Towards Facilitative and Pro-Poor Land Use Management in South African Urban Areas: Learning from International Experience

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Few would argue with the proposition that land use management is one of the most powerful tools that planning, both in South Africa and internationally, has to transform the urban form. Yet despite the potential of this tool, it has been neglected both in terms of academic enquiry and in terms of legislative reform. This has resulted in it functioning as an undesirable and unwieldy tool that perpetuates the modernist ideals of land use separation and sprawling suburbia. As the recent UN-Habitat (2009) *Global Report on Human Settlements* summarises and explains: "regulation and land-use management are the most powerful aspects of urban planning; yet most reforms have concentrated on directive planning. The regulatory system is probably the most difficult to change because of entrenched legal rights and interests; but without reform in this sphere it will be extremely difficult to use planning to promote urban inclusion and sustainability" (p. 65). Indeed, a comprehensive review of the operation of land management in Johannesburg South Africa has confirmed that "much of what is necessary is a serious re-thinking of how some fundamental concepts are regarded. The existing planning schemes, zonings and the cadastral system are in many ways exclusive of the needs of low-income households and communities and seem to result in the disempowerment and alienation of those that they intend to include and empower" (Rubin, 2008: 30). However, academic and policy debates rarely extend their discussions beyond *what* such a system should achieve to address questions of *how* it will achieve them.

This paper begins the search for the appropriate ingredients of such a land use management system in South Africa's urban areas. In the first section it outlines some of the critiques levelled at land use management as a planning tool and then makes the case for its importance to enable integrative and transformative outcomes. The reasons for the failure to overhaul land use management in South Africa are then considered. The second section reviews international experiences of innovation within particular regulatory systems, particularly examples of systems that have used methods other than Euclidean land use zoning to achieve the desired goal of spatial transformation. We focus on methods of analysis that take account the broader formal and informal dynamics of land use management, and innovations that take account of the poor's 'right to the city.' The third section then considers the potential and implications of these systems and innovations in a South African context; drawing out what we believe to be the key elements in the medium and long term that need to occur in the current system. Based on examples from both local and international practice, we present an argument for a land use management system that moves away from the traditional emphasis on zoning towards a more flexible system based on a tiered set of plans. We argue for a system that takes account of and responds to the dynamics of the urban land market, both its formal and informal dimensions, and that addresses the poor and their needs as the central focus of land use management.

1. Understanding the place of land use management in reforming South African spatial relations

In this section we will advance three arguments in favour of the retention but overhaul of land use management in South Africa. First, we briefly outline the place of land use management within wider systems of land governance and spatial planning. Second, we acknowledge the international

debate about the appropriateness and efficiency of land use management as a planning intervention. Third, we sketched some of the reasons why land use management in South Africa continues to operate *contrary* to the values and stated objectives of the state since 1994.

To begin we would like to emphasise that land use management should be understood as a single component in a wider land governance system, which establishes the regulatory framework which governs access to land, land rights, land use, and land development[1]. It is only through the comprehensive integration between these different aspects regulation is likely to be effective and transformative[2]. Enemark and McLaren (2008) argue that, ideally, in the land use management system

> ...the various sectoral interests are balanced against the overall development objectives for a given location and thereby form the basis for regulation of future land-use through planning permissions, building permits and sectoral land use permits according to the various land-use laws. These decisions are based on the relevant land use data and thereby reflect the spatial consequences for the land as well as the people. In principle it can then be ensured that implementation will happen in support of sustainable development (p. 6).

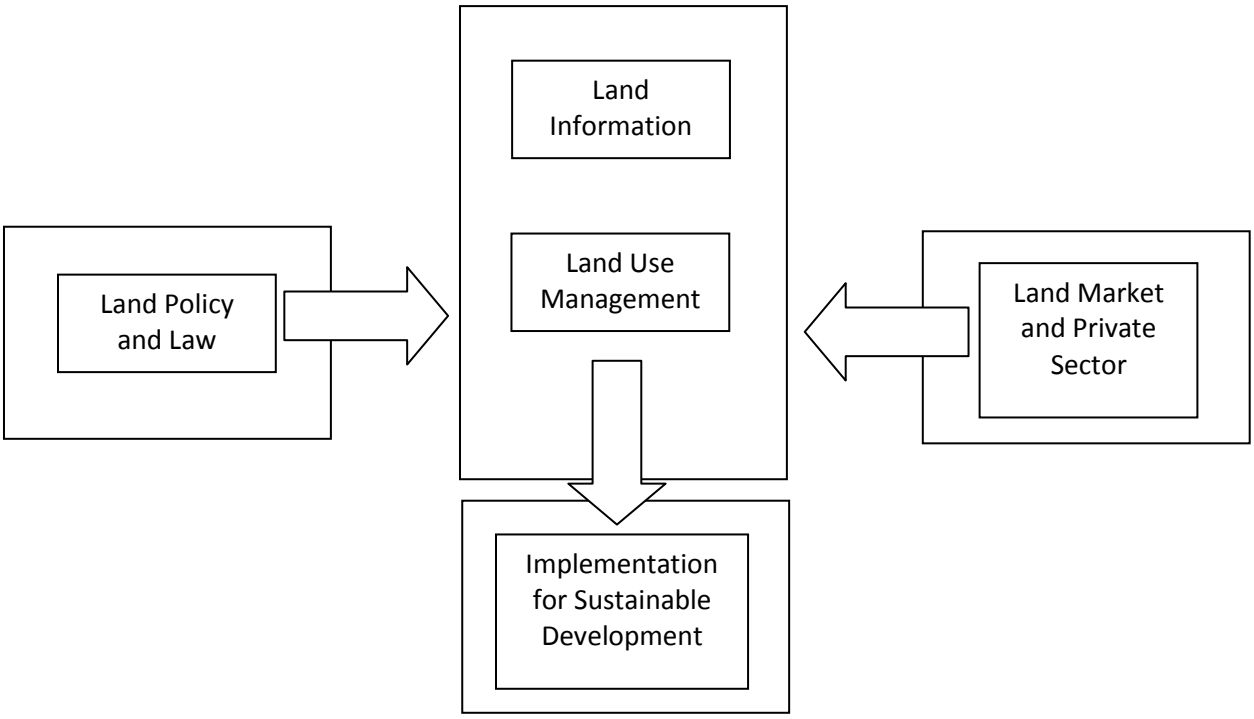

Figure 1: Integrated Land Use Management System
(Adapted from Enemark and McLaren, 2008: 6).

[1] This is vital because it "allows everyone to understand the role of the land administration functions (land tenure, land value, land use, and land development) and how land administration institutions relate to the historical circumstances of a country and its policy decisions. Most important, the [land governance] paradigm provides a framework to facilitate the process of integrating new needs into traditionally-organized systems without disturbing the fundamental security these systems provide" (Deininger and Enemark, 2010: 4).

[2] "Sound land management requires operational processes to implement land policies in comprehensive and sustainable ways. Many countries, however, tend to *separate land tenure rights from land use opportunities, undermining their capacity to link planning and land use controls with land values and the operation of the land market*. These problems are often compounded by poor administrative and management procedures that fail to deliver the required services. Investment in new technology will only go a small way towards solving a much deeper problem: *the failure to treat land and its resources as a coherent whole*" (Deininger and Enemark, 2010: 4; added emphasis).

Originally land use management evolved to serve two different purposes: it was intended to guide the evolution of the development of the urban space to protect the 'public good' and, somewhat paradoxically, to protect the property values of private landowners (Watson, 2009a). Despite the almost ubiquitous practice of land use management throughout both the developing and developed world, its use as a planning instrument remains contested by two divergent philosophies of planning: market-based critiques and progressive critiques, which take on distinct elements when describing developing world conditions (although the two are often not neatly separated in particular analyses). The market-based critique takes aim at the fact that land use management constitutes a state-led intervention into the dynamics of the land market resulting, they claim, in a range of undesirable 'externalities' (i.e. unintended and often unanticipated consequences). These include the addition of unnecessary 'transaction costs' (i.e. the time and cost involved in meeting the requirements) and the inefficient and ineffective allocation of land uses (e.g. that a *laissez-faire* approach would result in more appropriate mixes of land use or that there are more effective market-friendly regulatory mechanisms) (Karkkainen, 1994). In a review of these arguments Karkkainen (1994) suggests that while they may be some limited validity to these critiques, they are often difficult to empirically verify and the suggested alternatives seem to have equivalent or greater externalities.

