

Assessing Stakeholder Perceptions in Participatory Infrastructure Upgrades – a Case Study of Project Silvertown in Cape Town

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Abstract

This study articulates the perceptions and expectations different stakeholders in sanitation infrastructure upgrades have to determine the implications their contrasting views have towards the success of participatory upgrades. The success of public infrastructure projects, such as sanitation infrastructure upgrades, requires balancing issues relating to technical and financial feasibility as well as social considerations.

Community participation is believed to be an effective means to addressing social issues relating to public infrastructure projects and improving project success by including communities in decision-making processes. In South Africa, community participation processes have been mandated for use in large infrastructure projects – particularly when upgrading informal settlements. However, in practice, evidence suggests that, in some instances, the implementation of community participation processes have been reduced to a tick-boxing exercise, providing communities with little to no agency.

Research reviewed found that one of the factors contributing to the poor project success is the neglect of participatory processes in projects, as different expectations and motivations held by stakeholders are not addressed. This study involved a review on legislation involving sanitation infrastructure and community participation processes relating to the Upgrading of Informal Settlements Programme (UISP) in particular.

The investigation was conducted using the single case study of Project Silvertown, the controversial project that in 2010 was coined by the media as the “toilet war saga” in Cape Town’s Khayelitsha township. The project was implemented in terms of the UISP with the controversy revolving around the installation of 1 316 unenclosed toilets provided by the City of Cape Town.

A systems thinking-based framework called Critical Systems Heuristics (CSH) was used to articulate the views of the different stakeholders involved in Project Silvertown. CSH makes use of a set of 12 questions aimed to make explicit the various value judgements upon which different stakeholder groups frame their understanding and beliefs. CSH maps the bigger picture in any given social intervention by not only identifying any conflict or misunderstanding

between stakeholders, but also examining the influence behind those value judgements held. Documentary resources on Project Silvertown were used to gather secondary data on stakeholder groups and analysed using the CSH framework to structure the data. The key findings in this study revealed the following disjunctions affected the success of the Project Silvertown participatory upgrade, namely:

- i) Different stakeholder expectations of community participation and decision-making
- ii) Differing stakeholder visions for project outcomes
- iii) Poor capacitation of community members
- iv) Disjunction of community representation by legitimate community leaders
- v) Disjunctions of UISP policy interpretation

The use of the CSH framework proved a valuable tool for unfolding the contrasting perspectives held by stakeholders in a participatory upgrade. As an evaluative tool CSH also helped to assess various project dynamics such as the power and knowledge structures that could negatively influence the overall success of a project. Findings of the conflicts between stakeholders in a given system can contribute towards identifying what stakeholder assumptions ought to be considered and built into planning public infrastructure projects to reduce the likelihood of project failures.

Table of contents

Acknowledgements.....
Plagiarism declaration.....	i
Abstract.....	ii
List of figures.....	vi
List of tables.....	vi
1. Introduction.....	1
1.1. Rationale.....	1
1.2. Problem statement.....	6
1.3. Research aim.....	6
1.4. Research questions.....	6
1.5. Research methodology.....	7
1.6. Outline of the study.....	8
2. Project Silvertown.....	10
3. Legislative and policy framework on sanitation in South Africa.....	17
3.2 The Upgrading of Informal Settlements Programme.....	20
3.3 UISP funding structure.....	23
3.4 Community participation in sanitation projects.....	24
3.5 Summary.....	26
4 Methodology.....	31
4.1 Research design.....	31
4.2 Research methodology.....	32
4.2.1 <i>Critical Systems Heuristics</i>	32
4.2.2 <i>CSH boundary questions</i>	33
4.2.3 <i>Systematic boundary critique</i>	36

4.2.4	<i>CSH stakeholder definitions</i>	36
4.3	Data collection	39
4.4	Data analysis	40
4.5	Validity	42
4.6	Ethical considerations	42
5	Analysis of CSH results	44
5.1	Stakeholder analysis	44
5.2	Summary of constructed CSH answers	49
5.2.1	<i>Sources of motivation</i>	49
5.2.2	<i>Sources of power</i>	60
5.2.3	<i>Sources of knowledge</i>	76
5.2.4	<i>Sources of legitimation</i>	92
6	Discussion	107
6.1	Disjunctions between stakeholder perceptions and expectations and the associated implications	107
6.1.1	<i>Different expectations of community participation and decision- making</i>	107
6.1.2	<i>Differing visions for project outcomes</i>	109
6.1.3	<i>Poor capacitation of community members</i>	110
6.1.4	<i>Disjunction of community representation by legitimate community leaders</i>	112
6.1.5	<i>Disjunctions of UISP policy interpretation</i>	114
6.2	Critique of stakeholder perspectives to conceptual community participation frameworks	116
6.3	Evaluation of CSH	117
7	Conclusions and recommendations	119
7.2	Key findings.....	119
7.3	Recommendations.....	122

References.....	123
Appendix – Assessment of ethics in research form.....	133

List of figures

Figure 1: Major sections of Khayelitsha with Project Silvertown sites (Adapted from Wilson, 2014).....	11
Figure 2: Woman standing next to open-air toilet in plain sight of all passers-by. Khayelitsha, Cape Town (Honwana, 2010).....	13
Figure 3: Dismantling the zinc toilet covers (Honwana, 2010).....	15
Figure 4: UISP Project Phases (DHS, 2009).....	20
Figure 5: Breakdown of social actors in a given system of interest (Ulrich, 1996).....	37
Figure 6: Example to show the process taken for sorting data sourced.....	41

List of tables

Table 1: Boundary judgments and questions of CSH (Adapted from Ulrich 2005:11).....	35
Table 2: Key stakeholder groups in Project Silvertown.....	45
Table 3: Project Silvertown external key players.....	48

It is not enough that you should understand about applied science in order that your work may increase man's blessings. Concern for the man himself and his fate must always form the chief interest of all technical endeavours...in order that the creations of our mind shall be a blessing and not a curse to mankind. Never forget this in the midst of your diagrams and equations.

Albert Einstein

1. Introduction

Community participation is a legislated requirement for all major public infrastructure projects in South Africa as it is believed to improve the likelihood of success in major public infrastructure projects in South Africa. However, the increasing rate of violent protests by citizens voicing their anger and frustration suggests the inability of these participation structure to fulfil their desired outcome. Municipalities may feel that they are taking the needs and preferences of communities into account during these processes but communities appear to feel they are not being taken seriously.

This study attempted to identify where these discrepancies lie by articulating different stakeholder perceptions and expectations in a participatory upgrade project called Project Silvertown – better known as the “toilet war saga”. Critical Systems Heuristics was the framework used to analyse stakeholder perceptions and expectations in Project Silvertown. The data for the investigation was sourced from publically available documentary resources obtained from the Western Cape High Court which were used in the court case that ensued. This chapter sets out the rationale for the research project, identifies the aim of the study as well as the research questions investigated.

1.1. Rationale

In 2010, the United Nations General Assembly declared the access to adequate sanitation as being “essential for the full enjoyment of life and all human rights” (Langford, Bartram & Roaf, 2014). Access to adequate sanitation is also a powerful indicator of the state of human and economic development of a nation (South African Human Rights Commission, 2014). It bestows many advantages for public health, livelihoods and dignity – advantages which extend beyond households to entire communities (United Nations, 2013).

Globally, the provision of basic sanitation continues to remain a problem for over 2.5 billion people across the world (United Nations, 2013). In an attempt to address this need as well as other global issues, the United Nations (UN) established the Millennium Development Goals (MDGs) in 2000. One of the MDGs targeted halving the population of those living without adequate access to water and sanitation by 2015 (Satterthwaite, 2003). By 2015 the goal of

improving access for 1.25 billion people was not achieved with only a slight improvement to 2.4 billion people lacking access to adequate sanitation facilities from (Sustainable Development Knowledge Platform [SDKP], n.d.). As a post-2015 successor to the MDGs, the UN has since developed a list of 17 sustainable development goals (SDGs). Goal 6 of these 17 SDGs focuses on issues relating to water, sanitation and hygiene, and aims to achieve the availability and sustainable management of water and sanitation for all humans by 2030 (SDKP, n.d.).

The South African government is among the list of 194 countries which have committed themselves to achieving the goals set out in the SDGs (SDKP, n.d.). National government has aligned the SDGs and timeframes to its National Development Plan (NDP) – a plan aimed at eliminating poverty and reducing inequality in the country by 2030 (National Planning Commission, 2015).

One of the key focuses to reduce this inequality and poverty in the NDP is through prioritising the upgrading of informal settlements. Since 1994, informal settlements have grown from 300 to over 2 700 nationwide, and they continue to grow at a rate of between 5% and 7% annually (Fieuw, 2015). This poses a major challenge for the government, as these areas have long been characterised with service delivery issues such as poor sanitation and waterborne diseases (National Planning Commission, 2015). To address these problem areas, the NDP aims to provide all citizens with affordable and reliable access to basic sanitation to live healthy and dignified lives by 2030 (National Planning Commission, 2015).

In South Africa, basic sanitation is defined as being a “flush toilet connected to a public sewerage system or septic tank or a pit latrine with ventilation pipe” (as quoted in Tissington, 2011:14). Since 1994, through investment into major public infrastructure projects, the government has advanced significantly in addressing the sanitation backlog. The percentage of national households without access to basic sanitation went from 52% in 1994 to less than 4% in 2017, thus achieving the 2015 MDG for halving the proportion of the population without sustainable access to basic sanitation in 2008 (Department of Water Affairs [DWA], 2012, 2017).

The success of sustainable sanitation infrastructure projects is dependent on several aspects such as financial and economic considerations, environmental considerations, technological and operational considerations, health and hygiene considerations, and socio-cultural considerations (ICLEI European Secretariat, 2012). Owing to the highly technical nature of a majority of these aspects, the provision of sanitation was long considered a domain controlled mostly by government, engineers and water services providers. However, more recognition has been given towards the value that citizens as end users can contribute towards several of the success factors mentioned (Vliet, Spaargaren & Oosterveer, 2011).

In South Africa, public participation is mandated for stakeholder management of large-scale public projects (Department of Human Settlements [DHS], 2009). Residents in informal settlement areas are recognised by national government as having deep-rooted knowledge of their preferences and development needs (DHS, 2009). Because of this, the incorporation of their knowledge is seen as vital to ensuring that service delivery is targeted at satisfying these needs and preferences (Fieuw, 2015). The hope is that participation processes will help to systematically capture the interests of the public and build their opinions into decision-making processes through the project duration for improved likelihood of success (Maharaj, 2012).

There has been a conscientious effort by the state to promote public participation in service delivery to the end that it will establish this shared governance. The Department of Provincial and Local Government defines *public participation* as “an open, accountable process or channel through which individuals and groups within selected communities can exchange views and influence decision-making” (DPLG, 2005:1).

In addition to the concept of *public participation*, government also makes use of the term *community participation*. The distinction made between public participation and community participation is the boundary between the grouping of the public and a community. Public participation is a blanket term for the participation of an unbounded/undefined group of citizens, whereas community participation refers to the participation of residents in a particular ward in the context of public participation (Sibeko, 2005). For the purposes of this research the term *community participation* will be used when referring to participatory processes. This is because

it is the term used in the Upgrading of Informal Settlements Programme – a central policy document in this study that will be discussed in later chapters.

Major public infrastructure projects, such as sanitation upgrade projects, can be controversial and complex spaces requiring navigation through technical and financial constraints as well as differing interests of the various stakeholders (such as the public, technical experts, the municipality and project funders) involved in the process (Li, Ng & Skitmore, 2013; Quick, 2014). Furthermore, engaging both experts and everyday stakeholders, such as the public, in technically complex decisions can open the door to produce choices that do not adequately consider design, safety, equity, efficiency, environmental protection and political feasibility (Quick, 2014). An example of the conflicting interests of stakeholders is evident in the sanitation study conducted by Armitage, Spiegel and Hilligan (2012) in Barcelona, an informal settlement in Cape Town. While the residents of Barcelona preferred a full flush toilet system, technical and financial constraints made that preference impossible, as the settlement had been built atop a capped solid waste site – which meant that the ground conditions and the danger and expense of excavation did not allow for the installation of a conventional sanitation system. The expectations of the end users had to be managed and the technical experts were challenged to find an alternative solution of which the public would approve and the funders could afford.

While legislation mandates community participation in infrastructure projects, several challenges exist in the practice of shifting projects like upgrading informal settlements from being an exclusionary process to participatory upgrades (Fieuw, 2015). Maharaj (2012) argues that, despite the efforts made by the government, citizens still feel detached and side-lined as stakeholders on state issues incorporating community participation processes on matters directly affecting them.

The South African Public Service Commission conducted an investigation on the Assessment of Public Participation Practices in Public Service (2008). One of the challenges raised in the investigation was the mistrust between government and the public owing to the lack of transparency and accountability due to past experiences (Public Service Commission, 2008). Li et al. (2013) attributed one of the reasons for this as being that some government officials were

cynical about the value community participation brings and were concerned that an overactive citizenry could spiral into a situation of conflict and social disorder.

Because of these concerns government officials may make the choice to fast-track and short-cut participatory processes – resulting in the community participation exercise being done as a formality more than anything else (Li et al., 2013).

This is seen as problematic because often conflict actually exists due to the divergence of issues such as cultures, values, histories or beliefs between the various stakeholders (Li et al, 2013). Conversely, findings in the Public Service Commission report also claim that government officials believe the public are apathetic when efforts are made to engage with them during participatory processes (Public Service Commission, 2008). Quick (2014) explains that oftentimes this apathy is as a result of the public feeling as though their involvement does not seem to influence decisions – they are invited to participate; yet there is very little that can be changed in the policies or projects that have already been put together.

With participatory processes being fast tracked by government officials or received with apathy by the public the possible conflicts in expectations and perceptions that exist among stakeholder groups cannot adequately be identified and resolved. Failure to meet or manage the concerns and expectations of stakeholders involved in participatory upgrades can jeopardise project success (Li et al., 2013; Fieuw, 2015). An example of this in the South African sanitation sector would be the 2011 violent protests of Project Silvertown.

In the run up to the 2011 local government elections, the South African Human Rights Commission (SAHRC) received two complaints about municipalities, which built some 2 000 toilets without enclosures in their local communities (DWA 2012). The first complaint at the end of 2009 from the Western Cape Makhaza informal settlement in Khayelitsha was against the City of Cape Town Metropolitan Municipality. The second complaint concerned Rammulotsi in the Free State against the Moqhaka local municipality.

Following the SAHRC's investigations into these matters and a ruling by the Constitutional Court, it was found (among other findings) that both municipalities had violated the residents' right to participation. The SAHRC recommended that both local municipalities had to

immediately enclose these toilets in a manner that upheld human rights (SAHRC, 2014). Project Silvertown provides the case for this study and the documents associated with the High Court Judgement provide the data analysed.

1.2. Problem statement

Community participation processes have been legislated in public infrastructure projects. There is a belief that they are needed in order to successfully address the crises of poor service delivery – particularly in informal settlement areas. However, research is showing that challenges exist in the practice of incorporating community participation processes in projects of this nature. Some reasons these challenges exist are due to the shortcutting of participatory processes by government officials as well as apathy from the public to engage in participatory processes. This poses a problem as it undermines the ability to understand the conflicts in stakeholder views and incorporate the knowledge of the public into participatory upgrades.

1.3. Research aim

This research project aimed to articulate the perceptions and expectations that stakeholders have in sanitation infrastructure projects with a view to understanding the implications this has towards the success of participatory upgrades. This is intended to inform improved participatory processes.

1.4. Research questions

The following research questions were asked:

- What are the disjunctures in perceptions and expectations between stakeholders in participatory upgrades?
- What implications do the different perceptions and expectations of various stakeholders have on the success of participatory upgrades of informal settlements?

Supporting these questions is the following sub-question:

- What contribution does Critical Systems Heuristics make as a framework towards surfacing the differences in perceptions and expectations held by stakeholders in a participatory upgrade?

1.5. Research methodology

Project Silvertown was used as the case study for this study. This project began in 2007 with the purpose being to upgrade an informal settlement called Silvertown in Khayelitsha, a township in the Western Cape Province (Ntliziywana & Ayele, 2010). Under the management of the City of Cape Town, the project was upgraded in terms of the Upgrading of Informal Settlements Programme (UISP). It included the provision of interim services, full engineering infrastructure and housing for 1 316 households (Western Cape High Court, 2011a).

During the project the City erected unenclosed toilets claiming they had an agreement with the community that the residents would be responsible for building their own enclosures (Western Cape High Court, 2011a). This led to public outcry, protest action, an investigation by the South African Human Rights Commission and a court case (Ntliziywana & Ayele, 2010). Furthermore, there was extensive media coverage on this case, which spurred national government to review the national policy on sanitation (Tissington, 2011).

This case study was selected due to the important role it had played towards re-evaluating the state and provision of sanitation services in South Africa and the extensive data readily available on the case.

To analyse the perceptions and expectations of stakeholders, a systems thinking-based framework called Critical Systems Heuristics (CSH) was used. The CSH framework makes use of 12 boundary questions that are asked in two modes, namely the ideal/*what ought to be* mode and the actual/*what is* mode. The main modifications to the standard application of CSH in this study were through the source used to answer the 12 boundary questions and the answering of the questions in each mode.

Usually, CSH is applied to human participants who answer the 12 questions in both the ideal and actual modes. For this research, a textual analysis of documents such as policy documents, affidavits, project documents and newspaper clippings were used to develop answers to the 12 questions posed. CSH also prescribes that stakeholders answer the 12 questions in both the ideal and the actual mode.

This study modified the prescription and based the ideal scenario on the policy and project documentation on which Project Silvertown was based. To answer questions in the actual mode, textual data from stakeholders involved in Project Silvertown was used. Because the answers constructed were based on the analysis of textual data, the critique to the modification would be the biases of the researcher with regard to answering the questions. To minimise this bias, data from multiple sources was used and rigorously analysed. Furthermore, in the explanation of the answers constructed, extensive quoting of excerpts of the data was included for the reader to identify the direct opinions that were interpreted to construct the answers.

1.6. Outline of the study

This chapter has provided a background to the problem, and presented an overview of the research project and design.

The Project Silvertown case study is presented in detail in Chapter 2.

Chapter 3 then follows with an investigation on the legislation and policy of community participation in sanitation projects as well as informal settlement upgrades.

Chapter 4 deals with the research methodology and presents Critical Systems Heuristics (CSH), a framework developed by Werner Ulrich in 1983, which has been adopted for this research project. The chapter also explains the modifications made to CSH to better suit the nature of this study. As described previously, the main modification to the standard application of CSH in this study has been done through the use of documentary data being used, as opposed to data being obtained from interviews with human participants. This study also modified the CSH framework by basing the *is/ought* scenario on the policy and project documentation on which Project Silvertown has been implemented. Answers to questions in the actual mode were taken from textual data of stakeholders involved in Project Silvertown. This chapter also discusses

the limitations and possible bias the modification to the framework could have on the interpretation of the analysis. Furthermore, it highlights actions taken by the researcher to mitigate bias in the interpretation of results.

Chapter 5 presents an analysis of the various stakeholders involved in Project Silvertown as well as the analysis of stakeholder perceptions and expectations using the modified CSH framework.

Chapter 6 is the discussion chapter and reflects on the key findings from the data analysed in response to the research questions and sub-question posed at the start of the project.

Chapter 7 concludes with a summary of the research project and includes limitations of the research as well as recommendations for future studies.

2. Project Silvertown

This chapter discusses the events of the case study selected for the research project, Project Silvertown. Public attention to Project Silvertown began shortly after 21 January 2010. Local members of the African National Congress Youth League (ANCYL) lodged a complaint with the South African Human Rights Commission (SAHRC) against the City of Cape Town (CoCT) for building 1 316 unenclosed toilets (SAHRC 2010; Tempelhoff 2012).

Project Silvertown dated back to 2003 when the City of Cape Town submitted an application to the Province of the Western Cape for the upgrading of Silvertown, an informal settlement in the Khayelitsha township. The project was initially proposed to be an in-situ development upgrade. In-situ upgrades involve the upgrading of informal settlements as they stand with the aim being to relocate as few residents as possible (DHS, 2009). Unlike roll-over upgrades and new township developments that involve the relocation of residents as well as the ability for structured town and special planning, in-situ upgrades aim to minimise relocation and require road, sanitation and other municipal infrastructure to be designed to fit into the shape of the existing settlement (Western Cape Department of Housing, 2005). As Silvertown (SST) was an already existing informal settlement area of approximately 2 000 inhabitants, the CoCT made the decision to upgrade the site in terms of the UISP (City of Cape Town, 2003; Western Cape High Court, 2011a).

Although initially viewed to be an in-situ upgrade, during preliminary feasibility studies it was found that the SST area was too small to accommodate all of the 1 316 households required (Western Cape High Court, 2011a). To address this problem two nearby greenfield sites in Makhaza and Town 2 were selected for use with plans to relocate some of the 1 316 SST householders to these sites. Therefore, all three sites formed part of the project scope and were included in the initial Project Silvertown application for funding under the UISP (Forensic Services Department, 2010).

As shown in Figure 1, a total of 121 erven were to be relocated to Town 2, 298 erven to the site in Makhaza and 897 erven were planned for the original in-situ site in Silvertown (Forensic Services Department, 2010).

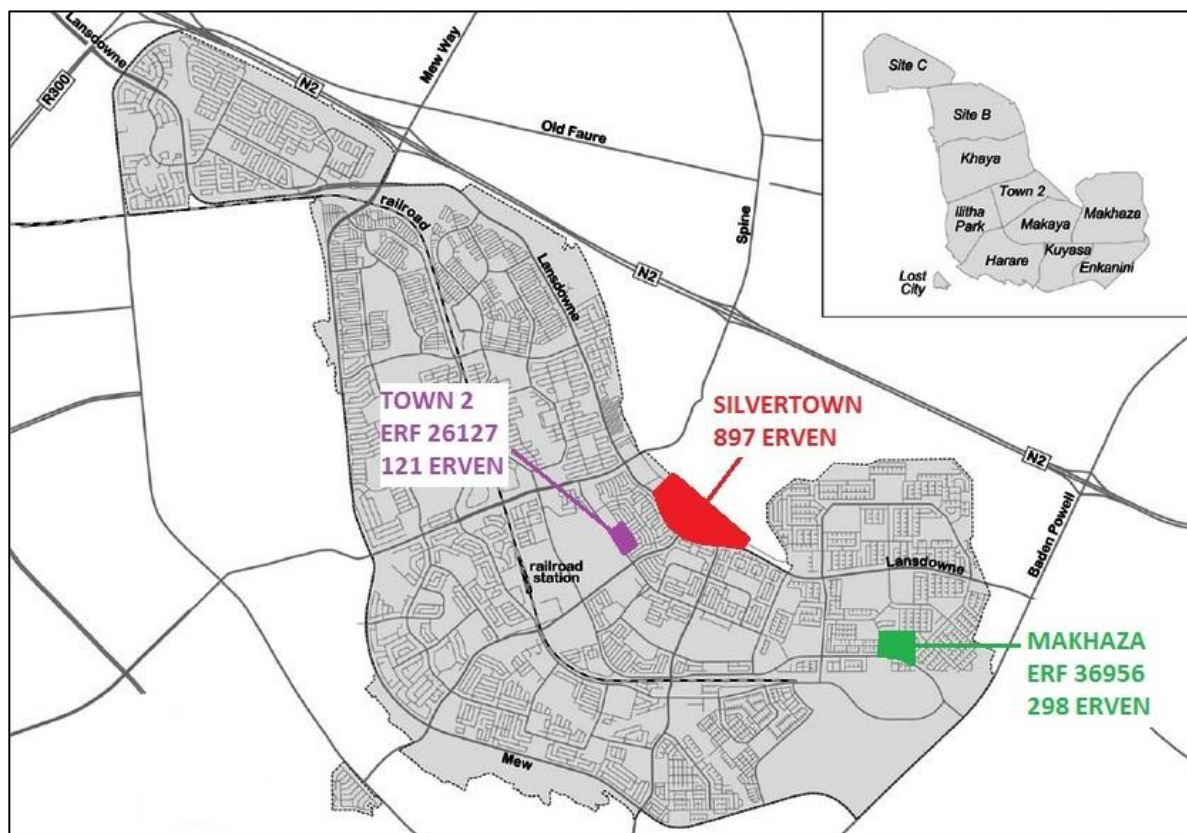


Figure 1: Major sections of Khayelitsha with Project Silvertown sites (Adapted from Wilson, 2014)

Originally, the City of Cape Town put in a tender for the provision of interim services, full engineering infrastructure and relocation assistance. Project Silvertown was to be implemented in four stages, as recommended by the UISP. These four phases will be discussed in greater detail in Chapter 3. However, it is important to note that Phase 4, which involved the provision of houses, was to be implemented at a later stage. Therefore, the application submitted by the City to the Province of the Western Cape in October 2004 was for the completion of the first three phases.

Construction of the communal toilets began in 2007 with the plan to construct 179 communal toilets in SST, 59 in Makhaza and 25 in Town 2 (Western Cape High Court, 2011a). The communal toilets consisted of an enclosed concrete structure, housing concrete slabs upon which toilets were built and plumbing connected (Western Cape High Court, 2011a).

Construction started on the two greenfield sites, Makhaza and Town 2 with all communal toilets being built as well as six extra communal toilets.

When in-situ construction began in SST only 63 of the planned 179 communal toilets were built until the community halted construction (Western Cape High Court, 2011a). Members of the community were unhappy as they were not in favour of communal toilets and felt they had not been informed of the decision to construct them (Western Cape High Court, 2011a). They demanded that each of the 1 316 erven be provided with an individual toilet.

