provides for co-operative governance by establishing principles for decision-makers on matters affecting the environment, and procedures for coordinating functions by different organs of state” (Du Plessis and Napier, 2001). This Act places the responsibility and the liability for the environmental health and safety consequences of policies, programmes, projects, services or activities on the agency that is responsible for such intervention. NEMA requires national and provincial government to prepare and update Environmental Management Plans (EMPs).
The purpose of this Act was ‘to provide for shortened procedures for designation, provision and development of land, and the establishment of townships, for less formal forms of residential settlement; to regulate the use of land by tribal communities for communal forms of residential settlement...’. The procedure was introduced in order to speed up the delivery of housing. Many people no longer believe there are significant time savings in using this legislation.


The Development Facilitation Act No. 67 of 1995 (DFA) introduced extraordinary measures to facilitate and speed up the implementation of reconstruction and development programmes and projects in relation to land. It put in place a normative framework of general principles in terms of which all development work should be done. It established the basis for land development objectives. It also provided for nationally uniform procedures for the subdivision and development of land. The Act is often used as a speedier process than Ordinance/Removal of Restrictions procedures and is often used for changes of zoning.

The general principles set out in the Development Facilitation Act (1995) include:

- The integration of social, economic, institutional and physical aspects of land development
- Promotion of the availability of residential and employment opportunities in close proximity to or integrated with each other, optimising the use of existing resources.
- Promotion of a diverse combination of land uses, even at the level of individual erven
- Discouraging urban sprawl
- Contributing to the correction of historically distorted spatial patterns
- Encouraging environmentally sustainable land practices. (GPG, 1997, 32)

Along with the Local Government Transition Act, the DFA set the stage for the development of an integrated approach to planning. This approach is given weight in the imperative on local government to formulate Integrated Development Plans.

The Urban Development Framework (1997)

The Urban Development Framework of (1997) was a major policy guideline for implementation of Habitat Agenda in South Africa. It outlined an urban vision that by 2020, South Africa cities and towns will be

- Spatially and socio-economically integrated, free of discrimination and segregation, enabling people to make residential choices to pursue their ideals
- Centres of economic and social opportunity where people can live and work in a safe, healthy and peaceful environment.
- Centres of vibrant urban governance managed by democratic, efficient, sustainable and accountable local governments in cooperation with civil society
- Environmentally sustainable: marked by a balance between quality-built environment and open space; as well as a balance between consumption needs and renewable and non-renewable sources
- Planned in a highly participatory fashion
- Characterised by adequate housing and infrastructure and effective services for households and business
- Integrated industrial, commercial, residential, health educational and recreational centres which provide easy access to a range of urban resources (Department of Housing, 2000, 12)

The two programmes intended to achieve this vision which concern urban land use are:
• Integrating the city, which aims to negate apartheid-induced separation, fragmentation and inequality. The focus is on integrated planning, rebuilding and upgrading townships and informal settlements, planning for higher density land use, reforming the urban land and planning system, urban transportation and environmental management
• Improving housing and infrastructure. It includes the upgrading and construction of housing, restoring and extending infrastructure, alleviating environmental health hazards, encouraging investment and increasing access to finance, social development, building habitable and safe communities.

The Gauteng Planning and Development Act 3 of 2003

This Act will replace most other town planning legislation with the possible exception of the DFA, once the regulations of the Act are promulgated. The Act seeks to create “a single system of development, planning and land management in the Province; to set out principles for planning and development; establish planning bodies; provide for appeals; create frameworks for the preparation of development plans; provide for the creation of zoning schemes; create unified procedures for applications; repeal certain existing legislation, and provide for general matters such as enforcement procedures”. The legislation provides the following initiatives:

• The principles of development are based on the Development Facilitation Act (DFA). Strict procedures for development planning and policy planning are set out.
• It calls for a single, standardised Town Planning Scheme in cities.
• It provides for Provincial Authorities and Councils to prepare integrated development plans, spatial development frameworks and land development policies.
• It allows for one type of development application for any purposes i.e. rezoning, consents, subdivision, consolidations, removal of restrictions, township establishment, road closures, etc.
• It provides for a tribunal made up of property professionals not politicians.

