

3. FINDINGS FROM THE CASE STUDIES

3.1 Introduction

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

3.2 The Institutional Environment – Profusion, Confusion and Contusions

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

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

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

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

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

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

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

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

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

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

3.4 Gaining access? Fragmenting, Enclaving and Fortifying the City

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

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

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

Spatially, the result has been a series of enclaves or even more extreme versions, where communities are fortifying themselves against external influences. Enclaving may be seen as a series of activities and communal actions that promote the spatial and other resource interests of a specific group within a certain area. It could be argued that the manner in which the older generation in Kliptown and Diepkloof is looking after their best interests, through denying certain kinds of outside interventions, are forms of what is referred to as “enclaving”. Enclaving can be described as a way of fortifying certain areas, such that they are spatially ringed off/divided from the surrounding areas, and in some very profound ways are cut off from the rest of the surrounding community. On reflection there seem to be some extreme forms of enclaving taking place in other areas of Johannesburg. Diepsloot seems to have elements of that within its larger informal constitution. Certain areas seem politically and socially dominated by some groups, the Councillor from Ward 96 identified, “we have blocks that are controlled and owned by foreigners. The leadership of the Community Policing Forums (CPFs) of these areas are also foreigners” (Himlin, et al, 2007). It would seem that the social fragmentation in these areas has become so marked that it has manifested through a series of spatial expressions, in which foreigners and locals have divided themselves up. In Fourways the sense of fortification is even stronger as the gated communities are very much in evidence and much has been written on the fortification of these higher income communities³.

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

3.5 Land Use: Regulation and the Modernist State

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

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

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

It is, however, not only housing and informal dwellings that are being monitored and controlled, but also informality in other guises. There is a general and quite pervasive idea that informal trading is the first step in a slippery slope from disorganisation to anarchy. Government officials or private sector property owners have argued that the mess left behind by informal traders means “first grime and then crime” (Silverman and Zack, 2007). Such thinking implies that there is a set of stages that lead to crime and criminality, and which begin with littering and dirt. Royston and Narsoo (2006) have commented on the fact that the existing dichotomy or binary that regards “informal” as something which is opposed to or opposite to the formal means that informality in all of its formulations can only be seen as that which is illegal or oppositional to order and notions of modernism. Formality and informality could probably be more usefully understood as standing in a number of complex relationships to each other, in some cases mutually dependent or mutually beneficial. However, whilst formality is privileged within policy circles as the best amongst a variety of options then informality will always be seen as something that is wrong, second-best and which should be disposed of as soon as possible.

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

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

The laws and regulations that are on the books are certainly an attempt to control the use and management of land use in the city; it is the manifestation of the underlying belief that the city must be ordered and controlled. A system where informal activities and uncontrolled growth at any scale are dangerous and should be stopped. The reality is that land use is taking place in a wide variety of ways that are ignoring the official land use schemes and zoning regulations precisely

because they do not support a range of activities that are in demand by the people living and working in these areas. Land use regulation and management currently tries to order what it sees as disorder but in doing so creates obstacles for informal entrepreneurs and potentially jeopardises survivalist strategies.

3.6 Community Conflict and Cohesion: The Cadastral and Zoning Schemes

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

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

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

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

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

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

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

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

3.7 Privatising Public Space and the Reprivatisation of Private Space

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

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

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

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

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