In an attempt to reach an agreement with the residents, in November 2007 the City held a community meeting in an open field. No attendance register was taken; however, officials from the City stated that members from the community, community leaders, ward councillors and City officials were present at this meeting.

The City proposed to the attendees that they would be able to provide toilets for each erf; however, residents would have to enclose these toilets by themselves. This was owing to budget constraints, as the available funding they had would not allow for the installation and enclosure of the 1 316 toilets required.

An informal agreement was reached between all parties present on this matter and construction of the 1 316 unenclosed toilets began in May 2009 and was completed in December of the same year (Western Cape High Court, 2011a). These open toilets were constructed in such a way that they were in full view of community members on a concrete plinth with the cistern and pipe connections not attached to any walls.

In an attempt to provide proof of a formal agreement between the City and residents, as per the UISP, the CoCT requested that, upon completion of each installation, the residents sign what was termed as “happy letters”. These letters served to indicate the residents’ approval of the toilets installed and their obligation to provide their own enclosures. Of the 1 316 happy letters signed, only one was negative (Western Cape High Court, 2011a).



Figure 2: Woman standing next to open-air toilet in plain sight of all passers-by. Khayelitsha, Cape Town (Honwana, 2010)

Upon completing the construction of the individual toilets, some of the residents then began to enclose the toilets themselves. Of the 1 316 open toilets installed, the residents enclosed all but 55 open toilets in Makhaza (Western Cape High Court, 2011a). After roughly three months of the installation of the open toilets, disgruntled rumblings began to resurface in the community. For many residents, they believed that the open toilets and makeshift enclosures which they had constructed themselves would be a temporary measure. When they signed the “happy letters” they believed they were agreeing to open toilets being temporarily built for incorporation into a government-funded house three months later.

When it seemed like this was not likely to happen, community leaders in the area, primarily the African National Congress Youth League (ANCYL), began to engage with the community (Western Cape High Court, 2011a). The ANCYL is the youth wing of the African National Congress, the ruling political party in South Africa since 1994. The Democratic Alliance (DA), the ruling party in the City of Cape Town and greater Western Province, is the official

opposition party to the African National Congress (Tempelhoff, 2012). On 21 January 2010, the ANCYL lodged a complaint regarding the case of the 55 households forced to make use of the unenclosed toilets to the SAHRC (Western Cape High Court, 2011a). The complaint filed was on the basis of a violation of human rights of the residents by the CoCT's decision to build unenclosed toilets in a predominantly black, low socioeconomic area (Western Cape High Court, 2011a).

During the SAHRC's investigation, the media investigated the complaint lodged, and the situation gained both local and international coverage. In his paper, Tempelhoff (2012) believed the large interest this story received was because, to the country and world at large, the open toilets raised a sombre message of

the callous disregard, in some quarters of South African society, for the plight of less privileged people on the fringes of the country's urban conurbations. An everyday necessity like a toilet – associated with a sanitary domestic lifestyle – became a conduit in the public eye for comprehending just how important it was to respect an individual's privacy (Tempelhoff, 2012:83).

Prior to the ruling by the SAHRC, the City of Cape Town made three documented attempts to enclose the 55 unenclosed toilets with a structure built from corrugated galvanised iron and timber (Western Cape High Court, 2011a). In the first attempt, the building contractors, Shamrock Plumbing, were stopped by unknown members of the community who demanded brick and mortar enclosures be built as opposed to the timber and corrugated iron structures (Forensic Services Department, 2010). Following this event, a Ward Councillor conducted a meeting with the community to try and reach an agreement for the City's contractors to recommence with enclosing the toilets. However, the meeting was unsuccessful with no agreement being made.

Despite no agreement being reached, the City again requested their contractors to enclose the toilets in March 2010. This time the City's contractors were able to enclose 26 of the toilets before community members halted construction and demolished all of the newly built enclosures (Western Cape High Court, 2011a).



Figure 3: Dismantling the zinc toilet covers (Honwana, 2010)

What initiated the City's third attempt to enclose the toilets prior to the findings from the SAHRC was the stabbing of Mrs Ntombenhle Beja, a 76-year-old resident of Makhaza. In April 2010, Mrs Beja made use of her open toilet in the evening to relieve herself using blankets to cover herself for privacy (SAHRC, 2010). When she had finished and was walking back to her home, she was attacked and stabbed by an assailant who demanded she give him her cellphone.

In an attempt to remedy the safety concerns this incident had raised, the mayor of Cape Town, Mr Dan Plato, met with members of the ANCYL, the Makhaza Councillor and several CoCT housing officials (Western Cape High Court, 2011a). The meeting was considered successful with an agreement reached by all parties present that the City could once again commence with the installation of the corrugated iron and timber toilet enclosures. However, when construction resumed again on 24 May 2010, community members vandalised and demolished the enclosures again and forced the building contractors to vacate (Western Cape High Court, 2011a). In response to this, the mayor then ordered the removal of all 55 unenclosed toilets as well as 10 other toilets with enclosures (SAHRC, 2010).

The SAHRC released the findings to their investigation on 4 June 2010. The results of the investigation found that the City failed to adequately consult the community throughout the

process (SAHRC, 2010). The findings also stated that the CoCT violated the residents' constitutional right to dignity by providing unenclosed toilets (SAHRC, 2010). Recommendations made by the SAHRC were for the City to reinstall and adequately enclose 51 of the removed toilets with a brick and mortar structure (Tempelhoff, 2012).

The City appealed the SAHRC's findings in July 2010 but the appeal was dismissed on 21 September of that year (Western Cape High Court, 2011a). On 23 September 2010 Messers Andile Lili and Andiswa Ncani, ANCYL leaders and residents of Makhaza, submitted an application against the City of Cape Town together with Mrs Beja (Western Cape High Court, 2011a). The case was handed over to Judge Nathan Erasmus who, after conducting a site visit to Makhaza, filed a court order for the interim relief of the Makhaza community members. Judge Erasmus ordered that the City reinstall all toilets previously removed and temporarily enclose all of the 1 316 toilets using a corrugated iron and timber structure not exceeding a cost of R2 800 (Western Cape High Court, 2011a). In addition to this, he instructed the City to hand-deliver written notices to all residents requesting their permission to install such toilet structures. The City was also instructed to consider any alternative plans raised by the community to better suit their contextual environment (Western Cape High Court, 2011a). In December, the City attempted to comply with this ruling but were allegedly restricted from doing so by ANCYL members.

The court hearing occurred in March 2011 at the Cape Town High Court, hearing arguments compiled by the legal teams of both the Western Cape and CoCT as well as the legal representatives of the three applicants, Andile Lili, Andiswa Ncani and Ntombenhla Beja. The main argument presented by the Western Cape and CoCT was that, although the decision to build unenclosed toilets for Project Silvertown was unconventional, it was not unconstitutional (Tempelhoff, 2012). Arguments made by the residents' legal team were that the installation of open toilets was "an infringement of the rights, dignity, privacy and freedom of residents to endure the unacceptable conditions of having to use open toilets" (Tempelhoff, 2012:85). The final judgment handed down in 2011 found the City of Cape Town in violation of meeting the residents' right to human dignity and ordered that the unenclosed toilets be walled by a structure making use of brick and mortar (Tempelhoff, 2012).

3. Legislative and policy framework on sanitation in South Africa

This chapter investigates the legislation and policy on community participation in sanitation projects as well as participatory informal settlement upgrades. Particular attention is given to the Upgrading of Informal Settlements Programme the programme that Project Silvertown was administered in terms of.

3.1 Introduction

In 1994, the newly elected government was faced with many challenges to redress the inequities brought about as a result of the apartheid regime. One such challenge was access to basic sanitation, which over 50% of the then 40 million citizens lacked (DWA, 2012). With the addition of rapid urbanisation occurring in South Africa, informal settlement areas in particular have faced major challenges in providing adequate sanitation services to an increasing number of poor households (Mjoli, 2010). The South African government became party to the conventions set out by the MDGs as well as several other declarations such as the Vancouver Declaration on Human Settlements (1976) and the Habitat Agenda (1996) aimed at the development of informal settlements (Department of Human Settlements [DHS], 2009).

National legislation and policy on sanitation was developed to be consistent with the international conventions mentioned. From a constitutional point of view, legislation places the responsibility to provide adequate service delivery on the government. Several sections within the Constitution of the Republic of South Africa (1996) make direct and indirect connections to issues relating to sanitation provision and service delivery.

The first of these is Section 1(a), which stresses that human dignity and the advancement towards equality for all in South Africa should be what all human rights are to be founded upon (Western Cape High Court, 2011a). Another section in the Constitution often interpreted as pertaining to sanitation issues is Section 24(a), which states that everyone has the right to live in an environment that is not harmful to their state of wellbeing or health (Mjoli, 2010). There are several other sections in the Constitution which highlight issues such as an individual's right

to privacy and human dignity, all of which speak to the softer issues involving sanitation provision.

There are several policy documents explicitly relating to sanitation, which are also pertinent to the Project Silvertown case study. Those of which were passed before the start of Project Silvertown and were most pertinent to the case were as follows:

The *Water Services Act 108 of 1997* established the overall compulsory national standards for basic sanitation (Acts Online, 2013). For the minimum standard for basic sanitation, the Act stipulates that the government make provision for “a toilet which is safe, reliable, environmentally sound, easy to clean, provides privacy and protection against the weather, well ventilated, keeps smells to a minimum and prevents the entry and exit of flies and other disease-carrying pests” (Acts Online, 2013).

The *National Sanitation Policy* (1996) was developed mainly to clarify issues raised in the White Paper on Water Supply and Sanitation of 1994. This paper was largely reworked into the 2001 White Paper on Basic Household Sanitation, which is mentioned later in this document. The National Sanitation Policy lists several types of sanitation systems commonly used in South Africa (Tissington, 2011). One such system mentioned is the bucket system, which was being used in the Silvertown area prior to the upgrade project being approved (Western Cape High Court, 2011a). The policy describes the bucket toilet as a portable dry sanitation device consisting of a seat placed on top of a bucket for collection of excreta (Department of Water and Forestry Former [DWAF], 1996). The policy states that besides not meeting the minimum standards of sanitation, bucket toilets are considered socially unacceptable and that the use of these be eradicated (Tissington, 2011). Project Silvertown aimed to replace this system with the provision of full water-borne sewerage or flush toilets.

The *Municipal Systems Act 32 of 2000* was created as a guideline to assist municipalities in the social and economic development of their communities (Marata 2012). Section 4(2)(d) of this Act states that municipalities should “strive to ensure that municipal services are provided to the local community in a financially and environmentally sustainable manner” (Tissington, 2011). It also outlines procedures and processes, which municipalities can use to encourage and engage communities to participate in their development (Tissington, 2011).

The 2001 *White Paper on Basic Household Sanitation* (developed as an update from the White Paper on Water Supply and Sanitation Policy of 1994) adopted a framework particularly aimed at the provision of sustainable sanitation for low density rural areas as well as informal settlements (Marata, 2012). The Paper introduced 12 policy principles around the provision of sustainable sanitation for households. While all of these principles are applicable to all sanitation infrastructure projects, in the context of Project Silvertown four principles spoke to some of the key problems that were faced in the project. These principles were community participation in decision-making processes, the provision of sanitation as a human right, the financial sustainability of sanitation initiatives, as well as the cooperative governance approach between national, provincial and local government (Tissington, 2011).

The *Housing Act 107 of 1997* was written to serve as the primary piece of housing legislation in South Africa (Tissington, 2011). This document established a framework for sustainable housing development in the country and defined housing development as follows:

The establishment and maintenance of habitable, stable and sustainable public and private residential environments to ensure viable households and communities in areas allowing convenient access to economic opportunities, and to health, educational and social amenities in which all citizens and permanent residents of the Republic will, on a progressive basis, have access to-

- (a) permanent residential structures with secure tenure, ensuring internal and external privacy and providing adequate protection against the elements; and*
- (b) potable water, adequate sanitary facilities and domestic energy supply* (Western Cape High Court, 2011a, 23:51).

As evidenced in the abovementioned quote, the provision of infrastructure that ensures privacy and protection against the elements should be a key feature of infrastructure provided as per the Housing Act. This includes the provision of sanitation infrastructure. The Housing Act was amended in 2001, following the release of the National Housing Code in 2000 (Tissington, 2011). The National Housing Code introduced guidelines and principles for various national housing programmes to which all spheres of government are to adhere. Amendments to the Act included a list of various national housing programmes, which, depending on the context of the

development required, municipalities can seek to adhere to planned infrastructure development within their region (Tissington, 2011).

The Project Silvertown case study hones in on one such national housing programme, namely the Upgrading of Informal Settlements Programme (UISP).

3.2 The Upgrading of Informal Settlements Programme

The UISP was instituted in terms of section 3(4)(g) of the Housing Act and developed in response to the rapid urbanisation rate in informal settlement areas (Tissington, 2011). This programme was particularly targeted at in-situ development upgrades with the aim being to relocate as few residents as possible while providing the residents with formalised municipal services. The UISP suggests that municipalities adopt a 4-phase approach to upgrading informal settlements (Department of Human Settlements [DHS] 2009). The four UISP phases and associated activities are shown in Figure 4.

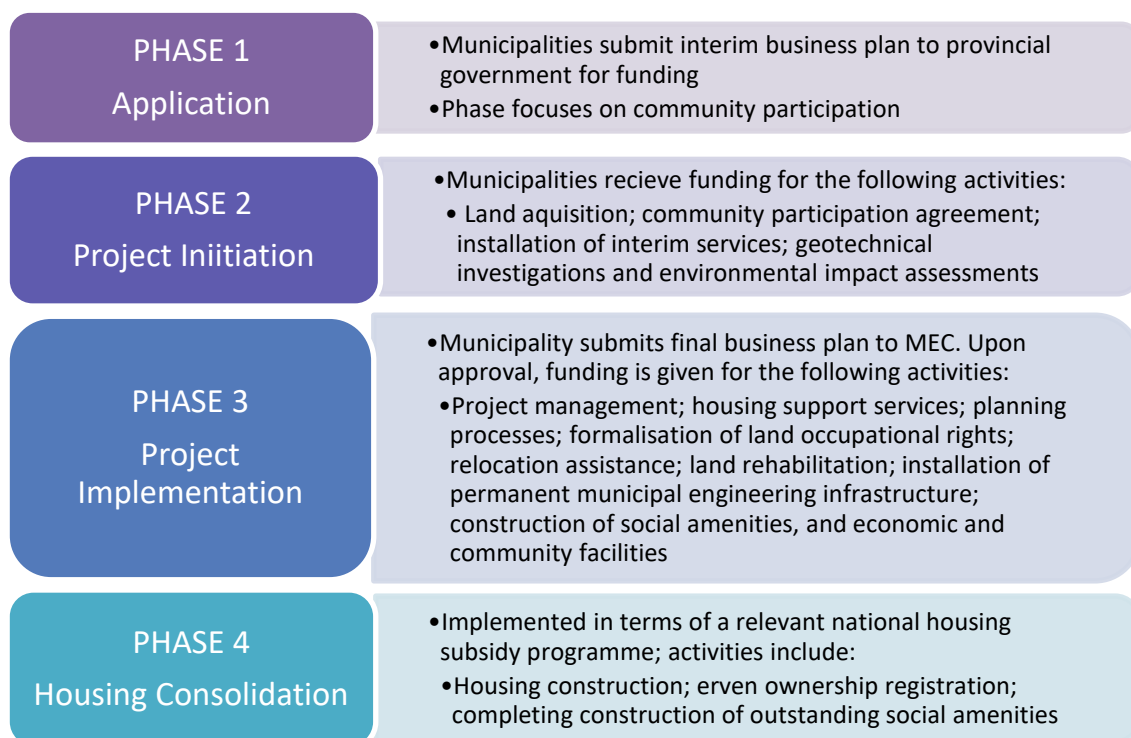


Figure 4: UISP Project Phases (DHS, 2009)

Phase 1 of the UISP requires for the developer, usually a municipality, to apply for funding and submit an interim business plan to the relevant provincial department of human settlements (DHS, 2009). Phase 1 also places emphasis on community participation to ensure the community remains involved through all phases of the upgrading project (Van der Westhuizen, 2017).

Phase 2 is the project initiation phase and is usually undertaken over a period of eight to 12 months. Once approval has been granted for the upgrading project municipalities are given funding for the following activities:

- Land acquisition (if required)
- Conclusion of agreement between the municipality and the community which will regulate the terms of community participation for the project
- Undertaking a socio-economic and demographic profile of the settlement
- Provision of interim services such as basic water and sanitation services to households pending the formalisation of the settlement
- Detailed investigations on the geotechnical conditions as well as an environmental impact assessment required for the planning process

Phase 3 is the project implementation phase. This phase requires that the municipality undertaking the upgrade submit a final business plan for the MEC to consider and approve (Van der Westhuizen, 2017). Upon approval from the MEC, the municipality will receive funding to conduct the following activities:

- Establish project management capacity
- Establish housing support services
- Initiate the project planning process
- Formalise land occupational rights and resolve disputes
- Provide relocation assistance and perform land rehabilitation
- Install formal municipal engineering infrastructure and services
- Construct community facilities and socio-economic amenities

Phase 4 is the housing consolidation phase and consists of township establishment finalisation, ownership registration and the construction of housing or other top structures (Van der Westhuizen, 2017). While this phase forms part of the UISP, it is implemented under the provisions of the relevant national housing programme (DHS, 2009). Funding approval for Phase 4 is handled at the individual household level and is dependent on whether households meet certain criteria to qualify them for housing subsidies (DHS, 2009). It requires households to apply for a housing subsidy under various housing subsidy programmes (Van der Westhuizen, 2017). Several housing subsidy programmes such as the people's housing projects, individual ownership options and contractor-built houses are available for qualifying residents to choose from (DHS, 2009). What is important to note is that the funding arrangements for Phase 4 are different from the first three phases (Van der Westhuizen, 2017).

The CoCT adopted this phased approach for Project Silvertown. Phase 1 and 2 formed the application and initiation phases of the project, and Phase 3 was seen as the project implementation phase (CoCT, 2004:2).

- Phase 1 comprised the pre-feasibility study, which aimed to identify details such as the project location, land ownership, geotechnical scoping studies, households affected, as well as a preliminary work plan and budget (CoCT, 2004:4).
- Phase 2 was made up of various activities such as a survey and registration of all households, the provision of interim services, an environmental impact assessment, community participation processes and a work plan for the scope of works, as well as the estimated budget for the scope of works (CoCT, 2003). For Project Silvertown, it is unclear whether the funding provided for the interim services was for individual or communal toilets; however, it was decided that communal toilets with a ratio of one toilet for every five households would be provided for residents (Western Cape High Court, 2011a).
- Phase 3 was the implementation phase and involved detailed design, construction site work, as well as the relocation of residents to Town 2 and Makhaza. Upon the completion of Phase 3, the City envisaged that residents would have been relocated to areas with access to interim services and full engineering infrastructure. Interim services typically refer to providing residents with access to a rudimentary water supply such as a stand pipe, temporary

sanitation services such as communal or chemical toilets, as well as refuse removal services (Western Cape High Court, 2011a).

- Phase 4 was the top structure phase of the project and involved the construction of residential housing per erf.

3.3 While the long-term plan for the City was to complete all four project phases, the decision was taken to initially seek approval only for phases 1-3. Phase 4, which dealt with the construction of houses, was to be handled at a later stage and under a different budget application. Therefore, although residents were under the impression that they were to receive housing within three months of the installation of their open toilets, this would not have been possible, as no funding had been applied for or sourced for this phase of the project. UISP funding structure

The DHS, through the Integrated Housing and Human Settlement Redevelopment Grant, manages funding for all national UISP projects (DHS, 2009). Annually, national government allocates bulk funding to each provincial department. The onus is on provincial government to distribute the funds received based on the number of UISP projects planned within their area of governance. Municipalities submit project-specific proposals, outlining the required amount of funding they need for the project, depending on the various considerations, including service standards and the development options selected for the upgrade.

If provincial government approves the project, funding for the completion of phases 1-3 is given to local government. As previously mentioned, funding approval for Phase 4 is handled at the individual household level and is dependent on whether households meet certain criteria to qualify them for housing subsidies. An agreement is then required to be made between the municipality and the provincial government as to how the control of the funds will take place.

In October 2004, the Province of the Western Cape received a request for project approval and funding to the value of R33 748 194 from the City for phases 1-3 of Project Silvertown.

In July of 2005, Project Silvertown was approved by the Province of the Western Cape and funding was made available to the City of Cape Town. The UISP stipulates that, upon project

approval, a Memorandum Of Understanding (MOU) must be entered into between the provincial department and the municipality (DHS, 2009). This agreement was signed between the CoCT and the Province of the Western Cape, and stipulated that Project Silvertown was to adhere to regulations as set out under part 3 of the National Housing Code, which deals with the UISP. Details mentioned in the MOU included scheduled project milestones, project budgeting and cash flows, detailed technical descriptions of services to be provided, etc. (DHS, 2009). Another key aspect which the National Housing Code emphasises is that municipalities have to adhere to the facilitation of public participation processes throughout the duration of the project.

3.4 Community participation in sanitation projects

The report on the status of sanitation services in South Africa highlights key issues affecting the efficient provision of sanitation services. One of the main concerns was inadequate involvement of communities in planning and implementation, thus leading to low community acceptance of sanitation infrastructure (DWA, 2012). In October 2012, the Multi-Level Government Initiative released findings on the state of public protest activity in the country, revealing an increasing trend in violent public protests between 2007 and 2012. Among the list of the top five grievances cited were protests on the state and service delivery of water and sanitation (Powell & De Visser, 2012).

This situation points to an obvious disjuncture between what is intended in policy and what is experienced by citizens, with several calls being made to civil society and the monitoring and evaluation sector to share their expertise with government to improve the situation (Naidoo, 2011). The Public Service Commission found that municipalities faced several challenges, particularly with regard to participatory processes and service delivery (Public Service Commission, 2008).

The DWA (2012) also raised points that financial, time and human resource constraints were some of the challenges that resulted in municipalities not being able to engage communities in a meaningful manner; they were often under pressure to meet sanitation delivery targets and this led to poor community ownership of new sanitation infrastructure (DWA 2012; Public Service Commission, 2008).

While mistrust between the government and communities has played a role in the failings of participatory processes, Mjoli (2010) acknowledges that there have been examples of South African case studies of successful community participation in sanitation projects where communities played a leading role in the implementation of sanitation projects. An example of one such project was documented by Ngobeni (2015) who conducted a comparative investigation into the effect different community participation methods in sanitation infrastructure projects had on user adoption and sustainable sanitation in Bushbuckridge. Findings revealed that the village, which made effective use of community participation methods by involving the community in decision-making processes, significantly improved project success and longevity of sanitation infrastructure.

These case studies showed that communities were willing to collaborate with government for the improvement of their sanitation facilities, provided they were recognised as equal partners in the development process (Mjoli, 2010).

While community participation remains a buzzword in development and governance practice, Rowe, Horlick-jones, Walls and Pidgeon (2005) assert that there is little empirical data to support positive effects of community participation processes. Rowe et al. (2005) conclude that globally commitment to community participation is lacking because of power imbalances. This results in community participation becoming a means for government to legitimate itself within a community through intentionally giving them a false sense of participation. In such cases, community participation is often used to maintain the status quo.

Ziblim (2013) reported similar findings for the incorporation of community participation processes in UISP projects. In his study, he found that while the programme mandated community participation, municipalities often conducted these processes after experts had already devised upgrading plans and designs. This left little room for residents to influence decisions made through these participation processes (Ziblim, 2013).

In her research, Maharaj (2012) found that stakeholder groups did not share a common understanding of community participation, which had resulted in relations between stakeholders (state officials and community leaders) often being strained. Municipal managers and service providers perceived community participation as consultation, while community leaders

perceived it as a partnership (Maharaj, 2012). Consequently, community leaders felt undermined by community participation processes, while state officials felt that they were making adequate progress in implementing community participation as they understood it.

Community participation cannot act as a transformative force to change local governance if power imbalances and a non-unified understanding of participation exist between experts and communities (Parkinson, 2009).

In the case of the UISP, the contextual knowledge contributions community members can make have been recognised as valuable towards ensuring the sustainability of upgraded settlements (DHS, 2009). To ensure this knowledge is harnessed appropriately, the UISP suggests that existing social networks in the area and structures such as ward committees play an active part in community participation processes (DSH, 2009). These structures should be used not only to facilitate participation processes, but also for capacity-building initiatives to ensure that residents feel competent enough to participate actively. Funding of up to 3% of the project cost is made available for all community participation related processes under the UISP, and requires that a structured agreement be made between the community and the municipality (DHS, 2009).

For Project Silvertown, community participation processes occurred as early as 2003 when the City established a Project Steering Committee. The committee consisted of representatives from the City, ward councillors from the affected areas as well as community representatives. In the selection of community representatives, the City approached two existing community structures within the area, namely the South African National Civic Organisation (SANCO) and the Khayelitsha Development Forum (KDF). Furthermore, the City appointed a community liaison consultant residing in Khayelitsha to assist them in public participation processes and planning.

3.5 Community participation conceptual frameworks

In his thesis Abbott (1993) investigated the theoretical development of community participation, particularly three different conceptual frameworks of community participation. He defines conceptual frameworks for community participation as a “framework within which the various components of community participation can be linked to each other” (Abbott, 1993:68).

