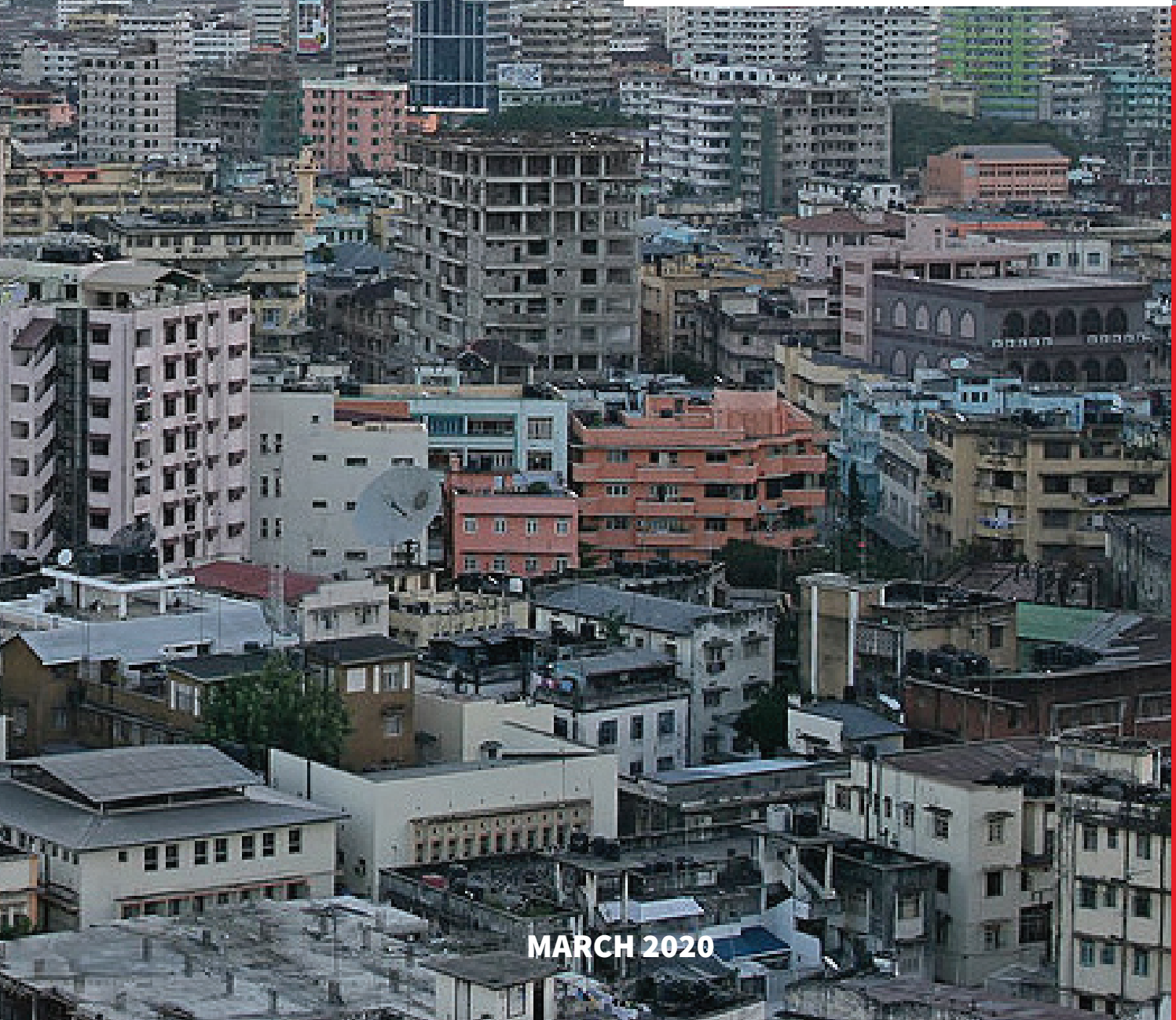
AAK | PROMOTING EXCELLENCE IN THE BUILT ENVIRONMENT

FEASIBILITY OF CENTRALIZATION OF DEVELOPMENT CONTROL SYSTEMS IN KENYA

FINAL REPORT

Presented to the ARCHITECTURAL ASSOCIATION OF KENYA



MARCH 2020

ABBREVIATIONS

AAK	Architectural Association of Kenya
BAF	Business Advocacy Fund
CGA	County Government Act
CGs	County Governments
IBRD	International Bank for Reconstruction and Development
IFC	International Finance Corporation
NG	National Government
NGO	Non-Governmental Organization
PLUPA	Physical and Land Use Planning Act
PPA	Physical Planning Act
UACA	Urban Areas and Cities Act
WB	The World Bank (Group)

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INTRODUCTION

1.1 Background on AAK's Advocacy Work

Table 1.1: AAKs Advocacy role in the transformation of development control systems in Kenya

NO	YEAR	OUTPUT	RESULTS	COMMENTS
1	2002-2019	The World Bank study on **Doing Business Survey** – Part of an annual global survey on the ease of doing business in Kenya as part of a global survey of 190 countries. Partnership with AAK is specially on study component on **Dealing with construction permits**[1]	The need for efficiency in approval of development applications has been highlighted and positively enhanced. Consequent interventions have seen the country rise from position 151 to 105 in 2019 globally in the efficiency of obtaining construction permits, thus contributing to the ease of doing business. These studies saw the launch of the first automated development control system in 2011, the e-construction system permitting system, in Nairobi.	More work still needs to be done to make the development control system more efficient. The doing business survey of 2019 indicated that it still takes an average of 159 days to wait for the necessary approvals and connection of utilities
2	2013	A study on **Development Control Systems in Kenya** – which sought to highlight the strengths, weaknesses, opportunities and threats in development control in Kenya	The study revealed serious weaknesses in development control system, with the first one being the need to align development control practices with Kenya's 2010 Constitution.	Study recommends improvements on development control practices in the country including the need to automate the function across the country.
3	2018	A Study on **Automation of development control systems Kajiado, Machakos and Nakuru counties** was done and these counties approached to be supported	The benefits of automation of development control in Nairobi, Mombasa, Kiambu and Kisumu saw an increase in interest from additional counties on automation. Successful trials of the automated development control systems have been rolled out in Kilifi and Kajiado Counties; The study identified that development control is a multi-agency process that though vested in the counties, is broadly conceptualized as a concurrent function of both NG and CGs government.	AAK is committed to having fully automated development control systems in the whole country. The multi-agency nature of development control calls for increased synergies among institutions, and thus a call for a one-stop-shop

Source: AAK (2018)

According to the WB, finding the right balance between regulations aimed at protecting the public and regulations that are accessible, efficient and affordable is challenging (The World Bank/ The International Bank for Reconstruction and Development , 2009). As is demonstrated, much of AAKs recent advocacy activity relates to the need to improve the efficiency, accessibility and affordability of DC not only because of its significance to national development, but also because the totality of the association's membership work in development control, are affected by the current inefficiencies surrounding the systems, and are likewise direct beneficiaries of any positive outcomes.

1 This topic tracks the procedures, time and cost to build a warehouse—including obtaining necessary the licenses and permits, submitting all required notifications, requesting and receiving all necessary inspections and obtaining utility connections. In addition, the Dealing with Construction Permits indicator measures the building quality control index, evaluating the quality of building regulations, the strength of quality control and safety mechanisms, liability and insurance regimes, and professional certification requirements. The most recent round of data collection was completed in May 2019 (The World Bank Group, 2019).

1.2 Revisiting Principles of Development Control: A summary of previous studies

According to the World Bank Group (2009), dealing with construction permits globally involves multiple agencies and levels of approval—more than in any other area of regulation studied by *Doing Business*. For a development to be implemented to completion in Kenya, there are four levels of development permits granted by counties, all of which have hitherto been executed under the PPA Cap 286. These permits include:

- Development permission (including for change of use of land, etc.);
- Certificate of compliance (issued by the National Director of Physical Planning);
- Construction permit; and
- Occupation certificate

Some counties like Nairobi City County have set up the **Policy Implementation Section (PIS)** within the County Departments of Physical Planning that are responsible for issuing land development permission. Permission is required for four cases of land development, including change of users, extension of users, land amalgamation and subdivision.

