

Incremental Planning and Alternative Tenure Solutions for the Incremental Upgrading of Informal Settlements in eThekweni Municipality

iQhaza Lethu Learning Event #2

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"iQhaza Lethu"
*An informal settlement upgrading partnership initiative co-funded by
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'Take-home' messages

- 1. Planning and regulatory frameworks:** Formal planning and regulatory systems are neither viable nor relevant for informal settlement environments – too rigid, inflexible and slow and result in exclusion
- 2. Provision of services on private land:** Government has both the right and obligation to provide essential basic services to communities on land which it does not yet own subject to there being transparent and rational planning processes and other prescribed conditions being met.
- 3. Alternative forms of tenure:** Formal tenure in the form of title deeds are unviable in incremental upgrading environments – other forms of tenure security need to be embraced which not only provide basic tenure security but also unlock owner-driven housing improvements.
- 4. Scale and realism:** We need to respond at scale and within the severe fiscal, capacity, land and other constraints – optimally leverage resources.

Context of informality and informal settlements

1. Organic urbanisation – a normal and inevitable process (not an anomaly). People are solving the challenges of access to the city for themselves in the absence of other viable alternatives.
2. But happening in ways authorities (and perhaps professionals) did not adequately anticipate, respond to and embrace
3. Often viewed through the lens of a problem e.g. informal settlement 'eradication' as a driving philosophy
4. An alternative view is to embrace the informal and collaboratively find optimal solutions through 'negotiation' involving government, communities, professionals, and upgrading support organisations – i.e. an agenda of inclusion which necessitates incrementalism and flexibility relative to formal / conventional solutions.

CONTEXT AND PROBLEM STATEMENT



Informal Settlements in eThekweni

- Over 587 urban informal settlements, 312,741 households.
- Nearly a quarter of the City's population.
- Continued urbanization and scarcity of well located land.
- Over 90 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
- **78% are category B1 (incremental in-situ upgrade with essential services) - 352 settlements, 246,348 hh.**
- **Many are very dense (200+ du per hectare)**
- Less than 3% of households earmarked for relocation (due mainly to sites being unsafe for habitation)
- **41% of land is privately owned (only 18% city-owned)**



Settlement Overview eThekweni – The scale of the challenge

The scale of informal settlements in the Municipality is a key factor informing eThekweni's City-wide Strategy. This has significant strategic implications including the impossibility of addressing the 'backlogs' by means of formal housing provision or comprehensive upgrading and the necessity for an optimized incremental approach.

Summary of settlements by NUSP category

NUSP Categorisation	No. settlements	Est. households	% Settlements	% households
A (full conventional upgrading i.e. housing project)	56	22 131	9,5%	7,1%
B1 (Incremental upgrade with essential services)**	352	246 348	60,0%	78,8%
B2 (Deferred relocation with emergency services)	135,5	33 009	23,1%	10,6%
C (Imminent relocation)	34,5	10 954	5,9%	3,5%
Under investigation	9	299	1,5%	0,1%
	587	312 741	100,0%	100,0%

*** 35% of B1s are best located (inside PIC and urban zone) - 202 settlements, 97,113hh, 35% of all settlements, 31% of all hh. Note household numbers as at July 2021 at time of pipeline analysis – there has been a slight increase subsequently.*

National & eThekweni 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/criteria**: 1) **Site is viable** (developable) and appropriate for purposes of formalisation AND 2) **full upgrade project is implementation-ready** (full upgrading can commence rapidly - land secured, feasibilities complete, plans approved etc.) AND 3) **formalisation is appropriate** and will not result in significant adverse consequences (e.g. significant 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/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).

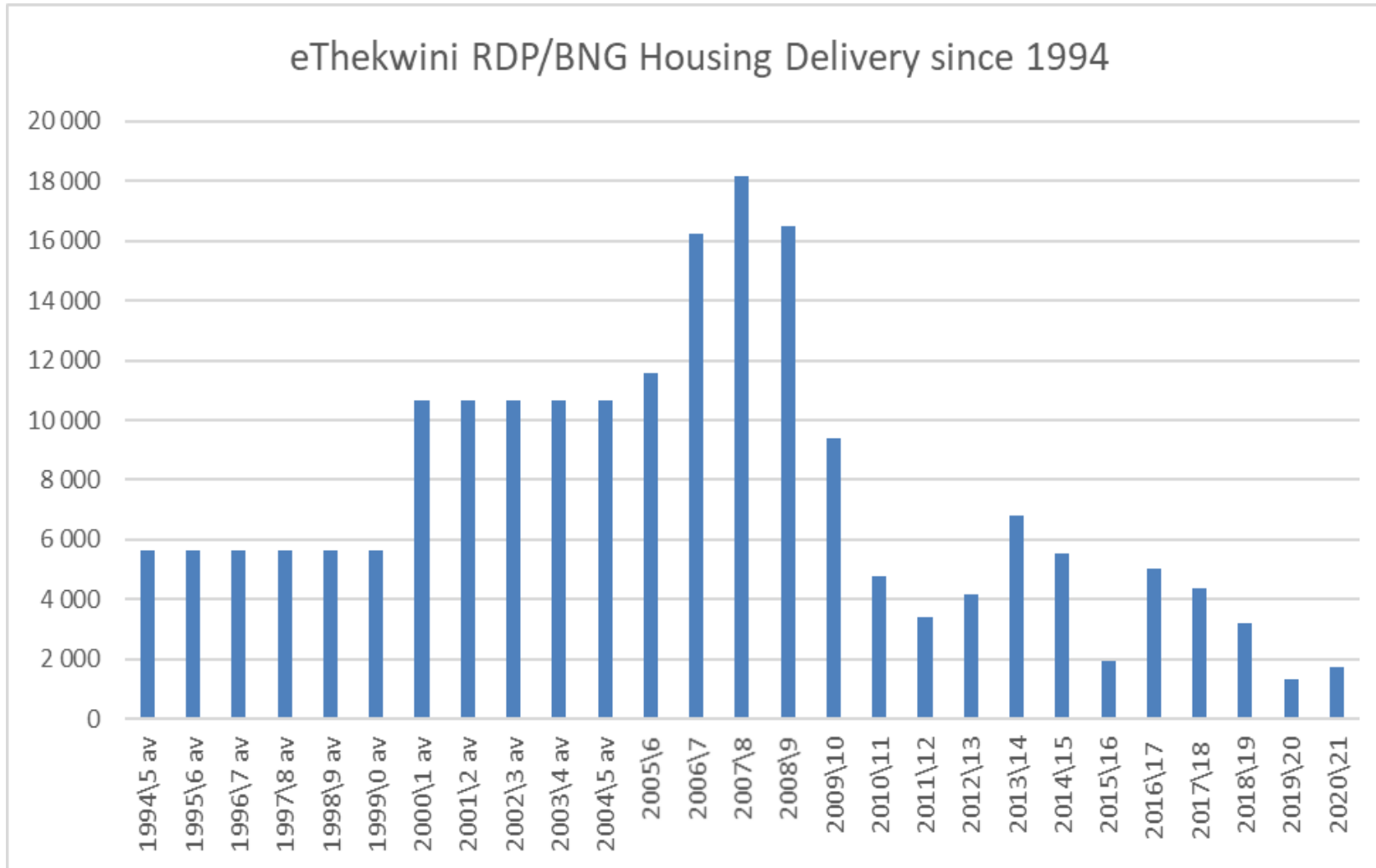
3) DEFERRED RELOCATION WITH EMERGENCY SERVICES (category 'B2'):