The earliest framework identified by Abbott is that of Arnstein (1969) who developed a framework describing eight levels of citizen participation that she termed as a ladder of citizen participation (Abbott, 1993). Arnstein's framework related the notion of community participation to the idea of community power – the ability for community members to join in determining decisions relating to their development so they are able to “induce significant social reform which enables them to share in the benefits of the affluent society (Arnstein, 1969:216).

Each of the eight rungs on the ladder describe a different intensity of involvement by the beneficiary group ranging from levels of nonparticipation, varying degrees of tokenism to the highest rungs of the ladder describing the degrees of citizen power (Arnstein, 1969). Abbott highlights two significant contributions from Arnstein's paper. The first is the connection made between levels of community participation being linked to the amount of power given to communities in decision making processes (Abbott, 1993). The second contribution is the ladder of citizen participation itself in that it provides a structure outlining the “continuum of increasing intensity which tends towards some form of control” (Abbott, 1993:55).

While able to identify a continuum of intensities that can exist in community participation processes, one criticism made was that applications of her framework might be limited to projects relating to the urban poor in America and not suitable within the context of developing nations such as South Africa (Abbott, 1993).

The second framework Abbott discusses is that of Paul and was the first research paper that specifically focused on community participation from a developing nation's point of view (Abbott, 1993). Paul's framework is a three dimensional model that expands on Arnstein's continuum of intensity levels of participation to include two additional components, namely community participation objectives and instruments (Abbott, 1993). Paul identifies five main objectives and outcomes for community participation namely:

- i) The empowerment of community members
- ii) Capacity building of beneficiaries to strengthen their ability to contribute towards the project development through the provision of relevant skills and knowledge
- iii) Effectiveness relating to the degree in which the project outcomes are congruent with community needs and wants

- iv) Cost sharing between project implementers and beneficiaries for an increased sense of ownership of the project and its related services
- v) Efficiency in the delivery of community participation to ensure the best use of financial, human and other resources required for the process (Abbott, 1993; Paul, 1987)

In addition to objectives, Paul (1987) identifies a component of participation he termed as “instruments of community participation”. These are institutional devices used to organise a community participation in a project and fall under three categories, namely:

- i) Field workers of the implementing agency who are seen as the group used to interact and organize with the beneficiary group
- ii) Community workers/committees who act as community mobilisers and are usually selected by the beneficiaries through means of a consensus or consultative process.
- iii) User groups that, where possible, are specialized and organized groups within the beneficiary group. While this group has the potential to ensure the highest levels of community participation are reached in projects, they are often the most complex instruments to sustain. User groups are able to coexist with the aforementioned community worker/committee instruments (Paul, 1987).

Abbott recognises Paul’s framework as a significant contribution to the community participation debate by distinguishing between community participation objectives and intensities and identifying instruments (Abbott, 1993). At the same time he notes that Paul’s framework does not state how and who ought to decide the level of intensity and objectives for the given project.

The third framework investigated is referred to by Abbott at the “objectives” conceptual framework developed by Moser for projects in the developing world. Moser expands on the list of objectives Paul identified and, similar to Arnstein, places community participation objectives on a continuum (Abbott, 1993). However, unlike Arnstein’s work this framework assigns only one level of intensity to community participation processes – a level of complete control (Abbott, 1993). Therefore this framework takes on the view that community participation processes can either be viewed as a “means” or an “end” to community empowerment (Moser, 1983). Processes which are in support of the complete control of the community are seen to be

the end component of the framework. Those processes which do not support the empowerment of the community fall under the “means” component of the framework (Abbott, 1993). This “means and end” duality is seen as problematic to Abbot because it places “community control and power within the socio-political sphere” at the neglect of the technical, and economic issues (Abbott, 1993:76).

In Abbott’s critique of the conceptual frameworks on community participation mentioned, there are two fundamental issues both of the frameworks share. The first issue centres on the entry point of the community into the decision making process. The second issue is around the relationship shared between the different stakeholders involved in the participation process. Goulet (1986) clarifies the stakeholder relationships in a development process by using the concept of perceptions. He argues that three types of role-players make developmental decisions: technical specialists, politicians and persons expressing general or special concern. Technical specialists and politicians approach decision making on distinct rationality systems such as technological rationality systems that are based on scientific evidence or political rationality systems based on the preservation of power. Those parties with general or specific concern pursue an ethical rationality that pursues the promotion of ethical values above all rationality systems. It is when these different role-players with different rationality systems “converge in decision making arenas, the three rationalities impinge upon one another, not in the mode of horizontal mutuality, but across purposes and in a vertical pattern” (Goulet, 1986:304-305).

3.6 Summary

Literature relating to sanitation service provision, upgrading of informal settlements and the community participation processes incorporated in these infrastructure projects in South Africa was explored. The chapter began by exploring the legislative framework on sanitation service delivery in South Africa, highlighting key policies relating to the provision of sanitation infrastructure. The review then went on to focus on the provision of sanitation infrastructure projects in relation to informal settlement areas in the country, paying particular attention to the UISP. The UISP was the programme in terms of which Project Silvertown was implemented and is premised upon extensive community participation with beneficiary residents to the

upgraded services. An example was shown where the effective use of community participation led to improved adoption and sustainability of sanitation infrastructure projects. While community participation is believed to be an effective way to empower communities and improve the chances of project success, it is not without challenges and shortcomings. Power imbalances that exist between communities and government officials implementing projects can undermine participation processes to becoming an administrative façade.

4 Methodology

Public participation processes have been legislated in public infrastructure projects with hopes to improve the delivery of infrastructure and services – particularly in informal settlement areas. However, in practice challenges exist when incorporating various stakeholder expectations in projects of this nature. This poses a problem as it undermines the ability to understand the conflicts in stakeholder views and incorporate the knowledge of the public into participatory upgrades.

This study aimed to determine the different perceptions and expectations held by stakeholders involved in participatory sanitation upgrades in informal settlements. To do this the two main research questions were asked. The first question asked was: *What are the differences in perceptions and expectations between stakeholders in participatory upgrades?* The second question asked was: *What implications do the different perceptions and expectations of various stakeholders have on the success of participatory upgrades of informal settlements?*

The study made use of existing documentary resources which formed part of the High Court submissions. To analyse the data, the Critical Systems Heuristics framework was modified and used to surface stakeholder perceptions and expectations.

4.1 Research design

This study adopted an interpretivist research philosophy guided by a qualitative paradigm. Interpretivism makes use of language, values and interpretations to construct the social realities perceived by humans (Bandaranayake, 2012). This was in alignment to the overall project objective, looking to articulate the perceptions and expectations held by various stakeholder groups in participatory sanitation upgrades. Furthermore, the project aimed to understand the implications of the disjunctures which various stakeholders have that may contribute to the fuelling of public protest and poor adoption of sanitation interventions.

The research design was based on a case study making use of Project Silvertown as the single in-depth case study. Flyvbjerg (2006) states that more often than not, many researchers believe a case-study strategy to be of little relevance in the academic world, as the findings in a case study do not allow for broader generalisations to be made about the wider systemic problem.

However, he counters this argument by suggesting that gaining deep insights into a single phenomenon is indeed advantageous as “a discipline without a large number of thoroughly executed case studies is a discipline without systematic production of exemplars, and that a discipline without exemplars is an ineffective one” (Flyvberg, 2006:242).

Project Silvertown was a significant event in South Africa which triggered both national and international debate on sanitation service delivery. It was the main catalyst behind the in-depth study to determine the status of the quality of sanitation services being provided in the country, an audit which had rarely been done prior to the event (Mjoli, 2010; DWA, 2012). The importance of this particular case study within the wider discipline of sanitation service delivery in South Africa justifies for an extensive qualitative study. The aim is to help strengthen what is already known in existing resources on this matter by providing detailed contextual analysis and understanding of the events that transpired and the perceptions of the stakeholders involved.

4.2 Research methodology

For the purpose of this research, an adaptation of critical systems heuristics was the methodology applied to surface and critically articulate stakeholder perspectives within a given system. This theory brought to bear the comparative perspectives stakeholders have of participatory sanitation upgrades. The findings were then used to identify the potential problems for project success that could arise as a result of the conflicting stakeholder viewpoints.

4.2.1 Critical Systems Heuristics

Rooted in the traditions of critical systems thinking and practical philosophy, CSH is a philosophical framework devised by Werner Ulrich to support reflective practice in social planning. The CSH framework supports reflective practice by making “explicit the value assumptions underlying practical judgments by means of critical reflection” (Carr & Oreszczyn, 2003:1).

For the purpose of this framework, Ulrich redefined social planning (a term more commonly understood as a scientifically informed means for fulfilling a desired end) to be the art of promoting improvement within a system (Ulrich, 1996). Often, experts and institutions holding the monopoly of power (either through that of knowledge or resources) were responsible for

driving the processes of improvement and making decisions regarding what the measure of improvement may be (Ulrich, 1987).

However, like the thinking behind community participation, CSH drives the point that all social planning for improvement should be a public activity inclusive of all affected citizens, particularly when the involved planners are themselves not affected by the desired end result. However, this can pose an ethical dilemma, as a diverse stakeholder group may result in different factors being relevant (Carr & Oreszczyn, 2003).

Improvement rarely means the same thing for everyone concerned. Promoting it inescapably implies preference; that is to say; it implies choice between the needs and values of different groups of people (Ulrich, 1996:9)

The conflicts between stakeholder needs and values exist in all social planning processes. Choices on which some of those needs and values are prioritised over others will inevitably result in the processes not being able to serve all parties equally (Ulrich, 1996). Those with a high level of power, knowledge or influence will place their interests above other groups. The CSH framework is not able to justify the rationality of any particular proposal for improvement among these conflicting needs and interests.

However, CSH does provide systematic critical means to reflect on the needs and values of not only professionals and experts involved in the planning, but the people involved and affected as well. This allows for the emancipation of the citizens who have to live with the proposed solutions by giving them a competent voice in the matters affecting them. Therefore, CSH frees citizen views from being undervalued and allows their knowledge to be deemed as credible as that of the technical experts (Ulrich, 1983).

4.2.2 CSH boundary questions

Conventional systems theory makes use of the idea of systems models as a means of learning about a particular situation in reality. Another way in which to view this can be understood as “the lens through which one might see the world” (Churchman cited by Ulrich & Reynolds, 2010:246). CSH builds on this conceptual model by defining and structuring a situation or system of interest (SOI) to form reference systems.

CSH uses 12 boundary judgments or questions to determine which facts and value considerations people deem to be relevant or irrelevant to define a reference system (Ulrich, 2005). The boundary questions are shown in Table 1.

The 12 questions are based on four sources of influence, namely motivation, focusing on the purpose achieved; control, pertaining to power distribution and decision-making processes; expertise, looking at those with the relevant knowledge; and legitimation, seeking emancipation from such claimed expertise or power (Jamaludin, 2012). Details regarding each source of influence are discussed further in Chapter 5.

The 12 questions are designed in such a way as to make evident the four sources of influence. These questions answer three categories in each source of influence. The first relates to identifying “who” the stakeholder is in each source of influence. The second questions asks for “what” the stakeholder identified is/isn’t responsible in each of the four sources of influence. Finally, the third question seeks to identify the main stakeholding issue in that particular source of influence. The importance of these sources of influence is stressed by Ulrich who states that:

these four issues are essential for reflective practice in most (if not all) situations of problem solving, decision-making, or professional intervention. They are essential since without considering them, we do not really understand what a claim means and whether or to what extent we should recognize it as valid, that is, as a basis for action. (Ulrich, 2005:9).

Table 1: Boundary judgments and questions of CSH (Adapted from Ulrich 2005:11)

Sources of influence	Boundary Judgments		
	<i>Social Roles (Stakeholders)</i>	<i>Specific concerns (Stakes)</i>	<i>Key problems (Stakeholding issues)</i>
<i>Sources of motivation</i>	1. <i>Beneficiary</i> Who is (ought to be) the client or beneficiary ? That is, whose interests are (should be) served?	2. <i>Purpose</i> What is (ought to be) the purpose ? That is, what are (should be) the consequences?	3. <i>Measure of improvement</i> What is (ought to be) the measure of improvement or measure of success ? That is, how can (should) we determine that the consequences, taken together, constitute an improvement?
<i>Sources of control</i>	4. <i>Decision-Maker</i> Who is (ought to be) the decision-maker ? That is, who is (should be) in a position to change the measure of improvement?	5. <i>Resources</i> What resources and other conditions of success are (ought to be) controlled by the decision-maker? That is, what conditions of success can (should) those involved control?	6. <i>Decision environment</i> What conditions of success are (ought to be) outside the control of the decision-maker? That is, what conditions does (should) the decision-maker not control?
<i>Sources of knowledge</i>	7. <i>Expert</i> Who is (ought to be) considered a professional or expert ? That is, who should be (ought to be) involved as competent provider of knowledge, experience and expertise?	8. <i>Expertise</i> What kind of expertise is (ought to be) consulted? That is, what should count as relevant knowledge?	9. <i>Guarantor</i> What or who is (ought to be) assumed to be the guarantor of success ? That is, where do (should) those involved seek some guarantee that improvement will be achieved; for example, consensus among experts, the involvement of stakeholders, the experience and intuition of those involved, political support?
<i>Sources of legitimacy</i>	10. <i>Witness</i> Who is (ought to be) witness to the interests of those affected but not involved? That is, who is (should be) treated as a legitimate stakeholder, and who argues (should argue) the case of those stakeholders who cannot speak for themselves, including future generations and non-human nature?	11. <i>Emancipation</i> What are (ought to be) the opportunities for the interests of those negatively affected to have expression and freedom from the worldview of the system? That is, where does (should) legitimacy lie?	12. <i>Worldview</i> What worldview is (ought to be) determining? That is, what different visions of improvement should be considered, and how should they be reconciled?

4.2.3 Systematic boundary critique

Striving towards this non-elitist approach to social planning, Ulrich included the idea of boundary critique in CSH. Boundary critique is defined as being a “systematic – reflective and discursive – effort of handling boundary judgments critically, whereby ‘critically’ means both ‘self-critically’ questioning one’s own claims and ‘thinking for oneself’ before adopting the claims of others” (Ulrich & Reynolds, 2010:256).

This is a core concept of CSH as it “aims to sweep-in the maximum amount of information into the defined system boundary on one hand and poses the question for a rational justification of the boundaries through a debate between stakeholders on the other, thus making it an ethical process involving multiple viewpoints” (Jamaludin, 2012:56). By surfacing the underpinning boundary judgments of various parties, the critique helps parties to understand their own boundary assumptions, as well as those of other parties (Ulrich, 2005).

4.2.4 CSH stakeholder definitions

Stakeholder involvement and management in projects have increasingly gained the attention of academics and practitioners. However, the identification of stakeholders in any given SOI can prove to be a complex task (Achterkamp & Vos, 2007). Olander and Landin (2005) have defined project stakeholders in construction projects as being “a person or group of people who have a vested interest in the success of a project and the environment within which the project operates” (Olander & Landin, 2005:1).

Public infrastructure construction projects often require community participation processes; this adds another dimension to stakeholder engagement beyond the realm of organisational stakeholder management. This is because the citizen stakeholder group, together with organisational stakeholders, are given the opportunity jointly influence project outcomes, as well as share control over resources allocated to the project (Xie et al., 2014). Therefore, community participation aims to involve the end-users affected in the decision-making process.

CSH was developed to bear the civil society context in mind. The CSH framework distinguishes between two major stakeholder groups in any SOI, namely involved and affected agents (Vos, 2003). In developing the CSH framework, Ulrich identified two key factors allowing any

individual or group to belong to the affected or involved stakeholder group. Vos (2003) writes that the factors considered to belong to either group are that the person/group must:

- Have a resource to contribute to the system of interest (expertise, financing, political power)
- Actually or potentially be affected by the outcome of the system (end-users)

This acts as a macro-filter, separating stakeholders from non-stakeholders, and serves as the first boundary judgment employed by Ulrich in identifying the pool of stakeholders in the system of interest.

Beyond this macro-filter, a second boundary judgment is employed to differentiate the identified stakeholders into the involved and affected stakeholder groups. This stage helps sort



Figure 6: Breakdown of social actors in a given system of interest (Ulrich, 1996)

the identified stakeholders by defining what is meant by involved stakeholders and affected stakeholders, and they are represented in Figure 5.

Achterkamp and Vos (2007) state that involved stakeholders are the identified stakeholders who are actively involved in the achievement of the project objectives. This active involvement would be in the form of the stakeholders' contribution of resources or the involvement of affected stakeholders in the outcome of the SOI.

As seen in Figure 5, the involved stakeholder group is then further divided in the CSH framework into the sub-stakeholder groups:

Client – This is “the party whose purposes are being served” (Achterkamp & Vos, 2007:8). These stakeholders are predominantly responsible for defining the project purpose and determining whether the resultant outcomes/objectives constitute an improvement in the SOI (Ulrich, 2005).

Decision-Takers/-Makers – This group “sets the requirements regarding the project process and outcomes and evaluates whether these requirements are met” (Achterkamp & Vos, 2007:8). They predominantly control the resource allocation and conditions of success in any SOI.

Planners/Experts – This stakeholder group contributes expertise or experience towards meeting the project deliverables (Achterkamp & Vos, 2007). They are contributors in the sources of knowledge required in the SOI and therefore are responsible in helping to assure that some improvement is achieved in the outcomes of the project.

Ulrich restricts affected stakeholders to being those passively involved or otherwise “affected by the project outcomes or project process without being able to influence the process or outcomes” (Achterkamp & Vos, 2007:8). In his book, Ulrich (1983) gives a good example of this type of stakeholder, describing affected parties as people who are not in the position to be able to contest a decision or vote because of various factors such as being too young, not yet born, disabled or not having the capability to rationally express their concerns. Vos (2003) explains that owing to insufficient knowledge regarding the side-effects and long-term risks of a project, the affected group are often difficult to bind. Because of this, Ulrich bounds this stakeholder group by means of assigning representatives to this stakeholder group. CSH

classifies these representatives as witnesses, the fourth sub-stakeholder group in the framework. Witnesses are defined as a person/group elected to act on behalf of the greater affected stakeholder groups' interests (Ulrich, 2005).

4.3 Data collection

CSH implies the use of interview methods using participants to answer each of the 12 questions CSH prescribes for the collection of the data required. However, instead of interviews, this study has adapted the CSH data collection method and made use of existing documentary resources available on Project Silvertown. Therefore, the answers to each of the 12 questions were constructed for each stakeholder group from an interpretation of the documents sourced.

Instead of asking participants questions in both the *is* and *ought to* mode a further modification was made to the framework. For the purposes of this project, data gathered from the UISP, as well as the initial Project Silvertown project, proposals were used to answer the CSH questions in the *ideal/ought to* mode. The decision was taken to do this because the UISP and Project Silvertown proposals were documents, which stated how the project ought to have been implemented in an ideal state; therefore, making use of this documentation to frame the ideal mode of how the project ought to have been implemented from a policy perspective.

To address questions in the *is* mode, responses from various stakeholders identified in the documentary resources sourced were used to generate answers to the questions for each stakeholder group. Information from the documents sourced were extracted to formulate responses to the questions posed in the CSH framework from various stakeholder perspectives. The documentary resources used included:

- Internal documents from the CoCT regarding the project details obtained from the Western Cape High Court
- Signed affidavits from several witnesses in various stakeholder groups
- Minutes of meetings between the Silvertown Project Team Steering Committee obtained from the Western Cape High Court
- Forensic investigation reports on the Silvertown housing project
- Court proceedings and judgments on the Silvertown housing project

- UISP policy documentation
- Journal articles on the toilet war saga
- Newspaper clippings dated between 2010 and 2011. These clippings were sourced online, using the following search words used to find the newspaper articles: toilet war saga, Khayelitsha toilet war, and Makhaza toilet war.

The internal project documents, signed affidavits, meeting minutes and forensic investigation reports were obtained from the Western Cape High Court and are public records.

4.4 Data analysis

Ulrich (2005) recommends CSH practitioners begin by first mapping the stakeholders involved in and affected by the system of interest. The main objective of this activity is to determine which individuals or groups represent the stakeholders within the given system of interest. As per Ulrich's CSH framework, stakeholders need to either be involved with the planning of the system, affected by the intended plan or a mix of both involved and affected.

Before stakeholders in the system are identified, Reynolds (2007) recommends that the plan's SOI and its associated boundaries be clearly defined so as to better distinguish who is considered a stakeholder and determine "what belongs to the problem (the problem-relevant system) and what belongs to the problem environment" (Reynolds, 2007:n.p).

However, for this research project, the data was first coded to make a distinction between the various stakeholder groups. Computer-assisted qualitative data analysis software (CAQDAS) called NVivo10 was used for data handling and analysis. Figure 6 shows an example of how the data was sorted into each CSH question.

Using NVivo, sourced textual data, which directly quoted or cited any individual or group, was extracted and sorted according to whether they were either a stakeholder or non-stakeholder. For this research project, only data from stakeholders who were involved prior to the case being lodged with the South African Human Rights Commission, others were considered as

stakeholders. Once stakeholders and non-stakeholders were identified, the next step involved differentiating the stakeholders into their respective stakeholder groups.

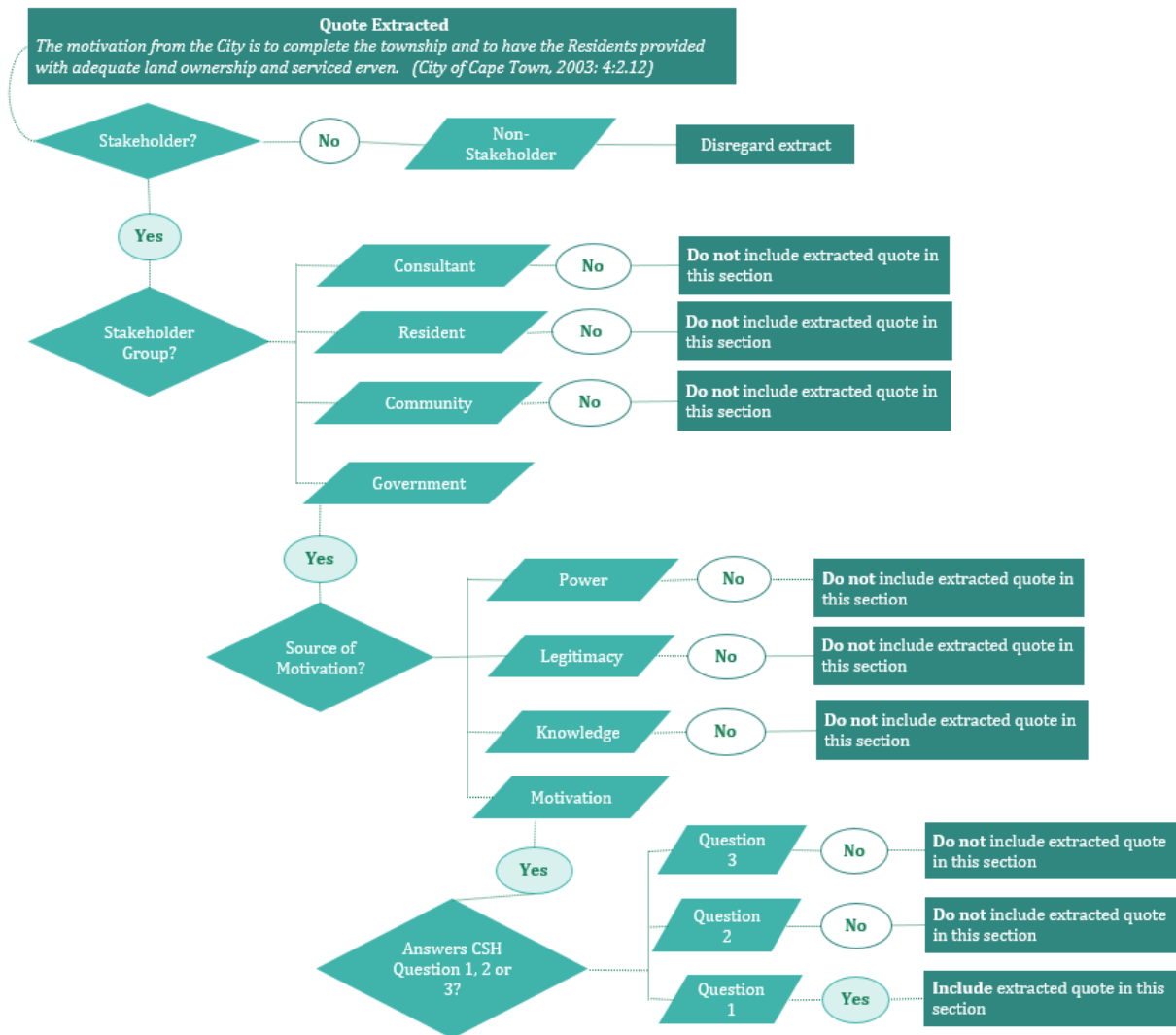


Figure 7: Example to show the process taken for sorting data sourced

Again, for this step, Nvivo was used to sort the data into four stakeholder groups, namely government, community leaders, consultants or residents. Refer to Chapter 5.1 for a more detailed explanation on how stakeholder groups were identified. Following this division, the

data was sorted into the 12 questions falling into the four sources of influence, as per Ulrich's framework, namely motivation, power, knowledge and legitimacy.

The next step involved formulating answers for the 12 CSH questions for each stakeholder group, using the extracted textual data. After coding the data into the 12 questions, a secondary thematic analysis was done to identify any recurring patterns or relationships in the data to synthesise any disjunctures found between stakeholder groups into larger systemic problems.