The progressive critiques often have four elements: land use management is associated with inflexible and antiquated modernist notions of planning that have resulted in sprawling, unequal and environmentally unsustainable cities; the use of the system to exclude undesirable elements from well resourced areas[3]; the tendency of these systems towards the technocratic (often disconnected from wider, public, democratic systems[4]) and, in the developing world, the foreign nature of and impracticality of implementing land use management systems (Karkkainen, 1994; UN-Habitat, 2009; Watson, 2009a). This last critique deserves further elaboration and really consists of two interrelated parts: first, the inappropriateness of focusing scarce resources on producing 'paper plans' that have little impact on governance (Rakodi, 2001) and, second, the inversion of the normative assumptions that underpin traditional approaches to planning[5] renders responses which focus heavily on formalisation impractical and unsuitable (recently driven by Hernando de Soto's *The Mystery of Capital*; for a thorough South African critique to see Kingwill, Cousins, Cousins, Hornby, Royston and Smit, 2006). Authors such as Roy (2005, 2009), Huchzermeyer (2009) and Watson (2009a; 2009b), therefore, emphasise the different rationalities underpinning such systems[6] and

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[3] Watson (2009a) explains in great detail: "Land use zoning usually carried with it a particular view of urban form (in keeping with the visions of the early planners), and was enthusiastically adopted by urban middle and commercial classes, who were able to use it as a way of maintaining property prices and preventing the invasion of 'less desirable', lower income residents, ethnic minorities and traders. At the time it was noted that the supposed 'public good' objective of planning had been turned into a tool by the wealthy to protect their property values and to exclude the poor" (p. 166-7).

[4] Karkkainen (1994) reports that "critics suggest that in bigger cities that do have planning departments, planners often find zoning a bothersome, time-consuming, and highly technical distraction from what they regard as their more important planning functions, i.e., charting the future of that area. Therefore, it is not clear that zoning has ever been well-integrated with the other tools at a planner's disposal" (p. 6).

[5] Here we are referring to the fact that the majority of land, space and economic activity is 'informal' (i.e. they enables the livelihoods of the poor *because* they lie outside of the regulatory reach of the state) and heavily influenced by extra-market and non-state social relations (e.g. traditional authorities, kinship ties etc) (Roy, 2005, 2009; UN-Habitat, 2009; Huchzermeyer, 2009).

[6] Watson (2009b) explains her 'conflict of rationalities' thesis thus: "One way of thinking about the problem of planning as anti-poor, is to see the relationship between the requirements implied in planning and land use management systems, and the human requirements of survival and 'making do' under conditions of poverty and inequality, as a 'conflict of rationalities'. The forms and processes of land use, buildings, activities and conduct required to meet conventional master planning and urban modernist environments, are simply

underline the important role the informal land system plays in the livelihoods of the poor, including providing cheap, easy access to cities and employment; allowing individuals to achieve greater levels of independence and exercise choice; and act as a safety net when households experience 'shocks' but need to remain in the city (Marx and Royston, 2007: 18). The fear often expressed is that processes of formalisation, no matter how sympathetic, will undercut these benefits. They therefore advocate for a more patient approach that is directed at improving the "'interface' between institutionalised systems of land management and development and the survival strategies of the poor" (Watson, 2009a: 128).

In the face of these varied critiques can a continued focus on land use management be justified? The danger with abandoning land use management, as Yiftachel and Yacobi (2004) point out, is that in highly unequal societies

> ...a common planning response is allowing, condoning and even facilitating urban informality. Whole communities are thus left out of the planning process, or overlooked by the content of urban policies. Typically, such populations are mentioned as 'a problem', but their undocumented, unlawful or even fugitive existence, allows most authorities to ignore them as having full 'planning rights' to the city. In other words, policy-makers define urban informality as a method of indirectly containing the 'ungovernable'. The tactic is avoidance and distant containment; but the result is the condemnation of large communities to unserviced, deprived and stigmatized urban fringes. Here lies a main feature of the urban informality as a planning strategy: it allows the urban elites to represent urban government as open, civil and democratic, while at the same time, denying urban residents and workers basic rights and services (p. 217–218).

Therefore, while informality may well support the immediate needs and livelihoods of the poor, their exclusion from the planning system (whether it is 'strategic' or due to neglect) is likely to exacerbate systems of inequality. Parnell and Pieterse (2010) argue that what has been absent from the literature that suggests the formal systems of the state in the global South have had an adverse effect on the livelihoods of the poor "is the notion that consistent enforcement to protect the public good and to foster a financially and environmentally sustainable urban system is a critical component of the developmental agenda of the state, especially at the city scale" (p. 156). This, they argue, means shifting the debate away from single-issue debates about the effect of particular policy and regulatory mechanisms on the livelihoods of the poor (e.g. security of tenure, housing delivery) to address the whole land use management system (presumably addressing those features that contribute to inequality and as well as making the regulatory system more accessible to the poor[7]). In the South African context, the argument for the development of a single system holds particular weight because, in contrast to rest of the continent[8], the bulk of urban land is at least nominally part of formal land circuits. "In other words, most land is recognised and nominally controlled by the State as opposed to being informal, and beyond the control of government and in the hands of illegal land barons. Thus, while there are currently multiple and unequal systems of

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incompatible with the fragile, fluid, improvised and temporary practices (including informal and 'illegal' shelters, acquisition of water, energy, income generation, mobilisation of networks) needed to survive in poor environments. This is not to suggest that this conflict arises from some kind of simple misunderstanding: it has its roots in global and local economic and political processes which are exploitative and which entrench inequality" (p. 128; references removed).

[7] "If urban regulations were supportive rather than exclusive, more achievable by poor people, and developed in consultation with communities, it may also be easier to achieve compliance and hence basic health and safety levels, and social protection of the vulnerable" (Watson, 2009a: 179).

[8] For example, '[t]he best figures available indicate that less than 30 percent of the land in developing countries is titled. In many countries of Sub Saharan Africa, this drops to one percent' (Augustinus, Lemmen and van Oosterom, 2006: 1).

urban land management, government ultimately controls almost all land management in cities" (Ovens et al., 2007: 16). Therefore, as Parnell and Pieterse (2010) point out, appropriately integrated directive planning and land use management is an indispensable part of the state's ability to pursue redistributive goals and the transformation of city spaces (e.g. greater integration and increased sustainability). Enemark and McLaren (2008) further argue that there are three 'fundamental principles' to a land use management system that is able to respond to informality:

- **Decentralisation**, where the purpose is to solve the tasks at the lowest possible level so as to combine responsibility for decision making with accountability for financial, social, and environmental consequences.
- **Comprehensive planning**, that should combine the overall land use policies and the more detailed land-use regulations into one planning document covering the total jurisdiction. This should emphasise that "planning is politics" and not just bureaucratic regulations.
- **Participation**, that should serve as a means to create broader understanding of the need for planning regulations and enable a locally based dialogue between government and citizens around development opportunities and the need for development control (p. 6).

That is, it is a system that must be optimally accessible and flexible, and yet should be informed by a wider strategy of socio-spatial transformation. Watson (2009a) puts the challenge thus: "Both pro-poor urban plans and climate change actions will require strong and decisive state intervention (with other partners) to make a difference, given the nature and scale of urban crises... Rather than a blanket approach to land use management, these systems need to be able to combine flexibility and inclusion, where it is needed, and at the same time retain the ability to take firm and long-term action in relation to environmental [and social] concerns" (p. 188).

Why are there still 'multiple and unequal systems of urban land management' in South Africa more than fifteen years into democracy, especially in the light of various political and policy pronouncements over the years on the importance of tackling the inequality inherent in the 'apartheid city'? There are a collection of reasons which relate to the politics around other agendas that have affected the development of this agenda (e.g. deep ambiguity about implementing urban policy, the constant association of land with rural issues, the fragmentation and 'despatialisation'[9] of planning throughout government policy, 'space-blind' housing delivery, the demobilisation of civil society and social movements that cannot be considered in more detail here (see Charlton and Kihato 2006; Harrison, Todes and Watson, 2008; Pieterse, Parnell, Swilling and van Donk, 2008; Pillay, 2008; Turok and Parnell, 2009). We would like to focus on three sets of structural challenges. First, Berrisford and Kihato (2008) and Pieterse (2009) argue that the failure of the state to promulgate the Land Use Management Bill (first drafted in 2001) and/or enact a proactive approach to spatial planning has been due to the common vested interests that business, the middle-class[10] and municipal authorities[11] have in protecting property values. Given the threat that such legislation

[9] Here we are trying to indicate the continued focus in government on 'strategic' planning and the 'integration' of the planning in different departments, minimising the spatial aspect of these processes (e.g. the relationship between the IDP and the SDF). For more see Pieterse (2007) and Harrison, Todes and Watson (2008).

