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# **Incremental Planning and Alternative Tenure Solutions for the City-wide Incremental Upgrading of Informal Settlements in eThekweni Municipality (City of Durban)**

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- Over 590 urban informal settlements comprising an estimated 316,000 households in eThekweni,
  - Nearly a quarter of the City's population.
  - Continued urbanization and scarcity of well located land.
  - Over 90 years to overcome the backlog by means of conventional housing delivery.
  - Challenging topography, high densities and many settlements within environmentally sensitive areas
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- 80% are category B1 (incremental in-situ upgrade with essential services) - 370 settlements, nearly 255,000 hhs
  - 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)





# 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**



# Settlement Overview eThekweni – The scale of the challenge

*The scale of informal settlements in the Municipality is a key factor informing the 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 National Upgrading Support Programme (NUSP) category

NUSP Categorisation	No. settlements	Est. households	% Settlements	% households
A (full conventional upgrading i.e. housing project)	55	22 633	9,26%	7,16%
B1 (Incremental upgrade with essential services)**	370	254 938	62,29%	80,64%
B2 (Deferred relocation with emergency services)	135	30 219	22,73%	9,56%
C (Imminent relocation)	34	8 369	5,72%	2,65%
	<b>594</b>	<b>316 159</b>	<b>100,00%</b>	<b>100,00%</b>

*\*\* 36% of B1s are best located (inside Prime Investment Corridor (PIC) and Urban Zone) - 202 settlements, 97,113hhs, 34% of all settlements, 31% of all hhs.*

# Overview of optimised Incremental Upgrading Approach – as per ground-breaking City-wide Upgrading Strategy adopted June 2022

*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.*

- 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.



# 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 activating various enable 'levers' so people can build their own improved housing
- **Incremental planning arrangements and individual tenure security are a pivotal lever** 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)

# 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 (traditional) 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**
  - Informal Settlement '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**

# Key principles and 'take-home' messages

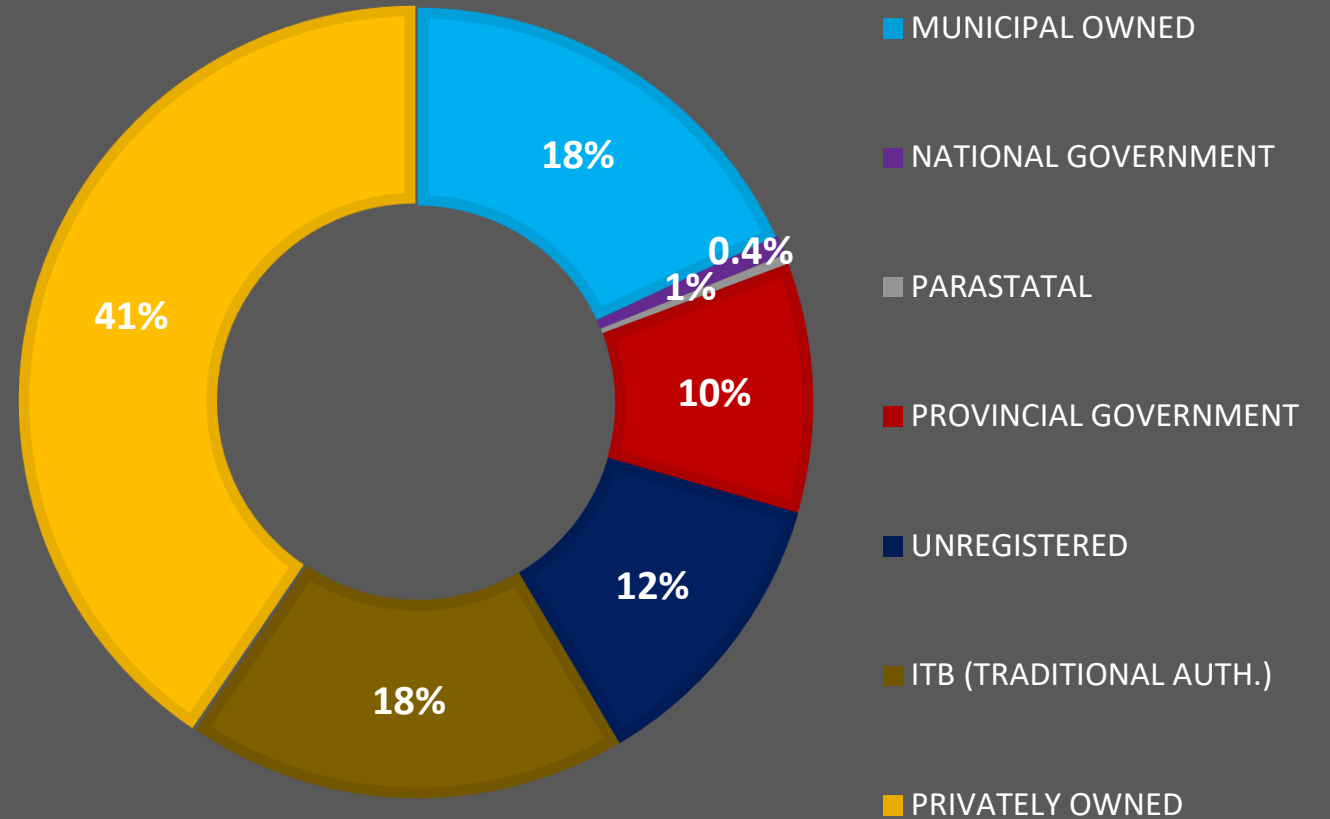
- 1. Planning and regulatory frameworks:** Formal planning and regulatory systems are neither viable nor relevant for informal settlement environments – too rigid, inflexible and slow and result in exclusion
- 2. Provision of services on private land:** Government has both the right and obligation to 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.



