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AAK/RA/SDHUD/F01 17th June 2026

Mr. Charles Hinga, CBS, CA (SA)
Principal Secretary
State Department for Housing and Urban Development
Ministry of Lands, Public Works, Housing and Urban Development
P.O. Box 30450-00100
Nairobi, Kenya

Dear Sir,

RE: THE ARCHITECTURAL ASSOCIATION OF KENYA-TOWN PLANNERS CHAPTER'S COMMENTS ON THE PLANNING LAWS (AMENDMENT) BILL, 2025

Please receive warm greetings from the Architectural Association of Kenya (AAK).

Established in 1967, AAK is the premier association for Built Environment professionals encompassing Architects, Engineers, Town Planners, Quantity Surveyors, Landscape Architects, Construction Project Managers, Environmental Design Consultants and Interior Designers.

The Town Planner's Chapter of the Association (AAK-TPC) has reviewed the Planning Laws (Amendment) Bill 2025 and makes the following principal recommendations for your consideration:

i. **Clarify planning authority and decision-making hierarchy:** The Bill's redefinition of "planning authority" may create jurisdictional conflicts. The County Director of Physical and Land Use Planning should remain the principal technical authority, with Boards performing delegated functions only.
ii. **Professionalize key appointments:** County officials responsible for planning and the built environment should be registered physical planners and meet the professional competency requirements prescribed under the Physical Planners Registration Act and section 35 of the County Governments Act.
iii. **Establish statutory development control technical committees:** Every planning authority should establish a Development Control Technical Committee comprising qualified technical officers and professional representatives to review development applications and provide formal recommendations on approval, deferral, or rejection.
iv. **Shifting planning authority to technical officers:** The transfer of plan preparation, development permission, enforcement, and approval functions from the County Executive Committee Member

to the County Director of Physical and Land Use Planning is a strongly supported structural reform in the Bill.

v. **Strengthen plan-led development and statutory plans:** Section 61 of PLUPA should expressly bind planning authorities to comply with approved national, county, local, city, and special area plans when determining development applications.

vi. **Extend planning horizons with built-in review mechanisms:** The proposed extension of plan implementation periods from 20 to 30 years is supported, however, mandatory mid-term reviews at ten-year intervals should be included, alongside out-of-cycle reviews responding to major changes in population, climate, or national policy.

vii. **Metropolitan area governance:** The introduction of Metropolitan Area Plans is welcomed. However, the 60-day timeline for initiating plan development is inadequate and should be extended to a minimum of 180 days. Definitions for metropolitan areas must also be aligned across the various regulatory frameworks.

viii. **Digital accountability:** Development approval systems should incorporate secure digital signatures linked to responsible officers, immutable audit trails, and automated controls preventing approvals from proceeding where mandatory technical clearances remain outstanding.

ix. **Integrate spatial planning with budgeting and infrastructure:** All national and county infrastructure projects above a prescribed value should be assessed for consistency with approved physical and land use development plans before receiving funding approval from the National Treasury.

x. **Address rural planning:** The Bill does not adequately address rural planning. Provisions for rural land use management, agricultural land conservation, and rural settlement planning should be introduced.

We recommend these submissions to the State Department for careful consideration in the finalization of the Bill. Please find a detailed memorandum on each of the above recommendations, alongside proposed amendments to the relevant clauses and regulations in the table below.

Yours faithfully,

PLAN. CHRISTINE MUCHIRI – RPP, MAAK
CHAIRPERSON, ARCHITECTURAL ASSOCIATION OF KENYA-TOWN PLANNERS CHAPTER (AAK-TPC)

Cc: **Director - Urban Governance, Management and Resilience**
State Department for Housing and Urban Development
Ministry of Lands, Public Works, Housing and Urban Development
Prism Towers, 20th Floor
Nairobi, Kenya

SUMMARY OF AAK'S SUBMISSIONS ON THE PLANNING LAWS (AMENDMENT) BILL 2025

S/No.	CLAUSE OF THE BILL/REGULATION	COMMENT	RATIONALE
1	Amendment of Section 2 of Cap 303 (Definition of "planning authority") under the Bill	The Bill redefines "planning authority" to include City Boards, Municipal Boards, and Town Committees alongside the County Director of Physical and Land Use Planning. While this is a welcome attempt to decentralize planning, the clause creates ambiguity on which body exercises supreme authority within a county. The definition should clearly establish that the County Director of Physical and Land Use Planning is the primary technical planning authority, with Boards and Committees exercising delegated functions only.	Overlapping mandates between the County Director and City/Municipal/Town Boards risk jurisdictional conflict, delayed decisions, and inconsistent application of development control standards. The County Director is professionally qualified and technically accountable, making them the appropriate lead authority on all planning matters within a county.
2	Section 3 of Cap 303 – Objects of the Act	The objects of this Act are to provide: **(c) the procedures and standards for development control and the regulation of physical planning and land use;**	This section is highlighted to emphasize the extensive development control processes recommended in this review.
3	Section 10 of Cap 303 – Functions of the Cabinet Secretary	Add the following responsibilities after (c): **(d) offering policy guidance to any public institution proposing a project of strategic importance; and** **(e) approving development permission for any development to be carried out within the prescribed projects of strategic national importance upon the advice of the Director-General**	This comes here after expunging section 69 (see Section 4.4 in the Appendix below)
4	Section 13 of Cap 303 – Responsibilities of the Director General of Physical and Land Use Planning	Add this responsibility after (d): **(e) coordination of the processing of development applications for any development to be carried out within the prescribed projects of strategic national importance;**	This aligns with the Cabinet Secretary's responsibilities that have been moved from Section 69
5	Section 17 of Cap 303 – Responsibilities of the	Amend and add the following responsibilities:	

