

POLOKWANE

MUNICIPALITY



1st draft

**STRATEGY FOR HANDLING ILLEGAL
LAND USES IN THE AREAS UNDER
CONTROL OF A LAND USE (TOWN
PLANNING) SCHEME IN POLOKWANE**

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STRATEGY FOR HANDLING ILLEGAL LAND USES IN THE AREAS UNDER CONTROL OF A LAND USE (TOWN PLANNING) SCHEME IN POLOKWANE

1. BACKGROUND

1.1 Integrated planning and the importance of land use management

The Local Government: Municipal Systems Act, 2000 (Act no. 32 of 2000) provides in Chapter 5 thereof that a municipality must undertake integrated development planning and for this purpose Section 25 of the act (*supra*) stipulates that each municipal council must adopt an Integrated Development Plan (IDP).

Section 26 in turn makes provision for the core components of which the IDP must consist of, which *inter alia* for purposes of this document are the following namely:

- Subsection (a): Vision for long term development;
- Subsection (c): Development priorities and objectives;
- Subsection (d): Development strategies must be aligned with national of provincial sectoral plans and planning requirements; and
- **Subsection (e): Spatial Development Framework.**

The detail contained in the Spatial Development Framework (SDF) is further set out in the Local Government: Municipal Planning and Performance Regulations, 2001 (Regulation No. R 792 of 24 August 2001).

Regulation 2(4) of the said regulations stipulates that a Spatial Development Framework reflected in a municipality's integrated development plan must *inter alia* –

- Set out objectives that **reflect the desired spatial form** of the municipality;
- Set out basic guidelines for the **land use management system**;

The SDF, 2005 is clear about the role of land use management and submits as a point of departure that: ***“The guidelines for the land use management system must further support the desired spatial form and developmental approach of the municipality”***

It is therefore clear that the Land Use Management system (LUMS) plays a key role in integrated planning and to accomplish long-term development objectives within the municipal area.

For purpose of this strategy, those specific long-term development objectives is not important to note. What is important to realize, is that the LUMS must function properly.

In order to understand what the LUMS and the role of zoning (land use scheme), the Land Use Management Bill, March 2001 defines it as follows:

“Land use management” to mean “... *establishing or implementing any statutory or non-statutory mechanism in terms of which the unencumbered use of land is or may be restricted or in any other way regulated.*”

Whilst,

“Land use scheme” to mean “... *a scheme which -*

- *regulates the use of land in the area;*
- *records the permissible use of each piece of land in the area.*

Therefore the concept of a Land Use Management System (LUMS) will refer to the mechanism in terms of which imaginative use of land is regulated in one way or another, which may include the adoption of a Land Use Scheme of which the stipulations will be binding on that land. It is furthermore accepted that any spatial development framework, policy, structure planning and/or other guidelines accepted by the municipality, form part of the regulation of land by guiding and informing the LUMS thus legally effecting decisions to be taken to amend the Land Use Scheme.

The LUMS is therefore interpreted to be a much broader term which incorporates different aspect affecting land, land use and development from policy making level (strategies, principles in the IDP) up to final development control measures (conditions in land use scheme/use zones).

The basis of the LUMS and basic principles derive from policy and strategic based decision from the IDP and more specifically the Spatial Development Framework thereof.

A Land Use Scheme on the other hand, is interpreted to be a scheme, which subsequently regulates and records the permissible use and/or restrictions applicable to each property within the area of the municipality. It is therefore **the “mechanism” or legislative document which provides the final management/control over land use over each piece of land**, on a more administrative and technical level in accordance with the LUMS in general.

Currently, land use schemes appears in the form of a Town Planning Scheme introduced and promulgated through provisions of the Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986). The only scheme in operation in the Polokwane Municipality’s area of jurisdiction is the Pietersburg/Seshego Town Planning Scheme, 1999.

