
Development Action Group (DAG)



SUBMISSION TO THE HOUSING CONSUMER PROTECTION BILL (B10-2021)

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Development Action Group

Since 1986, the Development Action Group (DAG) has worked to **create equal, inclusive, and sustainable neighbourhoods and cities through development processes that foster human rights, equity, and dignity**. Operating from the conviction that empowered citizens must actively drive their own development, DAG's efforts are rooted in a participative and democratic approach to advancing socio-economic rights and spatial justice through collective action in South African cities.

Through five programmes that target contractors and micro-developers, community-based organisations, informal settlement residents and key state officials, to name a few, DAG delivers sustainable, nuanced, and multifaceted impact toward the realisation of the right to access safe and affordable housing opportunities.

DAG's long-standing history and resilience as an organisation over the last 37 years can be attributed to its ability to adapt to changes in the external environment, supported by a highly value based organisational culture and its focus on ensuring that its work always remains grounded in the lived realities of the communities it serves.

DAG's IMPACT

- 7323 new houses built through DAG's support resulting in improved tenure security for 27000 people across the Cape Metropolitan Area
- 100 000 people in over 80 projects provided with direct assistance with securing land, infrastructure, housing and community.

VISION

To create sustainable human settlements through development processes that enable human rights, dignity and equity.

MISSION

Our mission is to facilitate the creation of resilient, diverse, equitable and democratic cities through the proactive participation of civil society, government, and the private sector to address spatial, social and economic inequalities.

STRATEGIC GOAL: Inclusive and equitable cities realised for dispossessed communities through active citizenry.

INTRODUCTION

The Human Settlements, Water and Sanitation invites interested people to submit written comments on the Housing Consumer Protection Bill (B10-2021). The Housing Consumer Protection Bill is intended to repeal the Housing Consumers Protection Measures Act, 1998 (Act No.95 of 1998). The Bill aims to ensure adequate protection of housing consumers and effective regulation of the home building industry. This was reported to be done by regulating and enforcing mechanisms that will hold homebuilders accountable and ensure they abide by set standards of the regulatory body namely the National Home Building Regulatory Council (NHBRC).

This submission presents the Development Action Group's (DAG's) organisational position on the contents of the Housing Consumer Protection Bill (B10-2021). In principle, DAG is support of the objectives of the Bill, however there are a couple of clause that require further pragmatic review particularly pertaining to the responsible grouping (homebuilder, developer) for the enrolment, duplication of functions between local government's building control and the Council, enrolment fees, access to the Council services and capacity building initiatives amongst others

project called *Backyard Matters: Enabling People, Place and Policy* a partnership between Development Action Group (DAG) and Isandla Institute. The project is aimed at strengthening the backyard rental market and contributing towards well-managed, quality rental stock that provides affordable, dignified, and safe housing solutions. Backyard Matters is funded by Comic Relief. In 2020, DAG partnered with four neighbourhood communities namely Maitland Garden Village, Eerste River, Freedom Park and Lost City and their leadership structures to enumerate and profile tenants and landlords living in backyard accommodation.

CONTEXT AND INTEREST OF THIS SUBMISSION

Firstly, The need for affordable, adequate housing in urban areas is ever growing and is even arguably exacerbated by the COVID-19 pandemic. "The national (South African) housing backlog sits at an estimated 2.6 million houses, that is, 12 million people in desperate need of decent accommodation."¹ It is well recognised and documented that the state alone will not be able to fulfil its mandate of 'housing for all'. This is evident through the National Department of Human Settlements' (NDHS) policy shift toward a site-and-services approach, otherwise known as rapid land release. According to the NDHS, the decision to prioritise giving people land on which they can build their own houses is a response to the state's continually shrinking housing budget. This policy shift places a huge burden on the private sector and communities to provide and self-build affordable, decent housing opportunities *without* the necessary mechanisms, operational and structural capability, institutional arrangements and even without the associated human and financial resources needed to support this level of collaboration.