	County Executive Committee Member	**(a) formulating of county policies on physical and land use planning in liaison with relevant departments and agencies;** **(b) issuing in the Gazette the procedures and standards for delegated development control powers to City and Municipal Boards;** (c) promoting the integration of county physical and land use planning functions and sectoral planning levels	(a) This gives effect to Article 183 (1)(a) of the constitution and the translation of policy framework to operational activities (b) This allows for clear authority to delegate DC functions to devolved units
6	Amendment of Section 18 of Cap 303 (County Director and new Director of City Planning)	The proposal to establish the office of the Director of City Planning for Nairobi City County is supported. However, the Bill should clearly state the qualifications required for this office, specifying that the Director must be a Registered Physical Planner under the Physical Planners Registration Act (Cap. 536). The relationship between the Director of City Planning and the County Director of Physical and Land Use Planning should also be clarified to avoid duplication of roles.	The Director of City Planning will oversee planning and development control in their city county. Without a requirement for registration as a physical planner, this office risks being filled by unqualified appointees. Clarity on reporting lines and mandate boundaries is essential to maintain technical independence and professional accountability.
7	Section 20 of Cap 303 – Responsibilities of the County Director of Physical and Land Use Planning	Include this responsibility after (g): **(h) oversight and coordinating the processing of development applications in the county**	This offers the oversight and coordination function over the multiple devolved units
8	Amendment of Section 20 of Cap 303 by adding new Sections 20A and 20B (City, Municipal and Town Planners; Functions of City Boards, Municipal Boards and Town Committees respectively)	The establishment of City Planner, Municipal Planner and Town Planner positions within the county public service is strongly supported. The Bill should additionally provide that: (c) These positions can only be filled by Registered Physical Planners (c) The scale and categories of developments subject to Board approval be defined in Regulations and; All development permissions issued by Boards must be endorsed or certified by the relevant registered planner. Section 20B should not vest blanket development permission powers without specifying a technical certification requirement.	Without mandatory registration as a physical planner, political appointees with no planning background may exercise development control functions, undermining professional standards. Regulations defining the scale of Board-level approvals will prevent overreach and ensure that major or complex developments are appropriately escalated to technically qualified officers. A

			mandatory certification step protects the integrity of the planning process.
9	Amendment of Section 21 of Cap 303 (Planning horizon extended from 20 to 30 years)	The extension of the national and county physical and land use development plan implementation period from twenty to thirty years is supported as it aligns with long-term frameworks such as Kenya Vision 2030 and its successor. The Bill should, however, provide for mandatory mid-term reviews at ten-year intervals and specify the conditions under which an out-of-cycle review may be triggered, including significant changes in population, climate, or national policy.	A thirty-year plan without structured review mechanisms risks becoming irrelevant in a rapidly urbanizing and climate-affected context such as Kenya. Mandatory mid-term reviews ensure plans remain responsive to changing circumstances and that implementation is monitored and corrected where necessary.
10	Amendment of Section 28 of Cap 303 by inserting a new Section 28A (Metropolitan Area Plans)	The introduction of metropolitan area plans is supported as it addresses a critical gap in Kenya's planning framework. The Director General should be required to involve all affected county governments, relevant sectoral agencies, and professional associations in the preparation of Metropolitan Area Plans. The sixty-day timeline for putting in place measures to develop the plan is too short; a realistic minimum period of one hundred and eighty days should be stipulated.	Metropolitan areas by their nature span multiple county boundaries and require integrated governance. The current SGR corridor, Nairobi-Thika and Nairobi-Ngong corridors are examples where uncoordinated land use has led to unplanned densification and infrastructure strain. A meaningful timeline and robust stakeholder process will ensure that metropolitan plans are technically sound and politically legitimate.
11	Amendment of Section 36 of Cap 303 (GIS-based county plans and climate change integration)	The requirement for GIS-based county physical and land use development plans and integration of national urban resilience and climate change strategies is strongly supported. The Bill should additionally mandate that counties establish and maintain GIS infrastructure with standardized data protocols, and that plans be made publicly accessible in digital format. Regulations should specify minimum GIS standards and data-sharing requirements between national and county governments.	Effective spatial planning in the 21st century requires digital data infrastructure. Without standardized protocols, GIS adoption will be uneven across counties, undermining inter-county coordination and the ability to monitor land use change. Public