Jaspan and Associates indicate that there are significant problems with the Act. These include:

• The acquisition of land development rights remains a costly procedure, inaccessible to the poor.
• Overall development procedures have not been simplified by the legislation
• The consolidation of town planning schemes could result in loss of rights on certain properties.
• The Environmental Conservation Act and the Department of Agriculture, Conservation and the Environment (DACE) are still able to slow down decisions and procedures in terms of their rights to take decisions over development.
• There is no synergy between the respective authorities such as the Provincial Heritages Resources Authority of Gauteng (PHRAG) who oversee historical buildings and conservation areas and the Council.


“The Land Use Management Bill of 2006 guides the overall formulation, development and implementation of all policies and legislation at the provincial and municipal level regarding land development and management in the country. The key pieces of policy and legislation developed to address the fragmented planning legislative framework under the Land Use Management Bill are the Development Facilitation Act (Act 67 of 1995), The Municipal Systems Act (Act 32, of 2000) and the White Paper on Spatial Planning and Land Use Management”.

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Case Study 1: Transfer of Housing in Alexandra
(Source: DPLG (2006): Documenting Emerging Practice: Lessons Learnt, Part four, case studies prepared by Mike Morkel and Tanya Zack)

The ARP Housing Strategy in 2002 recognised that common law rights in respect of owners, tenants and the local authority has been undermined in Alexandra. A critical focus of the housing strategy therefore was to reintroduce and normalise conventional rights and obligations in order to upgrade the existing housing circumstances of residents.

The aim of the programme was to transfer title of 6000 erven of public owned housing stock from the Johannesburg council to qualifying households. The object was to deliver secure tenure, to regularise the situation, to provide a legal basis for the collection of rates and service charges, whilst protecting tenants. It would also fulfill other ARP objectives such as the creation of an enabling environment for future private and public investment and the creation of a viable community in Alexandra.

The programme was implemented alongside the programme to facilitate the upgrading of existing houses and backyards to minimum standards.

The process was planned as follows: based on a Block Plan and a physical audit or field survey, all households living on an erf or stand were to be identified and their rights to ownership determined. A Housing Bureau Committee was to be established to develop proposals and to oversee the transfer of housing process and to adjudicate and mediate disputes. The Committee was to be made up of representatives from provincial government and the City of Johannesburg. A dedicated office would be established in Alexandra, and the Bureau would be financed by the ARP. A project manager and adjudication administrator would be appointed with responsibility to:

- Undertake a documentation audit and a property survey;
- Ensure that the Precinct Plan and Block Plans are developed timeously;
- Undertake the communication programme to the residents of Alexandra;
- Establish the Transfer Bureau and ensure that it operates effectively; and
- Ensure that the Block Plan would be revised once title had been transferred.

It was also planned to establish a Rental Housing Information Service to further strengthen landlord and tenant rights in Alexandra. Existing law clinics would also be approached to provide necessary legal services should these be required.

Detailed plans and criteria for implementation were drawn up as follows: A communication programme would be undertaken so that information on the transfer of title programme would be provided to households in Alexandra, with individuals and households invited to submit claims. The Transfer Bureau would investigate all claims. Any South African citizen who submitted a claim would be entitled to a hearing. A time frame would be specified by which all claims would need to be submitted. Adjudication of claims by the Bureau Committee would be based on the following guidelines:

- Persons with a valid ownership certificate, leasehold rights or who have entered into an existing valid sales agreement will be entitled to ownership of an erf in the first instance.
- Where such a claim does not exist then residents who reside on the basis of the relevant residential permits would be entitled to ownership. Where there were competing claims an adjudication process would be held to decide who had the
strongest claim. E.g.; the adjudication process will take into account the length of time a person has occupied the erf, etc.