¹<https://www.groundup.org.za/article/ramaphosa-silent-on-far-reaching-changes-in-housing-delivery-during-sona/>

Secondly, with the growing affordable housing demand, property owners who have either benefited from the state subsidised housing programmes or purchased a house in the township areas are repurposing their properties to create additional housing in the form of backyard formal structures. These property owners are often referred to as either Homeowner developers or Micro-developers (see Image 1) who develop small-scale rental units to hold (not sectionalised or sold off). These small-scale rental developers play a significant role in township economy through the employment of NHBC accredited/ registered local homebuilders (CIDB grading 1-4), provision of affordable housing, urban regeneration and densification. Even though the sector refers to them to developers, however they are not particularly coming from the built environment space and the existing Act and Bill puts them at disadvantage as they do not have large budgets for professional teams for NHBC registration and enrolment as compared to the established/typical developers.

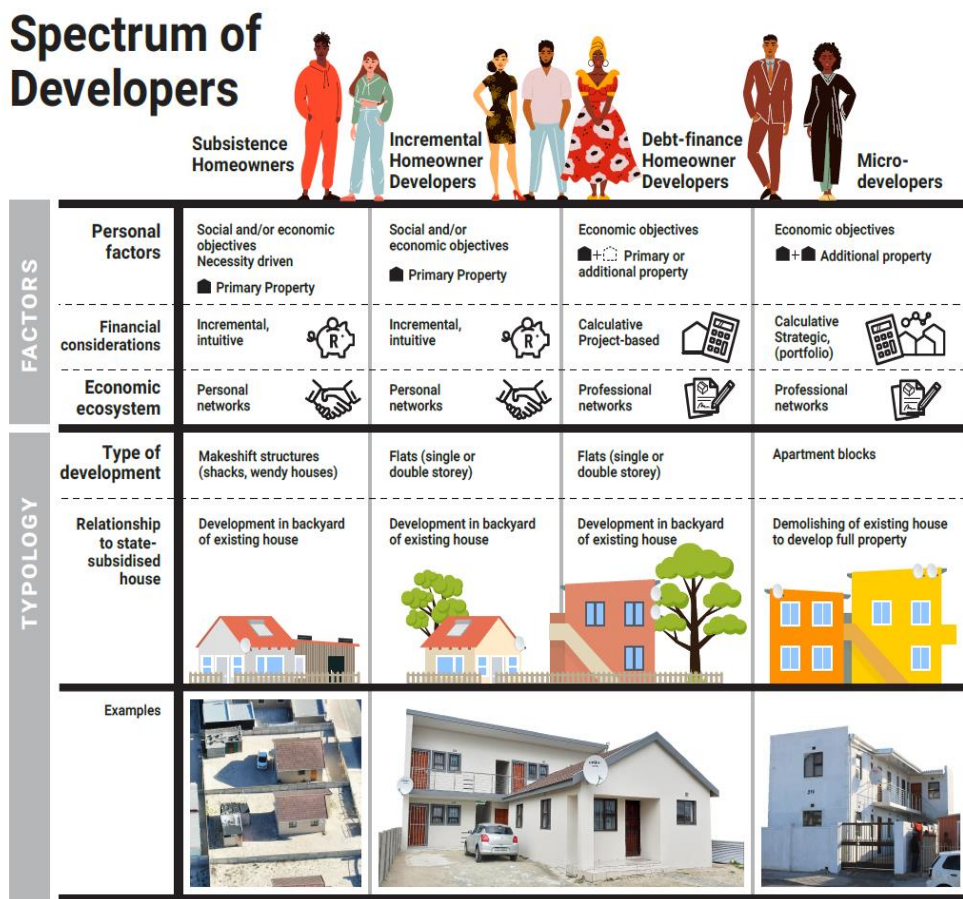


Image 1: Spectrum of Developers: Small-scale rental housing – Moving from the low road to the high road, DAG & HSRC Publication (2022)²

² https://www.dag.org.za/wp-content/uploads/2022/06/small-scale-rental-housing_publication.pdf

COMMENTS AND RECOMMENDATIONS

Chapter 1

Section 1: Interpretation or Definitions

The “**homebuilder**” means a person who (a) builds or undertakes to build a home or to cause a home to be built for any person, including himself or herself; or (b) builds a home for the purposes of sale, leasing, renting out or otherwise disposing of such a home, irrespective of whether or not that person is registered in terms of this Bill;

The scope of application of the legislation is extended to include not only builders who undertake home building as a business, but also **owner-builders**. Owner-builders are included in the definition of a “homebuilder” and are required to register with the Council.

