



Urban LandMark

working towards improving access to land and property rights

TENURE SECURITY FACILITY SOUTHERN AFRICA PROJECT

**Incrementally securing tenure in informal settlements /
slum upgrading in Southern Africa**

Advisory Support Services – Technical Report

Incrementally securing tenure in Johannesburg: Assessment and impact of the City of Johannesburg's Regularisation Programme

June 2013

Tenure advisory support services undertaken for Urban LandMark and Cities Alliance by:

Gemey Abrahams Consultants

About Urban LandMark

Established in 2006 with funding from the UK's Department for International Development (DFID), Urban LandMark works to find remedies to the problems that have made urban land markets dysfunctional and habitable land unaffordable.

Our initiatives aim to shift policies and practice to improve access to well-located urban land by making markets as well as land planning and management systems work better for poorer people, and giving meaning to the right to land.

Urban LandMark plays a catalytic role by using research to inform policy, and by promoting dialogue between key stakeholders – government, the private sector and civil society – to find effective solutions to prevailing obstacles in accessing urban land markets.

About the Tenure Security Facility Southern Africa Project

Urban LandMark established the Tenure Security Facility Southern Africa project in 2012 to provide specialist technical assistance and advisory services on tenure security within slum upgrading initiatives in Southern Africa, and share lessons learnt with others in the region. The work aims to contribute to improved access to land for poorer people, which in turn contributes to improved livelihoods, active citizenship and asset creation.

The Tenure Security Facility extends and expands on work Urban LandMark has undertaken since 2006. This work has made a significant contribution to recognising the need for incremental tenure in the slum upgrading process and thinking about how this should occur.

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Contents

Glossary	5
1. Introduction	6
2. Overview of the Regularisation Approach	8
2.1 Contextual Considerations	9
2.3 The legal mechanism to regularise settlements	10
2.4 Regularisation – the process and Community Dialogue	13
3. Regularisation and the Tenure Continuum and Approach	18
4. Progress with Regularisation in the City of Johannesburg	21
4.1 Context for assessing progress	21
4.2 Progress with the Regularisation Approach	22
4.3 Institutional Changes within the City of Johannesburg	25
5. Impact of Regularisation	27
6. Observations and Lessons learnt for the Urban LandMark approach	35
6.1 Observations and lessons on the legal recognition mechanism	35
6.2 Observations and Lessons on what went wrong	38
6.3 Observations and Lessons on particular aspects of the approach	40
7. Recommendations for Urban LandMark	42
References	44

List of Figures

Figure 1: The TSF approach to incrementally securing tenure	7
Figure 2: The Tenure Continuum and the Regularisation Approach in	18
Figure 3: The Tenure Continuum and the position of the Regularisation Approach	21
Figure 4: The multiple standpipes with a soak-away area installed by the City in regularised settlements	34
Figure 5: A VIP toilet installed during Regularisation	34

List of Tables

Table 1: Approximate Timeline of the Regularisation programme	21
Table 2: Progress with implementing the Regularisation Approach	22
Table 3: Impact of the Regularisation Programme	27
Table 4: Extract from Council Report, June 2009	32

Glossary

CASE - The Community Agency for Social Enquiry (CASE)

CGIS – Corporate Geo-Informatics Department

CoCT – City of Cape Town Metropolitan Municipality

CoJ – City of Johannesburg Metropolitan Municipality

DPUM - the Development Planning and Urban Management Department

DFA – Development Facilitation Act, Act x of 1993

GIS – Geographic Information System

GPS – Global Positioning System

ISD – Infrastructure Services Department

ISFUSC - Informal Settlements Formalisation and Upgrade Steering Committee or Steering Committee

JRA – Johannesburg Roads Agency

LEAP - the Legal Entity Assessment Project

LIS – Land Information System

LFTEA – Less Formal Township Establishment Act

LUPO – the Cape Land Use and Planning Ordinance, 15 of 1986

MIG – Municipal Infrastructure Grant

Provincial Ordinance – The Transvaal Town Planning and Townships Ordinance, 15 of 1986

SPLUMB – The National Spatial Planning and Land Use Management Bill

SUN – Sustainable Urban Neighbourhood programme

TRSA – Transitional Residential Settlement Area

TSF - Tenure Security Facility Southern Africa Programme

Urban LandMark - The Urban Land Markets Programme of Southern Africa

USDG – Urban Settlements Development Grant

VIP – Ventilated Improved Pit Latrine

VPUU – Violence Protection Upgrading Unit

1. Introduction

The Urban Land Markets Programme of Southern Africa ('Urban LandMark') Tenure Security Facility Southern Africa Programme 2012, supported by Cities Alliance and with co-funding from UKaid, developed a project to provide targeted advisory services on incrementally securing tenure in slum upgrading in five sites in Southern Africa. The work of the Tenure Security Facility (TSF) builds on work previously undertaken by Urban LandMark since 2007.

Urban LandMark developed an approach to incrementally securing tenure¹ in informal settlements. The approach advocates working with existing, practical mechanisms that allow land tenure to be secured and upgraded over time through a concept of 'recognition'. When authorities 'recognise' a settlement, through various interventions, a settlement can become more secure. The idea of tenure security can be illustrated on a continuum where one end is a state of great insecurity and fear of removal of the settlement through to a state of great security where the settlement is developed by authorities in a formal development process. The moments along the route between these two ends of the continuum represent different states of security, usually related to actions of the authorities and the community. Most informal settlements can be located along this continuum.

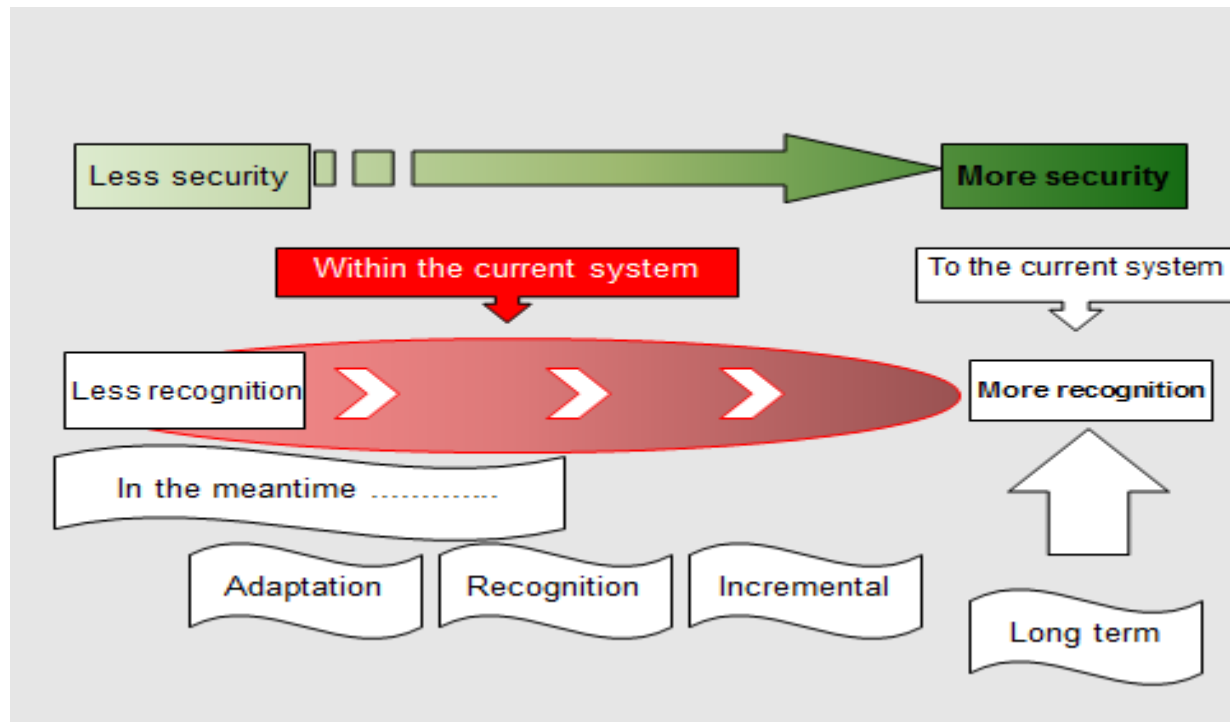
The Tenure Security Facility Southern Africa Programme (TSF) has developed this concept further by identifying different routes that settlements may take to secure tenure. The routes represent actions that lead to more secure tenure for occupants and include:

- Resisting evictions;
- Understanding local land management systems - understanding how communities access land, how they hold it, trade it and manage it;
- Tenure dialogues involving the community, stakeholders and the municipality with a view to building greater understanding of tenure;
- Locating tenure within an upgrading project as a 'stream' or element to be specifically addressed - tenure is often a difficult concept to discuss with communities and officials but it is an important element a wider upgrading approach in slums or informal settlements. It is also one that is usually overlooked by authorities and does not feature explicitly in incremental processes. This is because in the conventional approach to development, there is one 'model' or one 'supply channel' of tenure – freehold rights that are granted on individual sites at the end of a formal development process. It is therefore seldom conceptualised as something that can be incrementally provided;
- Strengthening existing land management practices in communities – this can help build community structures and make them more capable of engaging with authorities;
- Administrative recognition mechanisms – these are mechanisms used in a community that are recognised by authorities and in so doing, provide more secure tenure to the settlement;
- Legal recognition mechanisms – these are mechanisms that have a legal or statutory basis and are used to provide recognition to settlements.

¹ See Incrementally Securing Tenure: An Approach to Informal Settlement Upgrading in South Africa, April 2010. Available at www.urbanlandmark.org.za

What the approach does is place tenure more centrally or even just more explicitly in an overall incremental upgrading approach. So, the approach seeks to understand, to build on and to increase the supply channels (or routes) of officially recognised tenure. It builds on the notion that tenure is recognised in many ways by authorities. The approach is illustrated in the diagram below:

Figure 1: The TSF approach to incrementally securing tenure²



The five sites that are the focus of this wider study provide knowledge and practice of the seven routes mentioned above. The status of tenure security in each case study may also be at different moments along this continuum.

When Urban LandMark was developing the incremental tenure approach in 2008, it worked closely with the City of Johannesburg's (the City65) department of Development Planning and Urban Management (DPUM). At that stage the DPUM was instructed by the Mayor to find mechanisms to address conditions in informal settlements while they wait for formal development (formalisation) using the housing subsidy mechanism, as this was taking many years to accomplish. The DPUM developed an approach called Regularisation for the informal settlements in the City that would be suitable to be upgraded *in situ* in an incremental way until they can be formally developed. The mechanism that they pioneered was a town planning (land use management) instrument and used the Ordinance³ to declare certain portions of land with informal settlements as Transitional Residential Settlement Areas (TRSAs) where a set of incremental interventions⁴ would be legally

² This illustration is adapted from an unpublished presentation by Lauren Royston for URBAN LANDMARK on 21/05/2013 titled "Reflections on the work of the Tenure Security Facility South Africa project".

³ The Transvaal Town Planning and Townships Ordinance, 15 of 1986.