- Where it is not possible to determine who has the strongest claim to an erf, a mediation process will be held to find a way to accommodate all the claimants through a form of shared ownership.
- Where the mediation process is not successful an Appeals Panel will then hear the evidence and make a decision on the best form of shared ownership.
- In all cases a transparent, fair, equitable and flexible approach will be adopted to resolve competing claims.
- An individual will be allowed ownership of one erf only, unless s/he has a valid Ownership Certificate, Leasehold title or Sales Agreement for more than one erf.

If a claimant does not obtain ownership rights as a result of the adjudication process and is a legitimate occupant on an erf, s/he will still be able to continue to reside on the erf as a tenant. Conditions would be imposed on the new owner of the erf to protect the rights of such tenants.

Once the adjudication process is completed the erf will be transferred to the individual/s identified as the owners. The new owner/s will be required to undergo a training programme prior to receiving title.

All erven will be transferred voetstoots and no warranties will be given in terms of the legality, structural integrity or health or safety of buildings. As part of the transfer process owners will be required by law to upgrade their erven to meet minimum specified standards. Assistance, including financial support, was planned in this regard. All individuals who participate in the adjudication process will be informed of the responsibilities relating to the ownership of a property during the process of taking title, and will take responsibility for the ongoing development (which must be completed within three years of receiving title), and costs associated with the erf.

Tenants or sub-tenants would have their rent protected by legislation for 4 years after transfer of title to the owner. (Rent payable would be equal to the amount paid before transfer, and be capped at a 10% increase per annum each year thereafter).

A Transfer Bureau was being set up during 2006 (at the time of writing of this case study). Unrelated to the transfer process, a delay of over a year had been experienced in setting up this bureau. This was the result of tender irregularities within the Gauteng Department of Housing and poor project management.

**Lessons**

Normalisation of title was crucial to gaining buy-in from the residents, and for the success of the ARP. Delays in this process however cause frustration. Once expectations have been raised in the complicated area of land title transfer there needs to be follow through and clarity on the stages achieved in the process.

Detailed processes were drawn up to cover this complicated and politically charged area.

Administrative processes and structures (such as the Transfer Bureau) need to be in place timeously.
Case Study 2: Diepkloof Land Regularisation Project
(Source: HSRC 2007)

The Johannesburg Property Company (JPC) is currently in the process of undertaking a Soweto Land Regularization Programme, which is one of its strategic initiatives that target townships. The JPC has said to have laid the foundation for the implementation of this land regularization process that is in line with the government’s development priorities and objectives. This Programme aims at formalizing property rights. The first township to be targeted is Soweto. One of the benefits of this Programme includes the “extension of property ownership as the basis for providing shelter and wealth to thousands of residents in the former black townships” (JPC: Annual Report).

This regularization process seeks to audit, verify and transfer urban land to previously disadvantaged individuals from formerly disadvantaged areas through the release of council owned land that is not required by the council to fulfil its functions. This programme also aims to create a property market through private sector investment and also to “increase the rates, taxes and service repayment base of the City”, (JPC Website: 24/04/2007). This process simply tries to firstly identify the number of properties that are “vacant and includes Council–owned shops, occupied land and land which is seen as ‘farm portions’”(JPC Website: 24/04/2007) through a property audit. Thereafter it aims to verify the total number of council owned property and of these properties, which could be released to the public or for public sector investment. This would allow for the redistribution of land and ownership of property in Diepkloof.