[10] "The middle classes in South Africa are highly organised and their interested are typically advanced through ratepayers associations and other specialist organisations. Typically these organisations have no shortage of access to legal expertise to threaten litigation if they deem it necessary to block government plans or interventions. In other words, Nimbyism is not some abstract sentiment but rather a powerful sentiment that is always backed-up with a litigious disposition. This threat is enough to neutralise ambitious planners" (Pieterse, 2009: 3).

[11] Municipal authorities are very dependent on the constitutionally-guaranteed rates base for taxes and income, with approximately 20% derived from property taxes (Berrisford and Kihato, 2008).

may be transformative or redistributive in nature (although the various drafts proposed thus far remain relatively market-neutral), the current inefficient and fractured status quo, with its know loopholes[12], is considered preferable by those in power (Harrison, Todes and Watson, 2008: 14-5) and civil society has thus far proved to be unable to consolidate an agenda and effectively mobilise to change these systems[13].

Second, the planning profession faces a raft of challenges including a sometimes difficult relationship with the government and statutory bodies intended to regulate it; capacity shortages, in both the absolute number of planners as well as their skill sets and levels of experience; the ability of the profession to establish a confident realm of professional practice within state structures and wider society (e.g. separate but equal to engineers and financial managers); the fact that many state-employed planners are deeply steeped in outmoded, and sometimes even discriminatory, methods of practice[14] and the conceptual and practical question of how to work with and influence the operation of the market (Todes and Mngadi, 2007; Harrison, Todes and Watson, 2008; Berrisford and Kihato, 2008). On this last point, Harrison, Todes and Watson (2008) argue that

> ...there is an absence of direct debate amongst planners about how they should relate to the market. The emphasis on planning as facilitation implicitly accepts a market-driven approach, but attempts to shape the market through physical plans. Yet planning visions are very different from patterns produced by the market, and this form of spatial planning has largely been ineffective in this context... While planners have become more engaged in LED [Local Economic Development], the more traditional work of planning remains devoid of an engagement with economic dynamics and relationships. The design approach used has meant that planners have not spent much effort on understanding relationships between markets, economic activity and space. This is a crucial lacuna if planners are to manage cities in more effective ways (p. 157).

The design and functioning of the land use management system, as the functional meeting point between the state and the private sector, therefore, necessitates a concerted engagement with the realities presented by 'markets, economic activity and space'. Indeed, it presents planning with a tangible way to reclaim disciplinary authority within the local government system[15].

Third, the regulatory environment has been complicated by the separate and parallel evolution of the planning and environmental (and heritage) agendas. Harrison, Todes and Watson (2008) argue that the progressive elements of each agenda have perceived the mainstream of the other as

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[12] An example of one such loophole has been the use of provincial tribunals (established by the Development Facilitation Act) to circumvent municipally-controlled planning processes (Harrison, Todes and Watson, 2008: 124). This particular loophole seems to have been close by a recent Constitutional Court case.

[13] "One of the really curious puzzles in South African politics is the general absence of civil society formations or coalitions that operate at the larger urban scale... I am relatively certain that unless this shifts; unless radical civil society groups can reformulate their claims to connect the local and the regional, as well as the current moment and the future, it will be difficult to foster enough autonomous political pressure to influence or redefine the political calculus of local authorities" (Pieterse, 2009: 10-1).

[14] Consider for a moment to be successful (i.e. promoted) in current departments you need to be skilled at using apartheid-era legislation (Mammon, Ewing and Paterson, 2008: 22; Berrisford and Kihato, 2008). While it is quite possible that this has resulted in planners who can cleverly use these instruments *against their original intent*, it seems more likely that they use them 'strategically', as Yiftachel and Yacobi (2004) use the term, to 'control' informality (often at the request of their political bosses). For examples see Pithouse (2009) about local government in Durban, Huchzermeyer (2009) in the City of Johannesburg and Graham (2006) for a detailed analysis of these dynamics in the City of Cape Town.

[15] That is, if the profession is seen to possess the tools and ability to successfully facilitate *and influence* market desirable outcomes, it is more likely to receive increased political support and secure a more central institutional role in decision making.

narrow and unreformed, and have therefore emerged as separate disciplines with parallel sets of legislation, institutional locations and sets of practices and discourses. The environmental lobby, however, has been far more successful at promoting its agenda: "There is no doubt, when comparing the relative zeal with which government has tackled these two areas of law, that enormous energy and political commitment have been directed towards the reform of environmental law, while planning law has been almost entirely ignored since the closure of the Development and Planning Commission in 2000" (Berrisford and Kihato, 2008: 338). In addition to the different levels of zeal, these approaches to land use regulation have been marked by different rationalities: Environmental Impact Assessments (EIAs) and Heritage Impact Assessments (HIAs) focus on rational planning principles that emphasise expert-led processes which focus on preventing negative impacts, while planning legislation (governing, for example, IDPs) has increasingly tried to embrace collaborative, facilitatory practice concerned with issues of redress, equality and integration[16] (Ovens et al., 2007: 33). In a context where municipalities often have severe capacity constraints, such parallel system are wasteful and add to the complexity of achieving desirable outcomes (for examples see Townsend, 2001 and Harrison, Todes and Watson, 2008). Indeed, Swilling (2008) argues that "[n]either of these policy frames adequately define what sustainable urban development needs. Sustainable urban development is not the sum of developmental local government plus environmental conservationism" (p. 80-81). The reform of the land use planning and management system, as well as the continued development of guidelines on integrating sustainability into IDPs, therefore, provides vital opportunities to create better and *more explicit* alignment between the 'green' and 'brown' agendas at both the strategic and regulatory levels.

In this section we have sketched the components of a land use management system, the conventional criticisms levelled at them and have argued that a reconceptualised land use management system can play an important role in the spatial consummation of cities in the developing world. Finally, we have outlined the three structural barriers to land use management reform in South Africa since 1994. The next section begins to draw on international experience to indicate how a progressive land use management system may be constructed in South Africa.

2. Learning from international experience

In this section we change gear and look to international 'best-practice' in the field of land use management. We are particularly interested in examples that will enable the creation of a land use management system that concurrently *facilitates* private sector development, while enabling progressive local government authorities and civil society organisations with opportunities to *proactively* claim the rights of the poor to the city. Reviewing the literature there seem to be three main lessons that can be learned from the international experience:

1. *Effective land use management starts with an understanding of the land market, including the impact of existing regulatory systems*

Internationally there is a growing recognition of the importance of monitoring and evaluation as it has become increasingly clear that for public interventions to be effective their effects must be better understood, paying attention to both their desired and unintended consequences. Yet, surprisingly, this has not translated into the realm of land use management. This is particularly worrying when one considers that there is a vast body of literature that argues that the current paradigms and practices of public management of land are creating artificial land shortages, resulting in land and housing prices that generally out of reach of the majority of the urban population (see for instance Rajack, 2009; Brueckner, 2007; Dowall and Clarke 1996). In response to this one of the main tools which have been suggested by the World Bank is that of a Land Market

[16] Although the degree to which this has happened in practice, as has been outlined, is debatable.

Assessment (LMA)[17]. This tool intends to give accurate and up-to-date database on the operation of the urban land market, including prices and supply of urban land, as well as an understanding of the impact that state regulation of land and supply of infrastructure is having in constraining and enabling development. In other words, they allow for an assessment of where state intervention is hindering and harming the development of the urban settlement in question, and where state intervention is needed but not occurring adequately (or at all). The two commonly cited examples of this are Sando Pedro Pula, Honduras and Bangkok, Thailand. In the case of the former, the LMA was able to identify a dramatic increase in land prices, and a severe undersupply of land – resulting in a recommendation for the state to develop a land development agency. In the case of the latter, the LMA identified a conflict between private sector development and state built housing, with both sectors providing housing to lower income groups, but with the state providing housing in more remote locations. Based on this, it was possible to recommend a resolve that would change the state's role to supplying land to private sector developers; a resolve that had the potential to alleviate the unnecessary competition between the two sectors (Dowall, 1995[18]).

Such a monitoring and evaluation system should also be sensitive to the actually occurring dynamics within 'informal' land use systems in poor communities. The International Federation of Surveyors (FIG), Global Land Tool Network (GLTN) and UN-Habitat have therefore recently proposed a 'Social Tenure Domain Model'. They argue that

> [g]iven today's problems related to urbanisation, environment, access to land, and access to food and water there is a need to get a complete overview of who is living where, under which tenure conditions, and for which areas. Overlapping claims to land need to be included as well as Illegal acquisition or occupation of land. A complete map of 'people – land' relationships is needed. Such a more flexible extension of LAS [Land Administration System] should be based on a global standard and should be manageable by local communities them self from the start (Lemmen, 2010: 7).

