



MANAGING AND CURBING UNAUTHORISED LAND OCCUPATION

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Housing Development Agency

ANNEXURE 3 Managed Land Settlement



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Promoting active citizenship and good governance

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1. INTRODUCTION

It would help if government made serviced or even semi serviced land available for people to move onto and start to build their own shacks. Many communities have said that they would only be prepared to move out of their informal settlements if they were moved into a RDP house. However, generally people are more concerned about equity and they would be prepared to move to a semi serviced plot if they knew that everyone from that settlement was being treated the same. So if some people in the informal settlement get communal toilets and tenure security, people that move to new land should get at least the same.¹

Despite the South African Government providing 3.7 million housing opportunities between 1994 and 2014, the housing backlog for the country still managed to increase from 2.1 million houses to 2.3 million houses over the same period.² If, as a country, we are to seriously address the challenge of addressing the housing needs of these 2.3 million (and growing) households, we cannot continue with similar strategies and programmes that we have been using up to now. We have to try new approaches.

Managed Land Settlement (MLS) is one such new approach where people are allowed to settle on land in an organised manner, with access to at least basic tenure and basic services. Over time, and with support from government and others, using instruments such as the upgrading of informal settlements and other programmes, they can upgrade their neighbourhoods and houses.

The National Government has identified the upgrading of informal settlements as one of its key programmes within Outcome 8 (on Human Settlements) within the Medium Term Strategic Framework (2014-2019). However the Upgrading of Informal Settlements Programme (UISP) is limited in its scope in that it predominantly focuses on the upgrading of settlements only after people have occupied land without the authority of the land owner. What is missing from the set of government programmes is a MLS programme that will pre-empt the need for households to unlawfully occupy land in the first instance.

The MLS approach can be implemented using existing government programmes, like the UISP, which already makes provision for the programme to be implemented on greenfield land in that “the rules of the (UISP) programme will also apply to the development of the relocation areas with the changes relevant to the particular context.”³

2. LEGISLATIVE CALLS FOR MANAGED LAND SETTLEMENT

The call for MLS is embedded in the highest legislative mandates of the country. According to the Bill of Rights:

The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis. (Section 25.5)

¹Atwell Masupa (Community Liaison Officer - Buffalo City Upgrading of Informal Settlement Planning Project, 2014) personal communication with Ronald Eglin

² Sisulu L, 2014, Speech by Minister of Human Settlements LN Sisulu on the occasion of the Budget Vote of the Ministry of Human Settlements, 15 July 2014. National Assembly Chamber, Parliament.

³ section 3.9.C. of the UISP programme in the Housing Code - 2009

“Everyone has the right to have access to adequate housing (and) the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right. (Section 26.1 and 26.2)

When interpreting the Bill of Rights, a court, tribunal or forum must promote the values that underlie an open and democratic society based on human dignity, equality and freedom. (Section 39)

The *Housing Act 107 of 1997* outlines general principles applicable to housing development, where it is stated that:

National, provincial and local spheres of government must—...

d) Encourage and support individuals and communities, including, but not limited to, co-operatives, associations and other bodies which are community-based, in their efforts to fulfil their own housing needs by assisting them in accessing land, services and technical assistance in a way that leads to the transfer of skills to, and empowerment of, the community;...

k) Use public money available for housing development in a manner which stimulates private investment in, and the contributions of individuals to, housing development.

More recently the National Development Plan (2012) makes the following statements:

Municipalities must have clear strategies and allocate budgets to open up well-located, affordable land for new development...

Progressively shifting state support from only providing top structures to investing in public space and public infrastructure. ...

The state should gradually shift its role from a direct housing provider of last resort to a housing facilitator ensuring adequate shelter and greater access to a wider choice of housing options.

Outcome 8 on Human Settlements, from the Medium Term Strategic Framework 2014 – 2019 calls for the state to provide adequate housing and improved living environments where adequate housing includes:

“.....secure tenure, access to basic services and within sustainable settlements.”

Outcome 8 specifically calls for:

“.....750 000 households assisted through the Informal Settlements Upgrading Programme by 2019 (to phase 2)”

More recently, the draft policy document on a ‘coherent and inclusive approach to land’ encourages municipalities to:

“....formulate a specific land policy as part of their integrated plan, showing how vacant and under-utilised land will be developed and managed to achieve wider socio-economic and environmental objectives.”

The draft Human Settlement White Paper being drafted by the national Department of Human Settlements makes the following call:

“...A coherent approach to the acquisition and development of land for human settlements must be adopted. The Department of Human Settlements will use the National Plan for the Development of Human Settlements to chart a horizon of about 10– 15 years to plan for the entire infrastructure required including land.”

This provides an opportunity for Municipalities to include Managed Land Settlement in this coherent and inclusive approach to land.

3. INTRODUCTION TO MANAGED LAND SETTLEMENT

Managed Land Settlement (MLS) is a pro-poor approach to incremental settlement development that emphasises the provision of planned secure land with basic services as a first step towards a longer-term housing and settlement upgrading process.

One of the earliest references to Managed Land Settlement can be traced back to the proposed Accelerated Managed Land Settlement Programme from the Cape Town Metropolitan Council as a response to the Grootboom eviction case.⁴

The Accelerated Managed Land Settlement Programme can therefore be described as the rapid release of land for families in crisis, with the progressive provision of services

The case paved the way for the formation of the Emergency Housing Programme established by the National Government. The concept of Managed Land Settlement was then picked up and promoted by civil society organisations coming together around 2009/10 as part of the LANDfirst network.⁵ Organisations like Afesis-corporation continue to promote the concept and a specific website www.incrementalsettlement.org.za has been created to draw attention to and support more incremental settlement approaches like Managed Land Settlement.

MLS can be contrasted with most existing settlement development programmes of government that focuses on the immediate provision of a complete full house as part of a fully planned and serviced project. MLS is a simple yet revolutionary concept to speed up the process of settlement development, by providing previously disenfranchised South Africans with access to well-located, affordable and secure land for residential and other purposes. At the core of the MLS concept is the desire to find innovative solutions to the growing discontent expressed by thousands of 'informal' settlement and backyard shack dwellers, and other landless people that eke out a living on the periphery of society.⁶

Many homeless people will continue to live for many years in unrecognised and unplanned informal settlements without access to adequate basic services if we exclusively pursue approaches to housing development that emphasise fully packaged houses on serviced plots with individual ownership. There are just not enough (human and financial) resources available in the country to rapidly provide everyone in need with a fully packaged house. MLS provides an additional entry point for the homeless to access land and housing that does not rely on land occupation or waiting for government to provide a fully packaged RDP house.