JPC is therefore responsible for the management and transfer of all council owned property in Soweto. In its Soweto Investor Prospectus, JPC outlines the investment prospects that are to materialise in Soweto with the implementation of the Land Regularisation Project. It has also been outlined in this Prospectus what the JPC has so far undertaken on the Soweto Land Regularization Project. These are as follows:

- An audit and survey of all Council-owned properties in Soweto
- Identification of the best uses for individual council-owned properties
- Submission of proposals towards a land release strategy
- Ongoing consultation with city and Provincial Government role players
- Submission of first phase land-use applications
- The development of a basic Information Management System (IMS)

(JPC: Soweto Investor Prospectus: 2005)

In an interview with the Manager of Land Regularization at JPC, Marius Pieters it was stated that the above processes have been undertaken for most parts of Soweto and they are currently, looking specifically at transferring property rights to the owners of shops known as train shops in Soweto. These shops have been given this name due to its long, train like appearance. Marius also mentioned that JPC has developed an asset management register with every property owned by the council and on which an audit has been undertaken. All council owned and private owned properties of Soweto are also on a database (Marius Pieters: 25/04/07). It has been further stated that the City of Johannesburg has an asset register which has 305 000 assets, of which 150 00 are council-owned. A large amount of these is said to be residential and underdeveloped. Therefore the Land regularization process provides a chance to transfer individual property rights to respective housing beneficiaries, service utility providers, as well as investors (Dlamini: 2007)

Marius Pieters, said that the JPC has gone through all the township areas and has advertised lists of who owns land according to their records, and has asked the relevant people to bring in documentation to verify their ownership of land so that the JPC can ascertain what land is owned by whom (Marius Pieters: 25/04/07). These adverts are
placed in, “The Sowetan” newspaper. Consultation is also undertaken through community structures (ward councillors) that are used to make people come forward with relevant documentation.

The Soweto Land Regularisation Process is therefore aiming to finalize approximately 64 townships. Diepkloof and its extensions are part of these townships being finalized. The JPC have put out a call for proposals for interested parties to propose to undertake this finalization, which has been defined in its scope of work. The call for proposal is attached as Appendix 4. However, according to the JPC’s ‘Township Status Report of the Soweto Land Regularisation Program’ (refer to Appendix 5), Diepkloof, Diepkloof Extension and Diepkloof Extension 10, according to a ‘Town Planning Investigation’ have been deemed Established, according to the Black Communities Development Act of 1984. Diepkloof Extension 2 has not had its general plan approved, and a register has not been opened. According to the status report a Legal Investigation showed that Diepkloof and Diepkloof Extension have a status that is “freehold, in order, except where indicated”. Diepkloof Extension 10 is now a “freehold township and is in order” and Diepkloof Extension 2 is “still leasehold and in the Pretoria deeds office” (Township Status Report: JPC).

The scope of work for the proposal, therefore seeks to finalize the process of the proclamation of townships by the City of Johannesburg, by “obtaining approvals for outstanding general plans” (Township Status Report: JPC), as is needed in certain extensions in Diepkloof, also to “compile conditions of establishment where outstanding” (Township Status Report: JPC), as in the case of Diepkloof Extension 2. Therefore, Diepkloof has not been proclaimed but three of the areas within Diepkloof (Diepkloof, Diepkloof Extension, Diepkloof Extension 2) have been deemed as freehold, as title deeds have been transferred to owners and are still to be finalized as part of this land regularisation process.

Diepkloof not being proclaimed as yet by the City of Johannesburg may have certain implications on the management of land in the area, including the formal transfer of property in Diepkloof. However, these implications will be looked at further at later stages in the report. The Land Regularisation process is one stem towards the formalisation and proclamation of townships into the fabric of the City of Johannesburg.

Some of the anticipated outcomes of the Soweto Land Regularisation project that would enhance the economic and social life of Soweto are as follows:

- 26 new business stand to be created
- 240 business stands to be formalised through the transfer of council-owned shops
- 33 stands to be allocated for development
- 290 stands to be offered for the City of Johannesburg’s Department of Social Development and City Parks Agency
- 620 stands to be rezoned for residential purposes
- 8 856 stands to be transferred to housing beneficiaries.

(JPC: Soweto Investor Prospectus: 2005)

As stated in this Prospectus, " multiple Acts exist concerning property rights and the amendments of these rights – and that numerous provincial and local Government entities have the mandate to grant property rights" that results in a fragmented and disjointed administrative process (JPC: Soweto Investor Prospectus: 2005). Therefore this process of Land Regularization is an attempt by JPC in achieving a harmonisation of administrative processes.