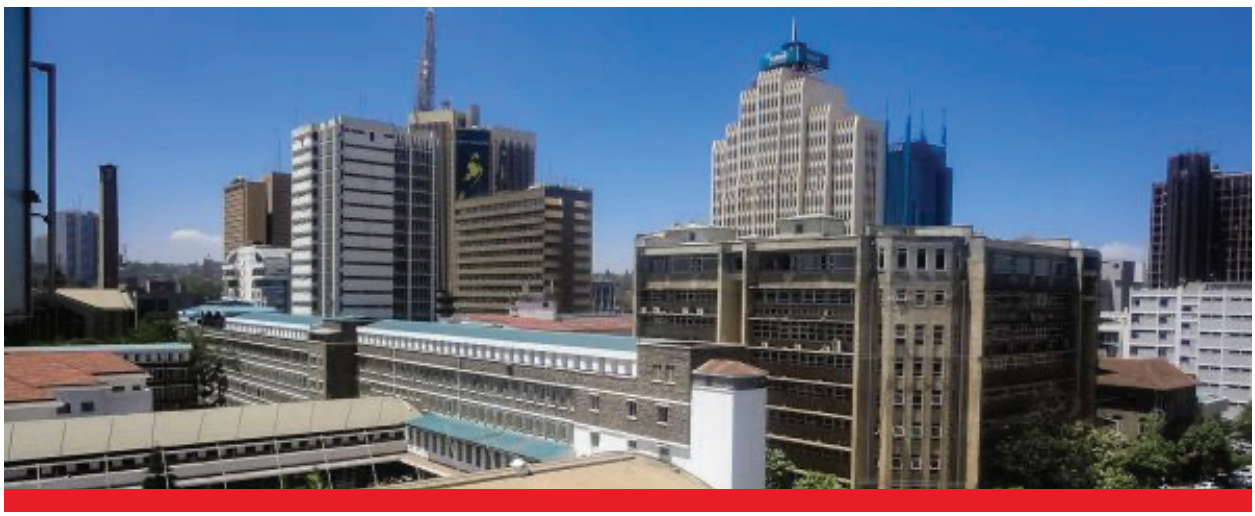
For these permissions to be granted, an application has to be submitted in the prescribed form PPA 1 by a registered and licensed Physical Planner. The Physical Planners' Registration Act of 1996 provides for the registration of such persons by the Physical Planners' Registration Board.

Development will not be permitted in counties unless the **National Director of Physical Planning (Now Director General as per Physical and Land Use Planning Act, 2019)** issues a certificate of compliance. This certificate is referred to as PPA5. The counties provide approvals (or refusal for approval or deferment of the application) in the prescribed form PPA2.

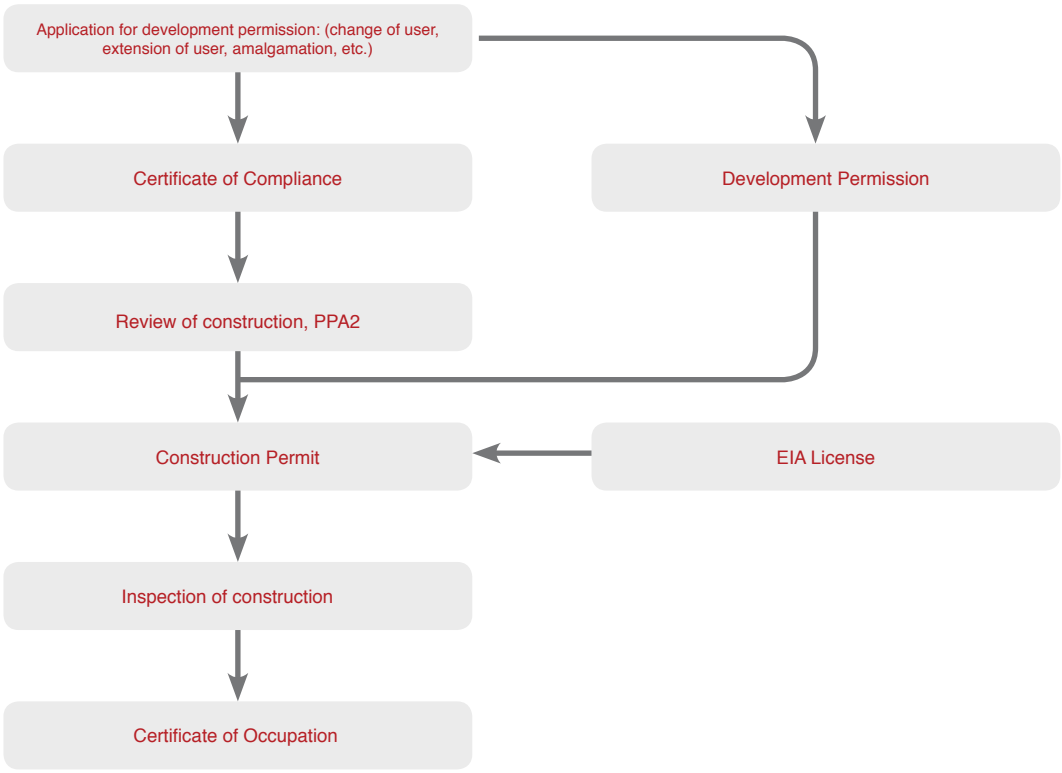
After the applications for the use of land has been effected, registered architects submit architectural drawings on behalf of their clients. **Development Control Sections** of local authorities (or counties) like Nairobi City County, is responsible for issuance of construction permits for building construction. With the approved construction permits, an Environmental Impact Assessment (EIA) License is then applied for from National Environment Management Authority (NEMA) to ensure that the building project does not leave adverse unmitigated environmental consequences.

Once construction permits are issued after approval of architectural plans, engineers submit structural engineering drawings for certain categories of buildings for approval, and after construction is initiated, building inspectors from the enforcement directorate as well as those of the National Construction Authority (NCA) periodically visit the site to inspect compliance with the plans and to ensure that construction goes on as required and that the construction is supervised by approved professionals.

Certificate of occupancy is issued when the construction is completed and is ready for use, which is under the responsibility of the **Enforcement Section** of the County Government.



This process is summarized in Figure 1.3 below



Source: Adopted from JICA Study Team (JST) 2015
Figure 1.3: Development Control Framework.

1.3 Problem statement

Theory and Practice worldwide shows that development control is an important government function. While many see it as a source of government revenue, development control enables the sustainable use of land, and is closely tied to the progress of a nation. Most developed countries have prioritised development control, and this has resulted in sustainable land use, and sustainable cities and communities contributing to realisation of Sustainable Development Goal 11. Development control therefore plays a significant role towards achieving Kenya's Vision 2030.

Even with the big strides forward in development control in Kenya with a new constitution promulgated in 2010, there are challenges that still accounts for vast inefficiencies and downtimes in the practice which have not only hampered investor confidence, but halve also helped fester malfeasance in the administration of development control.

The Constitution of Kenya, 2010 (The Government of Kenya, 2010), under the Fourth Schedule provides that planning is a devolved function, and comes with its myriad functions, including preparation of county plans and other development control instruments, as well as development control. However, what the constitution does not define is the entirety of the development control practice, and how the understanding of its full devolution might hamper its intended logic. Ideally, current practice illustrates the concurrent nature of development control in Kenya, and highlights the need for understanding of specific roles of both the national government and the county governments in respect to development control.

1.4 Aim of this study

With the current challenges in development control in Kenya, including those of the automated development control systems, AAK now seeks to do an exploratory study, for purposes of advocacy, on the feasibility of centralization of the development control practices. In that regard, AAK seeks to explore the potential for a national-scale roll-out of effective development control practices inspired by the successes of other national "one-stop-shop" initiatives like the Huduma Centres and the Integrated Financial Management

Information Systems (IFMIS) which its members have for a while now agitated for. Towards that end, this study seeks to assess and document advantages to the stakeholders in the built environment of the existing electronic development control systems in Kenya with the aim of exploring the feasibility of a centralised development control system in Kenya. The specific objectives of the study are to:

i. Investigate the challenges underpinning the attainment of efficient development control in Kenya
ii. Explore the benefits of automation processes which may include, but are not limited to ease of Doing Business – value that such a system would provide to enhance business competitiveness, administrative efficiency in managing construction permits, minimization of system downtimes between counties and professionals, etc.;
iii. Review the legal framework on development control and devolution in Kenya including: The Physical and Land Use Planning Act, County Governments Act, Urban Areas and Cities Act and related planning / revenue collection laws and regulations;
iv. Explore the benefits of centralization of development control systems for the country without rolling back the gains of devolution as provided for in the Constitution of Kenya (2010), using good practice examples from other jurisdictions;
v. Explore the advantages to the professionals involved in submitting the development applications, including an all-encompassing system that would have all development applications under one roof, etc.;
vi. Explore the advantages to the professionals involved in the evaluation and review of the development applications;

The ultimate objective of this study, is to seek interventions for the improvement of the development control approval processes, while retaining the requisite autonomy of all specialised agencies that operate in the development control environment. It is the intention of AAK to enhance the systems and processes in these counties with a long term plan to integrate all development control processes and agencies to produce a “one-stop-shop” model for development permitting system.