⁴ These 'rules' were set out in Annexure 9999.

permitted. Twenty three settlements were declared this way in 2009⁵. This was a specific and innovative form of legal recognition of informal settlements and contributed to Urban LandMark's conceptualisation of the routes to securing tenure by presenting legal recognition as one of the possible routes and a possible step in the incremental process of upgrading.

Urban LandMark continued to provide *ad hoc* support to the City⁶ between 2008 and early 2011 while the DPUM developed the approach in more detail and began implementing it in 'pilot' areas. More recently, the DPUM and the municipal Department of Housing (now Sustainable Human Settlements) have undergone institutional changes and the Steering Committee that was formed to bring together all informal settlement upgrading initiatives across all departments was abandoned in 2012.

It was therefore unclear to Urban LandMark and the TSF what the progress and impact of this initiative has been since 2011 and this forms the core of this report. The brief for this study is therefore to assess the progress and impact of Regularisation and develop recommendations concerning the use and application of legal declaration mechanisms for securing tenure. The study has been carried out using the following methodology:

- Undertaking a literature search and review on regularisation in the City;
- Identifying stakeholders to interview to obtain updated information, explore their views on the approach, including shortcomings and achievements;
- Synthesis of information to arrive at recommendations on the concept of legal recognition and its place in incrementally security tenure in informal settlements.

This report comprises seven sections. It begins by summarising the City's Regularisation approach and its potential 'place' in the tenure continuum and its contribution to the elements that make up the overall approach. It then assesses the application of the approach by the City and tracks the progress that was made. Section 5 outlines the impact of the approach, followed by an assessment of it. The report concludes with observations and lessons learnt and recommendations for the overall incremental tenure approach.

2. Overview of the Regularisation Approach

In April 2008, the DPUM submitted a report to Mayoral Committee outlining the Regularisation approach⁷. It underwent some minor amendments and was adopted by the City. This heralded in a new approach to dealing with the incremental upgrading of certain informal settlements identified under this approach. The approach was developed by the DPUM Department in collaboration with Urban LandMark. It gained high level, mayoral support, leading to the formation of an Informal Settlements Formalisation and Upgrade Steering Committee (ISFUSC or Steering Committee) to co-ordinate the upgrading of all informal settlements in the City. DPUM also obtained a budget to drive

⁵ These settlements became known as Category 3 settlements according to the categorisation that the City developed and the number has reduced considerably as more information of conditions in the settlements became apparent through feasibility studies. More will be said about this in the report.

⁶ See www.urbanlandmark.org.za/downloads/inc_securing_tenure_p02.pdf for more information.

⁷ See CoJ Mayoral Committee Report submitted by DP&UM – Office of the Executive Officer: Formalisation of Informal Settlements Programme. April 2008.

and implement the regularisation approach and established the Informal Settlements Formalisation Unit (ISFU).

The approach was promoted widely by the City through press releases and in the State of the City and other Addresses by the Mayor⁸ from 2008 – 2011. It was promoted as an interim measure to recognise settlements⁹, bring services, provide addresses, improve the quality of life and extend citizenship to informal settlements while waiting for formalisation to be implemented.

2.1 Contextual Considerations

Before explaining the approach in summary, it is important to note some **contextual factors** that had an influence on the approach:

- Informal settlement upgrading is the responsibility of the City's Department of Housing (now called Sustainable Human Settlements), often in partnership with the Gauteng Department of Housing. It is undertaken through the formal process of township establishment, driven by the housing subsidy programme. It is slow and fraught with difficulties such as land acquisition, relocation of settlements, protests from communities and limited allocations of budgets from the Provincial Housing Department. There were few, if any, projects that are true *in situ* upgrading projects.
- At the time (end 2007) there were 183 informal settlements with an estimated 220 000 households. Approximately 20 000 subsidised units were being delivered per annum. This translated into one in every four of the City's citizens falling outside of the regulatory system of government¹⁰.
- The Mayor had undertaken a site visit (circa early 2008) to an informal settlement and was appalled by the unsanitary living conditions. He requested his departments to come up with a solution and the DPUM responded to this challenge, even though they were not directly involved in informal settlements previously, other than to assist with the township establishment application. But there were very experienced town planners in the DPUM who were very well versed in land development and management instruments, such as town planning schemes. They therefore, unsurprisingly looked to these existing mechanisms for a solution.
- The DPUM also, at the time, had a new Executive Director who had a strong academic and policy background and was familiar with approaches to informal settlements including Brazil and that government's attempts to improve 'favelas' through upgrading. The Brazilian approach of declaring informal settlement areas as special zones or ZEIS where more flexible rules applied was of particular interest to the planners. A study tour to Brazil by senior-ranking officials and their MMC's was undertaken in June 2008 to learn first-hand about

⁸ See www.joburg.org.za for speeches in the archive section.

⁹ See in particular the press statement "City wants Shack Dweller's Buy-in" on 30 July 2009 at www.joburg.org.za/index.php?option where the Mayor, the MMC for planning and the Executive Director of the DPUM addressed the press on the approach.

¹⁰ See the presentation by Professor Phil Harrison, Executive Director of DPUM, at the leadership forum, entitled New Directions in formalising and upgrading Informal settlements. 2009. www.joburg.org.za

their upgrading programmes and projects. The Urban LandMark consultant also attended this study tour.

- Urban LandMark provided support to DPUM between October 2007 – August 2008 and again between January 2009 and January 2010. In 2005/06, Urban LandMark and the Legal Entity Assessment Project (LEAP) had been working on an approach to incrementally secure tenure by finding more channels of officially recognised supply of land for the poor¹¹. The concept of ‘official recognition’ is used to describe the legitimacy of the tenure arrangements¹² that is given by authorities when they acknowledge or support certain interventions that lead to improved security. Recognition can be through administrative or legal means and these are outlined in more detail in the report. Integral to the approach was a concept of a continuum of tenure security, where a settlement that is newly formed may have a very insecure status and be under threat of removal through to instances where a settlement is accepted by the authorities and they intend embarking on the formal upgrading of the settlement, providing very secure tenure to occupants. The approach provided a way to begin understanding the incremental steps along the continuum from lesser to greater tenure security. The City’s Regularisation approach was instrumental in developing the Urban LandMark incremental approach as it contributed to an improved understanding of legal recognition which Urban LandMark had been researching and developing. So, there was much common purpose to the two initiatives and each contributed to an improved understanding of incremental approaches.

2.3 The legal mechanism to regularise settlements

As an important starting point, the DPUM had a political mandate from the Mayor to:

Bring dignity to the poorest citizens of the City of Johannesburg by providing decent housing and eradicating informal settlements by 2014, in line with MDG goals and the ideal of a “nation free of slums”¹³

From that political point of departure and according to Professor Harrison¹⁴, they sought an approach that would:

- unlock State and household investment before lengthy township establishment processes are concluded;

¹¹ RDP and BNG housing projects provide title deeds as the dominant form of supply and access to property. Many alternative supply channels do exist but they are not officially recognised by authorities. Occupants in settlements without some forms of recognition then have limited access to benefits such as an address, improved services and tenure security that would normally come with official recognition. See Afesis-Corplan article by L. Royston titled Incrementally Securing Official Access to Property in Informal Settlements. www.afesis.org.za/sustainable-Settlements-Articles

¹² Based on the thinking provided in ‘Perspectives on Land Tenure Security in Rural and Urban SA. An analysis of the tenure context and a problem statement for Leap’. June 2005. Page 10.

¹³ Extracted from the presentation by Professor Phil Harrison, Executive Director of DPUM, at the leadership forum, entitled New Directions in formalising and upgrading Informal settlements. 2009. www.joburg.org.za

¹⁴ See the presentation by Professor Phil Harrison, Executive Director of DPUM, at the leadership forum, entitled New Directions in formalising and upgrading Informal settlements. 2009. www.joburg.org.za

- encourage residents to make their own contributions to upgrading their property and home;
- provide an appropriate and enforceable regulatory framework for safety and security;
- be incremental and flexible;
- be administratively simple and tailored to capacity for implementation;
- build citizenship.

They also wanted the approach to be supported by appropriate legal instruments and administrative mechanisms¹⁵ – in other words they wanted it to have status and the ability to be implemented. This required it to be more than an administrative intervention - as one of the architects of the approach, Mr Tiaan Ehlers¹⁶ so eloquently noted *“We do not want to administer these areas out of boxes in my office”*.

Being town planners, they explored the legal instruments they were most familiar with – Town Planning Schemes. These are land use regulatory instruments, that derive their legal basis from the Provincial Planning Ordinance, that confers land use zoning rights to land and provides ‘rules’ for how the land may be used. A solution was sought that would be applicable during the “transitional” or interim period before a township establishment application is submitted to formalise a settlement. They therefore needed to distinguish their approach from that of township establishment which was already termed formalisation and undertaken by the City’s Housing Department. They thus coined the phrase ‘Regularisation’ for their approach as it was using land use regulations to ‘regularise’ the land use. Regularisation is defined by the City as *‘an approach that recognizes informal settlements and promotes tenure security by including it in the City’s legal framework (Town Planning Scheme) so that basic services can be provided and the area can be managed and improved over time.’*¹⁷

The Regularisation approach is surprisingly simple. It is based on an amendment to four of the Town Planning Schemes that fall within the Metro, to include a definition of a Transitional Residential Settlement Area (TRSA) and to list the portions of land that will be declared TRSA’s. A Schedule (Annexure 9999) was included that set out the conditions that would be applicable to areas declared as TRSA’s. This Scheme Amendment was advertised on 24 June 2009 as Amendment Scheme 9999¹⁸. Through this Scheme Amendment, 25 portions of land were identified as TRSA’s and resulted in the regularisation of 23 informal settlements.

Essentially a TRSA is *“land upon which informal settlements are established by the occupation of land and provision of residential accommodation in the form of self-help structures and some ancillary non-residential uses”*¹⁹. The conditions applicable to TRSA’s are set out in detail in Annexure 9999 and reflect an incremental approach. The conditions are crafted with land use management provisions in mind. Land use management, as a public sector activity, has a long tradition in protecting the health and safety of the public. But it went beyond land use management and

¹⁵ Extracted from the presentation by Professor Phil Harrison, Executive Director of DPUM, at the leadership forum, entitled New Directions in formalising and upgrading Informal settlements. 2009. www.joburg.org.za

¹⁶ Mr Ehlers was the acting head of the PUM after the departure of Professor Harrison and frequently chaired the Steering Committee.

¹⁷ The definition evolved over time and this is a summary of descriptions used by planning officials in 2008.

¹⁸ Provincial Gazette 143, Notice 1053, Amendment Scheme 9999 which included Annexure 9999 with the applicable conditions.

¹⁹ Taken from a presentation by K. Pillay at the URBAN LANDMARK Conference on Incrementally Securing Tenure in Informal Settlements. 29 January 2009.

included elements of building management, land tenure and consultative approaches. It therefore went beyond the conventional contents of a town planning scheme. It was of interest to Urban LandMark and the TSF because it includes land tenure mechanisms and because it is a very definitive form of official, legal recognition.