In order to achieve an administratively sound process, JPC has joined forces with other role players so as to institutionally embed this project into a three-pronged approach that looks at issues of policy and strategy, processes and communication through forums. City
of Johannesburg departments like the Development Planning and Facilitation Department, Housing Department and Department of Economic Development are just a few entities involved with JPC is achieving the success of this Project. The Housing Department assists with the transfer of residential title deeds to residents in Diepkloof, whereas the JPC concentrates on the transfer of commercial and other council owned property in Diepkloof.

Case Study 3: Township establishment in Alexandra
(Source: Interview with Neels Letter of the Alexandra Renewal Project, October 2007)

There are 72 townships in ‘Old Alex’. Of these 36 are now proclaimed. The bulk of development is not formalized through township establishment. The areas were largely set up in terms of the BCDA and “no one ever bothered to establish the township properly”. Even in more recently developed areas of the Far East Bank, where LEFTEA was used, full township establishment was not pursued. This means no title can be granted in these areas. In the present developments in Alexandra Letter insists that no house is occupied without title being handed over. This means that full township establishment has to take place before handover. Achieving this is complex as the time delays in township applications are onerous and the tie deadline on delivery of housing in the ARP are tight. Normal procedures do not allow for these activities to be completed timeously. Letter says it is important to act professionally and to take calculated risks in manipulating the regulatory system. Once interim approval is granted, Letter proceeds with development on the ground so that construction and town planning regulation take place simultaneously.

Letter bemoans the long time delays in township applications. He says the timing of applications is not only dependant on bureaucratic procedure but also on individual decision-makers. Some planners in local government are inclined to prioritise urban renewal projects and “if an Alex application lands on their desk they will stop their other work to do it.” Others will deal with the applications on a first in first out basis and the urban renewal applications have to take their place in the normal queuing. Letter believes that if the URPs are to be successful, then special measures have to be designed to streamline the land use management application procedures on these projects. He says that relationship and partnerships within the City are important and that his relationships (as a longstanding senior official in the City prior to taking on the planning functions of the ARP) are useful. “But even with all my connections it still takes ages to get things approved”.

Letter also describes the enormous frustration he experiences even as a state official in dealing with the requirements of environmental legislation. He says much of the requirements of that legislation duplicate the requirements of town planning legislation. The requirements are pedantic and slow processes down. They are applied in a compliance-driven way without regard for the particular site. “There is not sufficient capacity to process all the details that GDACE requires. So approvals are slow. We can have as many laws as we want, but if we don’t have the capacity to implement them, they won’t be effective”.

Case Study 4: Innovative building control processes in Wiggins, Cato Manor

In about 2000 Durban Metro embarked on an experiment to find a building control process more appropriate to the speedy delivery of low-income housing. The intention was to overcome the slow and bureaucratic procedure involved in the formal of plans submission and building approval. According to this process, each householder is expected to submit
plans to the local authority, and then these plans are circulated to the various line departments within the council to get their approval. Although this is a long process, it is also an important one: plans approval procedures ensure that buildings comply with certain minimum standards and are not a threat to people's health or safety. In the interests of speed and delivery, many low-income housing projects get built without such approval - often with disastrous effects.

When the Cato Manor Development Agency wanted to embark on a fast-track housing project in the Wiggins area, the Durban Metro helped in speeding up the building control process. They stationed one of their building control officers on the site to advise people who would build their own homes.

The building control officer focused on only the most strategic aspects of building control:

- Making sure that people built on the correct sites and within the site boundaries, on the plots that had been allocated to them.
- Checking that the foundations were adequate
- Ensuring that roof construction started at the right height.

**Lessons**

The lessons from this project may not be replicable in that it would be an expensive system to roll out across the city and that the project succeeded largely on the basis of the charismatic personality of the building control officer. It did however inspire the eThekwini (previously Durban) Metro to start revising their development control procedures.