- 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/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 threats which cannot be mitigated in the short-term through basic services provision).

4) IMMEDIATE RELOCATION (category 'C'):

- a. **Developmental pathway**: Rapid relocation is imminent to a site which is already available or is almost ready (site & service or green-fields housing or temporary relocation area).
- b. **Rationale/criteria**: 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 ready and available** or this is imminent.

Conventional Housing Delivery since 1994



To date 201,191 formal houses delivered (massive and positive achievement).

Delivery has been slowing – now at an average of 3,210 over the past seven years due to numerous constraining factors (fiscal, land, bulk service, regulatory, escalating housing costs etc.)

At this rate, it will take 95+ years to address only the current informal settlement backlog (of 312,000+ households), notwithstanding other housing needs and further population growth/urban influx.

Incremental Upgrading: Significant service delivery to date

- **Communal ablution facilities (CABs):** 1,368 facilities (pairs of CABs) delivered (approx. 100 000 households serviced). Approx. 192 000 households with inadequate access to sanitation and not accommodated in Cat A planned projects
- **Electricity:** 102 000 hh electrified with pre-paid meters. Approx. 194 000 households not formally electrified
- **Water supply** (standpipes & via communal ablutions) to most settlements including 'relocation' settlements: at least 148,000hh have access
- **Roads, footpaths & storm-water (RFS):** 26,500hh in 40 settlements; >32km road, >27km footpaths



Interim services approach in eThekweni



But current interim approach not sustainable

(despite large scale services delivery)

The historical interim services approach was temporary in its orientation. Given the significant delays and constraints with rapidly providing formal housing for all informal settlements, an optimised incremental upgrading approach is therefore required in order to overcome the following challenges:

- **High and unsustainable capital and operating servicing costs:** The cost structure of temporary and communal services is prohibitively high. For example, if an alternative to CABs is not found, then R5 billion will be required to fund the remaining 3,123 pairs of CABs required to meet the remaining backlog and once all settlements have been serviced there will be a total of 4,103 pairs of CABs with a combined annual operating cost of approximately R400 million (including caretakers, supplies, maintenance and recapitalisation/refurbishment after 10year lifespan).
- **Limited spatial transformation :** There has been limited or no re-working of space (partial re-blocking) especially in well-located B1 settlements in order to improved access, services quality and layout.
- **No incremental planning arrangements:** Informal settlements currently fall entirely outside of all municipal planning frameworks even though SPLUMA dictates that they need to be accommodated in an incremental fashion.
- **No individual tenure security:** Residents lack individual tenure security. This represents a significant obstacle to owner-driven housing improvements and ultimately individual services connections and payment for services. If residents have tenure security and can transact (sell) their properties, this is expected to produce significant gearing of investment in improved housing stock and increased property values.
- **Limited owner-driven housing improvements :** Due to the above impediments, residents make limited effort to improve their own housing in start contrast to what is occurring rural/peri-urban areas. This represents a major lost opportunity.

