AUTOMATION OF DEVELOPMENT CONTROL IN KENYA

DEPLOYMENT OF ELECTRONIC SYSTEMS FOR DEVELOPMENT CONTROL MANAGEMENT

CONTENTS

EXECUTIVE SUMMARY

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Towards the promotion of professional excellence and integrity among its members, the Architectural Association of Kenya (AAK) from time to time engages in a number of subject-oriented advocacy researches on behalf of their members to influence the policy environment under which its members operate. Such interventions have in the past helped to influence a number of policy changes at both levels of Government in Kenya (National and County).

One area of interest that the AAK has paid particular attention to is in shaping the development control (DC) function of counties. This was done through a 2010 Study on Development Control Frameworks in Kenya which highlighted the challenges and prospects of DC in the Local Authorities, later Counties. This was followed by publishing a 2015 Policy Position Paper (PPP) on *Improvement of Development Control Frameworks in Kenya*.

The main findings of *the Study on Development Control Frameworks in Kenya* that were highlighted in the PPP were that DC in Kenya takes place in an environment that is rife with many challenges including long winding paths, unreasonably lengthy delays, high costs and rampant corruption. According to the study, DC in Kenya needs to be made more efficient to enable it be more effective. The PPP on *Improving Development Control Practices in Kenya* identified streamlining DC in Kenya, which included eradication of all challenges that are faced by both the institutions (regulators), practitioners in the built-environment and developers in Kenya.

The World Bank Report on *Doing Business in Kenya, 2017* further lays a solid justification for the improvement of DC practices in Kenya. According to this report, Kenya ranks position 80 globally on the ease of doing business across several sectors, including business registration, and others. However, on the ease of obtaining construction permits, Kenya ranks position 129, up from 149 in 2016. That movement - 20 places up -on obtaining construction permits can mainly be ascribed to automation of DC practices in 4 counties namely: Nairobi, Kiambu, Kisumu and Mombasa. The automated process has considerably lowered the average waiting time for the approvals; is eradicating the ordinate delays and its attendant corruption. It is worth noting that these automated DC systems were put in place with World Bank funding.

Among the benefits the 4 counties have reaped from automation, generally referred to as E- Construction Permit System - ECPS, (also called e-Development application Management System) are: improved efficiency of the DC process; increase in the number of development applications approved; and increased revenue generation for

counties among others. Notably, the amount of work in the review of the applications for development permission and construction permits has significantly reduced, allowing the counties to process more developments with lower levels of staffing. It is estimated that if these counties can complement the expediency achieved with the system with adequate personnel (DC experts), the system can achieve higher efficiency. The benefits of automation have also been felt by the practitioners including Architects, Planners and Engineers, as well as the developers. They are now able to complete development applications and obtain construction permits faster. Further, as a benefit to society, inspection of the construction works is also made more efficient which will ultimately lead to safer buildings.

However, the counties of Nakuru, Kajiado and Machakos are also on course to achieve efficient DC practices. These counties have embarked on initiating active reforms in DC, including development of County Spatial Plans, Local Physical Development Plans and other DC instruments which are a prerequisite of good DC practice. These counties have also tried to improve the human resources in DC, including hiring more DC officers and assistants. However, the counties have a shortage of adequately trained personnel in DC. Machakos and Nakuru Counties have devolved their DC functions to the sub-counties, but still lack adequate DC staff. The best example in this regard is Kiambu County which has devolved DC practices to all the sub-counties and staffed those offices with properly trained DC officers, including planners, architects and DC officers and assistants.

This PPP has identified the qualities of good automated DC systems. Accordingly, it has identified that a good DC system is one that: is easy to use; efficient, and enables procedures that were previously lengthy, tedious and costly to be short, comfortable to use and less costly hence saves time and money; do not compromise on the quality of applications, reviews and approvals; safe and secure from any internal or external breaches; are progressive and adaptable, hence the same system can be improved to accommodate the potential changes and additional innovations; and accessible to enable different actors in different locations to review and comment on the application. It is such a DC system that is envisioned through automation of the systems in Nakuru, Kajiado and Machakos Counties.

The PPP has identified that as a measure, the DC processes need to be standardized across the country. It has identified the key processes that should comprise DC and has suggested ways in which those processes can be optimized. One of the ways for optimization of the processes includes having all agencies required for the development control process on the ECPS platform thus circulating the applications through them. The paper identifies that this can be achieved through incremental additions of the agencies, with only relevant projects to be circulated to each agency, removing the element of redundancy.

Prototyping a good DC system has sought to make this PPP specifically relevant to Kajiado, Nakuru and Machakos Counties through improvement of the systems that exist in Kiambu, Nairobi, Kisumu and Mombasa. Through this, the advantages of the ECPS system can be extended to these counties, but significant changes are also proposed for the existing systems. In addition to adding other agencies to the system and simultaneous circulation of applications, the system also seeks to introduce a public platform where members of the public can view the applications and make comments on them; reduce the number and levels of invoicing and payments; and create a one-stop DC shop. However with the current limitations, the systems will need to be hosted on Cloud platform, to enable all the systems, across all the counties to be inter-linked, for purposes of sharing a common database of all practitioners in DC in the country.

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01

INTRODUCTION

About The Architectural Association of Kenya

1.1 Established in 1967, the Architectural Association of Kenya (AAK) is Kenya's leading Built and Natural Environments professional association, incorporating Architects, Quantity Surveyors, Town Planners, Engineers, Landscape Architects, Environmental Design Consultants and Construction Project Managers;

1.2 As an umbrella association, AAK brings together professionals in National and County Governments, the Private Sector and Academia. The association also acts as a link between professionals and stakeholders in the construction industry including, among others, policy makers, manufacturers, real estate developers, and financial institutions;

1.3 AAK's mission statement is *Promoting Professional Excellence and Integrity in the Built and Natural Environments;*

1.4 Towards the promotion of professional excellence and integrity among its members, the AAK from time to time engages in a number of *subject-oriented advocacy researches on behalf of its members* to influence the policy environment under which they operate;

1.5 Such interventions have in the past helped to *influence a number of policy changes* at both the National Government and County Government levels in Kenya;

1.6 One such area of interest that the AAK pays particular attention to is the *development control* (DC) function of counties and how to improve them.

What is the purpose of this Policy Position Paper?

1.7 In line with its advocacy mandate, the AAK sought to prepare a Policy Position Paper (PPP) on *Deployment of Electronic Systems to Manage Development Control in Machakos, Kajiado and Nakuru Counties* with the *aim of* improvement of DC;

1.8 AAK envisions that the systematic, phased roll-out of the system across counties provides an opportunity for evaluation of the existing systems for purposes of upgrading them, and implementing improved systems in the counties that currently lack them.

What is the Rationale for this Policy Position Paper?

The Study on Development Control Frameworks in Kenya

1.9 In 2010, AAK commissioned *The Study on Development Control Frameworks in Kenya* which highlighted the status of DC in Kenya;

1.10 AAK needed to elevate its level of dialogue by developing a research-based, concise policy recommendations that would inform its advocacy activities in the area of DC which is of profound interest to its members;

1.11 The main objective of that study was *to highlight existing technical capacities and procedures* in *counties*, and *other related agencies in charge of DC* in Kenya, to ascertain the efficiency and efficacy of these procedures;

1.12 The main findings of that study were that DC in Kenya in what were previously 'local authorities' (now counties) was not properly managed because of a number of institutional and procedural short-comings, *inter alia* shortage of qualified staff, shortage and lack of DC instruments, rampant corruption in the DC departments, far-reaching inefficiencies in the DC process, among others.

1.13 In 2015, based on the findings of that study, AAK, through funding from the Business Advocacy Fund (BAF) prepared a Policy Position Paper (PPP) on *Development Control Frameworks* to describe the problem of DC across the counties in Kenya, to highlight its importance and to buttress its need for improvement.

The Policy Position Paper on Improving DC Frameworks in Kenya

1.14 The PPP on *Improvement of Development Control Frameworks in Kenya* highlighted the importance of streamlining DC practices in the local authorities (now counties)
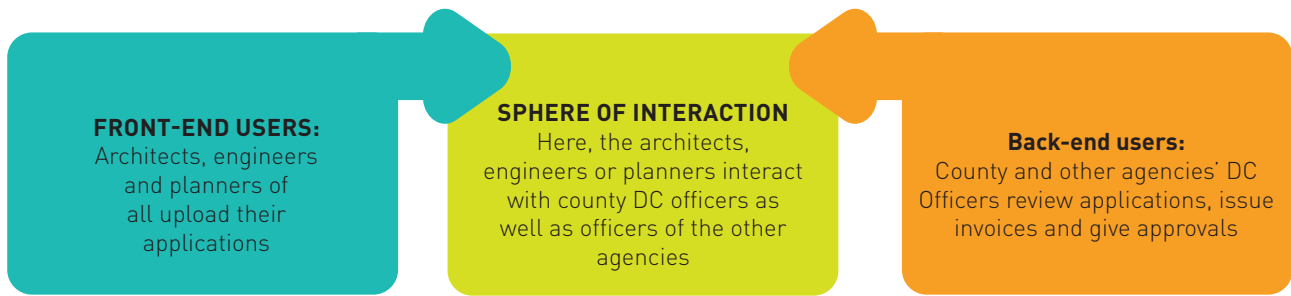
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which included eradication of all challenges that are faced by both the institutions (regulators), practitioners in the built-environment and developers in Kenya in Kenya;

1.15   This PPP was disseminated to the relevant stakeholders, and has widely been used to improve DC processes across the counties in Kenya;

1.16   The World Bank used the results of this PPP to recommend and fund the establishment of automated DC systems in a few counties, with Nairobi City County being the first county to benefit;

1.17   A number of counties have subsequently improved their DC systems, including three other counties which have rolled-out automated DC systems through the World Bank support, including Kiambu County, Kisumu County and Mombasa County.

What was the Justification of the current study?

1.18   Globally, Kenya was ranked 149th out of 180 economies in the world (World Bank Doing Business 2016 report) on the ease of dealing with construction permits (www.doingbusiness.org , 2016, edams.kiambu.go.ke, 2016)

1.19   According to the World Bank study, there was need to improve efficiency of DC in Kenya to improve the ease of obtaining construction permits across the country for more profitable investments to be achieved through construction permits reforms;

1.20   In 2017, after a number of reforms, including implementation of automated construction permit application systems, Kenya was able to move 20 positions up from 149th to 129th globally (http://www.doingbusiness.org , 2017);Closely related to the findings of *The Study on DC Practices in Kenya*, and tied to the World Bank support in the development of electronic development application management systems in Nairobi, Mombasa, Kisumu and Kiambu;

1.21   While appreciating the success of these initiatives, AAK seeks to advocate for the expansion of automation of DC systems to Kajiado, Nakuru and Machakos counties;

1.22   But since the regulatory framework on DC has changed considerably since 2011, and because there are new laws and regulations that have come up since the 2015 PPP, it is important to frame the need for automation of DC systems within the broader statutory framework in Kenya;

1.23   This then invites for a further evaluation of DC, and to establish if there exists any new paradigms or DC practices that have been anchored in law or in practice to guide implementation in the three counties.