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**Case Study 5: Dealing with informality: City negotiates with goat traders of Alex**

(Source: Melinda Silverman and Sarah Charlton, Mail and Guardian 2004)

Livestock traders operating in Alexandra are an ongoing concern to the environmental health officers of the Johannesburg council. Livestock cause traffic disruptions if allowed to roam free. Animals relieve themselves anywhere, polluting streams and rivers, from which the animals in turn drink. Animal excrement contains E coli bacteria. These health problems may take time to manifest in human beings, but there is the possibility of increased respiratory conditions through airborne diseases, or worsening asthma. Smells can bring flies. There are also objections from the community with people complaining of goats tipping over refuse bins or eating their gardens and vegetable patches.

The Johannesburg council acknowledges that there is a long history of livestock in urban areas, largely associated with cultural practices related to appeasing the spirits or ancestors. According to an environmental health inspector, these practices cut across tribal boundaries and are very common. While Western culture uses abattoirs for slaughtering, in African culture the 'spilling of blood' at a particular location is important. The City recognizes that traditional slaughtering is a business which cannot be eradicated.

The City initially devised a plan to provide communal places for keeping animals and slaughtering them. But according to one goat trader in Alex this will not work. Tradition demands that the animal must be slaughtered at home. As a result the goat traders have been trying to organize themselves to discuss with council officials how animals can be accommodated.

In response, Region 7 has developed a strategy – in consultation with livestock keepers, the Departments of Agriculture, Land Affairs, the SPCA, the Johannesburg Metro Police Department, veterinary services, municipal housing, environment, and health divisions – to balance the needs of livestock keepers and the City of Johannesburg.

The phases of the plan include:
- Identifying the livestock keepers - who they are, where they are, who the customers are.
- Health promotion. People will be told why it is problematic to have animals in the streets, and why it is better that animals are farmed elsewhere, even if they are brought in and sold in Alex
- Farmer support programmes organised by Land Affairs. The municipality may apply for land for urban farming or individuals may acquire land and loans through the Land Bank to start commercial farming.

In the last resort, if people do not buy into the plan, there will be vigorous enforcement of the law.

Case Study 6: Mansel Road – accommodating informal trade in the city
(Sources: KZNIA, 1997, Volume 3 and DoH (2002) Towards sustainable settlements: Case Studies from South Africa)

Durban's inner city accommodates a vibrant informal retail sector with street traders selling muti, cheap imports, fresh fruit and vegetables. Among the many hawkers plying their goods were a group of women who bought used plastic chemical drums, which they washed to rid them of poison, before selling them to rural shoppers for use as water receptacles. The chemicals, hosed down the streets, ran into storm water drains. From there the effluent ran into rivers killing the fish. At night the women stacked these same drums on top of one another and, with a couple of boards, turned them into rudimentary shelters in which they would sleep.

Many a municipal authority, faced with street sleepers, littered grounds and poisoned fish, would have moved in swiftly to stamp out the trade. The Durban Metro chose instead to treat the informal market as an asset, and to consider innovative ways to provide the hawkers with appropriate facilities. The council acquired a sliver of land on Mansel Road from the railways and commissioned Durban architect Rodney Harber to design accommodation for the "drum ladies". Harber studied how the "drum ladies" distributed themselves along the sidewalk, how much space they utilised and most significantly how the drum ladies had combined work and home in a way that suited them best.

The plan finally approved provided 44 relocated "drum ladies" each with a shop and living quarters in one unit. The size of the units was based on measurements of the original drum shelters. A small room with a sales hatch fronts a trading street; two tiny living rooms lie beyond a pole-covered courtyard at the back. A special gully for washing drums ensures that the effluent goes into the sewers rather than the storm-water drains.

The Mansel Road facility has been a great success, offering the poorest city dwellers a viable existence in the centre of town. It showcases how housing can be designed to accommodate economic activity. Most significantly, it illustrates how creative solutions can emerge when government chooses to engage sensitively with informal processes. Increasing informalisation will make demands on government to do this more often in the future.