Concern/objection

Increase cost to Affordable Housing

The previous Act specifically excluded people building homes for themselves. The new definition not only include those building for themselves but also includes persons whom cause a home to be built. This expanded definition will now include all “backyard homes”. In the context of City of Cape Town this would catch those building affordable housing such as the small-scale developers.

It is clear from research conducted by DAG and Human Science Research Council (HSRC) that the cost related to compliance impacts affordability. We appeal to the policy drafter to review the publication: https://www.dag.org.za/wp-content/uploads/2022/06/small-scale-rental-housing_publication.pdf

Recommendation

While the expanded definition will afford protection to those in Affordable Housing space by providing them with the cover of this Bill. It is the processes and additional cost related thereto. The enrolment fee would just be added onto to the end consumer. With the current housing market crises in the affordable housing sector and the current economic climate, we recommend a further amendment to include in the bill wherein the Council or Minister can a certain category “value” from the enrolment fee.

While Section 2(5) does provide for exemption, it provides for after consultation with the board and exceptional circumstances for certain persons or homes. It is not clear whether this section would allow the minister to clear a group/category of people or homes to be exempt from the enrolment fee specifically.)

Alternatively – “cause a home to be built” should be removed as it is too broad.

Section 2 : Application of Act

The application of the act has been extended to the “renovations and alterations”. This is problematic under multiple fronts:

- A home Consumer when now attending to the renovations of his/her property will have to enrol an existing home with the NHBRC. None of the sections proposed in the bill make it clear whether the home or the renovation should be enrolled.
- The clear concern would be that all existing home would either have to enrol at their current value which certainly would not be tenable. Should the intension only be for the enrolment of renovations/alterations, it is not clear to what extent/value would enrolment be charged.
- It is not clear as to whom the homebuilder is here. As the definition of home builder is linked to the definition of home.
- The home consumer will have to enrol an existing home, in order to have any alteration or renovation effected, at an astronomical cost which will be based on the market value of the property, rather than the value of the alteration or renovation.
- The home consumer will have to register as a home builder, given the definition of “home builder”, which reads as “a person who builds or undertakes to build a home or to cause a home to be built for any person, including himself or herself”. Most home consumers (as owners of existing homes) are not home builders. Indeed, they would in the ordinary course contract with registered home builders to carry out the alterations and renovations to their homes. The Bill stipulates how to register a home builder and to how to enrol a home to be built, but there is no reference to the process to be followed regarding alterations and renovations. There is a fundamental contradiction in the proposed extension of the scope to fund a warranty for major structural defects on a home because, by their very nature, defects in ‘drainage systems’, ‘water systems’, ‘alterations’, ‘renovations’, and non-residential buildings such as ‘garages’, ‘storerooms’ and ‘covered walkways’, etc., will not give rise -- or is unlikely to give rise -- to damage of such severity, that it affects, or is likely to affect, the structural integrity of a home and which requires complete or partial rebuilding of the home or extensive repair work (the definition of a major structural defect).
- The Bill imposes obligations on banks not to finance loans, unless the home consumer has enrolled the home with the NHBRC. However, alterations and renovations are often financed by an application to increase a bond on the property. This would mean that banks would have to require reasons for the increase, which is not addressed in the Bill, nor is it capable of doing so.

These concerns were raised during the public hearings as they would affect vulnerable individuals who do not foresee the expenses associated with enrolling with the NHBRC was directed to section 2(5) which deals with exemptions for exceptional circumstances.

The Council's legal team stated that exceptional circumstances would be defined in the regulations. The idea is for categories to be created and exemptions to be granted based off the category you fall in. They did not sound so sure about the

process as they also answered the same question saying it would be dealt with on a case to case basis.

Chapter 2

Section 14: Function of Council

Section 14(g) states that the National Home Builders Registration (NHBRC) “provide training to homebuilders to achieve and maintain satisfactory technical standards in the home building industry”. Through experiences, the council only provides trainings to homebuilders/contractors linked to state department's capacity building initiative. Secondly, the trainings are only targeting for the homebuilders and does not include developers or a person who causes a home to be built.

Recommendation

It recommended that the trainings should include consumer education drives especially targeting areas where access to information is limited or communities that may not have heard about the Council. The council should consider partnerships with external (apart from the state) organisations (NPOs, NGOs) in delivering these education drives and trainings.