4.5 Validity

Concerns are raised as to whether the textual data is sufficient to answer all the CSH questions adequately and furthermore, whether the researcher's own reference system and bias have influenced the data analysed. To best answer the 12 CSH questions for each stakeholder group an attempt was made to access a wide range of data verbatim from the sources mentioned in Section 4.3.

Reynolds (2007) recommends that any CSH practitioner reflect on their role in the SOI to identify any possible bias before conducting an evaluation. The practitioner's involvement could range from being an independent observer, "expert" associated or involved in the project, an "expert" providing external and independent expertise on the project, or a "witness" representing the affected parties, or a combination of the mentioned roles. For this project, the researcher was an independent observer who had no contact with any of the known stakeholders and played no part in the selected case study.

When explaining some of the answers constructed in Chapter 5, excerpts from the data extracted were included to provide the reader with reference of the data used for the constructed answers and mitigate the researcher's subjectivity of data construction. Furthermore, the CSH framework provides frameworks that assist with objectivity as they help to identify issues that may be tacit or otherwise invisible.

4.6 Ethical considerations

This research project made use of project documents, signed affidavits, meeting minutes and forensic investigation reports obtained from the Western Cape High Court and online news

sources. Ethical consideration regarding the privacy of stakeholders, informed consent, voluntary participation and anonymity were not considered to be relevant for this dissertation as all information sourced was readily available in the public domain.

Prior to research being conducted, the study went through the ethics approval process with the Faculty of Engineering and the Built Environment at the University of Cape Town and was granted ethics clearance to continue with data collection and analysis.

5 Analysis of CSH results

This research project aimed to articulate the perceptions and expectations that stakeholders have in sanitation infrastructure projects with a view to understanding the implications this has towards the success of participatory upgrades.

This chapter describes and analyses the answers constructed for each stakeholder group identified in Project Silvertown. The chapter begins with a stakeholder analysis to identify the various stakeholder groups involved in and affected by Project Silvertown. Following the stakeholder analysis is the summary of the constructed CSH answers from the textual data sourced. As mentioned in Chapter 4, data was sourced from the UISP, Project Silvertown application for subsidy approval document and the Project Silvertown project description document.

These three documents were used to answer the *ought to* questions in the CSH framework, as they were developed to structure and frame how the project was envisioned to be administered. The constructed CSH answers to the *ought to* section are presented in the first table in each section. Stakeholder perspectives were used to answer the *is* questions in the CSH framework and are reflected in the second table in each section.

5.1 Stakeholder analysis

An initial analysis involved analysing the data to identify key players who featured in the data collected and group these representatives into stakeholder groups, depending on their involvement in the project. Within the bounded SOI, four stakeholder groups were recognised as being involved in or affected by the system of interest, namely the residents, community leaders, government branches and specialist consultants. Table 2 shows a detailed summary of the stakeholder groups in Project Silvertown and identifies the stakeholder representatives, as well as their primary roles in the project.

The government branches and consultant stakeholders were identified as being part of the involved stakeholder group in the project. Their involvement in Project Silvertown served as the providers of resources and technical expertise towards the proposed sanitation upgrade.

Table 2: Key stakeholder groups in Project Silvertown

Stakeholder Groups	Major Stakeholders	Stakeholder Representatives	Major Stakeholder Roles
Government	City of Cape Town (CoCT)	Dan Plato - Mayor CoCT Douglas Norman - Head Projects Coordinator New Informal Settlements Theo Sethosa - Project Manager Herman Steyn - Manager: New Housing Mzomba – Erstwhile Manager: New Housing	The CoCT applied to the DoHS Western Cape Province for the approval of subsidies for Project Silvertown. As a municipal government, the City of Cape Town was responsible for the initiation, project management, management of funds, tender processes and other administrative duties for the project. They were involved in the project from conceptualisation through to the project completion. The responsibility lay with the CoCT to appoint and finance the relevant expertise required for this task, as well as approve the final design concept. They were responsible for the initial approval of the communal toilets for which they received funding from the Western Cape provincial government, as well as approval for the unenclosed toilets, which were installed later.
	Department of Human Settlements (DHS)	Jan-Louis van der Walt - Director Human Settlement Policy Development	The DoHS allocates money from the national housing programme to provinces to aid them in financing any national or provincial housing programme as per the framework of the Housing Act. They are also primarily responsible for provision of clarity on the interpretation of the UISP code.
	Province of the Western Cape	Helen Zille - Premier Helgard Daniel Muller - Chief Engineer Mbulelo Service Tshangana – Head of DHS	The Province of the Western Cape was responsible for the approval of the Silvertown Project proposal submitted by the CoCT. Upon approval of the project, they were the main project financiers, however, management of the funding remained the responsibility of the CoCT. A condition made by the Province of the Western Cape for this project was that the CoCT was to adhere to provisions of the National Housing Code to govern the decisions made in the project.
Consultants	Shamrock Plumbing	Reg le Sar	Civil contractor awarded the second tender to construct the 1 316 toilets without enclosures.
	Umzamo Civils CC	PE Tom	Civil contractor awarded the initial contract to build 282 communal toilets.
	Kwesi V3 Engineers	Deon Rossouw - Technical Director Rushied Abdurahman	Contracted to provide technical details of the toilet structures required for the construction of the 1 316 individual toilets, and to prepare all documentation and specifications for tender. Upon the withdrawal from the project by Liebenberg & Stander Consulting Engineers & Project Managers, KV3 acted as the sole design and project management consultants.
	Liebenberg & Stander Consulting Engineers & Project Managers	Nkosinathi Caso A Bishop Glen Honeyman	Responsible for the facilitation of community participation processes, general project management and technical civil engineering design of the planned upgrade. Upon the decision taken by the CoCT to change to the 1 316 unenclosed toilets, the consulting firm decided to no longer be a part of the project. They were not in favour of the decision and also considered the new proposal to be a duplication of the original contract.

Stakeholder Groups	Major Stakeholders	Stakeholder Representatives	Major Stakeholder Roles
Community Leaders	SANCO & KDF	Community-led Organisation	The CoCT approached existing community structures in the project area to form part of the Project Steering Committee and represent residents.
	Ward Councillors	NG Gexa - Makhaza Ms LD Jelele - Silvertown Mkutswana - Town 2	Formed part of the Project Steering Committee from the start of the project planning phase to act as representatives of the council within their respective wards. With the dissolution of the Project Steering Committee councillors were responsible for relaying the residents' concerns to the CoCT and consultants, and communicate all decisions taken by the project team to the residents.
	Community Liaison Officer (CLO)	Andile Lili - Makhaza CLO Xoliswa Sondlo - Silvertown CLO Mthandozo Khope - Town 2 CLO	Appointed by the civil contractors as extension of the contractor as a communication resource and link to the community on the behalf of the contractor with the contractor's interests at heart.
Residents	Makhaza	Ntombentsha Beja Thembisa Princess Sokabo Andiswa Ngabi	Beneficiaries of the sanitation upgrade

The residents and community leaders were both involved in and affected by the project. The involved and affected stakeholder group would ultimately be the end-users of the sanitation solution provided. In addition to the residents and community leaders, there were members within the community hired by the government branches and consultants to act as their communication links to the residents. These members were community liaison officers (CLOs). Although they were employed by organisations which were only involved with the project (government branches and consultant groups) owing to the fact that they were residents within the project area they too fell under the involved and affected or end-user group.

There were several other parties recognised as key players who fell outside the system of interest and were neither directly involved in nor affected by the project outcome. As shown in Table 3, these parties were groups like the High Court of South Africa, the South African Human Rights Commission (SAHRC) and the African National Congress Youth League (ANCYL). These parties all became involved in the latter part of the project and through investigations of the events leading to the public protest. While their direct roles were not considered within the SOI, their testament was used to extract data of actual stakeholders in the SOI.

Table 3: Project Silvertown external key players

High Court of South Africa	Judge Nathan Erasmus	Appointed in 2010 as the judge to provide a verdict on the application filed by Mrs Beja and others against the Premier of the Western Cape and others. By this point the project had been running for six years. He was not involved in any of the events that led to the court case application filing, and therefore had no agency or control of any of the decisions that were made prior to the application being filed. However, once the case had been filed, he did play a pivotal role in closing the matter and making the final ruling.
South African Human Rights Commission (SAHRC)	Pregs Govender	Upon receiving a formal complaint from the ANCYL, the SAHRC embarked on an investigation into the matter. The investigation included several consultation and mediation sessions between the ANCYL, Makhaza residents and the CoCT. Findings from this investigation ruled that the CoCT had violated the right to dignity of the Makhaza residents, failed to provide adequate sanitation services to the citizens and followed an inadequate consultation process. Pregs Govender, the SAHRC Deputy Chairperson, was the main figure who played a prominent role on behalf of this group.
African National Congress Youth League (ANCYL)	Andile Lili Andiswa Ncani	The ANCYL are the youth wing of the ruling political party in South Africa since 1994. In Project Silvertown, the Youth League served more as an interest group and not a political party, as they were not formally elected by the residents to stand as their representatives. Although Andile Lili is a representative of both the CLOs and the ANCYL and lodged the complaint to both the SAHRC and High Court in his capacity as an ANCYL member, he could have used his function as a CLO to have lodged the complaint.

5.2 Summary of constructed CSH answers

The following section summarises the answers constructed for each stakeholder group and highlights noteworthy excerpts of the data analysis. The answers are grouped as per Ulrich's sources of influence, namely motivation, power, knowledge and legitimacy (Ulrich, 2005).

Each question describes two viewpoints. Firstly, the ideal/*ought to* version describing what ought to occur in upgrading projects as found in the UISP, as well as the Project Silvertown documentation that was submitted for funding approval. Secondly, the actual viewpoints of each stakeholder group identified in Project Silvertown are presented. Distinctions will be raised for any instances where notable disjunctures were found within any of the stakeholder groups so as to maintain the integrity of the data analysed.

5.2.1 Sources of motivation

In the CSH framework, the three questions related to the sources of motivation dealt with defining the system's sense of direction and values, as well as identifying which of the stakeholders is responsible for defining this. The three questions asked in this section were:

1. Who is (ought to be) the client or beneficiary?
2. What is (ought to be) the purpose? That is, what are (should be) the consequences?
3. What is (ought to be) the measure of improvement or measure of success? That is, how can (should) we determine that the consequences, taken together, constitute an improvement?

In essence, these questions aimed to determine whose interests the project served. The answers constructed to each of these questions will be discussed next.

QUESTION 1

Who *ought* to be the client or beneficiary? That is, whose interests should be served?

UISP	No clear indication of who the client ought to be and whose primary interests should be served. A distinction is made between the beneficiary and the developer. The beneficiary refers to the residents receiving the upgrade. The developer refers to the government branch planning and implementing the upgrade.
Project Documentation	The developer is referred to as the City of Cape Town, and the beneficiary is referred to as the residents receiving the upgrades.

Who *is* the client or beneficiary? That is, whose interests are being served?

Residents and Community Leaders	The residents believed the CoCT was the client. This was because they believed Project Silvertown was only serving the interests of the CoCT. They felt that, as residents, their needs and interests were not met, as they were not happy with both the communal toilets, as well as the unenclosed toilets.
CoCT	The data suggested that, from the perspective of the CoCT, the client role was shared between the CoCT and residents, as the City stated that a solution was required, which would allow for the interests of both the beneficiaries and the developer to be met. The residents were defined as being the beneficiaries of the intended solution. The role of the municipality was seen as that of a developer through the provision and arranging the necessary goods or services required for the project success.
Consultants	The consultants made a clear distinction between the beneficiary and the client in the system. In the view of the consultants, the client was the City of Cape Town, whose needs they were required to meet. The beneficiaries of the planned sanitation intervention were the residents, who were the concern of CoCT, and the consultants were only responsible to them through the CoCT.

Regarding stakeholder roles, in Ulrich's framework, the terms *client* and *beneficiary* are synonymous. He suggests that the client "refers to the group of people who are to benefit from a plan, the people whom the plan is to serve in the first place. Other possible terms would be 'beneficiaries', or 'people in need', or whatever" (Ulrich, 1996:19).

In the *ought* case, the language used in the USIP does not point directly to a client whose interests are meant to be served in an upgrading project. The terms *developer* and *beneficiary* are used in several instances of the National Housing Code (2009). Section 3.6 of the Code clearly states

that “Municipalities act as developers” (DHS, 2009:27) and in the event where a municipality is unable to take this role, the provincial department is to assume that responsibility. The community members receiving the services are the said beneficiaries of the project.

In the actual/is scenario, there was consensus among all stakeholder groups that the residents were the rightful beneficiaries in Project Silvertown. However, evidence in the data reflected that there was a differentiation made between the terms *client* and *beneficiary* by some of the stakeholders involved.

The residents and community leaders were of the opinion that the CoCT was the client in Project Silvertown in the actual scenario. This was because they believed the City acted in their own interests and removed the residents’ claim as beneficiaries and end-users of the services to this role.

The City continues to treat us as objects which should take whatever handouts it throws up and not as people who have feelings, choices and preferences. This attitude will invariably always cause confrontation and turmoil (Lili¹ Answering Aff. 6:15).

Extracts taken from meeting minutes held by the consultants and the CoCT demonstrated the view that the consultants believed the client and beneficiary roles were seen as being distinctly different from each other. They viewed the CoCT as the client and the residents as beneficiaries. The consultants also appeared to place the interests of the CoCT above those of the residents.

“The certificate confirming strengths of casted concrete slabs is yet to be provided to KV3 Engineers (FOURTH REQUEST). The *Client* stresses the importance of providing the certification, as it may negatively impact the certification of payment towards the Contractor, as a result of the concrete not being certified as correct.” (KV3 Engineers, 2009a: 4.6)

Drawings to each individual erf have been presented to the residing *beneficiaries*, to allocate as to where they would want the toilet structure placed. (KV3 Engineers, 2009b: 3.1.3. italics added)

¹ Andile Lili – Community Liaison Officer and ANCYL member

The following statement made by the City took a view suggesting both they and the residents had interests that they needed to be served in this project.

Part of the undertaking of the beneficiary to the developer will be the responsibility of the new property owner to fulfill his/her obligations in respect of rates and services charges payable to the municipality (City of Cape Town, 2003: 4:2.10).

To summarise, the UISP and project documentation gave no clear indication of who the client in an upgrading project ought to be; however, they were consistent in the identification of the role of the municipality being the developer (CoCT) and the residents being the beneficiaries. The residents and community leaders felt that the CoCT ended up taking that role, as the City put their interests above the residents' interests as the end-users.

Similar to language used in the UISP, the CoCT was also consistent with the distinction between the developer and the beneficiary. However, the language in the data collected showed that the City believed that both the CoCT and residents were the client because they both had interests that were met with the project outcome. The only stakeholder group who spoke directly of a client and beneficiary in the project was the consultant group. However, they made a distinction between the two terms. They considered the client to be the CoCT and the beneficiary to be the residents, and were primarily more concerned with meeting the interests of the CoCT. The inability to clearly define the client in the *ought to* scenario had a negative implication of causing tense relations when the interests of the CoCT and the residents did not align.

QUESTION 2

What *ought* to be the purpose? That is, what should the consequences be?

UISP	The overall UISP policy intent aims at the significant improvement in the lives of slum dwellers. The consequences to this improvement are threefold, namely to provide tenure, improve health and safety, and empower community members.
Project Documentation	<p>CoCT The City envisaged to complete the township and to have the residents provided with adequate land ownership and serviced erven. Prior to the provision of houses, communal taps and toilets would be provided as an interim service.</p> <p>Residents The residents envisaged the purpose to be to formalise the area, limit the overcrowding and improve living conditions in terms of health, safety and hygiene in the community.</p>

What *is* the purpose? That is, what are the consequences?

Residents and Community Leaders	Contrary to what they envisaged, residents believed the actual purpose of the project was to provide whatever the cheapest solution was to the residents without consideration of their human dignity or quality of life.
CoCT	To formalise the township and address the housing, water and sanitation needs of the community
Consultants	To upgrade the informal settlement and provide sanitation services to the beneficiaries/residents in the Silvertown area to the specifications of the CoCT

The UISP states that the programme was purposed to improve the lives of slum dwellers in South Africa through 3 different objectives. The first objective looks at formalising the tenure rights of residents in informal settlements as a means of enhancing citizenship. The second objective speaks to the promotion of a safe and healthy environment for residents through the provision of affordable housing and basic services. The third objective the UISP sets out to meet is that of empowerment of the community through the promotion of social and economic inclusivity through participatory processes.

The UISP also states that interim services that provide the residents with basic services, such as access to water and sanitation, must always be seen to not only be a temporary solution, but also serve as the first phase of the provision of permanent services. Furthermore, the type of services provided ought to be discussed with the residents.

The programme provides funding for the installation of interim and permanent municipal engineering services. Where interim services are to be provided it must always be undertaken on the basis that such interim services constitute the first phase of the provision of permanent services, the nature and level of permanent engineering infrastructure must be the subject of engagement between the local authority and Residents (DHS, 2009: 9).

As mentioned previously, for the *ought* section, responses were constructed using data obtained from the UISP and project documentation. In the project documentation a section relating to the various stakeholders' motivations for Project Silvertown were recorded and highlighted what the government and resident stakeholder groups envisioned the project motivations *ought* to have been. What was interesting to note was that from project conception the project documentation noted that the community leaders and the CoCT had differing motivations for what Project Silvertown *ought* to achieve. The residents and community leaders believed the provision of individual household toilets ought to have been a means of dignifying the community members. They envisioned the intended consequence of the project as being an overall improvement in their quality of life with respect to health, hygiene and safety of all residents in the area.

The motivation from the community is to limit the overcrowding and to improve the poor hygiene and living conditions that prevail on the site in its current format. The motivation of the greater Khayelitsha community is to establish a safe and formalised area that can fulfill the housing needs (City of Cape Town, 2003: 4:2.12)

However, residents and community leaders believed that the actual purpose of the project became focused on the provision of the cheapest solution available with little consideration to what they had envisioned. The initial communal toilets that the City had provided were not what they wanted and the decision to do so had not been adequately communicated to them. Regardless of whether the communal toilets were meant to be an interim or permanent service, the residents felt as though the construction of these facilities did not fall in line with their initial purpose for the improvement of health and safety of the community. It was only after their cries for individual toilets to be built that the City provided them with a half measure in the form of unenclosed toilets.

It is so that the communal toilets were built prior to the community being moved to the new erven. It came as a huge disappointment that people were supposedly being upgraded and the quality of their lives being improved; yet they had to continue living in shacks and use communal toilets. This did not make logic. It was on this basis that people wanted their own toilets. This concern was raised in the regular and structured meetings with the contractor over a sustained period since at least 2007 (Forensic Services Department, 2010: 5:13).

However, the CoCT and consultants took a different position on the purpose of the project. The City made it clear that their main purpose was focused on the provision of land ownership and serviced erven.

The motivation from the City is to complete the township and to have the residents provided with adequate land ownership and serviced erven (City of Cape Town, 2003: 4:2.12).

The water and sanitation needs of this community are not adequately met. This project will address the housing need of the 2 200 families that are not located on formal/ serviced erven (City of Cape Town, 2003: 2:2.4).

In this regard, the City believed it had not only achieved the intended objective, but they had actually provided above what was required of them as per the UISP by providing individual toilets instead of communal toilets.

In my consolidated affidavit the City noted that, properly interpreted, the provisions of the Code dealing with the UISP only require communal toilets on a basis of 1 toilet to 5 erven. Individual toilets will follow when houses are constructed (in phase 4. of the upgrade of an area). In the Makhaza area the City not only constructed such communal toilets, but it also supplied individual toilets (which the beneficiaries would enclose) (Plato² Replying Aff., 9:18).

In summary, the UISP's overall objective is to improve the lives of informal settlement dwellers focusing particularly on the provision of serviced erven targeted at promoting, health, safety and

empowerment of the end users. The Silvertown Project Description document highlights that the CoCT and Residents had different motivations for the project (CoCT, 2003). The Residents saw the provision of services and a formalised area as a means to an end: the end being improved health and safety. Contrary to what they had envisioned, the Residents believed that the purpose became to provide the Residents with the most affordable solution possible with no regards to the consequences this would have on their desired improvement of health and safety. The CoCT's focus was primarily on land ownership and the provision of municipal services, and they believed that they not only met their intended purpose, but they had surpassed it through the provision of individual toilets.

QUESTION 3

What *ought* to be the measure of improvement or measure of success? That is, how should we determine that the consequences, taken together, constitute an improvement?

UISP	<ul style="list-style-type: none"> • Performance against expenditure targets • Access to water and sanitation • Health indicators • Tenure • Decline in crime • Improved social and economic activity • Beneficiary satisfaction survey
Project Documentation	<p>CoCT The measure of improvement ought to be the provision of formalised erven and services for approximately 2 000 inhabitants of the Silvertown community.</p> <p>Residents Formalised housing and the establishment of a dignified, private, safe and hygienic environment for the residents</p>

What *is* the measure of improvement or measure of success? That is, how can we determine that the consequences, taken together, constitute an improvement?

Residents and Community Leaders	The actual measure of improvement was the provision of basic but undignified sanitation services and the signed “happy letters”.
CoCT	The measure of improvement was the provision of adequate formalised sanitation services to approximately 2 000 residents to establish a self-sufficient community capable of economically benefitting the country.
Consultants	The measurement of success was the signed “happy letters” obtaining the satisfaction of the community upon completion of the unenclosed toilet installation.

The UISP have several performance indicators which are outlined to measure the success of an informal settlement upgrade. These indicators look at the socio-economic, financial and infrastructural factors. In addition to the indicators measured by them, they also require that municipalities run a beneficiary satisfaction survey to determine whether the upgrade has made a meaningful impact to the residents’ lives.

The following indicators should form part of an approved business plan and should be used to evaluate and regularly report on the impact of projects for the upgrading of informal settlements:

- Performance against the work plan and expenditure targets contained in the approved final business plan;
- Improvements in living conditions measured through: - Health indicators (particularly decline in waterborne diseases and infant mortality rates, where these indicators have been recorded and are available); - Access to water and sanitation (households having access to “improved” drinking water and sanitation; - Tenure (number of households with secure tenure); - Economic activity (increased number of business opportunities and number of temporary and permanent jobs created); - Social amenities (increased number and affordability of social and recreational facilities); - Social capital (particularly family stability and community cohesion); a - Decline in crime (crime statistics). ... - A beneficiary satisfaction survey to determine the impact of the development impact on their lives (DHS, 2009:35).

Regarding the project documentation relating to the Silvertown upgrades, there was no specific mention of evaluation criteria for the project. However, comparing the performance indicators as set out in the UISP and the project purposes for the CoCT and the residents, as stated in Question 2, the deductions on the types of indicators on which each stakeholder group focused are discussed in the following paragraphs.

The project documentation indicated that the residents’ success/improvement indicators were targeted towards health and socio-economic indicators (crime, hygiene and a formalised area). However, in actual fact they believed the measure of success of the project ended up focusing on the signed “happy letters” and the provision of basic but undignified services. The initial communal toilets that were provided did not meet their success criteria for the promotion of a healthy and hygienic environment, which is why the community halted the construction of these structures.

Community leaders and residents were of the belief that the agreement made between them and the City for unenclosed toilets would result in the City fast-tracking the construction of houses to three months to enclose the toilets in their newly built homes. The building of unenclosed toilets was seen as a temporary concession that would result in a more desirable long-term solution. When houses did not materialise after three months of the installation of the open toilets, residents deemed this to be a failure of the project’s measure of success.

I have spoken to other members of our community and they seem to have understood the issues in the same way - that open toilets would be integrated into a house which was going to be built within a period of 3 months. To the extent that it is alleged that we accepted these open toilets, I point out that it was on condition and only on condition that they were part and parcel of a house, which was to be constructed on the land within a period of 3 months. I would not have accepted the construction of an open toilet if it were not part of a house (Beja³ Founding Aff. 5:15-16).

The City and consultants denied allegations that there was an agreement made for them to provide houses to the residents, which would enclose the toilets three months after the installation of the toilets. While the plan was to enclose the toilet structure eventually, timelines to when this would happen were never communicated. The toilet enclosures built by the residents would remain for an indefinite period of time.

In the circumstances I, and all of the City's officials, scrupulously avoided making any suggestion to the CLOs or members of the community which would suggest that houses would follow immediately. We were particularly anxious to raise false expectations (Caso⁴ Affidavit, 6:16).

The measures of improvement for the residents and community leaders leaned towards improvement in health, safety and other intangible measures. This sentiment did not seem to be shared by the CoCT and consultants. Instead, the CoCT viewed the measure of improvement of the project in a more matter-of-fact view, focusing on tangible deliverables such as the number of toilets installed and increased access to formalised services. This implies that the residents held a deeper ideological view of the provision of formalised sanitation services that was more aligned with the UISP than the CoCT and the consultants.

3 Ntombentsha Beja – Resident

4 Caso - Bergstan SA Consulting and Development Engineers

5.2.2 Sources of power

In the CSH framework the questions related to the Sources of Power deal with defining who provides the necessary means as well as authority on decisions within a system. The three questions asked are:

4. Who is (ought to be) the decision-maker? That is, who is (should be) in a position to change the measure of improvement?
5. What resources and other conditions of success are (ought to be) controlled by the decision-maker?
6. What resources and other conditions of success are (ought to be) outside the control of the decision maker?

This section covers the stance as per the UISP and stakeholder perceptions of the decision makers in the project with a particular focus on the perceived resource management throughout the system.

QUESTION 4

Who *ought* to be the decision-maker? That is, who should be in a position to change the measure of improvement?

UISP	Clear decision-making powers given to the MECs to approve the proposal for the upgrading process. Beyond the approval of the project there is no clear indication as to who the decision-maker is.
Project Documentation	No explicit references as to who the decision-maker is; however, the data implies the City of Cape Town to be the decision-makers in the project.