			access to digital plans enhances transparency and enables citizen participation in the planning process.
12	Amendments of Sections 46-68 of Cap 303 (Transfer of planning functions from County Executive Committee Member to the County Director of Physical and Land Use Planning/County Planning Authority)	The shift of plan preparation, development permission, enforcement, and approval functions from the County Executive Committee Member (a political officer) to the County Director of Physical and Land Use Planning or county planning authority (a technical officer) is strongly supported and is the single most important improvement in this Bill. However, the definition of "county planning authority" must be finalized and made internally consistent throughout all amended sections before enactment. The Bill currently uses both "county planning authority" and "relevant county planning authority" without clear distinction.	Vesting operational planning functions in professional officers rather than political officeholders is consistent with best practice, protects the integrity of the planning process, reduces corruption risks, and ensures technical independence in decision-making. Consistency of terminology across all clauses is essential to avoid future litigation arising from ambiguous statutory language.
13	Section 56 of Cap 303 – Power to undertake Development Control	Revise the section to this: (1) Subject to the provisions of this Act, **the power to undertake development control shall be vested in:** **(a) the Cabinet Secretary, for any development to be carried out within the prescribed projects of strategic national importance;** (b) the county governments within their areas of jurisdiction **(c) Cities and urban areas as shall be delegated by charters;** (2) These powers shall be limited to: *Maintain the powers as outlined in clause 56 of Cap 303*	This comes here after expunging section 69 (see Section 4.4 in the Appendix below)
14	Section 57 of Cap 303 – Development permission	Add the sections **in bold** under clause 1: (1) A person shall not carry out development **within the prescribed projects of strategic national importance** or within a county without a development permission granted by the respective **planning authority** Replace **county executive committee member** with **planning authority** in all proceeding clauses.	The review is aligned such that it binds both national and county governments in their respective development control roles

15	Section 58 of Cap 303 – Application for development permission	Add the sections **in bold** under clause 1: (1) A person shall **apply for** development permission from the **respective planning authority by submitting the development application at the designated national government office or devolved units as the case may be** in the prescribed form and after paying prescribed fees Replace **county executive committee member** with **planning authority** in all proceeding clauses.	This review brings about the devolution aspect and the origination point and path flows of an application – submission station, local evaluation (municipality, sub county), decision making and approval (headquarters) and post-approval (monitoring & inspections by municipalities or subcounty)
16	Section 60 of Cap 303 – Development application referred to relevant authorities	Replace and add the sections **in bold** as indicated in section 60 of Cap 303: (1) Within seven days of receiving an application for development permission, the **planning authority** shall give a copy of the application to the relevant authorities or agencies to review and **take into account material considerations** and the relevant authorities or agencies shall **provide development conditions** on all relevant matters including— (a) land survey; (b) roads and transport; (c) agriculture and livestock; (d) **public** 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 **(i) building and construction** **(j) urban design** (k) any other relevant authority. (2) Within fourteen days of receiving the copy of the development application from a **planning authority** the relevant authorities or agencies shall submit their **development conditions** to the **director-general of physical and land use planning or the county director of physical and land use planning, as the case may be.**	Please see the entire **section 4** on the Appendix for review below

		(3) Timelines to return the comments **(4) The director-general of physical and land use planning or the county director of physical and land use planning, shall receive processed, consolidate and collate all development conditions for decision making**.	
17	Section 61 of Cap 303 – Decision making and communication	Include the following sections under section 61 of Cap 303: **(1) Each planning authority shall, by notice in the Gazette, establish the Development Control Technical Committee to provide professional advice to the planning authority for the processed development applications;** **(2) Membership of the Development Control Technical Committee shall comprise of –** **(i) such authorised technical officers in the relevant authorities or agencies in accordance to section 60(1) of the Act;** **(ii) such authorised planning officers in designated planning units in accordance with section 20(g) of the Act;** **(iii) such a registered and qualified professional appointed by the planning authority nominated by –** **a. Kenya Institute of Planners** **b. Architectural Association of Kenya** **c. Institution of Surveyors of Kenya** **d. Any other relevant professional body** **(3) The Development Control Technical Committee shall hold scheduled meetings set out on an annual basis or so often and not less than monthly with authority to convene special sessions as required by workload demands and principles of efficient service delivery to prevent delays in development approval processes.** **(4) When considering an application for development permission, the planning authority county executive committee member—** **a) shall be bound by the relevant approved national, inter-county, county, local, city, urban, town and special area plans;** **b) shall be bound by the relevant approved codes, guidelines and specifications by relevant government quality assurance agencies;**	Please read the entire Section 4 in the Appendix below. This a very critical step in the quality of decision taken in terms of professional undertaking and scrutiny. It introduces a recording mechanism that binds both the State Officer (CS/CECM) and Public Officers (DG/CD and relevant authorities) in an accountable and transparent way. Most importantly it draws the line that ring-fences technical decisions that should bind the planning authority is the clearest way possible

		c) shall take into consideration the provision of community facilities, environmental, and other social amenities in the area where development permission is being sought; **d) shall take into consideration the comments made on the application for development permission by other relevant authorities in the area where development permission is being sought;** **e) shall take into consideration the comments made by the members of the public on the application for development permission made by the person seeking to undertake development in a certain area;** **f) in the case of a leasehold property, shall take into consideration any special conditions stipulated in the lease.** **(5) The Development Control Technical Committee shall recommend to the planning authority a development application, in a prescribed format, to –** **(i) approve, subject to conditions;** **(ii) defer with specifics for review;** **(iii) reject, with reasons.** **Remove clause 2 on section 61 entirely:** Replace and add the sections **in bold** as indicated in section 61 of Cap 303: (3) An applicant or an interested party that is aggrieved by the decision of **the planning authority** regarding an application for development permission may appeal against that decision to the County Physical and Land Use Planning Liaison Committee within fourteen days of the decision by **the planning authority** and that committee shall hear and determine the appeal within fourteen days of the appeal being filed. (4) An applicant or an interested party who files an appeal under sub-section and who is aggrieved by the decision of the committee may appeal against that decision to the Environment and Land Court.	