# Land Occupied: Private land Ownership

2020

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
<b>PRIVATELY OWNED</b>	<b>4 016</b>	<b>41</b>
TOTAL	9 920	100



# Key Features of eThekweni's Incremental Planning Arrangements

- **CATEGORISATION:** Categorisation of all settlements determines their developmental and planning trajectory (e.g. B1 incremental in-situ upgrade vs B2 deferred relocation vs C imminent relocation).
- **SPATIAL PLANNING:** All settlements reflected and recognised in Municipality's Spatial Development Framework as per their categorization.
- **BYLAWS:** New bylaw specifically geared to incremental upgrading and reflecting the management approach for different incremental land use categories. Additional bylaw to establish statutory servitudes for municipal services on private land.
- **INCREMENTAL LAND USE AREAS:** Land use norms ('rules') established by means of social process and incentives rather than enforcement at three levels: incremental development areas at two levels (IDA1 & IDA2 for B1 settlements) and temporary development area (TDA) for B2.
- **BASIC SERVICES ON PRIVATE LAND:** Basic services provided on private land in advance of land acquisition in terms of specified process and as per legal opinions and as informed by legal precedent in S.A. noting that over 40% of informal settlement land is privately owned.
- **TENURE SECURITY:** Initially administrative recognition (non individual tenure security – freedom from arbitrary eviction) for all settlements followed by alternative individual tenure security e.g. municipal certificate of tenure which can be traded – solutions to be piloted soon.
- **INCENTIVES:** Above arrangements must be utilized to incentivize and enable more responsible citizenry (e.g. desisting from illegal connections, paying for electricity, disposing solid waste responsibly), better cooperation between municipality and communities, and owner-driven housing improvements / investments resulting in land value capture and assets in the hand of the urban poor.

# Incremental land use categories

- **TEMPORARY DEVELOPMENT AREA (TDA):** Applicable to category B2 settlements (deferred relocations – 23% of households) or such portions of settlements. Priority is 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.
- **INCREMENTAL DEVELOPMENT AREA LEVEL 1 (IDA1):** Applicable to all category B1 settlements (incremental in-situ upgrades) which constitute 80% of IS households or such portions of settlements as a minimum. Seen as an ‘entry-level’ land use category. Should be regarded as a temporary, interim planning solution with the objective to get to IDA2 as soon as possible. Priority is the provision of basic services and mitigation of health and safety threats – as for TDA but typically higher level of investment. Services should be undertaken so as to minimize abortive costs and form part of longer term permanent solutions to the extent possible. Efforts should be made to rework space to create main access ways (also known as partial re-blocking or the provision of a ‘services frame’).
- **INCREMENTAL DEVELOPMENT AREA LEVEL 2 (IDA2):** :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. Should be considered once the following preconditions have been achieved: land has been acquired; 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).



# 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.** 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 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.**

# Examples of land use norms applicable 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

# eThekwini Approach to dealing with Private land (as informed by two Senior Counsel legal opinions including Constitutional and High Court precedents)

**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 (developmental trajectory determine).
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 duly considered.
4. A parallel land acquisition programme being established.
5. An incremental upgrading bylaw for incremental and temporary development areas.
6. A statutory servitude and related bylaw being established (or under establishment) to protect municipal services.

*Note: For B1 settlements, **consideration may be given to a substantial if not full rates (property tax) 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: a) the landowner no longer enjoys beneficial use of the land; b) the municipality has decided to upgrade the settlement over time; c) the municipality is deferring compensation.*