In summary Annexure 9999 includes the following 'rules':

Land use aspects: The land use is *Transitional Residential Settlement*. This allows for residential use, economic and other activities.

Land Use Management aspects: An incremental approach is taken to this. When the settlement is newly declared and there is no layout plan and individual sites are not demarcated, there is very little land use management. Once there is a basic layout plan and individual sites are identified, the land use management conditions kick in. These relate to the number of structures on each plot (1 main dwelling plus one other); side spaces between the buildings of 1 metre; no solid boundary walls; coverage of 60% of the plot; a process to change the land use on the plot; rules for enforcement of the land use requirements.

Building controls: Again, these are incremental. The buildings within a TRSA are called structures and may be built of any materials. They may not exceed one storey in height. Instead of including their own building regulations in the Annexure, they refer to the SABS standards for informal housing (SABS 0400 and 0401) that must apply.

Security of Occupation: the act of legally declaring the settlement as a TRSA provides blanket tenure security to the settlement (group tenure security). It is a form of official recognition. However, Annexure 9999 goes a step further and introduces mechanisms to move towards individual tenure security. Again, through incremental steps, once the settlement has a draft layout plan, each structure can be identified and numbered and a socio-economic survey administered to obtain information on each household. The reason for this is to issue an "Occupation Permit for a residential unit". This information will form a register to be administered by the relevant municipal department. It was envisaged that the Occupation Permit will also indicate what activities may be permitted on the site. An Occupation Permit is not dependent on defining plot boundaries but specifically permits an occupant to occupy a structure within the area of the settlement.

Community Participation: this is built into the Schedule and instructs officials to prepare the plans in consultation with the community. It also requires the participation of neighbours when the land use regulatory framework kicks in.

The key to unlocking the incremental steps for regularisation is **the layout plan**. Again, this is a key town planning instrument. In the initial stages it is a draft plan prepared on the basis of aerial photography (similar idea was included in Section 64 of the DFA). The basic or early-stage layout plan was conceptualised as a fairly simple plan – showing the boundary of the settlement, access points, the identification of community, social and economic land uses and density requirements. When the layout plan has progressed to identifying individual sites and can give each a number, the land use and building regulation phase is initiated. When this layout plan is approved by the local authority, residents must apply to the municipality (in writing) if they need to change their land use and a process of consulting the neighbours is necessary. If the new use is approved, it must be

endorsed on the layout plan and a register must be kept of the land use changes. In this way the layout plan becomes an important record of the development of the settlement.

The use of TRSA's is therefore more than a land use management instrument – it includes tenure arrangements, community participation and an incremental upgrading process. Through the layout plan it also enables the delivery of improved services. But it is not a township establishment process – it does not deliver a new development area with cadastrally defined individual sites with freehold tenure or formal, subsidised RDP houses. To achieve that goal, if desired, requires the settlement to be on a different legal route – that of township establishment.

But these provisions are innovative in that in one clause they specifically make (legal) provision for:

- A consultative approach;
- The identification of each structure, securing the home of the household;
- Spatial mapping of the area;
- An occupation permit – hard evidentiary proof of occupation;
- Obligations on both parties that can be included in the clauses of the permit;
- Land use regulation - to protect against nuisance and provide more certainty as activities on the site are identified;
- A local register, held by the City to record and secure occupancy.

Lastly, but significantly, Annexure 9999 provides a mechanism for the settlement to become integrated into the administration of the City. This is a very important aspect of official recognition because it offers a way to “lock in” the tenure mechanism. By allowing for a basic layout plan, a register and the monitoring of land use and building changes, the City is required to ‘insert’ these requirements into their GIS, land administration and eventually also the billing systems of the City. This is significant as it begins to ‘embed’ these settlements into the systems of the City so that they are not ‘below the radar screen’ so to speak but are mainstreamed, even if they are not formally proclaimed as townships. Projects and budgets for these areas can then be approved and programmed.

2.4 Regularisation – the process and Community Dialogue

The City's regularisation approach, while using an innovative instrument, essentially employed a technicist approach and process. It was developed by technocrats, approved by the politicians (the Council) and when the Amendment Scheme was approved, it automatically applied to the selected settlements. So, it was not an ‘organic’ approach that emerged from community processes. It did not really base itself on detailed research or inputs of the dynamics within resident communities that were to be regularised, with respect to how they access the land, how they hold it and trade it. It was not an approach that emerged out of a thorough understanding of what currently exists in any of the identified settlements. But that is not to say that it did not envisage community involvement and working with resident communities in the implementation of the approach.

The identification of the settlements that were categorised initially as Category 3 – regularisation projects, was in some respects, by default or by a process of elimination. Regularisation settlements were those that were not already linked to a project, a programme or earmarked for relocation and

a looked promising as an *in situ* upgrading due to their location, land ownership status or known geotechnical information. It was based more on the understanding that these settlements could be suitable for remaining *in situ* and being formally upgraded sometime in the future but during that 'interim' period, there needed to be some kind of legal basis on which to make interventions to improve lives in the settlements. The legal basis was important for the City to be able to allocate funds and motivate for interventions which would have been impossible if the settlements were un-categorised and un-defined as being part of some kind of recognised programme within the City.

Hence Regularisation provided the 'legal framework' within which all the community-based and official-based activities could take place. And this could only happen after the designation of the settlements as TRSAs. Despite appearing as a 'top-down' approach, it was not viewed as an imposed approach by its architects rather it was understood as providing the framework which would allow community engagement to begin. The Annexure 9999 has as its very first point that the community must be consulted. Hence, the approach was developed by officials and applied to the settlements without any of the settlements knowing beforehand that it applied in their area. But then the process of implementation, with consultation with the community, could begin.

This section addresses the community participation aspects of the approach that have not been documented elsewhere before, given the evolution of the approach explained above. It is included to address a side of the programme reporting that has been 'missing' up to now.

The structure of the City's DPUM department at that time (2008/2009 and 2010) was such that Development Planning and Urban Management were one department. Within the Urban Management section, there was Stakeholder Management (SM) officials in each Region of the City. It was the responsibility of each region's SM officials to communicate the approach to the community. Representative officials from SM also attended the monthly Steering Committee meetings. Towards the end of April 2009, the DPUM facilitated a workshop for SM officials from all the regions, so they could be briefed on the approach more fully. In the City, the Office of the Speaker is responsible for communication with ward councillors and so in May 2009, the Office of the Speaker facilitated a workshop for DPUM to brief councillors on the Regularisation approach. The intention was that, at the level of officials and ward councillors, there would be a good understanding of the approach so that when community consultation took place, they would be able to explain it clearly and answer any concerns or questions from the community. Development Planning relied on SM to be the interface with communities while they provided the 'technical' inputs.

What transpired was that of all the Regions, only Region C actually arranged community meetings in the informal settlements they were responsible for. Between 28 May and 10 June 2009, three community meetings were held for Ruimsig Portion 77, Lindhaven Pots 6, 8 and 10 and Dunusa²⁰. The SM officials conclude, in the progress report to Council on the community²¹ meetings inputs, that the community engagements were well received. While not all the comments from the communities related specifically to Regularisation, concerns that did, included:

²⁰ See the Informal Settlement Regularisation progress report to Council by Urban Management from Region C, undated c July 2009.

²¹ Ibid

- Whether Regularisation would create jobs in the community?
- How the layout plan will be developed and that the community must be involved in its development?
- Will people have to be relocated when the layout plan is prepared?
- What size sites will people get and will current ones be reduced when the layout plans is prepared?
- Who will monitor the implementation of Regularisation?

It would appear that no other consultation on the approach was done in any of the communities until the regularisation approach began its implementation. Of the original 23 settlements that were categorised as regularisation settlements, the DPUM identified three as pilot areas for testing the implementation of the approach. The first was Happy (Heavenly) Valley. The DPUM had acquired a budget to establish an Informal Settlements Formalisation Unit (ISFU), so funds were available to begin the programme. In broad outline, the process that was established for implementation²² of the Regularisation approach included:

- Identification of pilot settlements;
- Undertake a feasibility study of the settlement;
- Prepare a draft layout plan;
- Survey (audit) the settlement to develop a data base and a register of occupants;
- At the same time, do GPS positioning of each shelter;
- Revise the layout plan based on more detailed technical and community information, including GPS co-ordinates;
- Provide an address for each stand;
- Extend further infrastructure services – standpipes, ablution blocks with chemical or VIP toilets, graded roads, electricity if viable and regular solid waste services;
- Establish a local office in the community – where the plan will be on display, occupation permits issued, changes to the local register recorded and land use management undertaken;
- Issue Occupation Permits to residents;
- Include the layout plan and survey data in the Land Information System (LIS) of the City;
- Link the information in the LIS to the billing systems of the City;
- Issue 'group' bills as a form of evidence of residence;
- On-going land use and building management through endorsements of any changes of land use on the layout plan.

While never fully documented by the City, there was a clear sense of the implementation process and how it would roll out (see section 5 of this report for the DPUM's plan of implementation in 2009) and the roles that different departments needed to play. In order to not delay the introduction of the approach, the more intricate details of each step were not necessarily all worked out in detail when the programme was started (e.g. the contents of the Occupation Permit or the

²² This information is based on discussions with officials and the Annexure 9999. These actions all kick in only after the declaration of the areas as TRSAs.

registers). Instead it was always thought of as a 'learning by doing' approach, or as Mr Tiaan Ehlers²³ aptly put it "*n Boer maak 'n plan*" approach.

Community Surveys: Engagement with communities in the regularised settlements began when the surveys were undertaken. But the City was relatively "hands off" in this process. The ISFU of the DPUM went out on a proposal call for service providers to undertake the survey. A firm was appointed to do the survey. It was a community survey linked to geo-spatial referencing of the structures. The survey was undertaken for Happy Valley and in March 2011 another proposal call went out to do a similar survey in Lindhaven informal settlement (made up of Plot 6, 8 and 10). The service provider was responsible for all communication about the survey with the community. In summary, the process that was employed in Happy Valley was the following:

1. A communication phase where the service provider engaged with the community to explain the approach and sought volunteers from the community to be trained as fieldworkers to do the survey;
2. Train volunteers from the community as field workers;
3. Do a GPS outline boundary of the settlement to create a shape file for the settlement – households outside of the 'ring fenced' area cannot be interviewed;
4. Load the survey and other GIS information into the hand held wireless devices and do testing to confirm that it works;
5. Undertake the survey going from structure to structure and administering the questionnaire. The questions appear on drop-down menus. Each field must be entered in order to proceed to the next question. There are built in verification systems (e.g. for checking id numbers);
6. A GPS co-ordinate is given for each shelter and a bar code printed and placed on the structure;
7. The information is uploaded wirelessly to a main server so real time collection of data occurs;
8. All information can be downloaded into a format that is compatible with the GIS system of the City and a map can be generated, based on aerial photography. Data tables in X-cell are generated for the household information and can be used as a record or register of occupants.