1.5 The Role of other related agencies in development control

To provide adequate justification for centralization of development control systems, there is need to understand the multiplicity of agencies in the development control environment, which has been achieved in the earlier study (AAK, 2018) as shown in the Figure 1.4 below.

Figure 1.4: Multiplicity of agencies in development control

As shown in Figure 1.4, the central role of the counties on development control remains dominant, but a different horizontal – but - centralized development control system will be explored. Many reports have recommended the creation of a one-stop-shop model, including the World Bank Group through several editions of Doing Business in Kenya (i.e. 2010, 2011 etc.) To ring-fence the counties revenue streams, and to protect the investors against increased payments, revenue from the development control will be proposed to remain in the counties. The exploration is done for the ease of doing business, generally, with the intention of reducing the length of time taken to obtain the numerous construction permits required. The review of the weaknesses of the automated systems will be done to ensure that the centralized system draws from the strengths of the current system, while including additional functionality that will provide access to the system to the various agencies as illustrated above.

1.6 Analysing the efficiency of development control systems in Kenya

In Kenya, Development Control (DC) as explained above sometimes happens under an environment devoid of adequate certainty, transparency and accountability from the implementing agencies. This leads to poorly organised and opaque development control units characterised by inefficiencies, rampant corruption and making it difficult for investors in the real estate to conduct business.

Such disorganization often makes it difficult to effectively plan for development and investment, hence contributes to present bottlenecks in the ease of doing business in the counties. This study is designed to review the advantages of the automated systems through feedback from practitioners to establish the efficacy of the automated systems in Nairobi, Kiambu, Kisumu and Mombasa.

02

STUDY METHODOLOGY AND APPROACH

This study is designed as simple linear but iterative process that involves both quantitative and qualitative approaches. The study shall begin with a review of past studies as well as a review of the legislative framework for development control. (See Figure 2.1)

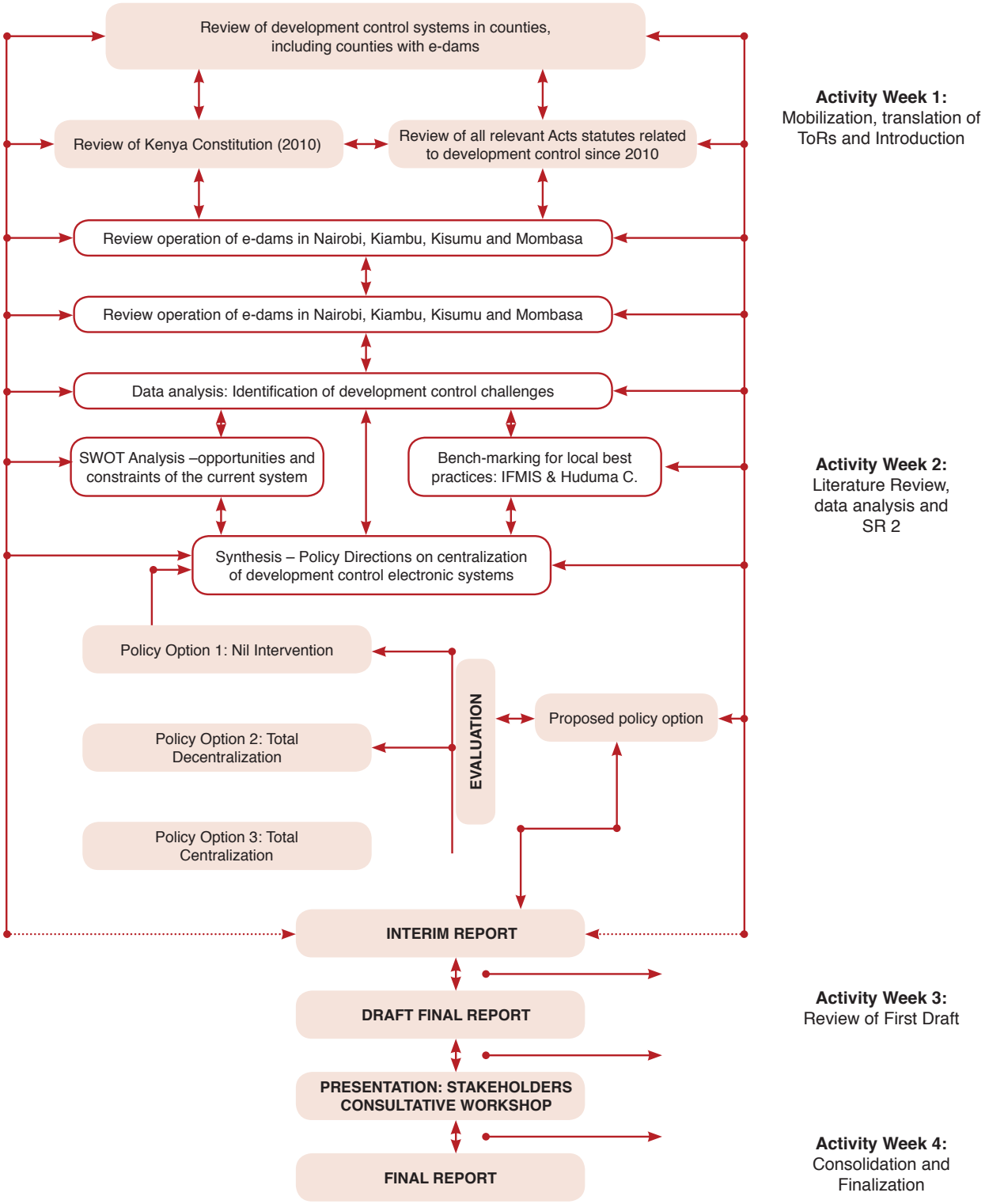


Figure 2.1: Detailed Schematic for the study on centralization of development control systems

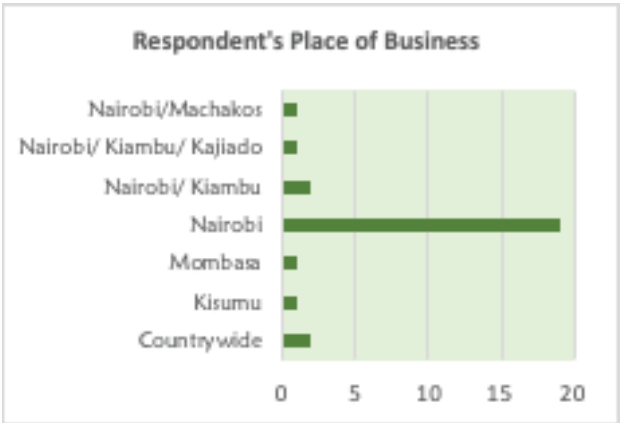
03

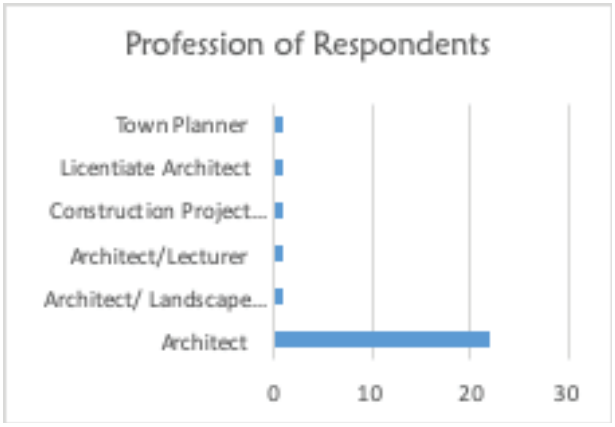
PROFESSIONALS' EXPERIENCE WITH DEVELOPMENT CONTROL IN KENYA

This primary aspects of this study was achieved using online questionnaires to members of the AAK disseminated to them through e-mails. 28 members promptly responded to the questionnaires and sent their feedback to the association within 5 days on average. This information was analysed and used for the report. While this number represents less than 5% of the population it was noted that the respondents were senior professionals with vast experience in matters development control and whose views broadly represent the perspectives of the wider membership. This was complemented by targeted interviews with practitioners from both the private and public sectors.

3.1 Respondents' data

According to the survey, 75 per cent of all respondents have their primary location of the business in Nairobi, with 25 per cent operating in more than two counties, including countrywide (Figure 3.1). This highlights the primacy aspects of Nairobi City as the place of choice for architectural and built-environment practice, but also laying emphasis to the dearth of professionals in the built environment in many parts of rural Kenya and other smaller towns. Significantly, it is noteworthy that the other respondents were from Kiambu, Kisumu, Mombasa, Machakos and Nairobi, countries which are well placed in terms of development control, most of which have implemented, or seek to implement automated development control systems.



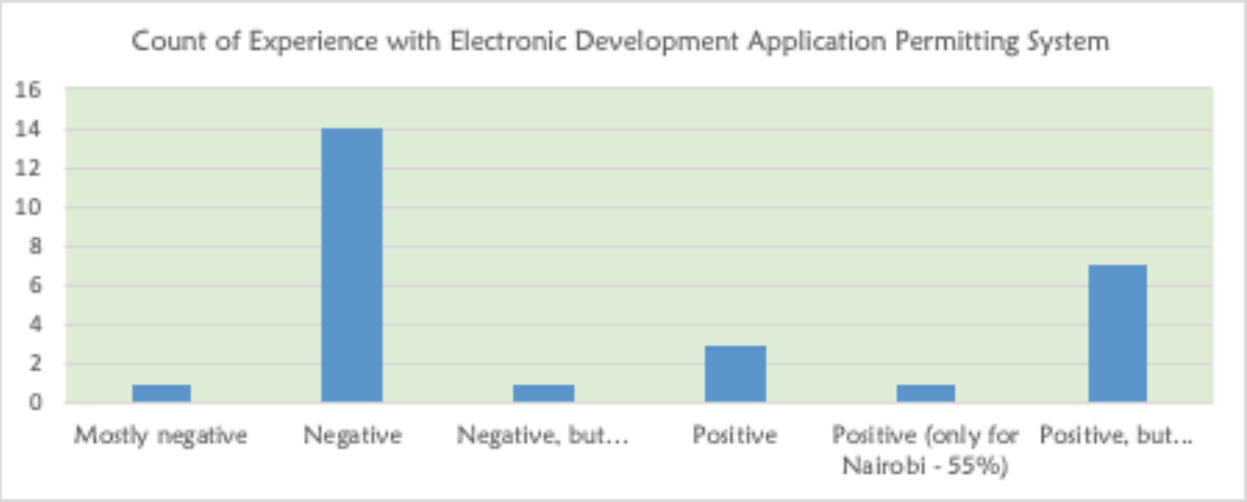


Figures 3.1 and 3.2: Respondents primary place of business and respondents' professions

From Figure 3.2, while the statistics are consistent with the demographics of the association's membership by profession, 90 per cent of all respondents are architects; perhaps signifying that the architects are most aggrieved by the development control deficiencies and inefficiencies, but also perhaps reflecting the central position occupied by architects as the professionals who play a major part in development control, as well as being the applicants in the final stage of approvals, also affected by inefficiencies in the earlier approvals by planners and engineers within the project cycle. Other professional groups who responded are Town Planners, construction project managers and landscape architects.

3.2 Critique on Electronic development application management systems

From the survey, a number of critiques on the electronic development application were received. While many people have lauded the significant strides in development control in Kenya, a number of issues have been identified as undermining the painstaking gains. According to this study, 64 per cent of respondents have had negative interactions with the automated development control systems, with more than 50 per cent having the absolute opinion that the current model of automated development control practice is not conducive (See Figure 3.3 below).



Figures 3.3: Professionals' experience with automated development control systems

In this survey, many respondents qualified their positive or negative experiences with the automated development control system as relating to some opposite corresponding reasons. 60 per cent of respondents were unequivocal that their interaction with the automated system was either negative or positive. However, 30 per cent qualified the negative or positive experiences with the automated development control system, giving what aspects were contrary to their initial feelings as summarised in Table 3.1

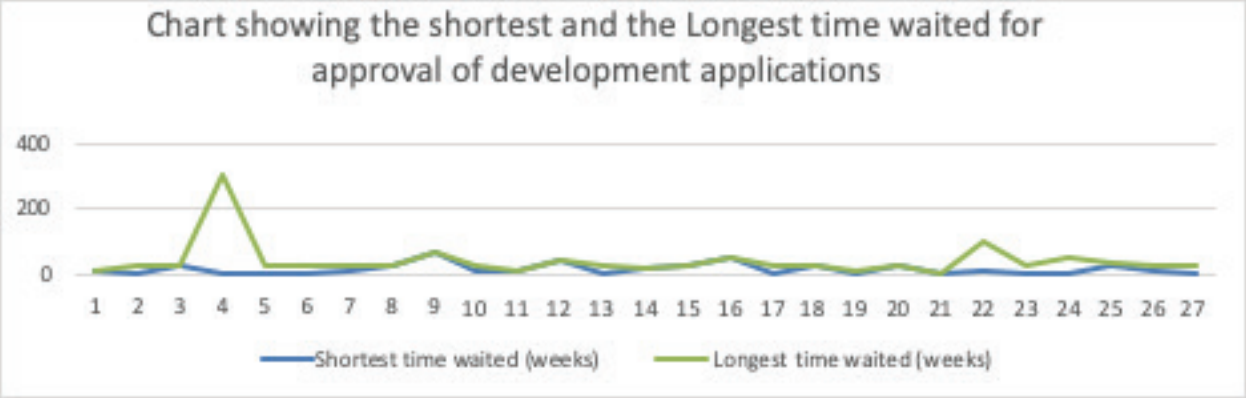
Table 3.1: Qualification of "positive" and "negative" experiences... "Negative ...but" and "Positive...but"

Positive	• Only for Nairobi – 55 per cent • Human interaction that potentially breeds corruption was supposedly eliminated • Automation enhanced transparency with the risk of "lost files" reduced	**Negative**	• Ineffective, as the system is poorly run • Corruption and arbitrary hurdles placed by county officials • Lack of transparency in the system/ lack service charter for building plans approval • Confusing and inconsistent • Untrained reviewers • Political interference
Positive but...	• Slow/ takes time • Unpredictable • Lack of feedback • Erratic/ Long downtime • Susceptible to "system fiddling" by corrupt individuals • Not operated by qualified personnel • Difficult to access/ upload applications • Approvals not based on standards/ are arbitrary • System lacks transparency	**Negative, but...**	• Efficient system • Minimizes physical movement • Minimizes bureaucratic red-tape/ less paperwork • Minimizes interaction with people

Source: AAK 2020

It is apparent that development control in Kenya, including the automated system, is rife with retrogressive practices that affect its otherwise positive view (based on initial grounding studies that unanimously applauded the automated systems as compared to the analogue development control systems). With respect to whether the specific objective of minimizing delays in development application processing and approvals, an average of 80 per cent of respondents indicated that it takes, on average, 24 weeks for the longest waiting period for the approval to be obtained. However, it emerged that professionals have had to wait for up to 300 weeks for their applications to be approved, which while it sounds like an outlier (see figure 3.4 below) is not an unrealistic occurrence in development control in Kenya.

For the shortest time, on average 50 per cent of the respondents indicated that it took an average of 8 weeks for the approval to be obtained. Similar to the "seemingly" outlandish waiting period of the 300 weeks, the shortest waiting period recorded in the study is "within 7 days". However, the response for the shortest waiting time was attached with a disclaimer that the unusual occurred because the "developer knew someone on the inside" which made it possible.



Figures 3.4: Shortest and Longest waiting time for approval of development

It is worth noting that this waiting period is different from the waiting period used by the *Doing Business Surveys* (see various World Bank Group *Doing Business Reports*) which include the period for connecting utilities to the construction application as part of the waiting time. However, the 300 weeks shown by a respondent is an outlier, and may imply certain other factors beyond the scope of this study. However, it may be interesting to compare it with the opposite end of the spectrum where an approval was obtained within 7 days as a result of the client knowing somebody on the "inside". To understand the discrepancy in the waiting timelines, and the raft of concerns raised concerning it, one respondent remarked thus:

"We want the office of the DCIO to investigate why some approvals take a very short time to be issued, and some take a very long time. The answer to your question lies in the findings of that investigation"

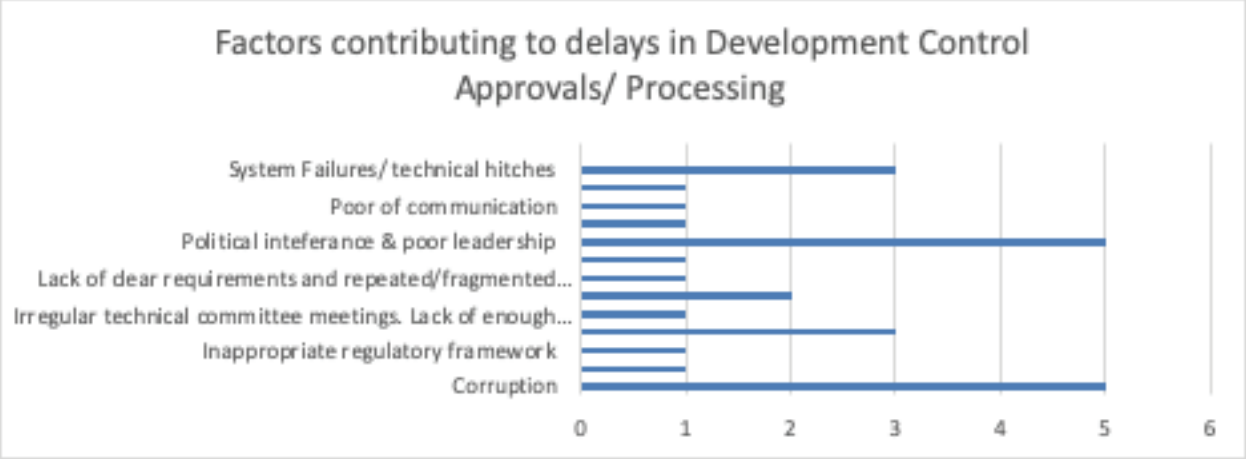


Figure 3.5: Factors contributing to delays in approvals

Many interesting concerns have been raised in the survey as constituting the reasons for delays in obtaining approvals. Some of the reasons raised including what respondents have called "vested interest" among the people processing the development applications. Most professionals are of the concern that many among the county development control staff are just interested in what immediate benefit they will get from the process as proceeds of corruption, and where one decides not to bribe, their applications are 'ignored' hence end up taking longer.

Political patronage has also been blamed for the inefficiency in the development control environment.

There are concerns that development control is one of the “employment” areas where politicians find it easier to “fit” some of their cronies. The result has seen such departments experience high levels of staff inefficiency due to the lack of training of the “officers”, a lack of understanding of design concepts, lack of technical capacity among the development control staff, among others.

Changes in legislation have also been seen as contributing to inefficiency in development control. Where new legislation does not prescribe concrete timelines for evaluation technical committee meetings.

Lack of adequate responsive planning or “master-planning/ zoning regulations” and building regulations suitable for today’s developments has also been variously flagged as potential concerns. It emerges from the survey that many counties have developed the habit of arbitrary approval of development applications without any due consideration of any plans/ building codes/ standards.

Other notable concerns include poor governance, rent seeking, shortage of credible leadership qualities, including incompetence of officials and leaders which interfere with professional processes in the counties, thus contributing to the inefficiencies of development control.

04

LEGAL AND INSTITUTIONAL FRAMEWORK FOR DEVELOPMENT CONTROL

4.1 Development Control As Stipulated In the Physical and Land Use Act (2019)

The Constitution of Kenya under Chapter Five provides that land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable. Through the devolved government, the constitution assigns the planning function to the 47 County Governments (see Schedule 4 Part II item 8 of the Constitution). Though the Physical and Land Use Planning Act, (2019) provides for the new dispensation of development control in totality, there are other laws which also supply key provisions for development control, and which contribute to the totality of the development control process.

This process is summarized in Figure 4.1 below

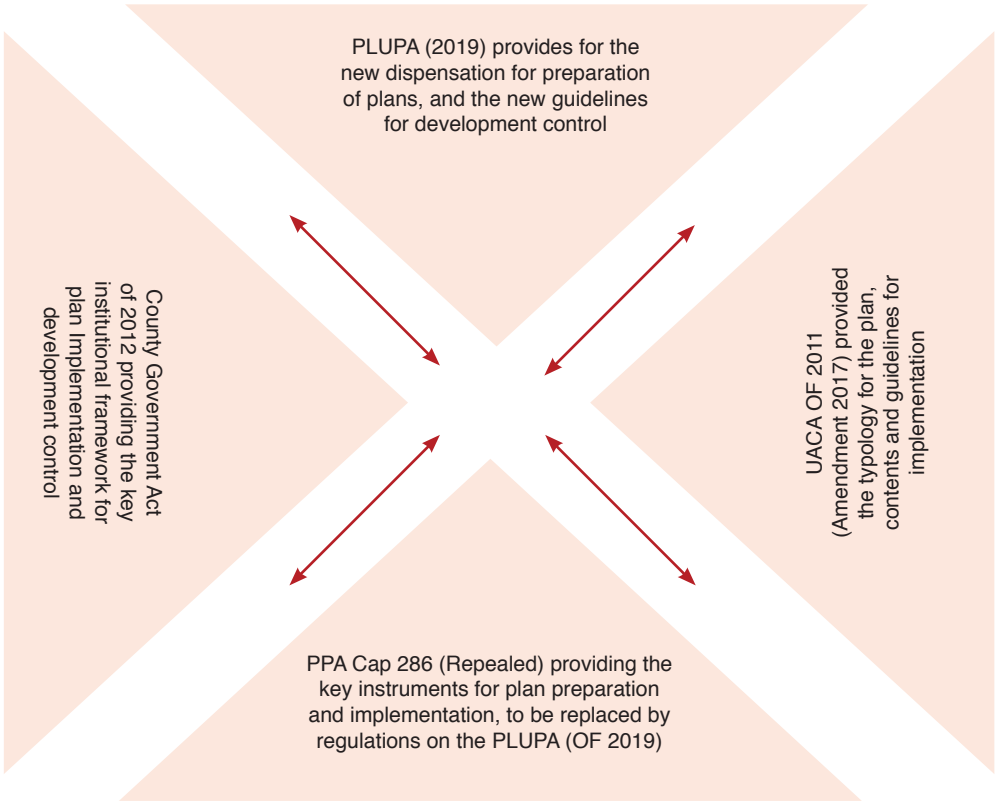


Figure 4.1: The Legal Framework for Development Control.
Source: Adopted from the PPA (1996); UACA (2011, amendment 2017); CGA (2012) and PLUPA (2019)

The role of the counties are further highlighted in the Table 4.1 below, showing what actions and deliverables are due from the development control application agents, including Planners, architects, engineers, among others professionals.

4.2 Development Control As Stipulated In the Physical and Land Use Act (2019)

Both Part IV and the Third Schedule of the act are dedicated to development control, and provide the mandate of development control to counties and prescribes the development application process that should be adhered to. The Act directs that the application should be scrutinized by various agencies at the local level as shall be deemed appropriate from time to time if the proposed development is of significant impact in the neighborhood. Participatory involvement of the various agencies is essential.

4.2.1 Power to Undertake Development Control

Section 56 of PLUPA, 2019 provides that subject to the provisions of these Act: **the Urban Areas and Cities Act, 2011**, and **the County Governments Act, 2012**, the county governments shall have the power within their areas of jurisdiction to;

a) Prohibit or control the use and development of land and buildings in the interests of proper and orderly development of its area
b) Control or prohibit the subdivision of land
c) Consider and approve all development applications and grant all development permissions
d) Ensure the proper execution and implementation of approved physical and land use development plans;
e) Formulate by-laws to regulate zoning in respect of use and density of development;
f) Reserve and maintain all the land planned for open spaces, parks, urban forests and green belts in accordance with the approved physical and land use development plans; and
g) Consider and determine development planning applications made in respect of land adjoining or within reasonable vicinity of safeguarding areas.

4.2.2 Development permission

Section 57 of PLUPA of 2019 provides for the modalities of development permitting. It provides that:

1. A person shall not carry out development within a county without a development permission granted by the respective county executive committee member.
2. A person who commences any development without obtaining development permission commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two months or to both.
3. A county executive committee member shall require a person who has commenced a development without obtaining development permission to restore the land on which the development is taking place to its original condition or as near to its original condition as is possible and that such restoration shall take place within ninety days.
4. Where a person who is required to do so fails to comply with the provisions of sub-section (3), the relevant county executive committee member may undertake to restore the land as required and shall recover the cost of the restoration from the person required to undertake the restoration.
5. A county executive committee member may revoke development permission if the applicant has contravened any provision of this Act or conditions imposed on the development permission for any justifiable cause.
6. A county executive committee member may modify the conditions imposed on development permission where circumstances require it or for any justifiable cause.

Section 58 provides for the procedure for preparing plans for permission while section 59 provides that only qualified professionals shall prepare plans and documents for development application

4.2.3 Development application referred to relevant authorities

The enactment of the Physical and Land Use Planning Act of 2019 has expanded domains of development control and appreciated the roles of the multiple agencies which are involved in development control. PLUPA of 2019 recognizes the multi-sectoral nature of development control. In s60, the act provides that within seven days of receiving an application for development permission, the county executive committee member shall give a copy of the application to the relevant authorities or agencies to review and comment and the relevant authorities or agencies shall comment on all relevant matters including ;

a) Land survey
b) Roads and transport
c) Agriculture and livestock;
d) Health;
e) Public works and utilities;
f) Environment and natural resources;
g) Urban development;
h) National security in respect of land adjoining or within reasonable vicinity of safeguarding areas; and any other relevant authority.

Within fourteen days of receiving the copy of the development permission from a county executive committee member, the relevant authorities or agencies shall submit their comments to the respective county executive committee member.

Table 4.1: Sample key laws that reinforce the role of counties

DC Instrument	Enforcing Institution	Important deliverables/ guidelines	Role of the guidelines
Physical and Land use Planning Act of 2019 (PLUPA)	County Governments National Government	PPA1	Application for Development Permission
		PPA2	Approval
		PPA8 AND PPA9	Appeal against rejection of application
County Governments Act, 2012; Physical Planning Act (PPA, 1996); Physical Planners Registration Act (1996): County Spatial Plans; Town Plans; Sectoral plans; Local Physical Development Plans; Zoning Plans and Ordinances	Counties - Policy Implementation Sections (any other development control sections other than PIS)	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)	Contractors' Registration Certificate	Construction Supervision and inspection

Source: AAK (2018)

However, certain deliverables of the repealed PPA (Cap 286) are still in force for the transitional periods of the implementation of the PLUPA (2019) before the acts regulations are formulated. Once the Ministry of Lands and Physical Planning conclude with the regulations, it is believed that development control will receive the attention it deserves, in the interim, to develop adequate instruments for its execution.

05

TOWARDS REFORMED DEVELOPMENT CONTROL PRACTICES IN KENYA

5.1 Proposed measures for improving development control in Kenya

The Kiambu e-DAMs (2020) highlights the significance of reforms in construction permit administration the world over. In 2014/15, for example 17 economies across the world reformed their construction permit processes and introduced novel concepts hitherto untried. Key reforms that were identified during that period include: streamlining internal review processes for building permit applications, reducing time for process building permit applications, adopting new building regulations, improving building quality control processes, introducing/improving one stop shops and fees reduction.

It is clear that a number of issues identified in this study have highlighted specific aspects of reforms implemented by the Kiambu County Government, including the need for streamlining the internal approval processes like the need for standardized developed control across the counties. Figure 5.1 highlights some parallels similarly perceived/ experienced by stakeholders to be important to improving the efficiency of the development control:

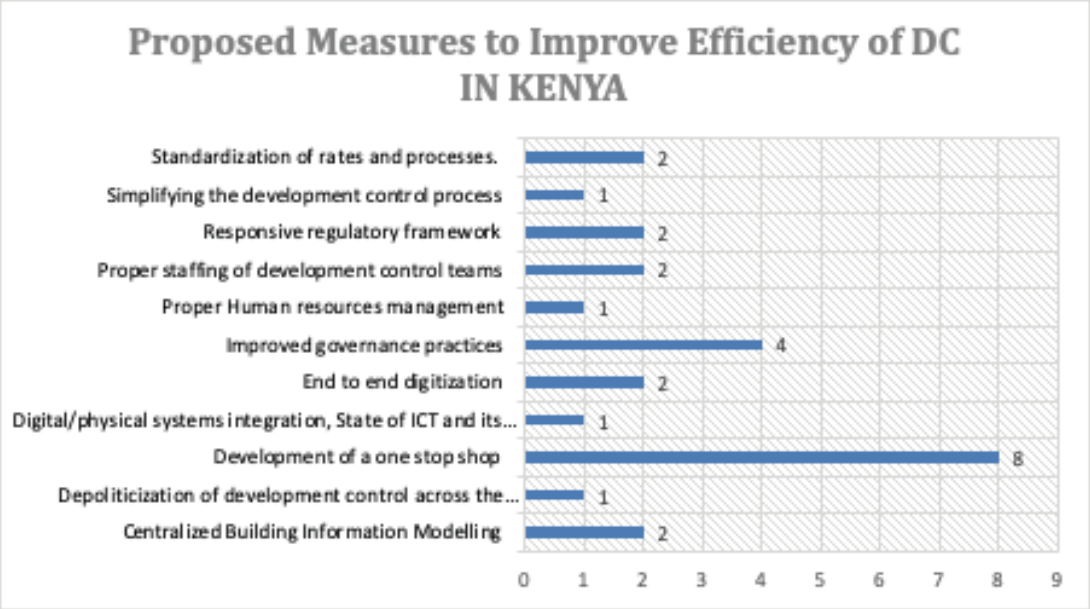


Figure 5.1: Proposed Measures to Improve the Legal Framework for Development Control.

5.2 Exploring the feasibility of centralization of development control in Kenya

According to this study, 40 per cent of respondents identified the consolidation of development control practices under a single entity as a prerequisite for an efficient development control system. As a follow-up to the questions about measures which need to be put in place to improve development control in Kenya, some 75 per cent of respondents supported the need for centralization of development control.

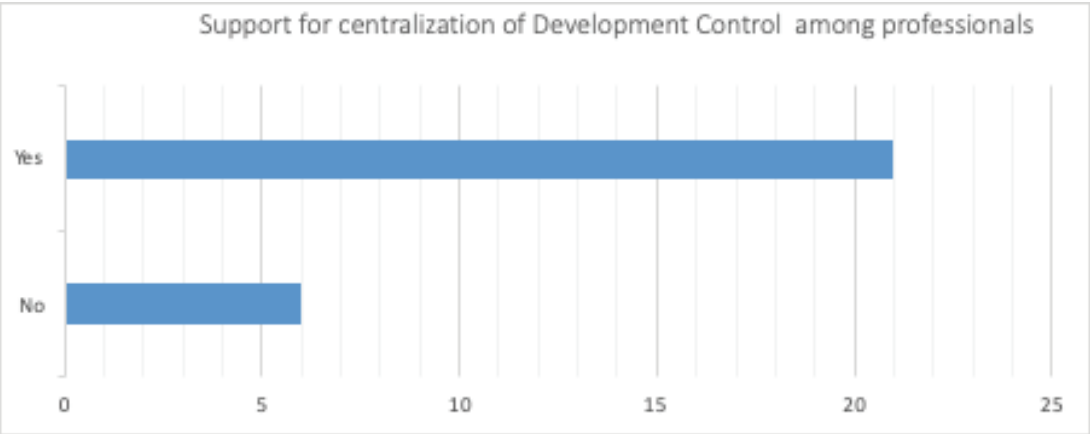


Figure 5.2: Support for Centralisation of Development Control among professionals in Kenya

While around 10 per cent of respondents are not well acquainted with the current legislative provisions for development control, many have the optimism that the development control in the country can be improved by fixing the legislative and regulatory framework. One of the ways in which the legislative framework can be improved is seen by many respondents to be the need for centralization of development control through a "one stop shop" model.

Below is a summary of the views of the respondents on the possible alternative institutions mooted to be suitable to host a centralised Development Control include the following:

- A Multi-Ministerial National Government Agency (ICT Authority (ICT) /NCA(Technical)/State Department of Public Works (Administration/Policy), KRA (Revenue)
- NCA
- Ministry in charge of Housing & Public Works
- A New Agency for DC (one that does not financially gain from development control)
- Ministry of State For Planning, National Development & Vision 2030 with technical assistance from the architectural association of Kenya
- A private entity or partnership to safe-guard the role. Since government systems are highly politicised, it may end up being a risky endeavour
- A National Building Information Modelling (BIM) Management Information System, run by the National Government, accessed by all stakeholders at various levels of credentials.

Of the 25 per cent who believe that the counties should retain the development control, 50 per cent of them believe so solely because of the constitutional provisions for devolution, and that centralization would reverse the gains obtained. However, 50 per cent believe that the counties themselves may come into some kind of coalescing partnership to initiate the centralize development control on their own terms. The opponents for centralisation highlight some of the concerns listed below:

1. The county-based automated development permitting system is fine for now provided that all counties adopt it. However, there is need to synchronize the process and rates payable across all counties for uniformity;
2. The same software used in Nairobi should be made available to all counties, hence the format remains but development control as part devolution as per the Kenyan constitution is followed. In Rwanda a similar system was introduced based on an electronic land registry and full zoning/ masterplans.
3. The current constitution which underpins devolution through article 174 empowers the counties to make their own laws and policies and plans that are consistent with national laws and policies.
4. Centralizing the process would worsen the approval process. However, NCA and NEMA should all be merged within the development control environment.
5. Each county needs to have its own "one-stop-shop" due to need for local knowledge;
6. Geographical disparities do not make it possible to have a centralised system. An approval in Mandera, Moyale or Mombasa counties, for instance cannot be done in Nairobi because of its unique features not present in the far-flung counties. Development control should be done in the place concerned.

Some of the plaudits for the centralisation of development control include, generally:

1. Ease of doing business, including ease of obtaining construction permits;
2. Ease of developing requisite legislation. Laws can easily be passed to facilitate efficient models of doing business. Huduma Centre is an excellent case study;
3. Work the enabling legislation to suit this purpose. WBG Doing Business index imperative is able to cause any necessary change(s) in legislation
4. Lobbying the national government on the loss of business opportunities and loss of revenue both as County Levies and National taxes such as VAT and PAYE is a potential port of entry
5. If the county governments can agree to a common framework and consequently platform that can accommodate all county construction permit requirements, centralizing the system should be possible.
6. Professionals who have practiced in other countries like Rwanda and Seychelles and they confirm that those countries have centralised their systems under the "one-stop-shop" models that work. The same can be replicated in Kenya.
7. It is very possible but our systems need an upgrade and we need to be trained across the board for them to work. If it is a one-stop-shop applicants should not be asked to go back and forth as is currently the practice. If everything is filtered into the system, any satellite centre should be able to digitally retrieve data, one wouldn't have to carry physical copies and transfer them back and forth.
8. With the sharing of the workspace in the IT systems every department can log in and view the same drawing and comment right there. When adjustments are made there will be no one person who can hold back the drawings. It becomes transparent and the authorized officer can give go ahead.

9. There's need to bring in BIM experts to design the management systems, so that right from planning, BIM parametric models are used in processing the approvals. This automates the system and human intervention is minimal.

5.3 Conclusion and recommendations

This study has highlighted the importance of improving developing control in the country. To achieve this, number of interventions have been proposed, which will address the various aspects that that have been flagged as hampering the efficiency of development control. Table 5.1 highlight some of the potential interventions.

Table 5.1: Sample key interventions for improving development control

CHALLENGE	POTENTIAL SOLUTION	LEGAL PROVISION TO BE ENHANCED
Time-consuming	Reviews need to be expedited through legal and technical mechanisms meant to enhance expediency	The law on development control needs to have specific sections that indicate strict and enforceable time-lines for approval
Erratic/ Lengthy downtimes	Needs to be activated throughout/ delays minimized. Need for bench-marking can be achieved through the study of the M-Pesa and banks mobile money platforms. These take time to update their systems periodically, clients are informed in advance. Breakdowns are addressed promptly.	The central authority on development control needs to be legally bound to cushion the developers and professionals against the lengthy downtimes occasioned by the system inefficiencies, or the human agency in system.
Lack of feedback.	Reviewers' feedback needs to be prompt as per provisions of the Third Schedule of the PLUPA, 2019	The law needs to have clear direction as to when the applicants are to receive feedback
Corruption	This can be reduced by enhancing system transparency and reviewer's accountability. Many proposals on how to tackle corruption on development control include the need to legislate on the offences on development control corruption, specifically	The laws on development control need to be explicit on measures to be taken against corruption. End to end digitization will reduce human interaction.
Arbitrary approval without standards	This can be mitigated by ensuring that all counties have for all their areas of jurisdiction relevant plans to be used for approving plans.	The law needs to make a compelling incentive for counties to prepare plans to be applied in the approvals. Development control needs to be depoliticised to reduce political interference.

Source: AAK, 2020

In view of the foregoing, AAK envisages a development control environment which provides for the concurrent mutual appreciation between the county governments and the national government agencies concerned. The proposed structure envisages a development control model which:

i) Retains the development control function, roles and revenues within the county governments as currently existing
ii) Considers the superiority and efficiency of KRA in collecting revenue on behalf of the counties, and transferring the same wholesome to them;
iii) Provides a centrally managed electronic platform that can be accessed by the applicants (public) and county officials for lodging and processing construction permits, including the host of the system;
iv) Links other state agencies that have a role in construction permitting within the workflow (including Agricultural Society of Kenya, Director of Physical Planning, Kenya Airports Authority, Kenya Civil Aviation Authority, Kenya Defence Forces, Kenya National Highways Authority, Kenya Rural Roads Authority, Kenya Forest Services, Kenya Ports Authority, Kenya Urban Roads Authority, Kenya Wildlife Services, National Construction Authority, National Environment Management Authority, National Land Commission, Water Resources Management Authority);
v) Appreciates the significant role played by information communication technology; one which advocates for the automation of the whole development control chain;
vi) Has specific legislative provisions, including a specific Development Control Act, not consisting part of any other statute for richness in detail as well as ease in implementation.

1. Unbundling development control functions and workflow

The most critical pillar of development control is the careful rolling out of processes, norms, standards and procedures that provide a clear roadmap to carry out the desired reforms on the vertical and horizontal institutional structures in public service delivery mechanisms. This requires a methodology of unbundling the full-cycle development control functions at micro- and macro-levels.

The objective of unbundling is to identify every move and necessary action for each actor on the basis of relevance and efficiency. It is useful to divide the development control functions into distinct operational phases that define the full cycle. These three phases are:-

- Scoping of appropriateness before submission (pre-application) phase
- Application acceptance and assessment (post-approval) phase; and
- Implementation and completion /occupation (post-approval) phase

Detailed stages of each operational phase:

For a smooth transition of the entire cycle from manual to paperless documents, forms and online resources, it will require a mechanism of sifting of applications by risk classifications from low-risk outline development applications to complex mid-risk and sophisticated high-risk applications, which, in turn will determine the efficiency and the relevant multiple standing consultees required for each category.

Phase 1: Pre-application

i. The availability of GIS based plans and digital reference materials in development control;
ii. The role of consultants in preparing digital and on-line development applications;
iii. The digital tools of engagement between consultants and county officials

Phase 2: Pre-Approval

i. Reception offices and digital focal points – sub county/municipalities
ii. Registers – for circulation tracking and archival of records
iii. Invoicing – graduated fees & charges, waivers and complimentary submissions
iv. Sieving – determination of low, medium and high risk applications
v. Circulation – consultation relevance to specific application
vi. Reviewing, assessment and comments – reference documents (plans, regulations, manuals, codes etc.)
vii. Material considerations for approval conditions including modalities of charging development fees (new PLUPA s.63)
viii. Agenda Preparation and Approval – agenda preparation, convening of Planning technical committee, procedures of conducting meeting, capturing of minutes
ix. Determination of applications – approval, deferment and declining of applications
x. Communication of Determination – internal and external
xi. Post-meeting documentation – reporting ot CECM, circulation of minutes, stamping and signing
xii. Communication to consultants/developers
xiii. Internal secondary circulation of mid and high-risk applications
xiv. Permits issuance

Phase 3: Post Approval

i. Appeals – internal appeals and referral to a Liaison Committee
ii. External secondary circulation of mid and high-risk applications
iii. Project implementation planning – phasing, safety procedures
iv. Progressive inspections – quality assurance and compliance
v. Enforcement action – breach or violation of approval conditions, judicial processes and/or redress/ restoration
vi. Final inspection/testing – all actors certification for compliance
vii. Occupation/compliance certification
viii. Commissioning

2. *Capacity Building Strategy*

The adoption of digital technology and the transfer of development control activities into a unified platform, a capacity building strategy has to be adopted. The intent is to assess the capacity needs at every stage for sustainable urban development and municipal management and develop local system implementation and operating manuals.

There are many counties, and by extension the municipalities, who for the first time ever will require an enabling training of all actors on a unified approach to development control. Unfeasible or unpopular as it may look to the multiple actors in the built environment, the fact remains that looking at the current narrow silos of the relevant actors operate in, they have not and cannot deliver the desired outcomes

3. *Automation of the efficient manual system*

Once the development control functions have been unbundled, the workflow clarified and all actors have been empowered, then the manual system can be automated. At this point, other agencies relevant to the DC Process should be able to plug in. It is only logical to automate an already working system as automating a mess will create an automated mess.

4. *Piloting the One Stop System*

Piloting the one-stop-shop platform is inevitable for understanding and appreciating the complexity and providing more real time feedback loops. The most ideal piloting environment must have the dynamics of accommodating the ever expanding development control actors and their interdependencies. The pilot platform ideally should be in a metropolitan environment with an elaborate convergence of the multiple sectoral actors through the integrated policy regimes – from national, regional, county to municipal level capable of an end-to end development applications workflow for proper system configuration with analytical tools to inform each of the stages of the three phases. Most profoundly the operational uniformity of the ideal one-stop-shop platform should be user friendly, promote professionalism across board and create and sustain a simpler user experience.

5. *Replication of system across all counties in Kenya*

Ultimately this will herald the common or universal processes applicable across the 47 counties and a user interface change at the county or municipal level in delivering speedy professional services. The objective is to reduce duplication of effort among developing control agencies, improve assessment and reduce costs related to planning, cadaster and any other land related information.

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Appendix 1: QUESTIONNAIRE

Kindly provide answers on the grey highlighted spaces in different font colour by the 25th of January, 2020

PART A: RESPONDENT INFORMATION

1. Please provide us with the following information:
   a) Your profession (Architect/ Planner/Engineer etc.):
   b) Sector of your organization (government, non-government, multi-national,)
   c) Your primary location (the location of your firm/ place of work)
2. What is your experience with the Electronic Development Application Management Systems (e-dams)?
   Positive experience
   List from 1-n
   Negative experience
   List from 1-n
3. Do you find the need to register and log into the various e-dams of all counties convenient?
   Yes **No**
4. What are the longest and shortest periods you ever waited for your development control application to be processed?
   Longest: Months weeks days **Shortest: Months weeks days**
   a) What, in your opinion, contributed to the longest/ shortest delays in application processing?
   List the reasons
5. Do you think certain county officers interfere with the e-dams deliberately to engineer a down-time/ crisis?
   Yes or no. What do you think is their motivation?
6. To how many departments are your applications circulated before approval is granted?
   Give number
   List them
7. Does the process of circulation of applications bother you, or do you find it routine??
   Yes or no
8. What are some of the bothersome aspects of circulation of development application?
9. In your opinion, do you think it is possible to centralize the development control system in Kenya, say in the Huduma Centres' one-stop-shop Model?
   Yes or no. Kindly explain your answer using any constitutional or statutory argument
   Explain here
10. If development control were to be centralised, which agency in government would you find most suited to host it?
    List/ provide name
11. What in your opinion would make development control most efficient in Kenya?
    Explain measure

Thank you for your cooperation.
Best wishes for the year 2020.
From the AAK Team.

Appendix 2: THIRD SCHEDULE (S.55) OF THE PHYSICAL AND LAND USE PLANNING ACT (2019)

Aspects of development control include the following

1. **The development control process and procedures may relate to any of the following;**

   - Change of user
   - Extension of users
   - Extension of lease
   - Sub-division scheme and amalgamation proposals
   - Building plans
   - Processing of easements and way-leaves
   - Siting of education institutions, base transmission station, petrol stations, eco lodges, camp sites, power generation Plants, factories
   - Advertisement
   - Other as the county executive committee member may prescribe from time to time

2. **A county government shall, when considering a development application submitted;**

   - Be bound by approved physical and land use Plans
   - Have regard to relevant national and county policies
   - Have regard to the health, safety, amenity, efficiency, aesthetics and conveniences of the community generally and to the proper Planning and density of development and land use in the area
   - Have regard to any comments received from the officers or authorities and or relevant stakeholders as referred to in section 60
   - I In the case of a leasehold, have regard to any special conditions stipulated in the lease.

3. **If any development application requires subdivision or change of user of any agricultural land, the county government shall require the applicant to obtain consent from the relevant Board.**
4. **Planning authorities shall require applications for major developments to be subjected to environmental and social impact assessment.**
5. **The following factors shall be considered in the determination of change and extension of user;**

   - Provisions of an approved physical and land use development Plan
   - Visual impact
   - Effect on the right to a view
   - Defined location and size of the land
   - Current user
   - Area zoning regulations
   - Infrastructure availability and adequacy

6. **Extension of Lease Consideration of extension of lease.**

   - Whether the land is required for public purpose.
   - Whether special conditions in the lease were adhered to.
   - I whether the land is developed.
   - Whether the buildings on the land have been well maintained.
   - Provisions of relevant approved physical and land use development Plans.
   - Defined location and size of the land.
   - Current user of the land.
   - Infrastructure availability and adequacy.

7. **Sub-division and amalgamation**

   - The design of the Plan.
   - Provisions of relevant approved physical and land use development Plans.
   - Land reference number, Size and shape of land.

- The location Plan/inset.
- Resultant subplots, their access and adequate truncations.
- The owner of the property, name, signature, identification and telephone number.
- Linkage and indication of classified roads, and other Infrastructure availability and adequacy.
- Surrender of land for public utilities.
- Change of user considering the minimum size of sub-plots.
- Consent from the relevant agency in case of agricultural land.

8. Where the development involves the erection of a building, the county government will consider the following;

- The use of the building
- The sitting of the building within the plot
- The elevations of the building, plinth area, canopies and height of buildings
- The design, shape, civic design and I and appearance of the building
- The set back and the building line
- Access to and parking on land which the building is to be erected
- Loading bay
- Density
- Plot coverage
- Provision for rainwater harvesting facilities and water storage tanks in every building
- Landscaping
- Character
- Ventilation and lighting
- Infrastructure adequacy
- Environmental, health and cultural considerations
- Any other matter that a county government considers necessary for purposes of planning.

9. Where the building plans submitted do not meet the required standard, a county government shall communicate the areas of improvement to the applicant.

10. The applicant to whom any written directions are given shall amend the buildings Plans or drawings accordingly and resubmit within such a period as the county government may specify.

11. The building Plans or drawings to be submitted include;

- Development Plan and drawings
- Architectural drawings and specifications
- Civil and Structural engineer's drawings and specifications
- Electrical engineer's drawings and specifications
- Mechanical and plumbing drawings and specifications.

12. The following services require easements and ways leaves

- Telecommunications
- Electrical power supply
- Water and sewerage networks
- Oil pipeline
- Fiber optic
- Base transmission stations
- Any other service as may require easement and or way leave.

13. The owner of a building may display the following illustrated advertisements without the prior consent of the relevant county government;

In the case of shops: the name and occupation of the occupier:

(1) Provided that the letters are not greater than 0.3 meter. (12 inches) in depth and contains not more than 6 words.
(2) In the case of offices: a notice board displayed at the ground floor entrance to the premises not exceeding 0.3 sq.metre. (1 sq. ft.) Total for all occupiers.
(3) Any advertisement displayed within a building or on land or building not visible from a street.

14. The display of advertisements not mentioned in (1) shall require permission from the relevant county government.

(1) The grant of permission under paragraph (I) shall depend on
(2) The location, size and colors of the billboard
(3) Traffic and pedestrian safety
(4) Religious, cultural and moral character of the advertisements
(5) Preservation of the natural environment
(6) Scenic beauty
(7) The preservation of natural monuments and archeological sites
(8) General amenity
(9) Any other factor that the county government may consider necessary.

15. A county government may by notice in writing, require any person who displays an advertisement without permission to remove such advertisement within the time specified in the notice.

16. Authorities responsible for licensing educational facilities shall not issue licenses without advice from the relevant county government.

17. In processing the applications the following planning considerations are taken into account;

(1) The adequacy of the physical facilities;
(2) Land use conformity
(3) Size of land.

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