This is particularly important in understanding the impact of changing economic and land market conditions on the livelihoods and place of the poor in the city. Durant-Lasserve (2006) argues that the "market eviction process is tending to replace the forced evictions that prevailed in the 1990s, with similar effects on the poorest segments of the community is concerned. Although no figure is available at global level, empirical information clearly indicates that the magnitude of various forms of market-driven displacement now surpasses that of forced evictions" (p. 223). These dynamics, and their consequences, are vital to capture to enable appropriate policy responses.

While there is limited evidence of elements of these tools being adopted into formal practice, we would argue that they should form the *cornerstone* of any state intervention into the land market. They embed a monitoring and evaluation tool into the land use management system that will create a system of feedback loops to help guide policymakers and decision-makers achieve their desired results.

2. *Land use management should be premised on a method that emphasizes negotiation based on a series of general principles and not a prescription of a specific urban form*

The second lesson is that method is important – how you 'do' land use management has a substantial effect on the overall effectiveness of the system, particularly with regards to the length and complexity of land use management processes. De Soto (1989; in Payne 2001) illustrated this,

[17] See also Payne (2005) for a similar concept around the idea of regulatory audits.

[18] It needs to be noted that it is not clear to what extent these proposed interventions were actually implemented.

using the case of Peru, by showing that the biggest hindrance to poor were less the regulatory standards in place, and more the procedure required to gain approval. This begs the question: how do you land use management better? One answer is simply to adjust the standards and procedures being emphasized, and there are certainly examples this. Following De Soto's recommendations, Peru has looked at ways to reduce the steps needed to get approval and to make the process more transparent. Mali, on a similar tack, instituted maximum time frames for in the approval process which, if exceeded by the authorities, entitles the applicant to proceed (Payne, 2001). This achieves a basic level of reform without having to review the entire nature of the system and processes. However, conversely, it still relies on a method (Euclidean Land Use Zoning) that has been shown time and again to be a poor and, especially in the developing world, often inappropriate tool.

The other path is to look for alternatives to Euclidean Zoning. Two viable alternatives have emerged. First, performance zoning maps development rights right down to the level of individual erf but, instead of focusing on land use as you would in Euclidean Zoning, it focuses on the intensity of land uses. While in its original implementation it was heralded as a viable alternative to traditional Euclidian Zoning, this method has largely fallen out of favour owing to the cumbersome administrative burden it creates (Baker, Sipe and Gleeson, 2006).

The second option, and the option we believe to have the most promise, is the one demonstrated by the British Planning System. In the UK, under the recently proclaimed Planning and Compulsory Purchases Act of 2004, all development is controlled by what is referred to as a Local Development Framework. This framework is a 'folder' of five documents (Hambleton District Council, 2007):

- *The Core Strategy* - sets out general and spatially specific principles for the area. This usually includes broad social, economic and spatial analysis and recommendations.

- *Development Policies* – policies which guide the approval or refusal of planning permission. This provides interpretation, explanation and further detail to the core strategies, in essence making the core strategy 'practical.'

- *Allocations* – based on the Core strategy and Development policies, a set of strategic site specific proposals are identified and elaborated upon in this document.

- *Proposals Map* – a map showing the location of local site specific proposals.

- *Statement of Community Involvement* – sets out the process for public participation in both the Local Development Framework process as well as during planning applications.

The difference between this and traditional Euclidian Land Use planning is this system maximises flexibility – it is not encumbered by the technocratic concerns for which zoning schemes have become renowned. For example, there is no need to differentiate between a rezoning, departure or application for consent use; an application is an application. Secondly, as land use decision making is directly tied into forward planning for the area, and because individual erf's are not ascribed specific rights, development control is based on up to date principles covering spatial and socio-economic considerations.

What is less than ideal about this system for a developing world context is that in the British system all developments have to be assessed. In a developing world context, where the capacity of government is usually limited, this will probably require a more nuanced approach; for example, only requiring large developments, or developments clearly out of line with the principles promoted, to undergo rigorous assessment. We are, however, aware that this is by no means a 'golden bullet' –

a generative code promoting values out of sync with the society they are regulating, or that attempts to plan too comprehensively, will likely still be just as ineffective as a traditional land use management scheme. The devil, as they say, is in the detail of implementation.

3. *Land use management must be able to speak to the needs of the city as a whole as well as remaining in sync with the values and needs of specific areas and neighbourhoods .*

Up to now we have been focusing purely on the 'methods' rather than the substantive concerns underlying land-use management. We have to look to what is currently being regulated in wealthy areas and ask, as Payne (2001) does, is it really a priority in cities today to be restricting such things like coverage and street setbacks? Perhaps even more disturbing is the use of these kinds of restrictions to maintain the character of the area, particularly when there is pressure on the area to change in line with the needs of the city as a whole. A classic example of this is minimum erf size restrictions, or title deed clauses preventing subdivision, which ensure that many wealthier areas remain of a low density, thereby contributing to the artificial land shortage faced by cities. Furthermore, as Payne (2005) argues, overly zealous restrictions on road reserves and setbacks from railways can effectively sterilise large volumes of land that is otherwise developable, contributing to an artificial land shortage and lowering the overall density of the city. The question that follows logically, then, is: if we are to move away from the traditional considerations of what land use management focus on then what are the values and issues that land use management should be focusing on?

Firstly, our starting point has to be securing and affirming the poor's right to the city. This can be achieved by pursuing a dual strategy of securing access to the city through improving security of tenure and increasing the supply of well located, affordable housing and/or rental stock. In informal areas land use management can be used as to ascribe secure tenure. The most prominent international example of this is the oft quoted Brazilian 'Zones of Special Interest' which designate areas of vacant land and existing informal areas for the purposes of social housing. This provides protection against eviction, and discourages speculation, by not allowing any use other than social housing (and associated functions) as well as establishing maximum erf sizes and preventing the consolidation of erven (Watson, 2009a).

Land use management can also be used to ensure that there is an adequate supply of affordable housing by shaping the formal land and housing markets[19]. Brown-Luthango (2006) and Calavita and Mallach (2010) suggest that there are essentially four ways to achieve this:

- Firstly, making it a mandatory requirement of any development to include social housing.
- Secondly, requiring all developments to pay an additional levy that enables the municipality to build or subsidize affordable housing.
- Thirdly, permitting a relaxation of planning standards in exchange for the construction of affordable housing.

[19] Calavita (2010) explains that "housing provision and land use planning are inextricably linked, since plans designate the amount of land to be dedicated to housing development and lay out the ground rules for that development. When plans create shortages in the supply of land needed to accommodate growth—by reducing or keeping artificially low the quantity or densities of residentially designated land uses—they increase the cost of that land and hence of housing. The rigidity of plans in a context of rapidly changing circumstances may also contribute to a scarcity of land for development and lead to higher housing costs" (p. 3).

- Fourth, releasing state land at low to no cost for private sector development subject to the use of a portion of the land for affordable housing purposes.

International experience, as summed up by Smit and Purchase (2006), is that the most effective programs are those that mix regulation and incentives, emphasising flexibility with regards to the nature of the mix so as to be optimally responsive to the specific area and project. Including incentives are vital as regulation imposes additional costs on the project and so developers need to have some way to offset the resultant extra costs that emerge. We will consider two examples: the first is Ireland where, as part of the overall reform of the countries planning laws, inclusionary housing was included as a mandatory requirement of all developments over a certain threshold (usually 20% of the overall development). The cost of this inclusionary housing is born between the developer and the municipality, with the developer's contribution linked to the gain in value that results in planning permission (in other words, value capture) and the remainder of the cost is covered by a subsidy from government. In certain instances municipalities have elected to lower the number of housing units delivered by the developer (usually 7%) rather than paying a subsidy (Malach, 2010). The second example is the City of Vancouver in Canada which has also pursued an innovative approach to value capture, called income mix zoning (Canada Mortgage and Housing Corporation, 2010). When developers apply to rezone industrial or other uses to residential use, the policy requires 20% of the base density to be set aside for low-cost housing. The city then buys this housing from the developer at 60% of its market value *and leases the land to a non-profit organisation for sixty years*[20]. The developer participates to secure the rezoning and receives a density bonus. The value of these models have been their ability to link the supply of affordable units to the ability of the public and private sectors' ability to fund such developments.