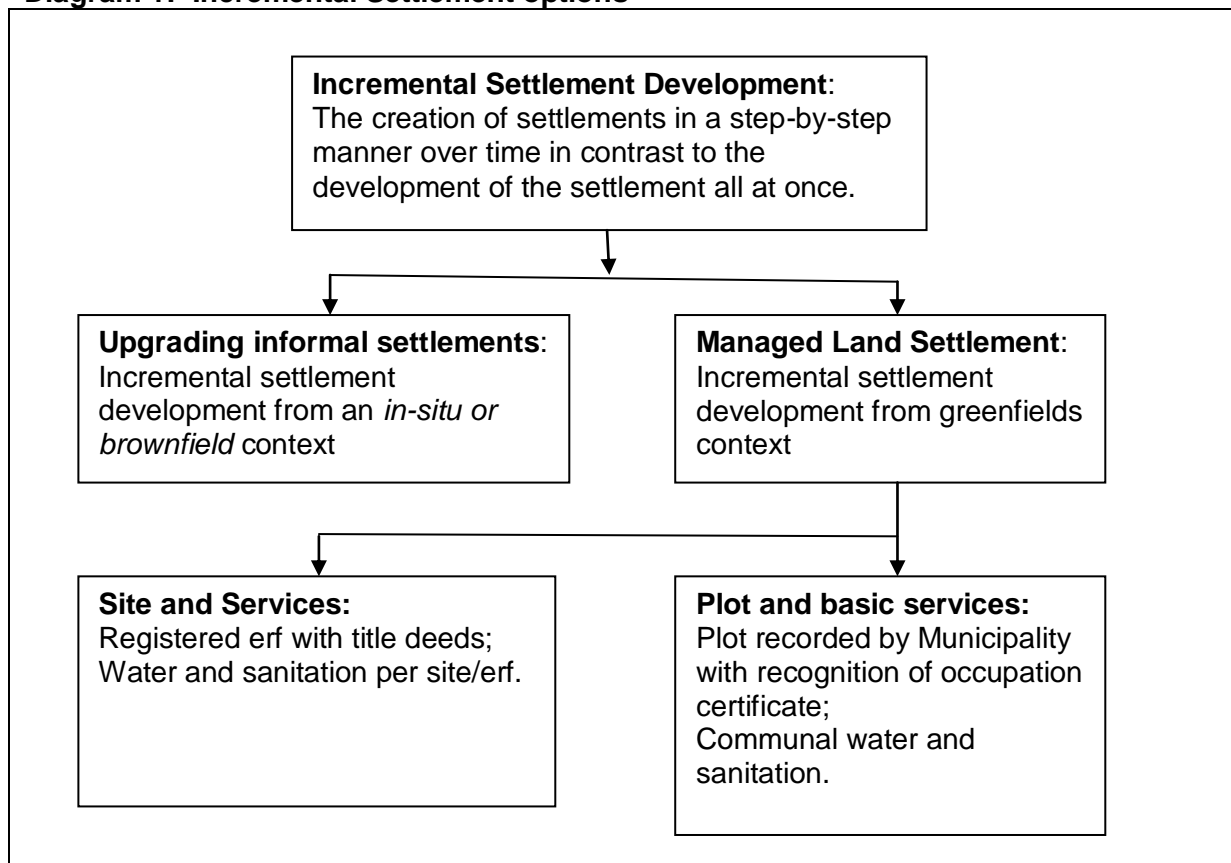
⁴ see <http://www.saflii.org/za/cases/ZACC/2000/19.pdf> and also see NPM Geomatics. 2010. *Towards managed land settlement: a review of 5 South African case studies*. Available online at: http://www.urbanlandmark.org.za/downloads/towards_managed_land_settlement.pdf (18 February 2016)

⁵ see <http://landfirst.org.za/landfirst-charter/>

⁶ Modified from definition of LANDfirst found in article on Understanding LANDfirst (2010) found at: <http://landfirst.org.za/wp-content/uploads/2013/05/Understanding-Landfirst1.pdf>

MLS is one side of the incremental settlement coin, the other side being in-situ upgrading. MLS can be undertaken in a number of ways, two examples are site-and-service (where government provides a surveyed erf with water and sanitation per erf/ site); and plot-and-basic-service (where government provides a planned plot with records kept by the municipality, and communal water and sanitation). See diagram 1 for a summary of these relationships.

Diagram 1: Incremental Settlement options



The term 'settlement' in MLS is used as a verb, referring to the act of building a settlement, as people settle on the land in a managed process: this contrasts with the use of the term 'settlement' as a noun, a place where people have settled, when referring to the concept of upgrading informal settlements.⁷

4. THE MANAGED LAND SETTLEMENT APPROACH

MLS, as an incremental approach to settlement development, follows a phased and step by step approach over time. The following summarises these phases:

Phase 1: Preparing for development

⁷ see Eglin (no date) *Settlement as a verb*, available at: <http://www.afesis.org.za/sustainable-settlements/sustainable-articles/478-settlement-as-a-verb-by-ronald-eglin.html>

- Identify land where Managed Land Settlement can occur, ensuring that this land forms part of a Municipal Integrated Development Plan and Spatial Development Framework.
- Where necessary develop and implement land acquisition and development strategies and plans to secure the rights to develop the identified land.
- Arrange for the necessary bulk infrastructure, such as water and sanitation to be available. Note however, that interim arrangements can be considered (e.g. on site sanitation, in instances where bulk services are not yet ready for full services).
- Establish and manage a land and housing allocation programme ensuring that there is a fair allocation system in place to allocate land to those that require it.
- Develop plans for the provision of at least basic tenure and basic services, which can be implemented in phase 2. Consideration can be given to involving the future potential beneficiaries in situations where the allocation process is conducted prior to people actually moving onto the land.
- Obtain the necessary approvals (environmental, land use, etc.) for the basic development phase.

Phase 2: Basic development

- Provide basic tenure through the provision of, for example, Recognition of Occupation certificates or Permission to Occupy certificates or through some other administrative or legislative mechanisms.⁸
- Install basic primary and secondary services and facilities where:
 - Primary (priority) services include: the provision of communal ablution facilities for clusters of about 25 households; the construction of basic access roads for fire and other emergency services; the construction of basic pedestrian paths and storm water management systems; the provision of communal refuse collection services; and the installation of pre-payment electricity and area lighting; and
 - Secondary services includes (for example): fire hydrants, lockable storage facilities, traffic calming furniture, communal post boxes, notice boards and signage, child play areas, multi-purpose community halls, fencing, and other services and facilities as determined by the community.

Phase 3: Development support

- Support households to build or organise the building of their own houses by providing training in how to build or organise the building of one's own house, providing examples of house plans, information of where to access building material and builders, advice in establishment of bulk buying schemes, support in organising or accessing local savings and loan schemes, etc.
- Support businesses to start or expand by providing training in how to run a business or providing appropriate skills related to the type of business (e.g. plumbing, sewing, marketing, etc.), providing access to cheap loans, and developing locations from where businesses can be run at cheap rates, etc.
- Support social groups such as children (by supporting early childhood development groups), the youth (by providing recreational facilities and after school youth development programmes), the aged, the infirm and people with disabilities (through home based care programmes and improving the accessibility of various government services), women's groups (through targeted training and mentorship programmes), neighbourhood residents (through support to safety and security patrols), orphans

⁸ see Urban LandMark (2010) *Incrementally securing tenure: an approach for informal settlement upgrading in South Africa*, available at: <http://www.urbanlandmark.org.za/research/x31.php>

(through orphan support programmes), cultural groups like choirs, art clubs etc. (through training and access to space and equipment for them to undertake their activities) and many other sectors and activities as identified.

- Support community leadership through, for example, provision of leadership and organisation training, the provision of mediation and conflict resolution services, and space from which to conduct meetings.

Phase 4: Consolidation

- Upgrade tenure from basic tenure to 'full' tenure, which would normally be individual title deeds, but could also include rental, communal property association or cooperative ownership amongst others.
- Upgrade services and facilities from: communal ablution facilities to water and sanitation per house; basic access roads and paths to internal surfaced road and storm water; basic 'roof on poles' community halls to fully equipped multi-purpose halls; basic play areas to fully equipped multi-purpose recreation centres.
- Upgrade top structures from self-built interim shelter to subsidised and approved formal dwellings.