Chapter 4

Section 30 : Enrolment of home

Section 30 of the Bill requires that “a home builder or developer, as the case may be, may not commence with the construction of a home unless that home is enrolled with the Council”. It is important to note some of the small-scale developers may not be familiar with the NHBRC regulations and not all builders will take on the responsibility of enrolling a home because of an enrolment fee that is payable.

Recommendation

It is recommended that the Bill is clear on who is responsible for the enrolment of the home. This will help any homeowner who causes a home to be built knows whether the builder or the homeowner (him/herself), will be responsible for enrolling the home. This is where initiatives such as the CDA assist homeowners and developers in adding this in their contractual matters between homebuilders. This will avoid instances where a homeowner is caught unaware when they expect their builders to enrol the home for them, only to find out years later that the builder's building contract did not include this obligation and the builder was not responsible for doing this.

Alternatively to aid with the confusion, small-scale developers should not be responsible for the enrolment of home/s that will not be sold off or sectionalised through a sectional title scheme. These small-scale developers undertake development projects for rental purpose and in this instance they are the consumer which the Bill seeks to protect. The developments undertaken by homeowner developers are usually a once off initiative and they remain residing on the property that is being developed/ repurposed. These developers appoint an NHBRC registered

homebuilder to undertake the construction work of the home, it therefore to our understanding that the homebuilder is responsible for enrolment of the home.

Chapter 5

Section 35: Home Warranty Fund

The NHBRC's mandate of providing warranty insurance and conducting technical inspections aimed at enforcing and maintaining quality standards on new homes, is proposed to be substantially expanded in the Bill. This is to include the additional categories of work involved with the additions, renovations, alterations, and repairs to homes, as well as to the other categories of work envisaged in the conversion of commercial buildings to residential homes. It duplicates National Building Standards Act (1977) and the related national building regulations.

The expansion of the mandate is not recommended due to the lack of quality of the inspections done by the NHBRC as many home-building contractors have experienced.

Implications of the expansion of the mandate:

1. The NHBRC's inspectorate will perform functions that fall within the exclusive constitutional competence of municipalities. This will duplicate the administrative functions of the municipal planning and building inspectorate – all at a cost to both the tax payer and the home consumer.
2. There are fundamental contradiction in the proposed extension of the scope to fund a warranty for major structural defects on a home because, by their very nature, defects in 'drainage systems', 'water systems', 'alterations', 'renovations', and non-residential buildings such as 'garages', 'storerooms' and 'covered walkways', etc., will not give rise -- or is unlikely to give rise -- to damage of such severity, that it affects, or is likely to affect, the structural integrity of a home and which requires complete or partial rebuilding of the home or extensive repair work (the definition of a major structural defect).
3. The Bill imposes obligations on banks not to finance loans, unless the home consumer has enrolled the home with the NHBRC. However, alterations and renovations are often financed by an application to increase a bond on the property. This would mean that banks would have to require reasons for the increase, which is not addressed in the Bill, nor is it capable of doing so.

Section 42: Claims and recourse

Section 42(3) of the bill stipulates how a home consumer can claims from the warranty fund for a major structural defect, roof leak that is attributable to non-compliance with the technical requirements and when the homebuilder or developer is unable or fails to rectify the defect within the prescribed period. The consequences of this are in twofold:

1. The change of policy, in not providing an alternative form of warranty through allowing home builders to insure with private insurers. No explanation is given for the failure of the Council Advisory Committee not to have met its statutory obligation to make recommendations to the Minister in respect of private insurance, nor is there any explanation as to why the policy has been changed.
2. There is a contradiction between the fee that has to be paid by homebuilders into the home warranty fund in respect of what amounts to an alteration, or an ancillary building that is not a home (garage, storeroom, garage, covered walkway, etc.) and the kind of claim for which a consumer is entitled to claim from the fund, namely a 'major structural defect that affects the structural integrity of the home'

This is irrational – a fee is required in respect of alterations and ancillary buildings to fund claims that cannot, by their very nature, constitute a major structural defect to the home. Namely, one that is so severe, that it affects the structural integrity of the home. The NHBRC has failed to accredit any commercial insurers to provide warranty insurance as required to by the current Bill, this failure amounts to non-competitive behaviour.