



THEMBISILE HANI LOCAL MUNICIPALITY

Land Use Management Scheme 2020

STRATEGY FOR ADDRESSING ILLEGAL LAND USES



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SECTION A: BACKGROUND AND INTRODUCTION

1. DEFINITIONS

“**Illegal**” means any land and/or buildings which is used for a different use or under different conditions as specified or as provided for within the Land Use Scheme.

“**Legal**” means all existing land use rights, which are deemed to be legal in terms of the Land Use Scheme.

“**Non-conforming Use**” means an existing land use that was lawful in terms of a previous Town Planning Scheme, but which does not comply with the current Land Use Scheme.

“**Municipality to determine**” means any land use or zoning which are undetermined. The responsibility of assigning a land use right to a property or erf zoned undetermined will be the responsibility of the Local Municipality, except when a land owner can provide proof of the existing approved land use rights or zoning of the property.

“**General Plan to be re-drawn**” means such township area where the current General Plan of the area does not represent the layout of the actual township on the ground. For the cadastral layout of such an area to

accurately represent what is on the ground a General Plan for such township will have to be re-drawn.

2. INTRODUCTION

Rights to land and property also include the right of use. However, the right to use may be limited through public land-use regulations and restrictions, sectoral land use provisions, and various kinds of private land-use regulations such as easements, covenants, etc. Many land-use rights are therefore in fact restrictions that control the possible future use of the land.

Land-use planning and restrictions are becoming increasingly important as a means to ensure the effective management of land-use, to provide infrastructure and services, to protect and improve the urban and rural environment, to prevent pollution, and to pursue sustainable development. Planning and regulation of land activities cut cross tenures and the land rights they support. These issues become still more important as the world become still more urbanised.

3. UNDERSTANDING ILLEGAL LAND USE AND INFORMAL DEVELOPMENT

An **illegal land use** occurs when a piece of land and/or building is used by an owner for a different use or under different conditions than specified or provided

for in the land use scheme. In general, the scheme provides for different use zones (zoning) which permits certain uses under each use zone. For example, if a property is zoned “Public Open Space” the property may only be used for Public Open space or any other use as stipulated under primary uses of the zoning table. If the owner now uses it for a dwelling unit, it becomes “illegal” and inconsistent with the provisions of the use zone i.t.o. the land use scheme.

Informal development may occur in various forms, such as squatting, where vacant state-owned or private land is occupied illegally and used for illegal slum housing; or it may appear through informal subdivisions and illegal construction work that does not comply with planning regulations such as zoning provisions; or through illegal construction works or extensions on existing legal properties.

It is important to distinguish informal settlements and informal development. According to the

OECD definition Informal settlements are:

- Areas where groups of housing units have been constructed on land that the occupants have no legal claim to, or occupy illegally; and
- Unplanned settlements and areas where housing is not in compliance with current

planning and building regulations (unauthorized housing).

4. LEGAL STATUS OF A LAND USE SCHEME

Land use schemes are LEGAL instruments. SPLUMA stipulates the following with regards to the legal effect of a land use scheme:

- An adopted and approved land use scheme:
 - ✓ has the force of law, and all landowners and users of land, including a municipality, a state-owned enterprise and organs of state within the municipal area are bound by the provisions of such a land use scheme; and
 - ✓ once a land use scheme is adopted and approved, land may be used only for the purposes permitted by a land use scheme.

Municipalities must promulgate their land use schemes as a municipal by-law. Municipal by-laws are laws made by local government. They must be passed by a majority vote of a municipal council. Under the Constitution, the public must be given an opportunity to review and comment on by-laws before they are voted on by a municipal council.

When land use is exercised that is not permitted by the land use scheme, this is seen as a contravention of the

municipal by-law. In the case of such contravention, SPLUMA stipulates that a municipality have the following powers:

- It may appoint an inspector that can enter the property with the aim of ensuring compliance to the land use scheme;
- It may apply to a court for an order:
- interdicting any person from using land in contravention of its land use scheme;
- authorising the demolition of any structure erected on land in contravention of its land use scheme, without any obligation on the municipality or the person carrying out the demolition to pay compensation; or
- directing any other appropriate preventative or remedial measure.