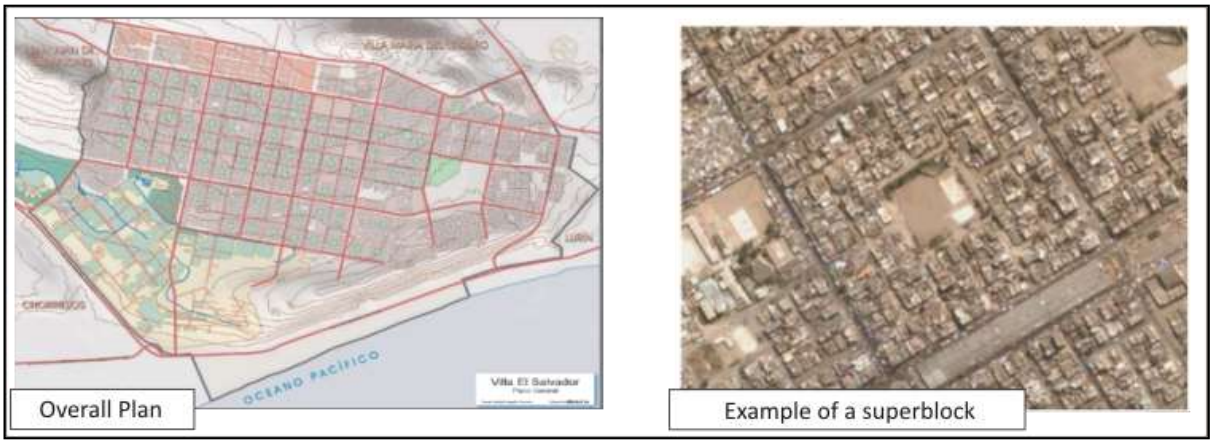
Secondly, using land use management as a means to incubate and protect livelihoods. Probably the most successful international example has been @22 in Barcelona. The project, as part of a broader strategy, has used an incentive zoning scheme that permitted, with the agreement of land owners, extra bulk for city blocks on the proviso that they agree to allow 20% of the building to be used for activities that comply with @22 sectors. Further, 10% of the land transformed must be given over to facilities related to the productive sector – including training, research and dissemination activities for new technologies – and a further 10% of the industrial land to be given over to new green spaces (@22 Barcelona; Clark, Notay and Evans 2010). This example is interesting because, firstly, it was highly successful and, secondly, it is one of the few examples which has shown a successful union of private and public interests. For the private sector the 30% required to be used by particular industries was not unprofitable, and so they got extra development rights as a result. For the public sector, it provided a valuable tool to implement the @22 project, helping to bring private sector activity in line with public investment.

Thirdly, using land use management to create and maintain public space and public facilities during the creation of new settlements is vital. Mammon, Ewing and Paterson (2008) emphasise the importance of these spaces:

> Public facilities, public spaces and institutions which form the backbone of any public spatial network provide venues to address critical issues such as health, education and social development collectively. Public facilities and institutions are venues for people to congregate, discuss, perform, protest and interact outside of the confines of their private domains. These are also important spaces for recreation and relaxation especially given the nature of the majority of the lower income areas where positive urban space is at a premium (p. 9).

[20] On the role of the non-profit sector in the delivery and management of housing, supported by government intervention, in Australia and the Netherlands see Blessing (2010).

The best example of this is Villa El Salvador in Peru – in 1971 the government sought to create a new set of 'planned' informal settlements on the periphery of the city. What made this example innovative is that the standards adopted treated these settlements as functional neighbourhoods in the city, rather than treating them a slum. Each block had its core space set aside for elementary schooling, a clinic and space for sports, and each block was surrounded by a road designed to be a major thoroughfare. As important, the plan emerged from a dialogue between the communities and the state so that the standards imposed were appropriate and the community bought into the plan – so much so that a space of land allocated to an industrial park was guarded by the community against squatter invasion for fifteen years until the vision of the industrial area could be realized. Villa El Salvador shows that it is possible to impose a set of development standards that, subject to public participation, allow for an orderly layout and effective integration of public facilities into informal settlements[21] (Imparto and Ruster, 2003).



(Source: Navarro Sertich 2010 and Google Earth)

Fourth, we need to retain some aspects of the traditional role of land use management: protection against unsafe developments, the mixing of incompatible uses and protection of areas of environmental conservation, and accounting for the impact of developments on city services. These are concerns that can dramatically affect quality of life, whether one is speaking about wealthy or poor areas. For example, no development of land should occur on ground that is vulnerable to flooding or fire, nor should industries that are highly noxious or land uses that generate a high nuisance factor be allowed to co-exist with residential uses. That said, we are conscious that many poor communities are forced exposed themselves to such conditions to securing their livelihoods. This aspect of land use management, therefore, must be enforced with the needs and priorities of the affected settlements as its first priority. This places a particular responsibility on planners to design highly participatory processes *and* particular care must be taken in the design of these processes to ensure that wealthier groups cannot co-opt the system to protect local interests over those of the city as a whole (as per the earlier example of minimum erf sizes).

3. Relating these back to South Africa

In this section we will interrogate these lessons in the South African context perusing two lines of thought: first, we will consider some of the challenges of consolidating these elements into a single

[21] This is not to say the Villa El Salvador is without problems, forty years on a large number of the households are still living in substandard housing, lack basic services, and there is evidence in recent years that parts of the settlement are starting to deviate from the model proposed here. Where this example is still however instrumental is in its illustration of effective layout planning principles, and the synergy between the provision of public amenities and the shelter.

system and, second, we will briefly reflect the practical implications of these lessons in the South Africa. Overall we argue that updating and improving the flexibility of the land use management system may well have some pro-poor effects; for example, increasing the supply and availability of urban land and housing. However, this alone is likely to result in market-driven displacement; that is, the perpetuation of the current urban form (with the poor perpetually ejected to the new peripheries of urban areas[22]). A truly pro-poor approach requires regulation that is able to explicitly and directly challenge and transform the embedded socio-spatial inequalities in South African cities.

The challenge, therefore, presents itself as a puzzle which echoes old and deep debates in planning and development: how to design a bureaucratic system that is flexible and responsive enough to be able to facilitate and support creativity (both in the private sector and the livelihood strategies of the poor), while remaining sufficiently robust to begin to combat the profound inequalities that characterises the current status quo? This alone represents a formidable challenge but, when aspiring to the creation of a single system in a developing world context, it is crucial to acknowledge the deep inequalities in power relations between those targeted by such a system. That is, we must be cautious about reviewing international practice and glibly promoting *synergistic* partnerships between the private and public spheres. There is a profound 'clash of rationalities' (Watson, 2009b) between the middle-class and technocrats on the one hand, and those fighting to maintain their foothold in the peripheries of South African cities on the other. Each is addressed by the system in a profoundly different way – the former as active subjects actively participating in city-scale debates and decision-making, while the latter are far more likely to be treated as the objects of policy that are 'relocated', 'upgraded' or 'evicted' and who participate, at best, in local neighbourhood or ward-based processes (Pithouse, 2009). In order to build the momentum required to challenge structural inequality regulation must function to invert this pattern.

The challenge for the land use management system, then, is to recognise the competing sets of values expressed by different groups within the city but, instead of creating neutral spaces in which to mediate them, explicitly acknowledge that socio-spatial integration will require remaking the spaces we live in, which, in turn, requires embedding a new set of values in the urban fabric. In practical terms this means promoting areas of mixed income and mixed housing types, of a range of erf sizes, and of spaces that accommodate a diversity of livelihood practises. This policy position is a *proactive and assertive* one – it means that, instead of the traditional role of land use management as focusing on 'preserving the character' of local area, it will directly contest dominant values so as to promote the values that best serve the city as a whole. In other words, we need to make some (powerful) people unhappy so the city as a whole can begin to be transformed – this is very different role to the system as it currently stands. Paradoxically, the other implication of the 'clash of rationalities' thesis is that the land use management system (and the wider planning system) will have to be able to partner with (informal) communities to construct locally appropriate regulatory structures and practices. As research in the City of Johannesburg has shown, this is already occurring in different forms through local community initiatives but remain separated from the wider system (Rubin, 2008). Instead of replacing these practices, the intent should be to develop and support them. The system, therefore, needs to explicitly promote a transformative set of values at the city scale (which are likely to elicit resistance and conflict from the powerful), while,

[22] "The land development strategies employed by property developers and the land tenure and land market patterns on the periphery of the city, combined with the steady increase in the price of urban land, are drastically restricting any room for [sic] manoeuvre available for housing the urban poor. If they have some form of secure tenure, they are in a good bargaining position and may be tempted to sell their property. If they do not, they are vulnerable to pressures from investors and will be in a weak position to negotiate and obtain fair compensation" (Durant-Lesserve, 2006: 223). This, therefore, illustrates the limits of a 'tenure security' approach - it may improve their bargaining power but leaves the structural challenge of urban space unaddressed.

simultaneously, remaining sympathetic to the particular needs and priorities of local communities (again, making an effort to protect these processes from elite capture). That being said, this is also not about promoting class warfare. The attractive lesson from the international literature is that, in the context of a confident and assertive planning system, the state and the private sector *can* partner to increase the productivity, efficiency and diversity of urban space. There are genuine win-win opportunities but, to re-emphasise the point, these are dependent on the state creating the conditions to invoke and support them.