Case Study 7: Landlord-tenant relationships in Diepkloof
Source: HSRC (2007)

As outlined by Area Manager of Region D, there is the presence of a tribunal system that monitors and manages complaints of conflict and disputes between landlord and tenant (backyard rooms and shacks). The Housing Department have Tribunal Officers, three in the vicinity of Soweto, who see to these complaints on a case-to-case basis and tries to
solve these disputes locally. From a telephonic conversation, with the Tribunal Officer for Diepkloof, Ms Mary Mathabane, the Tribunal System had been initiated in May of 2005 and has been in place since, to monitor complaints. If these cannot be resolved locally then it is referred to the Provincial Tribunal, which is a more formal system. However, Mary assured us that complaints have not reached a stage of mediation with the Provincial Tribunal. The Housing Department keeps a record of all cases, and compiles case records on a monthly basis and reports how many of these have been resolved and how many have been referred to the Provincial Tribunal. These are reported to the Provincial Department on a quarterly basis.

Mathabane reported that over a three-month period (April 2007 - June 2007) only five complaints have been recorded in Diepkloof. Complaints come from both landlords and tenants. Complaints are lodged telephonically and a Tribunal Officer, thereafter listens to both sides of the story before resolving the dispute. Majority of complaints have been small in nature and in the form of ‘non-payment of rent’. Mathabane also mentioned that Street and Ward Committees as well as councillors do monitor the charging of rent of backyard shacks and rooms in terms of the services (electricity, water) provided and quality of the structure. Other than services and quality, the rentals of backyard shacks are dependent on the landlord.

Therefore the management of disputes is facilitated by the formal system through the existence of a Tribunal System. However the Tribunal System engages in an ‘informal’ and interactive process that has to date, resolved all disputes (even though these are small in nature) amongst landlords and tenants. Informal interactions, take place in the form of one on one discussion with respective parties. This reinforces the fact that the Housing Department have and are currently managing disputes effectively, using an ‘informal’ and interactive process that involves other formal structures like, ward committees and councillors. According to Mathabane, Diepkloof operates on ‘normal’ rental prices for backyard rooms and shacks. For a shack, approximately R 150 per month is charged and a brick backyard room, R 250 – R 300 per month is charged. The Housing Department has not made any formal agreement to manage the growth and rental of backyard shacks in Diepkloof. Therefore the tribunal system only has the power to manage disputes that arise between landlord and tenant.

The municipality regards backyard shacks as informal structures and have put Programmes in place to rehabilitate and upgrade these townships, specifically backyard shacks. Other Townships in Soweto, like Orlando, is one of the 20 Townships targeted by the Gauteng Department of Housing to rehabilitate townships and upgrade backyard shacks. This is said to “firstly formalize tenancy provide secure tenure and provide alternative housing accommodation”, and it also has the “potential to offer affordable housing accommodation to those that cannot afford market related rentals and it offers accommodation to people that are ‘in-transit’” (RETP Report: 14/09/2006), through the placing of restrictions on the number of backyard rooms or shacks that are allowed in one yard as well as the maximum amount of rental a landlord can expect from a tenant. Therefore this formally manages backyard shacks, which Diepkloof lacks.

Other than the Tribunal System, there is no formal system of managing the landlord and tenant situation in Diepkloof as the Municipality sees backyard shacks as informal structures.

Case Study 8: “Rental is the Business of Alex” - Support for Housing Entrepreneurs
Source: DPLG (2006): Documenting Emerging Practice: Lessons Learnt, Part four, case studies prepared by Mike Morkel and Tanya Zack
One of the programmes identified in the 2002 Alexandra Renewal Project (ARP) Housing Strategy was to encourage residents of Alexandra to become entrepreneurs to develop and rent out accommodation. Although it is a project that has not yet been implemented it is an innovative concept that is worth reflecting on. Support would be given in packaging projects and providing incentives to encourage private investment (mainly by individual households) in the upgrading and development of the formal and informal housing stock of Alexandra. This project would provide income generating opportunities for the economically active population of Alexandra, whilst dealing with the housing reality on the ground.