5. CURRENT STATISTICS ON ILLEGAL LAND USES

Part of the process in compiling a Land Use Scheme involves updating the cadastral information and a Land Use Survey of all properties within the jurisdiction of the Municipality. The existing land uses are then compared to the zoning tables to determine the land use status. The land use status is illustrated in Table 1, Figure 1, Table 2 and Figure 2.

Table 1: Land Use Status

Land Use Status	Total
Illegal	153
Legal	79 825
To be determined by the Municipality	119

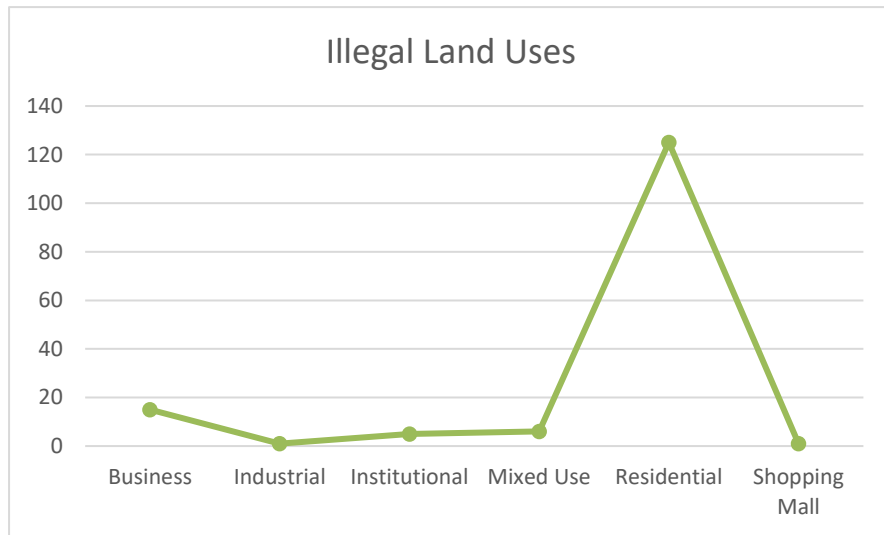
Figure 1: Land Use Status



Table 2: Illegal Land Use Types

Illegal Land Use	Total
Business	15
Industrial	1
Institutional	5
Mixed Use	6
Residential	125
Shopping Mall	1

Figure 2: Illegal Land Use Types



6. PURPOSE OF THE STRATEGY

The purpose of this strategy is to, addresses the main issue of how to prevent, illegal land uses informal urban development, especially through the use of adequate and sustainable means of land use control and good governance.

The Strategy also provides a Land-Use Management System (the Planning Control System) of various sectoral

Interests balanced against the overall development objectives of the Land Use Scheme, thereby form the basis for regulation of future land-use through planning permissions, building permits and sectoral land use permits according to the various land-use laws.

SECTION B: STRATEGY ON ILLEGAL LAND USES

The strategy proposes a local approach of Integrated Land Use Management in addressing the issue of illegal land uses which is based on the following fundamental principles:

- (a) Comprehensive Planning
- (b) Monitoring Change
- (c) Administration
- (d) Participation
- (e) Financial Penalties



7. COMPREHENSIVE PLANNING

The term comprehensive planning relates to some key characteristics:

- The planning document (including policies, land-use plans, and planning regulations) should cover the total jurisdiction of the municipality. This will ensure a holistic approach to policies and decision making.
- The planning document should include the preconditions and the land-use policies, as well as the land-use plans (zoning maps etc) and the land use regulations. This will ensure that the actual land-use regulations can be linked to policies and discussed as political decisions.

Such comprehensive planning may be carried out at several local levels in which land-use management includes control of land-use in both urban and rural areas as well as management of natural resources. Control of land use may be executed through the planning regulations at various administrative levels and is often supported by land-use regulations within the various sectors such as agriculture, environmental protection, water catchments, transport, etc.

7.1. Urban Planning Control

Urban planning normally includes zoning of the urban areas into various areas of use, such as residential housing, retail, light or heavy industry, offices, public space such as parks etc. detailed regulations are then imposed within the various zones to determine the development opportunities in terms of a minimum size of parcels, building density, heights of buildings, etc. Such regulations may be further detailed in development plans including schemes for new subdivisions with a detailed lay-out for example a new residential neighbourhood.