		(5) (a) Members of the Committee shall be remunerated by the respective planning authority in accordance with recommendations of the Salaries and Remuneration Commission (b) The planning authority shall provide secretariat services to the Committee	
18	Section 63 of Cap 303 – Development application processing fees and Development fees	Replace and add the sections **in bold** as indicated in section 63 of Cap 303: (1) A **planning authority** may levy **development application processing fees and infrastructure** development fee **where applicable**, against an applicant for development permission. (2) Each **planning authority** may, by notice in the *Gazette*, publish Regulations determining the circumstances under which **development application processing fees and infrastructure** development fee shall be levied, the rates that shall be payable and the circumstances under which each fee may be waived **including but not limited to diplomatic missions, consular offices, religious institutions, charitable organizations, educational institutions, public benefit entities, and other institutions serving public interest or enjoying statutory exemptions.** (3) Where a development fee has been waived in relation to an application for development permission, **the planning authority** member may require that applicant to develop infrastructure in relation to the property in question for general use by the residents of the area where the property in question is located.	Recommendation to explore other terms that give clear distinction e.g. betterment fees as applied in the UK
19	Section 69 of Cap 303 – Strategic national and inter-county projects	Remove the entire section	Delete entire section (Please read section 4.4 of the Appendix below) Clause 1, 2 & 4 has been translocated to Section 10 This gave birth to LN 156 of 2019 and DC regulations LN 245, 246 and 247 of 2021

20	Amendment of Section 2 of Cap 275 (Definitions of Borough and Metropolitan Area)	The introduction of "borough" and "metropolitan area" definitions into the Urban Areas and Cities Act is supported. The definition of "metropolitan area" should be aligned with the equivalent definition proposed in PLUPA to avoid interpretive inconsistency across the two statutes. The definition should also specify minimum criteria for declaration, including population thresholds, infrastructure connectivity, and economic integration, rather than leaving these entirely to the discretion of the Cabinet Secretary.	Inconsistent definitions across Cap 303 and Cap 275 will create interpretive uncertainty in the courts and in practice. Clear statutory criteria for metropolitan area declaration reduce the risk of arbitrary or politically motivated declarations and provide a predictable framework for inter-county planning.
21	Amendment of Section 27 of Cap 275 (Establishment of Boroughs and their management)	The introduction of borough governance structures for city counties is supported as a mechanism for decentralized service delivery. The Bill should, however, specify that physical and land use planning functions within a borough must be supervised by the Director of City Planning or a designated Registered Physical Planner. The functions listed for boroughs in subsection (4) are broad. Regulations should define the categories of development applications that borough managers may process.	Borough managers are generalist administrators. Without explicit linkage to the Director of City Planning and a requirement for registered planner supervision, planning functions at the borough level may be exercised by persons without technical planning qualifications. This risk is compounded by the breadth of the functions assigned to boroughs in the Bill.
22	Amendment of Section 30 of Cap 275 (Qualifications for city or municipal manager)	The amendment to restrict eligibility for city and municipal manager appointments to professionals from the built environment is strongly supported. The listed disciplines – architecture, engineering, urban planning and management, environmental planning, quantity surveying, land surveying, and valuation – are appropriate. The Bill should additionally require a minimum period of post-qualification professional experience of not less than ten years for city managers (given the complexity and scale of city management) and seven years for municipal managers.	Professional qualifications ensure that those overseeing urban areas have the technical background needed to manage complex planning, infrastructure, and service delivery functions. Minimum experience thresholds further filter for candidates with demonstrated management capacity, reducing the risk of appointing technically qualified but inexperienced persons to senior urban management roles.

23	Amendment of Section 30 of Cap 275 by adding new Section 30A (Qualifications for appointment of borough manager)	The qualifications and tenure provisions for borough managers are noted. The requirement for a degree in the built environment and ten years' experience is supported. The Bill should clarify whether the non-renewable six-year term also applies to the first cohort of borough managers appointed after this Act comes into force, or whether transitional arrangements apply.	Clarity on tenure provisions for the first appointments is necessary to avoid litigation and ensure an orderly transition to the borough governance model. A fixed, non-renewable term promotes accountability and reduces capture of the office by political interests.
124	Substitution of Section 38 of Cap 275 (Preparation of integrated city plans and physical and land use development plans)	The requirement for every city or urban area to prepare both an integrated city strategic plan and a physical and land use development plan in accordance with PLUPA is strongly supported as it aligns strategic and spatial planning frameworks. The Bill should specify the sequencing of these two plans – whether the spatial plan precedes or follows the strategic plan – and provide for their mutual consistency.	The integration of spatial planning with strategic plans and budgets is a key weakness in Kenya's current planning system, as highlighted by the failure to align infrastructure investment with approved land use plans. Mandating both plan types and specifying their sequencing will embed spatial considerations into urban governance from the outset.
25	Amendment of Sections 59, 105, 107, 110 and 111 of Cap 265 (County Governments Act – planning unit, plan types, terminology) under the Memorandum of Objects and Reasons	The amendments to align terminology across the County Governments Act with PLUPA (replacing "spatial" with "physical and land use development") and to consolidate county plan types into three categories (physical and land use plans, integrated development plans, and sectoral plans) are supported. The amendment to Section 105 establishing that the county planning unit comprises the directorates for physical and land use planning and economic planning is particularly welcome as it institutionalizes integrated development planning. The Bill should additionally require that budget estimates at county level are consistent with approved physical and land use development plans, and that no major infrastructure project receives funding approval without a corresponding spatial plan.	Inconsistent terminology across the three Acts has caused confusion in practice and disputes over jurisdiction. Consolidation and alignment of terminology will reduce litigation risk and improve administrative efficiency. Anchoring budgeting to approved spatial plans is essential to ensure that public investment is spatially rational and consistent with long-term planning objectives, a linkage that is currently almost entirely absent in practice.
26	General – Rural Planning	The Bill does not address rural planning adequately. PLUPA provides tools predominantly suited to urban and peri-urban contexts. The Bill should	Rural Kenya is undergoing rapid transformation as urban sprawl,