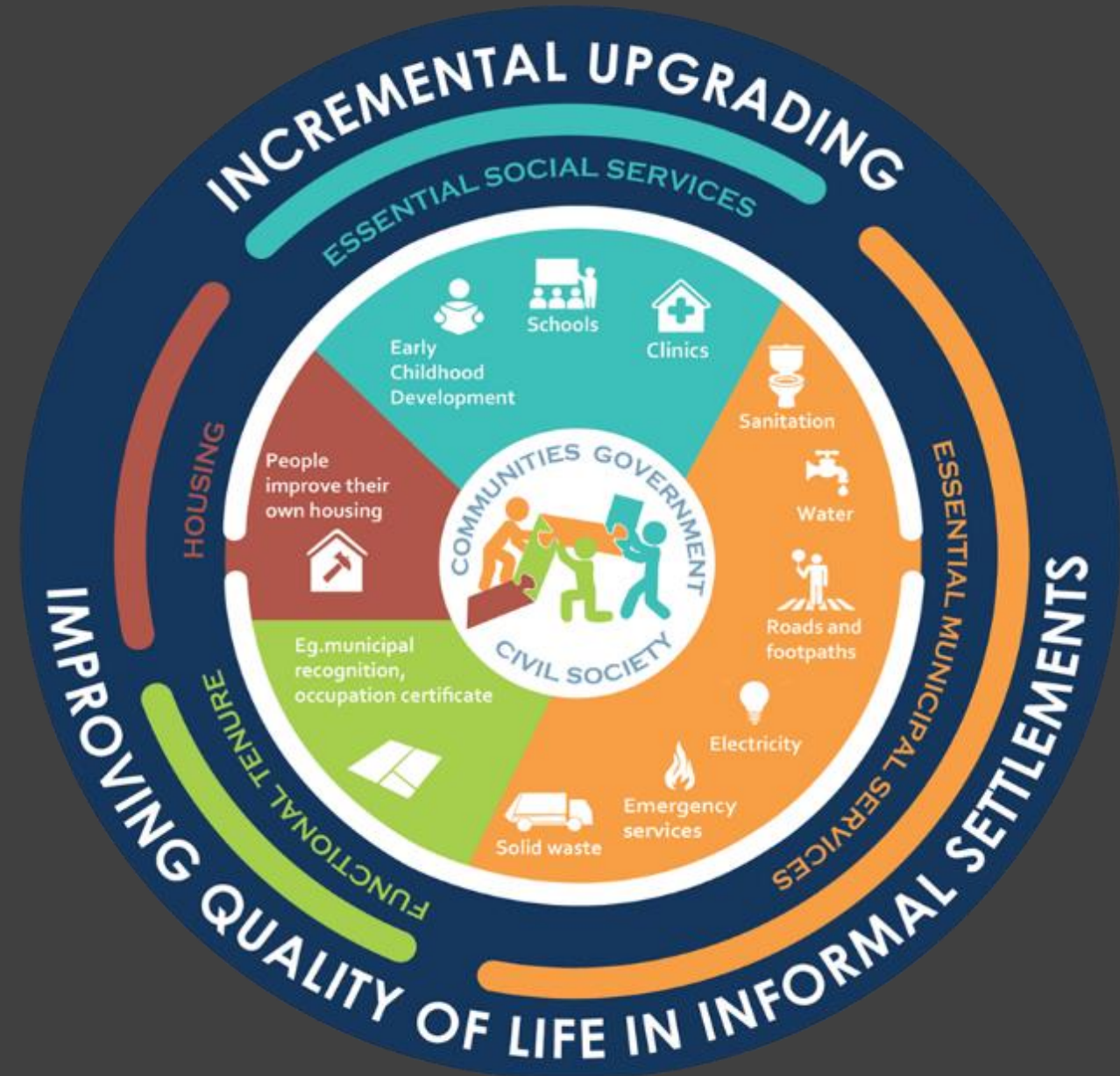
Overview of optimised Incremental Upgrading Approach

The objective is to reach all informal settlements ('city-wide') as rapidly as possible with improved basic services and tenure security whilst at the same time starting to address spatial transformation and asset building. Incremental planning and tenure arrangements and optimised servicing approaches will be utilised to enable and empower people to invest in their own housing improvements (it being accepted that the formal housing programme will not be able to provide everyone with a state-funded house in the short-medium term). This is expected to take approximately 14 years given current ISUPG availability (approx. R1billion per annum). There are also additional O&M and bulk services implications to be considered.

- 1. Basic municipal services for all settlements** at various levels appropriate to the pipeline category (typical services include communal ablutions, household electrical connections, roads, footpaths & storm-water controls, solid waste containment and collection, fire hydrants and improved fire response).
- 2. Incremental planning arrangements for all B1 and B2 settlements** including designation in the SDF and incremental land use arrangements such as incremental or temporary development areas (i.e. IDA1 or IDA2 for B1s, or TDA for B2s).
- 3. Functional tenure security for all B1 and B2 settlements** in the form of administrative recognition based on categorisation, and with the intention of investigating alternative locally-administered individual forms of tenure at IDA2 level (e.g. municipal tenure certificate) subject to successful pilots and the available capacity to administer.
- 4. Partial re-blocking and establishment of services frames in best-located B1 settlements.** Establishment of services frames along with reworking of space / partial re-blocking. Typically involving the relocation of a limited number of households either within the settlement or to adjacent/nearby land. This lays the platform for owner-driven housing consolidation and asset-building over time as well as possible individual services connections and eventual payment for services (it being noted that in the long term it is critical for the municipality to be able to recover some operational costs).
- 5. Fast-tracked mitigations or relocations for households at most-severe risk** e.g. due to severe flood risk or slope instability (landslide), active railway line reserves, on fuel lines, fire.

Optimized Approach to Upgrading

- **INCLUSIVE & CITY-WIDE** – reaches ALL informal settlements
- **INCREMENTAL** – improvements over time
- **IN-SITU** – relocations a last resort
- **PARTNERSHIP BASED** – municipality, communities, CSO/NGOs, universities etc.
- **PARTICIPATIVE** – communities are co-drivers
- **PROGRAMMATIC & AREA-BASED** – as opposed to project-delivery focussed
- **DIFFERENTIATED** – addresses a range of key local priorities, not one-size fits all
- **FLEXIBILITY** – statutory and regulatory, working with not against informality