Who *is* the decision-maker? That is, who is in a position to change the measure of improvement?

Residents	Residents believed the City of Cape Town was the sole decision-maker.
CoCT	The structure of the Project Steering Committee did not give residents or their representatives any decision-making powers; only advisory status. However, the City believed that they had made every effort to engage with the community and negotiated with the residents to find a solution to their development beyond what was legally required for them to fulfill. No decision was made without the consideration and buy-in from the community.
National Government	The City of Cape Town took the role of the decision-maker, thus neglecting the residents' interests.
Consultants	The City of Cape Town made the final decision with the input and consultation from the community members.
Community Leaders	Despite the efforts, community representatives who were made to negotiate various decisions within the project felt that the City of Cape Town had disregarded their opinions and had made autonomous decisions. In an attempt to reclaim their decision-making power, community leaders organised protests against several decisions taken by the City.

In the UISP, the only explicit mention made of a decision-maker referred to the MEC's having decision-making powers as to whether approval would be granted to the municipality's proposals

made for upgrading projects. Beyond this mention, there was no clear indication as to who were to make the decisions once the project was up and running. The documents did highlight the importance of community participation processes in upgrading projects. It mentioned the important role that players such as ward committee members played in the success of these projects. It mandated municipalities to provide a structured agreement between the community and municipality to demonstrate effective community participation.

The programme is premised upon extensive and active community participation. Funding is accordingly made available to support the social processes. Community participation should be undertaken through Ward Committees with ongoing effort in promoting and ensuring the inclusion of key stakeholders and vulnerable groups in the process. The municipality must demonstrate effective interactive community participation (DHS, 2009:15).

In order to ensure that community members assume ownership of their own development and project, the involvement of the community from the onset is key. Hence, community participation should be undertaken within the context of a structured agreement between the municipality and the community (DHS, 2009:30).

Although the UISP stresses the importance of community participation through every process of the upgrade project, no mention is made with regard to the community's decision-making powers. The Silvertown documentation again makes no specific mention as to whom the decision-makers in the project are. However, it clearly states the groups who do not have decision-making powers – namely the Project Steering Committee (PSC). The excerpt from the project description document, compiled by the CoCT in 2003, dealt with the formation of the Project Steering Committee (PSC). The PSC was a group comprising of representatives from the City, contractors and elected community representatives. What it suggests is that, although the City has created platforms to hear the opinions from the community, their concerns are only taken under advisement for the City to ultimately reach a final decision. It should be noted that the elected community representatives, SANCO and the KDF later left the project. It is implied in the data that political reasons have been the cause of their departure from the PSC.

The community participation processes commenced in November 2003. The project manager and community facilitator approached the political and community-based structures in

Khayelitsha. Role players and organisations that have an active interest in the Silvertown project and have a genuine concern that the end result of any development is successful were targeted to form a Steering Committee (City of Cape Town, 2004:5).

A Project Steering Committee (PSC) was democratically elected by the Silvertown community and has been issued with a document defining their Terms of Reference. SANCO⁵ and KDF⁶ are existing community structures within the Khayelitsha and Silvertown area. They have been actively involved in the Steering Committee meetings that have been held monthly since November 2003 and have been actively involved in the development process. The Terms of Reference of the Steering Committee are available on request ... The purpose of the Committee is to provide strategic direction, support and lobbying with regard to the development of the project on technical matters. It has advisory status *and has no delegated authority for making decisions* (City of Cape Town, 2004: 5:3.5. emphasis added).

At national government level, the Department of Human Settlements believed the City did not meet the requirements regarding community participation as prescribed in the UISP. In their view, both the City and the residents ought to have had equal power in decision-making processes but instead, the CoCT took advantage of their control of resources to take control over all decision-making aspects.

The City's decision to install unenclosed toilets lack all the attributes of reasonableness and fairness; the decisions are unlawful and violate a plethora of constitutional rights and ultimately constitute an abuse of public power and resources to deprive persons with bare necessities of life (Arendse, Masuku & Sidaki, 2011: 31:59).

The residents and community leaders had similar views to that of national government. Ideally, residents and community leaders were open to the idea of shared governance; however, they felt as though the City had removed their decision-making powers - making the CoCT the sole decision-makers.

5 SANCO – South African National Civics Organisation

6 KDF – Khayelitsha Development Forum

Our intention has always been and continues to be to cooperate with the City for the good of our community (Lili Answering Aff., 4:10).

From what I have observed of the DVDs it is my view that they show a community crying out loud for meaningful consultation and inclusive decision making by the City. They also show a community, which does not appreciate being undermined (Lili Answering Aff., 9:23).

However, the City stated several times how seriously they had taken the responsibility to engage with community members and to include their views in decisions made. They stated that their efforts in doing this were evident in the City seeking consultation with residents and diverting from the national minimum standard of communal toilets to the provision of individual toilets.

The City's solution of providing toilets, to be enclosed by the beneficiaries, was a pragmatic and well-intended solution arrived at in consultation with the community, enabling the beneficiaries to take better advantage of the serviced stands (Tshangana⁷ Aff., 10:24).

Had the City simply insisted that it could offer no more than the communal toilets, it would have satisfied the minimum requirements of the Code. The Residents would then have had no legally enforceable complaint against the City. The City's officials however always viewed communal toilets as a compromise and sought to consult with the community regarding a preferable solution. Following extensive consultation to find a better way of providing sanitation facilities, on 25 November 2007 at a public meeting held on a Sunday between the City and the affected beneficiary community, it was agreed that ... the city would supply in addition to the communal toilets ... 1 316 individual toilets ... the beneficiaries would be responsible for enclosing the additional individual toilets on their own (Fairbridges Attorneys, 2011:13:22.13.)

In conclusion, regarding decision-making powers, the national government, residents and community leaders believed that the City had manipulated community participation processes to their benefit and did not regard the residents' opinions when making decisions. Although the City claimed to have included residents in decisions made, the CoCT also implicitly stated that

⁷ Mbulelo Service Tshangana – Head of DHS in the Western Province

they believed decision-making to be the role of the City. They made use of community participation platforms as advisory boards to assist in decisions they would make and communicate decisions to the public through those means. The actions of the City were not in direct conflict to the requirements as stated by the UISP, as the UISP does not indicate that community participation ought to translate directly to the community being given decision-making powers.

QUESTION 5

What resources and other conditions of success *ought* to be controlled by the decision-maker? That is, on what sources of decision power should the project rely?

UISP	Land, financial resources, human capital
Project Documentation	Land, financial resources, human capital

What resources and other conditions of success are controlled by the decision-maker? That is, on what sources of decision power does the project rely?

Residents	The residents believed they had little control of any of the conditions of success and that the City of Cape Town had control of almost all aspects of the project but displayed poor control of the financial resource budgeting of the project.
CoCT	The City believed they controlled the land and human resources necessary to deliver the project; however, the funding was controlled by the provincial and national governments.
Provincial Government	National government controlled the project funding, as they specified UISP requirements.
National Government	They believed that, although they were responsible for overall budget allocation to provinces, it was provincial and local government who were to allocate project funding according to the type of development selected and other projects which might require funding.
Consultants	Land, infrastructure, financial budgeting of funding provided to the City, control of human resources employed for the project
Community Leaders	The community representatives believed that the City of Cape Town tried to remove the rights of the residents to control their own development and share their knowledge of the social climate so they could control almost all aspects of the project. What was important to note was that they recognised that the City controlled the financial resources but displayed poor control of the financial resource budgeting of the project.

On the matter of resources, the UISP and project documentation pointed to three main physical resources needed for upgrading projects, namely land resources, financial resources and human capital. The project documentation noted the fact that the City of Cape Town already owned the land where the proposed upgrades were to take place and that they had sufficient human resources to execute the project. The resource most mentioned was the financial resources the project would require. The funding structure for UISP projects placed the main responsibility

for the allocation of project financing on provincial government, in partnership with the local municipality.

The PDs will be responsible for the funding and implementation of this programme in partnership with municipalities. PDs must do everything in their power to assist municipalities to achieve their obligations under this programme. The following are some of the responsibilities provincial government should have to perform: ... Reserve, reprioritise and allocate funds from its annual budget allocation and manage, disburse and control funds allocated for an approved project, in accordance with an agreement with a municipality (DHS, 2009:21).

In the actual scenario, there seemed to be consensus between all groups that the City was the stakeholder in control of the majority of resources necessary for the project implementation. Where considerable attention and disjuncture among stakeholders lay was within the control of financial resources for the project. The extent of control the City had regarding financial resources was a point of divergence between stakeholder groups.

Within the government groups there were disagreements on the funding structures between local, provincial and national government. At local government level, the City believed that they had control over the project budgeting, but that they lacked control of the overall budget allocated to the project. In their view, funding remained within the sphere of provincial and national government, and there were restrictions as to the amount of funding which was available to them as per the UISP.

Despite these demands, the City cannot claim any additional amount for implementing a UISP, save for a small supplement for geotechnical expenses. The result is that in most cases it simply is not possible to supply adequate services, and to still hold back some funds for the erection of individual toilets enclosed with brick-and-mortar or pre-cast concrete structures. The City is however dependent on the national and provincial spheres of government to provide funding for all projects it undertakes to promote the progressive realization of the right to housing - including related aspects such as access to land and services (Fairbridges Attorneys, 2011: 27:45).

The City's initial application for funding was premised on the temporary installation of the 1:5 toilets to households ratio, which they interpreted as the minima prescribed under the UISP.

Provisions for individual enclosed toilets per erf is generally not prescribed under the UISP and could not be met within their budget. However, when residents raised their disapproval over the construction of communal toilets the City believed they sought to come to a joint decision with the residents for the installation of unenclosed toilets which the residents would then enclose themselves. Examples of the City's view on this matter are as follows:

Significantly funding for a UISP does not include any component for the provision of toilets to each erven. All that it covers is a sewerage pipe to each property, which rises slightly above ground-level. The City however realises that a sewerage connection by itself is of limited utility to poor people, and accordingly utilises some of the allocated funding under the UISP for the construction of individual enclosed toilets on each erf. For budgetary reasons however, this was not possible in the Silvertown project (Fairbridges Attorneys, 2011: 12:22.9).

Where residents would prefer or insist on one toilet per household, this would not be affordable from either the service portion of the grant or the top structure portion when the housing subsidy would ultimately be utilised for those that qualify for such subsidies. However, a basis for providing one toilet per household and remaining within the allocated project budget would be to secure the agreement of the Residents to enclose the toilets utensils themselves (Muller⁸ Answering Aff., 25:54).

The UISP and its funding structure does not provide for the construction of enclosed toilets on each erf, in advance of top structure construction... While the cost of the construction of such toilets could conceivably be brought under the UISP interim service provision of R2 966,74 per household (as suggested on behalf of the national minister), in truth the interim services contemplated in the UISP appear to be of a different character, that is to say communal and temporary. Nor is the amount provided for adequate to cover the cost of constructing an enclosed toilet facility (Tshangana Aff., 11:24).

Provincial government, however, felt as though national government was ultimately responsible for the allocation of funding, as the latter determined the requirements set up as per the UISP, which governed the amount of funding they could allocate to a project. Furthermore, onus was

⁸ Helgard Daniel Muller - Chief Engineer

also given to the City as they were the parties who determined the nature of the project to be emergency or interim services when they applied for funding. Had they determined that the project required permanent services, they could have sought funding under a programme outside of the UISP.

In this regard, the Province's hands are tied by what is determined by national government. If this Court or national government were to conclude that the provision of full services to an informal settlement in principle requires the construction of enclosed toilets on each site, national government would have to make the necessary alterations to the UISP and its funding mechanisms (Tshangana Aff., 12:26).

National government explained that the UISP was designed for the upgrading of in-situ informal settlements. In the case of Project Silvertown, the City could have applied for funding for permanent infrastructure from a different programme based on the fact that two of the three sites they had planned to upgrade (Makhaza and Town 2) were greenfield sites. In addition, national government stated how the UISP was not to be considered a rigid programme, but more of a guideline for development that should be able to accommodate for the context of the community for whom it is providing services. Funding allocated by national government to provincial government was not project-specific. The responsibility lay with both local and provincial government to allocate their resources accordingly.

The UISP does make provision for the interim provision of services. These services cover more than a sewerage pipe, as alleged by the City. The UISP has been designed to address the specific development requirements posed by informal settlements. Hence, it is flexible to ensure that it can address locally particular development requirements and becomes a specially designed funding mechanism...the Code recognizes the need for flexibility in order to take account of the diverse living conditions across the country. It accordingly recognizes that the provision of interim services during phase 2 of informal settlement upgrading projects could entail communal water and sanitation services. I must however emphasize that this is not a prescribed minima (Van der Walt⁹ Answering Aff., 19:37.2).

In an affidavit filed on behalf of the Minister of Human Settlements (sixth respondent), the Minister asserts that unenclosed toilets are not sanctioned by the governing national legislative framework; concept of communal toilets as acceptable on a ratio of 1 toilet is to 5 families is permissible only under an emergency housing programme; the Code does allow for beneficiaries to actively participate in decision-making over the housing process and the housing product, adequate funding was made available by the National Department to the Province to provide "fully enclosed toilet facilities based on current market prices (Van der Walt Answering Aff., 27:51).

Indeed, on the facts (as they appear in HDM2 to Muller's affidavit), the Province advised the City as follows: "At this stage, no dedicated funding for the UISP is available as envisaged by the policy document. This implies that this project must be funded from the annual allocation of the Department to the Municipality. If necessary, the Municipality must reprioritize its housing projects to fulfil its commitments." I reiterate, that subject to what I have stated in my explanatory affidavit, the Department does not allocate funding to provinces on a project basis. Funding for the implementation of the National Housing Programmes are annually allocated in terms of the Division of Revenue Act and provinces must apportion the funds so allocated in terms of current contractual commitments provincial planning, and agreed priorities. Accordingly, any additional financial cost implications as a result of this application must be borne by the Province and City (Van der Walt Answering Aff., 65:34).

The residents and community leaders viewed the CoCT to be solely responsible for all financial resources. They felt that the City from the onset ought to have allocated enough funding for the provision of individual toilets that would have been enclosed. Furthermore they did not believe that the City did not have enough funding to enclose the toilets, in their view the City did not want to spend any additional funding to assist the community.

The only issue which was raised was why the government had not properly planned and provided enough money to allow individual toilets which could be included in each shack. There was a general murmur supporting a statement that this matter resulted from a failure to plan properly from the start (Caso Affidavit, 11:39).

It is very clear that if you have money in this country, you can do whatever. (Court toilet ruling..., 2010)

It was always our understanding that the City was provided with enough funds from the national government, alternatively that it had sufficient funds of its own, to fully develop our area (Lili Replying Aff., 5:12).

In conclusion, what stood out as being noteworthy in the data regarding the control of project resources was the disjuncture between local, provincial and national government on the UISP funding structure. While all stakeholders identified financial resources as being an important factor in the project, the difference of opinion concerned who was in control of this resource and the availability of financial resources.

The UISP placed the majority of the responsibility of allocation of financial resources to projects on provincial departments. The City believed provincial and national government to be in control and were of the view that the financial limitation of not being able to build individually enclosed toilets was owing to the UISP policy legislated by national government.

National government explained that the CoCT had the opportunity to seek funding under different programmes, which might have resulted in more money being made available for the type of services the residents had preferred. In addition, national government believed the onus was on both municipalities and provincial government to adequately allocate the lump sum funding given to them by national departments annually. Should a local municipality not budget the project accordingly, the responsibility is theirs to reprioritise their housing budget to commit to the completion of projects already in progress.

Residents and community leaders believed that the City of Cape Town manipulated their control over the financial resources to allow them full control of all decisions made within the project.

QUESTION 6

What conditions of success *ought* to be outside the control of the decision maker? That is, what conditions should the decision-maker not control?

UISP	Roles of government are based on principles of co-operative governance. Residents should be involved in every step of the project process.
Project Documentation	Project documentation does not give decision-making powers to government on the choice of housing option the residents prefer. Instead they are given the choice of the option they prefer that falls within the subsidy amount for which they qualify.

What conditions of success are outside the control of the decision maker? That is, what conditions does the decision-maker not control?

Residents and Community Leaders	Both stakeholder groups believed that no conditions were outside the control of the CoCT. Residents believed that the City controlled everything and that they, as residents, had no control of what the determined conditions of success were to be despite their efforts.
CoCT	They believed that funding allocated to project and policies prescribed by provincial and national government were outside of their control.
Consultants	No distinct info found on this

Responses to what conditions of success ought to be outside the control of the decision-maker were difficult to construct owing to the limited data available. In the ideal situation, the UISP outlines several functions for the roles municipalities, provincial departments and national government should play in an upgrading project. It also highlights the fact that government should be seen to function in a cooperative way, acting as one entity and assisting each of the different spheres of government to ensure the success of the project. It does stress the need to include the community in every stage of the project. In the Silvertown Project motivation document, the section describing the motivation of choice removed the City from dictating the housing options for the residents. It states clearly that, based on the subsidised amount given to the residents, they are free to select the choice of housing option they want.

The projects are undertaken on the basis of a partnership of cooperative governance between the relevant municipality, the PD, and the National Department (DHS, 2009:14).

Every beneficiary will be afforded the choice of housing option that he/she may want to acquire within the subsidy qualification (CoCT, 2003).

In the actual scenario, the cooperative governance, as envisioned by the UISP, appeared to not have taken place in Project Silvertown. The provincial department felt that there were aspects that fell outside of their involvement and control. Examples of what they believed fell outside of their control were the decision taken for the provision of the open toilets and the “happy letters” which were signed between the residents and the City. They saw their role in the project as being solely responsible for the evaluation, approval of funding and monitoring of the project. They believed that primarily it was the municipality that had executive authority for all matters.

I confine myself to the Province's own involvement in the project, which was limited to evaluation, approval, funding and monitoring of the implementation thereof (Muller Aff., 2010:3:5).

The Province was not involved in the actual provision of the toilets which forms the subject matter of this application. It was not party to the interactions and subsequent agreement between the City and the community (Muller Aff., 2010:22:44).

They acknowledged the fact that the signed Memorandum of Understanding between the provincial department and City of Cape Town required that the City ought to inform the Department in the event of any changes to the scope of the project. However, members of the Department attested to the fact that they were never informed of the decision taken by the City to install unenclosed toilets and therefore deny any involvement relating to that matter.

This finding shows a breakdown between what was mandated legislatively, namely cooperative governance, and what is implemented at a practical project level, namely siloing of the three departments.

I deny the allegation in paragraph 7 that the Province provided open toilets for the Applicants. I have pointed out the role played by the Province in the implementation of the Silvertown upgrade project. The City was the developer and it provided the infrastructure to the residents of Makhaza (Muller Aff., 2010:23:5).

There was never a formal decision at executive or council level to provide unenclosed toilets. This was an ad hoc agreement between officials and the community representatives to meet demands in a specific project. This was never conveyed to me in my capacity as Mayor or Premier (Zille¹⁰ Aff., 2010:9:14).

In this regard, it bears emphasising that the Province is only one role player in human settlement development and not all elements are within its direct control (Tshangana, Aff, 2010:2).

The residents believed that the City of Cape Town was in control of all the project conditions but that they would have liked it to have been a more cooperative process between the City and the residents. They felt that they had no control over anything relating to the project despite their efforts to engage with the City.

We are not happy. We are complaining about toilets without covers. Now, instead of doing what we want, they just take off the toilets. We're feeling that government destroyed us¹¹ (Eyewitness, 2010:n.p).

Furthermore, the community leaders believed that the City of Cape Town did not attempt sharing control of decisions or considering what the residents had to contribute.

¹⁰ Helen Zille – Premier of the Western Cape Province

¹¹ Andiswa Ngabi – Community resident

I note that Steyn¹² disingenuously omits reference to this quotation in his affidavit. Furthermore, he makes no mention of our attempts in this regard to cooperate and work with the City in order to find an amicable solution (Lili Aff., 2010:5:12).

In summary, with the limited data found that could speak directly to this question, it was determined that, while the UISP specified certain tasks to local, provincial and national government - the programme envisioned cooperative governance between all three spheres to be seen and act as one body. Data from the stakeholder groups showed that the provincial government denied any participation of the decision the City made to install unenclosed toilets and stated that they were never informed of the decision made to do so.

12 Herman Steyn - Manager: New Housing

5.2.3 Sources of knowledge

The questions asked when dealing with the expertise in an SOI as per Ulrich's framework are:

7. Who *is* (*ought* to be) considered a professional or expert?
8. What kind of expertise *is* (**ought** to be) consulted?
9. What/who *is* (*ought* to be) assumed to be the guarantor of success?

These questions are to establish where the provision of competent expertise to successfully execute the project comes from, and also to determine what the factors are to determine this successful execution.

QUESTION 7

Who *ought* to be considered a professional or expert? That is, who should be involved as competent provider of knowledge, experience and expertise?

UISP	<ul style="list-style-type: none"> • Engineering consultants/Construction professionals • Community • Community leaders • Municipality • Provincial department • National department • Community facilitator/Conflict resolver
Project Documentation	<ul style="list-style-type: none"> • Liebenberg and Stander • KV3 Consulting Engineers • Umzamo Civils • Shamrock Plumbing • CoCT • Department of the Western Province • Residents • Community leaders

Who is considered a professional or further expert? That is, who is involved as a competent provider of knowledge, experience and expertise?

Residents and Community Leaders	Residents and community leaders believed that only the City of Cape Town were regarded as the experts in the actual scenario. They believed they had expertise to share regarding contextual knowledge but that it was undermined by the City.
CoCT	Experts stated as per project documentation
Consultants	Experts stated as per project documentation

The UISP states that the upgrading projects *ought* to involve several experts. These types of experts can be grouped into four categories, namely technical, financial, legislative and social experts.

Engineering consultants, construction contractors and municipalities were seen as being experts in the technical field. For Project Silvertown, these experts were Liebenberg and Stander, KV3 Consulting Engineers, the civil contractors (Shamrock Plumbing and Mzamo Civils) as well as the City of Cape Town. Financial expertise and responsibility were primarily assigned to the provincial department as well as the City. While all three spheres of government were expected to be well versed regarding the legislation in the UISP, primary responsibility of this task and interpretation of legislation were given to the national government. Members of the community as well as community facilitators and community leaders were seen to be experts in the contextual knowledge required for the success of upgrading projects.

Secondly, the community has deep rooted knowledge of its development needs and preferences. This knowledge must be harnessed to ensure that a township design and services standards as well as the housing solutions and the economic and social facilities opted for, are targeted at satisfying the actual needs and preferences (DHS, 2009:30).

However, in the actual scenario, residents and community leaders believed that they were not taken seriously as experts who could contribute to upgrading the project and that the role of

experts was filled by the CoCT. They believed they tried to position themselves as experts in matters relating to the contextual issues in the project, and even tried to find solutions to some technical and financial issues. Despite their efforts, they believed that their inputs were not taken seriously or considered by the CoCT.

On this topic, Andile Lili, one of the community leaders and political figures residing in the area, had this to say:

The City did not inform us that it planned to install the enclosures on that day; consider our reasonable and easily implementable proposal for an alternative structure; seek to find a solution to the problem with which we are comfortable (Lili Answering Aff., 2010:5:14).

The CoCT and consultants believed they had made every effort possible to engage with the community and gain their knowledge and expertise. From the data recorded from these stakeholders, it appeared that when professional expertise was being discussed and decisions made, the CoCT and consultants took into consideration the expertise or requests of the community members.

Data showed that when the consultants and CoCT experts discussed matters, it seemed as though they only took accounts of the information given by the social experts. Extracts from data shown below indicate that social experts did not seem to be at the table when issues relating to the required project expertise were discussed.

Steyn¹³ stated that during his interview that it was necessary to discuss the demands of the community with the relevant role players to search for an alternative. Steyn informed us that the project team had a discussion and the proposed alternative was the "loo with a view" as successfully implemented previously in other areas in the City, such as Phillipi (Forensic Services Department, 2010:14:628).

13 Herman Steyn – City of Cape Town Manager: New Housing

The decision was then taken that Mzomba¹⁴ would discuss the matter with KV3 Engineers¹⁵ and Bergstan SA¹⁶ to search for alternatives. On the 30th of November 2007 a meeting was held on the 21st Floor, Civic Centre between himself, Mzomba (City), A Bishop¹⁷, G Honeyman¹⁸ and N Caso of Bergstan SA where the financial status and technical detail were discussed (Forensic Services Department, 2010:15;629).

To summarise, the UISP mentioned experts in four different categories, namely technical, financial, social and legislative experts. The role of the social expert was of the biggest concern in Project Silvertown. On this, the UISP stated the importance of involving the community as experts to provide contextual knowledge required for the upgrading process. However, in the project, the residents and community leaders felt as though they were not recognised as experts despite their efforts to engage and contribute their knowledge with the City and consultants. This aggravated tensions between the City and the residents and community leaders, and contributed to the violent protests which occurred.

14 Mr J Mzomba – Erstwhile City of Cape Town Manager: New Housing

15 A Bishop – Ward Councilor Bergstan SA Consulting and Development Engineers

16 G Honeyman - Bergstan SA Consulting and Development Engineers

17 Nkosinathi Caso – Bergstan SA Consulting and Development Engineers Community Consultation Facilitator

QUESTION 8

What kind of expertise *ought* to be consulted? That is, what should count as relevant knowledge?