1.2 **What is “illegal land use”**

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 “Residential 1” the property may only be used to erect a dwelling unit (house) and to be used by a single family for residential purposes. If the owner now uses it for an office and/or to conduct business, it becomes

“illegal” and inconsistent with the provisions of the use zone i.t.o. the land use scheme.

The White Paper on Spatial Planning and Land Use Management, 2001 submits that weak enforcement of schemes are taking place in the country. It is submitted that: *“Those controls that are in place - to prevent illegal, unsafe, environmentally unsound land development - are only rarely enforced. This is the result of two factors. Firstly, many of the controls that are unenforced are in fact inappropriate, particularly insofar as they affect the poor. Secondly, there is a general lack of law enforcement capacity in local government. These two factors combine to create a sense of impossibility: the problem is so big and the resources so small that the problem simply cannot be tackled.”*

1.3 The different strategies of handling of illegal land uses the past ten years

1.3.1 Two basic processes

There are two basic processes to follow in order to enforce the town planning scheme and to ensure that an owner conduct the land use as specified under the specific zoning applicable to his/her property, namely:

- Civil prosecution through the Magistrate Court; and
- Civil procedures through the High Court.

Under prosecution through the Magistrates Court an owner can be fined or sentenced to imprisonment by a Magistrate should he be found guilty of an illegal land use.

Under prosecution through the High Court the courts will grant an order preventing such an owner to continue with an illegal land use.

Court procedures are followed where a land owner do not adhere to warning (notice) issued i.t.o. the Town Planning Scheme to cease illegal land use and persist with the illegality.

1.3.2 The Magistrate Court v.s. the High Court process

Up to mid 1996 the municipality followed the process of prosecution through the Magistrate Court in order to combat illegal land uses. This process was not very successful due to the following constraints, namely:

- Fines issued by Magistrates were small and didn't discourage owners to discontinue with illegal land use. Owners just incorporated fines as part of their operating costs;
- State prosecutors were ill informed with regard to town planning schemes, which lead to unsuccessful prosecution and the municipality lost several cases;
- Prosecution was not always swift and not within the management of the municipality. The municipality had to wait prosecution by the State Prosecutor.

In 1997 the municipality started with a process of combating the illegal land uses by following prosecution through the High Court. The High Courts will grant a court order preventing such an owner to continue with an illegal land use. This process seems to be much more successful because:

- The High Court is much more knowledgeable on town planning matters which resulted in a greater success rate in prosecution;
- Court orders will prevent owners to continue with the land use and is not only a “fine”;
- Costs orders granted against transgressors is much higher than a mere fine, which is a bigger deterrent;
- The process and management of the case is much more in the hands of the municipality’s lawyers and advocates.

1.3.3 Different project strategies followed by the municipality

Internal handling

Therefore in 1997 the municipality started to request the High Court for courts interdicts against transgressors of the town planning scheme.

The relevant Town Planning Unit undertook inspections and issued the necessary notices where illegal land uses were conducted.

By failure of land owners to comply with such notices instructing them to cease the illegal use, the case was handed over to the municipality’s legal unit. This department compiled all necessary affidavits and statements, where-after it was handed over to correspondents (Attorneys and Advocates) in Pretoria who acted in the High Court on behalf of the municipality.

This process seemed to be much successful and approximately 70 interdicts were granted by the High Court with a 100% success rate for the municipality.

This process was relatively simple because all officials who acted against transgressors reported to senior management. Control, reaction time and instruction was very simple. However, only one town planning official (Town Planning Assistant) was assigned and the increase in illegal land uses due to normal economic realities, made the task cumbersome.

Appointment of Town Planning Consultants.

Because of the large increase in illegal land uses, it was decided around 1998 to appoint Town Planning Consultants to assist the Town Planning Unit in order to achieve much more success. The legal processes were still handled in the same manner.

This process also achieved a high success rate was also reached and these projects continued up to 2000/2001.

Appointment of complete team of consultants

During 2000/2001 it was decided that a complete team of Town Planning and Legal consultants had to be appointed in order to handle the process of illegal land uses on behalf of the municipality.