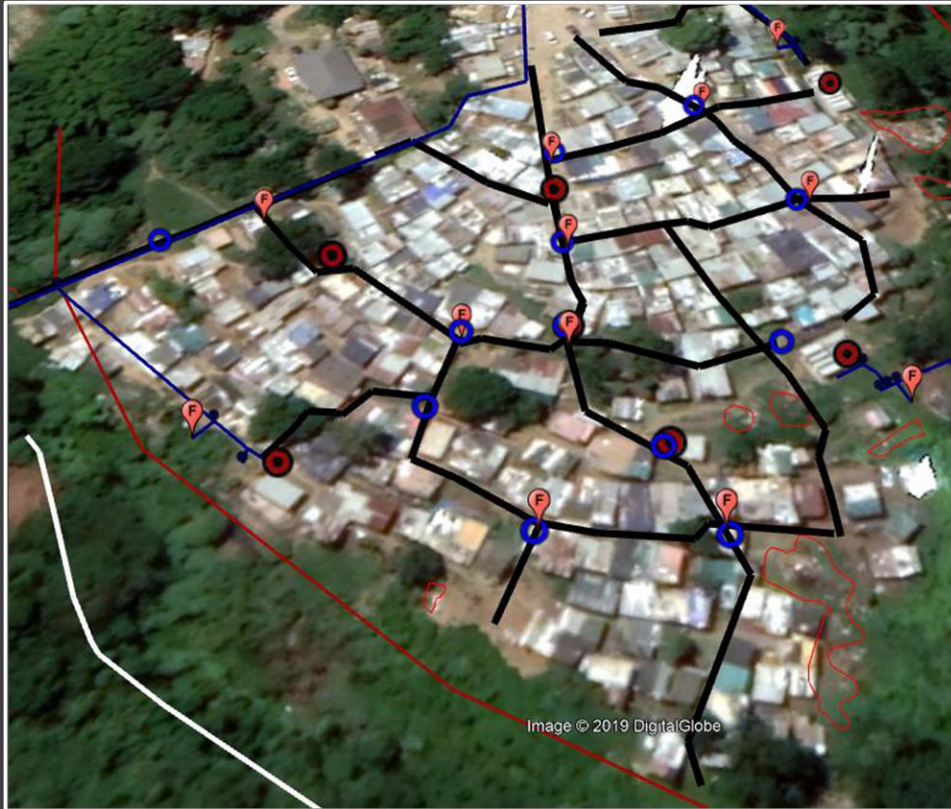


Problem Statement RE land, tenure & incremental planning

- **Informal settlement areas in the eThekweni Municipality (and most other cities) fall outside of current planning and regulatory frameworks.** Underlying land not yet proclaimed, subdivided and often not yet owned by government (41% the informal settlement land in eThekweni is still privately owned). Households also lack individual tenure security.
- **The time and resources required to rapidly acquire all informally settled land and obtain all formal planning, environmental and other approvals is prohibitive given the scale of informal settlements.** In eThekweni there are more than 312,000 households and more than 587 settlements, noting that almost 79% of households reside in settlements which are scheduled for incremental, in-situ upgrading and are not going to be relocated (352 settlements and over 246,000 households). Prevailing densities make formal planning approvals impossible (without mass relocations) and there are additional site constraints (e.g. steep slopes) which make conventional development and planning solutions impossible.
- **The provision of basic services for informal settlements cannot be delayed and government has a constitutional obligation to respond rapidly and in an appropriate fashion.** This includes the mitigation of a range of significant threats and vulnerabilities (to the health and safety of both residents and neighbouring communities, as well as to municipal infrastructure and the natural environment). Challenges include poor sanitation and solid waste management, recurrent fires, and faecal and solid waste contamination of the environment.
- **Incremental, in-situ upgrading is national policy as per the Upgrading of Informal Settlements Programme (UISP) which prioritises the provision of basic services and functional tenure security with relocations as a last resort.** There is also a recognition that conventional, formal housing delivery cannot solve the challenges of informal settlement. The informal settlement 'backlogs' in eThekweni and South Africa have grown significantly since 1994 despite large scale housing delivery. More than 200,000 formal housing opportunities have been provided in eThekweni and more than 3 million throughout South Africa. This has been a significant achievement. However, there are currently over 312,000 households residing in informal settlements in eThekweni and more than 2 million households throughout S.A. In eThekweni, it would take more than 95 years to overcome the current informal settlement backlog

WHAT KIND OF FUTURE DO WE ENVISION?

Alternative servicing approach for dense B1 settlements - why is an alternative approach needed?



- **Significant numbers of these settlements**
- **High level of vulnerabilities** - typically the most vulnerable e.g. fire, disease, overcrowding, squalid living conditions.
- **Most are old, well established and in prime locations** (work, social services).
- **Incremental services approach currently 'reactive'** – CABS on edges, minimal footpaths on existing alignments, no reworking of space, limited/no internal water and sanitation.
- **Conventional upgrading not possible** due to densities, non-qualifiers, lack of alternative land, steep slopes, geotech., costs and other factors
- **Settlements are developmentally 'locked'** UNLESS there is an alternative approach
- **COVID-19:** need to open up space for better W&S services + reduce queuing at communal taps and toilets

Parkington,

informal settlement, eThekweni
municipality, Ward 34,
Incremental Upgrading Service
Upgrading **Concept Plan**



"iQhaza Lethu"

*An informal settlement upgrading
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Proposed upgraded services

Roads	
Footpaths	
Lighting	
Water pipes	
Sewer pipes	
Water hose points	
Standpipe Drainage Facility	
Existing Sewer pipes	
Existing communal ablutions	
Mini communal ablutions	
Solid Waste bins	
Solid Waste Containment area	
Bridge	
Project Boundary	
Fire Hydrant	