UISP	<ul style="list-style-type: none"> • Technical considerations: local municipality governed by National Housing Code • Financial considerations: MEC approved based on how municipality stated it would apportion the funds • Social considerations: residents • Legislative conditions: national and local government
Project Documentation	Technical, financial and social expertise

What kind of expertise *is* consulted? That is, what counts as relevant knowledge?

Residents	Financial
CoCT	Technical, financial and social expertise
Consultants	Technical, financial and social expertise
Community Leaders	Financial

On the question of what kind of expertise is required for upgrading of informal settlements, similar to Question 7, the UISP and project documentation consider four categories of expertise for the success of a project, namely technical, financial, social and legislative expertise.

Community needs must be balanced with community preferences, affordability indicators and sound engineering practice (DHS, 2009:14).

An appropriate and sustainable trade-off should be reached between up-front capital costs, long-term maintenance and operating costs, settlement affordability levels, the need for environmental sustainability, social acceptability, human dignity and safety (DHS, 2009:37).

The purpose of this submission is to obtain approval to initiate Phase 1, 2 & 3 of the Silvertown Housing Development in terms of the National Housing Programme: Upgrading of Informal Settlements: Project Initiation to the value of R33,748,194 (City of Cape Town, 2005).

The UISP assigns the oversight and approval of matters relating to technical expertise to the local municipality. However, the execution of technical tasks is the main responsibility of external professionals such as town planners, consulting engineers, as well as the building contractors, as mentioned in Question 7. Some of the technical expertise mentioned relates to geotechnical investigations, land surveys, municipal engineering designs etc.

The conceptual plan prepared by the planners and the engineers will make provision for various options in the development (City of Cape Town, 2005).

The approval of the design and standards of engineering services by the municipality (DHS, 2009:34).

Financial expertise primarily involved project financing, budgeting and funding allocation. While the provincial department is primarily responsible for the project funding and allocation, the responsibility of putting together the budget and cash flow breakdown for the project is the responsibility of the local municipality – in this instance the CoCT.

The PDs will be responsible for the funding and implementation of this programme in partnership with municipalities (DHS, 2009:21).

The City of Cape Town hereby applies for approval of subsidies for the in-situ upgrading of Silvertown ... The application is requested in the amount of R6,663,460.00 (City of Cape Town, 2004).

On the matter of social expertise, as mentioned in Question 7, the UISP considers the involvement of the community as experts regarding their contextual environment. Their expertise is viewed as critical to the success of an upgrading project.

Entails an area- and/or community-wide focus, fostering holistic development of the settlement with minimum disruption of existing fragile community networks and support structures. To the greatest extent possible, settlements should be upgraded in a holistic, integrated and locally appropriate manner. Engagement between community members and their local authorities is of the utmost importance to ensure locally appropriate solutions (DHS, 2009:13).

Furthermore, the UISP states that all upgrading projects make provision in their budget for capacitation of the community members to enable them to understand their rights throughout this process and to enable them to be in a position to better contribute their expertise with a broader knowledge of the project and their constitutional rights.

The community must be assisted and encouraged to achieve the required level of competency for meaningful and realistic participation in all aspects of their development (DHS, 2009:30).

To ensure that the objectives of the community participation are achieved, the programme has accordingly been designed to facilitate extensive community capacitation to achieve the intended participation. Therefore, in terms of the programme provisions:

- A municipality may apply for funding for the appointment of capacity to assist in the processes leading up to the conclusion of the participation agreement with communities;

- Facilitation should, as a minimum, include the following tasks: Socio-economic surveying of households; Facilitating community participation; Project information sharing and progress reporting; Conflict resolution, where applicable; Housing support services comprising: i Training and education on housing rights and obligations; ii Capacity building of housing beneficiaries; iii Assistance with the selection of housing options; iv Management of building materials; v Relocation assistance (DHS, 2009:31).

However, in the textual data analysed, there was no mention of any community capacitation that took place for Project Silvertown. Evidence of the extent to which the community were not aware of their rights came to light in the forensic investigation report, which was conducted and where members of the community were interviewed.

In our community, we believe that the reason why the City and the Province built these open toilets was because of a housing policy that permits the building of open toilets for poor people like me and members of my community. I am advised that if such a policy exists, it is unlawful

as it is in conflict with our constitutional rights set out in paragraph 2 of the Notice of Motion. I am further advised that such a policy would be a breach of the government's constitutional duty under section 7(2) of the Constitution and more particularly to provide us with access to adequate housing (Beja Affidavit, 2010:9).

Sondlo¹⁹ further stated that they agreed to this offer as they had used the bucket system for the past twenty years and were afraid that should they decline the offer they would lose out on the opportunity to have their own toilets (Forensic Services Department, 2010:646).

The UISP has given the role of legislative expertise to the national government, making them responsible for maintaining all policy relating to the programme, as well as assisting local and provincial departments with such interpretation of the programme. However, from what was found in the data from representatives from the national department, it appears as though they were not aware of the decision to construct unenclosed toilets for Project Silvertown. The break in communication between the different spheres of government therefore resulted in national government not being able to provide their expertise on legislature, which would have not permitted the construction of such toilets. On this matter, Mr Van Der Walt, a representative from the national department, had this to say in his affidavit:

Second and in any event, if the individual facilities provided by the City are found to result in an infringement of any constitutional right, they are self-evidently unconstitutional and cannot be considered to be "in excess" of any alleged nationally prescribed minimum (Van der Walt Answering Aff., 2010:12;16.2).

I have no personal knowledge of the alleged agreement entered into between the City and the beneficiary community. I address this issue elsewhere in this affidavit. However, for present purposes I reiterate that the Code does allow for the conclusion of agreements with beneficiary communities, subject to there being compliance with its requirements (Van der Walt Answering Aff., 2010:12;17).

¹⁹ Xoliswa Sondlo - Silvertown CLO

In summary, four types of expertise were seen to be relevant for Project Silvertown, namely technical, financial, social and legislative expertise. Although the UISP mandated the capitulation of the community members to allow them to contribute their knowledge and fully understand their housing rights, no evidence of this training was found for Project Silvertown.

The quotes from members of the community suggested that the residents' lack of expertise regarding the other aspects of the project rendered them vulnerable to what the technical, legislative and financial experts were telling them. They believed it was lawful for the City to construct unenclosed toilets for residents and that, if they did not accept the compromise of open toilets, they would not be able to get any toilets owing to funding constraints.

Furthermore, there appeared to be a lack of communication between the three spheres of government, particularly relating to the City, not informing provincial and national government of the scope change and decision to move ahead with the construction of unenclosed toilets. This lack of communication resulted in legislative expertise (which fell under national government's domain) not adequately being considered when the decision was taken to construct open toilets. This inadvertently weakened the importance of the contextual knowledge which the community members had and placed technical and financial expertise as the prioritised knowledge sought after.

QUESTION 9

What or who *ought* to be assumed to be the guarantor of success? That is, where should those involved seek some guarantee that improvement will be achieved for example, consensus among experts, the involvement of stakeholders, the experience and intuition of those involved, political support?

UISP	Prior to construction, agreements between local and provincial government, as well as agreements between local government and the community must be signed. In addition, once the upgrades are completed a beneficiary satisfaction survey is required to determine the impact of the development on residents' lives.
Project Documentation	Guarantee of success through the involvement of stakeholders in the Project Steering Committee.

What or who *is* assumed to be the guarantor of success? That is, where do those involved seek some guarantee that improvement will be achieved? For example, consensus among experts, the involvement of stakeholders, the experience and intuition of those involved, political support.

Residents	Consensus among technical and financial experts
CoCT	Consensus among municipality and residents – “happy letters”
Consultants	Consensus among residents, technical and financial experts, and municipality
Community Leaders	Consensus among technical and financial experts

To improve the likelihood of success of upgrading projects, the UISP requires that a consensus among experts be sought between the local municipality, the provincial department and community. Prior to construction starting, evidence of this consensus is to be produced in the form of two formal agreements. The first agreement is an agreement between the local municipality and the provincial department. As per the UISP, the agreement between the municipality and provincial department should, at minimum, contain the following information detailing the community:

- A clear description of the approved project and approval registration number;
- Conditions imposed by the MEC when approving the project;
- A clear indication of how the membership of the parties to the agreement is structured, who is represented by each party, and in terms of what mandate. Provision may also be made for the co-option of members, for "non-voting" members, for observers and for the attendance by invitation of consultants;
- Procurement requirements;
- Total number of persons/households to be assisted under the project;
- Detailed description of the land on which the project will be implemented;
- The approved project specifics in respect of the following:
 - Envisaged planning of the area;
 - The agreed professional services to be procured, details on the work to be done, and fees to be paid;
 - The tenure rights to be awarded under Phases 1 to 3 of the project;
 - The planning details of the township indicating layout, land use, sizes of stands and intended zoning of stands;
 - The details on the interim municipal engineering services to be provided, if applicable;
 - The details of the permanent municipal engineering services to be provided;
 - The type of permanent housing solutions selected for Phase 4 of the development.
- Details of any other assistance to be provided;
- A detailed itemised breakdown of all amounts of the grant and the total grant amount;
- Details of the contracting strategy selected;
- Details of community participation plan and confirmation of the commitment to implement the agreement reached with the community;
- The amount of the grant approved under the programme, which will be discounted against subsequent housing subsidies to the extent to which it contributes materially to the future permanent housing solution for the beneficiaries of the programme;
- A detailed project implementation plan also indicating the cash flow, agreed project milestones and progress payments;
- Rental and/or occupational compensation to be charged for Phases 1 to 3;
- Provision of assistance to indigent persons;
- Details on any other agreed housing goods or services to be provided and/or procured;
- Any other matters deemed reasonable and necessary to ensure that the project objectives are met;
- The processes to manage the implementation of the agreement. This must include details of:

- When, where and how often the parties will meet;
 - The description of the quorum for a constituted meeting;
 - The process of appointment of a chairperson and secretary and their terms of office;
 - The responsibility regarding secretarial functions;
 - The manner in which decisions will be made; and
 - How conflicts will be resolved and procedures to be followed, should the agreement be terminated.
- Signatures of members to indicate acceptance of the terms of contract. The date and place of signature should be included (DHS, 2009:58).

As can be seen, the requirements stated for this agreement are robust and elaborately detailed in the UISP to allow for clarity on what is required in the agreement. For Project Silvertown it appears that an agreement was signed between the CoCT and the Western Cape Department of Local Government and Housing because, when the Project Silvertown application was approved, Mr Muller from the Western Cape Provincial Department sent a letter to Mr Steyn from the CoCT, stating the need for this agreement to be signed to commence forward with the project.

While the agreement did not form part of the data sourced, as it could not be found on record in the High Court documents, it was assumed that the agreement must have been signed and agreed upon by both parties because the project was able to commence.

As required by the UISP policy, an Agreement between the Department and the Municipality will have to be signed in which the obligations of the parties are explained. You are kindly requested to provide the Department with an estimated programme and cash flow. This programme and cash flow, if acceptable to the Department, will form the basis for agreed milestones on which advance payments can be made to the Municipality. The agreed cash flow and payment milestones will form a part of the Agreement (City of Cape Town: 2005).

While the agreement between the municipality and the provincial department is clearly defined in the UISP, the details on what is required to be in the agreement between the municipality and community are not explained as elaborately. In several instances, the UISP states the need for

an agreement between the municipality and the community; however, it does not go into detail as to what the agreement should include and how it should be structured.

In order to ensure that community members assume ownership of their own development and project, the involvement of the community from the onset is key. Hence, community participation should be undertaken within the context of a structured agreement between the municipality and the community (DHS, 2009:43).

Once the project has been registered and the funding reservation confirmed by the MEC, the municipality will proceed with the implementation of Phase 2 of the project. During this phase of the upgrading process, municipalities will receive funding to undertake the following activities... The conclusion of an agreement between the municipality and the community on the participation process (DHS, 2009:43).

After the upgrades have been completed, the UISP also requests that municipalities conduct a beneficiary satisfaction survey to help measure the sustainability of the upgrading project.

A beneficiary satisfaction survey to determine the impact of the development impact on their lives (DHS, 2009:36).

Project Silvertown documentation made mention that ensuring the success of the project was through the involvement and support of political and community-based structures within the community to form part of the Project Steering Committee.

The community participation processes commenced in November 2003. The project manager and community facilitator approached the political and community based structures in Khayelitsha. Role players and organisations that have an active interest in the Silvertown project and have a genuine concern that the end result of any development is successful, were targeted to form a Steering Committee (CoCT, 2004:5).

In the actual scenario, the City of Cape Town acknowledged that besides providing toilets that worked, the guarantee of success of this project would largely involve consensus among the stakeholders involved and affected. This consensus took the form of informal agreements, as well as signed agreements.

Upon making the decision to build the unenclosed toilets, the City believed it came to an informal agreement or understanding with the community representatives. To get formal agreement on the success of the project outcome, the City instructed the contractors employed to get the residents to sign what they called “happy letters”. These letters were presented to the residents to sign after installation of the toilets so as to confirm that they were satisfied with the structure handed over.

To the City, the letters were three things - written proof of the initial verbal agreement made between the CoCT and residents for the construction of unenclosed toilets; signed approval of the residents’ satisfaction with the completed installation of the toilet structure and finally, a fulfilment of the community participation requirements as per the conditions set out in the UISP. By signing these letters, the City believed it indicated that the residents were happy with the structures upon receipt, save for less than five beneficiaries who disapproved.

Owing to the largely positive responses from the letters, the City and consultants believed that they had successfully completed their scope of work. The remaining task of enclosing each of the toilets was up to the residents to do themselves.

He also stated that in order to obtain the satisfaction of the community each beneficiary had to sign a letter ("happy letter", a term used by consultants with us) after completion of structure. The "happy letters" did not indicate that the community is dissatisfied with the project (Forensic Services Department, 2010: 16:631).

The importance of providing the completed Happy Letters had been addressed to Shamrock Plumbing. The Contractor had been made aware that the project could not be certified as complete without the abovementioned completed Happy Letters (KV3 Engineers, 2009a: 2:4.6).

However, the majority of residents stated that they had signed the letters under false pretences from the City. From what can be seen residents were not equipped with adequate knowledge of their human rights, housing policy and particulars of the Silvertown Project to have been able to contribute their expertise. There was a lack of transparency about details of the project, and

the residents felt as though the City had manipulated their lack of knowledge to allow them to accept the building of unenclosed toilets.

I also informed the community that we had been misled into accepting the construction of open toilets in the area. We informed the community that no budget existed for the construction of housing, which would integrate the open toilet and thereby provide enclosure for them (Lili Supporting Aff., 2010:4:9).

There is no indication or evidence that the City made any attempt to explain what the implications of any agreement was or were, whether there were any options available to the community, or questions as to the affordability of enclosing their own individual toilets, what materials were to be used, whether there was going to be any assistance, or for how long the toilets were to be enclosed on a temporary basis (Arendse, Masuku & Sidaki, 2011: 16:28.7).

Their assumption was that the installation of the unenclosed toilets was a partial fulfilment of what the City had promised them – their own houses into which the unenclosed toilets would be incorporated. Although they could not discount the evidence of the signed agreements, residents contested the conditions under which these agreements were signed. To them, the guarantee of success for the project ought to have been the construction of houses. The letters they signed were in agreement of temporarily accepting the unenclosed structures for three months until they would be enclosed by their new homes.

I recall that the leadership of our community informed us at some point prior to the open toilets being provided that the toilets were a step to the immediate provision of housing. I recall that we were told that these open toilets had to be built in such a manner so as to incorporate them into a housing structure. I also remember being told that the housing project in our area would be built within three months of the open toilets being built. I can state that when I signed a piece of paper with some people who told me that they were from the City of Cape Town I did not understand the open toilets to be unlinked to any housing project. I have spoken to other members of our community and they seem to have understood the issues in the same way - that open toilets would be integrated into a house which was going to be built within a period of 3 months. To the extent that it is alleged that we accepted these open toilets, I point out that it was on condition and only on condition that they were part and parcel of a house, which was to be constructed on the land within a period of 3 months. I would not have accepted the construction of an open toilet if it were not part of a house (Beja Founding Aff. 5:15).

As leaders of the community, we agreed to have these open toilets constructed only on condition that they were part and parcel of a housing project which was to be implemented within three months of putting up these open toilets. We then proceeded to persuade the community to accept the City's proposal and to support the construction of these toilets. To the community, the construction of the open toilets was regarded as a phase in the construction of a house. It was never accepted as a permanent feature and even though some community members enclosed them, it was always on the basis that when the housing project is implemented the toilet infrastructure would be integrated into the housing structure (Lili Supporting Aff., 3:6).

In summary, the UISP requires a signed agreement prior to the construction stage, namely a signed agreement between the municipality and provincial department, and a signed agreement between the municipality and the community affected. After the completion of upgrading works, a beneficiary satisfaction survey is required to be done between the community and the municipality responsible for the upgrading project. Unlike the detailed description of what the agreement between the municipality and provincial department should contain, the UISP does not go into detail regarding what that agreement between the community and municipality should include.

The City of Cape Town and consultants were able to produce signed agreements in the form of “happy letters” signed by all but five households within the community, which they believed constituted an adequate guarantee of project success. However, the residents and community leaders believed that, even though they signed off on the completed construction of open toilets, it was under false pretences. They were under the impression they would be provided with housing three months after the toilet installation, a measure which they deemed to be the guarantee of success.

5.2.4 Sources of legitimation

Ulrich stresses the importance of sources of legitimacy in any social planning effort, as it serves as a reminder to the parties involved of the “moral responsibility for all the practical consequences of their planning effort” (Ulrich, 1983:10). To determine where legitimacy lies within the system, Ulrich proposes the following three questions be asked:

10. Who is (ought to be) witness to the interests of those affected but not involved?
That is, who is (should be) treated as a legitimate stakeholder, and who argues (should argue) the case of those stakeholders who cannot speak for themselves, including future generations and non-human nature?
11. What ought to be/are the opportunities for the interests of those negatively affected to have expression and freedom from the worldview of the system? That is, where does (should) legitimacy lie?
12. What worldview is (ought to be) determining? That is, what different visions of improvement are (should be) considered, and how are they (should they be) reconciled?

QUESTION 10

Who *ought* to be witness to the interests of those affected but not involved? That is, who should be treated as a legitimate stakeholder, and who should argue the case of those stakeholders who cannot speak for themselves, including future generations and non-human nature?

UISP	Ward committee members, community participation facilitators
Project Documentation	Khayelitsha Development Forum, SANCO, community Liaison consultant

Who *is* witness to the interests of those affected but not involved? That is, who is treated as a legitimate stakeholder, and who argues the case of those stakeholders who cannot speak for themselves, including future generations and non-human nature?

Residents	Initially KDF and SANCO served as witnesses but when they left the project, residents consulted with ward councillors. Some members also approached the ANCYL and the rest of the community who were not in favour of this were forced to have them as representatives.
CoCT and Consultants	The witnesses ought to have been the KDF and SANCO. They were elected representatives by the community. Upon the Project Steering Committee dissolving, the ward councillors ended up being the community representatives.
Community Leaders	Community liaison officers, ANCYL and ward councillors

While the UISP advocates for the involvement of all community members throughout the duration of the project, it also recognises that residents of informal settlements are considered to be vulnerable groups owing to the likelihood of them being disadvantaged, either educationally, economically or physically. Thus, the programme advocates for community participation to be run through ward committees with ward committee members facilitating the participation processes. Ward committees play an important role in the government's ambitions for a people-centred democracy, as they serve as the link between the local ward councillor and the community (SA News, 2016).

Ulrich states the importance of allowing only those affected by the outcome of the project to elect who they want to represent them (Achterkamp & Vos, 2007). Ward committee members are elected by the local residents with the ward committee being recognised by municipalities as the legitimate statutory structure to consult with for all matters relating to the ward (SA News, 2016).

Community participation should be undertaken through Ward Committees with ongoing effort in promoting and ensuring the inclusion of key stakeholders and vulnerable groups in the process (DHS, 2009:15).

The programme also recommends the use of external community participation facilitators to provide any education or advice to community members, should this be required.

The appointment of external capacity to provide consumer education and construction advice and material management over and above the functions that will be fulfilled by surveyors and community participation facilitators, may be considered (DHS, 2009:31).

For Project Silvertown, the project documentation made no mention of ward committee members. Regarding community representatives, it stated that SANCO and KDF, two NGO representatives, were elected by the residents to sit on the Project Steering Committee. Ward councillors were also members of the PSC; however, they were considered to be representatives of the council and not the beneficiary communities.

The Committee consisted of the following members:

- a. Representatives of the Council:
 - i. The Executive Councillor Housing, normally represented by an official from Housing, Mr G Wiseman
 - ii. The affected ward councillor : Cllr Kula
 - iii. The affected proportional councillor: Cllr Ncedana
 - iv. The Director Public Housing, normally represented by the project manager, Mr A Bishop
- b. Representatives of the beneficiary community/ies in this project from the following organisations:

- i. Two from SANCO
- ii. Two from the Ward/(Khayelitsha) Development Forum (WDF/KDF)

SANCO and KDF's involvement in the project began in 2003. However, at the start of the construction phase in 2005 the Project Steering Committee meetings were replaced by more regular site meetings. The PSC eventually dissolved and the involvement of SANCO and the KDF in the project stopped altogether. While records mention the dissolution of the PSC to the addition of the site meetings, other members believe that their involvement in the project and the collapse of the committee might have stopped due to political tensions.

Meetings of the steering committee continued throughout the planning phase of the Silvertown project in 2004 and 2005. At a meeting on 29 August 2005, the contractors appointed by the City for the project were introduced. In the implementation phase of the project the meetings of the steering committee were superseded by regular site meetings between the engineers and community representatives (Caso Affidavit, 4:10).

According to Wiseman, negative influences and political interference resulted in the steering committee becoming dormant. On questioning him about the nature of the political interference, he could not provide names or further details in this regard (Forensic Services Department, 2010: 21:709).

With the dissolution of the PSC shortly into the project commencement, the consultants and CoCT believed that the residents decided to communicate directly with their ward councillors as their representatives.

Mr N Caso of Bergstan SA stated in his interview on the 7th of April 2010 that a steering committee was formed wherein the role players of various disciplines would participate. The steering committee was later abandoned and the community decided to deal directly with the respective ward councillors on the issue of the construction of the toilets (Forensic Services Department, 2010: 17:636).

Data suggests that there seemed to be disagreements among the ward councillors on the decision taken to construct the unenclosed toilets. While Councillors Jelele and Gexa confirmed that

they, as well as the residents were in favour of the decision to construct the open toilets, it seemed as though Councillor Mkutswana (also known as Councillor Rhyder) was not in favour of the decision and had requested, to no avail, that enclosures be built for the residents.

Although the UISP required that the municipality “must demonstrate effective interactive community participation” (UISP, 2009:15), it appeared that when the matter of SANCO and KDF no longer attending the site meetings as community representatives had been addressed to the CoCT, they did not take any actions to remedy the situation or find alternative representatives to speak on behalf of the residents.

A matter of concern had been raised about SANCO members not attending the monthly CLO meetings, as they form the platform for issues to be raised by councillors or the community. The Client stated that the forum had been made available for community related issues to be addressed, in which case they would not be held accountable for matters that had not reached the forum, due to lack of attendance from SANCO members. No apologies had been received for the above mentioned, and it is reiterated that it forms part of the CLO's responsibility to inform SANCO members of meetings which is to take place (KV3 Engineers, 2009c: 2:3.2.3).

Another interesting role-players who took on the role of being the link between the project team and the residents when construction began, were the community liaison officers (CLOs). They were hired by the project contractors under the following directive:

The CLO to be extension of the contractor who is employed by the Contractor and has the Contractor's interest at heart. Roles of the CLO's: Communications between community and contractor; Identification of local labour for the contract; Placement of structures, positions (KV3 Engineers, 2009c: 2:4.2.3).

While they were not formally elected by the residents and mandated to have the contractor's interests at heart, the CLOs believed themselves to be witnesses to those affected.

The CLOs were never in favour of open toilets or residents enclosing toilets on their own. That is why one will see that there is no written record of it in any of the minutes of meetings held with the CLOs. The CLOs took their mandate from, the community and I know that the Residents never agreed to open toilets (Lili Replying Aff., 6:15).

I am an adult male and reside in Makhaza, Khayelitsha. I am duly authorised to depose to this affidavit on behalf of the applicants, and on behalf of the residents of Makhaza (Lili Answering Aff., 2:1).

However, members of the CoCT and consultants later on in the project questioned the conduct and interests of the CLOs – particularly that of Mr Andile Lili, as he was also an active member on the leadership of the ANCYL.

These meetings were attended by "community liaison officers" ("CLOs"), who were members of the community who were paid to attend meetings and to represent the community's concerns. Mr. Andile Lili was one of these CLOs had attended some meetings (although he often failed to attend meetings without excuse) (Caso Affidavit, 4:11).

The ANCYL's involvement became prominent upon the residents' realisation that there was no plan to enclose the toilets by the government or provide the formal housing they had promised. It appeared they had support of some of the community members, as the complaint to the SAHRC and application lodged to the South African High Court was done together with Mrs Beja, the resident who was stabbed.

Following my attack, the community of Makhaza, supported by the Youth League of the African National Congress, decided to formally report the issue of open toilets to the South African Human Rights Commission (Beja Founding Aff., 4:11).

The CoCT questioned that the Youth League had the best interests of the residents at heart because City officials claimed that they had come to an agreement with the owners of the 55 unenclosed toilets to enclose the facilities with a corrugated iron structure. However, Mr Lili and members of the ANCYL purposefully sabotaged all attempts made by the City several times to further their political ambitions.