This argument has very particular implications for the planning profession, especially in light of the three structural weaknesses that were identified in the first section. It requires the profession as a whole, and individual planners located both within government and outside of it, to take on a far more activist role in promoting the 'public good'. It means developing modes of practice and regulatory tools that are able to interface with and influence the market in realistic and persuasive ways. It means mounting convincing arguments within municipal processes of planning and practice to shift patterns of public investment and public programs to support the process of spatial transformation. It means consciously building a joint agenda between planners and environmentalists to bring about more environmentally, financially and socially sustainable cities. In the words of Parnell and Pieterse (2010)

> ...negotiating land use reform requires a fine-grained engagement with the systems and procedures of the local state and state agencies that are rooted at regional and national scales. This implies building interest-based coalitions across diverse institutional sites, which include the state, the professions, non-governmental actors and even selective business interests. This is not the same as the partnership discourses characteristic of many neoliberal inspired urban management agendas. Rather, it invokes an appreciation of the necessity of strategic articulation (akin to the notion of Laclau and Mouffe, 2001) to advance a transformative agenda in an urban context sutured by capitalist modernity. What this suggests to us is the need for a propositional politics as opposed to a defensive one against the vicissitudes of neoliberalism (p. 158).

So what can we draw from the international examples cited above to begin to build our 'propositional' land-use management system?

1. *Land use management needs to be premised on an understanding of the urban land market*

As we argued in the first section, market-based critiques of zoning rarely propose better alternatives to land use management. However, they are right that any regulation of the urban form will result in externalities, some of which will be desirable and others will not. Planning without knowledge of what those externalities may be is, at best, a risky proposition and, at worst, can result in a system that works against the values it is intended to promote. It is primarily for this reason that we cited the examples of Land Market Assessments and the Social Tenure Domain Model – we believe that the starting point for any land use management system in South Africa should be an assessment of both the formal and informal state of the land market. Based on clearly defined set of normative principles, such assessments will help to identify the key weaknesses and strengths of the built fabric thereby identifying what and where land use management should, and should not, regulate. It also provides an assessment of the effect the land use management system has had on the built fabric; clearly identifying areas of strength in existing regulation but also areas of concern, thus allowing for an informed review of the regulations. It also represents an opportunity to establish systems of monitoring and evaluation that are constantly updated and used as a valuable source of information when planning for new initiatives or accounting for the effects of existing policy or practice. This involves a shift in the conception of the information about land; moving away from legalist

definitions (e.g. title deeds[23]) to embracing wider and more informal systems of information. That is, the emphasis is on collecting as much functional information as is possible, rather than worrying about narrow official or legal definitions. In this regard, the current focus of the Informal Settlements Network (ISN) and its supporting NGO, Community Organisation Resource Centre (CORC), on creating community-driven processes of enumeration[24] represents a tantalising opportunity for the state to act as a supportive partner and to begin to find ways in which official and informal flows of information can be combined to improve decision-making

2. *Land use management can be strategic and does not have to rely on zoning*

In line with the critiques outlined in the first two sections, we do not believe zoning is the most effective tool for land-use management. Zoning is inflexible and often difficult to change, primarily because it prescribes rights on an erf by erf basis. Worse still, due to the high level of detail it requires, the use of a zoning system means that regulation often becomes more about complying with procedure than ensuring that the original intent of the regulation is achieved, and requires a heavily bureaucratized and unnecessarily complex system. We believe that a variant of the British System, one which only requires those developments which clearly deviate from policy to go through the land-use management process, would be more appropriate to a South African context. To briefly summarize this, land-use management would be based purely on a tiered forward plan: the first would give an analysis of the area, set out the broad goals for spatial development and the rationale behind these. The second would then operationalise these, translating them into a series of policy prescriptions, and the third would identify certain strategic areas and prescribes area-specific regulations.

There are regional examples of innovation in South Africa that explore similar ideas. For example, a Department of Traditional and Local Government Affairs for KwaZulu-Natal (DTLGA KNZ) review of Nquthu Municipality in 2007 suggests that a land use management system should consist of:

- A refined Spatial Development Framework, which essentially is a spatial imprint of the development vision and strategies.
- Land Use Management Framework, which refers to a guide for the future location of different land uses and identification of areas that are experiencing development pressure and requires, detailed level of controls.
- Land Use Scheme(s), which are development management tools.
- Management overlays, which provides for the recognition of other factors in land use decision-making (UKZN DPLG, 2007: 6).

The production of non-statutory Land Use Management Frameworks (LUMF) to link the broad Spatial Development Framework (SDF) with the site specific and detailed Land Use Schemes is an interesting innovation. We also think that the addition of management overlays is a particularly interesting innovation as it explicitly and practically links land use management to other 'silos'. Nelson Mandela Bay Municipality (MNBM) also produced a *Sustainable Community Planning Guide* in 2007. It has built its planning around the notion of Sustainable Community Units (SCUs) as the basis for intermediate planning, which function as the building blocks for the wider Metro, with each of these plans referred to as Local Area Spatial Development Frameworks (SDF Plans in the figure below). We believe that this form of 'scaled' planning has great potential to enable land use management in new and enabling ways[25]:

[23] This may also shift some of the pressure off the Deeds Office, which is reportedly in sorry state (Warren Smit, personal communication).

[24] One example of such a process has been occurring in Cape Town, with the support of the city (CORC, 2009).

[25] Although our suggestion that development rights are not prescribed on an erf by erf basis, other than for certain strategic sites, would seem to stand in contrast to the type of lower level planning (Detailed planning /

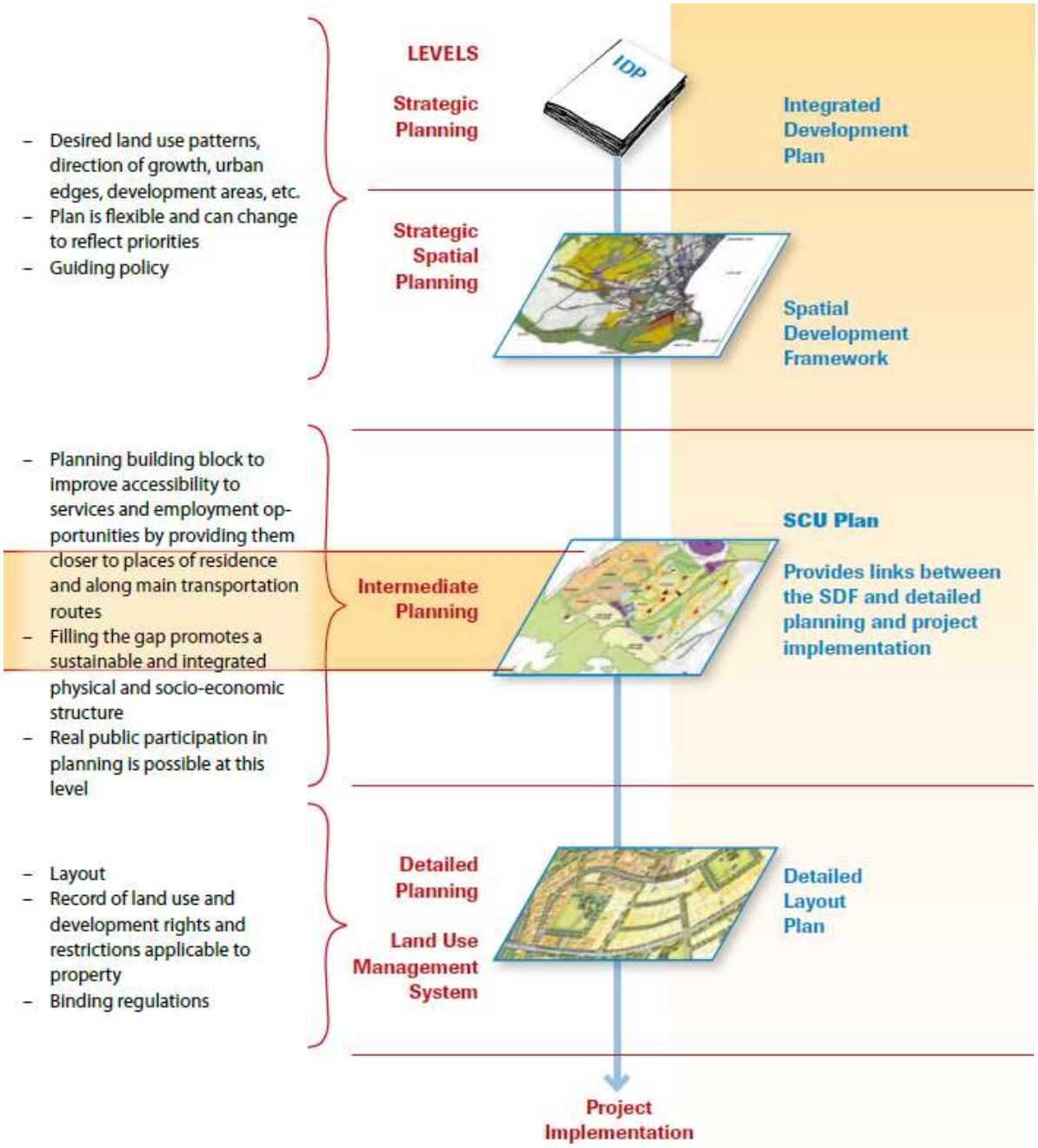


Figure 3: Scales of planning in Nelson Mandela Bay Municipality
(MNBM, 2007: 29).