Other planning regulations and may include regulations for a minimum size of parcels, maximum building density in residential areas, maximum building heights (density policy) etc. Such general regulations for subdivision and housing development are very effective to control development in areas where detailed planning regulations do not apply.

7.2. Building Permit Control

Most planning regulations are mainly reactive in the sense that they determine the possible future use of land. The control of actual development such as construction works, is normally exercised through the issuing of a

building permit (or planning permission) prior to commencement of any construction work.

The administrative process of issuing a building permit normally includes a check of the development proposal against adopted planning regulations, land-use restrictions, sectoral land-use provisions, and various regulations such as building by-laws including detailed regulations for safety and quality of the constructions.

The system of building permit control should then act a kind final check in the planning control system and ensure that any new developments are consistent with adopted planning policies and land-use regulations and restrictions.

7.3. Building Permit Control

The crisis of urban management is well known but planning and development issues in rural areas are just as significant. Rural planning systems are complicated with separate systems of demarcation of sites by Traditional Leaders and sectoral planning which manage resources such as soil quality, landscape qualities, raw materials and water accessibility.

Ideally, these sectoral controls should be integrated into the comprehensive spatial plans to form the basis for rural land use administration.

The rural zone development provisions are intended to prevent uncontrolled land development and should consist of regulation such as the Demarcation of Site in Traditional Areas Policy and issuing of development permits (Traditional Use Permit or Development on Communal Land Permit)

8. MONITORING CHANGE

Monitoring change entails the process of conducting a detailed land use survey, conducting the land audit, identify a number of illegal land uses. The following process can be followed to rectify this.

Identify illegal use. This can happen as the result of a land use survey or land audit or can be the result of a complaint from a member of the community. Note that if it is the result of a complaint – the municipality should investigate first.

A collective responsibility, built by trust between local government and the community, to monitor all developments will ensure that the majority of developments are formal. This may require the need for anonymity when members of the public challenge developments

9. PARTICIPATION

If citizens are not directly engaged in their local land use control activities, then the political decision making will not be truly legitimate. Citizens who cannot influence changes to their local environment will tend to reject the official land use control procedures and turn their backs on ensuring a sustainable local environment. This lack of participation and transparency can also potentially lead to an increase in corruption and illegal development.

Therefore, it is essential that citizens / communities have a genuine opportunity to have a say (a dynamic process of dialogue) on a development plan or proposal which affects them and that officials and politicians listen to what they say and reach a decision in an open and transparent way, taking account of all views expressed. If the process ensures transparency and inclusivity then even difficult decisions may be easier to be accepted by all parties involved

9.1. Contravening Land Owners

In a case whereby a land owner has been identified to have contravened with the land use scheme by practising illegal land uses in his / her property the following procedures should be undertaken:

- **Invite the owner** or other person within a specified time to make written representations on the notice. If the owner supply written proof that he/she is exercising a legal right (e.g. an old zoning certificate) the municipality should withdraw the action.
- The owner submits an application to rectify the land use and follows the process of that application as is necessary (e.g. an application for consent or rezoning or departure etc.)
- If the application contemplated above is not successful, the owner should cease to exercise the land use. The municipality can consider enforcement litigation:
 - ✓ the municipality may apply to the High Court for appropriate relief, including orders compelling the owner or other person to;
 - ✓ demolish, remove or alter any building, structure or work erected in contravention of the scheme, and rehabilitate the land concerned; and
 - ✓ cease or modify conduct in contravention of this scheme, to comply with this scheme, or to address another impact of the contravention.

10. ADMINISTRATION

The administrative elements of managing illegal land uses entails the issuing of contravention notices

The municipality may serve a notice on an owner or other person if there are reasonable grounds for believing that the owner or other person is in contravention of the land use scheme. The notice should contain the following information:

- description of the property/land unit in question;
- describe the conduct that lead to the contravention of the scheme (in other words, what is the illegal land use);
- indicate which provision of this By-Law, condition of approval or other provision the conduct contravenes (refer to the specific scheme clause or land use table in the scheme clauses);
- instruct the owner or other person to cease the unlawful conduct and to comply with the scheme;
- state that a failure to comply with the notice constitutes an offence and indicate the penalties;
- state that, in the event of non-compliance with the notice, the Municipality may take one or more of the following measures:

- if relevant, take steps to withdraw an approval for a temporary departure/consent or an approval granted for a limited period of time;
- apply an administrative penalty;
- apply to a competent court for appropriate relief including the costs of the application; and
- institute a criminal prosecution;
- advise the owner or other person of their right to apply for rectification of the contravention. This should include what the rectification process will involve (e.g. a rezoning application)

11. FINANCIAL PENALTIES

Municipalities can consider penalising a property owner if he/she contravenes the municipal land use scheme. The following can be considered in terms of financial penalties:

An owner and/or other person are guilty of an offence if such owner or person:

- contravenes or fails to comply with a:
 - ✓ decision taken or a condition imposed or deemed to have been taken or imposed by

- the Municipality in terms of this By-law or any other law relating to land development;
- ✓ provision of the Land Use Scheme or amendment scheme;
- ✓ uses land or permits land to be used in a manner other than permitted by the Land Use Scheme or amendment scheme;
- ✓ uses land or permits land to be used in a manner that constitutes an illegal township as defined in terms of the provisions of this By-law;
- ✓ etc.
- alters or destroys land or buildings to the extent that the property cannot be used for the purpose set out in the Land Use Scheme or zoning scheme.

Any person convicted of an offence in terms of this By-law, shall be liable to a fine not exceeding R5 000 or as may be determined by a Court of Law or to imprisonment for a period not exceeding 12 months or both such fine and such imprisonment.

A person convicted of an offence under the by-law or land use scheme who, after conviction, continues with the action in respect of which he/she was so convicted, is guilty of a continuing offence and liable to a fine not exceeding R5000, or upon conviction, to imprisonment for a period not exceeding three months

or to both such fine and imprisonment, in respect of each day for which he/she has so continued or continues with such act or omission.

12. ILLEGAL LAND USE TARRIF

Cities and towns grow in wealth and size through investments in land and property. For municipalities, this value is the base of their primary source of tax income, which is used to provide basic services and perform their functions. The Municipal Property rates Act (2004) specifies that a municipality must compile a register of all properties in the municipality which also include the value of those properties. This is called a valuation roll. The value of a property is determined by looking at the following factors:

- The value of any license, permission or other privilege granted in terms of any legislation;
- The extent and value of land and buildings (referred to as “immovable property” in the act);
- What the land and buildings are used for (legal or not).

Each municipality compiles a tariff policy (in terms of the MFMA Municipal Finance Management Act) which includes, among other, a property rates tariff

applicable to land. This tariff is applied to the value of the property to determine the property rates amount payable on a monthly basis to the municipality (note that certain rebates can be applied to certain property classes e.g. RDP houses, or old age homes etc.). The table below provides an example of tariff for each category of property.

Table 12.1: Property tariff and monthly property rates bill Example (for a property valued at R 1 000 000)

Category	Tariff (Rand)	Monthly Property Rates
Agricultural Residential	0.005878	R490
Agricultural Business	0.018287	R1 524
Farming	0.001632	R136
Residential	0.006531	R544
Business and Commercial	0.018287	R1 524
Mining land	0.018287	R1 524
Public Service Infrastructure	0.001632	R136

State	0.009796	R816
Public benefit	0.001632	R136
Education	0.001632	R136
Religious	0.000000	R0

In this example, a residential property valued at a R 1 000 000 pays R 544 every month in property rates. A business valued for the same amount pays almost three times as much due to the higher tariff applicable to that category. Municipalities should consider amending their tariff policies to make provision for illegal land uses.

The example below (based on City of Johannesburg) introduces an illegal use tariff. In this scenario, a property owner will pay more than R 2000/month (if the property is worth R 1 million) if he/she is exercising an illegal land use. Using this method may force the property owner to try and “legalise” his land use rights in order to avoid paying the elevated property rates bill per month.