When the City realised that the 55 toilets remained unenclosed (being 4.1% of the individual toilets constructed in the Silvertown project), and that this was possibly due to the beneficiary

families being unable to afford materials to enclose their individual toilets, it (i.e. the City) attempted on at least three occasions to construct enclosures out of corrugated, galvanised iron and timber. This was generally welcomed by the affected beneficiaries, but opposed by the representatives of the ANCYL (after they initially supported it). Enclosures constructed by the City out of corrugated, galvanised iron and timber were violently and wantonly destroyed by a small, uncontrolled group of ANCYL members (Fairbridges Attorneys, 2011).

The ANCYL organised and sanctioned the vandalising of the enclosures, which made it necessary for the City to temporarily remove the toilets until enclosures could be erected sustainably. As to the claim of Mr Lili to represent the community of Makhaza, I do not accept that this is the case. Whatever interest Mr Lili serves, I strongly doubt that the community he claims to represent has anything to do with it. I also do not recall Mr Lili, in his capacity as the remunerated liaison officer on the project, reporting any problems with regard to unenclosed toilets, notwithstanding that it was his duty to do so (Zille Answering Aff., 20:46).

To conclude, the elected witnesses who were meant to represent the interests of those affected were the ward councillors, Sanco and KDF. However, circumstances occurred which resulted in SANCO and KDF's involvement in the project stopping – leaving the ward councillors as the solely elected representatives of the residents in the area, who themselves did not seem to share a unified stance. Other groups such as the CLOs and the ANCYL claimed to be additional witnesses for the residents and having their best interests at heart. However, the motives behind their involvement was questioned by the City of Cape Town.

QUESTION 11

What *ought* to be the opportunities for the interests of those negatively affected to have expression and freedom from the worldview of the system? That is, where should legitimacy lie?

UISP	Professional appointed for conflict resolution and capacitation of skills. This is to ensure residents understand their housing rights, obligations and involvement through all aspects of the development, and are able to voice their opinion on any matter relating to this from a more informed point of view.
Project Documentation	Concerns were raised through the Project Steering Committee and a dispute resolution committee.

What are the opportunities for the interests of those negatively affected to have expression and freedom from the worldview of the system? That is, where does legitimacy lie?

Residents	Inadequate opportunities were available for freedom of expression and lack of understanding of the policy and project phases. Therefore, residents resorted to strike action to have their voices heard.
CoCT and Consultants	Platforms given at community meetings, the ability to raise concerns to ward councillors and community leaders, as well as the door to door consultations where "happy letters" were being signed existed.
Community Leaders	Community leaders and residents were not heard in the formalised avenues for consultation. Once those formal structures of communication (PSC) were dissolved, they decided to organise strike action.

The UISP attempted to provide several vehicles that would allow for freedom of expression for the residents. Firstly, the UISP mandated community capacitation in upgrading projects to ensure that beneficiaries were able to speak and raise concerns from an informed position. Secondly, the UISP suggested the need for municipalities to employ a professional to deal with any conflict which might arise between the municipality and the community. Thirdly, they

stressed the need for the community to be involved and engaged actively in all aspects of the development.

Project documentation highlighted that PSC meetings and site meetings were held where SANCO and the KDF, representatives of the community, could voice any opinions they might have had. Furthermore, they formed a dispute resolution committee to help deal with any problems they might encounter.

The PSC has instituted a dispute resolution committee. This committee has already dealt with a variety of issues. The committee reports to the PSC and is chaired by the project community liaison consultant who is external to the community, and can take an unbiased stance on issues in the interests of the whole community (CoCT, 2004:5).

In both the City and consultants' opinion they had done due diligence trying to engage with the public and providing several platforms for them to raise their concerns. The CoCT believed that they had made available the avenues for community members and their representatives to openly engage with them. They held PSC meetings, regular site meetings in town halls, which involved both community representatives, as well as community members. In addition to providing consulting engineering services, the CoCT also employed Bergstan to facilitate community participation and consultation to the affected beneficiaries of the project. They believed that what affected the residents' freedom of expression was not the inability of the residents to engage with officials – it was the involvement of the ANCYL.

One of the key responsibilities allocated to Bergstan was to facilitate community participation and consultation processes with the affected beneficiaries of this project. I was directly involved in and responsible for facilitating these consultative processes (Caso Aff., 2010:2:3).

Indeed, the City has, in my view, extended the parameters of the Code further than most, if not all other local authorities, by actively engaging with its informal settlement communities so as to provide them with a real voice in respect of the upgrading of their community.

What is happening now is that the Youth League is taking decisions on the part of the community without the community having any say in it.

Regarding the decision of providing unenclosed toilets, the CoCT did not receive any complaints from the residents. In defence of this viewpoint, the City contested that they followed the procedures as set out by the UISP and if fault needs to be placed, then it should be placed on the UISP, which does not cater for vulnerable groups. However, they do acknowledge that the emancipation of marginalized groups, such as those with disabilities, were not adequately catered for during the project and accept their shortcomings in this area.

As dealt with below, no-one from the Makhaza area ever raised a concern with the City that they were simply unable to afford an enclosure for their toilets. That being said, the City accepts that it should in future ensure that an agreement with a community caters for those individuals whose personal circumstances demand additional consideration (whether it be on account of their age, disability, health, gender or penury) (Plato Replying Aff., 13:29.4).

On the matter of the unenclosed toilets, the community leaders stated that the City's efforts to engage and provide for the residents' freedom to voice their opinion were not honest. This was because less than 5% of the community was represented when the decision was taken to build open toilets.

The 60 people whom Caso claims attended the meeting could not have fairly represented the community making up the entire Silvertown project. In the event that these 60 people represented 60 households then they would have constituted some 4,6% of the population of Silvertown (Forensic Services Department, 2010:7:22).

The residents, however, felt that there were several reasons that were affecting their freedom of expression against the unenclosed toilets. The first concern was that if they raised their disagreement with the decision taken to construct the unenclosed toilets, they would stand the risk of the City not constructing any toilets at all. They did not want to continue to make use of communal toilets or the "bucket system" – an undignified method of using a bucket to relieve yourself and then disposing of the excrement.

Sondlo further stated that they agreed to this offer as they had used the bucket system for the past twenty years and were afraid that should they declined the offer they would lose out on the opportunity to have their own toilets (Forensic Services Department, 2010: 19:646).

The community accepted the offer of a "loo with a view" as they had made use of the "bucket system" for the past twenty years and they were concerned that should they not agree with the "loo with a view" they would be left with the "bucket system" of sanitation (Forensic Services Department, 2010: 21:710).

The second factor affecting their freedom of expression was the political tension which existed between the DA, CoCT and the ANCYL members within the community. Because the conditions of these participatory processes did not provide an open environment to express themselves, the residents eventually turned to the South African courts to seek justice and air their grievances.

It is also very difficult to discern the individual feelings of the members of the community as this matter has been highly politicized and, as a result thereof, people are not at will to air their feelings as they fear reprisals (Sokabo²⁰ Aff., 3:14).

"It was humiliating to use the toilet when people see you. There is covering now, but look at this (destruction). It is not what I want." Resident Phillip Bayapeli and his wife tried in vain to save their enclosure, but were told the community had rejected the corrugated enclosures and wanted concrete ones (Cape Times, 2010).

I would be happy for the Court to intervene and to depoliticize our suffering and deprivation of our constitutional rights (Beja Founding Aff., 4:13).

In summary, the City and consultants were of the opinion that they set up multiple platforms for the residents to voice their opinions throughout all stages of the project and met the

²⁰ Thembisa Princess Sokabo - Resident

requirements to demonstrate active community engagement in Project Silvertown. However, the residents themselves felt as though they could not freely voice their concerns owing to fear of not receiving any toilets whatsoever, as well as political tensions. This resulted in them having to seek emancipation from the South African High Court.

QUESTION 12

What worldview *ought* to be determining? That is, what different visions of improvement should be considered, and how should they be reconciled?

UISP	A balanced worldview bettering the living conditions and social environment of the residents while also valuing financial and technical considerations
Project Documentation	As per the UISP

What worldview *is* determining? That is, what different visions of improvement are considered, and how are they reconciled?

Residents and Community Leaders	The determining worldview places greater emphasis on economic/financial considerations, disregarding the improved quality of life, health and safety of the residents.
CoCT	The City intended a balanced worldview but were cognisant of the financial limitations of the project, and believed opportunists positioned this matter to be politically and racially motivated to discredit the local ruling political party.
Consultants	A balanced worldview bettering the living conditions and social environment of the residents while also valuing financial and technical considerations

The overarching goal of the UISP values was the improvement in the living conditions of informal settlement residents through indicators such as health, safety, access to municipal services, tenure, as well as social and economic capital. It aimed to implement this goal through a balanced worldview which considered factors such as the needs and preferences of the community, affordability indicators, as well as sound technical practice. Therefore, it considered the possible worldviews of all parties who might be involved in the upgrading project without allowing a particular worldview to dominate.

Community needs must be balanced with community preferences, affordability indicators and sound engineering practice (DHS, 2009:14).

Improvements in living conditions measured through: - Health indicators (particularly decline in waterborne diseases and infant mortality rates, where these indicators have been recorded and are available); - Access to water and sanitation (households having access to “improved” drinking water and sanitation); - Tenure (number of households with secure tenure); - Economic activity (increased number of business opportunities and number of temporary and permanent jobs created); - Social amenities (increased number and affordability of social and recreational facilities); - Social capital (particularly family stability and community cohesion); and - Decline in crime (crime statistics) (DHS, 2009:35).

The City of Cape Town and consultants believed their worldview was in line with that of the UISP, being a balance between the social, technical and economic factors. In their opinion, they tried to provide the best possible people-centred solution, given the limitations of finances, as well as protocols they needed to adhere to as per the UISP.

The agreement which the City concluded with the representatives of the Makhaza community in respect of the installation of individual toilets on 25 November 2007, as set out in my review affidavit, not only promoted the policy imperatives for constitutionally adherent human settlements but was, the City submits, an innovative and people-centred approach contrary to the assertions made by the Applicants in this regard (Plato Aff., 7:14).

The City would much rather provide individual toilets for each erf. It is on this basis that the City's officials went out of their way to find a creative solution to ensure individual toilets. This good deed should not be punished (Plato Replying Aff., 78:26).

In the period between the completion of the first three phases of an upgrade and the fourth, beneficiaries are expected to build their own houses. No provision is made in this period to assist those who genuinely cannot afford to build a house, save for relatively meagre assistance in the relocation process. If the City failed to take account of those who could not afford to build their own toilet enclosures, then by the same logic the Code must also be deficient to the extent that it fails to provide assistance to those who genuinely cannot build their own houses (until funding for a permanent house is forthcoming) (Plato Replying Aff., 13:29.1).

The contrast between the actual worldview adopted by the City and the consultants and the actual worldview adopted by the residents and community leaders was stark. Residents and community leaders believed that an economic worldview took precedence in Project Silvertown

and considerations incorporating a social worldview were not prioritised. Furthermore, they felt discriminated against by the City due to the fact that they were a predominantly black community and poor.

The issue of open toilets in Makhaza has shown that the Premier of the Western Cape and the Mayor of the City of Cape Town are unashamed to perpetuate the discrimination of African communities. When Africans complain that the Western Cape government institutions under the current Premier and Mayor treat Africans in a manner that is racist, they are ridiculed as playing the race card (Lili Supporting Aff., 2:3).

The issue of open toilet has demonstrated that poor African people are never regarded as part and parcel of the Western Cape. The resources deployed to alleviate their situation are very inferior compared to other project in which coloureds or whites are the main beneficiaries. The government in the Western Cape deal with us on the basis that we are from the Eastern Cape and therefore not entitled to have a decent toilet or access to adequate housing (Lili Supporting Aff., 4:11).

In summary, in the ideal state, the USIP has adopted a worldview considering social, technical and financial factors, with the overall objective being to holistically improve the lives of the residents affected by the upgrading project. Both the City of Cape Town and the consultants involved in Project Silvertown believed they were in alignment to the worldview stated under the UISP. The opinions of the residents and community leaders of what the actual worldview was, differed greatly from that idealised by the UISP. The residents and community leaders believed that overall economic motives dominated throughout this project with little attention given to social considerations.

6 Discussion

The aim of this study was to determine how the comparative perceptions of stakeholders in public infrastructure projects affected the success of participatory infrastructure upgrades. The study asked two main research questions, namely:

- What are the differences in perceptions and expectations between stakeholders in a participatory upgrade?
- What implications do the different perceptions and expectations of various stakeholders have on the success of participatory upgrades of informal settlements?

This chapter is split into three sub-chapters. The first sub-chapter discusses five major disjunctions identified in the findings from the CSH analysis. The second sub-chapter uses existing community participation conceptual frameworks to critique the disjunctions found in practice through a theoretical lens. The third sub-chapter discusses how CSH has contributed to a structured analysis of data, as well as the limitations brought about by the modified application of CSH.

6.1 Disjunctions between stakeholder perceptions and expectations and the associated implications

Each section under this sub-heading discusses a key disjunction identified in the findings from the CSH analysis, and then explains the implication this disjuncture has on the success of participatory upgrades.

6.1.1 Different expectations of community participation and decision-making

This research revealed that one of the major reasons why community participation had failed was because the stakeholder groups did not share a common understanding of what community participation was meant to achieve, and how it would affect decision-making powers and processes. In addition, the UISP policy was found to be ambiguous on what the power-sharing abilities were, which the community participation process ought to provide.

State-initiated community participation processes in participatory upgrades are complex to manoeuvre due to the power dynamics among stakeholders. Li et al. (2013) and the Public Service Commission (2008) claimed that authorities tended to not take community participation seriously, and they also found the public were apathetic towards community participation.

In contrast to their claims, the findings of this study showed that all the stakeholder groups involved in the project took community engagement seriously and believed that they had been making concerted efforts to ensure the success of the process. This study suggested that the City of Cape Town officials took community participation seriously without intentionally trying to make it a tick-boxing exercise; rather they viewed and implemented community participation differently to what residents and community leaders expected.

Community leaders were under the impression that community participation was the mechanism used for inclusive decision-making with the City. The City believed they followed the requirements, as set out by the UISP, to include the community in all aspects of the projects. However, what it appeared they did not do (and what the UISP did not explicitly state) was to give the community and leaders any decision-making powers through the upgrading process. Their engagement processes involved more of a one-way communication style in which the City would take into consideration the comments and concerns of the community; however, a decision would be reached only between the technical and financial experts, undermining the value and power of the community and leaders as social experts.

An example of this in the data found was how Steyn (a representative of the City) had mentioned the importance to take the views of the community into consideration when they were devising an alternative sanitation solution to the communal toilets which had been provided. However, this comment was made among a group of technical experts with the exclusion of community-elected representatives at key decision-making meetings.

These different expectations on decision-making powers and expectations were a cause of tension and frustration between the City and community leaders. The City felt they had gone above and beyond what was mandated of them in terms of their community engagement efforts. However, some of the community leaders believed the City had not taken their insights and

suggestions seriously, and they were not able to participate or change any decisions once the City and technical experts had made them.

Examples of the tensions which resulted as a result of different views on community participation in Project Silvertown were the multiple incidents of vandalism which occurred when the City attempted to enclose the remaining 55 open toilets with corrugated iron. The community leaders and residents were not in favour of such enclosures and provided the City with alternative solutions such as costing for a brick and mortar enclosure. The City believed that they had taken the considerations of the residents into account, but were unable to afford brick and mortar enclosures because of financial constraints in the project. The community leaders believed the City had not taken their ideas and expertise into consideration, and that the City had no intention of working with the community to find a joint solution and decision that would please all parties. This showed the different expectations of the role of community participation in the decision-making processes.

The tensions and frustrations brought about by these different stakeholder expectations had negative consequences for the relations between the City and residents, thus weakening participatory efforts. Unless the expectations of community participation and power-sharing agreements had been defined clearly at the onset of the project or emphasised in programme documents that the project was premised, such as the UISP, this could compromise the community engagement process.

This view is similar to findings by Maharaj (2012) who found that, between the City of Cape Town and Blikkiesdorp community leaders, the different perceptions of what community participation was and how it ought to be implemented created tension and disappointment in the relationship, and resulted in apathy from the community leaders.

6.1.2 Differing visions for project outcomes

Different perspectives among stakeholders are often cited as being a challenge in public infrastructure projects involving participatory processes (Olander & Landin, 2005; Quick, 2014). This research has confirmed such findings and has shown that stakeholders in Project

Silvertown did not share a common vision of what the project was purposed to provide due to personal interests and motives.

For the community leaders and residents, the provision of sanitation services was seen as a means to an end – with the end being an improved quality of life. The City and consultants, however, viewed the provision of sanitation services as an end in itself. To them, the improvement in the quality of life of the residents was a consequence of the Project Silvertown upgrades; it was not seen as the main priority. This led to the installation of open toilets, which ultimately jeopardised the residents' quality of life by compromising their safety and removing their dignity.

Although participatory processes were conducted to reveal the differing motivations of both these groups as early as 2003, no noted attempts were made to reconcile this conflict in the groups' purpose. Neglecting to address and reconcile the different motivations between stakeholder groups jeopardised the potential benefit which participatory processes can play in a project. If disagreement is found between groups and no action is taken to find resolutions or to reach a consensus it will render the community participation process as futile and frustrate those who have participated.

In the High Court ruling, Judge Erasmus made reference to this aspect by stating that, while the City pursued a laudable programme by upgrading the Silvertown informal settlement and providing the residents with individual toilets, they lost sight of meeting their needs relating to human dignity (WCC, 2012:57:144). This finding was echoed in the works of Quick (2014) and Wong, Li and Ng (2012) who explained how stakeholders, particularly citizens, could become resentful when their involvement did not seem to influence project outcomes in public infrastructure projects.

6.1.3 Poor capacitation of community members

The UISP states that capacitation of the community is necessary to help ensure that the objectives of community participation are achieved (DHS, 2009). The UISP makes provision for capacitation of the community by allocating funds of up to 3% of the total project cost (DHS, 2009). In addition to other requirements, this involves the training and education of housing

rights and responsibilities, as well as capacity-building of the beneficiaries (DHS, 2009). Findings show that for Project Silvertown, there was poor capacitation of the residents. The absence of data pertaining to the City's capacitation of the Silvertown community, as well as findings of how the residents were unaware of their rights as beneficiaries, are evidence of this shortcoming.

The UISP values the role the community plays in the provision of social expertise; however, because they were not educated in the aspects pertaining to the other identified forms of expertise in the project (technical, financial and legislative), this affected their ability to exercise their knowledge contribution effectively. Excerpts of data from the resident group showed that they were not aware that the City was infringing on their human rights by providing unenclosed toilets. In addition, they did not understand the four-phase approach of the UISP upgrading process, and were under the impression that they would be provided with houses three months after the installation of the toilets.

It was under these circumstances that they signed the "happy letters", which the City presented to the court as evidence of a signed agreement between themselves and the community. While evidence from the resident group reflected incapacitation of the community, the City believed they had educated the residents on the agreement regarding the installation of unenclosed toilets. In the Court ruling, Judge Erasmus found that this UISP requirement of community capacitation prior to an agreement being signed was not met in Project Silvertown (WCC, 2011:42;98).

In Chapter 2, it was stated that findings from the DWA (2012) and Public Service Commission (2008) revealed that financial, time and human resource constraints were some of the challenges which resulted in municipalities not being able to engage communities in a meaningful manner. For Project Silvertown neither of these factors were the cause of the CoCT not being able to engage with the community in a meaningful manner. As mentioned, a separate budget is allocated solely to community capacitation and participation processes. Issues or constraints of time were not noted by any of the stakeholders and the City. In the CoCT's application for the project funding, they confirmed that they had sufficient human resources required to execute the project.

Because of this incapacitation, the knowledge or expertise was left in the hands of the City of Cape Town and their employed consultants who worked primarily to meet the CoCT's interests. This meant that of all four types of knowledge (technical, financial, social and legislative) and their associated experts prescribed by the UISP to be involved for project success, only two of the four were met, namely technical and financial expertise, which were mainly under the control of the CoCT.

Ulrich (2011) warns that, in any system of interest, it is important that knowledge or expertise be independent of the decision-maker and that over-reliance of one area of expertise be avoided to avoid a false guarantee of project success. The consequences, which poor community capacitation had on the project were that it rendered them vulnerable to accepting what the technical and financial experts were telling them. This disabled them from being able to contribute their social expertise from the onset of the project. Instead, only once they understood that their toilets were not going to be enclosed and that they were not going to be expecting houses in the three months like they believed, did they resort to strike action to enforce their expertise.

In his paper assessing the lack of community participation in UISP projects across South Africa, Fieuw (2015) found that most participatory upgrading projects failed to honour capacity building or make use of the funding provided for such capacitation. Similar to findings in this case study, Fieuw (2015) went on to argue that this lack of capacitation led to the inability to functionally integrate the community knowledge and needs into upgrading projects. This could result in the formulation of untenable upgrading plans, as well as strained state-community relations.

6.1.4 Disjunction of community representation by legitimate community leaders

Reynolds and Williams (2012) describe how the role of the witness is intended to remove the bias that will invariably exist in the assessment of the first three sources of influence, namely motivation, power and knowledge. The witness exists in hopes of emancipating the system and end-users from activities which may be considered to be coercive or malignant (Reynolds & Williams, 2012).

The study found that ad-hoc community representative structures had made the community vulnerable to illegitimate community representation and had resulted in the breakdown of community-state relations. This illegitimate community representation thwarted participatory processes in Project Silvertown. Particularly the issue of unenclosed toilets, into the political sphere, resulting in political interests being prioritised at the expense of community wellbeing.

Hanyane and Nkabe (2012) and Hanyane and Motsoeneng (2013) argued that because of the 2011 local government elections, political parties had popularised sanitation issues around unenclosed toilets in informal settlements such as Makhaza and Rammolutsi as a political show of failed service delivery by opposing political parties.

With the breakdown of the PSC and the departure of the KDF and SANCO (the elected representatives of the community), the figures who then took on the role of community leaders were either directly appointed by the City or its consultants or had political affiliations that would bring their involvement into question. An example of one such individual was Andile Lili. Mr Lili was initially appointed by a civil contractor as a CLO to act in the best interests of the contractor. In addition, Mr Lili was also a well-known member and leader within the ANCYL.

When the Project Steering Committee dissolved, it appeared that Mr Lili took on the role of community representative despite him being employed to have the contractor's interests at heart and not being formally elected by the residents. Despite the conflict of interest which existed with his involvement in the project, Lili was confident that he was duly authorised to represent the community. This matter that was not agreed upon by government officials, as they found Lili's role in the project to be illegitimate and self-serving.

Ultimately Lili's involvement was found to be questionable in the High Court ruling by Judge Erasmus, who further went on to say that his role in fact undermined the principle of community participation. In the High Court ruling, Judge Nathan Erasmus wrote that it "... is unfortunate that in the scramble for limited resources, which have to address the historical imbalances and to cater for immediate needs, it has become the subject of political contest and patronage as opposed to the responsible use thereof to fulfil the State's constitutional obligations" (WCC, 2011:2;2).

The consequences of failing to maintain the formal structures intended for community participation and political interference directly weakened community participation processes in Project Silvertown. This was because without their elected representatives, the community was left with partisan leadership. The illegitimate community leaders who then emerged manipulated the situation to boost their political motives, leaving the community as pawns instead of project owners, and weakened their power, voice and opportunity to better their environment.

6.1.5 Disjunctions of UISP policy interpretation

The analysis revealed a lack of understanding and misinterpretation of the policy throughout all spheres of government. When selecting funding structures to implement upgrading projects, the lack of common understanding of what the programme was designed for between local, provincial and national government resulted in the incorrect structure being selected. Furthermore, it seemed like the checks or mechanisms to prevent misinterpretation of the UISP were not adequately enforced or monitored during the project approval and throughout the project as a whole.

The UISP states that the programme is idealised for facilitating in-situ upgrades of informal settlements as opposed to relocation housing projects (DHS, 2009). However, similar to findings by Fieuw (2015), data analysed on Project Silvertown revealed that the funding structure was also being used to finance housing relocations that were intended to be financed under a separate funding structure. Fieuw (2015) found that when the UISP was introduced, government officials were not familiar with what the programme intended to achieve regarding in-situ upgrades. Because of this, an increasing number of projects, which claimed to be in-situ upgrades, made use of methodologies such as rollover developments and relocations, which did not fit the model intended by the UISP.

An example from Project Silvertown was the different policy interpretations among officials in local, provincial and national government regarding the funding structures and the control of finances. Local government believed control of financing structures and funding fell under provincial and national government.

To the CoCT's understanding, because the project had been approved under the UISP, they could not seek additional funding for individually enclosed toilets. Their interpretation of the UISP was that provisions for interim sanitation services were limited to communal toilets.

Provincial government, however, interpreted that the programme gave responsibility of funding to national government. Their understanding was that, because the City had applied under the UISP for funding for such interim services, the City was given budget adequate for such development.

National government, however, believed that ultimately, funding allocation was the responsibility of provincial government. They also stated that, on the matter of communal toilets, both the City and provincial department had misinterpreted the UISP, as the programme did not make provision for interim services.

The City's misinterpretation of the UISP only budgeting for communal toilets as an interim service negatively impacted the participation process and overall success of the participatory upgrade. This is because the interpretation of a fixed budget allocation for the sanitation services did not allow for alternative sanitation options to be proposed or considered by beneficiaries.

The lack of coordination between the three spheres of government compromised the success of the Project Silvertown participatory upgrade. Data analysed revealed that the misinterpretation concerning who was primarily responsible for the funding of the UISP project became a divisive factor during the court case where one of the spheres had to be found accountable. While the UISP gave the bulk of the responsibility with respect to financial resources to provincial government, it also encouraged partnership and co-operative governance among the spheres (DHS, 2009; 20).