In interesting research comparing results from technology-assisted community-empowering planning at two different scales, Smith, Bellaby and Lindsay (2010) argue that

> [r]ecruitment was better in a neighbourhood-scale project, a scale that enabled access to settings of public familiarity and helping/coping networks. However, the factors that promoted social inclusion during recruitment favour defensive collective action. A city-wide project facilitated transformative social learning by relocalising community more

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land use management) indicated in the figure. It is crucial that land use planning and management is not limited to this scale but operate at the city scale (besides specifically identified areas).

> widely as a problem-oriented operational network. The two approaches could be combined, starting at neighbourhood level and then rescaling to reveal different affordances of social networks and stimulate different dimensions of technology appropriation (p. 1439).

Our suggestion, then, enables both directive planning and regulatory planning to be negotiated at each of these scales, thereby creating the opportunity to balance the need for participation (recruitment) and transformation. It is therefore a practical suggestion about how to achieve Rubin's (2008) call that "[p]articipatory processes must be developed whereby all land users and owners can directly influence the shape and nature of land management systems and how they are implemented. Decisions taken around land by government must be transparent and open to debate before they are finalised and implemented" (p. 26). Again, we need to emphasise that this is a call for these to be embraced as complicated and messy processes of *participatory decision making* and not empty 'consultative' forums (which effectively guarantee elite capture by politicians and organisations protecting middle-class and business interests).

The overall rationale for this approach to land use management can be summed up into one word – *flexibility.* Because rights are not prescribed in such a system on an erf by erf basis, it is much easier to regularly update the plan that governs land use management regulation thereby keeping it up to date with appropriate principles. Furthermore, the British system allows the system to be strategic, focusing on only regulating the areas and aspects of the built environment that are deemed necessary to regulate, and allowing what is not viewed as essential to remain relatively unregulated. This, however, is premised on using the system wisely and it is possible, particularly if power relations are ignored, that it can be used to simply reproduce the errors of the past. The difference is this system has far greater potential to more effective and relevant than a zoning scheme will ever be and is more accessible to democratic control.

One last point needs to be made here, this particular conception of the land use management makes the 'despatialisation' of planning, referenced in the first section, a particularly serious phenomenon[26]. The dominance of public financial management and engineering rationales during the formulation of IDPs are likely to result in a continuation of the current patterns of fractured public expenditure and a disconnection between directive planning and the operation of the regulatory departments.

3. *Land use management should be used to bring together the various normative agendas of the regulatory system (Socio-Economic, Environmental, and Heritage) and provide the forum for the negotiation of trade-offs, co-ordination of regulation and the incentivisation of the transformation of the urban built fabric*

Integrating these different regulatory aspects (environment, heritage and planning) would be a daunting task in a conventional land use management system that relies on zoning. However, adopting the British approach allows all of them to be consolidated one in place so that the various concerns can be articulated into a general overarching plan. Applications for development, then, can be processed with far greater clarity about the potential trade-offs being made between the

[26] While early "...conceptions of the IDP had proposed that the spatial plan act as the 'synthesising element' (placing spatial planners in an advantages position)... later conceptions gave the budget in this position, thus offering opportunities (to exercise power) to a different set of professionals. It could be argued that through the IDP process the urban managerial (or process) approach to planning finally secured dominance over the outcomes-based or urban restructuring approach to planning" (Harrison, Todes and Watson, 2008: 132; references removed). On the clash of rationalities between directive spatial planning and the form of 'strategic' planning adopted by the IDP system see Pieterse (2007: 18).

three agendas and avoids the current situation where developers have to move through multiple processes (and therefore avoids the 'death by a thousand cuts' scenario that is currently strangling development).

4. *Directing innovation and regulatory energy towards the four 'goals' of land use management: securing the right to the city for all, incubating livelihoods, creating and maintaining public space and public facilities, and ensuring a good quality of living environment for all*

Perhaps the most interesting example of attempts to rethink land use regulation[27] has occurred in the City of Johannesburg (CoJ). It launched a zoning initiative which sought to give legal security of tenure to informal settlements ("occupancy permits") as the beginning of an incremental process of tenure security and settlement upgrading. Smit and Abrahams (2010) have recently produced a booklet based on this experience that describes an incremental settlement improvement programme that moves the settlement through four stages of recognition eventually ending in township establishment. This land use management initiative is a vital innovation to complement to the government's Informal Settlement Upgrade Programme (ISUP). It has also instituted a vacant land tax and is developing a sustainable development rating system to process applications from developers. However, such programs stop short of the kinds of regularisation and land-speculation-reducing tools assembled in Latin America (and particularly in Brazil). For example, "[i]f... the Brazilian legal provision of transfer of ownership after 5 years of peaceful occupation were applied to private as well as publicly owned land in South Africa, there would be effective pressure to revise inappropriate spatial standards (which supply under-used invadeable land), to align sectoral capital budgets so as to ensure that and allocated for public facilities does not lie unused, and to ensure that environmentally sensitive areas are appropriately used and protected" (Huchzermeyer, 2009: 63-4). Equally, the provisions in ZEIS are wider and more progressive than those described in the CoJ. In general, it seems clear that more legally diverse and robust tenure and use rights[28] connected to a wider progressive land management system are required to improve the security, functionality and productivity of land in informal settlements.

The state should also pursue a systematic and pragmatic policy of land banking, land release and managed land settlement to address the growth of new informal settlements and the *in situ* upgrading approach advocated by Breaking New Ground. As our example of Villa El Salvador indicated, there is great potential in partnerships between poor communities and the state to achieve many of the benefits of land use management (basic enumeration, the creation of a positive public realm etc) and basic infrastructure delivery without having to wait for the formalisation of the entire settlement (as is currently the case, which leads to long delays, spiraling costs and great community frustration; Misselhorn, 2010). This has begun to find an advocacy and practice base in South Africa with the recent launch of the LANDfirst network, which argues for "the provision of planned secure land with basic services as a first step towards a longer-term housing and settlement

[27] We should point out that we have consciously tried to differentiate between fiscal and regulatory instruments. When considering value-capture instruments this differentiation is often extremely challenging.

[28] In an expensive review of land use management in the City of Johannesburg Rubin (2008) concludes that we should "reconsider the privileged position and role that property ownership has in the canon of land rights. As such the existing cadastre could be recast in light of a system in which ownership is considered to be just one in a number of land management rights [and that the] [u]se rights by individuals, households and communities who are engaged with productive use of land and property but who are not necessarily owners need to be creatively supported and entrenched" (p. 26). While it is beyond the scope of this essay to discuss it, we would like to suggest that the 'social function of property' doctrine adopted in many Latin American countries can serve as a rich source of inspiration for new ways to reconceptualise ownership and use rights (Ankersen and Ruppert, 2006; Watson, 2009).

upgrading process" (Afesis-corplan, 2009: 1). The planning aspects of this conversation must remain as prominent as its housing aspects.