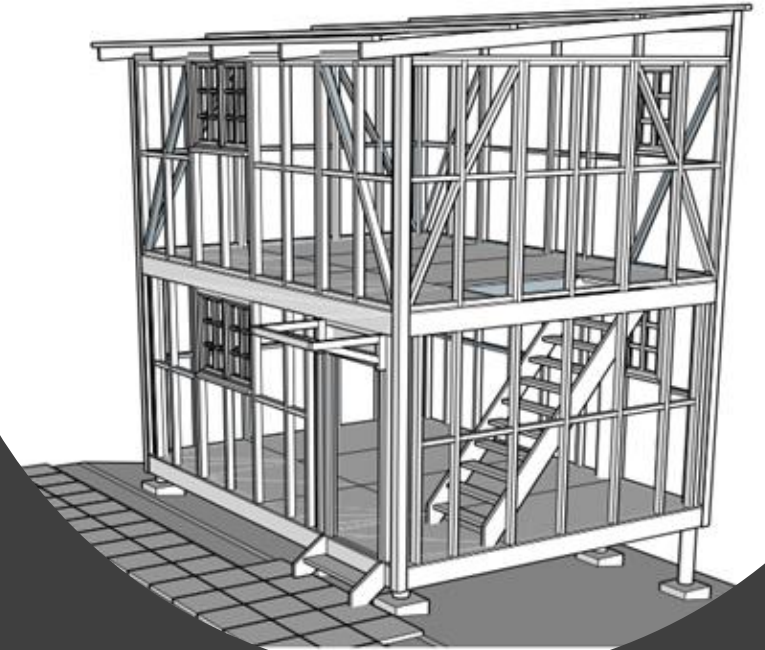
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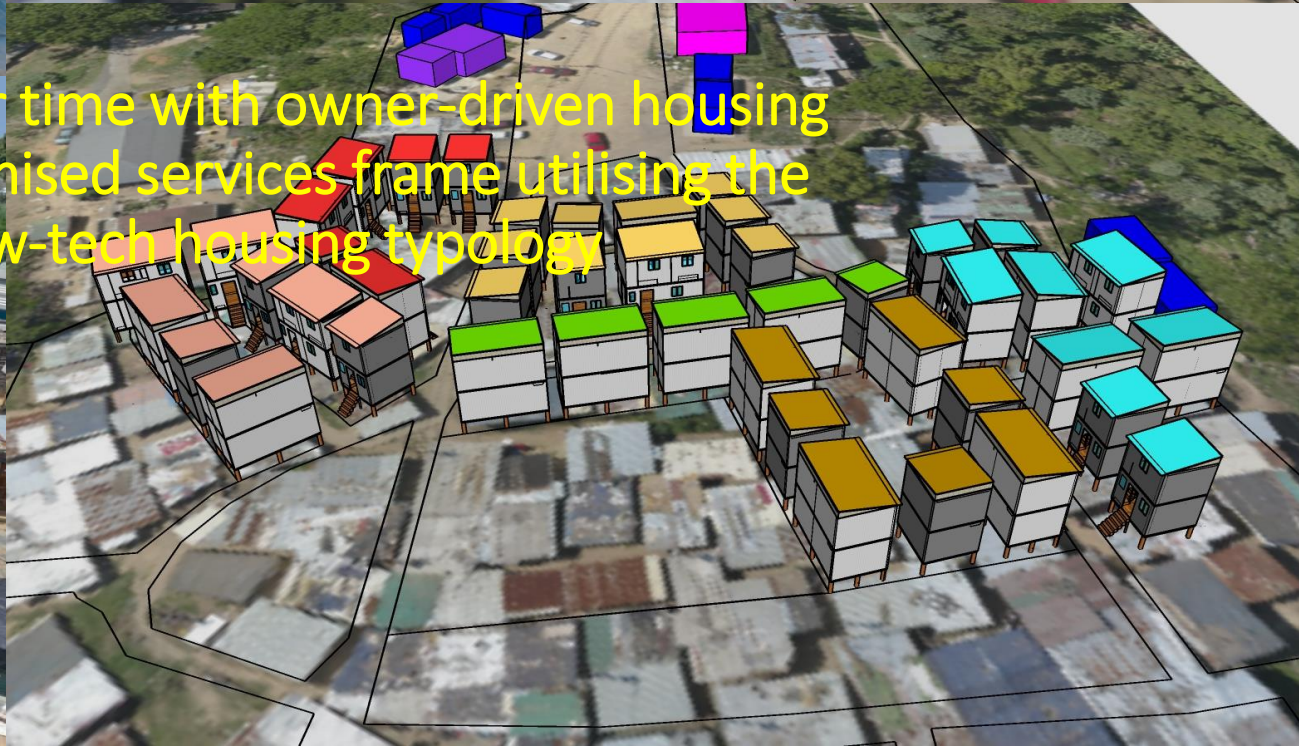
Alternative double-story typology – 150 units to be built on 3 re-blocking-relocation sites (Parkington, Havelock and Ezimbeleni) to release space for the services ‘frame’ in the adjacent settlements

- **Acute scarcity of well-located land** in eThekweni. Most dense settlements are well-located but the land is steep.
- **Conventional upgrading not viable** on these sites - RDP housing would mean massive relocations + destabilize the slope; conventional multi-story walk-ups (flats) not viable because of high unit costs.
- **Alternative typology developed in collaboration with HSRC and team of architects and engineers according to principles of rational design.**
- Double-story, low-cost, lightweight, timber-frame structure, micro-pile foundations & external metal cladding – **locally-built and can function effectively on steep slopes.**
- Units enable a **more functional alternative urban form** on eThekweni’s typically steep sites – double story, so optimise limited land availability.
- Units are **built/assembled on site by local artisans and workers in a PHP-type model.**
- Objective is to **imbed within communities a different way of building** for themselves (either organically or via with PHP support).
- **Units are engineer-certified. Parallel process for certification of the typology and/or development of new norms and standards.** Typology falls outside of current SANS10400 code norms (which are guidelines orientated towards conventional structures), but through rational design it complies in all material respects with the NBR requirements for a category one building (in terms of space, structure, health and safety etc.). Extensive work has been done to address fire performance including engagement with eThekweni Fire Department and specialist Fire Consultants. Burn tests via a fire laboratory are planned as well as future Agreement Certification .





What the future could look like over time with owner-driven housing improvements overlaid on an optimised services frame utilising the alternative, lightweight, low-tech housing typology



Role of Incremental Planning Arrangements & Alternative forms of individual tenure security in leveraging owner-driven housing

- Impossible for government to provide everyone with a subsidised, state-funded house
- Government already stretched to the limit of its capacity and fiscal resources just providing and maintaining municipal services
- Priority from a housing delivery point of view must therefore be on government providing an enabling environment and activation various enable 'levers' so people can build their own improved housing
- Incremental planning arrangements and individual tenure security are pivotal in this regard (along with adequate basic municipal infrastructure and a more enabling regulatory environment including owner-built housing i.e. greater accommodation and flexibility)

INCREMENTAL PLANNING AND LAND USE ARRANGEMENTS

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.”

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

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.

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).
- **Flood-lines**: areas within 1:100 or 1:50 year flood-lines - subject to further flood-line 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.

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. The **categorization is thus 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'.

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.

Upholding land use norms via social process

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 at time this may include the use of signed social compacts** 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:

Additional land use norms which should apply to all informal settlements

- **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

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

- 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 / 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 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 / 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 threats 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.