The following community information was gathered for Happy Valley (and Lindhaven):

- Head of household information: id number, marital status, dependents, disability, citizenship;
- Spouse of head of household: must be included if head of household indicates that they are married; similar information to that of head of household is captured;
- Employment status and income;
- Potential beneficiary or non-qualifier;
- Education information.

This survey and mapping information therefore provided the baseline community information for the implementation of the regularisation approach. While it did provide some information about

²³ Mr Ehlers was one of the main architects of the approach and was the Deputy Director of the DPUM at the time.

the community, it was not geared towards understanding what community processes are in place with respect to land (access, hold and trade). It also did not attempt to engage with the issue of tenure. And it was removed from officials that were responsible for community engagement (SM and officials in the ISFU). However, it was reported that the Happy Valley residents received this survey well and were co-operative and no problems were encountered²⁴.

There were some glitches in the first survey which had to be corrected (some GPS points from the survey did not match the aerial photo location of shelters) but when all are aligned and corrected, the anticipated outputs will be:

- A plan / map that shows the GPS point of each structure;
- A database that links each GPS point to household information in order to generate reports on any aspect of the questionnaire;
- The extraction from the data base of a register of all the households in the settlement;
- A data base that can be linked to the City's GIS system – creates various layers of information that is then stored on the GIS system of the City;
- Enable the City to develop a record / information system of the settlement in the same way that they would for sectional title units – the outside area of the settlement becomes a polygon and within that each point is given a reference number to which all the socio-economic data is attached (but not necessarily geo-referenced).

In 2012, The Community Agency for Social Enquiry (CASE)²⁵ undertook a project to examine how municipalities interact with marginalised residents in terms of the housing strategies adopted in three cities. The purpose was to give a voice to the most vulnerable residents of urban areas with respect to municipal planning and the implementation of housing projects. A survey methodology and focus group interviews was adopted. Happy Valley was included in the survey and it therefore provides some more recent information on the settlement – a pilot area for the regularisation approach. The findings of this study are instructive as they provide some feedback from the community on the community consultation process of the City regarding regularisation.

It was not unexpected to find that the CASE survey and focus group results from Happy Valley indicate that residents have had very little contact with municipal officials. The report mentions that Happy Valley was earmarked for Regularisation and concludes that:

“this research has indicated that residents of Heavenly Valley were not aware of this process at all. In fact, according to the residents, houses were built in an adjacent area, but none of these houses were allocated to the community of Heavenly Valley. Instead, residents noted, they are constantly overlooked for development by the government. The literature suggests that technocrats often make decisions that directly affect communities, but neglect to involve communities in meaningful participation about said decisions. The City's ‘Regeneration’²⁶ strategy for Heavenly Valley is a typical case of decisions being made at the top and filtered down to communities without any input from the relevant community.(Pg 111)

²⁴ Personal communications with L. Mogotsi of the ISFU.

²⁵ See Enhancing the Voices of the Poor in Urban Housing: Durban and Johannesburg. CASE. 2012

²⁶ Incorrectly referred to as the Regeneration Strategy, instead of the regularisation strategy.

The study found that participants felt that the plight of the residents was largely ignored by government. One participant noted that she worked with previous ward councillors to improve the situation in Heavenly Valley but these attempts did not result in any tangible changes (Pg 105).

The key conclusions from this section is that the City embarked on the implementation of the regularisation approach with little or no participation from the community but hoped that the community processes built into the regularisation process would suffice. The Urban LandMark approach is very clear about working with what exists. And this is best obtained by working with a community and establishing their tenure, social and economic relationships and living conditions before undertaking interventions.

3. Regularisation and the Tenure Continuum and Approach

During the first support phase that Urban LandMark offered advice to the City, they were developing their approach to incrementally securing tenure. The concept of a continuum was central to the thinking of tenure security. The diagram below, which was developed in early 2008, shows the tenure continuum and where they thought the City's Regularisation approach was located along this continuum.

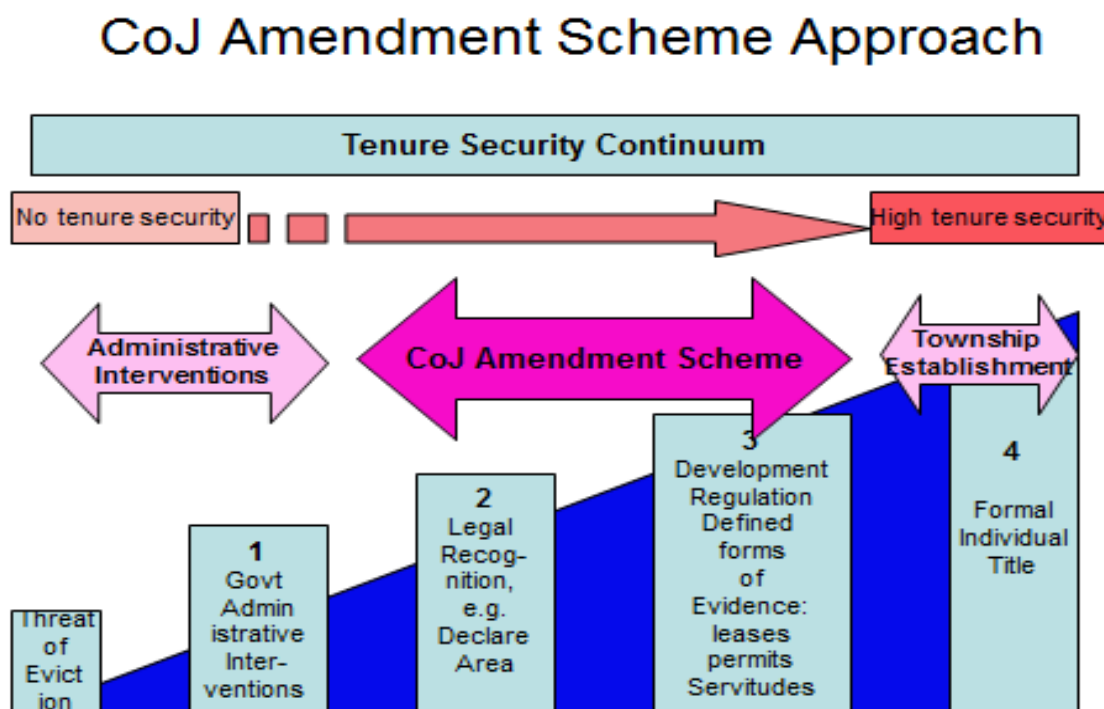


Figure 2: The Tenure Continuum and the Regularisation Approach in

More recently Urban LandMark and the Tenure Security Facility is more mindful that the continuum is a visual tool to illustrate that some settlements have very insecure tenure while others have more and that it is not productive to try to place settlements or the routes to securing tenure incrementally at any fixed points along the continuum, but rather use the continuum to indicate nominal levels of tenure security.

Due to the close working relationship between the City designers of the regularisation approach and Urban LandMark, it is evident that Urban LandMark's approach is reflected in the regularisation thinking. In a progress report to the Mayoral committee²⁷, the incremental tenure approach is explained, as shown in this extract from the report:

Tenure Approaches and Issues

Once basic tenure security is in place through the mechanism of legal recognition, the door is open between the City and informal communities to actively engage and collaborate on the more detailed and individualised aspects of tenure, including working with existing registers and forms of evidence where applicable, and the de facto rights and claims that underpin them. The issues and/or questions that have been considered over the last few months in respect of tenure are as follows:

Is the intention to manage land use, secure tenure, or both? Tenure is secured as an interim measure via the legal declaration of the 'Transitional Residential Settlement Area'. However administration is required if the City's intention is to secure tenure and manage land use so that the development and upgrading of the areas is also administered within a legal framework;

Documentation and evidence: This refers to title deeds, title deed registration and municipally held registers. Documented evidence, like occupation certificates and a municipally held register is important for clearer, and more accessible and transparent procedures.

Forms of tenure and related procedures: Processes and procedures related to forms of tenure need to be clearly understood, e.g. land administration and management.

Working with what already exists: Tenure needs to be secured as practically and as simply as possible, therefore work with what already exists, e.g. if there are street names that already exist in the settlement, that are not offensive and are generally within the ambit of the City's policy on street naming and renaming, the street names should be carried forward into the formal township establishment process.

The nature and content of rights: The de facto rights and claims of households should be identified in tenure upgrading processes and accommodated where possible. This is best achieved in consultation with communities and community organisations that may already be active in the settlement. In the case of informal settlements on Council or State owned land, for example, the land is de jure still owned by the government and the occupants will have rights in land rather than full rights to land. A municipally held register of occupation permits could be the mechanism through which tenure security is managed in such cases. However, if there are de facto rights and claims, how are such cases identified, what 'rights' will the occupation permit confer and what are the local perceptions of existing claims? Will there be conflict between those households with de facto rights reflected on the occupation certificate and those households who are issued a 'standard' occupation certificate with basic details linking name to shack number and layout plan? In general, the nature of rights needs to be considered in relation to inter alia:

- *Use (residential and productive uses);*
- *Rental or sub-letting options;*
- *Selling or bequeathing options;*
- *Developments and improvements, and access to micro-finance to achieve this;*
- *Access to services;*

²⁷ See Mayoral Report DPUM: Securing Tenure in the City's Informal Settlements 04.06.2009

- Access to credit (housing micro-finance);
- Access to economic opportunities (e.g. home businesses/micro-enterprises).

Registration practices: May be driven by the community, community structures or the Municipality. The location and control of the register of occupation permits is critical, and there should be a mechanism for recourse to an external authority or veritable community structure in the case of disputes. This authority for land management is a powerful tool in communities and it is the vulnerable whose tenure is most at risk from the State, community and family and even market pressures. Will occupation certificates record names and shack numbers and link these to the layout plan, or will they record land use rights and shack numbers and link these to the layout plan? Further there is a significant administration implication for the process and location of local registers and a local land office may be required to undertake this administrative function.

The management of change: Registers of occupation permits are seldom static documents. Community organisations and/or the Municipality, through the local land office, need to update registers to reflect changes arising from properties being transferred through either inheritance or sale or re-registration by the Municipality. In the case of many phases of registration, flexible and adaptable approaches are required which accommodate both the need to plan for a known quantity and to accommodate reasonable changes, such as those arising from transferring rights and claims under agreed conditions. Successive re-registration does however lead to multiple forms of evidence, and this creates confusion.

Community participation and consultation can play a big role in the management of change, specifically in instances where the population of the settlement increases due to the arrival of new residents over time. Population stabilisation requires cooperation from the community and/or community representatives, who are empowered primarily through knowledge sharing about the future plan for the settlement. In this regard, common purpose and a sufficiently shared vision of the future can be seen as a pre-condition for successful collaboration between the state and the community on population stabilisation.