What was the approach and methodology used in this PPP

1.24   This PPP adopts a simple evaluative-prescriptive approach in its preparation;

1.25   It evaluates the current practices and approaches to DC in Kajiado, Machakos and Nakuru Counties vis à vis DC practices and approaches in the counties where automation of the process has been implemented to examine the efficacy of those systems, and to explore ways in which automation has aided in improving DC practices in latter counties;

1.26   The study approaches the evaluation from two perspectives: that of the practitioners, including architects, planners and engineers as the front-end users and that of the regulators, including the counties as the back-end users;

Figure 1: Converging roles in an online application platform

FRONT-END USERS:
Architects, engineers and planners of all upload their applications

SPHERE OF INTERACTION
Here, the architects, engineers or planners interact with county DC officers as well as officers of the other agencies

Back-end users:
County and other agencies' DC Officers review applications, issue invoices and give approvals

Source: AAK, 2017

0.27 This study is also designed to explore the potentials and challenges of both the back-end and front-end users of both the automated and non-automated DC systems in the 7 counties using specifically designed questionnaires that capture the data on the practitioners, their firms, their type of practice and their experience, as well as those of the counties implementing the two systems;

0.28 The study is designed to capture specific recommendations on how to improve the DC practices in the three counties.

Organization of this PPP

1.27 **Part 1** of this PPP provides a general background on the need of a PPP on Automation of DC practices in the three counties namely Kajiado, Machakos and Nakuru Counties;

1.28 **Part 2** provides for the general principles of DC, frames the theoretical and the legal basis of DC, identifies other key back-end actors in DC and identifies the problems and prospects of DC in Kajiado, Nakuru and Machakos Counties;

1.29 **Part 3** provides the key aspects and benefits of automation of DC systems, identifies aspects that may be improved in the proposed DC systems based on the lessons from counties that have implemented their DC systems, and .presents a prototype structure of automated DC processes for implementation in Kajiado, Nakuru, and Machakos Counties.

02

GENERAL PRINCIPLES OF DEVELOPMENT CONTROL

What is Development Control?

1.1 According to the Local Government Reform Program (KGLRP) 2009, Physical Development Plans (PDPs) are a fundamental basis for decision-making by the (responsible agencies) in promotion of sustainable development within their areas of jurisdiction;

1.2 Whenever developers or project proponents wish to develop their land, they first have to apply for development permission from the counties which are the statutory approving authorities to ensure compliance with the development plans;

1.3 DC generally refers to the exercise of authority by Central, County or Local/ Municipal Governments to guide spatial developments in the built environment by regulating the use of land and type of building operations in any area within their administrative units;

1.4 According to the KGLRP, 2009, DC is a process geared to ensuring that development applications comply not-only with approved physical development plans, but also with policy guidelines, planning regulations and standards, Local Authority By-Laws (County Laws) as well as other relevant statutes, to guarantee an orderly, sustainable and environmentally-friendly development.

What are the Objectives of Development Control?

1.5 KGLRP, 2009 asserts that DC should be based on sound objectives to ensure that it is effectively implemented which include,:

- To ensure that implementation of development projects conform with approved PDPs;
- To enforce actions in case of contraventions of plan proposals, policies, statutes, (county laws) and standards;
- To evaluate and vet development applications that may have injurious implications;
- To continuously monitor, evaluate, and review planning regulations, standards and procedures to ensure their relevance to changing societal values, norms an practices;
- To provide rationale for development decisions;
- To ensure democratic public participation in development decision-making.

1.6 The achievement of one or more of these objectives requires profound commitments of a number of persons who are responsible for a number of related and independent functions;

1.7 Some of the specific DC applications that are submitted to counties include Change of use of land, Extension of use of land, Sub-division of land, Amalgamation of land parcels, and Review of building plans for issuance of development permits.

Who is in charge of Development Control in the Counties?

1.8 DC is a statutory responsibility of the counties as provided by the Constitution of Kenya, 2010 and County Governments Act Number 17 of 2012;

1.9 To discharge this mandate, some counties like Nairobi City County have Policy Implementation Sections which are responsible for reviewing applications for development permission while others do not have such sections under the same name, with DC coordinated under the respective counties Physical Planning Departments;

1.10 For development permissions to be granted, an application has to be submitted to the relevant departments of the counties in the prescribed **application form PPA 1** by a registered and licensed Physical Planner. The Physical Planners' Registration Act of 1996 provides for the registration of physical planners;

1.11 Some categories of development will not be permitted in counties unless the **Director of Physical Planning** issues a **certificate of compliance form PPA5**;

1.12 Some counties like Nairobi City County have multi-stakeholder, multi-institutional taskforces that sit in the development application review committees;

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1.13 DC typically is a sequential procedural undertaking that involves a back-and-forth exchange and review of documents among the many actors at various levels;

1.14 Typically, the process begins by establishing the ownership and user status of the property in question, and progresses to the point of issue of the certificate of occupancy;

1.15   After a comprehensive review , counties issue approvals (or denial of approval or deferment of the application as the case may be) in the prescribed **notification form PPA2**;

1.16 Once development permission is granted, **registered architects** prepare and submit architectural drawings on behalf of their clients;

1.17 In addition to the architectural drawings, civil and structural designs of the buildings are also submitted to the counties;

1.18 **DC Sections** of counties like Nairobi City County, is responsible for issuance of **construction permits** to allow construction;

1.19 Usually, applications are circulated to various departments, internally, for more elaborate vetting - an application is circulated to the relevant departments depending on its complexity: Small applications will be circulated to fewer reviewers to assess it while more complex applications will be circulated to more departments for a technical review (www.econstruction.mombasa.go.ke, 2016).

1.20 Once construction permits are issued, building inspectors from the enforcement directorate and the National Construction Agency (NCA) periodically visit the site to inspect and fill in the building card to ensure that construction goes on as required by law and that the construction is supervised by the approved and registered professionals;

1.21 There being no malpractice during construction, and once the construction is completed satisfactorily, a **certificate of occupancy** is issued by the counties in readiness for use of the building in line with the user for which the approval was granted.

1.22 This process is summarized in Figure 2.1 below

Figure 2: Summarized DC Framework.
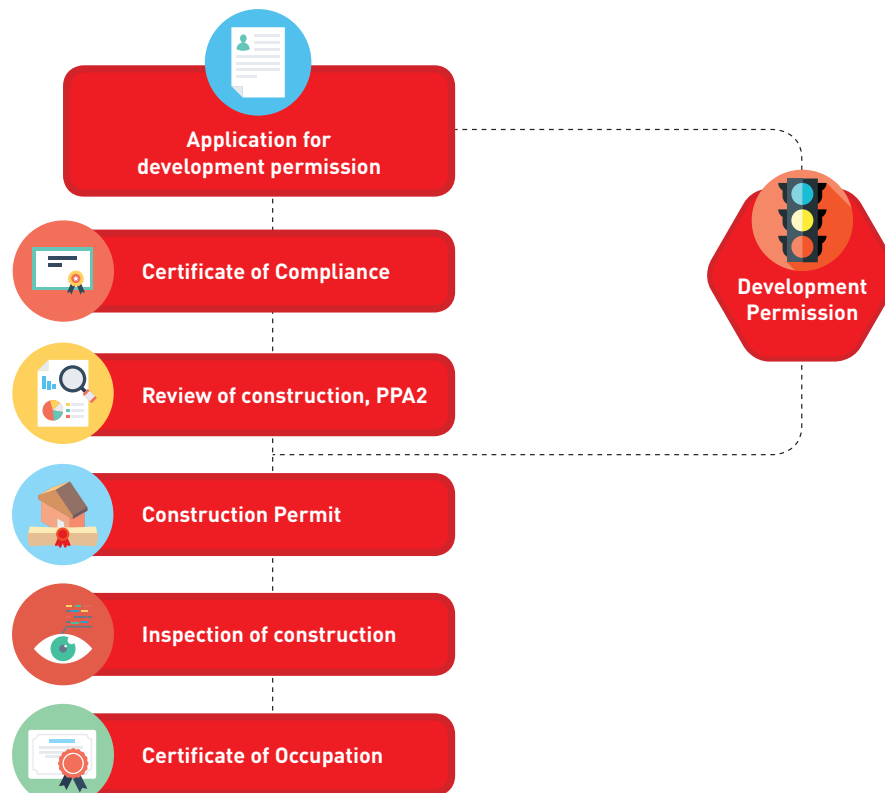
1. JICA Study Team, 2016, *Nairobi Integrated Urban Development Plan*, Nairobi: JICA

2. Government of Kenya, 199, *The Physical Planning Act*, Nairobi: Government Printers

Source: JICA Study Team (JST) 2016[1]; PPA (1996)[2]

Which instruments guide Development Control?

2.1   In Kenya urban DC framework is informed by both statutory and non-statutory instruments (Ng'etich, *et al*, 20163).

2.2   The statutory instruments include The Constitution of Kenya 2010, Physical Planning Act Cap 286, County Governments Act of 2012, Public Health Act Cap 242, Roads Authority Act 2007, Housing Policy, Lands Act, 2012, Land Registration Act, 2012, Assorted County Development Acts, the Kenya Civil Aviation Authority Regulations, approved LPDPs, Urban Plan, and Zoning Plans among others.

2.3   The non-statutory instruments are the Draft Planning Regulations and Minutes of County Development Committees, The Draft Physical Planning Handbook 2007, among others, as shown in excerpt 1 below from the Nairobi City Planning Ordinances.

Excerpt 1: Development Control Regulations

Zone	Permitted User	Permitted Development	Minimum Plot Size (Ha)	Plot Coverage (%)	Permitted Density per Ha.	Set Back/ Building Line (m)	Parking Space	Sewage Disposal	Waste Disposal
Low density	Residential	Bungalows And maisonettes	0.20	40	10	Front 4.5 Side 3 Rear 6	Provided on site	Main sewer, Septic tank	Council collection
Medium density	Residential	Bungalows And maisonettes	0.10	50	16	Front 3 Side 1.5 Rear 4.5	Provided on site	Main sewer, Septic tank	Council collection
High density high	Residential	Semi detached and row houses	0.025	75	32	Front 2.5 Side1.5 Rear 3	Communal parking	Main sewer	Council collection
High Density Low and medium	Residential	Single self contained family units	0.045	75	70	Front 2.5 Side 1.5 Rear 3	Communal parking	Main sewer	Council collection

Source: NLC, 2016

The Constitution of Kenya (2010)4

2.4   The Constitution of Kenya, 2010, under the Fourth Schedule provides for the functions of the National Government and the County Governments;

2.5   According to the Fourth Schedule, planning is a devolved function, and comes with its myriad branches, including preparation of county plans and other DC tools, as well as DC;

The County Governments Act Number 17 of 2012

2.6   **Section 103** of County Governments Act number 17 of 20125 (CGA, 2012) provides for the Objectives of National County Planning which provides the multifarious perspectives on why planning for DC may be done;

2.7   **Section 104** of the CGA, 2012 provides the obligations of the Counties to plan, and under sub-section 5 specifically provides that these plans are 'binding all sub-county units for developmental activities within a County.'