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 City-wide Upgrading Strategy finalised** and in process of being adopted by Council which will support and incorporate the above.

Pilot projects

- Plans are underway for piloting incremental planning and alternative tenure arrangements in eThekweni Municipality. The arrangements will be piloted as a collaboration between the Municipality, Project Preparation Trust (PPT) and grassroots Community Based Organisation (CBOs) from seven selected informal settlements (with a combined population of 5,802 households and an extent of 61ha).
- In all seven category B1 (incremental upgrade) settlements Incremental Development Areas at level 1 (IDA1) will be established with Temporary Development Areas (TDAs) in portions of two settlements which are categorised B2 (deferred relocation). These establish a non-individual form of functional tenure security as outlined in the preceding section.
- In portions of three of the B1 settlements, Incremental Development Areas at level 2 (IDA2) will be established together with re-blocking (reworking of space) and the piloting of municipal certificates of occupation and municipal tenure certificates in order to enable and incentivise owner-driven housing improvements and potentially individual household water and sewer connections and payments for such services.

TENURE SECURITY
AND
ALTERNATIVE SOLUTIONS

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 **alternative, locally-administered forms of individual 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.

Alternative Individual Tenure Security Pilot

(CDP/CSP supported 24 month period)

RATIONALE:

- Alternative forms of individual tenure (together with incremental planning arrangements) are important in unlocking much-needed owner-driven housing consolidation, land value capture and asset-building. The Municipality has developed draft Incremental Planning Operating Procedures and these form part of the draft City-wide Upgrading Strategy.
- In addition to the minimum level of non-individual tenure security by means of administrative recognition which confers freedom from arbitrary eviction and is related to the categorisation of the settlement, **alternative individual forms of tenure need to be collaboratively developed** (e.g. a municipal occupation or tenure certificate), in particular for category B1 settlements.
- This will be **subject to municipal capacity and appropriate tenure management systems being established, but the viability of this can only be determined once possible solutions have been piloted through carefully selected co-driven upgrading projects**

Alternative Individual Tenure Security Pilot

(CDP/CSP supported 24 month period)

SCOPE - Key project activities and outputs:

- **Finalise design of incremental planning land use arrangements** including development of incremental development area (IDA) zones at two levels: IDA1 and IDA2.
- **Design alternative individual, locally-administered tenure system** and certificates including legal, administrative, and financial aspects. Potentially at three levels (subject to further assessment, piloting, resources etc.):
 - **Basic proof of residence** (B1, possibly also B2 settlements) – Name of household head and ID or passport number linked to a structure number (mostly already in place). Evidence available on request e.g. Stamped municipal printout with name, ID, settlement name, street address, GPS point, ward. Current a letter from Councillor is often utilised to fulfil this function.
 - **Municipal certificate of occupation** (B1 settlements), linked to a site boundary demarcated on up-to date aerial photo and pegged on the ground - once municipality has acquired the land, a participative upgrading plan is in place, layout for services and sites (brownfields layout) in place – this will typically necessitate some re-blocking to reach a point of a layout which is viable and ‘bankable’ - noting that all informal settlements are flown regularly with high quality aerial mapping data available on which to overlay the ‘structure mapping’ (i.e. occupants of households linked to plan). This can potentially be provided on the basis that it can be upgraded to a full municipal tenure certificate if certain preconditions are met e.g. shack is improved to a more acceptable level, no illegal connections e.g. electricity, payment for municipal services e.g. electricity, agreement and compliance in adhering to other incremental land use norms e.g. disposing of solid waste in provided bins.
 - **Municipal tenure certificate** (B1 settlements) Once conditions above have been met – potentially upgradable to a title deed when/if a township is established and all formal planning and regulatory processes are complete. The purpose is the incentive and leverage owner-driven housing consolidation, more responsible and participative citizenry, and payment for services.

Alternative Individual Tenure Security Pilot

(CDP/CSP supported 24 month period)

SCOPE - Key project activities and outputs continued:

- Pilot incremental land use arrangements in three settlements (IDA1 and IDA2).
- Pilot municipal tenure certificates for 150 to 300 households including establishing local administration thereof. This will go hand in hand with:
 - improved basic services potentially with some individual household services connections (water, sewer, electricity);
 - re-blocking (realigning structures to utilise space more efficiently);
 - self-build of improved housing;
 - operating and maintenance solutions;
 - payment for services.
- Evaluation and learning.

Alternative Individual Tenure Security Pilot

(CDP/CSP supported 24 month period)