This process proved to be much less successful. The exact reasons can't be pointed out but it seems that a lack of knowledge and capacity of the consulting town planners, co-ordination between consultants, co-ordination between the consultant team and the different municipal units, as well as complexity of instructions to town planning consultants, contributed towards a very low percentage of cases which ended up in court.

Consultants blamed each other for delays and also admitted that there exist capacity problems in their firm. Cases dragged on for many years, which lead to a situation where officials had to undertake inspections in 2006 again i.r.o. cases which started in 2003/04 because the consultant's period already lapsed and information needed to be updated in order to complete the court cases.

Revert back to internal handling by Town Planning Unit

In early 2005 the contract of the consulting town planner came to an end and it was decided that the town planning issues (inspections, serving of notices etc.) will be handled internally again by the Town Planning Assistant. This was decided due to the huge success rate in 1998 and problems experienced with the consultants.

The indication is currently that there is much improvement because the Town Planning Assistant is under direct supervision of the managers making instruction is easier. After the process was concluded by the Town Planning Unit, the cases are handed over to legal advisors (consultants) to proceed. Instructions are made easier and it seems that cases are submitted to court much sooner than in the past. The Manager Spatial Planning & Land Use Management also has more control over the legal process due to closer operations with the unit.

However, shortcomings still exist and the number of illegal land uses are of such a magnitude making it impossible for the SBU to make a real impact on combating illegal land uses due to the limited capacity of the unit. It should also be kept in mind that the municipality needs to extend its land use schemes and the areas in which illegal land uses have to be prosecuted which will increase the situation.

There are also some co-ordination problems between legal consultants and officials, but these issues are minor and can be solved.

2. SITUATIONAL ANALYSIS

2.1 The Town Planning Scheme area of operation.

Currently only one town planning scheme, namely the Pietersburg/Seshego Town Planning Scheme, 1999 is in operation covering the areas of Polokwane City (Pietersburg) and Seshego only – or the former area of the Pietersburg/Seshego Transitional Local Council.

Figure 1 (**Annexure A**) illustrates the applicable area. From this figure it is clear that only a limited area under the jurisdiction area of the Polokwane

Municipality, is covered by a proper land use scheme. The result is the following:

- Many illegal land uses occur in areas outside the town planning scheme area;
- Owners and businesses being prosecuted or afraid of being prosecuted, will flee to areas just outside the borders of the scheme, making prosecution very difficult if not impossible;
- Should schemes come into operation in these areas (which is considered by the municipality) it will increase the responsibility of the municipality to enforce the scheme and it will increase the number of illegal land uses;
- If the municipality is unable to manage illegal land uses within the current limited area, and/or fails to put a proper strategy in place, they will not be able to successfully enforce a scheme applicable to a larger area or other areas such as Mankweng.

2.2 Future extension of zoning schemes

According to the Land Use Management Bill, 2001 it will be required that the total municipal area must be covered with a zoning scheme and/or sub-schemes within a period of 5 years from the act coming into operation. However, since 2001 the act is awaited and uncertainty exist whether it will be introduced or not. Gauteng is now introducing their own "Planning Act" and other provinces like Limpopo may follow.

What is accepted throughout the planning faculty and promoted in the White Paper on Spatial Planning and Land Use Management, is that land use or zoning schemes forms an essential part of proper land use planning. It is therefore inevitable that Polokwane Municipality has to prepare itself by introducing zoning schemes throughout its area of jurisdiction.