A central focus of the original Housing Strategy was to recognise and support the concept of home ownership within Alexandra, whilst simultaneously supporting the significant housing rental market that exists. Julian Baskin, Programme Manager of the ARP, recognises that: “We cannot intervene in programmes such as shack relocation without understanding the role that these structures are playing in a local economy. The yards often include a ‘main’ house and several other dwellings that are let to tenants…there is resistance to an upgrade that will alter the existing landlord-tenant relationships in which landlords earn income from renting out space”. It has been quipped, “Rental is the business of Alex”.

The idea is based on the ShoreBank Chicago model to encourage the development of housing entrepreneurs (private individuals/owners) to invest in developing housing stock for rental. ShoreBank’s mission is to invest in people and their communities to create economic equity and a healthy environment. Established in 1973 in the US in the days of officially sanctioned discrimination on the basis of race and income, ShoreBank was created to demonstrate that a regulated bank could be instrumental in revitalising communities.

Credit is used as the tool for the revitilisation and empowerment of communities.

By integrating real estate lending, small business finance, and entrepreneurial services, ShoreBank provides critical access to capital that bridges the divide in opportunities and helps create jobs and build wealth. They provide finance to fund the necessary building improvements and rehabilitation – mainly loans for the purchase and rehab of multi family apartment buildings. They offer revolving lines of credit for proven rehabbers of dilapidated single family homes and smaller multi family properties (2-3 flats). Designed to assist “hands-on” rehabilitation entrepreneurs who pursue this business full time, the access to lines of credit help to rebuild neighbourhoods by financing the transformation of vacant eyesores into decent, affordable housing. This helps local institutions promote small business growth, building residents assets and strengthen their communities through financial services to financially underserved communities.

In South Africa the Shorebank Chicago model is currently being piloted by TUHF, the Trust for Urban Housing Finance, who are working with emerging entrepreneurs in the inner city of Johannesburg. Shorebank Chicago are also supporting the development of initiatives in Kyalitsha and Durban, as a contribution to urban regeneration.

In Alexandra the plan was to target the acquisition and reconstruction of new housing in designated areas [such as Marlboro South], or to build or remodel rental housing on land that people already owned, such as in Old Alexandra. To initiate the programme two to three entrepreneurs would be identified to undertake pilot projects. A specialist service provider would be identified to support the programme.
The entrepreneurs selected would have to:

- Be resident in Greater Alexandra or in one of the areas developed to take the overspill from Alexandra;
- Live in the area in which the property which they are going to manage is located;
- Show an aptitude for property ownership [i.e. have construction and building skills, already own or rent on their property, operate other small business etc.];
- Meet the requirements of the Specialist Retail Lenders;
- Be willing to undertake ongoing management of the rental stock including selecting tenants, collecting rentals and maintenance.

As well as identified prospective entrepreneurs, programme implementation hinged on the appointment of a Specialist Retail Lender [SRL] – a ShoreBank in Alexandra.

Case Study 9: Accommodating evicted people in Marlboro
(Source: DPLG (2006): Documenting Emerging Practice: Lessons Learnt, Part four, case studies prepared by Mike Morkel and Tanya Zack)

New national regulations governing evictions require the state to take responsibility for providing basic accommodation for evicted persons. Applications for emergency land for this need take time, court procedures and are slow and arduous. The high level of invaded land in Alexandra – where not only open land, but industrial buildings and school sites are illegally occupied – means that many projects are held up while evictions are resolved. In addition the perceived contradictions of rewarding illegal occupancy by providing alternative accommodation have concerned local politicians.

The decision to halt removals to areas outside of the immediate surrounds of Alexandra has forced a change in the ARP housing strategy. The land now targeted for relocation of peoples from Alexandra is more expensive and more contested. It is also smaller in size and has stimulated a change in thinking about densities of new housing development.