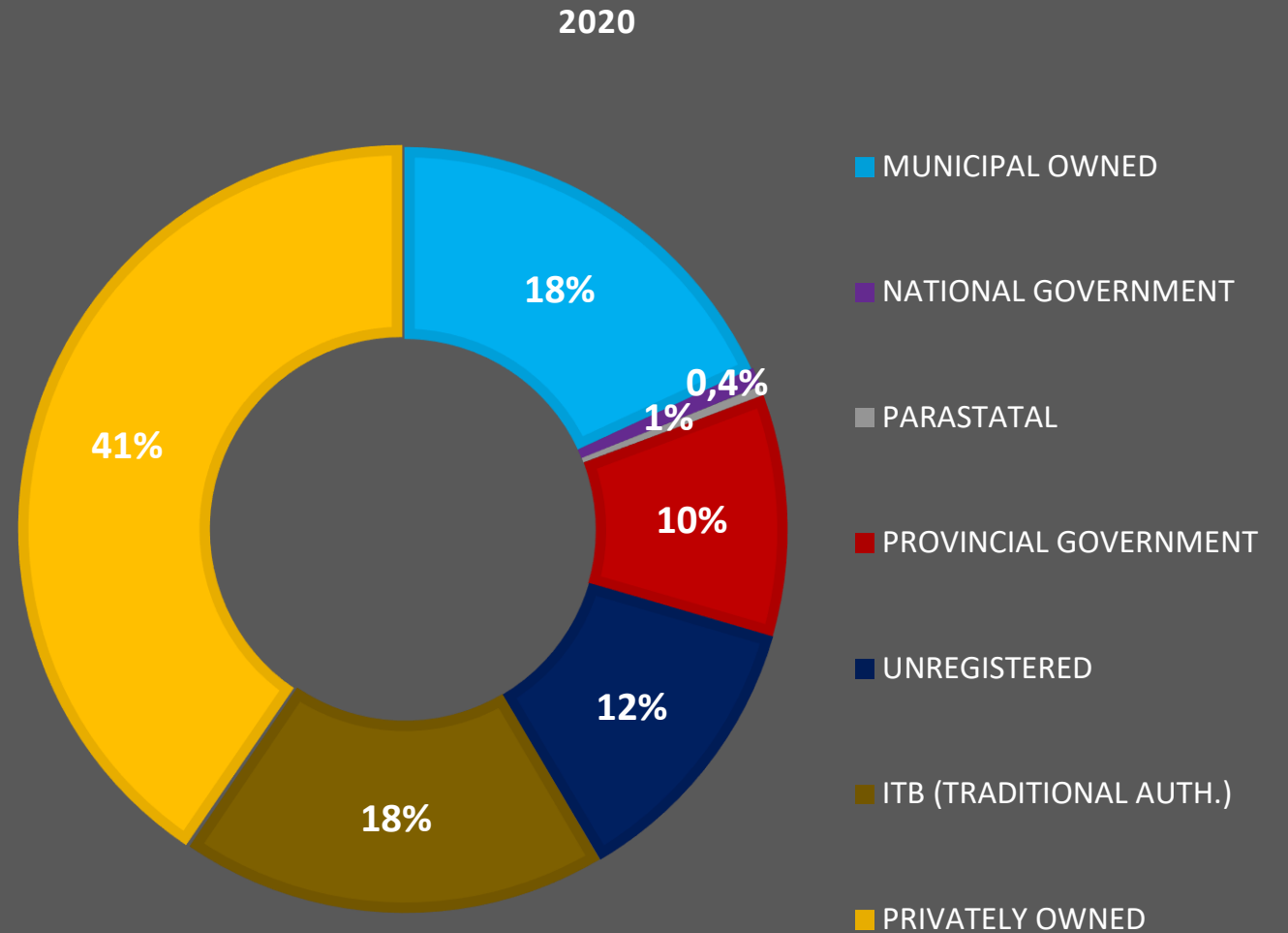
Key short-term outcomes:

- Refined, tested and proven incremental planning and land use system.
- Refined, tested and proven individual municipal tenure certificate and related system for local administration thereof (including for tenure documentation and property transfers).
- Evidence base, guiding documentation, proformas and learning relating to the above.

DEALING WITH PRIVATE LAND

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

- **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 SINCE 2010

- **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).

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. Categorisation 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 in the process of establishment.
5. A statutory servitude and related bylaw having been established (or in the process of establishment) to protect municipal services.
6. An incremental upgrading bylaw for incremental and temporary development areas.

For B1 settlement, **consideration may 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 a possible 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:

- Indicate the intention to provide basic services and the nature of such services;
- Establish the Municipality's right to construct, operate and maintain the services;
- Indemnify 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;
- Stipulate that no compensation will be paid to the landowner (at least not currently);
- Stipulate that the landowner may not impede the provision of the services;
- Stipulate that the landowner has 30 days in which to lodge an objection
- Disavow 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.

ADDITIONAL REFERENCE SLIDES

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.

Social compacts

Social compacts can be useful 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).

Differentiated pipeline – Best-located B1s – 31% of all households (97,113hh/202settlements)

- Strategic objectives: These settlements should be afforded a high strategic priority given their locational importance. The objective is to rework space, optimise services and enable or incentivise residents to invest in and improve their own housing over time. The strategy is not only to address services deficits but to achieve spatial transformation, land value capture and asset building over time (principally via carefully-focussed and appropriate government and private sector (residents) investments). The costs of this approach will typically be higher than for general B1 settlements, and the process slower, but the locational value of the land more than justifies a more qualitative and integrated incremental upgrading approach, noting that this approach also establishes a better platform for residents to improve their own housing over time and for incremental planning and tenure solutions to be implemented in the future.
- Services: A comprehensive package of essential services should be provided. It is accepted that, due the high densities in these settlements, a partially pedestrianised layout will typically be necessary and that, at least initially, certain services may only be possible along the main service alignments in the settlement (known as the ‘services frame’ approach). Typical services provided should include: footpaths and related storm-water controls and some roads where space permits; communal ablutions; standpipe wash facilities; fire hydrants; electricity; solid waste bins and containment areas. It is also accepted that some reworking of space (or partial ‘re-blocking’) will typically be required in order to open up the space necessary for service access ways. The planning, design, and delivery of services will typically need to be in an integrated and simultaneous fashion requiring effective coordination between line departments. Wherever possible services should be designed so that they are permanent, durable and part of a long-term permanent solution. The establishment of a services frame creates the potential for individual service connections in the future as a future phase of consolidation.
- Relocations: Relocations should be limited to those households who have to be moved to make way for the services frame. Some realignment of households within the settlement might also be possible. If additional land is required, then this should wherever possible, be adjacent or near to the settlement in order to minimise livelihoods disruptions. The use of alternative double story housing typologies should also be considered (see ‘housing’ below). Some relocations may also be required where there are households at severe risk (refer to dedicated pipeline category).
- Land use planning: Incremental planning arrangements should be established as soon as possible (initially IDA1 and transitioning to IDA2 once the municipality has acquired the land and sufficient planning and incremental servicing has occurred).
- Tenure: Tenure security will initially be via administrative recognition. Consideration should be given to incremental individual tenure (e.g. municipal occupation or tenure certificate) once IDA2 has been established and subject to municipal capacity and tenure management systems being established.
- Housing: People will need to be encouraged to improve their own housing. A requirement to build improved housing should preferably be linked to the award of any individual form of tenure security (e.g. a municipal tenure certificate).