The Polokwane Municipality SDF, 2005 set out the methodology of how new zoning schemes should be introduced in Polokwane Municipality's area of jurisdiction. The following is proposed:

- *"An **incremental approach for the introduction of zoning schemes** will be followed. It is accepted that the perfect land use management and planning system can't be developed over night, but can only be developed over time into a more elaborate system/zoning scheme. Therefore, the introduction of zonings schemes must start at higher order settlements (growth points and population concentration points) as well as some other problem areas moving downwards in the hierarchy to even include farm land areas.*
- *The **principle of minimalism** must further apply. The different zoning schemes must be directed towards only achieving/controlling necessary aspects in a certain area and towards directing resources to achieve key actions that produce the highest impact.*
- *Within the areas (e.g. growth points) where the most development pressure exists and where the largest spectrum of activities and specialized land uses must be entertained, a **specialized zoning scheme** and set of land use regulations are necessary. The opposite will therefore apply to villages and small settlements where a **rudimentary zoning scheme** will suffice"*

It is thus clear that a progressive approach will have to be followed. However, it is important to note that the area will increase which will put more strain on current resources i.r.o. handling of illegal land uses.

The first priorities of extension of the zoning schemes to be introduced within the near future, are:

- Expansion of the Pietersburg/Seshego Town Planning Scheme, 1999 in order to include areas (farms and small holdings) directly adjacent to the city;
- Introduction of a new scheme for Mankweng.

The farms and small holdings next to Polokwane are of specific concern and it is commonly known that many illegal business practices are conducted from these areas which have a negative impact on the sustainability of the land use management system, planning objectives and in general the negative impact that illegal land use has on people and the environment.

In conclusion, it is important to note that the expansion of the scheme and or incorporation of other schemes will put an additional burden on municipal resources and a clear direction and strategy is necessary in order to succeed in proper land use management in the future.

2.3 Current statistics on illegal land uses

The statistics pertaining to town planning work done by a consultant between 2003 to 2005 (24 months) seems as follows:

In total 325 cases were investigated (reported), of which 104 (32%) was found not to be illegal. After the relevant notices were served etc. only 31 cases (9%) of transgressions ceased. 75 Cases (23%) were handed over for legal prosecution of which the outcome of the court orders in some cases are still pending.

Since mid 2005 when the Town Planning Unit handled the inspections and issued town planning notices, the statistics over 6 months are as follows, namely:

In total 92 cases were investigated and reported of which 28 (30%) were found not to be illegal at all. After the relevant notices were served etc. 15 new cases (23%) were already handed over for legal prosecution.

Although the illegal uses are prosecuted, new ones will enter the database everyday and there are no figures available on the growth rate. What is evident, is that it can be expected that between 200 to 300 cases will be handled by the municipality every year.

The composition of the type of illegal land uses which commonly occur are as follows:

Type of illegal use	Percentage of total illegal uses
Offices	33%
Guest houses and boarding houses	22%
Mechanical work shops, panel beaters, wood works etc	11%
Household enterprises	8%
Place of instruction	7%
Taverns	4%
Others	15%

2.4 The origin of illegal land uses and common perception

When an illegal land use occurs it is commonly regarded as a “town planning problem”. This is not always the origin of the “problem” – or put differently, it can be prevented before it become an illegal land use.

Many illegal land uses result from improper control w.r.t other processes, municipal by-laws or regulations. For example, buildings are illegally converted without proper building plans. Building erections are not controlled properly and owners build without the necessary municipal consent. Another example, the control and monitoring of illegal occupants of land which is not a function of the Spatial Planning SBU, but later result in the contravention of the town planning scheme should it be permitted to continue. Erection of buildings and/or use of land in a road reserve can easily be managed and prevented i.t.o. the road ordinances.

By the time Town Planning action is initiated, owners have invested so much money that they are not prepared to easily stop the illegal land use and is therefore prepared to oppose any legal action.

2.5 Capturing system and data base

It was reported elsewhere in this report that about 300 illegal land uses appear from time to time on the data base of illegal land uses. These cases are only the reported cases – cases reported by the public.

It is however unknown what the real extent of illegal land uses are. Many cases go unreported and unknown because the Spatial Planning SBU doesn't have the manpower or resources to undertake a comprehensive survey or update the survey. Because illegal uses spring up everyday, such a survey should also be updated and closely monitored.