Table 12.2: Introduction of illegal land use tariff

Category	Tariff (Rand)	Monthly Property Rates
Residential	0.006531	R544
Business and Commercial	0.018287	R1 524
Illegal use	0.026124	R2 177

SECTION C: LAND USE MANAGEMENT & DEMARCATION OF SITES IN TRADITIONAL AUTHORITY AREAS

The objective of the demarcation of sites policy in the Thembisile Hani Traditional Authority areas is intended to assist the Chiefs and their Headmen (Tindvuna) to allocate stands that have been properly surveyed and are suitable for human settlement. This process will ensure the following:

- Efficient utilisation of land for human settlement development;
- Efficient provision and access to basic services in respect of water, sanitation, refuse removal and electricity;
- Creation of planned, consistent and sustainable layouts with proper road hierarchy and improved access to communities, social and economic opportunities;
- Conservation of environmentally sensitive areas; and
- Protection of agricultural land.

(a) Description

The demarcation of sites policy guides the process to be followed in the demarcation of stands. The process involves the transformation of undeveloped vacant or derelict land to land that can be used for residential, mixed, retail, commercial, industrial or institutional use.

The process does not involve land tenure upgrading, it is only a township establishment process and finishes upon the approval of a General Plan.

(b) Locality

The policy applies in the Traditional Authority areas.

(c) Objectives

The objectives are to:

- Limit unplanned and uncontrolled informal settlement and to ensure more efficient use of resources and land within Traditional Authority Areas; and
- To create sustainable and orderly human settlements.

(d) Guidelines

The process to be followed in the demarcation of sites will be as follows:

1. The Traditional Authority shall request assistance from the municipality in the demarcation of sites:
 - The demarcation of sites should be guided by the proposals contained in the respective Traditional Authority Framework.

- The Traditional Authority shall request assistance from the Municipality in the process of demarcating sites.
2. The Municipality shall facilitate the process of township establishment:

- The Municipality shall engage with the relevant departments to solicit support of the project, be it financial or otherwise i.e. from the
- Department of Human Settlement or Department of Agriculture, Rural Development and Land Affairs.
- Where capacity is an issue, the Municipality shall procure the services of experienced and capable service providers for the demarcation of sites i.e. Town & Regional Planners.

3. Preparation of the application

A Township Establishment Process shall commence which will include an application consisting of the following:

- Locality and Layout Plan with contour lines and a motivational memorandum which will include:
 - ✓ Land Claims investigation
 - ✓ Mineral Rights investigation

- ✓ Land ownership and land rights investigation
 - ✓ Investigation of servitudes
 - ✓ Conditions of title
 - ✓ Community participation information
 - ✓ Availability of bulk services (water, electricity, etc)
 - ✓ Traditional Authority Input
 - ✓ Local Authority Recommendations
-
- ✓ Inputs from external departments
 - ✓ Geotechnical report & engineering services
 - ✓ 1:100 Flood line Certificate
 - ✓ Scoping Report & ROD
 - ✓ Community Resolution
 - ✓ Certified copy of Title Deed

4. Lodging of a township establishment application:

- Before lodging the application, the layout plan shall be approved (i.e. stamped) by the Traditional Authority and a Community Resolution shall be obtained.
- The relevant legislation shall be used to lodge an application with the
- Mpumalanga Department of Agriculture, Rural Development and
- Land Administration (DARDLA) for its decision.

- A copy of the application shall be forwarded to the Municipality and other relevant departments for comments.
 - The Department (DARDLA) shall provide its written decision (approval or disapproval) of the proposed township.
 - Upon approval the Land Surveyor shall draft the General Plan of the study area and prepare the necessary technical documentation to be lodged with the Office of the Surveyor-General for approval.
5. Submission and presentation of approved layout plan to Traditional Authority:
- Upon receiving all necessary approvals the Municipality shall handover the Layout Plan to the Traditional Authority.
 - A copy the approved General Plan shall also be handed over to the Traditional Authority.
 - The Traditional Authority shall use the Layout Plan to allocate stands to residents.
 - The Traditional Authority together with the Municipality shall monitor the unlawful occupation of land and illegal land uses.

13. CONCLUSION

Although some occurrences of illegal development, such as in post conflict situations, may be difficult to stop, many other forms of illegal development could be significantly reduced through government interventions supported by the citizens. Underpinning this intervention is the concept of integrated land management as a fundamental means to support sustainable development, and at the same time, prevent and legalise informal development.

The integration of land policies, land information, and planning control/land-use management should ensure that land-use decision making is based on relevant policies and supported by complete and up to date information on land-use and rights in land. This should also provide for establishing the relevant social and economic institutions in society in support of legalising the informal sector