The regularisation approach is not full township establishment so it is not located right at the far end (high tenure security), but it does offer formal recognition to the settlement and addresses the provision of evidence to individuals through occupation permits, as shown on the diagram below:

Tenure Continuum

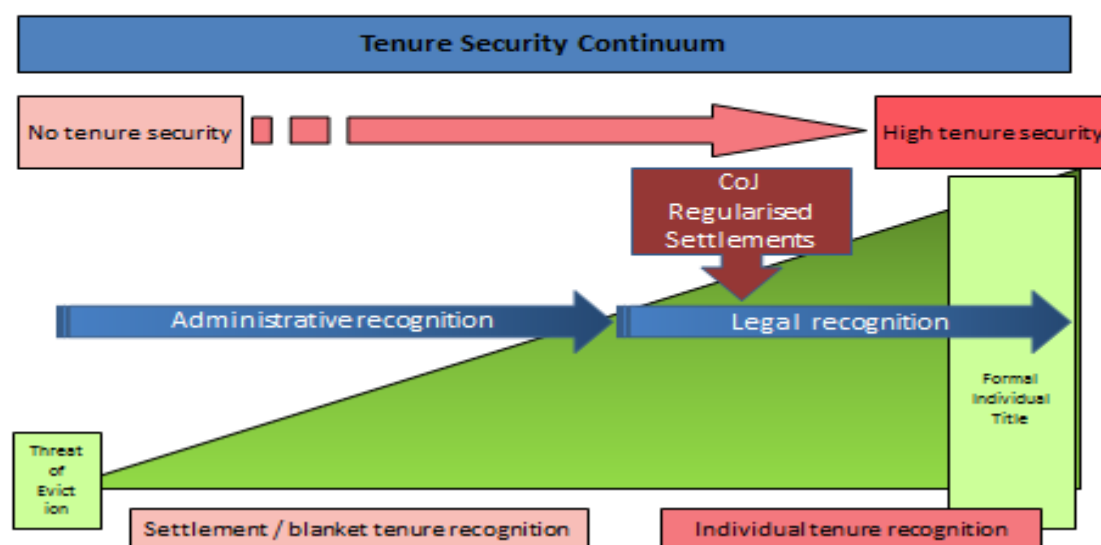


Figure 3: The Tenure Continuum and the position of the Regularisation Approach

4. Progress with Regularisation in the City of Johannesburg

In order to assess progress with the approach, interviews were set up with the former head of the (former) ISFU that was part of the DPUM. This Unit was moved to the Human Settlements Department of the City and so interviews were also held with officials from this Department. In addition, an interview was held with a DPUM official who was one of the key architects of the regularisation approach. Officials from the former Stakeholder Management section of the Urban Management Department of DPUM were also interviewed.

Notwithstanding these interviews it was difficult to get clear information on progress with regularisation and the information in this section is the Consultant's assessment of the information obtained from these various sources. It is not strictly empirical as such information was hard to come by, despite requests.

4.1 Context for assessing progress

A timeline was constructed to try to place all the events relating to Regularisation and to link these to the institutional and political context that the organisation found itself in.

Table 1: Approximate Timeline of the Regularisation programme

Year	Date of action	Actions
2008		Urban LandMark support #1
		Establish the ISFU Steering Committee
	April	Council report on Regularisation
	June	Study tour to Brazil

Year	Date of action	Actions
		Establish the ISFU
2009		Urban LandMark support #2
	April	Advertise the Scheme Amendment for comment
	July	Council progress reports
		Happy Valley pilot project
2010		Progress report on Regularisation
		Head of DPUM resigns
2011		Head of ISFU contract ends and new head appointed
		Feasibility studies undertaken
		Survey tenders for 3 settlements
		New mayor
	June – September	Steering Committee meetings postponed several times and then ceases to meet
2012		New head of DPUM appointed
		ISFU transferred to Housing
2013		All settlements being re-prioritised by SHS Dept

From this table it is evident that:

- It took one year from formulating the approach to getting the amendment scheme advertised;
- The ISFU was established and run from DPUM for approximately three years;
- There were changes in leadership in both the DPUM and the ISFU;
- There was a change in political leadership²⁸ during the life of the programme;
- Only three settlements had surveys undertaken in them, putting them on the implementation path.

4.2 Progress with the Regularisation Approach

The progress is assessed at the programme level rather than for each regularised informal settlement. This is largely due to the unavailability of information on a project/settlement level. The key mechanisms of the approach are listed and explained and then the progress is noted.

Table 2: Progress with implementing the Regularisation Approach

Annexure 9999	What the intention behind this was	Progress in the City
Declaration as a TRA	Legalise the land use	Was achieved in April 2009
Basic layout plan	Provide an address	A Section 79 Committee report in 2012 ²⁹ requested permission for the
	Provide access to the settlement	

²⁸ The mayor changed and the new mayor gave less support to the programme (he was a member of the tour party to Brazil) and there were also changes in MMC's for Planning.

Annexure 9999	What the intention behind this was	Progress in the City
	Provide basic services	preparation of 4 basic layout plans. Consultants were appointed to do Happy Valley layout
	Identify social and community facilities, business services and future services	
	Identify land uses in the settlement	
Identification of each structure and numbering	To obtain household information from the survey	Completed for Happy Valley Service provider appointed to do surveys in two other settlements in 2011
	GPS positioning of each structure	Completed for Happy Valley
	Numbering of each structure	Completed for Happy Valley
Providing an address	Obtain a street address for the entire settlement Blocks defined and addresses provided per structure	Not completed for any
Compilation of a Register	Information on the households into an Xcel spread sheet	Completed for Happy Valley
Management of the Register	Systems in place to record tenure changes Local office to manage the permits	This has not been set up
Occupant Permit for a residential unit	Drafting of a permit and issuing it	A draft permit was prepared No permits have been issued. Discussions with officials indicated that it is unlikely that permits will be issued in regularisation settlement but rather will be implemented only once the area is to be formalised as the City was concerned that relocations may be a possibility when formalisation occurs and the permits may make this process difficult.
Basic services provided or improved	Provision of standpipes	Yes – improvements in 3 settlements. Standpipes with double taps and water retention and drainage system extended to Happy Valley and two other settlements
	Provision of toilets	Yes – more VIPs and chemical toilets have been provided in some settlements since regularisation

²⁹ See the Section 79 Report by DPUM dated 6-06-12: Category3: Settlements to be Regularised. Basic layout plans Denver, Mangolongolo, George Goch Hostel, George Goch Station (Princess Backyard, Princess Crossing and Platform 5)

Annexure 9999	What the intention behind this was	Progress in the City
	Provision of electricity	Not provided. Studies were done for Happy Valley and it proved too expensive as bulk supplies were required
	Provision of a community office	Sites identified in the layout plan but none provided
Pegging of the sites	This was seen as a next step in the incremental process to identify individual sites	Site boundaries were included in some of the layout plans (where they were obvious from the aerial photography) – e.g. Happy Valley but were not pegged or verified by the community
Building regulation in terms of SABS 0400 and 0401	Some regulation to the structures Incremental approach to buildings	Not implemented and no applications received
Individual sites	To provide addresses and progress to formal development	Possible for Happy Valley but not implemented
Records in the municipality - GIS - register	GIS link to LIS system Local register from the survey	GIS linkage to LIS completed for Happy Valley Layout plan for Happy Valley is loaded into the LIS system The register for Happy Valley is in the form of a spreadsheet based on the survey and added to the GIS as a layer
Land use regulation administration – systems in place to manage Annexure 9999	Endorsing layout plans Systems to make applications for land use changes Systems for regulation of Side spaces Boundary walls Height of structure Coverage – 60% Contraventions monitoring	No systems in place within DPUM for any of these aspects

From Table 2 above it is apparent that there was considerable progress with the regularisation approach in the first three years after conceptualisation. This was when the ISFU was established and staffed with an experienced planner who implemented the necessary technical activities that were required. It was also when the ISFU Steering Committee was active and driven by the DPUM. It had a mandate to report directly to the Mayor and so there was also political pressure to achieve progress. Happy Valley was the pilot and progress was made with the implementation of the

approach during that time, including the completion of the layout plan, the community survey, the numbering and GPS positioning of the structures and improved services were installed.

The ability to secure improved services is usually cited by officials as an important achievement of regularisation. And services in the regularised settlements were improved in many instances. But it is interesting to note some community responses to services in Happy Valley that were obtained from the CASE study. To summarise the survey respondent's views of services:

- They noted that new taps were provided but some were already broken;
- Two-thirds of the households have illegal electricity connections and therefore do not pay for electricity. Paraffin and candles are also used for lighting, heating and cooking;
- A high level of dissatisfaction was expressed about sanitation. Toilets are not repaired;
- They indicated that they use a communal dump for refuse and that bags are provided but irregularly and the service is not regular. They would not be willing to pay for this service.

In the focus group the following comments were offered, indicating dissatisfaction with services:

- One participant reported that the "government" said that it would be too expensive to provide electricity for a small community such as Heavenly Valley³⁰. Residents mainly used candles and paraffin in the place of electricity and noted that one litre of paraffin cost R15. Several noted that the lack of electricity resulted in residents of Heavenly Valley being ridiculed because they always smelt of paraffin, and reported that children often dropped out of school because they were being teased as explained below: *"Our children suffer here in this place if there is no power, we don't have power we use paraffin and candles. Now if the young man goes to school they tease him because he smells of paraffin. What do you feel you as an adult get into a taxi and people ask who is smelling of paraffin here. How do you feel, you feel bad you understand."* Some of the participants said that because most residents smelt of paraffin, they were treated as outcasts and were discriminated against by other people. *"They don't want their children at our crèche as they say our children will make their children sick and our children don't have sickness."* (pg 103)
- Residents had to walk far to access a tap, and had no toilets which deprived them of a dignified life: *"You cannot invite people to your house as we have no toilets, if you need to go to the toilet I will have to take you into my room and give you a pot to use."* Finally, residents were not receiving refuse removal services, and one was of the view that they were better off in the pre-democratic era: *"The old government gave us toilets and if it broke they would come and fix it. They collected our rubbish, they came in here with their trucks and collected our rubbish, they gave us bins, and we even had a park here. All those things were taken away from us."* (Pg 104)

4.3 Institutional Changes within the City of Johannesburg

There have been many changes to the staffing arrangements in both DPUM and the ISFU that resulted in a dramatic drop off in progress. The head of DPUM, who was a main driver and the

³⁰ The settlement is called both Happy Valley and Heavenly Valley – the survey uses Heavenly Valley and the City uses Happy Valley.

conceptual thinker behind the approach, left the organisation. The contract of the ISFU head came to an end and the dedicated funding to the Unit was all allocated and spent. Enthusiasm for attending the monthly Steering Committee meetings also waned and few line departments attended and a trend was emerging of sending less senior representatives to the meetings. The Steering Committee meetings came to a halt in the second half of 2011. Within DPUM, the Urban Management (UM) section, which was responsible for Stakeholder Management, was also split from DPUM. They no longer undertake the community liaison in the Regularisation settlements.

It was also at that time that the more detailed mechanisms of the Regularisation approach needed to be formulated. This included operationalizing the register, designing and implementing the Occupation Permit, linking the GIS information to the billing system and setting up the management structures to manage TRSAs. Given the loss of staff in DPUM and especially the champions and the operational staff, these items went onto back burner and to date have not been implemented.