With regards to housing, as indicated above, a range of responses are required prior of affordable housing and *explicitly pursue* the goal of the desegregation and integration of South African cities. Inclusionary housing has a small but vital role to play in assisting this transformation. In 2008 the government produced its Inclusionary Housing Policy (IHP) in which it proposed a strategy with two components: a *Voluntary* Pro-Active Deal-Driven (VPADD) inclusionary housing delivery approach and a *compulsory* Town Planning Compliant (TPC) approach. The IHP tasks local government to produce an Inclusionary Housing Plan, one aspect of which involves identifying suitably located vacant or underutilised state land. The VPADD, then, involves identifying private partners to develop the land that produces housing that is more 'socio-economically inclusive' (with more than 30%, up to 60% made up of 'affordable' units). Perhaps the more interesting component is the compulsory incentive-linked and regulation-based TPC approach. Inclusionary prescriptions apply when the following rights are sought for a residential development: township establishment; rezoning; subdivision into two or more sites; sectional title, shareblock developments; building permit applications for second and third dwelling units. The policy outlines a number of incentives that may be offered to support these inclusionary prescriptions, including fast tracking the development approval process, density bonuses, the provision of bulk or link infrastructure (or reductions or wavers to block service contributions), granting particular use rights and possibly tax credits or housing subsidies. However, the TPC approach requires new legislation to be promulgated and some of the momentum for this approach within Department of Human Settlements (DSH) appears to have been dissipated in the face of the recent Constitutional Court ruling on the DFA, strong resistance from developers ('may lead to withdrawal of developers from an area and focusing on another more favourable area', 'bring the private sector housing development market to its knees') and concerns that few municipalities have the capacity to administer these relatively complex projects[29] (DSH, 2009). Reigniting support for this process is important and, as our Irish and Canadian examples indicate, there are a number of other ways to structure these inclusionary requirements that may result in greater private sector support and/or use the resulting stock in more effectively pro-poor ways[30].

However, this remains limited to residential development and, as the example of @22 in Barcelona indicates, the land use management system can also be used to incentivise and leverage desired economic activity in well-located parts of the city. This may involve the promotion of labour-absorbing industrial or commercial enterprise, in line with the wider strategic policy goals of the

[29] Unfortunately this is a function of the very flexibility that makes this approach attractive; for example, municipalities modeling the impact of requirements on the viability on particular developments and adjusting them accordingly. Calavita (2010) warns that inclusionary housing "is, ultimately, a negotiation-based process... Negotiations then should be based on an analysis of the economic implications of various alternatives for developers, landowners and the public. In Spain, a country where the financial aspects of planning are quite sophisticated and at the forefront of the planning process, economic analysis are quite routine. [However, t]ypically, planning departments lack the capability to perform or even verify economic analyses when provided by developers" (p. 15-16).

[30] Although we also take note of Calavita's (2010) warning that a "clear relationship exists between the way the effect of inclusionary housing on land values is understood and the underlying system of land use regulation. This, in turn, reflects the nature of each country's property rights regime" (p. 5). Given the conservative property rights regime in South Africa it is conceivable that the value capture instruments in general, and inclusionary housing in particular, it will be very difficult to enact and implement. See footnote 28 above for further detail.

'development state' enterprise. Alternatively, Mammon, Ewing and Paterson (2008) argue that it could be used to support the development of small and medium enterprises[31]:

> Experience has shown that at a local scale very little attention has been given to facilitate trading for entrepreneurs who desire to build an asset base that is somewhere between a formal shop and an itinerant trading facility. Access to secure commercial tenure is critical to establish an asset base and promote entrepreneurship. There needs to be an acknowledgement in planning of the complexity of relationships and critical understanding to provide for the diversity of economic actors at this scale (p. 12-3).

This can be connected to a wider process of the creation of "active public spaces of engagement which are accessible and attractive across class and income profiles" (Charlton, 2006: 52). Mammon, Ewing and Paterson (2008) evocatively argue for substantial public investments in the

> ...public environment – those spaces beyond the boundary of the private domain [- which] need to allow for the opportunities presented by agglomerations of people [and] social interaction as a necessity for personal development and societal healing[;] the development of social networks beyond those of the immediate family and outside of immediate race and cultural groups[;] the operation of viable access networks and services; and access to a range of markets. This is where social capital is produced and economic opportunity created. If we cannot create a spatially coherent and productive public realm we are failing those at the bottom of the economic ladder (p. 23).

This means focusing on improving and linking networks of public transport and movement, 'green productive space' (e.g. recreation, cultural ceremonies, and urban agriculture), social institutions and facilities, utility services and emergency services (Mammon, Ewing and Paterson, 2008: 23). Again, we would like to emphasise the potential of linking public investment and private initiative in achieving the creation of public space. In the US and Canada the "extractions" sought from developers can include contributions to public services[32] (Brown-Luthango, 2006).

Finally, as we emphasised in the previous section, one of the primary motivations for a single system is consistency in its application and enforcement throughout the city. Reviewing the experience of land use management in the City of Cape Town, Parnell and Pieterse (2010) argue that relatively good enforcement occurs in middle-class neighbourhoods and commercial developments but largely ignores poor neighbourhoods and informal settlements. When combined with the continued use of highly inappropriate land law (the Less Formal Township Establishment Act of 1991), this means that poor residents are far more likely to be exposed to hazardous or anti-social land uses (and restrictions on formal commercial activity thereby further perpetuating informality). Differentiated regulation and enforcement, therefore, is far more likely to disadvantage the poor. As a consequence they call for debate about "establishing built environment and service standards that the poor can afford, debating what level of state regulation is appropriate and would facilitate rather than block urban livelihoods, and balancing the needs and demands of this generation against those of future residents. The issue of informality lies at the core of this unspoken discussion of an

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[31] With the emphasis on moving from small to medium – see Harrison, Todes and Watson (2008: 146) on the inappropriateness of much of Local Economic Development (LED) policy pursued thus far because it either prioritises minor economic activity (e.g. basket weaving) that amounts to little more than poverty alleviation or is captured by medium-sized, well-established operators.

[32] Although these have to be carefully controlled to ensure that these are *inclusionary* public spaces in contrast, for example, to Central Improvement Districts in South Africa: "Concerns have been raised that these initiatives represent a privatisation of urban planning and management and serve to exclude the interests of the poor, such as informal traders and the homeless. In addition, critics argued that they create islands of safety, displacing crime to other areas" (Harrison, Todes and Watson, 2008: 151).

alternative governance framework" (Parnell and Pieterse, 2010: 155). We would like to add our voices to this call.

Conclusion

In this paper we have attempted to briefly outline the crisis facing land use management in South Africa, following this with a review of international best practise in order to gain insight into how South Africa could potentially do land use management better. The final section of this paper sought to bring these various lessons together into an approach or, at the very least, a series of principles that could be used to guide the reformation of the method of land use management in South Africa. This, however, can only be the first step; more strides will need to be taken in terms of the full development of a rights-based approach and supporting research if we are truly to have a land use management system that is both facilitatory and pro-poor. To conclude we would like to briefly outline what we view some of those specific areas of further work to be:

- *The relationship between land management and land use management*: A key challenge in South Africa, and other developing countries, is that the land market tends to be a mix of informal and formal property relations and, similarly, the management of such land spans the continuum between formal and informal. If we have a land use management system that only recognises and regulates formal property transactions (as is currently the case), then the bulk of land transactions in poorer areas will remain unaccounted for. For land use management to penetrate into localities of poverty it will need to be preceded by, or operate in parallel to, a transformation of the land management system that takes cognition of informal property transactions. In this regard, the Social Tenure Domain Model represents a pivotal beginning to achieve this goal. In addition, as the Brazilian case shows, the potential of fiscal instruments such as the punitive taxation of unused land and value-capture methods should also be investigated and their use should be co-ordinated with the land use management system to ensure a coherent approach to spatial transformation.
- *Public participation and the political nature of decision making:* While we have focused our critique on the system of the land use management, a key element that we have only briefly been able to cover is the issue of power dynamics – namely, the dysfunctional nature of the current system allows certain groups to hold and wield tremendous power over land use management decision making. A key feature to their ability to exercise this power has been the provisions around public participation, and the political nature of decision making. That is, land use management (and the other regulatory systems) tends to allocate preference to local voices looking at local interests (by giving disproportionate weight to objections in the appeals process), rather than considering the broader needs of the city as a whole. Furthermore, as we have argued, the current conceptualisation of participation as 'consultation' favours elite interests. 'Participation' has been used to advance narrow (political) interests or prevent change based on regressive priorities. Addressing this pattern with practical alternatives is no small task but is an absolutely essential area for further enquiry in order to achieve a pro-poor land use management system.
- *Finding a balance between the competing agendas of the pro-poor, environment and heritage lobbies:* As we have argued in this paper, land use management is one of three development control mechanisms that operate in South Africa, with the other two being Environmental Impact Assessments and Heritage Impact Assessments. We have suggested in this paper that all three agendas should be integrated into one single system, thereby allowing for efficiency and for trade-offs to be made between the three competing agendas. The land use management system proposed in this paper could conceivably achieve this. How this can practically be achieved is another matter altogether, specifically in terms how to manage the integration of differing government departments; how to handle the differing

ideologies of practitioners and professions; and, most crucially, how to handle the possible job-losses that would inevitably result. However, if we are to achieve a facilitatory land use management system, it is absolutely essential that this challenge is addressed.

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