		introduce specific provisions for rural physical and land use planning, including tools for soil and water conservation, agricultural land use management, and rural settlement planning. The role of Land Control Boards should be clarified, with a requirement for Registered Physical Planners to participate in them.	infrastructure expansion, and climate impacts drive land use change in areas with no approved plans or plan-making capacity. The absence of planners from Land Control Board processes means that land subdivision and change of use decisions are made without professional spatial input, contributing to fragmented land patterns and loss of agricultural land.
27	General – Professional Accountability and the Physical Planners Registration Board (PPRB)	The Bill should include provisions to strengthen the disciplinary functions of the Physical Planners Registration Board (PPRB). These could include: (a) Any planning decision made by an unregistered person purporting to act as a physical planner should be void; (b) Penalties for professional misconduct should be updated to reflect current economic conditions and;	Professional misconduct by planners – including issuing approvals to non-compliant developments or colluding with developers – undermines planning systems. Stronger disciplinary mechanisms and public transparency will improve accountability and deter misconduct. The Bill's transfers of functions to professional officers will only deliver better outcomes if those officers are themselves subject to robust professional accountability.
28	General – Integration of Planning with Budgeting and Infrastructure Development	The Bill does not address the disconnect between spatial planning and national infrastructure development. A provision should be inserted – whether in PLUPA or the County Governments Act – requiring that all national and county infrastructure projects above a prescribed value be assessed for consistency with approved physical and land use development plans before funding approval by the National Treasury. The	Major infrastructure projects in Kenya – including Class A, B roads and the SGR – regularly proceed without approved physical and land use plans for affected areas, leading to uncontrolled land use change, speculative subdivision, and

		National Physical and Land Use Planning Consultative Forum should be given a formal advisory role in the national budget process.	ultimate dysfunction of the infrastructure itself. Embedding spatial planning in the infrastructure funding approval process would align investment with orderly land use development and prevent the perpetuation of a pattern where planning follows rather than precedes development.

APPENDIX

1. INTRODUCTION

1.1. Planning Laws and Devolution

Devolution governance in Kenya is young and evolving rapidly. The speed and shift is palpable in many ways. In the wake of the promulgation of the Constitution of Kenya 2010, (CoK), what followed was the Urban Areas and Cities Act, 2011 (UACA) and the County Government Act, 2012 (CGA), which had a dedicated Segment on County Planning (Part XI). It had been projected that a new spatial planning anchor law would be enacted within the first wave of the electoral cycle to keep pace with the fast-evolving governance terrain and the steady population growth. The watershed moment came in August 2019 when the Physical and Land Use Planning Act, (PLUPA) (CAP303) was enacted, effectively repealing Physical Planning Act, 1996 (PPA).

This was the same year that the Kenya Population and Housing Census was released. Its Census Report theme *"Counting Our People for Sustainable Development and Devolution of Services"* was apt in the uptake of the devolution momentum and in the backdrop of steady population growth – projected to surpass 60 million by 2030. The urbanization wave will see well over 35% of the population living and working in urban areas, in the same period. Planning and development isn't just about physical spaces; urban governance is shaped by economic power, social relations, political interests and institutional structures.

In November 2012, seventeen Regulations (Legal Notices (LN) series 237 to 253) were enacted adding to LN 256 that was enacted in September 2019. Fundamentally, LN 156 - *Classification of Strategic National or Inter-County Projects* – drew the line between the planning and development functions of the National Government and County Governments.

1.2. The Call for Amendments

The nature of current spatial planning systems in Kenya is in dire need of serous reforms. Out of persistent calls for reviewing the identified gaps, the planning laws (miscellaneous amendment) bill, 2025 brings on board three statutes whose common fibre is planning. The principal object of this Bill is to amend the Physical and Land Use Planning Act, 2019 (Cap. 303), the Urban Areas and Cities Act, 2011 (Cap. 275), and the County Governments Act, 2012 (Cap. 265). The memorandum of objects and reasons provides four broad reasons:

a) Strengthen institutional frameworks for spatial planning and urban governance.

b) Clarify roles between national and county governments.

c) Provide for metropolitan and borough structures; and

d) Align terminology and processes across the three statutes.

The memorandum of objects and reasons goes further to state that the amendments respond to implementation challenges experienced since the commencement of the Physical and Land Use Planning Act (2019) and are intended to ensure consistency with Articles 186, 187 and the Fourth Schedule to the Constitution regarding the distribution of functions between the two levels of government.