Since 2010 there had been rumblings that the regularisation approach should be located in the Sustainable Human Settlement (Housing) (SHS) department. They were an active participant on the Steering Committee as their housing projects were also reported on in the meetings. But they did not fully embrace the regularisation approach, mainly because they were following the National Department of Human Settlements' housing policy and did all their projects in terms of housing subsidy funding. But the on-going difficulties experienced by DPUM to co-ordinate funds to do the small service interventions in the regularised settlements was a deciding factor in supporting a move to SHS. The DPUM is a co-ordinating, policy development and planning approvals department that does not receive capital funds for development. Service departments as well as SHS are 'delivery' departments and have budgets for capital and maintenance works. When the ISFU funding was exhausted, DPUM had to motivate for the allocation of funds from each service department to undertake small interventions, such as improving the standpipes and toilets. This became onerous and difficult and it was also outside of their mandate.

The ISFU was then relocated to the SHS Department in early 2013. The SHS Department is in the process of undergoing restructuring and the staff from the ISFU will be absorbed into the new structure of the SHS. While the new structure is still being finalised and the consultant could not have access to it, it is understood that all the formalisation (and regularisation) projects will fall under the Regional Head (Deputy Director level) and a Unit may be created to bring all the regional areas and all projects under one structure.

When the ISFU moved across to the SHS Department, all informal settlements projects, including the regularisation projects, were re-assessed and re-prioritised and the list of regularisation projects was further diminished as projects were identified for either formalisation or relocation. Six settlements were prioritised for formalisation in this process³¹. Happy Valley was designated as a formalisation project along with Motsoaledi, Bottom Compound, old Vista and Slovoville which were previously regularisation projects. Happy Valley was allocated to the regional office in Soweto where work has begun on a new feasibility study, revised layout planning, services report and detailed geotechnical

³¹ This included Bottom Compound; Elias Motsoaledi (on land donated by public works); Ezimbuzini; Happy Valley; Old Vista; Slovoville. Information from interview with Assistant Director: Projects. 17 May 2013.

studies (settlement is on dolomite). With its new location in SHS, funds (from the former Municipal Infrastructure Grant (MIG), now the Urban Settlements Development Grant (USDG)) are available to undertake these studies and proceed with formalisation through township establishment procedures using the Provincial Ordinance (rather than LFTEA). Once a layout plan has been finalised for Happy Valley and the list of beneficiaries known (obtain these from the enumeration that was undertaken during Regularisation), the SHS department can apply to the Provincial Department of Human Settlements for housing subsidy funding.

What is not clear with the move to SHS is whether the regularised settlements will continue to be treated as such and continue to be developed in terms of that approach or not. The indications are that this is being considered but no decisions have been taken by SHS at this stage. Happy Valley was a very clear example of a settlement that could be upgraded *in situ* and that to make it a formalisation project was sensible and logical as much of the pre-planning had been undertaken under the regularisation project. Based on the fact that SHS undertook a re-prioritisation exercise and many of the regularisation projects moved in status to be formalised, may not augur well for a continuation of the regularisation approach now that it is under the SHS department of the City.

In a meeting with the DPUM, it was noted that they do intend to approach the SHS Department with a view to motivate for continuing with Regularisation and to explain the overall approach and its merits to the officials in that Department. The SHS Department is focusing on the restructuring of their department at this stage and no further information could be obtained regarding the future of regularisation projects that they are now responsible for.

5. Impact of Regularisation

This section addresses the impact that the Regularisation programme has had. It is based on interviews with officials in the City and represents the consultant's synthesis and assessment. It looks at the impact of the different elements of the regularisation approach as well as some broader institutional aspects relating to the policy itself and its location in the organisation. It indicates what officials thought would be the intended impact when they developed the programme (expected impact) and compares it to what observers and stakeholders have indicated as the impact (observed impact).

Table 3: Impact of the Regularisation Programme

Aspect	Expected Impact (based on the design of the policy)	Observed Impact
Number of settlements	All settlements that were in Category 3. 23 were initially identified, representing 13% of all the informal settlements (180 were identified at the time).	As more information on the regularised settlements was obtained, the number of regularisation settlements decreased. It is now down to 3 ³² or 4 (officials could not confirm) and now represents a very minor programme within the context

³² As far as could be established, only the Lindhaven plots and Princess sites remain under regularisation (these are made up of 5 small settlements but some are combined into one project)

Aspect	Expected Impact (based on the design of the policy)	Observed Impact
		of 180 informal settlements in the City.
Number of households	In 2008 when the programme began, the estimated number of households in the regularised settlements was 34 685 ³³	Based on the Lindhaven and Princess areas, it is likely that regularisation will only affect approximately 1120 households
Impact of Annexure 9999:		
Basic Layout Plans	The Section 79 Committee in 2012 ³⁴ Report stated that: <i>"The basic layout plans show small elemental and inexpensive improvements that can be implemented to improve living conditions within the settlement and involve making settlement roads passable in wet weather, bearing in mind that Pikitup uses these roads to remove refuse, providing soak-aways at communal taps, ablution facilities in the form of wash and shower facilities which should be solar powered, a registration office which will also be used for post receiving as part of the registration system and a communal room close to the ablution facilities which will become a social gathering place."</i>	These had Mayoral support and were seen as the key physical element that 'holds the regularisation approach together'. The service departments have used these to provide limited, improved services in Happy Valley, Meriteng and a few other settlements. The Happy Valley layout plans (three options were prepared by the service providers) have provided a basis for planning the area under a formalisation project. It has enabled a more detailed layout plan to be prepared to the standard required as part of the development application.
Addresses	Each resident would ultimately be given an address, based on the basic layout plan. It was envisaged as having a major impact on the lives of residents, making them city citizens and allowing them to do business transactions such as entering into cell phone or hire purchase contracts on the basis of an address.	A system was only developed for Happy Valley. The settlement was given a street address based on the layout plan - 33 Calendula Road. With the survey having been done and the structures numbered, each unit was to be given an address – for example, Unit 1, 33 Calendula Road. This did not get finalised so there was no positive impact of this initiative.

³³ Estimate obtained from the DPUM Master list of categorisation of settlements used by the Steering Committee, managed by Mr Peter Ahmad. This list, at that time indicates 22 settlements listed for regularisation.

³⁴ See the Section 79 Report by DPUM dated 6-06-12: Category 3: Settlements to be Regularised. Basic layout plans Denver, Mangolongolo, George Goch Hostel, George Goch Station (Princess Backyard, Princess Crossing and Platform 5)

Aspect	Expected Impact (based on the design of the policy)	Observed Impact
Impact of services	The purpose was to improve the limited existing emergency services in the settlements and to provide a more regular service in other instances. This would improve quality of life, health and safety	There has been a positive impact in this regard. Three additional standpipes were provided in Happy Valley (see picture below); Refuse collection was improved and is now more regular. Refuse collection services were extended to regularised settlements that previously had none. Weekly services were introduced, with bag collection. It was mentioned that in some of the larger settlements, refuse collection is done twice-weekly. Chemical toilets were provided in some settlements and VIPs in others. Regularisation has had a strong impact on the provision of services and hence on the living conditions of residents in some areas.
Impact of survey	The survey was intended to: • provide household information for planning purposes • create a register of households, • get spatial data on the position of structures to assist with the layout planning • to identify potential housing subsidy beneficiaries	The survey created expectations in communities that housing would be delivered. The survey was undertaken by an independent service provider. Some training of local residents to assist in the survey was done. The data collected is useful for understanding what exists and for creating potential beneficiary lists for formalisation. The data was included in the GIS of the City, creating a link into the bureaucracy. Structures were numbered as a result of the survey. The survey also did GPS co-ordinates for the structures, giving them a spatial location. The impact has been limited as it was not a community-driven

Aspect	Expected Impact (based on the design of the policy)	Observed Impact
		process. The survey has been a once-off process and there are no systems in place to update it.
Register	The purpose of the register was to provide a record of households that would then form the basis for issuing occupation permits to residents, providing evidence of permission to occupy the land, thus providing more secure tenure to occupants. It was meant to be lodged in an office in the community and updated when changes occurred. The impact would be that this would provide the community with reassurance that their tenure was secure and up to date and also be used should any local disputes relating to occupation require resolution.	There has been no positive impact of registers for the community. They remain a technical list on an Xcel spread sheet within DPUM. No registration offices were established. No issuing of permits was undertaken. No monitoring of changes in occupation status within the settlements has occurred. Hence, the intended positive impact of registers was not achieved for regularisation
Incremental Tenure security	The purpose was to recognise the settlements through legally regularising them (blanket recognition), to then provide occupation permits (individual tenure recognition and security) and later, this could lead to title deeds when the settlement is formalised. The intended impact was to give reassurance that the settlement would not be relocated (settlement security). The impact of this was seen as leading to residents investing in their structures.	The regularisation approach has provided blanket tenure and as such many occupants are no longer under threat of relocation in these areas. But the impact has been limited as it has not moved to the next stage of providing individual occupation permits. Residents therefore do not have an address or written evidence of a right to occupy the land they are on. But the settlements are secure from a zoning and land use perspective due to the declaration as a TRSA.
Impact within the structures of the municipality	The development of a dedicated programme would have the effect of mobilising departments around the programme and commit resources to incremental upgrading Mayoral and high level support would have more sway with officials and encourage greater support	The Steering Committee certainly did mobilise most departments to contribute to the programme. The programme was included in the IDP and some officials even had performance targets related to the programme. Resources were committed to

Aspect	Expected Impact (based on the design of the policy)	Observed Impact
		small projects by service departments New ways of recording the settlements in the GIS were developed. Building services grappled with building standards to apply. Service departments did try to develop new servicing standards for informal settlements but the report to Council never got sent. Stakeholder Management did undertake some community liaison. Improved data on informal settlements was provided, including household information. All departments dealing with informal settlement had an opportunity once a month to meet and discuss problems and report on progress. While the Steering Committee was active, the programme had considerable impact on the departments in the City. But this was not sustained and there is little evidence that any of the departments, other than SHS have any particular on-going role in any of the settlements.

With respect to the last aspect, impact on institutional structures within the City, it is instructive to include the table below that is extracted from a Council Report by DPUM with the title of 'Securing Tenure in the City's Informal Settlements', in June 2009. It was an attempt by the DPUM drivers of the regularisation approach to link the incremental tenure security approach that underlies Regularisation to a range of instruments and actions that different departments would have a role to play in implementation. The consultant has shown the different departmental responsibilities in bold red font for emphasis. The table indicates that, for a new programme, it tried to cover the many responsibilities that a multi-faceted programme like this demands and illustrated a strong conceptual base for the approach.

Table 4: Extract from Council Report, June 2009

TENURE ISSUE	RESPONSIBILITY	APPLICABILITY TO JOBURG
Managing land use to incrementally secure tenure	DPUM	▪ The conditions of the scheme amendment set out the obligation of Council and the manner in which the land and improvements within the 'Transitional Residential Settlement Area' is to be developed, maintained, administered and managed. ▪ The conditions therefore cater for the range of rights that assist with the incremental securing of tenure, i.e.: a. The occupation permit affords occupants limited rights to occupy their site and pass it on to heirs (bequeathing option); b. The layout plan identifies social and community facilities, business services and access to the settlement and future services (access to services); c. Where the layout plan has progressed to the identification of individual stands, one main dwelling/structure and one subsidiary backyard unit per stand shall be permitted (sub-letting option); d. By virtue of the scheme amendment, all occupants are <i>de facto</i> renters (rental option); e. The development of new structures on individually identified stands on the layout plan is permitted (development and improvement); f. After the layout plan has been approved by the local authority, the occupier of a residential structure may apply in writing to the local authority to permit a new alternative land use on the site (access to economic opportunities through land use change which in turn could unlock access to micro-finance); g. Title deeds – these will ultimately be in place when the formal township establishment process is complete, allowing the sale of property.
Installation of hard and soft services up to LOS 3	ISD, Joburg Water, JRA, City Power, Pikitup	▪ As part of this programme, ISD will leverage resources from Municipal Entities and other programmes of government such as MIG for the provision of infrastructure services up to LOS 3.
Land administration: i. Documentation and evidence;	Housing Regional Stakeholder Management	▪ Housing will be responsible for the issuance of title deeds once township registers are opened as part of the formal township establishment process. ▪ Housing and Regional Stakeholder Management will be responsible for the local registers of occupancy permits per

TENURE ISSUE	RESPONSIBILITY	APPLICABILITY TO JOBURG
		household, and for the regular updating and monitoring of the registers.
i. Occupation permit/certificate and local register/title deeds;	Housing Regional Stakeholder Management	▪ The occupation permit identifies a person as the official occupant of the building/structure and indicates what activities may be permitted on the site. The permit therefore links a name, shack number and land use to the layout plan, and land use is managed at the same time as tenure is secured. ▪ Housing and Regional Stakeholder Management shall administer the local register and transmit local register information to Corporate Geo-Informatics so that this information can be captured spatially, i.e. geo-referenced. ▪ Housing and Regional Stakeholder Management will regularly update and monitor local registers and transmit this information to CGIS. ▪ Title deeds will be issued when township registers are opened as part of the formal township establishment process.
ii. Rights	Housing and Gauteng Department of Housing	▪ The Gauteng Department of Housing will assist the City with establishing which households have been bar-coded to date. ▪ Housing and the Gauteng Department of Housing will assist with establishing where <i>de facto</i> rights may already exist.
iii. Management of change	Housing Regional Urban Management Regional Stakeholder Management Office of the Speaker	▪ Housing and Regional Urban Management will implement and/or enforce existing mechanisms to curtail the growth of regularized informal settlements; ▪ Regional Stakeholder Management and the Office of the Speaker will ensure that communities are made aware of the long term benefits of the regularization process so that they secure the buy-in of communities into the programme.
iv. Working with what exists	Housing, DPUM and Gauteng Department of Housing	▪ The Gauteng Department of Housing will assist the City with establishing which households have been bar-coded to date. ▪ DPUM will manage the process of street name allocation. ▪ Housing and the Gauteng Department of Housing will assist with establishing where <i>de facto</i> rights may already exist.
Community consultation and	Regional Stakeholder	▪ Regional Stakeholder Management and

TENURE ISSUE	RESPONSIBILITY	APPLICABILITY TO JOBURG
engagement	Management and Ward Governance Office of the Speaker	the Office of the Speaker will undertake community consultation and engagement through the Ward Committee structures.

The overall assessment of impact is varied, with some positive impacts. Overall 23 settlements now have a new status as a TRSA and have occupational tenure secured. However the programme did not achieve its full, intended potential and so the subsequent actions that would have followed after declaration have been limited. Infrastructure services have improved in some settlements, positively impacting on the lives of residents. The programme did not get fully inserted into the institutional structures of the City before it was transferred to SHS, limiting the ability of the City to implement the programme fully.



Figure 4: The multiple standpipes with a soak-away area installed by the City in regularised settlements

Source: City of Johannesburg



Figure 5: A VIP toilet installed during Regularisation

Source: Gemey Abrahams

6. Observations and Lessons learnt for the Urban LandMark approach

This section reflects on some observations of the progress made with the Regularisation approach by the City and suggests lessons that have been learnt. These will inform the recommendations in the subsequent section. The emphasis is on lessons for legal recognition but some overall lessons for the Urban LandMark approach are also included.

6.1 Observations and lessons on the legal recognition mechanism

The position of the regularisation approach on the tenure continuum

The regularisation approach holds an important position on the tenure continuum because it is not full formal land development but it is a legally-based intervention. It therefore lies between administrative recognition mechanisms and formal development. The City saw it as an interim step towards formal development. It holds this place because it was designed specifically as an incremental measure. Because it is a legally-based approach it provides occupants of regularised areas more tenure security than administrative measures but does not provide formal, individual title, or what Mr Tiaan Ehlers call “heaven”. It makes the land use legal and hence legalises the land uses in the settlement. It is therefore a land use management approach, rather than full township development.

It essentially provides an area with blanket tenure security by legalising the land use but it requires additional instruments to provide more individualised tenure security. And the approach does this by introducing an Annexure 9999 which regulates the upgrading processes, including the incorporation of an “occupant permit for a residential unit” into the clauses of the Annexure. This makes the permit a legal instrument rather than an administrative, less secure instrument.

It also introduces other incremental measures such as a basic layout plan. It is not a full-blown layout plan that would be required in a township establishment application, but is based on it conceptually and so it can secure tenure by ‘pinning down’ the spatial location of key development needs in a regularised settlement. Roads can be graded, water pipes can be installed along defined roads, ablution facilities and sanitation can be provided and refuse collection can proceed on this basis. But the basic layout plan does something else important – it is also a record. As it is GPS-based it can be installed in the land information system (LIS) in the City and form a GIS layer (linked to the original property description of the underlying land) and each structure with GPS co-ordinates can be added as a layer and placed on the LIS. With the structures linked to the basic layout plan, data on each household can then be linked to the structure co-ordinate and kept as a spread sheet to form a record of occupants. This can form the basis of a community or City register and it can be updated easily as it is digital.

Importantly, it also does something else – it acts as a simplified town planning scheme. Schemes are used to record and regulate land use in proclaimed areas. Regularised settlements are “zoned” as transitional residential settlement areas and as such have their primary land use as residential. The Annexure 9999 provides the land use rules and if there are changes to land use (e.g. want to provide

a shebeen or a crèche), occupants make a simple (written) application to the City and when approved this change gets endorsed on the basic layout plan.

The basic layout plan is therefore much more than a spatial plan.

This is a useful instrument to consider in an incremental tenure approach and it adds considerable substance and some practice to a possible tenure mechanism that could be applied in other, similar applications. It can also provide a sound basis for the next step of formalisation through a township establishment route too.

Can regularisation be a bridge between administrative mechanisms and full formalisation?

As concluded in the paragraph above, regularisation provides instruments that can make the formalisation of an informal settlement more efficient. But is it a possible mechanism that can bridge between administrative mechanisms and formal development requirements? Firstly, many interventions can be made administratively – basic services can be installed, community registers can be endorsed by authorities, forms of evidence can be provided to occupants by authorities, communities can prepare their own spatial plans and so forth. But none of these are “locked” into established systems of the municipality. They can then be overlooked by authorities and cannot be confidently defended by occupants.

What regularisation does is take these similar interventions and ‘places’ them into a legal framework called the Amendment Scheme 9999 and it puts all similar settlements into a programme called Regularisation. Bureaucracies like municipalities have levels of authority and responsibility and these are not easily taken up unless there are approved policies and legal imperatives to do so. The regularisation approach does that – it is a policy approved by the Council, it is a legal instrument, it was set up as a programme, it has a work methodology and it has a name.

But equally important, it “locks” a range of interventions into a legal instrument. So mechanisms like a basic layout plan, an occupant permit, a register and enumeration, become legal requirements and are the responsibility of the municipality once an area is declared as a TRSA. This provides more security than administrative recognition instruments because it is more legally defensible. But still is not full township establishment. It therefore provides a very sound bridge between administrative recognition and full development that would be provided through township establishment.

A legally simple mechanism

The Scheme Amendment mechanism is a remarkably simple legal mechanism to provide tenure security in informal settlements. Full township establishment laws and procedures are lengthy to complete, require professional input and specialist reports and do not always deliver the end product that an *in situ* development of informal settlements requires. The mechanism is an amendment to a zoning scheme and this requires the identification of the land portions on which the settlements are located and the development of suitable scheme conditions for the areas. It does, however, need to be advertised for public comment and potential objections. While this does

present some risk (objections), advertising scheme amendments is a legal requirement and standard practice to achieve transparency.

It is therefore a simple but effective mechanism to provide legal recognition to informal settlements using an instrument (the town planning scheme) familiar to officials. It is a good example of adapting an existing mechanism to apply in unfamiliar situations. More creativity in the application of existing mechanisms for securing legal recognition are required to provide more entry points along the continuum of tenure security for the poor. Likewise, the opportunities presented by new planning legislation should take note of these innovations and 'create the space' for instruments to be developed or simply include them in their laws.

Embedding new approaches into bureaucracies

The regularisation approach is inherently embedded in the municipality, as indicated above (legal, policy and programme). But what has been difficult to embed has been the implementation of certain instruments within the approach. It has hesitated at these hurdles. The registers and the occupant permits did not get fully embedded. The procedures for managing land use or for providing addresses did not get completed and so are not embedded. But that is not to say that they cannot become institutionalised in the future. The reasons for them not becoming embedded, has more to do with the loss of the champions of this approach and its transfer to a department that was not fully convinced by the approach. Momentum was lost.

What is apparent though is that considerable effort has to go into implementing any new programme in a municipality. Besides systematising all aspects of the approach, individuals who will be working with the new systems need to understand them and work with them. This needs a strong champion. It also needs to be a significant programme and one that has high level political support. Heads of Department need to buy into the programme and build outcomes into staff performance agreements, to encourage dedication to the necessary activities. In fact one official in Stakeholder Management did have regularisation aspects built into the performance agreement and that same official was the only one that undertook the community meetings in regularised settlements to explain the approach. Clear processes or steps (systematising) need to be defined in any department dealing with Regularisation.

Many aspects of the regularisation approach are "technical" and more easily embedded – loading GIS information into the LIS was relatively simple. But to link this to a 'living' register and even to the billing system of the City was not easy and did not occur as it would require on-going activities and capacity to engage with communities in addition to allocating clear responsibilities.

The lessons from regularisation are instructive for other new recognition mechanisms as it points to the need for a new programme to find all the 'points' of connection with other departments and their processes early on in the development and implementation of the programme and to find suitable ways to 'hook' the aspects in.

Legal instruments must also include communities

While the conceptualisation and development of the approach relied on the intellectual capital of the professional planners in the City, assisted by Urban LandMark, it should perhaps have been ‘tested’ with communities before moving to adoption as a policy and implementation as a programme. Instead it was adopted and programmed without community input. Also, if there had been more status quo information on all the informal settlements and a more expansive set of criteria for ‘qualifying’ as a regularisation project, there would perhaps have been fewer ‘casualties’ of the approach, as the list dwindled from 23 to four during implementation. In the case of Happy Valley, it was probably always best suited for upgrading through formal development because of the long time the community has lived there, the cohesiveness of the community, the many promises made to upgrade and deliver houses, the low density and regular layout and the presence of existing services (albeit not working or maintained). To offer this settlement Regularisation instead of housing subsidies and full township development was probably inappropriate under those circumstances.

So, the regularisation approach could be improved by involving communities in the decision about whether to become a regularised settlement or not and then involving them in the basic layout plan so that it is more community-based planning, being directly involved in the survey and enumeration, the preparation and maintenance of the register, the contents of the occupation permit and suitable rules for managing land use. The overall approach is a good “template” and each settlement could develop or add more tailor-made clauses to suit each settlement’s particular needs and circumstances.

Does regularisation have a future in the City?

At present the future of the approach is uncertain. This is because it is unclear whether the SHS Department will take it on board along with their existing upgrading projects (many of which form part of the NUSP programme and funded by the USDG) and new housing subsidy projects. It is now at arm’s length from its original champions and from the institutional structures that drove the approach to implementation. It is possibly also at risk as a programme because so few settlements now fall under the programme to warrant the capacity it will require for implementation while human and financial capacity is already limited. DPUM has indicated that they would like to approach the SHS Department once their institutional restructuring is complete and provide any information SHS may need to keep the approach going. This is because DPUM believes that as an approach, Regularisation has many merits and has a place in informal settlement upgrading.

It therefore may well have a future within the department of SHS in the City but it is also an approach that can be fine-tuned and adopted by other municipalities.

6.2 Observations and Lessons on what went wrong

Institutional home and driver

The location of the regularisation programme within DPUM served the project well during its conceptualisation and policy formulation stages, because it was a land use management approach. DPUM had an enormous task to introduce a whole new approach and programme into all the structures of the municipality. The system was geared to dealing with conventional land development processes and approaches. The SHS department addresses upgrading of informal settlements through roll over (and Transitional Areas) projects, relocation and doing new greenfields developments. The Regularisation approach was therefore not attractive to the Department of SHS because in the end they would still need to do township establishment for the regularised settlements.

The establishment of the ISFU by DPUM was a positive initiative as there was then a dedicated unit, with funding, to embark on implementation. However, the ISFU did not secure on-going funding and the implementation of improvement projects in the settlements had to rely on the co-ordination of funds from many service departments. Or it needed to access 'lump sum' project-based funding, which is located in the SHS Department, not DPUM.

With the move of the ISFU to the SHS Department, the programme will be located where it may be possible to address the funding constraints. But it is not clear whether the approach and its concept and fundamentals will continue on as a programme. The former ISFU head will hold a senior position in the revised structure of the SHS Department and so it is possible that the programme may be promoted. A consideration is that with the number of regularised settlements being significantly reduced, it may not warrant a specific programme. However, there is potential for regularisation to be applied in other settlements and become an incremental phase in upgrading, but this needs to be taken up by the SHS Department.

Loss of administrative and political champions

Successful programmes need political and administrative champions. The origins, conceptualisation and policy development of regularisation was only possible because there was political (Mayoral) support and there were champions within DPUM who were willing to find a solution for long standing informal settlements and drive its development. The officials who championed regularisation were all town planners and unsurprisingly used town planning instruments to develop the approach. Turnover of staff in municipalities affects continuity of any approach being implemented as people who hold the history leave. For a new approach such as this, this can be even more crippling. This set of circumstances affected Regularisation as the two main champions left the Department. The mayor also changed and the new Mayor did not promote this programme in the same way as the previous Mayor. Staff in the ISFU also left, making implementation more challenging.

Services provision

According to officials in DPUM, the biggest problem they had was getting capital funds to do the upgrading in regularisation areas. The DPUM does not have capital budgets for this and so they had to co-ordinate funds from many departments to do improvements in the regularised settlements.

Some service departments allocated small budgets to do minor service improvements, but it proved difficult to do larger-scale interventions. Service departments preferred to allocate their budgets to housing projects (formalisation) and improvements in existing former black townships. They also did not have a clear understanding of Regularisation and the interim and incremental nature of it, to confidently allocate their budgets to it. With the programme located in the SHS department, DPUM felt that there would be access to dedicated funds for projects. Also with accreditation of the housing function going to the City, there was even more opportunity to get funding for regularisation projects through the SHS Department.

6.3 Observations and Lessons on particular aspects of the approach

Getting an address

Providing an address was a fundamental part of the conceptualisation of the approach. It was underpinned by the then Mayor's approach to create City citizens. The address was to be provided in a relatively simple way, based on the group situation rather than individual plot addresses. It was therefore inherently an incremental approach. It required a street address for the whole settlement and a structure number. The basic layout plan is the instrument to provide the street address and the enumeration and GPS positioning of the structures provides the structure number.

It is therefore a relatively simple mechanism and does not rely on establishing individual plot boundaries. But it needs to be done with the community and a plan of numbering agreed before it can be built into GIS system of the City. Where the City experienced problems was linking the GIS to the billing system because the two computer systems were not compatible and it would have cost a lot of money to do the conversion and there was not a budget allocated for this. The idea was that once in the billing system, accounts (zero-based) could be generated and this would provide proof of residential address and could be used by occupants to do transactions.

It is possible that this could have been done differently. Perhaps, with Annexure 9999 stating that Occupation Permits must be issued, these could have been used as evidence of occupation and would not necessarily have needed to be linked into the billing system. With Regularisation now being in SHS Department, there may be opportunities to develop this part of the approach more by learning from how they manage tenants in all their Council housing schemes and use a similar system.

Occupation Permits

The reasons why Occupation Permits were not implemented is probably a combination of political risk and bureaucratic factors. The risk relates probably to giving a formal permit to residents in regularised areas that may require relocation or re-blocking in the future. The concern of the City was that holders of the permits may resist relocation and force the City to develop the sites *in situ*. The City was involved in many court cases relating to evictions and they were probably reacting to this situation. The ISFU prepared a draft Occupation Permit but the implementation of them was

seen as being done by the SHS Department. While the inclusion of Occupation Permits was an important aspect of the regularisation approach and a significant step in incrementally securing tenure for residents in informal settlements, it seems that at some stage in the implementation process a decision was made to not include them in Regularisation projects, but to use them for formalised projects instead. It is not clear if this is a well thought through position as further information was not available.

How does Regularisation compare with other legal recognition approaches?

The informal settlement of Monwabisi Park in Khayelitsha, located within the City of Cape Town (CoCT) is to be upgraded *in situ* through a formal land development application. The process is supported by Sustainable Urban Neighbourhoods (SUN) who is contracted to the Violence Protection through Urban Upgrading (VPUU), a unit within the Housing Department of the CoCT. The legal mechanism is a formal subdivision application in terms of the Cape Land Use and Planning Ordinance 15 of 1985 (LUPO) and rezoning using the Zoning Scheme Regulations of the City of Cape Town. So, on the continuum of tenure security it is nominally positioned towards the 'high tenure security' end as it will take a settlement to full formal individual tenure, should this be desired. Regularisation is a land use management approach and is not full township establishment. But there are important comparative lessons that can be observed from the CoCT and City of Johannesburg examples:

Land use zoning

The CoCT zoning scheme provides a specific zone called Single Residential – Incremental Housing or SR2 for informal settlements. The CoJ had to 'invent' a new zoning called Transitional Residential Settlement Areas with similar land use conditions. But there are similarities and differences:

- Both zones can be applied in a blanket manner across the whole settlement;
- SR2 is a conventional town planning, land use zone and deals specifically with land use and building conditions;
- TRSAs, being a tailor-made invention, go beyond land use management regulations and include tenure aspects and layout planning aspects. In the CoCT the tenure aspects then had to be incorporated in another way. This was achieved through an adaptation of the Package of Plans approach to include a set of 'rules' attached to the Precinct Plans. It is an example of applying existing mechanisms to an unconventional situation. It is important that tenure aspects get embedded into the policies and systems so that they actually get implemented. The two situations provide two different routes to achieving the same outcome – legally recognised occupation permits/agreements.

Internal blocking or layout planning

Both systems allow an incremental approach to securing individual sites.

- The CoCT is more "legalised" in that the subdivision application will formally (can be registered in the Deeds Office) create the blocks and when an internal layout is finalised,

new subdivision applications can be made for each block. This can lead to the creation of individual erven shown on a township register and enable the transfer of each site to a household. It offers flexibility to retain blocks with group living arrangements where individual site subdivision is not desired.

- In the Regularisation approach, the blocks are less “formalised” and based on the basic layout plan which does not have any legal status in the formal, Deeds Registry system and cannot deliver individual, registered erven to occupants. But it can set up this process ahead of formal township establishment and make that process faster when it is undertaken.

7. Recommendations for Urban LandMark

The Regularisation approach has not been fully implemented and it is therefore difficult to make definitive recommendations based on the whole approach. But it is possible to comment on its intention and mechanism at a technical level and learn from the implementation challenges.

1. Regularisation holds a specific place along the tenure security continuum and as such offers an approach that provides tenure security through many legally defined instruments without it being the full, complicated and onerous township establishment process. The instruments are flexible and appropriate for incremental upgrading and for *in situ* situations. As such, it should be supported as an innovative and suitable mechanism to provide legal recognition to certain informal settlements.
2. But the approach could possibly be improved. It is a very “technical” approach in its conceptualisation. While community participation is built into the different instruments it uses, it is not fundamentally driven by a community approach. The opportunity exists with its transfer to SHS Department to modify the approach to inherently shift the emphasis and operations towards a community-driven approach. This could begin with involvement in the very first step of identifying if a settlement is appropriate for Regularisation.
3. Legal recognition, while not necessarily delivering top structures initially, is very important in delivering services. Both the CoCT and the City examples have shown that only minor servicing interventions can be done until a settlement has a clear ‘institutional home’ and hence legal status. This is because large capital and maintenance budgets cannot be allocated to areas that are not proclaimed. While regularisation will not result in township proclamation, the legal status it provides and the location in the SHS Department is considered sufficient to unlock bigger budgets. In both cases municipal Housing Departments have been identified as the institutional home for this to be achieved.
4. Legal recognition involves legal processes determined by laws or regulations. They have defined procedures and requirements. Officials tend to be familiar with conventional legal mechanisms and unfamiliar instruments or requirements can make a process grind to a halt.

Both the CoCT approach and Regularisation required modifications in processes and requirements to apply to *in situ* situations. While innovation is welcomed, any deviations from conventional procedures and requirements requires a number of things before they can become mainstreamed (locked in): they must be clearly systematised; they must be promoted with officials within the bureaucracy; they must understand the current way things are done and how it would be different so that the correct points of contact or actions are targeted for the amended requirements. It is therefore instructive that the current approaches to finding alternative routes to official recognition (including administrative mechanisms) be detailed to incorporate lessons learnt from the legal recognition approaches, including finding a name for the process or approach, defining the process clearly, defining institutional responsibilities and developing a programme approach, where appropriate.

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