Phase 5: On-going development

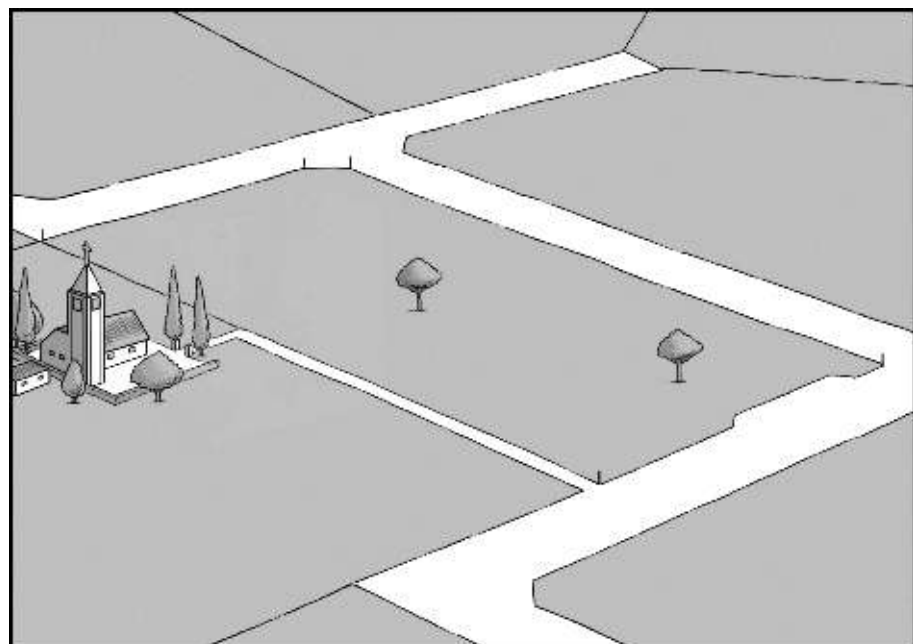
- Households will continue to use their own resources to maintain and improve their own houses.
- Government will use its rates and service income as well as other grants and loans from national government to maintain and improve the neighbourhood (e.g. fixing pot-holes, maintaining electrical distribution systems, etc.)
- Government and other stakeholders will, throughout the whole upgrading process, conduct research so as to learn from past experiences and improve future actions, and share these lessons with other communities and role-players.

These 5 phases are graphically depicted in diagram 2 below.

Diagram 2: Managed land Settlement Phases

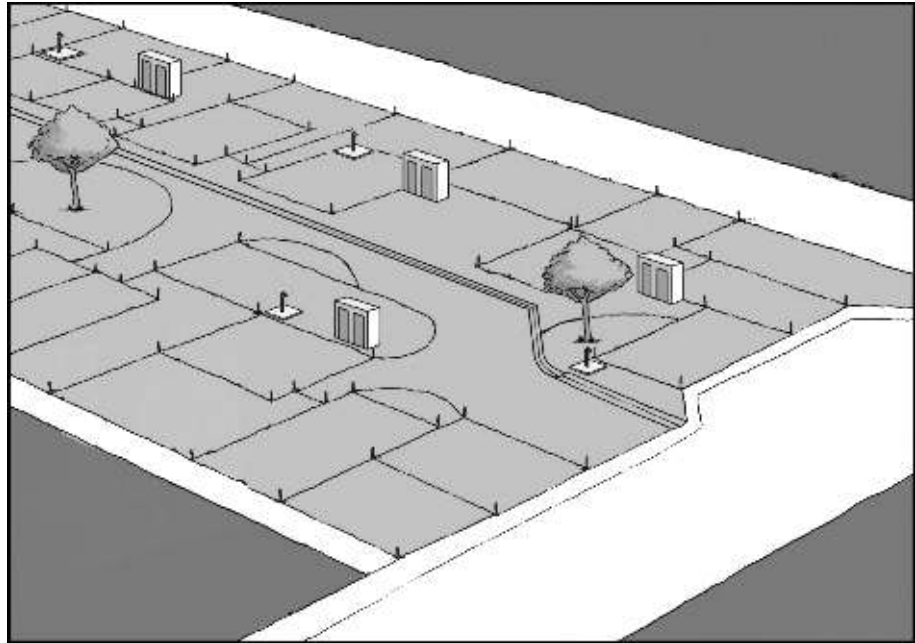
Phase 1: Preparing for development

State and communities identify, obtain and prepare land on which incremental settlement can occur.



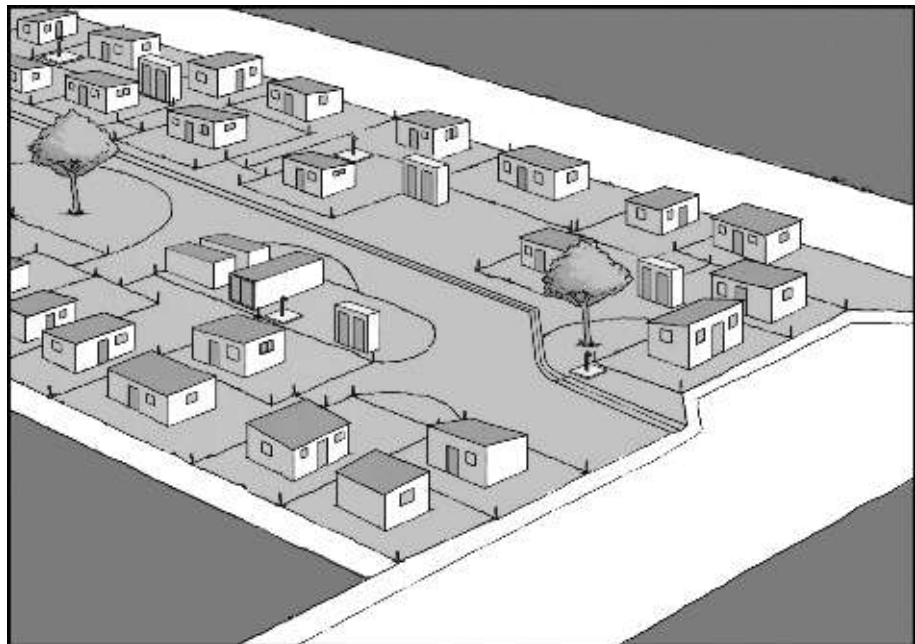
Phase 2: Basic development

State and/or communities provide a basic level of services and tenure security so that households can start to build houses for themselves.



