

Incrementally securing tenure in slum upgrading: Reflections on promising practices in southern Africa

Securing the formal status of a settlement through upgrading practices: The case of Monwabisi Park in the City of Cape Town, South Africa

This Practice Note outlines the actions taken over many years by the Monwabisi Park community in Cape Town in South Africa, and examines mechanisms for moving towards legal recognition that secures the formal status of the settlement. It outlines the technical assistance provided by the Tenure Security Facility Southern Africa to Sustainable Urban Neighbourhood Development (SUN), which has provided ongoing support to the Monwabisi Park community since 2009. Sun has functioned as an intermediary between the community and the local municipality. Technical assistance focused on conducting workshops with City of Cape Town officials to discuss a Land Use Management Application and gain clarity on the City's requirements and procedures for the process.

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The context of Monwabisi Park¹

Monwabisi Park is an informal settlement situated on the southern periphery of Khayelitsha, Cape Town. According to residents, it was established late in 1996 after a call by President Nelson Mandela that people should move out of backyards and become part of formal urban planning processes. People decided to occupy the open space, and initially referred to the area as Endlovini (meaning 'take by force – mighty and big like an elephant'), before changing the name to Monwabisi Park in 1997. The new name refers to the joy that informed the community's optimism that this would be the start of a better life.

Migration to the area was fuelled by the frustration experienced by backyard dwellers across Khayelitsha owing to the lack of housing and the aggression produced by overcrowding. According to residents, two proposals were tabled by the City of Cape Town Municipality to forcefully remove households to Durbanville or Kraaifontein, and some houses were demolished. In response to this, the community formed the SANCO Jabavu ('Local') branch in 1997 to defend their rights and resist removal. In 1998, under the presidency of Thabo Mbeki, people were promised basic infrastructure like water, toilets and electricity.

Today, Monwabisi Park is home to an estimated 24 000 residents and comprises 6 472 structures on approximately 64 hectares of land. The area extends over four large erven – three owned by the City of Cape Town and one by the Western Cape Province.



¹ This description is based on a report by Michael Krause (2009). Monwabisi Park Community Action Plan; Pilot Sites Informal Settlement Upgrading Programme, November 2009.

Technical assistance

The Monwabisi Park settlement is on the road to legal recognition and enhanced security of tenure. This will be achieved by the submission to the City of Cape Town by SUN² on behalf of the community of a Land Use Management Application for subdivision and rezoning. For subdivision to occur, the settlement area needs to be defined cadastrally, the four land portions need to be consolidated to create a new outline figure of the settlement, and internally the area needs to be subdivided into blocks according to the Spatial Reconfiguration Plan (SRP) (referred to in planning terminology as a Development Framework) developed by SUN. These developments create the conditions for the transition from status of administrative recognition to that of legal recognition. This secures increased permissions and unlocks higher levels of service provision for residents of the area.

The mechanism for moving from administrative to legal recognition is a Land Use Management Application that uses existing planning laws to subdivide, consolidate and rezone the area. Development laws are generally used to develop vacant land and once serviced, houses are constructed, and residents then move into the development. Residents often receive individual private ownership tenure at the end of this process. In Monwabisi Park, the development will occur on land that is already settled, partly serviced and with a substantial social and economic community infrastructure. The development laws thus need to be applied in this *in situ* context. This is more complex than greenfields development and requires a phased or incremental approach. While the City of Cape Town is familiar with land development laws and procedures, Monwabisi Park presents a less familiar situation, which requires adaptation and flexibility, especially in respect of incremental tenure.

Work by SUN over many years, with advice from the Tenure Security Facility in the recent past, focused on both the administrative and legal routes to gain official recognition.

Administrative recognition was achieved through the following outcomes:

- In February 2010 the then mayor signed off on a Community Action Plan that describes the community's vision for the area and how to achieve it.
- Through enumeration and survey data, an updated community register was developed with the community (between 2011 and 2013), and structures were numbered in accordance with a survey number. A new numbering system was developed using the Spatial Reconfiguration Plan. All structures, pathways and roads were geo-located using GPS points.
- The City of Cape Town provided minimal basic services (standpipes, communal toilets, electrical connection to 60 per cent of residents, solid waste removal, and high mast lights).
- Services Registration Cards were issued to residents.
- Six of the ten early childhood development centres were registered.
- A Spatial Reconfiguration Plan was developed by SUN, working closely with the community leadership and residents of Monwabisi Park.

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² SUN Development Services is an NGO that has been providing development support in Monwabisi Park since 2010. The development support spans many areas and is based on the Violence Protection through Urban Upgrading (VPUU) approach, which addresses crime prevention through an integrated programme that marries institutional crime prevention approaches with social situational approaches. This methodology has been applied in Monwabisi Park.

- Using the Spatial Reconfiguration Plan, Eskom installed electricity to parts of the settlement in 2012–2013.
- Occupation Agreements are in the process of being finalised by the City of Cape Town (2013), indicating progress in recognising occupation of the area.

Legal recognition is being facilitated by identifying the land development laws that could be used to subdivide and consolidate the portions of land making up the settlement, and by determining which rezoning regulations are relevant to the area.³ After consideration, there was mutual agreement between officials and SUN that the Cape Provincial Land Use Planning Ordinance, 15 of 1985 (LUPO) would be used for subdividing and consolidating the land, and the new Cape Town Zoning Scheme Regulations, approved in March 2013, would be used for the rezoning of the land.

The approach proposed by SUN is to subdivide Monwabisi Park into neighbourhood blocks, rather than into individual plots, as an incremental measure. This ‘block’ approach raised concerns from officials, especially those in the service departments, as to how they would be managed. There were also concerns about the mechanisms for incremental upgrade (building plans applications, individual servicing to each household within the block, ownership of the block vs. individual plot).

The size of the block was determined after on-site investigation to understand and observe an appropriate size of a ‘neighbourhood’; extensive discussions with the leadership regarding an area of impact of neighbourhood security in particular (neighbourhood watch); distance of children walking and playing within a neighbourhood, combined with an assessment of the main and secondary existing access tracks and institutional sites. Further discussions with municipal line departments reviewed the block size to work with fire and disaster risk management requirements, along with technical engineering input such as length of water pipe run, access to fire hydrants, gradient of roads and so on. To address the management concerns about neighbourhood blocks, line departments suggested that ‘development or block rules’ be developed and included in the application (see Box 1).

Implications for practice

The experience of Monwabisi Park shows that a range of community actions and administrative tenure recognition mechanisms are vital in providing ‘building blocks’ for legal recognition through the formal land use application. As demonstrated in Diagram 1 overleaf, the relationships are as follows:

The Community Action Plan provided a vision and actions around which the community could mobilise itself. The enumeration and survey information provided spatially referenced information for the mapping (the Spatial Reconfiguration Plan). This, together with the City of Cape Town’s basic **service provision** (standpipes and sanitation), informed the conceptualisation and design of neighbourhood plans. Block rules will be formulated to include reference to occupation, thereby elevating them from an administrative recognition instrument to a formally recognised legal instrument. The **community register, the GPS and spatially linked data in the Spatial Reconfiguration Plan** enabled Eskom to embark on a next phase of electrification in the settlement,

Box 1

Block rules, Occupation Agreements and an institutional home in the municipality

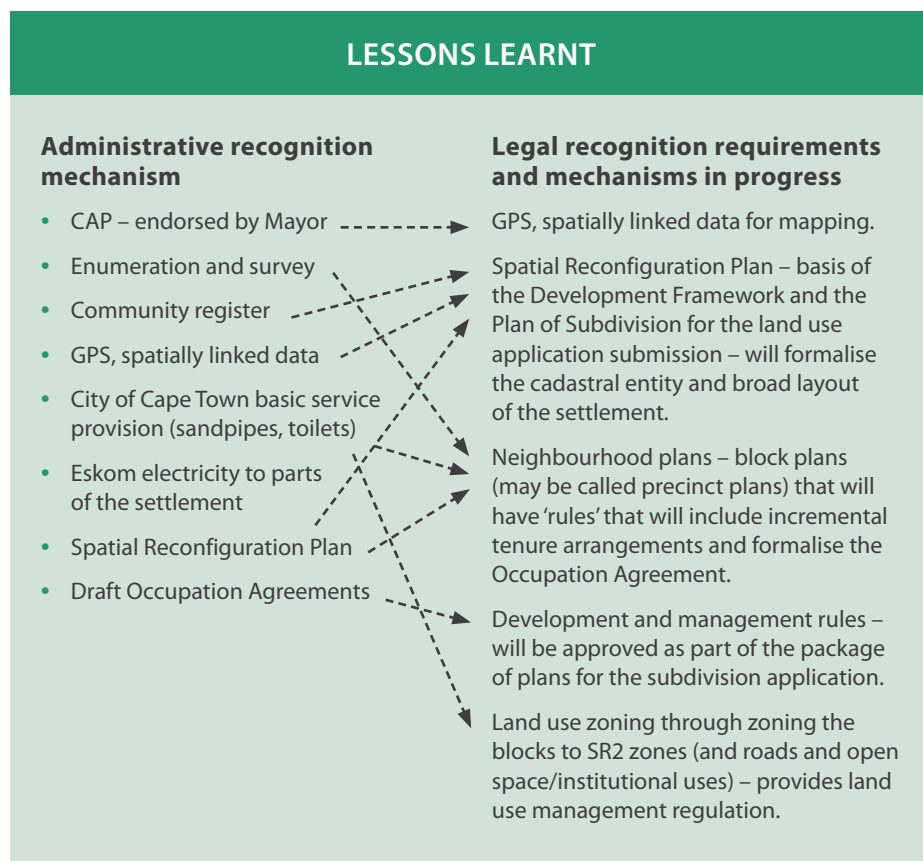
Block rules make it possible to link the settlement to precinct and site plans, so as to determine internal boundaries when the need arises for individual plot demarcation. The Occupation Agreement gives people evidence to secure their rights.

The land will be zoned Single Residential Zone 2 (SR2): Incremental Housing. This zone is especially designed to apply in an informal settlement and to blocks within settlements.

³ Options considered were: subdivision using the Cape Land Use Planning Ordinance (LUPO); subdivision using the Less Formal Township Establishment Act – Chapters 1 or 2; a conventional rezoning in terms of a town planning scheme; a rezoning to a special zone in term of a town planning scheme; a rezoning to the proposed ‘Incremental Residential Zone’ in terms of the proposed integrated town planning scheme which the City was in the process of preparing; other routes such as the City of Johannesburg Amendment Scheme.

even though the residents have no legal status as such, indicating the strength of the administrative mechanisms. The well-developed Spatial Reconfiguration Plan will be used to formalise the cadastral entity and the layout of the settlement. Zoning the blocks to an SR2 provides the conditions for land use management regulation.

Diagram 1 Interface between administrative actions and legal recognition mechanisms



Although the current legal framework and municipal procedures do not sit easily with an incremental approach to securing tenure and *in situ* upgrading, progress was made in locating the land application within the law, and in adapting municipal regulations to achieve the requirements for subdivision and rezoning. Critical to this process was the technical support provided by SUN and the Tenure Security Facility to help officials consider how the law and regulatory frameworks could be applied to the needs of Monwabisi Park as an informal settlement, using the data and planning produced by the community.

The updated community register and the renumbering aligned to the Spatial Reconfiguration Plan will form the basis of issuing Occupation Agreements by the City, while the extensive information available and the existence of strong community structures and community involvement should provide reassurance to the City in issuing the Occupation Agreements and embarking on the formal development process. Once the application is approved, it will be important for the City to continue working with the community and to put in place management structures and administrative procedures to ensure, *inter alia*, that the registers can be maintained, that land uses can be managed, and that services can be improved.

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Diagram 2 Key routes towards securing incremental tenure in Monwabisi Park



Equally important are the negotiations with officials to find the fit between local conditions, local land management practices and municipal policy frameworks and practices.

The case of Monwabisi Park thus demonstrates that it is possible to open up different routes into obtaining official recognition. Through the formal Land Use Management Application, there has been a 'natural' progression from the process of administrative recognition towards legal recognition mechanisms for the settlement. These may vary from communal or group tenure to individual tenure. For example, the Occupation Agreement can become a basis for registered title at some point in the future if the registers and certificates are maintained and are up to date. In this case, the neighbourhood blocks could become the basis for individual plot or communal/group subdivisions in the future.

Preconditions for moving from one form of recognition to the other include persistent efforts to find the 'spaces' within existing legal frameworks to identify laws and practices that can be adapted to local conditions. Equally important are the negotiations with officials to find the fit between local conditions, local land management practices and municipal policy frameworks and procedures. Communities remain the fundamental agents for change.