Differentiated pipeline – General B1s - (48% of all households - 149,235hh/150settlements)

- Strategic objectives: The main objective is to improve quality of life and services access within these settlements and mitigate health and safety threats. Even though these settlements are not as well located as the previous category, it is accepted that, in provincial context, they are still well located compared to many rural settlements. Wherever possible, a comprehensive package of essential services should be provided.
- Services: Priority services should include: communal ablutions; standpipe wash facilities; fire hydrants; electricity; and solid waste bins and containment areas. When resources permit or improved access is critical, footpaths and related storm-water controls and some roads may also be considered. Where possible, roads and footpaths should be established before settlement densities make it impossible to establish services access ways within the settlement. The road access and public transport efficiency within specific areas or precincts may need to be considered in order to enable a more efficient future urban form and as such these may require some master planning at precinct-level. Wherever possible services should be designed so that they are permanent, durable and part of a long-term permanent solution. Services which are most critical should be provided first and services may therefore not always be provided in an integrated/simultaneous fashion due to fiscal, land and other constraints. Typically, settlements with the biggest deficit of a particular service (e.g. electricity or communal ablutions) would receive the highest priority for the provision of that particular service, all other things being equal.
- Relocations: Relocations should be avoided except where there are households at severe risk (refer to dedicated pipeline category below).
- Planning: IDA1 should be established for all settlements. Transition to IDA2 can be considered in future when the required preconditions and arrangements are in place.
- Tenure: Initially administrative recognition but potentially transitioning to incremental individual tenure once land has been acquired and other arrangements are in place.
- Housing: As for best-located B1 settlements. Residents should be encouraged to improve their own housing.

Differentiated pipeline – B2s - 11% of all households – 33,009hh/136settlements

- Strategic objectives: The main objective is to mitigate health and safety threats and provide a basic level of temporary service in order to address imminent health and safety threats. Given that the relocation is deferred, and the urgency of it may vary significantly across B2 settlements, consideration should be given to distinguishing near-term relocation (e.g. within the next three years) and those which are longer term (e.g. B2S vs B2L). This may assist in guiding the nature of servicing which may be appropriate.
- Services: Priority services should include: communal ablutions; standpipe wash facilities; fire hydrants; and solid waste bins and containment areas. The delivery of these services will typically not be provided in an integrated/simultaneous fashion. The focus will be on first addressing those services deficits which are most severe and critical. The level of servicing should be at a minimal level given the temporary nature of the services and the intention to eventually relocate the settlement. A lower level of service and cost structure may be appropriate relative to B1 settlements (e.g. in terms of toilet to household ratio). Typically, settlements with the biggest deficit of a particular service (e.g. communal ablutions) would receive the highest priority for the provision of that particular service, all other things being equal. Electricity may also be considered depending on the relocation delay and extent of the threat posed by the use of other forms of energy (e.g. paraffin) or of illegal electrical connections. Roads and footpaths would generally not be appropriate.
- Relocations: The settlement (or affected portion) is due to be relocated. The general principles relating to relocation as outlined previously should be adhered to as far as possible.
- Planning: If there will be a significant delay in the relocation (e.g. more than three years) then TDA land use area should be established.
- Tenure: Administrative recognition as a temporary settlement only. No form of individual tenure security is appropriate given the temporary nature of the settlement.
- Housing: No housing will be provided on the site given the temporary nature of the settlement. Consideration should however be given to the most appropriate solution on the relocation site (e.g. conventional housing vs alternative typology vs service land release with occupants providing their own housing).

Differentiated pipeline – Category C - (4% of all households – 10,954hh/34settlements)

- Strategic objectives: The objective is to rapidly relocate the settlement. If there will be a significant delay in achieving this, then the settlement should be re-categorised as a B2 (deferred relocation).
- Services: Given that the relocation is imminent, little or no service provision will be appropriate. In the event that the relocation is deferred for a period longer than a year or two (i.e. a relocations solution is not yet available), then the settlement should be re-categorised as B2.
- Relocations: The settlement (or affected portion) is due to be relocated. The general principles relating to relocation as outlined previously should be adhered to as far as possible.
- Planning arrangements: Not applicable given that the settlement (or portion thereof) is about to be relocated.
- Tenure: Not applicable given that the settlement (or portion thereof) is about to be relocated.
- Housing: No housing will be provided. Residents may opt to improve their housing, but should be advised that such improvements may be abortive given the intention to eventually relocate the settlement.

Differentiated pipeline – Households at severe risk (further assessment required to determine no. hh.)

- Strategic objectives: Responses in this category should receive a high priority given that lives may be at risk. Once identified, responses mitigating or addressing specific risks (e.g. severe flooding, fire, profound slope instability, proximity railway lines) should be expedited. Responses will need to be tailored to the specific risks and may be cross-cutting (benefiting many vulnerable areas e.g. in respect of optimised fire response for high density areas). There may be households at severe risk across any category of settlements (B1, B2 or C) given that threats will often be confined to specific portions of settlements (e.g. river banks or railway line reserve). All households at severe and imminent risk of loss of life in the City should be identified as quickly as possible and emergency mitigation strategies determined which may include immediate relocation or other mitigations e.g. flood attenuation measure, early flood warning / response, improved fire response. These extreme risks would normally affect only portions of certain settlements and it is expected that the total number of households affected will be relatively small (with the exception of fire risks which should be regarded as a special case and will require a dedicated response). Further analysis is required in order to identify these most-at-risk households and some of this work is already underway in terms of flood delineation work. A special pipeline for fire protection responses should be established within this pipeline, especially for very dense, fire-prone settlements and may include improved infrastructure such as fire hydrants, enhanced local fire response plans and household education for improved prevention. This category of pipeline response would exclude those households who face general vulnerabilities arising from other services deficits (such as sanitation or electricity). These are dealt with through the other pipeline categories outlined below.
- Services: As appropriate – see above.
- Relocations: As appropriate – see above.
- Planning arrangements: Not applicable.
- Tenure: Not applicable to this category of response.
- Housing: Not applicable to this category of response except potentially where a relocation is required (unless site and service is utilised).