The second issue is that reported cases are not captured on a logging system which can enable management to monitor any progress or reply to specific enquiries.

The third problem is, that the municipality is currently only dealing with the “hard” illegal land uses – i.e. where the use is totally inconsistent with scheme's provisions. There are cases where owners obtained some consent (e.g. Clause 21 for Household Enterprise) but are seriously transgressing the conditions of the approval. These cases are not even monitored or proper

control applied. Again it seems that manpower shortages largely contribute towards this dilemma.

2.6 The dualistic planning system

Although the principle of participatory governance is supported, the current situation in the province and especially in the area of jurisdiction of the Polokwane Municipality which is based on a **“dual planning system” in terms of land use management (LUM)**, embodied in the current planning legislation and delegation of the function itself, needs to be addressed and corrected as a matter of urgency in order to:

- **give the municipality complete autonomy** over LUM and development and town planning matters throughout the municipal area;
- **address unwanted spatial forms** and undesired uses which are currently being created/continued throughout the municipal area;
- **standardise land use management** throughout the municipal area and ensure a uniform LUMS which will benefit the community, residents and developers.

3. ISSUES, OPPORTUNITIES AND CONSTRAINTS

The following issues can be summarised as the most relevant facts pertaining to the handling of illegal land uses and the opportunities and constraints evident in the case of Polokwane Municipality, namely:

- The municipality has a well established and competent Town Planning Unit who will be able to enforce land use regulations subject thereto that sufficient strategy exist and that the necessary resources are provided;
- The city of Polokwane has a large pool of expert consultants (e.g. Town Planners and Lawyers) who can advise the municipality on all aspects relevant to combating illegal land uses;
- Despite the competency i.r.o. the SBU and consultants, it appears that the different roles are not clearly defined in the current prosecution of cases. Current operational procedures and communication methods are also cumbersome. Clearly defined procedures and channels of communication should be introduced in order to expedite the legal process;
- The use of land within the current town planning scheme area is relatively under control and can still be managed compared to the situation in larger cities such as Tshwane. The municipality has to guard against a situation whereby illegal land uses get out of control and whereby the order can not be restored easily;
- The expansion of the scheme and or incorporation of other schemes may put an additional burden on municipal resources. A clear direction and base is necessary in order to succeed in proper land use management in the future;
- The municipality has to process applications whereby owners wish to change the land use (rezoning) promptly, because ignorance on the municipality's side leads to a situation where owners “take the law into their own hands” and conduct uses illegally;

- Uncontrolled land use lead to the erosion of the municipality's tax base over the long term with drastic results;
- Currently, no clear measurement of performance in order to determine the success or failure of combating illegal land uses exist;
- Currently, there exist no real database which indicate the total extent of illegal land uses in the scheme area. The only database in existence is based on reported cases, which may only represent a fraction of the real extent;
- There exists a lack of clear direction with regard to this project. Basically officials and Council knows what to do, but definite actions and realistic targets are not set. The current targets set out in the Service Delivery and Budget Implementation Plan is neither clear nor realistic;
- The general public and sometimes even management, is misinformed about the importance of enforcement of the land use scheme and what illegal land uses entails;
- The issue of illegal land use is commonly regarded as a town planning matter only, whilst the origin of illegal land uses mostly start during other processes and/or the lack of strict enforcement by other units within the municipality. For example, illegal buildings and or conversion of houses into offices finally lead to the illegal use thereof. Another example is the illegal conversion of outbuildings into second dwelling units and/or residential buildings;
- The municipality receives the necessary support from certain property owners and established community stakeholder groups (e.g. SAPOA) in dealing with illegal land uses and town planning matters in general;
- Reporting of illegal land uses by members of the public is not always well recorded. A logging system would improve the management.

4. OBJECTIVES

4.1 Normative principles

The major points of departure for this strategy in order to support the municipality's Integrated Developmental role are:

- The Land Use Management System must further support the developmental approach and Spatial Development Framework of the municipality;
- Illegal land use must be eradicated. The main reasons for strict enforcement of the LUMS and for it to exist are:
 - To provide effective protection to both the natural environment and members of the public from negative impact of land development and land use changes/rezonings. Thus to promote the health, safety, good order, amenities and general welfare as well as the economy offered to people in urbanised society through zoning of land use;
 - To provide a reliable degree of certainty to developers, members of the public and all spheres of government to a shared and consistent understanding of the scale, extent and nature of permissible land development in the municipal area. Furthermore, to promote the proper and efficient exploitation of land as an important resource;
 - To provide a basis for the public to negotiate with developers and investors to achieve development outcomes;

- To provide for the municipality to value land and so to determine an appropriate and fair rating of the land.
- Discourage the phenomenon of “urban sprawl” in urban areas and contribute to the development of compact towns and cities;
- Encourage environmentally sustainable land development practices;
- Promote sustainable land development in that land use should:-
 - Promote the establishment of viable communities;
 - Promote the sustained protection of the environment;
 - Meet the basic needs of all citizens in an affordable way;
 - Ensure safe utilization of land by taking into consideration factors such as geological formations and hazardous undermined areas.

4.2 Strategic objectives (Policy making level)

- The municipality must determine the real extent of illegal land uses. This will provide the necessary information in order to make the necessary management decisions;
- The municipality must put a clear and realistic program of action in place to deal with illegal land uses i.r.o. the Pietersburg/Seshego Town Planning Scheme area. This program must be agreed upon between all parties concerned with the project in order to determine realistic targets;
- The municipality must also consider a long term strategy how to deal with illegal land uses i.r.o. new areas to be added under control of a town planning scheme;
- The municipality must be able to measure performance in order to see if illegal land use increases or decreases. This will further inform the budgeting process in order to secure sufficient resources for this action
- The municipality must focus on those areas and type of illegal land uses where the maximum results are possible;
- The municipality must put a comprehensive and multi disciplinary strategy in place to deal with all aspects of illegal issues, such as illegal land uses and occupation of buildings/land, since they effect each other;
- Initiate a process and campaign whereby the general public, councillors and top management are informed about the impact of illegal land uses and why it is necessary to enforce land use regulations.
- Initiate a process of discussion with provincial government on the issue pertaining to the dualistic planning system in order to ensure that the municipality has autonomy over land use control.

4.3 Operational objectives (Management level)

- Appoint a project management officer responsible for co-ordination of the complete project (illegal land uses);
- Appoint a project Steering Committee responsible for steering of the project (illegal land uses) and which will be able to report back to Council structures in order to measure performance, obtain resources and inform the public of the progress and issues in this regard;
- Introduce a system (Interdepartmental co-ordinating committee) whereby all the different SBU's are involved in the handling and co-ordination of various illegal issues, namely illegal land uses, illegal buildings, dumping, illegal occupation of land and unsafe buildings and living conditions etc

- Undertake a comprehensive land use survey in the whole area covered by the town planning scheme in order to determine the real extent of illegal land uses. This will provide the necessary information in order to make the necessary management decisions;
- Assign experienced professionals and/or staff (permanent and/or consultants) in order to deal with illegal land uses and to compile a detail program of action;
- After results of the survey is submitted, a clear and realistic program of action should be submitted to the Steering Committee on how the illegal land uses will be reduced and what resources are required to meet targets;
- Define the roles of the different parties involved and assign clear tasks.
- Secure sufficient resources by means of finances to deal with illegal land uses and actions to support the project;
- Introduce proper channels of communication with the media in order to report the progress of combating illegal land uses to the general public which will also count as deterrent for other owners who are using property illegally.
- Introduce a logging system whereby reported cases are properly recorded and whereby the process can be managed and monitored;
- Clearly defined procedures and channels of communication should be introduced in order to expedite the legal process
- Introduce a system where consent uses granted are monitored in order to ensure that conditions are being complied with;
- Apart from all the above (new) strategies, the current system must be maintained in order not to create an extensive backlog of cases and ensure continuity.

(See **Annexure A** for operational manual)

5. STRATEGY

5.1 Introduction

The core of the strategy lies in determining of the real extent of illegal land use in order to take an informed decision i.r.o. allocation of resources, compilation of action plans etc.

A project Steering Committee responsible for steering of the project is regarded as essential for the success of the project. This committee will be able to report back to Council structures in order to measure performance, obtain resources and inform the public of the progress and issues in this regard.

Illegal land uses stretches further than mere contravention of town planning issues, all the different SBU's should be involved in the handling and co-ordination of various illegal issues, namely illegal land uses, illegal buildings, dumping, illegal occupation of land and unsafe buildings and living conditions etc.

Lastly, proper channels of communication with the media in order to report the progress of combating illegal land uses to the general public is required

which will also count as deterrent for other owners who are using property illegally.

It is not possible at this point in time to implement a concrete and final strategy before certain actions are undertaken.

Subsequently, some actions and priority issues are introduced in order to initiate the proper way forward with this project.

5.2 Strategic priority projects/action plans

Action/project	Immediate	Short term	Medium term	Target date
Continue with current system of handling of illegal land uses	X			-
Introduce a logging system whereby reported cases are properly recorded and whereby the process can be managed and monitored	X			06/03/03
Appoint project management officer and Steering Committee		X		06/06/01
Secure sufficient resources by means of finances to deal with illegal land uses, surveys etc.		X		06/07/01
Initiate a process and campaign whereby the general public, councilors and top management is informed about the impact of illegal land uses and why it is necessary to enforce land use regulations.		X		06/08/01
Introduce Interdepartmental co-ordinating committee		X		06/05/02
Appoint consultants to do comprehensive land use survey of all illegal land uses in town planning scheme area		X		06/08/01
Advertise and appoint legal expert to deal with illegal cases		X		06/08/01
Assign experienced professionals and/or staff (permanent and/or consultants) in order to deal with illegal land uses and to compile a detail program of action		X		06/07/01
Submit a clear and realistic program of action to the Steering Committee on how the illegal land uses will be reduced and what resources are required to meet targets			X	07/01/30
Introduce proper channels of communication with the media in order to report the progress of combating illegal land uses to the general public			X	07/01/31
Introduce a system where consent			X	07/03/31

uses granted are monitored in order to ensure that conditions are being complied with				
Measure performance in order to see if illegal land use increases or decreases.			X	Quarterly
Introduce a long term strategy how to deal with illegal land uses i.r.o. new areas to be added under control of a town planning scheme.			X	07/05/31
Introduce a comprehensive and multi disciplinary strategy to deal with all aspects of illegal issues, such as illegal land uses and occupation of buildings/land, since they effect each other			X	07/05/31
Initiate a process of discussion with provincial government on the issue pertaining to the dualistic planning system in order to ensure that the municipality has autonomy over land use control		X		06/11/30

ANNEXURE A.

**OPERATIONAL MANUAL FOR HANDLING THE
ILLEGAL LAND USES IN THE AREAS UNDER
CONTROL OF A LAND USE SCHEME IN
POLOKWANE.**

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1. INTRODUCTIONS AND PURPOSE

The purpose of this strategy is to highlight the operational strategies when combating unauthorized use of land (illegal land uses) within the municipality.

Clause 29 of the Pietersburg/Seshego Town Planning Scheme, 1999, stipulates that: "*where a person, in conflict with any provisions of a town planning scheme in operation*

- *Undertakes or proceeds with the erection or alterations or additions to a building or cause it to be undertaken or proceed*
- *Performs, undertakes or proceeds with any other work or causes it to be performed, undertaken or proceed with*
- *Uses any land or building or cause it to be used;*

The local municipality shall direct such person in writing to discontinue such erection, alteration, addition or other work or to discontinue such use or cause it to be discontinued, at his own expense to remove such building or other work or cause it to be removed; to cause such building or the other work or such use to comply with the provisions of the scheme

Any person who contravenes the provisions of the town-planning scheme or fails to comply with an instruction issued in terms of clause 29.1 of the town-planning scheme commits an offence.