2. OVERVIEW OF THE PROPOSED AMENDMENTS

2.1. Significance and Justification of Proposed Amendments

It is important to state from the onset that the four broad reasons underscoring this initiative are valid, however the challenges run far deeper. A thorough audit or analysis of each reason will reveal the true nature and extent of the constitutional compliance, policy, legal and regulatory gaps and most importantly institutional frameworks that drive the spatial panning and urban governance systems.

Midwifing PLUPA was a protracted process, and its performance has not been without challenges. Barely six years into operation, PLUPA and its attendant regulations have encountered conundrums and tensions. The very tensions that rocked the seamless weaving of PLUPA in those days with UACA and CGA still loom large. Making or amending laws is neither an easy enterprise nor a frequent occurrence. This a rare opportunity where every effort should reveal the weight of planning conscience to social safeguards and a commitment to higher principles that reflect the complexity of planning and development.

2.2. The Objects of PLUPA

A meaningful approach in reviewing laws is the critical evaluation of its objectives. PLUPA has nine objectives. To what extent have they been effective in meeting societal objectives, enforceable and aligned to the constitution?

This memorandum takes a critical look at Objective 3(c). This is a public interest objective for structured urban growth under the devolution principles. The memorandum examines the role and adequacy of "planning authority" on both national and county governments in development control procedures.

To put this in context, the memorandum begins with framing planning and development as a public service, where DC (hereinafter abbreviated as DC) promotes equity and fairness in urban governance and development. It moves further to provide a brief historical context before devolution (in the defunct local authorities) and an assessment of the post-devolution teething

challenges mired in transition ambiguity and conflicting provisions, which this law review exercise is seeking to cure. The recommendations are targeted to relevant sections of PLUPA touching on DC.

2.3. PLUPA Object No 3(c) - DC Procedures, Need for In-depth Review

Development control is invariably the most prominent function of spatial planning but also the most targeted and misplaced in the urban governance functions. Two examples stand out. First example, the processing of development applications is the revenue minefield that gets raided at will by county treasuries to bolster their coffers without due consideration to the provisions of CGA Section 120. This has resulted in making it so un-appealing to most developers who pay multiple permit fees, some unjustified and sometimes for duplicated services. This particularly affects low-income earners yearning to own a self-constructed home. Second example, the evaluation of development applications has become such a fluid process to the extent that decisions leading to issuance of development permits are made outside the parameters set out in the PLUPA Third schedule.

Object 3 speaks of *"the procedures and standards for development control and the regulation of physical planning and land use"* which can be examined against the performance of *'the process of managing or regulating the carrying out of any works on land or making of any material change in the use of any land or structures and ensuring that operations on land conform to spatial development plans as well as policy guidelines, regulations and standards issued by the planning authority from time to time in order to achieve a purposeful utilization of land in the interest of the general welfare of the public*'.

With the introduction of the DC function at the national level, this memorandum is trying to highlight issues to get DC back into its regulatory foothold, as dual responsibility at both governance levels.

2.4. Development Control Function – National and County Roles

The function of DC cannot escape in-depth review on the clarity of roles between the national and county governments on account of PLUPA Section 69 – Strategic and Inter-County Projects. Subsection 69(3) moved further to give a 60-day window for the regulations of prescribing the projects that may be classified as strategic national or inter-county projects (LN 156 of 2019). Section 69(4) moves further to assign the Cabinet Secretary the DC function of considering and approving the projects identified therein. A further three sets of DC regulations, namely inter-county projects, projects of strategic national importance and around strategic installations (LN 245, 246 and 247 of 2021 respectively) assigns the Cabinet Secretary prominent DC roles.

The county governments, on their part, are guided by two sets DC regulations, namely, Enforcement (LN 251 of 2021) and Development Permission and Control (General) (LN 253 of 2021). It is the expectation that the proposed Planning Laws (Miscellaneous Amendment) Bill should be comprehensive and explicit about the clarity of roles based on PLUPA object No. 3(c) – the procedures and standards for DC and the regulation of physical planning and land use.

2.5. Development Control Application and PLUPA Workability

Planning and development are methodical two sides of the same coin. They are inherently symbiotic and follow a specific cycle. Planning sets the 'rules of the game' and development ensures 'conformance and fair play'. Planning on the one side is an intensely engaging and consultative process of visioning rolled out in policies and plans. It is therefore important to draw clear distinction and relationship between policies (directions and rules) and plans (execution and steps). Development, on the other side, is the practice of implementing policies and plans in the physical reality and economic momentum. The workability of PLUPA is hinged on balancing the 'productive tensions' between public interests and private initiatives.

The philosophy of PLUPA at the national level revolves around the question of long-term spatial efforts that blends infrastructure sectors and resilient systems that support economic growth. At the county level, it about planning spaces that promote equity and community needs. Decisions made in the planning pillar become development management deliverables in the form of projects, programs and DC guidelines.

3. THE EVOLUTION OF DEVELOPMENT CONTROL IN KENYA

3.1. From the Town Planning Committee to The CEC Member

3.1.1. Before 2010 – the Interplay of Local Government Act and Physical Planning Act.

Before the Constituting of Kenya, 2010, the Physical Planning Act, (PPA) 1996 (CAP 286) provided for the legal framework for land use planning, DC and the preparation of physical development plans. Part IV of the Act outlined the framework of land use planning, and the preparation of physical development plans as a function of the National Government. Part V of the Act provided for Local Authorities to exercise DC authority within their areas of jurisdiction. Development Control was therefore a delegated function from the national government.

Local Authorities operated under the repealed Local Government Act (LGA) (CAP 265); hence the DC function was adopted and dovetailed into the provisions of LGA Part V – (Meeting and Proceedings) and Part VI – (Committees, Joint Committees and Subcommittees). The committee composition, notice of meetings and standing orders of the conduct of meeting sessions and

minutes of proceedings was well regulated. Minutes of proceedings of each committee were ratified by a Full Council Meeting and a composite Minute Book produced every month of the year, for public consumption and posterity records. The Town Planning Committee was vested with the delegated power of the "planning authority". The Town Planning Committee was therefore responsible in exercising the DC policy decisions as delegated in powers listed in PPA Section 30.

3.1.2. Town Planning Committees and Professional Linkage

Every Committee of a Local Authority had a linked originating department. For the Town Planning Committees in large Lacal Authorities, originating departments were known as City or Town Planning Departments. These departments were responsible for formulating action plans and processing development applications for tabling in the monthly meetings and thereafter implementing resolutions (policy decisions) passed. The professional duties of processing development applications was done in accordance with PPA Sections 30 to 39. Each development application received was evaluated by all relevant officers in established council departments and relevant authorities (PPA Section 32(2)) to qualify for listing in the agenda of Town Planning Committee.

The agenda of the Town Planning Committee was tabled by the Chief Officer of the Originating Department, and in attendance were Chief Officers listed under PPA 32(2). Under the LGA, a Chief Officer was the designated Head of Department. Most importantly, the contents of the tabled agenda were a concerted professionals' efforts. As a safeguard of professional integrity and opinion of officers relating to matters under consideration, the LGA under Section 28 stated thus:

"Opinion of Officers: An officer who is present at a meeting of a committee of the Council, being a chief officer or an officer instructed by a chief officer to attend such meeting, shall have the right to require his opinion to be recorded in the minutes if the committee arrive at a decision, which in the officer's opinion is contrary to his advice."

In this declaration, the LGA had drawn clear lines between policy decisions and professional responsibilities about how broad rules, standards, regulations laws, or organizational directives shape what professionals are expected, and sometimes required to do in their daily work.

3.1.3. Year 2010 to 2019 – the Interplay of UACA, CGA and PPA.

The Urban Areas and Cities Acts, which could have borrowed the much-cherished best practices of structured and documented decision-making processes from the repealed Local Government Act failed to do so. While the County Government Act dedicated Part XI for County Planning (Sections 102 to 115), it makes no mention of DC function under the new governance structures.

As result some counties became creative in establishing inter-departmental/agencies Development Control Technical Committees – to replicate the role played by the Town Planning Committees – to validate the processed development applications and seek "approval" from the CECM in accordance with CGA Sections 46 read in conjunction with Section 37. Instructively, many counties have amended Form DC/8 and inserted a section stating the data of the sitting of these committees and minute number for each tabled application. One of the greatest challenges of these committees has been their acceptance, for varied reasons.

3.1.4. Year 2019 to-date – the Interplay of UACA, CGA and PLUPA – Development Control at National and County Levels

Under PLUPA, the performance of planning is spread across the current governance structures; the National Government retains planning and development of bulk (strategic infrastructure) projects listed in LN 156 of 2019. County Government largely handle the planning and development of connecting (community) infrastructure, land use planning and DC. The intensity of decision making is less than at the national level while at the county level it is the daily grind. So intense it is that elaborate DC procedures become an imperative underpinned by accountable professional inputs and decisions.

4. DEVELOPMENT CONTROL (DC) PROCEDURES AND DECISION MAKING - MATTERS FOR CONSIDERATION

4.1. Institutional Decision Making

How are institutional decisions arrived at, packaged and communicated? A decision is the final determination emanating from an institutional purpose, role or mandate, processed through elaborate procedures and assigned a seal of authority. For the decision to commence the binding effect, it is communicated by an authorised person, and the consequences – statutory of administrative – become obligatory.

The processing of development applications is an institutional mandate under the DC function (PLUPA Part IV). DC is also a public service under the provisions of UACA with a Service Charter obligation – efficient delivery in a transparent fashion. DC in Service charters promotes predictability in urban management and diminishes investor uncertainty and restore public trust.

History is replete with the numerous planning and development shortcomings that occasioned the infamy in the defunct local authorities. With the benefit of that hindsight and the teething challenges experienced under devolution thus far, this is a pitfall to be given a wide berth.

4.2. The DC Purpose and Framework

Development control procedures are not merely a bureaucratic activity but also part of a measurable public service system. The CGA Section 47 explicitly provides the parameters of Performance Management Plans (PMPs) that open for public scrutiny. The prescribed permit delivery timelines (PLUPA Section 58(6) and 61(2) can only be achieved through stringent procedures (including ISO certification) that ensure interoperability across relevant authorities (PLUPA Section 60), quality evaluation (PLUPA Section 61). The Third Schedule of UACA lists planning and DC a public service in all urban classifications.

This is an opportunity to interrogate the legal and regulatory interventions in the amendments that will elevate procedural fairness and institutionalised and structured decision making.

4.3. DC Procedural Flow and Decision Making

A procedure is a "how to" manual for performing a specific task, from a defined start to determined end, consistently, efficiently in a fair and safe manner. In DC, the starting point is the submission of a development application (Form DC/1) and terminates at the issuance of Notification of Approval/Refusal/Deferment of Application (DC/8). In between, there are decisions bound by professional undertakings and responsibilities that reflect the exercise of institutional authority.

PLUPA Section 61 contains an implied decision-making responsibility attributed to the CECM and the attendant considerations that lead to the desired decision. At face value, this has been loosely interpreted as a singular responsibility of the office holder.

A deeper interpretation of reading the sub-section 61(1)(a) and (c) reveals there is a wider scope and corporate approach underpinned by professional inputs reached through established procedures. The professional inputs constitute the "control" elements within… "*spatial development plans as well as policy guidelines, regulations and standards issued by the planning authority from time to time"*. In legal and administrative contexts, institutional decisions attributable to institutional management systems. When a development application is referred to the relevant authority, the evaluation has the characteristics attributed to the mandate of the institution with an individual taking responsibility under lawful authority. Their decisions, expressed as "development conditions" produce legal, administrative or organisational consequences.

Under Section 61, the CECM is assigned the sole responsibility of the corporate decision contained in a permit. The deficiency in this section is how the CECM translates sub-clauses 61(a, b, c, d and e) into a corporate determination. LN 253 of 2021 under Regulation 21 does not either.

However, and more innovatively, LN 246 of 2021 under Regulation 7(4) provides a logical procedure from circulation of the application, submission of comments to the DG-PLUP, and most importantly under Regulation 7(8) the convening of a technical committee to consider the input received. The CS, as the approving authority makes the corporate decision based on the advice by the technical committee.

PLUPA Section 61 need a carefully structured amendment to introduce the Technical Development Committee to consummate the multiple technical decisions into a corporate decision that bears "planning authority" determination.

4.3.1. Professional Expression in Development Conditions

Under Section 60, the 'control' outputs are not mere comments but sectoral decisions. Article 47 of the Constitution (fair administrative action) binds all relevant authorities in performance of their statutory mandates under the principles of public service.

One of the core focus issues in these amendments is to "align terminology and processes across the three statutes". When applications are referred to relevant authorities the intent is to secure a binding commitment that is relayed in a professional expression giving compliance conditions, if any, relevant to that authority. Each of the relevant authority listed has its own regulatory authority in the review process, therefore the philosophy that underpins their 'comments' should be accorded fundamental professional considerations in their terminologies.

The review exercise should replace the simple term "comments" with "material considerations" whose outcomes are professional decisions specific to their sectoral mandate. Their entries in Form DC6 are decisions bearing institutional authority and professional accountability to a specific person.

4.4. DC Powers in National and County Governments and Unified Workflows (PLUPA Sections 56 and 69)

PLUPA Section 56 vests the power to exercise Development in County Governments. This is significant in relation to provision of services in the Decentralised Units mentioned in CGA Section 48, and the UACA First Schedule which mentions DC as a local service delivered in all urban governance structures.

PLUPA Section 69 was the entry point that ushered the DC function at the national government level and the parameters to operationist it. It was a launch clause whose intention has been achieved through LN 156 of 2019 and the subsequent DC regulations LN 245, 246 and 247 of 2021. In essence the entire Section 69 is spent.

The listed projects in LN 156 of 2019 are significant and impactful in national development as they compliment the private sector projects. The procedural principles are similar in nature and under the circumstances, with respect to powers to undertake DC, it follows then Section 56 should be amended to logically accommodate the powers of the national government and the subsequent sections to reflect the common procedures that apply at the county government level.

4.5. Development Control – Executive Authority and Flow of Information

The exercise of executive authority in the national government is the Cabinet and Cabinet Secretaries (CS) [Articles 131(b) and 153(2)]. Exercise of executive authority in the county government is vested in the County Executive Committee and County Executive Committee Members (CECM) [Articles 179 and 183]. Planning and development as a public service is a function exercised by dint of provisions of Chapter Five through institutional transparent processes and accountable practices. Article 129 speaks about the exercise of executive authority that should be exercised in a manner compatible with the principle of service to the people of Kenya, and for their wellbeing and benefit.

Article 10 provides the national values and principles of governance that binds all State organs, State officers and Public Officers. State Officers subscribe to the Oath of Office and conduct in the performance of duty (Articles 74 and 75). Their oath is considered as the authority of public trust and must act in the public interest. They influence and shape policy in the art and practice of governing a country or county. Public Officers perform their functions in any state organ, in executing decisions of the Cabinet or County Executive Committee. The performance of public officers is the collective duties that define Public Service.

The locus of planning authority – state officer or public officer – and flow of information on matters planning and development is critical. Development control, at national and urban level will always elicit public interest and feedback.

The submission in this memorandum is that the objectives of PLUPA Section 3(c) remain unresolved despite the glaring transition pitfalls and the observed deficiencies in the performance of development control function.

5. CONCLUSION AND RECOMMENDATIONS

This memorandum has made the bold attempt to pitch a case for objective 3(c) for reforming DC functions to align with the emerging governance situations to determine effectiveness, institutional practicality and social relevance with the aim of improving governance and public outcomes.

The recommendations are highlighted in the accompanying matrix.