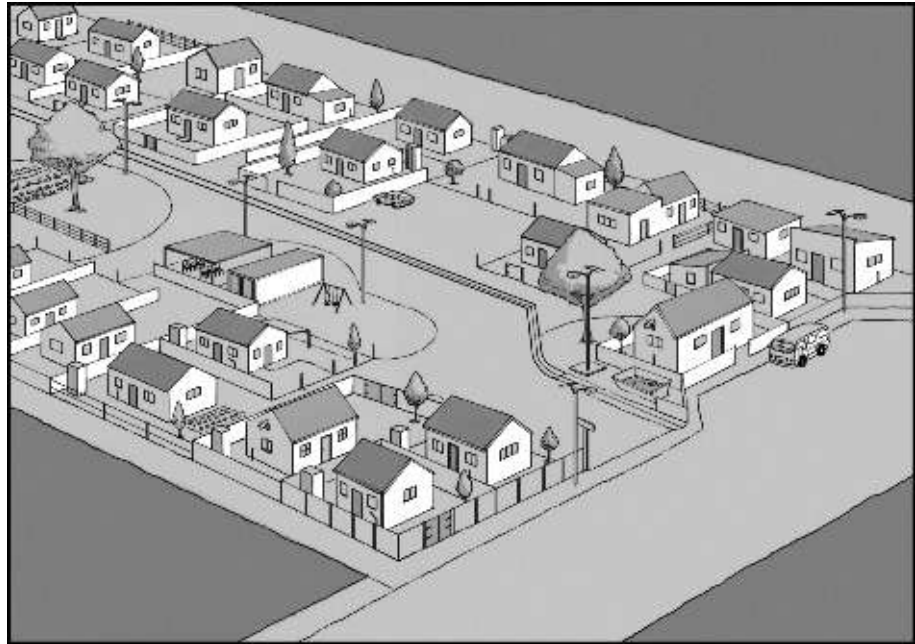
Phase 3: Development support

Households start to build their own houses using their own resources and whatever support they can get from government and others.



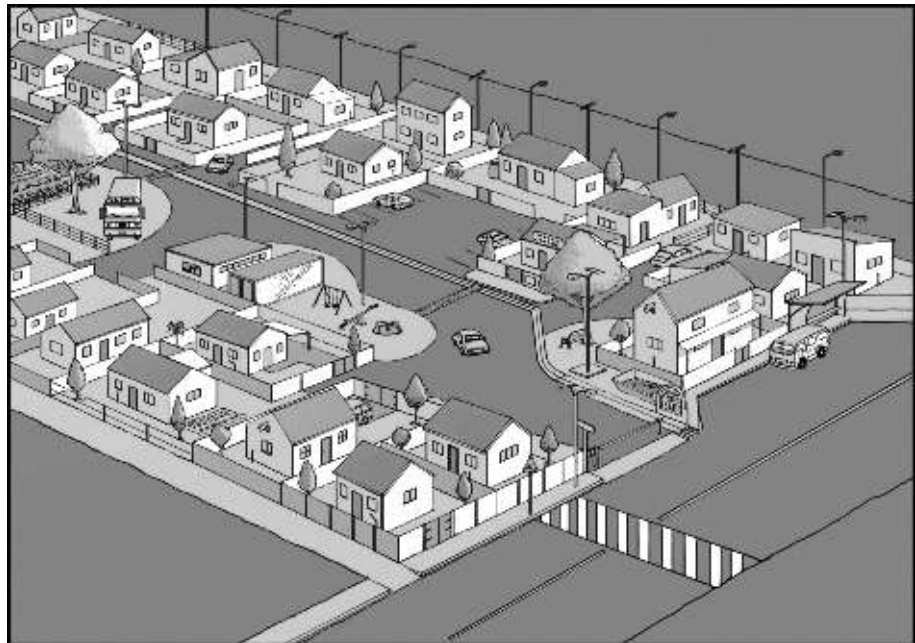
Phase 4: Consolidation

State and others help households to upgrade their tenure security, level of services and houses.



Phase 5: On-going development

Households, communities and the state continue to maintain and improve their houses and neighbourhoods.



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5. EXPERIENCE WITH MLS

The Managed Land Settlement approach is not new. Research commissioned by Afesis-corporan and Urban LandMark (NPM Geomatics 2010)⁹ looked at five examples where MLS-like approaches had been conducted in the past.

⁹ see <http://www.urbanlandmark.org.za/research/x47.php> (accessed 2 February 2016)

- The Incremental Housing Cluster, implemented by the Gauteng Department of Housing from 1994 to about 2003, involved 3 programmes: *“the Mayibuye Programme, which aimed to release serviced sites for settlement purposes; the Essential Services Programme, which provided upgraded services to Mayibuye sites, and in some instances also provided top structures; and the People's Housing Process which was intended as the programme through which top structures would be provided to beneficiaries of the Mayibuye Programme.”*
- The 4-Peg Policy was implemented by the Port Elizabeth Municipality, also over a period of approximately 9 years from the early 1990's. As part of the 4-Peg policy, people were quickly settled onto sites with very rudimentary services while waiting for the full township establishment and servicing processes to be finalised.
- The Accelerated Managed Land Settlement Programme was implemented by the Cape Town Metropolitan Municipality from about 1999 to 2005. *“This programme was a response to Emergency Housing needs within the Cape Metro area. The programme used Regional Services Council levies as bridging finance for the provision of land and basic services, that were repaid once housing subsidies were obtained from the provincial Department of Housing.”*
- The Bardale Housing Project undertaken by the City of Cape Town from 2007 and still on-going (as of 2010). *“Although this project is a one-off project, and not a programme like the other four case studies ... it uses the existing financial mechanisms of the Emergency Housing Programme and the Upgrading of Informal Settlements Programme to implement an incremental solution to emergency housing and informal settlement upgrades in Cape Town.”* (ibid: 70)
- The Rural Housing Policy, as it was being implemented in the Eastern Cape in 2010, provided a wide range of options for the use of the subsidy, although the implementation thereof is often very similar to that of any other housing subsidy (ibid: 49).

The site and service approach adopted by the Independent Development Trust (IDT) in the early 1990s can also be seen to be in line with this incremental approach. In the site-and-service approach, as implemented by the IDT (and others), the provision of the serviced site has often been viewed as the start and end of the project. Incremental Settlement approaches on the other hand see the provision of the basic product (i.e. a (basic) serviced site) as just the start of a longer term incremental consolidation, upgrading and development approach. Another difference between site-and-service type approaches as adopted by the IDT and MLS is that in MLS people are assisted to build their own houses through aided self build. State departments can also later upgrade services, tenure and dwellings.

Many of these above mentioned MLS-like projects were discontinued as a result of changes in the legislation (such as when new environmental legislation made environmental authorisation mandatory for new settlements projects); changes in funding channels (such as when the regional services council levy was discontinued in the Western Cape); and changes in key officials (as found when key officials in the Mayibuye programme were moved to other directorates).¹⁰

The main reason however for the relatively short lifespan of these MLS-type projects was the lack of political will to pursue such incremental approaches at the time. At the time

¹⁰ see Eglin R, 2014, *Managed Land Settlement: An Incremental Approach to Human Settlements*, found in SACN, From Housing to Human Settlements, South African Cities Network. available at: http://sacitiesnetwork.co.za/wp-content/uploads/2014/09/1968_SACN_From_Housing_to_Human_Settlements_Web.pdf

government's emphasis was on rolling out fully packaged (i.e. completed top structures with access to water and sanitation per site and full title deeds) Reconstruction and Development Programme (or what has become known as RDP) houses. It was difficult at the time for advocates of these approaches to 'sell' more incremental approaches to politicians, bureaucrats and communities.

The political climate has changed since the 1990's and 2000's and it is now possible that there is a more receptive audience that may be willing to relook and reconsider such incremental approaches.

6. MLS AND EXISTING HOUSING PROGRAMMES

MLS is not only similar to site and service (as explained above), it also has many similarities with the upgrading of informal settlements, emergency housing, and temporary relocation areas (TRA).

- MLS is like the Upgrading of Informal Settlements programme (UISP), except that it starts on greenfield land rather than on land that has already been occupied. MLS is like site and service, except that the tenure provided for the site can be "less" than title deeds, and the service can be "less" than water and toilets per site. For example:
 - The site can be shown, within a surveyed outer boundary of the neighbourhood, as a plot on a scaled map kept by the Municipality that is not registered in the Deeds Office; and
 - The service can be communal toilets and communal water standpipes.
- MLS is like emergency housing, except that these areas are not just developed for people affected by emergencies (like fires and floods) but MLS areas are made available for anyone who needs accommodation. Landlessness and homelessness is seen as a form of emergency.
- MLS is like temporary relocation areas, except that the land where people are relocated to is planned for a permanent settlement, people are allowed to stay in these areas on a permanent (not temporary) basis. However, the top structures that people build can be temporary, allowing them to be upgraded over time.

In other words MLS is not new, it is merely a re-interpretation of many of the existing government housing programmes.

7. ADVANTAGES OF MLS

The following list summarises the advantages of following a MLS approach compared to a conventional RDP housing type approach, which provides a full package with registered title deeds, services per house and a complete top structure.

- Government is not building enough houses to address the housing backlog within a timeframe that satisfies the needs of the homeless. MLS allows government to reach more households over a shorter period of time and provide them with access to a secure piece of land and to a basic level of service.
- Many homeless people are becoming frustrated that it is taking so long for government to build them a house and are sometimes resorting to violent protests and the unauthorised occupation of land. MLS provides an alternative to this frustration.
- Many homeless people are making statements along the lines of: *"just give us a piece of land now, we will then be able to start building our own houses on this land and*

government can come back later with housing subsidies". MLS provides homeless people with this opportunity

- Government can stop people occupying land by directing them to pieces of land set aside for MLS as an alternative.
- When evicting people from land and houses, government can provide alternative accommodation by moving them to MLS pieces of land.
- When government plans land in advance of need, this makes it much easier for government to upgrade these areas in future as the layout has been planned for roads, storm water, water and sewerage pipes etc. and is not 'haphazardly' occupied as occurs in many informal settlements.
- Government is considering (as expressed in pre-drafts of its new White Paper on Human Settlements) reprioritising top structures for the elderly and the destitute and MLS then provides an opportunity for government to at least find ways to help the youth and other households to help themselves to get housing.
- When people talk about incremental housing, they almost always only consider and refer to the *in-situ* upgrading of informal settlements. MLS gives government an additional incremental option that complements the upgrading of informal settlements.
- When people think of housing development in a greenfield context, they almost always think of just building RDP houses on this new land. MLS provides government with an alternative option for how to provide incremental settlement on this land.
- With MLS, government can start to keep a record of who is living in their municipality. This then makes it easier for government to plan for these people's needs in future as they have proper records.
- With MLS, even people who may not qualify for a top structure subsidy can at least get a piece of land with basic tenure and basic services (this includes, for example, single people or people who have received a subsidy before, or who have sold their house and now find themselves in poverty again). Housing subsidies can then be provided in future, following proper waiting list process, to those who qualify.

8. CRITIQUE OF MLS AND COUNTER RESPONSES

MLS has been criticized on a number of grounds.¹¹ The following section lists these criticisms and provides a counter response to each.

a) You can't move a person from one shack to another.

People who get a plot in a MLS project have tenure security. They are able to start to improve their own houses using their own resources. Further, many of the people who will benefit from MLS are coming from rural areas, overcrowded houses, back yard shacks. They do not all come from existing shack areas.

b) MLS areas will just become slums that we want to get rid of; we don't want to create new slums.

The purpose of the MLS, like the UISP, is to incrementally upgrade and improve these areas over time. Government support can come later to help improve both the houses and the broader neighbourhood. With limited financial and human resources, Government is able to address the needs of more people if it spends less money on each household by providing them with basic services first. This fits with the

¹¹ This criticism has been noted by Afesis-corplan in its research and presentations it has given on MLS over the last few years.

government's constitutional commitment to progressively address the needs of citizens within available resources.

MLS areas are not informal settlements. The location of MLS areas would have been identified through the SDF planning process, and the necessary land use change and environmental, etc. approvals would have been obtained prior to people occupying these areas. The people occupying the land have tenure security through either some form of lease agreement or occupation certificate. Households also have access to basic services. Households do not have access to a state built shelter, but they do have access to 1) housing and development support services of Government in the MLS settlement area (including for example bulk buying schemes, information and tool libraries, micro savings and loan services, etc.), and 2) commitment from Government that they will be considered for top structure subsidies if they qualify for such support (e.g. if they are over a certain aged or are categorised as destitute through some other criteria). They can also access resources for housing development from employers and others.

- c) *It creates 'ghettoes' or areas that are perceived as being just for low income households.*

This critique also needs to be considered in conjunction with the alternative of not providing incremental settlement areas, and then finding that people occupy land without authorisation as they have nowhere else to live. At least within a MLS context it is much easier to upgrade the area over time.

MLS projects should preferably be kept to a small size so they can be integrated within the broader urban fabric. In this way such areas do not become large 'ghettoes' where large numbers of 'poor' people live but are rather seen as just one part of a broader neighbourhood that includes other forms of housing and income groups.

- d) *It will be hard to stop more people 'invading' these areas and turning them into bigger slums.*

This is also a challenge for areas where informal settlements are being upgraded *in-situ*. It is up to the Municipality to develop and put in place mechanisms that prevent MLS areas (just like informal settlements that are being upgraded) from expanding and becoming worse slums. This involves introducing appropriate land tenure administration systems and land use and building control rules that accommodate and manage incremental settlement development. If sufficient land is set aside for MLS areas across the whole Municipal area, households will not have to resort to continuing to 'occupy' these areas.

- e) *If you give people a MLS plot, how can you guarantee that government will come back and build houses.*

Government is able, as part of its medium to long term budgeting efforts, to plan how it will be spending money in MLS sites as part of a longer term upgrading programme. Communities can hold government to account for these commitments.

- f) *MLS encourages urban sprawl and we need to increase not decrease densities.*

This is a valid concern. MLS needs to be implemented as part of a broader package of interventions that includes Social Housing and Community Residential Unit housing programmes, for example, which provide for higher density accommodation. Government needs to implement pilot projects looking at how incremental approaches can be supported in higher density contexts, by for example, providing fire walls as part

of the basic service provision, and providing additional funds for community facilities and community spaces in high density areas. Areas that are developed as MLS sites now can become well located areas in future. In future lower density MLS sites can be sub divided into two or more smaller plots. Entrepreneurial rental options (along the lines of more organised backyard shacks) can be supported on MLS sites.

- g) *There will always be people who need land: when do you stop just giving people land? You can't just keep on giving people land. People from other areas will all come to the Municipality to get 'free' land.*

Government has a constitutional obligation to ensure everyone has land and adequate housing. Government can therefore stop giving people land and houses when they have satisfied this obligation and everyone has adequate housing. If the MLS approach is adopted in all Municipalities, people will be able to get land where they need it and not migrate to other areas. Occupants can, for example, be required to enter into lease agreements (even at very low rates) for the land for a year or two, and only after this period lapses could they be issued with Occupation Certificates of some sort, and be allowed to consider converting to individual ownership.

- h) *There is not enough appropriately located land for everyone.*

If government plans properly through the development of credible Spatial Development Framework (SDF) plans, they can buy land and expropriate it if necessary. These plans must include proper public transport arrangements for any new land development, so people located in these areas are able to access opportunities in other parts of the Municipality.

- i) *It will cost too much for Government to give everyone land.*

Yes, a lot more land will be needed in the short to medium term to provide more people with MLS sites. This 'sudden' increased demand for land will put pressure on land prices and cause it to rise. Private land owners, when seeing that government has plans to buy their land for MLS, will increase the price of their land. Government will most likely need to expropriate this land, based on requiring the land in the public interest (i.e. as part of the land redistribution programme), at its existing land use price and not anticipated future land use price. Government will need to develop credible SDF's to be able to identify and motivate for the expropriation of appropriate land.

- j) *How does Government know where to provide new MLS projects if people are moving around all the time to areas where jobs and other opportunities are? Won't some MLS sites become vacant when people move thereby wasting the money invested in these sites?*

It will be a challenge for Government to ensure that MLS areas are located where people need them. This is a challenge for all forms of housing subsidy provision and is not a unique challenge for MLS. At least with the provision of land for MLS development, Government invests less of its own funds up-front into the new MLS development compared to developing RDP houses (that could land up empty if people do not want to live in that area).

- k) *Why do we need MLS if we already have site-and-service?*

MLS can be implemented as part of a conventional site-and-service projects, but MLS can also be an alternative form of incremental settlement (as explained elsewhere in this report) where the site can be a plot recorded on a plan approved by the Municipality and

not registered with the surveyor general and the deeds office, and the services can be communal services rather than water and sanitation per site. MLS allows, within available limited resources, more people to be provided with access to tenure security and basic services. The tenure and services can be upgraded as part of an organised upgrading and consolidation process.

l) Why do we need MLS if we already have UISP?

MLS is similar to the upgrading of informal settlements, except that upgrading starts before people occupy the land rather than after they have occupied the land. MLS provides a proactive form of incremental settlement, pre-empting the need for people to occupy land without authorisation.

In summary, it is argued in this report that much of the criticism of MLS can be countered, and while some of the criticism is valid (such as MLS promoting urban sprawl), this criticism can be mitigated as suggested in the counter responses above. However, even if one is not swayed by some of the counter responses to some of the criticism, it is hoped that one will still feel that the advantages of MLS far out way the criticisms or disadvantages.

9. RECOMMENDATIONS FOR PROMOTING AND SUPPORTING MANAGED LAND SETTLEMENT

The following provides an overview of the type of activities that Government and others need to implement in order to promote and support MLS.

1. Incremental settlement development

The National Department of Human Settlement (DHS) needs to incorporate the concept of managed land settlement, as one side of the incremental settlement coin (along with in-situ upgrading of informal settlements) into new national government policy positions, including but not limited to:

- The Human Settlement White Paper
- Coherent and inclusive approach to land
- Land acquisition and development strategy

2. Planning and land use management

The National DHS, working with the Department of Rural Development and Land Reform (DRDLR), as well as the National Department of Cooperative Government and Traditional Affairs (CoGTA), needs to include in relevant spatial planning and land use management legislation, and other relevant development planning legislation, the requirement that Municipalities must develop land acquisition and settlement strategies, that must include statements about what proactive strategies, such as MLS, the Municipality will be adopting to pre-empt the need for land occupation.

Municipalities, with the support of National and/or Provincial offices of DHS's, CoGTA, and RDLR, needs to identify Incremental settlement areas, within their Spatial Development Framework plans, where they will (1) accommodate more incremental settlement approaches; and (2) develop appropriate land use management 'zoning' categories and functions that make provision for more incremental settlement development approaches.

3. Land acquisition and development

The National DHS (with its Land Acquisition for Sustainable Settlements programme), the Housing Development Agency (HDA), the DRDLR, and the CoGTA should establish an interdepartmental committee dealing with land acquisition and development. In consultation with non-governmental organisations, the committee should review existing procedures and mechanisms for accessing well located large (and smaller) project scale portions of public and private land that can be made available to MLS and other types of settlement development projects.

The National DHS, within its national land acquisition and development strategy, needs to outline and unpack how Municipalities could implement land acquisition mechanisms like land banking, land swaps (where government swaps well located private land with less well located government land) and land readjustment (where developers enter into agreements with land owners to develop the land and give a portion of the developed land back to land owners to keep or sell).

4. Land tenure and land records system

The National DRDLR, working with the National DHS and the National COGTA, needs to consider the development of legislation making it possible for Municipalities (and other identified government structures) to issue, maintain and update land records as part of a nationally coordinated land records system. This system needs to provide a parallel land recording system to the official general plan and deeds registration systems, while providing clear procedures for shifting information from one system to the other. This land records system can record the land rights of people living in incremental settlement areas (that started as *in-situ* and greenfield) as well as in communal areas.¹²

5. Land allocation

The National DHS needs to review and modify its land and housing subsidy allocation procedures

Municipalities also need to develop or modify their land and housing allocation policies and programmes so as to make provision for the allocation of land for MLS projects, where such allocation is independent of allocation of housing subsidies for top structures and title deeds.

6. Implement and pilot MLS

Municipalities need to plan and develop MLS projects on land that has been identified and set aside for such purposes as part of the land acquisition and development policy and strategy, that forms part of the municipalities SDF. This includes, for example:

- Acquiring the land or at least entering into land availability agreements with the existing land owners, explaining how settlement development will be conducted on the identified land
- Obtaining the necessary planning related approvals, including land use approval, and environmental authorisation
- Providing some form of tenure recognition such as a lease agreement or a pre-payment electricity meter connection. Once the national land records system is in place (as outlined in recommendation 4 above), this should provide an important form of tenure recognition.

¹² This recommendation is based on unpublished research (as of February 2016) undertaken by Afesis-corplan for the HDA on Land Administration on Communal Land.

- Install basic services.

National and Provincial government should establish a pilot programme to explore how MLS can be implemented within the existing subsidy mechanisms, like the Upgrading of Informal Settlement Programme and the Emergency Housing Programme, and determine if there is a need for a new Managed Land Settlement programme.

7. Housing and development support

Municipalities, with the support of Provincial human settlement departments, need to develop their capacity to provide housing and development support services to households living in incremental settlement areas. Consideration needs to be given to how these services can be decentralised down to identified incremental settlement areas, though for example, establishment of reception or development support centres.

Micro-finance institutions should be lobbied to explore ways in which they could provide saving and loan products that allow people to purchase land, provide tenure security, install basic services and incrementally build houses. The land and housing subsidy can come later. The housing micro-finance sector presently focuses on the provision of home improvement loans and not on land access and incremental housing development loans.

8. Organisational development

Communities need to organise themselves into groups and organisations so that they can negotiate with local authorities and land owners to get land as a first step to incremental settlement development. Communities need to look at the possibility of using their own resources to purchase land, with government subsidies for land purchase (and engineering services and house construction) coming later when available.

9. Monitoring, evaluation and learning

The National DHS, working closely with Provincial and DHS, needs to monitor and review the experience with implementing MLS projects, and share lessons learnt with other Municipalities and Provinces, so they can improve implementation of further incremental settlement projects and improve policy and legislation.

10. CONCLUSION

In conclusion, the National DHS (as well as other government departments) needs to recognise and call for Managed Land Settlement alongside the upgrading of informal settlements, as a form of incremental settlement development within the future human settlement policy (White Paper). Within the concept of MLS, various sub sets of MLS are found ranging from site-and-service to plot-and-basic-services.

Municipalities need to develop land acquisition and development strategies and programmes that include the acquisition of land for MLS development.

National Government, Provincial Government, and Municipalities need to set targets for MLS so that progress can be monitored in terms of how many households gain access to land within MLS areas.

11. APPENDIXES

The following set of appendixes are provided so as to give readers a sense of what MLS can look like in practice.

1. A case study: Hyderabad Incremental Development Scheme in Pakistan
2. A MLS story – From a reactive to a proactive approach to dealing with land invasion
3. A MLS story: from #GiveUsLandNow to #FixOurPotholes

The first appendix is a real case study, while the remaining two appendixes are more hypothetical.

11.1. Appendix 1: A Case Study - Hyderabad Incremental Development Scheme in Pakistan

The Hyderabad Incremental Development Scheme in Pakistan¹³ is a successful example of a government project that was able to provide access to land for poor households almost as quickly and cheaply as an informal settlement. The key to the project's success was that administration and allocation procedures were very simple and rapid: households applied for a plot by submitting a photocopy of their ID card, and they were allocated a plot within 12 days. A reception area was set up in the scheme where households could put up a temporary shelter or rent a room while they waited for their application for a plot to be processed.

Beneficiaries were required to complete construction of a house immediately (no building standards were applied in the project). This was a major difference from previous projects, where there had been periods of up to a year for beneficiaries to build a house on their plots, which had often resulted in plots being allocated to people who never occupied them. The legal transfer of tenure did not take place immediately (there were instalment sale agreements, which involved people having to pay a certain number of low monthly instalments before becoming the owner of the plot). In this way, the Hyderabad Development Authority had a way of cancelling the allocation to beneficiaries who left the project (beneficiaries leaving the project could be refunded for a proportion of the money they had paid for the plot).

The Hyderabad Incremental Development Scheme was successful in a number of ways: it was able to reach the poorest 10% of the population; the usual long delay in implementing projects was eliminated because households were immediately allocated plots (which were then subsequently upgraded while the household was living there) and the continuous supply of plots ensured that there was never a shortage of land in the area.

¹³ Urban LandMark, 2008, *Access to urban land: handbook for community organisers*, pg 2

<http://www.urbanlandmark.org.za/downloads/AccessHandbook.pdf>

United Nations Centre for Human Settlements (1991): *The Incremental Development Scheme: A Case Study of Khuda-Ki-Basti in Hyderabad, Pakistan*. Nairobi: UNCHS.

And see *Khuda-ki-Basti Incremental Development Scheme Hyderabad, Pakistan*, available at:

http://www.akdn.org/architecture/pdf/0987_Pak.pdf

Also see: [https://en.wikipedia.org/wiki/Khuda_Ki_Basti_\(Karachi\)](https://en.wikipedia.org/wiki/Khuda_Ki_Basti_(Karachi)) for more information

11.2. Appendix 2: A MLS story – From a reactive to a proactive approach to dealing with land invasion

(This story contrasts an RDP approach with a MLS approach, and assumes that MLS approaches have been adopted by government).

In the past, many people used to wait for government to build houses for them. Government could only build a few houses at a time, as the money available was not enough to build everyone a house over a short period of time. Those people that were at the back of the allocation queue, or who did not know where on the queue they were, were more likely to take matters into their own hands and occupy land without authorisation. In some instances the land owner tried to evict these unauthorised occupiers but did not always follow the correct procedures for meaningfully engaging or providing alternative accommodation as part of the eviction process. In many instances the Municipality and Government ‘turned a blind eye’ to this occupation or only started to respond once households had settled on this land. The Municipality was overwhelmed with these informal settlements and initially tried to build its way out of the problem by building new RDP houses on new land for all these informal settlement dwellers, but this proved to take far too long and the number of informal settlements continued to grow. An attempt was also made to upgrade these areas *in-situ*, but this also proved challenging as it was difficult, in many instances, to retrospectively insert erven (with title deeds), engineering services and top structures into these informal settlements.

With the adoption by government of more Managed Land Settlement (MLS) approaches, as a significant component of a comprehensive approach to dealing with unauthorised land occupation, people now don’t have to wait for government to build them houses. Government, through its SDF planning process and its land acquisition and development strategy, is ready for people who need land for housing. With available money, government prioritises the planning and acquisition of land and the installation of basic services (like communal standpipes and ablution blocs) and the administration of a basic land tenure recording system. Municipalities have various MLS areas across the Municipality where people who need land and housing can go and be allocated a plot. They can start to build their own houses on this land. If the top structure is a temporary or interim structure built with timber or zinc or other interim or temporary building material, they do not have to submit building plans. However, if they do start to build more permanent structures they do have to submit building plans and conform to building regulations. In the very few instances where people still resort to the unauthorised occupation of land there are very clear procedures for the land owner and government to follow to lawfully evict this people after meaningfully engaging them and providing them with suitable alternative accommodation. In many instances government is able to redirect them to MLS areas where they are able to obtain a secure piece of land with basic services.

11.3. Appendix 3: A MLS story - from #GiveUsLandNow to #FixOurPotholes.

My name is Ms. Situli,¹⁴ I'm the mayor of Pakamisa Municipality. When this story started about 10 years ago, I was an inexperienced Councillor sitting on the Development Planning Portfolio Committee. This is the story of how our Municipality used the Managed Land Settlement approach, or MLS for short, to make serious inroads into addressing the housing challenges we faced.

The challenge

We used to have a big problem with land invasions and informal settlements. We thought we were doing well by building about 1000 houses a year, but we soon realised that if we continued at this rate, it would take more than 50 years to just address the backlog.

National Government at the time was talking about upgrading informal settlements. I remember attending a workshop organised by a local NGO and heard one of the participants from one of the informal settlements say during question time that if government just gave her a piece of land with basic services she would at least be able to start to build her own house. The NGO called this approach Managed Land Settlement or MLS. That was an 'a-ha' moment for me and opened my eyes to the possibility of using other approaches like MLS and not just RDP houses or informal settlement upgrading, to address the land and housing needs of our communities.

Not long after that the #GiveUsLandNow movement started, where landless people started marches and protests calling for government to give them land to build houses. I was very worried at the time as to how we would respond to this. This pressure from below combined with the new thinking coming from National Government in support of more incremental approaches made it easy for our Municipality to be an early adaptor of the Managed Land Settlement approach.

Our solution

In the first few years, using the MLS approach, we reduced the number of houses we built each year from 1000 a year to just 200. But at the same time we started to develop plots with access to basic services. We needed about 8 times less money to build a plot with basic services compared to building fully packaged RDP house on a fully serviced site. So now instead of finding land to build 1000 houses a year we needed to find land to build the 200 houses plus an additional 6 400 plots with basic services a year. This meant that we needed to find land for many more plots than we would have had to find to just build houses.

Spatial planning

This put pressure on our planning and land administration departments. We had to motivate from treasury for more money to increase the capacity of our land administration department.

We reviewed our Spatial Development Framework or SDF based on this new thinking and developed a land acquisition and development strategy. This helped us create a pipeline of land development projects.

¹⁴ This is a fictional story.

We then knew where we wanted to see the city growing. We identified three large areas as incremental settlement areas, in the east, west and north of the city. People who need land can choose which of these areas they want to move to. There was some criticism that these areas were far from job opportunities, but we have found that with good planning, today's periphery can become tomorrow's well located settlement. We have made sure that these areas are well served by the city's expanded public transport system. Within these development areas we are also making sure there is land set aside for social housing, middle income housing, schools, industrial areas etc.

We also adopted an infill programme, where we identified strategic portions of land within the city where MLS projects could be developed. This was harder to do as in many instances there were NIMBY¹⁵ protesters.

Bulk services

The SDF and land acquisition strategy we developed, that incorporated this new MLS thinking, gave our engineers warning as to where future bulk water and sanitation upgrading would be needed. In some places, the bulk infrastructure took time to get into these new areas but we were able to arrange ventilated improved pit latrine ablution blocks that are similar to those that are used in rural schools to be used as neighbourhood communal ablution blocks while those areas waited for full sewerage treatment works to be developed.

Land Acquisition

We initially tried to focus the development of MLS projects on land that was owned by Government, but many of these areas did not fit in with the SDF and development corridors we were trying to promote. Much of the land in these incremental settlement expansion areas was privately owned land.

We knew from previous experience in trying to get private land for low cost housing that land owners who knew that they were in the path of future expansion, tried to push up their land prices. We tried to negotiate with many of them to buy the land we needed, but were unable to reach what we felt was a fair price. In the end we used expropriation legislation to expropriate some of these pieces of land. In this way the compensation amount paid was calculated on present land use prices (e.g. at the price of comparable agricultural land in that area, as opposed to anticipated future price as residential land). Land owners soon realised they could not get away with inflating land prices and we did not have to use expropriation much after that. Over the last few years we have been experimenting with land swaps and land consolidation and readjustment projects and other mechanisms to get and develop the land we need.

Land allocation

One of the biggest challenges we faced in setting up and implementing MLS was putting in place a procedure for allocating plots to households. Lots of people needed and wanted land. The existing housing allocation system in use by the Municipality at the time was not working properly and the community had lost confidence in the ability of the municipality to allocate land and houses fairly. We had to design a new allocation system from scratch.

We first spent a lot of time work-shopping and agreeing on the allocation policy for MLS. Once this was approved we put out an advert asking people to come forward and register their names by a specific date on a new housing data base or waiting list. We made it clear that they needed to do this even if they had already put their name down for consideration in

¹⁵ NIMBY = Not in My Backyard

any previous housing project. After this date we broke the list of people who had registered into categories such as people from informal settlements, people from backyard shacks, the aged, and people with disability. We then had a public meeting where we did a 'raffle' to determine who would be allocated land (within each of these categories) in the first few phases of the MLS programme.

6000 people put their names down by the deadline. By this time we had got land ready for only 1000 people, and in the next 2 years we were able to allocate land to the remaining 5000 households.

During this time we had continued to update the waiting list. We put out more adverts explaining how future rounds of allocation would work from year 4 onwards. We also worked hard to get more land ready through our land and settlement development pipeline. Since year four we have had at least two land allocation events a year to raffle land for people on the waiting lists.

Over the last few years we have now introduced the housing club concept. Housing clubs are small groups of about 20 to 30 people that come together to help each other get land and housing. The idea is that housing club members should be people that come from the same area so that it's easy for them to meet and organise while they are waiting to be allocated land. About half the plots in new MLS areas were allocated to housing clubs and the other plots were allocated to people on the individual land allocation list. We have expanded the housing club approach as we find it much easier to work with these clubs rather than with individuals. Now 75% of new plots are allocated to housing clubs.

Land tenure

In these MLS areas a person gets allocated to a plot not an erf. An erf is what is registered in the deeds registry and is linked to title deeds. A plot is a piece of land shown on map that we keep at the municipality; and is also marked on the ground by our land management technicians.

For the first 6 months after people move onto the land we enter into a formal lease agreement with the occupant allowing them to stay on this plot. This is so that we can make sure that the household really wants to stay on that land and is not taking a chance to just get a free piece of land they can rent or sell. If they move somewhere else in this period the lease is cancelled and a new person from the list is allocated to the plot. The household must take away or give to us any material they have used to house themselves.

After 6 months we give people what we call an Occupation and Use Right or OUR certificate (like the old permission to occupy certificates found in communal areas). These certificates can be traded and sold. Once a person gets an OUR certificate they can trade their OUR certificates with other people. In this way, if they move the incoming person can pay them for any improvements they have made on the land.

Those that qualify for housing subsidies can use their subsidy to convert their plot to an erf and change their OUR certificate to title deeds. Those that don't qualify for a subsidy have to use their own money if they want to convert the plot into an erf and build top structures.

Services

For about every 20 plots we also initially provide a communal ablution block with male and female toilets, water and showers, as well as public lighting and security fencing.

As a Municipality we collaborated with the National Department of Cooperative Governance and Traditional Affairs, to construct these communal ablution facilities using the Community Work Programme, or CWP, that was implemented through an NGO. We continue to work with the CWP and the Municipality to maintain these communal ablution facilities and generally clean and secure these incremental settlement area neighbourhoods.

We have recently started to upgrade these services to water and toilets per site. On a phased bases, starting with those areas where people first moved into the MLS areas, households that qualify for top structure funding are able to use a portion of this funding to connect into the municipal internal infrastructure system to install water and toilets to their site. For those households that don't qualify for a housing subsidy they have to pay a connection fee to get water and sanitation connections to their plot or erf if they have bought their plot.

Housing top structures

Once a person is allocated a plot they are shown the plot and they can immediately occupy the plot and build some form of shelter. If they build a temporary house with corrugated iron sheeting and/or wood (we call it a shelter) then they don't have to get building plan approval. However, if they want to build a more formal structure (by formal we mean constructed out of block or brick etc.) then the household has to submit a building plan for approvals.

We have established a housing and development support office within our Municipal Department of Human Settlements to help households with this process of building top structures. We also have a mobile housing advice office that goes to each incremental settlement area about once a week where people can seek advice on housing development and any other matter like for example transferring names on the occupation data base in situations where there have been changes.

In the period after people have moved into a MLS area, households have to use their own money and resources to build their own houses. Households, who qualify are able to apply for a housing top structure. They can do this as part of a project approach (working through NGO's, developers or the municipality), or they can apply on their own (working through banks) to develop top structures for themselves.

The provision of funding for top structures usually corresponded with the provision of subsidy funding for connecting into the municipal water and sanitation system as well as for converting from the OUR certificate to individual title.

While we have been prioritising the provision of MLS and access to land and basic services, we as a Municipality have not been allocating many top structure subsidies. However, those top structure funds we have allocated have been for households that the community have advised us are the most destitute (i.e. the aged, and people with disabilities).

Housing and development support

The housing reception centres we initially set up to advise and support households as to where and how they can build houses have expanded to become part of a broader housing and development support programme.

Over the last few years we have been experimenting as a Municipality with and supporting the development of savings and loan, bulk buying, business referral and other housing development support functions. In some instances, such as the savings and loans, we are working very closely with NGO's and the private sector.

The housing and development support programme is drawing in and working closely with our Local Economic Development unit, the Small Enterprise Development Agency, the Community Work Programme and others to promote and support the small business sector and job creation initiatives.

We are also working closely with the community police forum, the forum of school governing bodies, and various sectors like the youth, women, the aged, and people with disabilities in helping these sectors to undertake activities in these incremental settlement areas.

Conclusion

I now smile when I see the #fixourpotholes campaign that is gaining momentum in these incremental settlement areas, as this demonstrates where we have come from, where people were originally calling on us to give them land and now they are calling on us to fix the pot-holes in the roads. People always have needs they would like to see met. There is always something for the Municipality to do. The MLS approach has provided us as a Municipality with a way to incrementally, within our available resources, to address the land and housing needs of our residents in a fair and dignified manner, as called for in the Constitution of South Africa.