If a person fails to comply with a directive issued in terms of clause 29.1 of the town planning, the local municipality irrespective of the fact that such a person has criminally been charged or prosecuted, remove the building or the other works at the expense of such person, obtain a court order to remove the building or other work or cause, the building or other work to comply with the provisions of it town planning scheme and to recover all expenditure incurred in connection therewith, fro such person."

This is the starting point for the SBU operation in as far as illegal land use is concerned.

2. PROCEDURE AND PROCESS OF DEALING WITH ILLEGAL LAND USE

2.1 Lodging a complaint

A complaint must be lodged by contacting or completing the complaint form and sending it by post or by sending e-mail to the municipality.

A complaint can also be lodged in person either by phoning, sending an e-mail, or posting a letter.

2.2 Investigation of a complaint

When a complaint has been received the following steps must be followed:

2.2.1 Preliminary Investigations

The business unit will identify the correct erf (i.e. stand) number and the zoning rights of the property.

2.2.2 First Site Inspections

An official will conduct an inspection to establish whether the unauthorized use exists. An official will write a report detailing the observations, take photos, and gather other evidence that supports the unauthorized use.

2.2.3 First Notice

A notice is an official warning, calling upon the offender to stop the unauthorized use. The usual time given for complying is 7 (seven) days. The official will then acknowledge received a complaint and advise the complainant of the action taken.

2.2.4 Second Site Inspection

After the notice period expires, the official will re-inspect the site. If the unauthorized use has been terminated, the file will be closed.

2.2.5 Final Notice

If the use continues, a final notice will be issued of which a maximum of seven days will be given to comply

2.2.6 Final Site Inspection

If the use continues, an assessment will be undertaken to determine whether there is a prima facie case and, if so the file will be referred to the council's attorneys for further action.

2.2.7 Legal Action

The council's attorneys will launch civil proceedings against the offender to interdict him from continuing with the unauthorized use, if this action is successful in court, the attorneys will obtain a court order. The sheriff of the court is usually authorized by the court to execute the court order if the respondent does not comply with it.

3. LAND USE SURVEY

Waiting for illegal land uses to be reported to the municipality causes friction with the landowners because other illegal land uses on the same area are attended to while others not attended to.

A detailed land use survey is therefore required to identify and deal with all illegal land uses.

When a detailed land use survey has been conducted, the land use practiced on the properties will be compared with the zoning of the property and the land use permitted on the properties. All illegal land uses identified through land use survey will then be placed on the database.

4. LAND USE APPLICATIONS AND EXTENTION OF TIME

All land owners who are operating illegal land uses and have submitted an application to legalize the use of land, will not be exempted from action or process which is used/ followed when dealing with an illegal land use.

Each case for the extension of time will be dealt with at its own merits because of legal and financial implications.

Illegal land uses, which are operated within areas, which demarcated for the type of unauthorized use, will be given a maximum of 30(thirty days) to submit an application to legalize an unauthorized use. Failing to submit an application further action will be taken without any further notice.

5. DATA BASE

A proper data base is designed so that all illegal land uses are recorded. The database is updated on a regular basis and provides up to date information regarding each case.

The database contains the following information regarding each case.

- Case number
- Address of illegal land use
- Type of illegal land uses reported
- Status of the allegations
- Date of first notice
- Date of second notice
- Date of when the file handed to legal section

6. CONCLUSION

The availability of the strategy for handling illegal land uses in Polokwane will somehow solve the problem and fast track the whole process. The above procedures and processes also make it simple to deal with an illegal land use case.