2.8   **Section 107** of the CGA, 2012 provides for various categories of plans for which their funding and operation is dependent. These instruments for their optimal resource use include—

(a)   County Integrated Development Plans

(b)   County Spatial Plans

(c)   Cities and urban areas plans

(d)   Sectoral plans – including for housing, water, roads, among others

2.9   **Section 107** (1) of the CGA (2012) provides that the County Plans are aimed to guide,

3.   Ng'etich, K Job, G Opata and L Mulongo, 2016, *Making Urban Planning and Development Control Instruments Work for Kenyan Cities: The Case of the City of Eldoret.*. Journal of Emerging Trends in Economics and Management Sciences (JETEMS) 7(4):246-254 © Scholarlink Research Institute Journals, 2016 (ISSN: 2141-7024) jetems. scholarlinkresarch.com

4.   Government of Kenya, 2010, *The Constitution of Kenya*, Nairobi: Government Printers, also available at www.kenyalaw.org

5.   Government of Kenya, 2012, *County Governments Act*, Nairobi: Government Printers, also available at www.kenyalaw.org

harmonize and facilitate development within each county which is the specific object of DC;

2.10 DC ensures that only planned developments take place in their correct zones are allowable. These zones are clearly (indeed are supposed to be clearly) indicated in the various DC instruments in 3.3 and 3.4 above.

2.11 **Section 111** of the Act provides the instruments that shall be used for development control. It provides that:
For each city and municipality there shall be the following plans—
- City or municipal land use plans;
- City or municipal building and zoning plans;
- City or urban area building and zoning plans;
- Location of recreational areas and public facilities.

2.12 **Section 111** provides that city or municipal plans shall be the instrument for development facilitation and DC within the respective city or municipality.

2.13 According to **Section 111**, a city or municipal plan shall, within a particular city or municipality, provide for:
- Functions and principles of land use and building plans;
- Location of various types of infrastructure within the city or municipality;
- DC in the city or municipality within the national housing and building code framework.

2.14 City or municipal land use and building plans shall be binding on all public entities and private citizens operating within the particular city or municipality.

2.15 City or municipal land use and building plans shall be the regulatory *instruments for guiding and facilitating development* within the particular city or municipality.

2.16 Each city or municipal land use and building plan shall be reviewed every five years and the revisions approved by the respective county assemblies.

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The Physical Planning Act Cap 286 of 1996

2.17 **Part V** of the Physical Planning Act (PPA) (1996) deals entirely with DC

2.18 **Section 29** of the PPA (1996) provides that subject to the provisions of this Act, each local authority shall have the power—
a) to prohibit or control the **use and development of land and buildings** in the interests of **proper and orderly** development of its area;
b) to control or prohibit the subdivision of land or existing plots into smaller areas;
c) to **consider and approve** all development applications and grant all **development permissions**;
d) to ensure the proper execution and implementation of approved physical development plans;
e) to formulate by-laws to regulate zoning in respect of use and density of development; and
f) to reserve and maintain all the land planned for open spaces, parks, urban forests and green belts in accordance with the approved physical development plan.

2.19 **Section 30 of the PPA (1996)** prohibits any person from carrying out development within the area of a local authority without a development permission granted by the local authority under section 33.

2.20 **Section 33 of the PPA (1996)** provides the Local Authorities (Counties) with powers to make, having assessed the merits of the applications, any of the 3 decisions summarized in Table 2.1 below –

Table 3: Decisions available to counties to applications

DECISION	GROUNDS FOR DECISION
Approval	Allowable by the various instruments of DC
Refusal to grant approval	Allowable by the various instruments of DC
Deferment	Decision arrived at when counties require to be furnished with some information pending a final decision of (1) or (2) above.

Source: Adopted from PPA (1996)[6]

2.21   **Section 36 of the PPA (1996)** provides that if in connection with a development application a local authority (county) is of the opinion that proposals for industrial location, dumping sites, sewerage treatment, quarries or any other development activity will have injurious impact on the environment, the applicant shall be required to submit together with the application an **environmental impact assessment report**;

2.22   However, the body that reviews environmental impact assessments and Environmental Audits (EIAs and EAs), and issues the relevant licenses is the National Environment Management Authority (NEMA) as provided for in the Second Schedule of the Environmental Management and Coordination Act (Amendment) number 5 of 2015 and **Section 4** of the Environmental (Impact Assessment and Audit) Regulations of 2003;

2.23   This calls for close synergies between counties and NEMA to ensure that the environment is protected.

Environmental Management and Coordination (Amendment) Act (2015)

2.24   The Environmental Management and Coordination (Amendment) Act Number 5 of 2015 EMCA (A) 2015 is an amendment to the Environmental Management and Coordination Act of 1999 (referred to as The Principal Act);

2.25   The Second Schedule of the EMCA (A) 2015 provides the category of developments requiring EIA, including major changes in land use, major urban development programs, major housing projects, transportation projects, processing and manufacturing projects, and mining and extraction projects, among others.

Urban Areas and Cities (Amendment) Act, 2017

2.26   The Urban Areas and Cities (Amendment) Act, 2017 (UAC (Amendment) Act 2017[7] is a Bill that seeks to amend the Urban Areas and Cities Act (2011)

2.27   The First Schedule of UAC(A)A places Planning and Development Control Services at the top of the services that are mandatory to be provided by the counties in classifying an area as a city, and as a municipality, and also the existence of the services required to be provided by the National Government.

Summary of Development Control instruments as used by the Counties

2.28   Table 4 below provides a summary of the DC instruments as used by the counties -

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6.   Government of Kenya, 2012, *Environmental Management and Coordination (Amendment) Act Number 5 of 2015*, Nairobi: Government Printers, also available at www.kenyalaw.org

7.   Government of Kenya, 2017, *Urban Areas and Cities (Amendment) Act, 2017*, Nairobi: Kenya Gazette Supplement Number 157 (Senate Bills), also available at www.kenyalaw.org

Table 4: Role of Development Control Legal Instruments

ESTABLISHMENT OF DC INSTRUMENT	ENFORCING INSTITUTION	IMPORTANT DELIVERABLES/ GUIDELINES	ROLE OF THE GUIDELINES
County Governments Act, 2012; Physical Planning Act (PPA, 1996); Physical Planners Registration Act (1996): County Spatial Plans; Town Plans; Sectoral plans; LPDPs; Zoning Plans and Ordinances	Counties - Policy Implementation Sections	PPA1	Application for Development Permission
		PPA2	Approval
		PPA8 AND PPA9	Appeal against rejected application
	Counties – DC Sections	Approval	Approval of architectural drawings
	Director of Physical Planning	PPA5 -	Certificate of compliance
Environment Management and Coordination Act	National Environment Management Authority (NEMA)	EIA License	Approval of development
National Construction Authority Act	County Inspection/ enforcement National Construction Authority (NCA)	Certificate of occupancy	Construction Supervision and inspection

Source: AAK (2015)

## Are there other agencies that perform Development Control functions?

4.1   Other agencies that deal with specialized landed mandates also engage in direct and indirect DC practices and circulations are done to them – Mombasa County, for example, circulates applications to NEMA and Mombasa Water and Sewerage Company for review;

4.2   Although they do not hold the ultimate authority to approve developments, these agencies hold ranging powers, from absolute to advisory, in influencing the approval of the proposed development;

4.3   However, as the case may be, if a circulation is not successful, then the application is rejected and the user of the application is notified of its status(www.econstruction. mombasa.go.ke, 2016);

4.4   Figure 3 below shows the multiple actors in the DC process, with the counties forming the central authority in regulating development in their areas of jurisdiction:

Figure 3 Multiplicity of Actors in the DC process

ASK	Agricultural Society of Kenya
DPP	Director of Physical Planning
KAA	Kenya Airports Authority
KCAA	Kenya Civil Aviation Authority
KDF	Kenya Defence Forces
KeNHA	Kenya National Highways Authority

KERRA	Kenya Rural Roads Authority
KFS	Kenya Forest Services
KPA	Kenya Ports Authority
KURA	Kenya Urban Roads Authority
KWS	Kenya Wildlife Services
NCA	National Construction Authority
NEMA	National Environment Management Authority
NLC	National Land Commission
WaRMA	Water Resources Management Authority

Source: AAK 2017
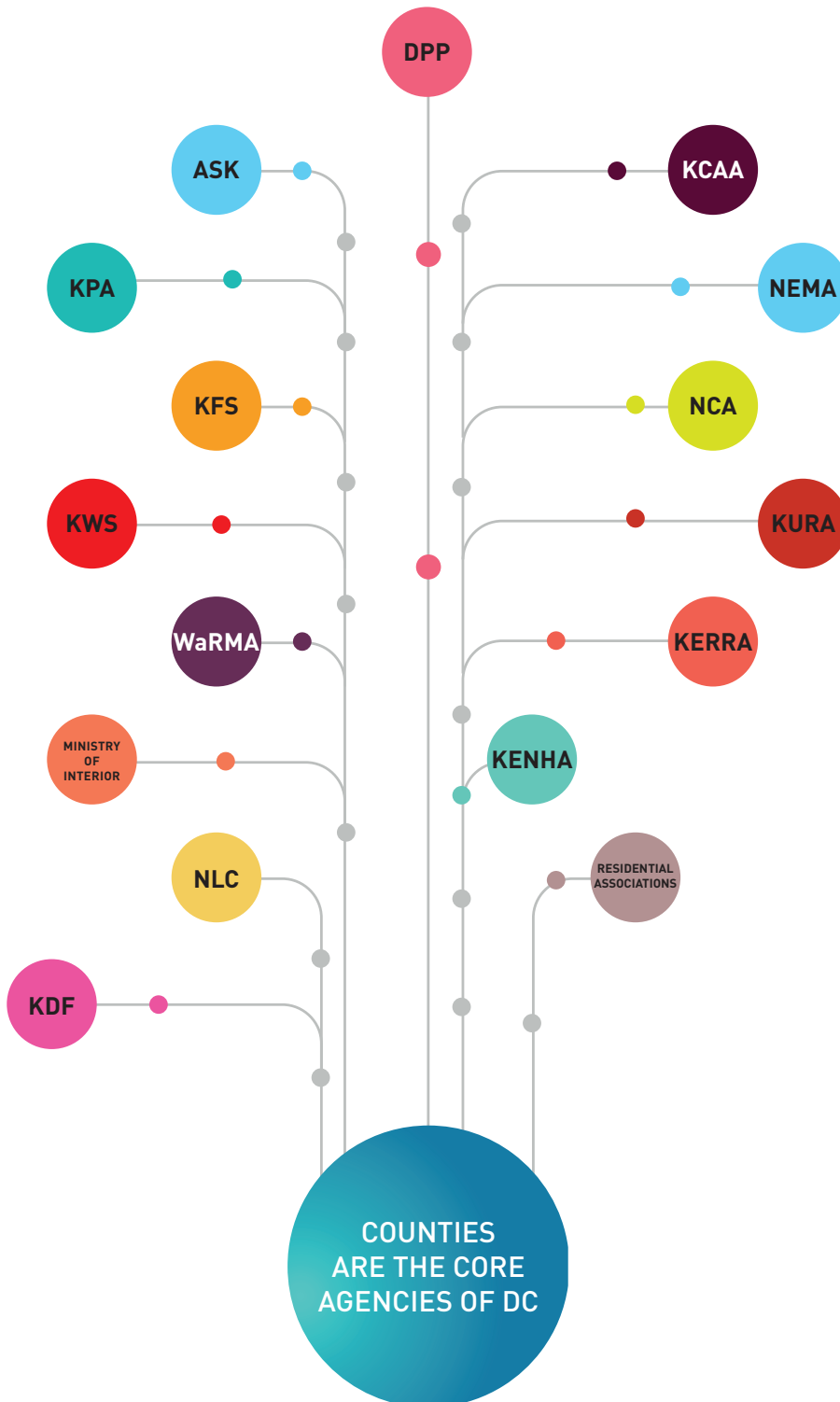
4.5   Some of the specialized DC roles, include, but are not limited to these agencies. These roles and the acts from which the agencies draw their authority are summarized in Table 2.3 below:

Table 1: Other Actors with Specific Development Control Mandates

AGENCY	ROLE	EXTENT OF AUTHORITY ON DC	LAW GRANTING MANDATE
Kenya Defence Forces (KDF)	To influence and control development in any land within and without military and strategic installations, including preparation of master plans, controlling heights around and influencing zoning and development of land around military barracks, air bases and naval bases	absolute power, not extensive	Kenya Defence Forces Act
Kenya Civil Aviation Authority (KCAA)	To control the use and height of buildings within flight corridors in line with the International Civil Aviation Authority (ICAA) guidelines	Absolute power, not extensive	Kenya Civil Aviation Authority Act
Kenya Rural Roads Authority (KERRA)	To control developments along the classified roads in the rural centres and villages for purposes of ensuring that the wayleaves are not infringed on, or the functionality of the road is not hampered	Absolute power, extensive	Kenya Roads Act (2007)
Kenya Urban Roads Authority (KURA)	To control developments along the major arterials in towns and cities for purposes of ensuring that the wayleaves are not infringed on, or the functionality of the urban roads is not hampered	Absolute power, extensive	Kenya Roads Act (2007)
Kenya Highways Authority (KeNHA)	To control developments along highways in Kenya	Absolute power, extensive	Kenya Roads Act (2007)
Department of Physical Planning (DPP)	To ensure that all proposed developments in the country are in compliance with the various physical plans	Absolute power, extensive	Physical Planning Act Cap 286
National Land Commission (NLC	To ensure that all proposed developments in Kenya are in compliance with the various land and physical planning laws	Absolute power, extensive	Constitution of Kenya (2010), NLC Act (2012)
Director of Surveys (DOS)	To ensure that the proposed development does not spill beyond the boundaries of the proposed plots	Absolute power, extensive	Surveys Act
National Environment Management Authority (NEMA)	to ensure that the proposed development does not have negative consequences on the environment, and if there are, that adequate mitigation measures are put in place	Absolute power, extensive	EMCA (1999)
Neighbourhood associations	to ensure that the proposed developments do not interfere with the neighbourhood character and amenity of their areas	Absolute power, extensive	Societies Act Cap 108, revised 2012

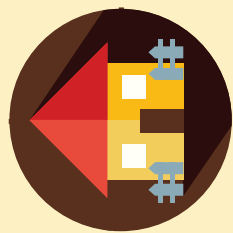| Water Management Authority (WARMA) | to ensure that the proposed developments do not interfere with the quality of water, and that water resources are protected and properly managed | Absolute power, extensive | Water Act (2002) |
Kenya Wildlife Services (KWS)	To ensure that the proposed development does not interfere with wildlife conservation areas, including national parks, game Reserves, etc	Absolute power, Extensive	Wildlife conservation and Management Act Number 4 of 2013
Kenya Forest Services (KFS)	To ensure that the proposed development does not interfere with the gazetted forests and parks	Absolute power, Extensive	Forests Act of 2005
Kenya Ports Authority (KPA)	To control development in areas close to the harbours, ports and other maritime transportation infrastructure on land and in the water	Absolute power, Extensive	Kenya Ports Authority Act Cap 391 of 1978
National Museums of Kenya	To control development in land around heritage sites, historical sites, museums and monuments	Absolute power, Extensive	National Museums and Heritage Act of 2006
Kenya Power and Lighting Company	To ensure that all power wayleaves and easements are protected, and to ensure that the safety of electricity infrastructure and of the general public is ensured	Absolute power, Extensive	Companies Act Cap 486
Kenya Pipeline Corporation	To safeguard all oil pipeline wayleaves and easements, and to ensure that the safety of oil pipeline infrastructure and of the safety of members of the public is upheld	Absolute power, Extensive	Companies Act Cap 486
Kenya Railways Corporation	To ensure that all railways reserves are protected, and to ensure that the safety of railways infrastructure and of the general public is ensured	Absolute power, Extensive	Kenya Railways Corporation Act Cap 397

Source: AAK, 2017

Table 2: The other provisions for DC that may be specific to counties include the following:

AGENCY	DESCRIPTION	EXTENT OF AUTHORITY ON DC	LAW GRANTING MANDATE
County Laws	County Assemblies have the mandate of enacting laws that help in the running of the counties. The Counties may develop laws to specifically control developments or guide the development of physical development plans which may form the basis of DC	absolute power, extensive	CGA (2012)
County Policies	According to the CGA (2012), counties are mandated to prepare urban development policies	absolute power extensive	CGA (2012)

Development Control is a statutory responsibility of the counties as provided for by the Constitution of Kenya, 2010 and County Governments Act Number 17 of 2012.

When carried out as provided for by the various laws and development control instruments, some of the key benefits of Development Control include:

Safe buildings

Safe neighbourhoods

Aesthetically pleasing neighbourhoods as per the Local Physical Development Plans (LPDPs)
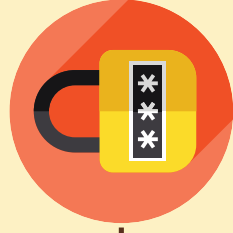
Proper citing of buildings on land hence optimal use of space

Production of sustainable land uses: Residential, commercial, industrial, recreational

Separation of incompatible land uses hence reduction of land use conflicts
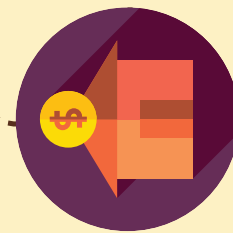
Efficient transportation systems

Provision of efficient and functional line infrastructure

Protection of the natural environmental systems
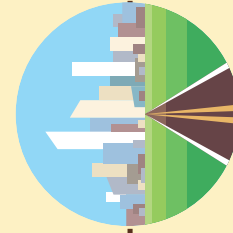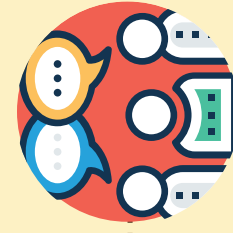
Increased property values

Source: AAK, 2017

4.6   Developers who proceed to develop their land without consulting these agencies risk the danger of demolition or eviction if their developments are against the allowable provisions;

4.7   These additional agencies do not charge/ do not need to charge to review development applications as their specific DC mandates are limited by their original mandate, and DC is done to the extent of securing their entities;

4.8   The main challenge is that these agencies are not located in the same physical location, and even if they were, the process of circulation to any number of them is time consuming and denies the actors the synergy that is required in making the process easy and efficient;

4.9   That in this regard, there is need to benchmark DC with other government efforts that have been implemented to solve similar challenges and borrow from other best practices elsewhere.

What is the importance of Development Control?

5.1   As has been established, DC is a function of the counties that is spread across many professional disciplines, including planners, architects, engineers, public health experts and environmentalists, among others, in the realms of the built environment;

5.2   But other experts are also directly and/ or indirectly involved with DC practices, including experts of security, accounting, public finance, sociology and banking, among others;

5.3   The various levels of DC regulatory procedures across the counties' departments ensure that all aspects of development are done in strict compliance with the relevant laws and regulations governing the relevant professions practices;

5.4   DC alone has the potential for employment of a wide range of experts in all counties across Kenya;

5.5   When done as provided by the various laws and development control instruments, some of the advantages of DC include:

- Production of sustainable land uses, residential, commercial, industrial and recreational land-uses, among others;
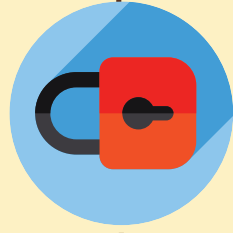- Proper citing of buildings in space hence optimal use of space;
- Aesthetically pleasing neighbourhoods as per the LPDPs;
- Safe neighbourhoods;
- Safe buildings;
- Increased property values;
- Protection of the natural environmental systems, including control and prevention of nuisance on underground and surface water, air and land;
- Provision of efficient and functional line infrastructure;
- Efficient transportation systems;
- Separation of incompatible land uses hence reduction of land use conflicts; among others

5.6   DC has the potential of creation of spatial and structural order of neighbourhoods and buildings, and their use;

5.7   While ensuring regulation of the use of land, DC also is one of the sources of revenues for the counties as all these applications are paid for by the developers.

Are there Government Initiatives that can be used to benchmark Development Control?

5.1   The Government of Kenya has tried to implement reforms across various sectors to improve its efficient operations;

5.2   Among the most lauded initiatives are the concepts of *Huduma Centres* and the Integrated Financial Management Information Systems (IFMIS) have been

successfully implemented by the Government of Kenya to improve service delivery to its citizens;

Huduma Centres

5.3 *Huduma Centres* concept was developed after it emerged that access to government services was both expensive and time-consuming because of distances between locations of service-delivery sites;

5.4 According to http://www.hudumakenya.go.ke/centres.html 8 Huduma Centres are one stop shop - citizen service centres that provide National Government services from one single location;

5.5 The centres are built to enhance transparency, efficiency and easy accessibility to government services for all;

5.6 These centres are networked with the main service-delivery points and ensure that all records are stored in the systems of the site of original provision.

Integrated Financial Management Information Systems

5.7 IFMIS is an automated system that enhances efficiency in planning, budgeting, procurement, expenditure management and reporting in the National and County Governments in Kenya http://www.ifmis.go.ke/ 9;

5.8 The system guarantees that each expense is traceable, delivering optimal value to every taxpayer, curbs wasteful spending and corruption;

5.9 Studies have shown positive results and an improved performance by the public financial systems through implementation of IFMIS;

How long should plans take before approval?

6.1 The length of time it takes to process development applications and approval of building plans is key in any DC context;

6.2 Reduction of the undue delays has been the recommendation of many studies (See for example the World Bank Studies on *Doing Business in Kenya (2016)10* and The PPP on *Development Control Frameworks in Kenya (2015) and the KLGRP (2009)*);

6.3 Counties have been blamed for unbridled delays on various development and building applications occasioned by a number of reasons, including shortage of staff, lengthy delays in circulations, corruption and lack of competence;

6.4 According to the http://www.doingbusiness.org , 2017, Survey, it takes an average of 159 days to acquire construction permit for a warehouse, against 147.5 days for Sub-Sahara Africa and 27.5 days for the republic of Korea, making Kenya one of the worst performers in that respect;

6.5 A most recent study on extension of leases in Kenya by the Taskforce on Extension and Renewal of Leases11 similarly identified the process of renewal of leases (a component of development permission applications) as taking unnecessarily long time and needing a reduction in time of application, processing and implementation;

Table 5: Number of days for an extension of lease application

DECISION	ACTIONS	TIMELINES
Notification of the land owner by the NLC	Done 10 years prior to expiry of the lease, the NLC informs the owner through all means possible for appropriate action	The process may begin at any point within the 10 years
Application to the County Government	The engages a planner to submit for a lease extension under the existing laws and PDPs through the prescribed formats and forms	2 days

8. http://www.hudumakenya.go.ke/centres.html, *Huduma Centre*, accessed on 18/12/2018

9. http://www.ifmis.go.ke/ *What is IFMIS*, accessed on 18/12/2017

10. This PPP has been influenced in part with the World Bank Studies on *Doing Business in Kenya* with the perspective of helping to build synergies between their findings, as well as identifying areas of mutual benefit for the ease of improving DC practices in Kenya.

11. Taskforce on Extension and Renewal of Leases, 2017, *Guidelines on the Processes and Procedures for Extension or Renewal of Leases*, Nairobi: Ministry of Lands and Physical Planning

Government of Kenya initiatives that can be used to benchmark Development Control in order to improve service delivery to its citizens include *Huduma Centres* and the *Integrated Financial Management Information Systems (IFMIS).*

Reception

Automation of Development Control systems refers to the hosting in electronic web-based platforms of the whole set of procedures and actions of Development Control for remote manipulation, review and processing.

Counties have been blamed for unbridled delays on various development and building applications occasioned by shortage of staff, unreasonably lengthy delays in circulations, high costs and rampant corruption.

DEPLOYMENT OF ELECTRONIC SYSTEMS FOR DEVELOPMENT CONTROL MANAGEMENT

County Determination	The county verifies the particulars of land, ownership details, planning determination, determination of eligibility of grants and of terms and conditions of grant	14
NLC Implementation	NLC then takes the application through the process of implementing the approved grant, and re-evaluates the land rent, facilitates re-survey and geo-referencing of the land, determines terms and conditions, notification of the concerned line ministry, issues letter of allotment, prepares the lease document an facilitates leaseholder execution of the new lease	10
Resurvey and Registration	Resurvey and amendment of RIM to be done, preparation of deed plans, preparation of registration documents	9 days
Total Days		35 days

Source: Taskforce on Extension and Renewal of Lease, 2017

6.6   According to this Taskforce, a process that typically takes more than one year has been reduced to 35 days through five key sub-processes allocated as shown in the table below:

6.7   There is need to improve the efficiency of development applications to make it easy and faster, hence improve the ease of construction and development

What are the features of Development Control in Nakuru, Machakos And Kajiado Counties that need improvement?

Nakuru

6.8   Nakuru County is one of the counties that inherited a robust DC framework from the former Ministry of Lands, Municipal Council of Nakuru and the County Government of Nakuru, including office space, established infrastructure and staff;

6.9   In spite of that, the County has on its own mandate improved its capacity to prepare plans and to implement the plans through DC;

6.10   According to the Nakuru Annual Development Plan (Nakuru, County Government of, 201612)the County committed to improving the development control mandate through the following measures:

- Urban Planning and Development – which include the preparation of Nakuru County Spatial Plan and a number of LPDPs, including for Molo Town, Olenguruone, Gilgil, Rongai, Bahati, Subukia, among others, as a basis for development control;
- Implementation of approved Physical Development Plans – which include adherence to approved Physical Development Plans and strengthening the 11 sub-county development control units;
- Capacity building – which included training of County Planning Staff and county DC staff;

6.11   Some of the plans have been achieved while others are at different levels of preparation and approval;

6.12   However, the sub-County development control units have not been staffed with adequately trained development control officers;

Machakos

6.13   Like Nakuru County, Machakos County inherited a robust DC framework from the former Ministry of Lands, Municipal Council of Machakos and the County

24

Government of Machakos, including office space, established infrastructure and staff;

6.14 The County has on its own mandate improved its capacity to prepare plans and to implement the plans through DC;

6.15 Machakos County currently has devolved its development control to two levels: Machakos Sub-county and Mavoko Sub-county to enable it discharge its mandate effectively;

6.16 DC is led by a team of planners located in these sub-counties under whom a number of DC assistants are attached to assist in the review of development applications;

6.17 This team of planners is guided by a number of LPDPs for a few towns, including LPDP for Mavoko and Machakos Town LPDP;

6.18 The county has also developed the ultra-modern Machakos City Masterplan, developed with a number of new development concepts in mind, like the Green Cities Concept, which is expected to guide development in the proposed city;

6.19 However, DC instruments are still lacking for the other towns including Matuu, Tala, Donyo Sabuk and others, where DC is still left at the whims of individuals

Kajiado

6.20 Kajiado County faces very peculiar development control challenges that needed to be comprehensively addressed;

6.21 Some of the challenges included rampant sub-division of agricultural land and range-lands into small units;

6.22 The challenge of sub-division was exacerbated by the increased rate of urbanization, especially, that that results from the sprawl of the city of Nairobi into its surrounding areas like Kitengela, Kiserian, Ongata Rongai, Kisaju, Ngong, among others;

6.23 The appetite for land of urban dwellers in Nairobi was also increased by the proximity of these places with Nairobi, and by the inhibitive high costs of land and housing in Nairobi and the corresponding lower costs of and in Kajiado;

6.24 Other challenges include destruction of wildlife habitat and migration corridors, and increasing human wildlife conflicts;

6.25 In spite of these challenges, the Kajiado County Integrated Plan (CIDP) 2013-2017,has not highlighted a robust strategy for urbanization and DC (Kajiado County Government, 201313);

6.26 There is need therefore to formulate a strong DC agenda for Kajiado County to take care of all these challenges and leverage the county for sustainable development;

6.27 Currently the process of p[reparation of the Kajiado County Spatial Plan is on-going, which will form the basis for preparation of LPDPs and Urban Plans;

6.28 However, there are a number of DC instruments that are used in the larger and fast-developing urban centres like Kitengela, Kajiado, Ongata Rongai and others which have LPDPs;

6.29 Practitioners have cited a lack of DC in many parts of Kajiado County which have left the practice in the whims of individuals, which may be counterproductive for the development of the country.

13. Kajiado County Government, 2013, *Kajiado County Integrated Plan (2013-2017*, Kajiado: County Government of Kajiado

What do the Counties need to do in order to improve their Development Control Procedures

Proper Land Use Planning/ Zoning

7.1 Land use planning refers to the process by which land is allocated between competing and sometimes conflicting uses in order to secure the rational and orderly development of land in an environmentally sound manner to ensure the creation of sustainable human settlements (Thomas, 200114);

7.2 It is necessary to view land-use planning as an integral part of the process of national growth and development;

7.3 Among other things, this process seeks to identify, articulate and satisfy the basic social/human needs of a country's population within the context of available

14. Thomas, Deborah, 2001, *The Importance of Development Plans/Land Use Policy for Development Control*, Prepared for the USAID/OAS Post-Georges Disaster Mitigation Project, Workshop for Building Inspectors January 15 - 26, 2001 , accessed from http://www.oas.org/pgdm/document/bitc/papers/dthomas.htm

economic/financial resources and technical knowledge;

7.4 There is need to prepare adequate and responsive land use plans for all areas in which the control of development is paramount, to ensure that the DC processes follow specific guided framework for development;

7.5 Development control is the most visible part of the land use planning process and the function with which members of the public - particularly those engaged in the construction and property development industries - interact on a daily basis;

7.6 However, the development control function cannot and should not operate in a vacuum. This brings me to the central theme of this presentation. That is, the link between land use policy and development control. The formulation of land use policy and development standards - often contained within development plans - provides the contextual framework within which the development control function operates;

7.7 The preparation of Land Use Plans and formulation of land use policies and development standards are some of the main outputs of the development/land use planning process. Plans are prepared to:
- anticipate the development needs of an area;
- identify relevant development issues;
- identify opportunities for and constraints to development;
- identify areas which are suitable/unsuitable for different types of development;
- make proposals for the way in which the area should develop over time; and
- establish policies and standards to guide development.

7.8 Plans are also prepared for areas which are already experiencing significant development pressures or some of the negative effects of growth and development in an effort to find solutions to these problems and to manage future growth.

Clear Development Control Procedures/ Development Control Manuals

7.9 DC is a process that is understood by the practitioners in Architecture, Urban Planning, Engineering and DC officers;

7.10 However, DC processes should be captured and summarized in easy-to-follow and understandable manuals of instruction for regulators, practitioners and the public in general;

7.11 Such manuals should be comprehensive enough to include all aspects of DC, including:
- preparation and application procedures;
- submission procedures;
- the considerations for review by the counties;
- review by the relevant agencies where appropriate;
- a framework for lodging of complaints and conflict resolutions; and
- framework for public and community participation.

7.12 A typical Manual sets out the procedures the County will follow in determining planning applications for which it is responsible, but is supplemented by an internal Administration Handbook for officers working in the County Development Control Service (See Suffolk County, 201715);

Automation of Development Control Systems

7.13 The NLC, 2016 recognizes Land Information Systems (LIS) as a prerequisite of proper DC regimes because LIS has the potential of showing the actual location of a parcel of land, and its attributes;

7.14 Such LIS, when used for DC to prepare digital GIS-based plans, will improve the interaction between;

7.15 Web-based application;

7.16 This implies that while there are thoughts for automation of DC practices, all effort must be channelled towards improving the human resource to operate the machine for effective service-delivery;

7.17 This means that it is important that the human resources capacities of these counties should be increasingly audited and improved;

15. Suffolk County Council, 2017, Strategic Development Resource Management: Development Control Manual, accessed on 15 January, 2017 from www.suffolk.gov.uk/assets/planning-waste-and-environment/planning-applications/Development-Control-Manual-June-2017-.pdf

Proper Mapping and Research

7.18   The DC process requires adequate and updated mapping and planning for use in DC;

7.19   Research on the existing and emerging trends also needs to be constantly done to identify needs in DC, as well as to firm up on the existing practices;

7.20   Research is also important in identification of newer DC methods and applications which can be implemented for effective service delivery

Adequate Equipment and Operational Support for Development Control

7.21   Adequate computers, servers;

7.22   Adequate electricity and power back-up systems;

7.23   Payment for internet services to prevent against interruptions

Political goodwill and support for Development Control

7.24   DC is a technical process that is guided by specific rules and professional regulations;

7.25   However, because of the existing influence perceived to be in DC, most political players in Kenya have meddled in DC practices to assert their individual influence in the process;

7.26   There is need to separate politics from the technical processes and allow DC to be guided solely by the plans, policies and laws, in spite of the fact that that these political players are the ones who guide the policy formulation and implementation process;

7.27   To make the political players informed of what is happening, there is need for periodic audits for the DC systems

Adequate Staffing

7.28   The DC process requires adequate and properly trained resources who can interpret the DC instruments and make informed reviews of the applications;

7.29   Even if automation can be implemented, the machine-human interface remains a very important point for the improvement of automated services;

7.30   This means that it is important that the human resources capacities of Kajiado, Nakuru and Machakos Counties should be increasingly audited and improved;

7.31   A look at the three counties' human resources point to a considerable number of DC officers, including planners, architects, DC officers and DC assistants in these counties, almost comparable to the numbers in Nairobi, Kiambu and Mombasa,. But definitely better than Kisumu, as shown in Table 7;

Table 7: Summary of Development Control Staffing per county*

PERSONNEL CATEGORIES	COUNTY						
	KAJIADO	MACHAKOS	NAKURU	KISUMU	MOMBASA	NAIROBI	KIAMBU
Planners	3	3	11	1	3	6	6
Architects	1	1	2	1	1	–	1
Engineers	1	1		1	1	–	1
Development control officers	4	3	2 – No	4	3	15	–
Development control assistants	–	–	22	–	4	8	6

Source: AAK (2017)

·   *this table considers the total number of DC staff as comprising those processing

applications for development permissions and those deployed in DC.

· This data was obtained from interviews with various persons involved with DC across the counties

7.32 But despite that, DC in the counties of Kajiado, Machakos and Nakuru are still inefficient in delivering their DC mandate

7.33 However, because of automation, the available personnel can deliver DC more efficiently since most of the functions will have been uploaded in the online platform;

6.30 According to the NLC, 2016[16], monitoring the adherence to the plan is an essential component of implementation which the board must create units to undertake;

6.31 To ensure effective DC in the urban area, the County Public Service needs to create a city/municipal land use planning unit which shall be headed by a Director who shall be a registered Land use planner which should be supported by adequate modern equipment, reliable transport, appropriate office accommodation and continuous skills enhancement programmes;

6.32 According to the NLC, the unit should consist of the Policy Implementation section, Land Information Section and Enforcement Section as a minimum:

7.34 However, all the DC departments should be supported by a strong Forward Planning and Research Departments which will be in charge of formulation of LPDPs.

How much does it cost to process Development Applications?

8.1 Different counties charge different fees for the various approvals;

8.2 While the fees are important revenue streams, the fees levied on development applications have previously been seen as inhibitive to investments;

8.3 To make the developers more cooperative and willing to submit their applications through the process, there is need to rationalize the costs of development;

8.4 Lowering the costs of development can be achieved by, for example, removing of all charges at circulation since the National Government is facilitated through other means as prescribed by the Constitution of Kenya, 2010

16. NLC, 2016, Urban Land Use Planning Monitoring and Oversight Guidelines, Nairobi: NLC

Table 8: County statutory costs of a typical Residential Housing Project from application for change of user

LEVEL OF APPLICATION	SPECIFIC COMPONENT	KAJIADO	NAKURU	KISUMU	NAIROBI
Change of user	PPA1	1500		-	1,000
	Application Fee	20,000 30,000	5,000	38,000	120,000/ 80,000
NLC	Circulation	-	-	5,000	-
DPP	Circulation	-	-	5,000	-
Commissioner of Lands	Circulation		-	5,000	-
DOS	Circulation	-	-	5,000	-

Approval of Building Plans	Processing (/ Sq.M)	60/sq.M	30/sq.M		1% of KShs 30,000 for high income residential zones (HIRZs)
Structural Engineers Drawings	Processing (/ Sq.M)	60/sq.M	2500 / floor	From A minimum of 46 sq M at 2,400/= to 38,000/= for above 930Sq.M. Each 93 SqM above that is charged at 4,000	1% of KShs 28,000 for low income residential zones(LIRZs) (increasing payments for architectural drawing and structural drawing)
Inspection fees	Implementation/ (/Floor)	6,000/ floor	2000/ visit		
Occupation certificate	Approval (/Floor)	12,000/ floor	2,000/ unit	Charged per user	
Site board					35,000 for HIRZs;25,000 for LIRZs

Source: AAK (2017)

- Table 8 is meant to illustrate the different billing methods used by the different counties rather than showing all the charges. For more information on the detailed rates, refer to the respective County Finance Laws
- **Structural plans are charged per a zone in a graduated manner in Kisumu County. Typical figures are indicated for the minimum area charged (KShs 2,400) up to 930SqM which is charged KShs 38,000. Every additional 93 Sq.M above 930Sq.M is charged KShs 4,000. These figures are only for one zone – there are rates for each zone
- In Nairobi City County, there is a single charge for both architectural and structural drawings which is billed per zone, typically divided into Low Income Residential Zones and High Income Residential Zones
- This data was obtained from interviews with various persons involved with DC across the counties

9.1 Across the counties, there is no correlation between the fees charged for Change of Use, Building Plans Approval, Structural Plans Approval, Inspection fees and occupation certificate;

9.2 However, Nairobi, perhaps because of its high demand of land and high land values, attracts the highest fees in each of the categories. In comparison with the neighbouring counties, including areas in close proximity to Nairobi, even considered part of Nairobi by the some of the residents, the same corresponding fees are lower;

9.3 This implies the lack of a rational explanation for the setting of the respective fees in each of the counties;

9.4 Further, from the table, it is clear that there are variations in the procedure. The following are the notable differences:

- Some counties circulate the development applications pre-approval of the development permission to other agencies while others do not. Kajiado, Nakuru, Nairobi and Kiambu do not circulate to the NLC, DPP, Commissioner of Lands, Director of Surveys while Machakos AND Kisumu Counties circulate to the departments and there are fees payable to the agencies;
- There are different charges for the various stages, including different rates for change of user, building plans, inspections and certificate of occupancy;
- Counties use different criteria in charging for development applications. For example, Kajiado Charges structural engineers drawings Per Square Metre of space while Nakuru charges per the number of floors; Kajiado County Charges for Certificate of Occupancy Per Floor while Nakuru County Charges per a unit of housing, among other differences;
- Nairobi County charges 300 and 280 KShs per Sq.M in high income and low income residential zones respectively.

03

AUTOMATION OF DEVELOPMENT CONTROL SYSTEMS

What are some of the necessary documents required for applications?

9.5   Across the counties, a number of statutory documents are required to be submitted during the application process to serve various important roles.

9.6   Across the counties, the documents usually attached when submitting applications for development permissions include, Ownership documents, Survey/ deed plans, Rates clearance certificates, Copy of newspaper adverts.

9.7   Typically for Architectural Plans, the following documents are required including Ownership documents, Survey/ deed plans, PPA2 for approval of Change of use.

9.8   All these documents are loaded into the system as scans of the original documents. However, the system does not allow for cross-checking of the authenticity of the attached scans

What Is Automation of Development Control?

10.1   Automation of DC systems refers to the hosting in electronic web-based platforms of the whole set of procedures and actions of DC for remote manipulation, review and processing;

10.2   These electronic systems allow the practitioners dealing with DC to access the application tools, including application forms, allowing them to upload plans and other documents that are required for submission of development applications and building plans;

10.3   Once the required forms are filled, and the relevant files uploaded, the system operators then issues commands that lead to issue of an invoice and the applications registration number;

10.4   The systems are linked with banking details so that once payment is done and a receipt issued, the payment reflects on the platform providing the DC reviewers with green lights to proceed and review the applications accordingly;

10.5   The back-end users, who comprise DC officers then review the applications and lists them on the Agenda List for ratification by the committee in charge.

Are there Automated Development Control Systems currently used in Kenya?

10.6   The e-construction permit system (EPS) is the name given to the web-based development application systems that have been rolled out in Kiambu, Mombasa, Nairobi and Kisumu, though it is referred to as e-DAMS in Kiambu County;

10.7   According to www.ccn.eps.or.ke17, and the edams.kiambu.go.ke, e-Construction Permit/ planning administration system is a web based software application requires minimal setup before use; i.e., a user only needs a browser e.g. Internet Explorer and they can access the system's full functionality.

10.8   The software is built to support the following functions specific to the administration of development permits:

- **Registration of architects, physical planners and structural engineers into the system** – These applicants can register themselves into the system and vetting is done by relevant registration bodies in order to permit them to access the system's functionality;

- **Submission of development proposals for review and approval** – They can upload their development proposals online without having to present themselves physically at the Nairobi City County offices;

- **Submission of payment evidences** – Applicants upload evidences of payments made for processing of development proposals.(Online payment option available);

- **Monitoring of submitted development proposals** – Applicants can log into the system and view the status of their submitted development proposals. The system also notifies the applicants via SMS and email once the proposals complete key milestones in the system. Notifications are also received when actions are pending for the applicant e.g. requests to make payment, comments communication;

- **Review and approval of development proposals** – Officers of Urban Planning in the Nairobi county council can log into the system, view submitted development proposals, provide comments and approve or return them (electronically) to the applicant for amendments;

- **Issuance of development permits** – after approval, the system generates the permit and allows the applicant to download it immediately and commence development;

- **Reporting on all activities related to the permitting process** – the system has a comprehensive and extensible reporting facility that allows users to generate reports of key aspects of development approval. Examples of currently supported reports include: reports of all submissions received within a specified

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period, reports of all approvals within a specified period and an overdue report – a report indicating proposals that have exceeded the pre-specified time threshold in circulation;

- **Profiling of on-going constructions for inspection process** – the system allows building inspectors to review on-going constructions and decide those which make the most monitoring sense to inspect;
- **Capturing of inspection data using smart phones** – the system allows building inspectors to go to site and capture inspection data via mobile devices. Photos of key aspects of the construction can also be uploaded during such inspections;
- **Support for the enforcement process** – the system allows enforcement officers to record key information on the enforcement process e.g. on-going court proceedings and their outcomes;
- **Archiving of data** – the system archives all data submitted to or created using it. This will provide a valuable resource to people seeking information on development related issues in the city.

10.9 An electronic permitting system typically replaces traditional paper and file-card systems. As a result, the intent of electronic permitting is to reduce permitting time, improve customer service and staff efficiency, enhance quality, and make operating funds more productive

10.10 Key benefits to the Architects and Property Developers include the following:

- Increased Transparency – applicants of building proposals will be able to monitor the status of their proposals by accessing the online system. In addition, the system will notify applicants via SMS and email whenever their proposals complete key milestones during approval;
- Cost Reduction through increased efficiencies - Architects and property developers will be able to apply and submit building proposals online, which saves them from making trips to the City Planning Department. In addition, County officials will be able to handle more applications more efficiently with less or similar resources;
- Architects and Planners' profiles – the system is capable of generating information on the number of successfully completed developments associated with each registered architect thus building the profiles of successful architects;
- Access to information – the CP administration system can disseminate information relevant to construction permits such as news items, downloadable files and frequently asked questions. Accessibility to information is expected to reduce the number of calls or visits that architects have to make to the County offices in the course of their work.

Are the e-Construction Permit Systems used in Kenya perfect?

10.11 Though the e-CPS has been designed to reduce the inefficiencies of the analogue paper-based application system, there are some system design elements that are not fully implemented in some of the counties, which include, that:

- The listing of applications for the agenda is still done by humans, hence the susceptibility of the process to corruption by the reviewers;
- The counties do not hold committee meetings regularly, hence making the process long and time-consuming. An example is the delay of meetings for Nairobi County from August to December, 2017 for unknown reasons;
- Practitioners have complained that other than the Kiambu County e-DAMS, all the other county eCPSs do not always dispatch real-time e-Construction Status Update text-message alerts to them;
- Because of the weak e-governance legal regime, the system is not purely paper-less as the approvals still have to be downloaded and printed for signing;
- There have been complaints from practitioners in Nairobi County that the servers may not have the capacity of the in-coming applications, hence causing periodic interruptions;,
- Service interruptions can still be experienced because of unpaid internet bills and other causes

The software is built to support the following functions specific to the administration of development permits:-

Registration of architects, physical planners and structural engineers into the system
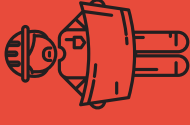
Issuance of development permits

Submission of development proposals for review and approval
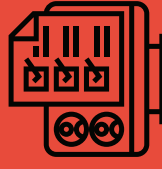
Reporting on all activities related to the permitting process

Submission of payment evidences

Profiling of on-going construction for inspection process

Monitoring of submitted development proposals

Capturing of inspection data using smart phones

Review and approval of development proposals

Support for the enforcement process

Archiving of data

Has Automation of Development Control benefitted the Counties that have implemented them?

10.12 Across the 4 counties where DC has been automated, there is substantive feedback on the benefits of the systems to both the counties, the practitioners and to the country;

10.13 Foremost, for the country, automation of DC in Nairobi, Mombasa, Kiambu and Kisumu has contributed to improving the World Bank ease of doing business rankings. In 2016, Kenya was position 149 in terms of issuance of construction permits, in 2017, the country moved to position 129;

10.14 For the practitioners and developers, the benefits of automated DC systems include reduction of the inordinate delays, reduction of costs in terms of printing paper and transport costs, among others, as has been identified in the foregoing;

10.15 For the counties, the benefits have been numerous, as well, including the following:

- **Increase in the number of applications** – when practitioners and developers know that their applications will not delay, they are quick to make sure that they submit their plans to the counties;
- **Reduction in the number of unqualified persons submitting the applications and handling the construction projects** – this has led to the reduction of the dangers in construction that have been brought about by the unqualified persons in the past;
- **Improvement in accountability** - all developments have to be properly invoiced prior to review, and once paid, the receipts are authenticated prior to review of development applications, making it possible to capture all payments to the county;
- **Ease in budgeting and projections** - of revenue received by the counties as all applications are easily available in the online platform;
- **Increased efficiencies** – *the system introduce far-reaching efficiencies in the administration of construction permits. An example of this is the simultaneous review of building proposals by reviewers – consequently reducing the approval time;*
- **Fostering good practices in the industry** – *the system is targeted at registered architects, planners and engineers display information on the successes of each professional;*
- **Improved inspection processes** – *the system allows inspection officers to generate reports on on-going constructions and profile them according to risk. This way, inspections are directed to where the need is greatest – consequently resulting in higher compliance with laws governing construction. The system also allows inspection officers to input inspection data into the system at the construction site via smart phones – this results in proper recording of inspection outcomes;*
- **Management oversight** – *the management oversight on construction permit administration increase through the various reports that can be configured into the system. This way, section heads shall be able to monitor the volumes processed by their staff and any bottlenecks arising should be quickly identified and dealt with;*
- **Better enforcement of construction laws and regulations** – *the online electronic system supports the entire administration process for construction permits thus simplifying the procedures and processes for applying and issuance of construction permits;*

10.16 Benefits to other stakeholders include the following:

- Researchers & Academic fraternity – the system will maintain in an archive all building proposals submitted to it and their eventual outcome;
- Enhanced public safety – use of the system enhances compliance in the industry through the adherence to good and lawful practices supported by the system thereby improving public safety. For example, buildings complying with the outlined laws and regulations;

10.17 Specifically, the implementation of the e-construction permit system has been helpful for the counties to improve on their approval processes;

10.18 Table 9 below of this composite table shows the estimated current versus previous

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Key benefits of the Automated Development Control process to the Architects and Property Developers include the following:-

- Increased Transparency
- Cost reduction through increased efficiencies
- Architects and Planners' profiles
- Access to information

Automation of Development Control in Nairobi, Mombasa, Kiambu and Kisumu has contributed to improving the World Bank Ease of Doing Business rankings. In 2016, Kenya was position 149 in terms of issuance of construction permits, in 2017, the country moved to position 129 out of 180.

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Kenya's position in terms of issuance of construction permits

DEPLOYMENT OF ELECTRONIC SYSTEMS FOR DEVELOPMENT CONTROL MANAGEMENT

waiting time for approval of plans (of a typical multi-dweller residential building from Change of Use to) in Kiambu, Nairobi, Mombasa and Kisumu counties vis a vis those of Kajiado, Nakuru and Machakos counties.

Table 9: Estimated role of Automated Systems in reducing the delays in approval process

Waiting time (Number of Days)	Total Cost Charged per county (KShs)						
	Kajiado	Machakos	Nakuru	Kisumu	Mombasa	Nairobi	Kiambu
Before implementation of ECPS	150	120	120	150	150	140	120
After implementation of ECPs	-	-	-	90	80	50	45
Estimated Number of days reduced	-	-	-	**60**	**70**	**90**	**75**

Source: AAK (2017)

** Estimates are authors own since the counties have not done a critical self-evaluation on the waiting time for approval, and the data is not available for the whole process from the beginning to the end (from the time of issue of invoice). The only study that has provided such data is the World Bank study on Doing Business, but the data is not disaggregated per county.

10.19   From Table 9 above, it is estimated that automation more than reduces the waiting tome by more than half, hence makes it more efficient. In the case of Kisumu, for example, the full benefits of automation may benefit some more by improvement in the back-end reviewers and experts. For Nairobi, concerns have been raised on the adequacy of the servers, implying that an improvement in the capacity of the servers may reduce the waiting time;

10.20   Across all the counties, the Technical Committee Meetings are not very regular, hence effecting delays that are not inbuilt into the system. Currently in Kiambu and Nairobi City Counties, for example, the meetings are held fortnightly. This may be improved by legislating the maximum time that it may take before a Technical Committee meets, to reduce on the time between meetings and reduce on the waiting time;

10.21   It is envisioned that such changes may reduce the number of days further, which may push the waiting time closer to 27.5 days record development application time in the Republic of Korea which is the best in the world.

What are the features of good Automated Development Control Systems that Kajiado, Machakos and Nakuru Counties can adopt?

10.22   DC is a dynamic process that consists of a good number of periodic changes, including: technological changes, changes in zoning regulations, changes in laws and policies, changes in the a people's general outlook in life, among others;

10.23   Automation of DC needs to be a means towards achieving an ever-changing objective, rather than being an end to itself in a world that is in a constant state of flux;

10.24   Good automated DC systems are those:
- That are easy to use by both the front-end and back-end users, including having interactive user manuals and tutorials;
- That are efficient, and enable procedures that were previously lengthy, tedious

and costly to be short, comfortable to use and less costly hence saves time and money;
- That do not compromise on the quality of applications, reviews and approvals;
- That are safe and secure from any internal or external breaches;
- That are progressive and adaptable, hence the same system can be improved to accommodate the potential changes and additional innovations;
- That have architecture that is easy to manipulate ,change and upgrade to suit the changing DC environment;
- That are accessible to enable different actors in different locations to review and comment on the application;
- That offer opportunities for public engagement through live interactions among reviewers and other stakeholders;

10.25 According to the City of London (www.cityoflondon.gov.uk, 201818), it is good practice to engage all communities who live within its area of jurisdiction, and there are very comprehensive guidelines on how the communities are to go about it;

Prototyping Automated Development Control Systems for implementation in Kajiado, Machakos And Nakuru Counties

11.1 To develop effective DC system, a number of prerequisites have been identified in this report, including identifying the activities that need to be carried out at what stage;

11.2 This detailed process is presented in Figure 4 below, and its vision is to develop an efficient DC framework that can be replicated across the country towards an efficient DC system-

Figure 4: Detailed Development Control Framework.
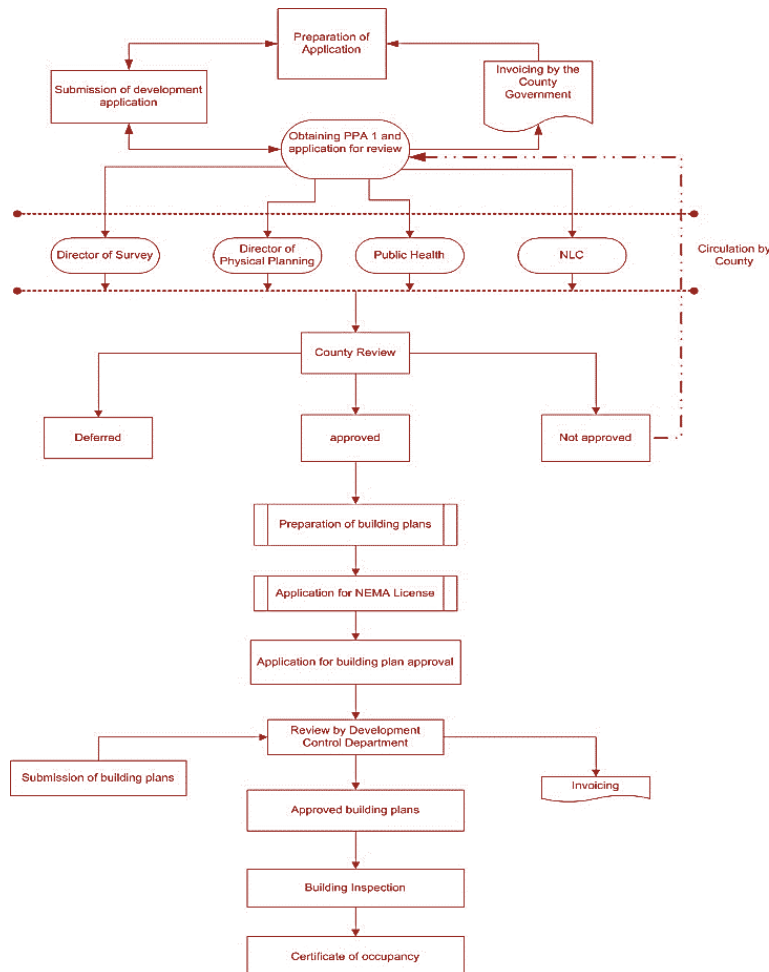
Source: AAK, 2017

18. www.cityoflondon.
gov.uk/services/environ-
ment-and-planning/plan-
ning/planning-applications/
view-planning-applications/
Pages.default.aspx accessed
on 13/1/2013 at 1400hrs

11.3 The KGLRP, 2009, concludes that DC is a kingpin in plan implementation, and is therefore imperative that all (counties) endeavour to establish effective mechanisms that make sure that is properly effected;

11.4 Part of the activities that need to be implemented by the counties include preparation of the Physical Development Plans against which DC is to be done;

11.5 In line with Section 110 of the CGA Number 10 of 2012, all plans prepared need to be GIS-based to enable ease in manipulation and review in real time;

11.6 There needs to be prepared an updated Land Information Systems (LISs) to be integrated with the GIS-based plans for purposes of real-time plan approval and contextualization in the respective zone in which the development is located. The benefit of the LIS to be integrated in with the GIS-based plans include:
- Updated zoning regulations and allowable development;
- Possible variances that exist in the respective zones;
- Updated existing user;
- Updated ownership details and change of ownership;
- Updated change in boundaries and change in property sizes;
- Updated Value of the last transfer/ valuation for rating;
- Possible infrastructure and capital developments that may contribute to increased demand of housing and property price variations;.

11.7 Consistent with the need to reduce the waiting time and lower the costs of applications, there is need to create a one-stop-shop-model construction permit system that brings all agencies at the same geographical location;

11.8 But since it is impossible to replicate the *Huduma Centres* Model, as some agencies only deal with development concerns only periodically while other agencies may not have their staff sit at a central location (KDF and KCAA for example), there is need to bring all the relevant agencies in the same digital space (preferably via cloud or networked servers) for purposes of reviewing the developments that touch on properties located within their land or those adjoining to them;

11.9 But because the agencies are many, there needs to be identified a framework for incrementally adding them,;

11.10 However, the back-end users may be added in the platform, albeit incrementally to ensure that the systems are not overwhelmed by the additional number of back-end users , but only developments that concern them are to be sent to them for review to prevent redundancy;

11.11 Each stage to have specific timelines for their implementation. A mechanism needs to be inbuilt in the system where reviewers are given a maximum number of days against which to complete their review with relevant incentives and disincentives put in place as the need may be.

11.12 This system may be broken in 2 parts, including the:
- Planning Application part which includes planning applications like change of use, extension of use amalgamation, sub-division and extension of lease of land (Part 1 shown in Figure 5.1);
- Construction permit section which includes construction permit, structural engineers drawings, application for utilities, inspection of works, certificate of occupancy and post construction inspection (Part 2 shown in Figure 5.2);

11.13 Both these stages may be interlinked for cross reference of the various aspects of the construction;

Figure 5 .1: Detailed Development Control Process

Submission of Preliminary Application for Development Permission

- Planners submit preliminary report for Development Permission, including an accurate summary of the Planning Brief and Site Location

Invoicing

- The counties issue the invoices for the application for development permission in accordance with the county legislation

Payment by the planner

- Payment against legal and valid invoiceand the application issued with reference number by the system.

Submission of Development Application

- The complete application is submiled and all relevant alachments are uploaded. (Need to create back-end link for verification of the submiled documentation)

Public Review

- The applications to be circulated for the members of the public through a link for comments

County Review

- Counties Identify and circulate the applications to the relevant agencies and do internal reviews based on the development control instruments

Relevant Agencies Review

- The relevant agencies make independent reviews based on their own starutory provisions

Counties consolidate reviews and issues approval with conditions

- Counties make their verdict based on their own and reviews of related agencies

Source: AAK, 2017

Figure 5 .2: Detailed Development Control Process

Architect submits architectural drawings

- The architect submits drawings based on the allowable conditions for the zone

Invoicing

- The County invoices the architect for all the applications, including architectural drawings, Structural engineers drawings and utilities to prevent multiple stages for invoicing and payments

County Reviews building plan based on approved PDP

- County reviews architectural plan, preliminary issues approval and circulates to the other internal like Public Health and Fire

Submission of Structural Engineers Drawings

- Structural engieer submits the drawings which are circulated alongside final architectural drawings for comments

Approval of architectural drawings and S.E. drawings
- The county issues final approveals of the architectural plans and the Structural Engineers drawings

Inspection
- Qualified County Inspectors to inspect buildings, fill inspection logs, file onluine inspection reports

Certificate of Occupancy
- Once building is complete to satisfation, cetificate of occupancy to be issued

Post occupation Inspections
- Post-biolding inspections to be done to see level of compliance

Source: AAK, 2017

11.14 There is need for harmonizing the criteria used for charging the different applications, including, but not limited to:
- Charging/ or not charging for Form PPA 1;
- Circulating/ or not circulating applications for development permission to NLC, SOK, Commissioner of Lands and Director of Physical Planning
- Charging or not charging for architectural plans and structural plans separately;
- Charging architectural plans (per zone) per floor space/ floor/ housing unit;
- Charging structural plans (per zone) per floor space/ floor/ housing unit;
- Charging/ or not charging inspection plans per floor space/ floor/ housing unit;
- Charging/ or not charging for the site board

11.15 While it may be difficult to harmonize the fees charged, harmonizing the criteria makes it easy for the practitioners to understand the requirements, even in a preliminary way, for purposes of advising the developers;

11.16 Counties may introduce variations with regards to the number of zones each town may have, but the general principles of billing will be standard.

11.17 Counties need to do capacity needs assessment with the help of Professional Associations and Professional Registration Boards to establish their requirements for the various cadres of staff responsible for the various roles in the DC chain;

11.18 As is done in London, there needs to be specific provisions in the system for engaging the public and allowing them an interactive platform for giving their comments on how the applications are to affect them, and whether they agree or do not agree. Special conditions are to be given for identifying only relevant stakeholders, and for reviewing the validity of the public comments;

11.19 Networking with the relevant DC agencies for purposes of circulations for their reviews which can enable reviewers to circulate only relevant applications to only the relevant agencies;

11.20 The Technical Committees for all the counties may be formulated by the county under the guidance of the Professional Associations and Professional Registration Boards to ensure that each technical committee is made up of individuals who will add value to the DC process.

Conclusion

11.21 Huduma Centres have demonstrated that government services can be centrally accessed without undermining the role of each individual institution through the one-stop-shop concept.

11.22 DC, while being a function of the Counties, has many stakeholders and multiplicity of agencies that are concerned with it, making it long, tedious and costly, and making developers to shy away from submitting their development applications as provided by law, which leads to counties losing revenue, as well as an occasional building being

constructed without the engagement of qualified personnel.

11.23   Automation of DC provides a basis for rationalizing DC practices across the country through a straight-forward internet-based process which can allow practitioners to remotely submit their applications to the counties, receive invoices, make payments and circulate simultaneously to the other agencies at reduced costs.

11.24   The automated system has the potential of significantly improving DC practices in Kajiado, Machakos and Nakuru counties to more efficient systems like those in their counterparts: Kisumu, Mombasa, Nairobi and Kiambu Counties.

11.25   To avoid redundancy in creation of a number of registers for the same professionals, the automated systems across the country need to be hosted on Cloud platform instead of on physical servers, to enable all the systems to be inter-linked, for purposes of sharing a common database of all practitioners in DC in the country. This is envisaged to make work easier for the practitioners as one password should open all the systems.

11.26   The automated system needs to be upgraded to have the latest efficient equipment and technology to enhance their efficient performance – where it is not possible to host the system on Cloud, the counties can still have superior servers with adequate power and internet supply to avoid interruptions.

11.27   To remove political interference with the system, the multi-agency, multi-stakeholder Technical Committees can be created in all counties, and have an independent time-tables for meetings to reduce the inordinate delays.

11.28   To improve the efficiency of the reviewers, adequate incentives and disincentives, including penalties can be put in place to ensure that reviewers do not deliberately delay individual applications without any reasonable cause – this can eradicate corruption in the review of development applications and application for construction permits.

11.29   But the system has to be flexible and adaptable, while reducing all the risks of online transactions that make people wary of them.

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Vision of the Architectural Association of Kenya (AAK) for the Automated Development Control process of Kajiado, Machakos and Nakuru Counties:-

1. One-stop shop model: brings together all agencies concerned with the development control process onto one platform. This will hasten the approval process and reduce application

2. Full Cycle Control of buildings from inception, plan approvals, site inspections and after occupation

3. Quality assurance: the Counties should formulate Technical Committees with the guidance of relevant Professional Associations and Professional Registration Boards to ensure that each technical committee is made up of individuals who will add value to the DC process

4. Outsourcing of approval services: addressing the issue of shortage of staff

5. Single pin registration: hosting of all automated development control systems on the Cloud Platform for purposes of inter-linkage will facilitate for all counties to share a common database. The practitioner will therefore only require a single pin registration as opposed to a unique pin registration for each county.

6. Standardize approval fees: the Development Control fees need to be standardized across the country

7. Harmonization of the criteria used for charging the different applications
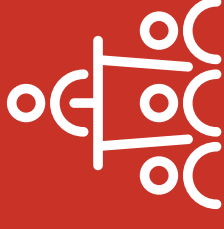
8. Provision for public engagement systems

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1967 - 2017
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