The ruling made by Judge Erasmus found that the City had indeed misinterpreted the programme on the matter regarding the provision of interim services. He criticised the City for not seeking clarity from the national department, as the policy had given responsibility regarding the interpretation of the programme to national government.

However, the UISP advocated that the national department should “actively participate” with the local and provincial government in matters relating to the upgrade to avoid decisions being made during the project based on the incorrect interpretation of the Code.

This lack of coordination within government spheres affecting project success is in line with Tshikotshi’s (2009) findings where he attributes poor co-operative governance to the failure of improving the living conditions of residents. He then goes on to recommend that government intensify the concept of intergovernmental relations to improve the likelihood of project success (Tshikotshi, 2009).

6.2 Critique of stakeholder perspectives to conceptual community participation frameworks

With reference to the conceptual frameworks identified by Abbott discussed in Chapter 3.5, this section discusses alignments to the frameworks that can be seen in findings from the stakeholder disjunctions identified in Chapter 6.1. The two conceptual frameworks to be used for the critique are that of Arnstein’s ladder of citizen participation and Paul’s three dimensional framework.

Abbot argues that because Arnstein’s framework was designed for the urban poor in America it might not be directly applicable to development projects (Abbott, 1993). Although this model may not be applicable for Project Silvertown, the idea of applying participation processes at different intensities ties into the first disjunction identified in Chapter 6.1. The Silvertown Community leaders expected participation processes to be implemented at a level of intensity on rungs describing degrees of citizen power. The City of Cape Town, however, implemented community participation processes in rungs more related to rungs of tokenism where decision making powers are not given to beneficiaries.

Paul’s framework finds discord in policy and practice on the notion of community empowerment and capacity building in community participation processes. He states that in his findings they emerged as being a low priority objective during project implementation, but were stressed as important in policy (Paul 1993). The findings in Project Silvertown are similar to that of Paul’s study in that the UISP stresses the need for capacity building and funding

allocation to this process, however, no recorded evidence of such capacitation was noted in responses from stakeholders.

Regarding the instruments of community participation Paul (1987) states that there is a risk of ineffective facilitation if the field workers align themselves primarily as agents of the government or sponsor. In the case of Project Silvertown the closest stakeholder group that matched the field workers definition was Bergstan, a company from the Consultants group, who were employed by the CoCT to facilitate community participation. Findings from Project Silvertown revealed that because the Consultants group was employed by the Cape Town, they viewed them as the Client group, therefore, aligned their objectives to meet that of the City of Cape Town above the needs and preferences of the beneficiaries.

6.3 Evaluation of CSH

As mentioned in Chapter 1, in large public infrastructure projects incorporating community participation processes, conflict among stakeholders can arise due to the divergence of issues such as values, beliefs or interests. Making use of the 12 CSH questions the methodological framework for this study proved to be a powerful tool for structuring these values, beliefs and interests held by stakeholders.

Furthermore, CSH was also useful in helping to surface the contrasting worldviews of the different stakeholders in the given system of interest. The ability to contrast these views helped to identify points of disjunction among stakeholders, thus revealing how these disjunctions affected the overall success of the participatory upgrade. Despite the value the CSH framework brought to this research study it was not without its limitations.

The limitations of the use of CSH, to a large extent, occurred due to the adapted methodology used for this study. The prescribed application to obtain answers to the CSH questions is for participants to answer the 12 questions directly. However, for this study, a textual analysis of documentary data was done, using the CSH to structure the data found and develop answers to the questions based on the grouped data. Answers to the CSH questions in the ideal/*ought* mode were constructed using data obtained from the UISP as well as from project planning documents relating to Project Silvertown. The UISP was used to answer the *ought* mode to frame how the

programme intended for projects of this nature to be implemented. Project planning documentation was used to frame the *ought* mode particularly relating to Project Silvertown to frame how the project *ought* to have been administered. To answer questions in the *is* mode data from sources such as affidavits, newspaper clippings and articles were used to construct answers from each stakeholder group. Although contrary to the prescribed application of CSH, the modification made to the framework served as an effective adaptation to analysing the textual data sourced.

The rigidity imposed by the 12 CSH questions was also a limitation in this study. Through a reading of the raw data it became evident that there were additional factors and disjunctions which occurred throughout the upgrade so that the 12 CSH questions could not surface. An example of this would be the complexity brought about by the political tensions within the project the CSH questions could not address directly.

In his paper, Tempelhoff (2012) stated the major role politics played in the breakdown of this project was particularly due to the fact that local government elections were nearing during the time when the protest action started. The CSH questions could not adequately address these nuances, which limited a broader understanding of the overall climate and interests of stakeholders involved and affected at the time. Despite the limitations resulting from the adapted use of CSH, overall the use of CSH in this study was beneficial in contributing to a rigorous analysis of the data available.

In summary, the findings revealed that the following disjunctions in perceptions and expectations affecting the success of the Project Silvertown participatory upgrade were the different stakeholder expectations of community participation and decision-making, the differing stakeholder visions for project outcomes, poor capacitation of community members, disjunction of community representation by legitimate community leaders and disjunctions of UISP policy interpretation. Despite the limited data available, the CSH methodological framework used for this research study was effective in organising the documentary data analysed and surfacing the disjunctions among the respective stakeholder groups.

7 Conclusions and recommendations

This chapter summarises the research conducted, highlights the key findings which emerged from the data analysed, points out the limitations noted in the study and finally, provides recommendations as well as possibilities for future investigation.

This study set out to investigate the implications, disjunctures and convergences that key stakeholders in informal settlement upgrades have towards strengthening participatory projects in such public infrastructure upgrades. To determine this interrelationship, two research questions were asked. The first question asked was what perceptions and expectations different stakeholders had in public infrastructure projects. The second question asked what implications these different perceptions and expectations had towards the success of participatory sanitation upgrades.

Critical systems heuristics was the methodology applied for this research. The CSH framework of 12 questions allowed for the disjunctures and convergences among stakeholder groups to surface and be analysed in a structured manner. To set up what CSH identifies as the “normative” or “ideal” state which describes what the situation ought to be, data from the UISP as well as the initial project documentation for Project Silvertown was used. For the “actual” state, perceptions of the identified stakeholder groups were used with the data being collected from affidavits, newspaper clippings and newspaper articles.

7.2 Key findings

The residents’ perspective in an ideal scenario was that, in public infrastructure upgrades, they ought to be the clients with their interests being met. Furthermore, decision-making processes, they believed, in the joint partnership with the City on important decisions. Regarding knowledge contributions, residents believed they had valuable contextual knowledge to contribute to the project success. Their actual experience was that the City had complete autonomy over the decisions made and that the project was working to serve only the City’s interests. The residents also believed that the City had failed to manage the financial resources adequately so as to provide them with a dignified sanitation solution.

Similar to the views of residents, community leaders envisioned working in partnership and collaboration with the City of Cape Town. They hoped the environment would be such that it would allow them to emancipate the feelings, choices and preferences of the residents whom they represented. However, in reality they perceived that the City did not want to engage with them in a meaningful manner or take their considerations and knowledge contributions seriously. They believed that the City had the necessary resources to provide them with the sanitation solution they had requested. However, because of their race and socio-economic status the City opted for a cheap solution and expected them, as beneficiaries, to not complain and take whatever solution was given to them. Community leaders believed they had the best interests of the residents at heart and that owing to the lack of cooperation from the City, they had to resort to protest action to have their voices heard.

The City of Cape Town believed that both the residents and the CoCT had interests that needed to be met with the completion of Project Silvertown. They believed that they had taken the concerns and knowledge contributions of the residents and community leaders into consideration. However, because of the financial constraints and limitations set up by the UISP they were not able to provide the residents with toilet enclosures. In their efforts to engage with community leaders and the residents they believed that the decision to install unenclosed toilets was made in collaboration with the beneficiaries. In their opinion, the protest action which came about was the result of the direct influence of the opposing political parties who wanted to bring the local ruling party into disrepute.

The consultants were the only stakeholder group to clearly identify a client in Project Silvertown, namely the CoCT. As they were under the employment of the City, they sought to meet the needs and interests of the City of Cape Town. They viewed the residents as beneficiaries of the services they were providing, and fulfilled the community participation requirements as directed by the City.

Five major disjunctions of perceptions and expectations among the stakeholders were found to have had negative implications on the success of participatory upgrades:

1. Different stakeholder expectations of community participation and decision- making
2. Differing stakeholder visions for project outcomes

3. Poor capacitation of community members
4. Disjunction of community representation by legitimate community leaders
5. Disjunctions of UISP policy interpretation

The findings showed that the UISP policy was interpreted differently by all three spheres of government. Furthermore, the analysis revealed that, on issues relating to community participation, the UISP policy was ambiguous regarding what requirements were expected from municipalities. This left the responsibility to the municipalities to interpret the Code and employ mechanisms for implementation. While the national government was meant to support local municipalities with their interpretation, in the case of Project Silvertown they failed to deliver on this requirement.

There was no alignment between the City and beneficiaries of the upgrading project regarding the vision of project success and what the outcomes were meant to achieve. Although this matter was brought to light in a community participation exercise, there was no noted attempt to reconcile the two visions to create a common goal which both parties favoured. With interests not being aligned, resulted in the stakeholder with the most power in the system (CoCT) ending up controlling the project motivation and vision, and side-lining the intended vision of the beneficiaries.

While local government was satisfied with their community participation efforts, residents and community leaders felt undermined by the City of Cape Town. This was because community participation was not meeting the residents' expectations with regard to having a shared of control in the decision-making processes. The community was also not adequately capacitated to be able to contribute in a more meaningful way in the project, which further undermined their involvement. Finally, illegitimate representation of the community and political motives also shifted the focus of the project away from serving the needs of the community to using the project as a platform to advance political motives.

7.3 Recommendations

Participatory upgrades relating to water and sanitation in informal settlements remain a complex space requiring consideration of technical, financial, political and social issues. This research study brought to surface the difficult space participatory upgrades such as Project Silvertown are implemented and the context which community participation processes are conducted.

The rigid structure of the CSH questions made it difficult to gain a holistic understanding of all the nuances within the project. This was particularly challenging, as limited textual data was the only resource used with no face-to-face interview responses, which could have painted a richer picture of the system of interest.

A recommendation would be to replicate this research project with face-to-face interviews with some of the stakeholders mentioned in this project. This could be done by comparing the interpretations and findings of this study, and obtaining more robust answers to the questions asked to remove the limitations which arose from having access to limited textual data. Insights found in this study could be used to inform community participation processes to get more effective outcomes.

It is also recommended that open-ended questions be asked in addition to the 12 CSH questions prescribed by the framework. This would help the researcher gain a richer understanding of the insights which had surfaced from the 12 CSH questions asked.

Key action points for community participation practitioners based on the findings from this study would be to ensure alignment of the motivations for participatory upgrades like Project Silvertown from the start of the project. If stakeholders are found to have different motivations practitioners should attempt by all means to combine the different expectations to a joint vision that all stakeholders can agree upon. This would help strengthen relations between citizens and local government as well as better ensure project success.

Capacitation of community members is important to ensure that beneficiaries know their rights and are empowered and informed to make decisions that could prove to be beneficial to project success.

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Appendix – Assessment of ethics in research form

EBE Faculty: Assessment of Ethics in Research Projects (Rev2)

Any person planning to undertake research in the Faculty of Engineering and the Built Environment at the University of Cape Town is required to complete this form before collecting or analysing data. When completed it should be submitted to the supervisor (where applicable) and from there to the Head of Department. If any of the questions below have been answered YES, and the applicant is NOT a fourth year student, the Head should forward this form for approval by the Faculty EIR committee: submit to Ms Zulpha Geyer (Zulpha.Geyer@uct.ac.za; Chem Eng Building, Ph 021 650 4791).
NB: A copy of this signed form must be included with the thesis/dissertation/report when it is submitted for examination

This form must only be completed once the most recent revision EBE EIR Handbook has been read.

Name of Principal Researcher/Student:
Shamiso Kumbirai

Department:
Civil Engineering

Preferred email address of the applicant:
kmbsha001@myuct.ac.za

If a Student: Degree: MPhil

Supervisor:
Nicky Wolmarans (supervisor)
Ulrike Rivett (co-supervisor)

If a Research Contract indicate source of funding/sponsorship: N/A

Research Project Title: UNDERSTANDING STAKEHOLDER PERCEPTIONS OF PUBLIC PARTICIPATION IN PUBLIC INFRASTRUCTURE

Overview of ethics issues in your research project:


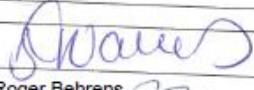


Question 1: Is there a possibility that your research could cause harm to a third party (i.e. a person not involved in your project)?	YES	<input checked="" type="checkbox"/>
Question 2: Is your research making use of human subjects as sources of data? If your answer is YES, please complete Addendum 2.	<input checked="" type="checkbox"/>	NO
Question 3: Does your research involve the participation of or provision of services to communities? If your answer is YES, please complete Addendum 3.	YES	<input checked="" type="checkbox"/>
Question 4: If your research is sponsored, is there any potential for conflicts of interest? If your answer is YES, please complete Addendum 4.	YES	<input checked="" type="checkbox"/>

If you have answered YES to any of the above questions, please append a copy of your research proposal, as well as any interview schedules or questionnaires (Addendum 1) and please complete further addenda as appropriate. Ensure that you refer to the EIR Handbook to assist you in completing the documentation requirements for this form.

I hereby undertake to carry out my research in such a way that

- there is no apparent legal objection to the nature or the method of research; and
- the research will not compromise staff or students or the other responsibilities of the University;
- the stated objective will be achieved, and the findings will have a high degree of validity;
- limitations and alternative interpretations will be considered;
- the findings could be subject to peer review and publicly available; and
- I will comply with the conventions of copyright and avoid any practice that would constitute plagiarism.

Signed by:

	Full name and signature	Date
Principal Researcher/Student:	Shamiso Tingani Kumbirai 	19/11/2014
This application is approved by:		
Supervisor (if applicable):	 Roger Behrens	20/11/2014
HOD (or delegated nominee): Final authority for all assessments with NO to all questions and for all undergraduate research.	 Roger Behrens	02 Nov 1017
Chair: Faculty EIR Committee For applicants other than undergraduate students who have answered YES to any of the above questions.	 G. Sithole	9/12/2014

ADDENDUM 1:

Please append a copy of the research proposal here, as well as any interview schedules or questionnaires. See attached research proposal for information regarding the project.

My data collection methods will primarily involve the collection of existing documentary resources. Although Critical Systems Heuristics (CSH), the theoretical framework chosen for this research project, suggests the use of survey data collection methods, modifications will be made to the framework to allow for the use of documentary resources to gather the required data to the extent with which it allows. Should the documentary sources not provide for all the data from the relevant stakeholders which are required from the framework, then interviews will be conducted to collect the remaining data needed.

CSH provides a framework of questions about a program/problem including what is (and what ought to be) its purpose and its source of legitimacy and who are (and who ought to be) its intended beneficiaries. The theoretical framework uses a set of 12 questions to make clear the judgements on which groups of people rely on to understand and frame situations as well as to design systems for improving them. The 12 questions asked are as follows:

Interview questions:

- (1) Who is (ought to be) the client or beneficiary? That is, whose interests are (should be) served?
- (2) What is (ought to be) the purpose? That is, what are (should be) the consequences?
- (3) What is (ought to be) the measure of improvement or measure of success? That is, how can (should) we determine that the consequences, taken together, constitute an improvement?
- (4) Who is (ought to be) the decision-maker? That is, who is (should be) in a position to change the measure of improvement?
- (5) What resources and other conditions of success are (ought to be) controlled by the decision-maker? That is, what conditions of success can (should) those involved control?
- (6) What conditions of success are (ought to be) part of the decision environment? That is, what conditions can (should) the decision-maker not control (e.g. from the viewpoint of those not involved)?
- (7) Who is (ought to be) considered a professional or further expert? That is, who is (should be) involved as competent provider of experience and expertise?
- (8) What kind expertise is (ought to be) consulted? That is, what counts (should count) as relevant knowledge?
- (9) What or who is (ought to be) assumed to be the guarantor of success? That is, where do (should) those involved seek some guarantee that improvement will be achieved (for example, consensus among experts, the involvement of stakeholders, the experience and intuition of those involved, political support)?
- (10) Who is (ought to be) witness to the interests of those affected but not involved? That is, who is (should be) treated as a legitimate stakeholder, and who argues (should argue) the case of those stakeholders who cannot speak for themselves, including future generations and non-human nature?
- (11) What secures (ought to secure) the emancipation of those affected from the premises and promises of those involved? That is, where does (should) legitimacy lie?
- (12) What worldview is (ought to be) determining? That is, what different visions of improvement are (should be) considered, and how are they (should they be) reconciled?

ADDENDUM 2: To be completed if you answered YES to Question 2:

It is assumed that you have read the UCT Code for Research involving Human Subjects (available at <http://web.uct.ac.za/depts/educate/download/uctcodeforresearchinvolvinghumansubjects.pdf>) in order to be able to answer the questions in this addendum.

2.1 Does the research discriminate against participation by individuals, or differentiate between participants, on the grounds of gender, race or ethnic group, age range, religion, income, handicap, illness or any similar classification?	YES	<input checked="" type="checkbox"/>
2.2 Does the research require the participation of socially or physically vulnerable people (children, aged, disabled, etc) or legally restricted groups?	YES	<input checked="" type="checkbox"/>
2.3 Will you not be able to secure the informed consent of all participants in the research? (In the case of children, will you not be able to obtain the consent of their guardians or parents?)	YES	<input checked="" type="checkbox"/>
2.4 Will any confidential data be collected or will identifiable records of individuals be kept?	<input checked="" type="checkbox"/>	NO
2.5 In reporting on this research is there any possibility that you will not be able to keep the identities of the individuals involved anonymous?	<input checked="" type="checkbox"/>	NO

2.6 Are there any foreseeable risks of physical, psychological or social harm to participants that might occur in the course of the research?	YES	<input checked="" type="checkbox"/>
2.7 Does the research include making payments or giving gifts to any participants?	YES	<input checked="" type="checkbox"/>

If you have answered YES to any of these questions, please describe below how you plan to address these issues:

My research proposal is based on the 2011 Toilet War Saga. This case was highly publicised in media and it's key players who appeared in the media were a rather small group. The theoretical framework I will be adopting requires that stakeholders from different groups in the chosen case study be identified – these stakeholder groups are; the decision makers, the experts, the witnesses and the clients. As the research is based around a public infrastructure project I have selected the decision makers to be therepresentatives of this case from the City of Cape Town Municipality (CoCT). The CoCT representatives who played a role in this case study are well known with many of their comments stated on this subject kept on public record. For this particular stakeholder group I foresee little need to further interview these members as the bulk of data I will require can be collected from existing documentary sources. The case is similar for the Client and Witness stakeholder groups, there is sufficient data which I have already collected to thoroughly analyse for the purposes of my research.

For the expert group I have selected the consulting engineers who were responsible for the design and construction of this project. Currently I have not been able to collect sufficient documentary data from this stakeholder group to provide a thorough analyses for my research. I will continue searching for any existing documentary resources which I can use for this stakeholder group – however, should I not be able to gather enough documentary sources from this group I will need to conduct interviews with the expert group representatives. This group of expert engineers involved in design of this nature is usually a small group of people, therefore there is the risk of their identities being disclosed by virtue of the team comprising of few people. In order to try prevent this from happening I will conduct an in-depth search on any documentary resources which are already available for public viewing on this case study which could represent this stakeholder group. Interviews with individuals will be considered the last option and if this situation arises, I will ensure that all names are omitted from my research and consider the answers given by the individuals as a representative answer for the entire stakeholder group. Therefore any comments made by the individuals will be considered as comments made by the whole group. If the experts who were directly involved in this project decide to withdraw or not participate voluntarily, I will resort to interviewing experts of similar fields who took an interest in this project and interview these experts as the representative group.

In the case of interviews needing to be conducted for any of the four stakeholder groups my plan of action to best protect their anonymity and privacy are detailed below:

1. Voluntary Participation

It is of extreme importance to stress to the participants upfront that should they feel they are no longer willing to conduct the survey and interview, they are free to withdraw at any stage in the process and their information will not form part of the data collected for my research project if they wish that to be the case. In doing this Watson (1997) states that although mandatory participation could result in more response rates from the survey, voluntary participation is almost certain to provide more accurate results. This is true especially if any questions are of a personal nature, the participant's will be more willing to share their honest opinion or personal details should they feel as though they have the right as to whether they are allowed to disclose any information. Furthermore, interviews will be conducted at a time and place that is determined by the interviewee to be suitable.

2. Informed Consent

Before the participant is to complete the interview, it is my responsibility to ensure they are willing to participate in the process and make them aware that the data they will provide me with will be used for my research project and will require them to sacrifice a portion of their time in order to complete the interview. Participants should understand that although their identities will remain confidential any comments made by them could be divulged in verbatim. Should participant's feel they need more information with regards to their involvement or the project it is my duty to best explain any concerns they might have with regards to the project. All of the above information will be expressed to the participants in a consent form that they will be required to complete before commencing with the survey and the interview.

3. Freedom of speech and privacy concerns

Participants should feel free to air their opinions without feeling as though their privacy has been invaded or pressurised in any way. All comments, ideas and answers brought forward by the participants should in no way be as a result of any influence on my part to better suit the outcome of the project. In addition to freedom of speech is the participant's right to choose not to comment on any of the questions posed during both the survey and the focus group should they not feel comfortable with any questions asked. Watson (1997) states that survey and interview professionals must acknowledge the two crucial human rights deeply rooted in the ethics of data gathering: freedom of speech and privacy.

Article 19 of the ICCPR states that:

"everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."
(Wikipedia, 2011)

The invasion of privacy poses several risks when dealing with surveys and interviews of any nature. When the participant is concerned about the consequences of answering a question of a personal nature there is a good possibility that the answer may not be truthful (Walonick, 1997). This could have consequences for the project outcome as the data gathered from participants would not be accurate. The questions being asked in the interview are not of a personal or private nature which avoids the concern of invasion of privacy, however, should the participants feel their privacy is being invaded at any point during the interview they are free to choose not to answer the question or to end the interview.

4. Anonymity

It is my responsibility to ensure to the best of my abilities that all names and other personal particulars that the participant may not want to share with the public remains confidential. I intend to quote responses made by participants in verbatim, therefore, I must ensure I avoid referring to the participants in any way that could make them identifiable. Therefore, pseudonyms will be used for every participant I reference to protect their identity and right to privacy.

References

- Walonick, D. 1997. *Designing and using questionnaires*. [online] Available at: <<http://www.philselfsupport.com/questionnaires.htm>>
- Watson, T. 1997. *Survey and Interview Ethics for Data Gatherers and Respondents*. [online] Available at: <<http://www.ijoa.org/imta96/paper64.html>>
- Wikipedia. 2011. *Concept Learning*. [online] Available at: <http://en.wikipedia.org/wiki/Concept_learning>

An example of the participant consent form I will use before conducting any interviews

Subject Information Statement and Consent Form

Dear Participant

Thank you for agreeing to participate in this interview. The 12 interview questions asked will form a part of a research study being conducted in the Department of Civil Engineering at the University of Cape Town by Ms Shamiso Kumbirai, who is a post-graduate student supervised by Nicky Wolmarans.

The study aims to understand perceptions of public participation in infrastructure projects; with a particular focus on the Toilet War Saga. While this information may be useful to the Civil Engineering Department, it may not be of direct benefit to you. All necessary precautions will be taken to ensure your anonymity as best as possible. Please be advised your participation in this interview is completely voluntary on your part; should you at any moment feel the need to opt out or not answer any questions you are free to do so. Any participant who would like more information about the project is invited to contact the Shamiso Kumbirai at kmbsha001@myuct.ac.za or 076 855 1099

Any persons with concerns or complaints about the conduct of a research study can contact Ms Zulpha Geyer (Zulpha.Geyer@uct.ac.za; Chem Eng Building, 021- 650 4719).

Kindly sign and date below indicating your agreement to participate in this interview.

Once again, thank you very much.

CONSENT

I,

(PRINT FULL NAME HERE)

- have read and understood information for participants in the above named research study;
- have discussed the study with Shamiso Kumbirai and am aware of the procedures involved;
- understand that I can withdraw at any time; and
- freely consent to participate.

Signature/full name _____

Today's date _____

ADDENDUM 3: To be completed if you answered YES to Question 3:

3.1 Is the community expected to make decisions for, during or based on the research?	YES	<input checked="" type="checkbox"/>
3.2 At the end of the research will any economic or social process be terminated or left unsupported, or equipment or facilities used in the research be recovered from the participants or community?	YES	<input checked="" type="checkbox"/>
3.3 Will any service be provided at a level below the generally accepted standards?	YES	<input checked="" type="checkbox"/>

If you have answered YES to any of these questions, please describe below how you plan to address these issues:

ADDENDUM 4: To be completed if you answered YES to Question 4

4.1 Is there any existing or potential conflict of interest between a research sponsor, academic supervisor, other researchers or participants?	YES	<input checked="" type="checkbox"/>
4.2 Will information that reveals the identity of participants be supplied to a research sponsor, other than with the permission of the individuals?	YES	<input checked="" type="checkbox"/>
4.3 Does the proposed research potentially conflict with the research of any other individual or group within the University?	YES	<input checked="" type="checkbox"/>

If you have answered YES to any of these questions, please describe below how you plan to address these issues: