

SOLVING THE PROBLEM OF PRIVATE LAND AND ESTABLISHING CITY-WIDE, INCREMENTAL PLANNING ARRANGEMENTS

THE EXPERIENCE OF ETHEKWINI MUNICIPALITY BETWEEN 2010 AND 2020

30 SEPTEMBER 2020



"iQhaza Lethu"
*An informal settlement upgrading partnership
initiative co-funded by the European Union*

Presentation / content overview

- eThekwini context - why solutions had to be found for private land
- SC legal opinions regarding land rights and government funding of essential services prior to acquisition
- eThekwini's Incremental draft planning protocols / SOPs – key features:
 - Categorisation & related implications for: planning arrangements, municipal services, land, tenure, building, essential social services
 - Spatial planning e.g. SDF inclusion/designation as the minimum
 - Land use planning – including social compacts as basis for upholding 'rules':
 - TDA1 (B2)
 - IDA1 (B1)
 - IDA2 (B1+)
 - Private land
 - Notices to landowners
 - Statutory servitudes
 - Land acquisition
 - Tenure security
 - Social compacts.

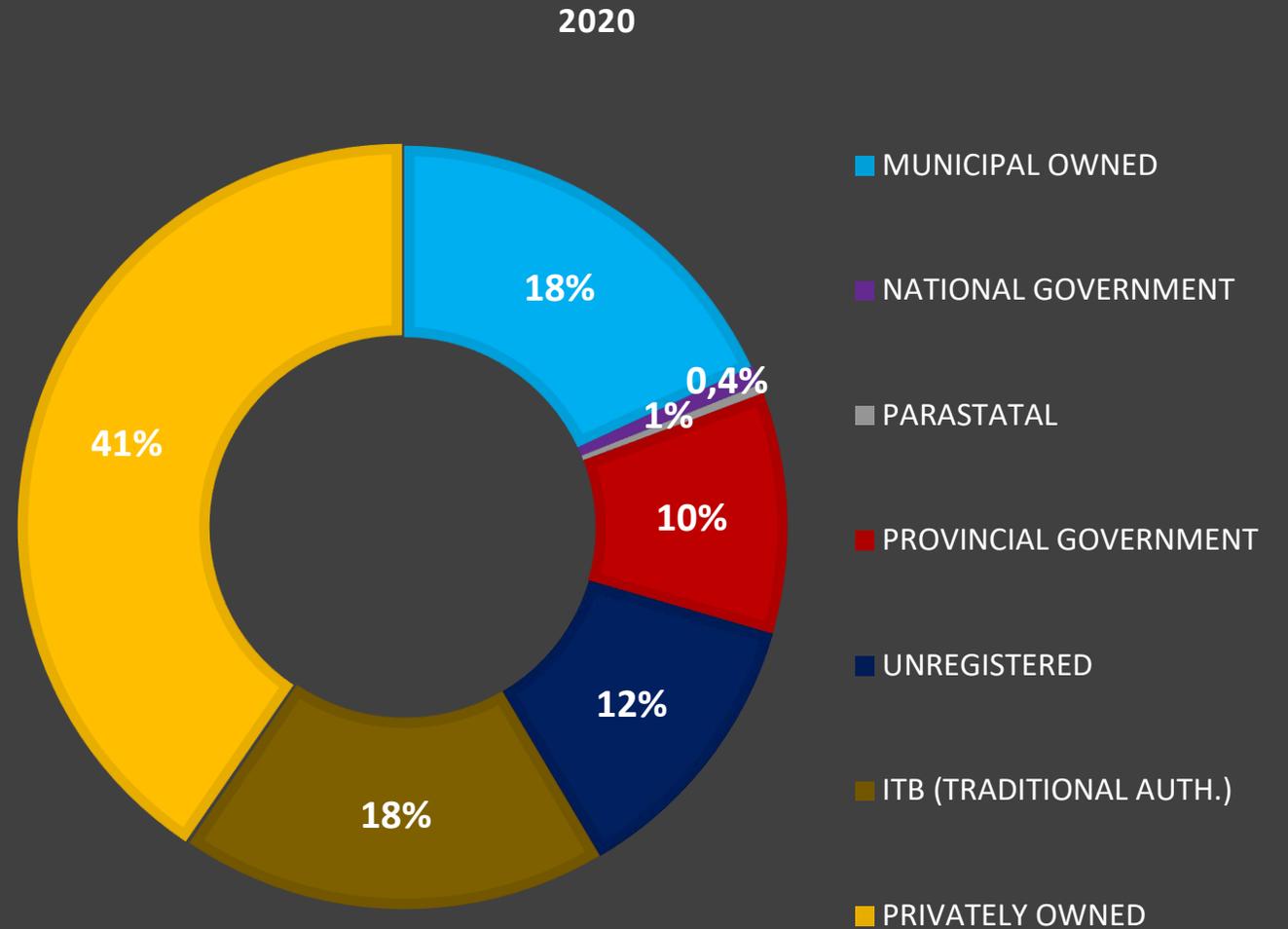


Informal Settlements in eThekweni

- Over 580 urban informal settlements comprising 287,000 households.
- Comprising nearly a quarter of the City's population.
- Continued urbanization and scarcity of well located land.
- Over 80 years to overcome just the informal settlement backlog by means of conventional housing delivery.
- Challenging topography, high densities and many settlements within environmentally sensitive areas
- 112 settlements comprising >1000 households
- **77% are category B1 (incremental in-situ upgrade with essential services) - 342 settlements, 220,000 hh**
- **Many are very dense (200+ du per hectare)**
- Only <3% of hhs earmarked for relocation (due mainly to sites being unsafe for habitation)

Land Occupied: Ownership

OWNER CATEGORY	AREA HA	% AREA
MUNICIPAL OWNED	1 791	18
OWNER CATEGORY	81	1
PARASTATAL	43	0
PROVINCIAL GOVERNMENT	1 010	10
UNREGISTERED	1 195	12
ITB (TRADITIONAL AUTH.)	1 786	18
PRIVATELY OWNED	4 016	41
TOTAL	9 920	100



RATIONALE – WHY ETHEKWINI WAS COMPELLED TO FIND SOLUTIONS TO THE ISSUE OF PRIVATE LAND IN 2010

- **Large numbers of settlements, 41% of which are on private land** (and 59% if Ingonyama Trust Board land is included).
- Introduction of ‘Interim Services Programme’ around 2010 due to the:
 - **Urgent need to provide basic services and address health and safety threats**
 - IS ‘backlog’ not resolved despite large scale formal housing delivery
 - Lack of suitably-located alternative land for relocations & green-fields projects
 - Most informal settlements relatively well-located
- **Impossibility of acquiring land BEFORE providing services** (land acquisition even by means of expropriation is slow and very costly and service provision can’t wait)
- **Most settlements are old and well established with owners no longer enjoying beneficial use of their land**

INITIAL/HISTORICAL MEASURES TAKEN – PROVISION OF BASIC SERVICES ON PRIVATE LAND ON THE BASIS OF NOTICES TO LANDOWNERS IN TERMS OF THE MUNICIPAL ORDINANCE

- **During the first decade of the 'Interim Services Programme', notices were provided to landowners in terms of the Municipal Ordinance** on the basis of provisions that the Municipality may intervene on private land if there are health and safety threats. Landowners were advised of the Municipality's intention and advised that, if they were not in a position to provide basic services themselves, then the Municipality would provide them.
- **Very few challenges or objections from landowners have been received to date**, presumably because:
 - Landowners have lost control of their land (usually a long time ago)
 - Landowners no longer enjoy any beneficial use of their land (and usually have not for a long time)
 - Landowners often owe the Municipality large amounts in rates arrears
 - Landowners typically accept that the land use has changed and the informal settlements are there to stay.

OPTIMISED APPROACH TO DEALING WITH PRIVATE LAND – 2017 TO DATE INFORMED BY TWO SENIOR COUNSEL LEGAL OPINIONS AND DICTATES OF SPLUMA

- **Two Senior Counsel Opinions commissioned** regarding the provision of Municipal services on private land.
- **Land Rights and Planning Protocol** developed on the basis of these opinions and also assimilating inputs from the National Upgrading Toolkit.
- **Council Resolution** to “investigate mechanisms to operationalise alternative tenure, land rights and incremental planning solutions for informal settlements which would, amongst other things, address the issue of the provision of essential services on private land which has not yet been acquired, ensure SPLUMA compliance and provide greater functional tenure security to residents of informal settlements” by eThekweni’s Dept. of Human Settlements in collaboration with the key infrastructure Units, the Development Planning, Environment and Management Unit, the Legal Services Unit and any other relevant Units.
- **Standard Operating Procedures** drafted/under development regarding Incremental Planning Arrangements for Informal Settlements (still in the early stages and only to be finalized after further internal municipal processes and legal advice).

Dictates of SPLUMA regarding informal settlements & informality

In terms of SPLUMA, municipalities are required to integrate informal settlements into their spatial systems and land use management. Incremental upgrading of informal areas receives special priority and principles of flexibility and incrementalism are emphasized. Municipalities are required to make provisions that permit the incremental introduction of land use management and regulation for ‘informal settlements, slums and areas not previously subject to a land use scheme’. The following extracts from SPLUMA are provided for reference purposes and to demonstrate the substantial emphasis on including informal settlements in an incremental and flexible fashion, amongst other things to enable the provision of services and more secure tenure:

- **Preamble:** “AND WHEREAS informal and traditional land use development processes are poorly integrated into formal systems of spatial planning and land use management”.
- **Definitions:** “incremental upgrading of informal areas” means the progressive introduction of administration, management, engineering services and land tenure rights to an area that is established outside existing planning legislation, and may include any settlement or area under traditional tenure”.
- **Development principles:** 7.(a) (ii) spatial development frameworks and policies at all spheres of government must address the inclusion of persons and areas that were previously excluded, with an emphasis on informal settlements, former homeland areas and areas characterized by widespread poverty and deprivation; (iv) land use management systems must include all areas of a municipality and specifically include provisions that are flexible and appropriate for the management of disadvantaged areas, informal settlements and former homeland areas; (v) land development procedures must include provisions that accommodate access to secure tenure and the incremental upgrading of informal areas.”
- **Preparation of spatial development frameworks:** 12. (1) (h) include previously disadvantaged areas, areas under traditional leadership, rural areas, informal settlements, slums and land holdings of state-owned enterprises and government agencies and address their inclusion and integration into the spatial, economic, social and environmental objectives of the relevant sphere.”
- **Content of municipal spatial development framework:** 21 (k) identify the designation of areas in the municipality where incremental upgrading approaches to development and regulation will be applicable.”
- **Land use scheme:** 24.1) “A municipality must, after public consultation, adopt and approve a single land use scheme for its entire area within five years from the commencement of this Act”. The land use scheme adopted must amongst other things include provisions that permit the incremental introduction of land use management and regulation in areas under traditional leadership, rural areas, informal settlements, slums and areas not previously subject to a land use scheme”.
- **Amendment of land use scheme and rezoning:** 28. (1) A municipality may amend its land use scheme by rezoning any land considered necessary by the municipality to achieve the development goals and objectives of the municipal spatial development framework. (2) Where a municipality intends to amend its land use scheme in terms of subsection (1), a public participation process must be undertaken to ensure that all affected parties have the opportunity to make representations on, object to and appeal the decision.” (4) “Despite sections 35 and 41, any change to the land use scheme of a municipality affecting the scheme regulations setting out the procedures and conditions relating to the use and development of land in any zone in terms of section 25(2)(a) may only be authorized by the Municipal Council.”

WORK CURRENTLY UNDERWAY

- **Municipal working group** established including representation of eThekweni Departments of Human Settlements, Land Use Planning, Spatial Planning, Legal Services, Policy Unit
- **Revised notices to landowners** drafted (as informed by SC Opinions)
- **Statutory Bylaw** drafted and under review / comment from line Departments
- **Standard Operating Procedures** drafted regarding Incremental Planning Arrangements for Informal Settlements (still in the early stages and only to finalized after further internal municipal processes and legal advice)
- **eThekweni Incremental Upgrading Policy** under development which will support and incorporate the above.

Senior Counsel Opinion 1 - SC Rosenberg 2017

This opinion confirms the both the rights and obligations of government (municipalities) to fund and provide basic/essential services (in advance of land acquisition) subject to there being a structured and transparent planning process which includes, at a minimum: settlement categorization; designation in the SDF; notification of landowners; the development of a bylaw for incremental development areas as a parallel process; establishment of a land acquisition programme as a parallel process.

The Opinion was informed by extensive Constitutional and High Court precedent, Constitutional rights as well as the upgrading context and pressures in Metros such as eThekweni.

Senior Counsel Opinion 1 - SC Rosenberg 2017 continued

- ***“the general constitutional duty to render these services is imposed upon local government regardless of the identity of the landowner, and subject only to the limitations of the legislative and regulatory framework for local government”***
- *“In principle, the constitutional and statutory framework which has been outlined above and which pertains to local government **permits the installation of essential services for informal settlements, where there is an urgent need for such services, in the case of privately-owned land.**”*
- *“The provision of services is part of (the municipality’s) constitutional and statutory obligations and would **constitute a normal restriction on property use** or enjoyment as found in open and democratic societies. This **would not in the ordinary course constitute a deprivation of property rights.**”*
- *“The purpose of the constitutional obligation placed on local government to render services is to promote the public interest and socio-economic development and the other objectives of local government which have been referred to above. **Given that the private property is already occupied and cannot be used by the owner for its intended purpose in the medium to long term, the extent of any further deprivation is limited.** The installation of services does not remove the right to use and enjoy the property. That has been forfeited as long as the land is occupied.”*

Senior Counsel Opinion 1 - SC Rosenberg 2017 continued:

- *“This does not mean that incremental upgrades cannot be undertaken without expropriation having first taken place. What it does mean, however, is that **the provision of permanent infrastructural services on private property can in most instances only be justified where there is a recognition of the permanent status of the informal settlement and the consequent obligation on the local authority to acquire the land in due course.**”*
- *“This does not mean that incremental upgrades cannot be undertaken without expropriation having first taken place. What it does mean, however, is that **the provision of permanent infrastructural services on private property can in most instances only be justified where there is a recognition of the permanent status of the informal settlement and the consequent obligation on the local authority to acquire the land in due course.**”*

Senior Counsel Opinion 2 - SC Annandale 2019 :

The **registration of statutory servitudes based on an appropriate bylaw** emerges as a solution for the Municipality in balancing various rights and obligations and also affording additional protection for the municipality from any potential legal challenges from landowners (even though these have not so far emerged as a being a problem in eThekweni). Such servitudes are established by means of a bylaw and as such do not require registration in the Deeds Office as for normal servitudes. This is as per precedent in the Telecommunications sector (e.g. regarding cell phone masts) – Section 22 of the Electronic Communication Act.

The provision of essential services may or may not be construed to constitute deprivation of property (it may well be that in many instances and given the context any such deprivation may 'marginal), but if it were deemed as such, then it cannot be arbitrary and needs to be both procedurally and substantively fair.

Given that the current bylaws are not adequately tailored to incremental upgrading and essential services provision, **“It is therefore necessary for [the municipality] to enact a new bylaw which will expressly give it the right to enter upon private land and erect the services by way of the creation of a statutory or public servitude akin to that created by section 22 of the ECA** and section 12 of the KwaDukuza Municipality Electricity Supply Bylaws.

eThekwini's Incremental Planning Arrangements for Informal Settlements – Draft Standard Operating Procedures

Note: The remaining content is still draft and subject to further internal municipal processes and legal input.

CATEGORISATION:

Categorization is the primary means of determining an informal settlement's developmental and planning trajectory as per the national categorization framework which has also been adopted by eThekwini Municipality. All informal settlements must therefore be categorized by EHS as per this national categorization framework. The categorized list of settlements (along with other key data fields) should be shared with the Planning, Engineering and Environmental Departments for comment and updated/amended accordingly (e.g. if new information is provided which impacts the categorization). Some settlements may have a dual categorization e.g. 75%B1, 25%B2. **Initially categorization is based on available desktop information** (e.g. relating to household counts, site constraints and service provision), although **as upgrading processes unfold, additional technical studies are typically undertaken which enable refinements of the categorization and may result in adjustments** (e.g. to the extent of undevelopable land within a B1 settlement from which households will eventually need to be relocated). The framework utilised is as per the National Upgrading Support Programme (NUSP) Categorisation Guideline (extracted from the National Upgrading Toolkit dated September 2017) and as adopted by eThekwini Municipal as per Council resolutions of 27th September 2019

National Informal Settlement Categorisation Framework

1) FULL CONVENTIONAL UPGRADE (category 'A'):

- a. *Developmental pathway*: **Rapid formalisation consisting of full services, formal housing and formal tenure** (e.g. title deeds), requiring prior land acquisition and formal town planning and environmental approvals.
- b. *Rationale*: 1) Site is viable (developable) and appropriate for purposes of formalisation AND 2) project is implementation-ready (full upgrading can commence rapidly - land is secured, feasibilities complete, plans approved etc.) AND 3) formalisation is appropriate and will not result in significant adverse consequences (e.g. significant partial relocations or other livelihood impacts).

2) INCREMENTAL UPGRADE WITH ESSENTIAL SERVICES (category 'B1'):

- a. *Developmental pathway*: **Provision of essential services and other incremental upgrading arrangements leading over time either to eventual formalisation or other permanent 'less formal' settlement solutions.**
- b. *Rationale*: 1) Site is viable and appropriate for purposes of permanent settlement AND 2) project is NOT implementation-ready for formalisation (there will be delays due to such factors as land acquisition, de-densification or bulk services provision).

3) DEFERRED RELOCATION WITH EMERGENCY SERVICES (category 'B2'):

- a. *Developmental pathway*: **Provision of emergency basic services but NOT leading to eventual formalisation – more likely leading to eventual relocation** (when and if a suitable relocation site is obtained and developed).
- b. *Rationale*: 1) Site is NOT viable or appropriate for purposes of formalisation or permanent settlement BUT 2) there is NO urgent need for relocation (absence of serious health and safety threats which cannot be mitigated in the short-term through basic services provision).

4) IMMEDIATE RELOCATION (category 'C'):

- a. *Developmental pathway*: **Rapid relocation to a site which is already or imminently ready and available.**
- b. *Rationale*: 1) Site is NOT viable or appropriate for purposes of permanent settlement or formalisation AND 2) there is an urgent need for relocation due to serious health and safety threats which cannot be adequately mitigated in the short-term through basic services provision AND 3) an appropriate relocations destination is currently or imminently ready and available.

INCREMENTAL UPGRADE WITH ESSENTIAL SERVICES (category 'B1') (proposed incremental planning arrangements in yellow):

- a. **Developmental pathway:** Provision of essential services³¹ and other incremental upgrading arrangements leading over time either to eventual formalisation or other permanent 'less formal' settlement solutions.
- b. **Rationale / criteria:** 1) Site is viable and appropriate for purposes of permanent settlement AND 2) project is NOT implementation-ready for formalisation (there will be delays due to such factors as land acquisition, de-densification or bulk services provision).
- c. **Planning arrangements:** The incremental solutions should include: SDF designation of B1 category; assignment of IDA1 or IDA2 land use protocols; notices to landowners; the use of statutory servitudes over municipal services. Partial re-blocking may be required to open up space for services along main access ways (see below for more detail).
- d. **Essential municipal services:** In the incremental phase comprehensive basic services should be provided, the extent of which will vary and some will typically be shared. Abortive costs should be minimised (i.e. where possible infrastructure should be usable as part of the permanent services solution). Accordingly, where possible, services should be provided inside the settlement (as opposed to around the edges) using alignments of main access ways which are functional for the long term. This establishes a more functional urban form for the future. Partial re-blocking may be necessary to open up the space for these service lanes (i.e. 'services frame'). Typical services in the incremental phase include: shared water & sanitation (mainly via communal ablutions and standpipe wash facilities); road/footpath access typically without road access to all households and with some informal footpaths remaining; related storm-water controls; electrical connections to those shacks not restricted due to being located within flood-lines, under power-lines etc.; public lighting; fire hose points and related municipal fire protection services; solid waste bins & collection points and related municipal disposal services.
- e. **Land:** Land need not be acquired by the municipality before the provision of services provided the prescribed incremental planning procedures are followed including notices to landowners etc. Land will be acquired by the municipality by means of a parallel land acquisition programme which will take many years to achieve and will be subject to available funding and other resources.
- f. **Tenure:** Initially administrative recognition (non-individual functional tenure). Consideration should be given to establishing individual forms of incremental tenure such as a municipal certificate of occupation (once incremental planning arrangements are in place and there is a GPS point for each structure/households) and/or municipal tenure certificate (once land has additionally been acquired and there is a full layout with a demarcated site boundary for each occupied site and subject to other social preconditions).
- g. **Buildings:** Housing is not regulated although, via social processes and social compacts: at IDA1, residents should be discouraged from building with highly flammable building materials such as plastic and cardboard and in high risk localities e.g. on stream banks; at IDA2, and once an individual municipal tenure certificate has been provided, residents should be encouraged to build either within or close to BNG housing norms or else within those relating to other alternative typologies such as lightweight frame structures suitable for steep slopes. Where possible, Municipality to provide standard designs and possibly provided PHP-type housing support, resources permitting.
- h. **Essential social services:** Provided in consultation with relevant Metro and Provincial line departments and authorised/statutory NPO service providers (especially clinics, ECD centres, schools). ECD facilities should receive special priority noting the high prevalence of vulnerable children in informal settlements, the strategic priority of ECD, and the Municipality's current ECD infrastructure support programme which also assists centres to achieve conditional registration with the DSD.

DEFERRED RELOCATION WITH EMERGENCY SERVICES (category 'B2') (proposed incremental planning arrangements in yellow):

- a. **Developmental pathway:** Provision of emergency basic services²¹ but NOT leading to eventual formalisation – more likely leading to eventual relocation (when and if a suitable relocation site is obtained and developed).
- b. **Rationale / criteria:** 1) Site is NOT viable or appropriate for purposes of formalisation or permanent settlement BUT 2) there is NO urgent need for relocation (absence of serious health and safety threats²¹ which cannot be mitigated in the short-term through basic services provision).
- c. **Planning arrangements:** As an interim measure before the settlement (or portion of the settlement) is relocated, incremental solutions should apply including: SDF designation of category B2; notices to landowners regarding provision of emergency basic services; assignment of TDA land use protocols; the use of statutory servitudes over municipal services. It is accepted that, due to funding, alternative land and other constraints, there may often be a considerable delay until relocation is possible and that residents may continue to reside on the land for a considerable period of time.
- d. **Essential municipal services:** Emergency basic services should be provided, the extent of which will vary and some will typically be shared. Abortive costs should be minimised and an appropriate balance should be achieved in mitigating risks and providing acceptable service access on the one hand, and the level of abortive investment on the other. The expected delay until relocation should also be factored in. Priority emergency services should include: shared water &, sanitation (mainly via communal ablutions and standpipe wash facilities); solid waste bins & collection points and related municipal disposal services; fire hose points and related municipal fire protection; road/footpath access sufficient to afford emergency access. Where the delay until relocation will be extended, additional services may also be considered subject to an appropriate motivation. Categorisation should at the same time also be reviewed (i.e. as to whether nor not a category B1 should rather be assigned, even if for only a portion of the settlement). The additional services may include: additional road/footpath access; related storm-water controls; electrical connections to shacks not restricted due to being located within flood-lines, under power-lines etc.; public lighting.
- e. **Land:** Land will ordinarily not be acquired by the municipality given that the settlement will eventually be relocated. Emergency services should nonetheless be provided subject to notices to landowners being given, SDF designation of B2 and assignment of TDA land use protocols.
- f. **Tenure:** Only administrative recognition (non-individual functional tenure) would normally be appropriate. Where possible, a list of residents linked to structure numbers should also be maintained in order to prevent further expansion of the settlement and manage the future relocation process. This also affords greater security to those residing on the site.
- g. **Buildings:** Housing is not regulated although, via social processes and social compacts residents, should be discouraged from building with highly flammable building materials such as plastic and cardboard or in high risk localities e.g. on stream banks.
- h. **Essential social services:** To the extent possible (noting that some settlements may not be well located and the temporary nature of the settlements will adversely impact the provision of certain services), provided in consultation with relevant Metro and Provincial line departments and authorised/statutory NPO service providers (clinics, ECD centres, schools). As for category B1, ECD should receive special priority.

Spatial Planning

At a minimum, all settlements should be designated/reflected in the Municipality's spatial development framework (SDF) as per their categorization and notwithstanding the status of land acquisition and absence of formal planning approvals or formal residential zoning. This **categorization should preferably be made public** along with the key details of the categorization framework outlined above which indicate the intentions and protocols relating to planning, services, land ownership and tenure. **Once instituted, the level/category of land use should also be spatially reflected in the SDF (i.e. TDA or IDA1 or IDA2) and the related land use protocols also made publically available.** Once land has been acquired and there are full layouts in place showing each residential site (i.e. at the level of IDA2), then these layouts should also be reflected in the municipality's 'package of plans'.

Land Use Management – ‘rules’ and social compacts

Regardless of the status of ownership, there needs to be consensus within the Municipality and between the Municipality and informal settlement residents regarding a range of key land use issues. These need to be expressed by means of policies, protocols and standard procedures (such as those outlined in this document) and potentially by means of bylaws (in the future once various issues relating to statutory and regulatory flexibility have been addressed). The consensus would need to be in respect of a range of key issues relating amongst other things to: appropriate levels of municipal services; use and maintenance of services; payment for services; forms of tenure; building norms / practices; mitigation of emergencies and risks. Given the difficulties and **impracticalities associated with enforcement of ‘rules’ within informal settlements** (e.g. regarding building norms), the land use norms, protocols and procedures which are established and which also define the roles and responsibilities of the Municipality and residents should rather be seen as good practices. They will be **supported principally by social processes and engagement and wherever possible should include the use of signed social compacts** (refer to attached specimen), at least for category B1 settlements, but preferably also for category B2 settlements where social preconditions permit. **The basis for the adherence to land use protocols by residents and the municipality is therefore principally that of mutual trust (i.e. social compact) rather than legal enforcement.**

The following three levels of land use category should be utilized:

Temporary Development Area (TDA) – B2 settlements

This would be applicable to category B2 settlements or portions of settlements which are deferred relocations. **The priority should be on the mitigation of imminent health and safety threats** (e.g. fire, flooding, solid waste, sanitation) **and provision of emergency basic services** (e.g. communal ablutions and standpipes, fire protection and solid waste management, early flood warning or flood attenuation measures etc.). **The level of investment will be affected by the expected delay until relocation can be achieved.** In some cases, it is accepted that there will be a delay of many years. If the delay is long (e.g. more than five or ten years) and provided solutions can be found which enable the prevailing risks on the site to be adequately managed, then it may be appropriate for a B2 settlement to be re-categorized as a B1. Refer also to details in the categorization table in section 1 relating to planning, services, land and tenure.

Incremental Development Area Level 1 (IDA1)

This would be **applicable to all category B1 settlements or portions of settlements (i.e., in-situ upgrades) as a minimum, 'entry-level' land use category.** This should be regarded as a temporary, incremental planning solution. The level of service would typically be higher than for TDA1, services should be undertaken in such a way as to **minimize abortive costs** and form part of longer term permanent solutions to the extent possible, and efforts should be made where necessary to **rework space to create main access ways (also knowns as partial re-blocking or the provision of a 'services frame')**. Refer also to details in the detailed categorization table in section 1 relating to planning, services, land and tenure etc.

Incremental Development Area Level 2 (IDA2)

This land use level should be assigned as a next phase and **may be regarded as an alternative 'less-formal' permanent or semi-permanent solution on sites where formal town planning and township establishment are not viable in the medium term. This should be considered once the following preconditions have been achieved: once land has been acquired; once there is a detailed settlement layout (as household/site level); and subject to other social preconditions such as a list of all resident households and the absence of local contestations (e.g. relating to sub-rentals).** This land use assignment should enable the possibility of incremental individual tenure solutions once they have been developed and the capacity for local administration is in place (e.g. a municipal certificate of occupation linked to a GPS point once land has been acquired and a municipal tenure certificate once there is a full layout and each certificate can be linked to a specific residential site boundary and subject to conducive social conditions). Refer also to details in the detailed categorization table in section 1 relating to planning, services, land and tenure etc.

Additional land use norms which should apply to all informal settlement land use types and which should also be supported by social processes and preferably reflected in social compacts at least for category B1 settlements and preferably also for B2 settlements where social conditions permit:

- **Payment for services:** Residents should be expected pay for certain services. Currently the only service residents pay for is electricity (once their informal structure is connected). Other shared services such as communal ablutions are provided free of charge. The cost of operating maintaining services within informal settlements is high and financially unsustainable for the Municipality and new solutions need to be found, including the possibility of residents paying for a high level of shared service where it can be located closer to their dwelling (e.g. a mini-CAB shared by a small number of households).
- **Illegal connections:** Residents should desist from illegal connections including to the municipality's electrical, sewer or water grid. This relates closely to the issues of payment for services and operational sustainability thereof.
- **Further occupation of land:** Residents should assist the municipality in preventing further occupation of land and further densification of the settlement, especially where the settlement is already dense and further settlement makes servicing more difficult. This includes leadership immediately reporting any new settlement to the Municipality's Land Invasion Unit and working constructively with the Unit.
- **Responsible use of municipal services:** Residents should use municipal services responsibly and with appropriate care (e.g. avoid throwing foreign matter into toilets, desisting from vandalism and illegal connections). Community leadership should report incidents of vandalism or faults with services immediately to the Municipality and assist in discouraging such behavior. Local, community-based maintenance approaches can be considered to assist in achieving this objective.
- **Solid waste:** Residents must ensure that their own household solid waste is placed in black rubbish bags and moved to the nearest municipal collection point either inside or on the edge of the settlement. The Municipality will assist wherever possible in providing a certain number of black plastic bags to settlements and might also assist with stipends for waste collectors, but the responsibility remains with each household to manage its solid waste responsibly.
- **Building materials:** Residents should desist from using highly flammable building materials such as plastic and cardboard. At IDA2, it should be agreed that residents endeavor to build to a higher standard (e.g. either using the norms for BNG housing where sites are relatively flat or the lightweight wood-frame housing typology recently developed for steep slopes in eThekweni) and that they utilize build double story structures where possible to make more efficient use of space and maintain access ways. Standard designs for selected typologies should be provided by the municipality to residents. Consideration will be given to establishing a PHP-type housing support programme to enable residents to build higher quality housing themselves

Flexible developability 'envelope' for B1 settlements

It is accepted that many informal settlement sites, whilst not ideal in terms of such factors as slope and population density, are nonetheless appropriate for incremental upgrading (category B1), accepting that many such settlements are well-located, old/well-established and that there is a lack of alternative, suitably-located land for relocations. Although some sites are significantly constrained, there may be the potential for certain constraints to be mitigated and/or managed and/or overcome. Subject to further technical studies, it is therefore accepted that a more flexible 'developability envelope' should be considered for such settlements along with an IDA1 or IDA2 land use designation. In addition to a more flexible services 'envelope' (e.g. partially pedestrianized layouts and shared services), additional site constraint flexibility to be considered in respect of:

- Steep slopes: Slopes steeper than 1:3 (18 degrees) subject to appropriate storm-water controls, geotechnical and slope stability assessments, use of alternative housing typologies etc. (and noting that some areas as steep as to 1:1.5 (33 degrees) have been settled for long periods of time).
- Floodlines: areas within 1:100 or 1:50 year flood-lines - subject to further floodline assessments/delineations and appropriate risk mitigation/management measures;
- DMOSS: Consideration of relaxation of DMOSS designation strictly on a case-by-case and subject to vegetation studies and other environmental assessments and also taking into consideration the potential to reduce environmental impacts (e.g. solid and faecal waste contamination of streams and soil erosion) through the provision of improved engineering services on already-disturbed land;
- Non-hazardous servitudes (e.g. road, water and sewer servitudes): Relaxation of these where there would be no resultant health and safety impact or other material risk for the management/maintenance of municipal services.

Private land

The Municipality will provide basic/essential municipal infrastructural services for informal settlements on private land in B1 and B2 categories in advance of land acquisition subject to:

1. Settlements having been categorized.
2. Categorization having been reflected in the SDF (or at least in progress).
3. Notice having been served on the landowner, a period for response given and any objections considered and noted.
4. A land acquisition programme being at least in the process of establishment.
5. A statutory servitude having been established (or in the process of establishment) by means of an appropriate bylaw in order to protect municipal services.
6. Finalization of incremental land use SOPs (preferably).

For B1 settlement, **consideration should be given to a substantial if not full rates rebate** once notice has been given and the 30 day notice period referred to below has elapsed (unless it can be shown that the landowner is directly deriving rentals from informal settlement residents). The reasons for the rates rebate are as follows:

- the landowner no longer enjoys beneficial use of the land;
- the municipality has decided to upgrade the settlement over time;
- the municipality is deferring compensation.

NOTICES TO LANDOWNERS

All private landowners for B1 and B2 settlements should receive notice which at a minimum:

- Indicates the intention to provide basic services and the nature of such services;
- Establishes the Municipality's right to construct, operate and maintain the services;
- Indemnifies the landowner from liability arising from the construction and operation of the services and from any maintenance thereof and in respect of any related environmental issues;
- Stipulates that no compensation will be paid to the landowner (at least not currently);
- Stipulates that the landowner may not impede the provision of the services;
- Stipulates that the landowner has 30 days in which to lodge an objection
- Disavows any right of the Municipality to reclaim from the landowner any costs of removing any hazards or dangers on the site.

Ideally (and subject to finalization of protocols and legal input), the notice should also in due course indicate: the categorization of the settlement; the developmental trajectory for the particular category; the implications for the landowner, residents and municipality (as drawn from land use arrangements). Ideally, information similar to that contained in the detailed categorization table would be appropriate in this regard. Ideally the notice would thus also indicate (or reference) how compensation would be dealt with (i.e. by means of a parallel land acquisition programme). Much of this information would in any event be covered via an incremental upgrading bylaw for which there would be a process of public notice/comment (if such a bylaw is opted for in addition to these SOPs).

Land Acquisition Programme

The Municipality must establish a land acquisition programme for informal settlement upgrading in terms of which it identifies all land currently occupied and required for settlement (i.e. categories A and B1) as well as any additional land required for decanting whether via formal greenfields housing or serviced land release (TRAs are regarded as a last resort). This **land acquisition programme should run in parallel with incremental upgrading and the provision of essential/basic services**. The budget requirements and timeframes for acquisition should be determined. The scale and rate of delivery of the programme will be subject to resource constraints and budget prioritization amongst other factors. It is accepted that the costs associated with such a programme will be substantial and the programme will take many years to complete, noting that there are many competing budgetary pressures and that the **provision of basic services to settlements should in general take precedence over land acquisition** given the severity of health and safety threats which pertain in most settlements (e.g. relating to fire, disease, flooding, solid waste etc.) and the scale of settlements and affected households. It is also recognized that expropriation is a slow process and that further guidance is still awaited from national government regarding expropriation at reduced or nil compensation and how this will be implemented on urban land.

Functional tenure security

For all settlements: Initially administrative recognition (non-individual functional tenure) which confers freedom from arbitrary eviction and is related to the categorisation of the settlement.

Where possible, a list of residents linked to structure numbers should also be maintained in order to prevent further expansion of the settlement and manage the future relocation process. This also affords greater functional tenure security to those residing on the site.

For category B1 settlements: Consideration to be given to establishing **locally-administered forms of individual, incremental tenure** once there is capacity established for local administration, **such as a municipal certificate of occupation** (and once incremental planning arrangements are in place and there is a GPS point for each structure/households) **and/or municipal tenure certificate** (once land has additionally been acquired and there is a full layout with a demarcated site boundary for each occupied site). The development and implementation of these innovations will be subject to technical solutions, local capacity and funding.

Social compacts

Social compacts are important in the context of incremental upgrading in terms of supporting land use arrangements (e.g. levels of service, responsible use of services, payment for services, tenure etc.). This is because the Municipality is not in a position to enforce land use 'rules' in informal settlements in the same way as is possible in formally developed areas. The use of social compacts is stipulated as national upgrading policy by the NDHS and NUSP and are now essential business plan requirements for UISP project pipelines and related HSG or USDG budget allocations. Refer also to the types of land use roles, responsibilities and protocols which social compacts need to support (in preceding sections). Social compacts should be regarded as essential on all category B1 settlements and highly desirable for category B2 settlements, except where social conditions do not permit (e.g. there is a high level of local contestation, problematic informal tenure conditions such as 'shack-lords', local instability etc. which may trigger unintended and severe negative social impacts such as violence and resultant dislocation of resident households).