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Hon YI Carrim, MP
Chairperson of the Select Committee on Finance (National Council of Provinces)
(Attention: Mr Nkululeko Mangweni)

Per email: nmangweni@parliament.gov.za

WRITTEN SUBMISSION ON THE DRAFT MUNICIPAL FISCAL POWERS AND FUNCTIONS AMENDMENT BILL, 2022 [B21 – 2022].

I refer to the NCOP Select Committee on Finance's invitation to submit written comment on the Draft Municipal Fiscal Powers and Functions Amendment Bill, 2022 ("the draft Bill"), and would like to submit the following comments on behalf of the City of Cape Town ("the City").

While the City supports to a large degree the proposed amendments to the draft Bill, there are areas of concern, which are discussed below.

1. GENERAL COMMENTS:

Accelerated demand for housing, and specifically affordable housing is a pervasive reality in Cape Town, as it is in the other metros and secondary cities. The existing state housing subsidy policy and programmes are inadequate to meet the required diversity of affordable accommodation demand. In the absence of adequate state supply, the private sector (specifically micro-developers and small-scale landlords) have taken a leading role in providing a supply of affordable rental accommodation at scale. Affordable rental stock has the potential to make a significant contribution to addressing the massive housing backlog in Cape Town – delivering at a much higher rate than the government and conventional development sector.

The surge in affordable rental housing units has been beneficial for property owners and tenants, but it has imposed a heavy burden on public services and the urban environment in many neighbourhoods across Cape Town. Much of the development to date has occurred in locations where regulation and enforcement are limited, and it has occurred in spite of, rather than within, the development management regulatory system, and without any development contributions to cover the cost of

infrastructure, or recognition of property value enhancement that would result in the realisation of property rates revenue.

While acknowledging and accepting the principle of "user pays", prospective micro-developers often lack upfront financing which can impact on the viability of the development (noting that general return on investment after construction is high). If the regulations regarding DCs and associated municipal policies fail to take this constraint into account, the consequence is a continuation of the status quo, where these micro-developers operate outside of the rules, resulting in a double loss to municipalities: they will still need to invest in those areas to avoid the infrastructure being overwhelmed, but will have to do so in a much more reactive way, while still not collecting development contributions or being able to charge property rates on the basis of the enhanced value of those properties. In these areas, there is a potential lacuna between the conditional grant regime, which supports state-subsidised housing developments, but not private housing developments servicing the same market, and this legislation, which has the potential to obstruct such development, if municipalities cannot identify a sustainable alternative funding source for these contributions. So, while these private-sector entrepreneurs are contributing to a crucial societal need, the state infrastructure financing regime is not necessarily supporting them in that endeavour. While development continues regardless, this is to the disadvantage of municipalities, which are potentially losing both upfront and annuity revenue, while being forced to play catch-up with infrastructure capacity.

Importantly, we do not want to stop this development through greater enforcement; it is meeting a crucial need. Rather, we want to make the regulatory environment as enabling as possible so that micro-developers can and do participate in it. This requires that this legislation (and conditional grant conditions – although these are not currently under review here) is flexible enough to accommodate private developers in rapidly densifying neighbourhoods.

The City is intent on supporting affordable housing development, as well as the sector providing development opportunities. A key enabler of the City's intent is an appropriate fit-for-purpose DC Policy which, through its implementation, enables further proliferation of regularised small-scale rental units in Cape Town. With this in mind, the City plans to review its current DC Policy, with the principal intent of establishing a system based on the following principles:

1) The user must pay a contribution towards the infrastructure required to meet the demand of the development, but that contribution needs to take account of the relative contribution to demand on bulk infrastructure of different land-uses and sub-markets, as well as affordability.
2) Partial or total exemptions should be allowed for developments that contribute to socio-economic outcomes, such as affordable housing that overlaps with the state's target market and investments that grow and develop township economies.
3) Such exemptions should be funded through a combination of the following:

a. Recognising all grant funding of bulk infrastructure as a credit against which DC contributions can be partially offset;
b. Cross-subsidisation, where a portion of DCs from developments in higher-income areas contribute to a capital revenue recovery fund for the (part-)payment of DCs in lower-income areas;
c. Allocations of revenue from rates and/or trading services appropriated for this purpose; and/or
d. Donor funding raised for this purpose.

The desired outcome of the DC Policy review is to enable development in lower-income areas and support the delivery of affordable housing opportunities.

Part of the review of the Policy will be to understand and, where relevant, amend the approach and method of calculating DCs in the City. For example, in the case of developments in less-formal areas, alternative ratios could be proposed. This could result in applicants that are contributing via DCs for their proposed development being allowed some level of reduced and/or deferred payment to ensure that the development remains viable for them.

The City has recognised the proposed insertion of Chapter 3A dealing with DCs, and the discretion it offers to municipalities to develop its own DC policy, while specifying the minimum contents of these policies. The City welcomes and supports the insertion, but seeks to confirm that the current draft will not preclude the City's proposed approach, as discussed above.

Subsequent to concluding an analysis between the 2020 Bill and the present draft Bill, the City has noted that most of the comments were considered and the present draft Bill reflects some of the amendments requested. The City appreciates the positive reception of the comments submitted on the earlier iteration of the draft Bill (2020). However, there are still some outstanding concerns on the present draft Bill, detailed in the specific comments below.

2. SPECIFIC COMMENTS

Page	Reference	Title	Relevant text	Comment
2	**Definitions**	***"bulk engineering services"***	**'bulk engineering service'** means bulk engineering service as defined in section 1 of the Spatial Planning and Land Use Management Act;	The inclusion of a definition of bulk and link services is a positive development. However, the actual definition of "bulk engineering services" refers to existing services or those to be provided as a result of development in terms of the MSDF. This seems to assume that the master plans and budget are always aligned to the MSDF, which sometimes is not the case. While the clarity that this definition provides is welcomed, guidance will need to be developed on the process and frequency of activities to align Budget and Spatial Development Frameworks.
3.	**Definitions**	**'internal engineering service'**	**'internal engineering service'** means an internal engineering service as defined in section 1 of the Spatial Planning and Land Use Management Act;	At present, the definition of internal services "means an engineering service within the boundaries of the land area which is necessary for the use and development of the land area and which is to be owned and operated by the municipality or service provider." Firstly, this still refers to engineering service. This should be replaced by "municipal engineering service".

				Secondly, and more importantly, this does not deal with the case where a private home owners' association is responsible for engineering services within the boundary of the common property, such as the roads and storm water infrastructure. This point has been repeatedly raised, but is never dealt with. In rare cases, bulk and link engineering services are part of internal engineering services. The definitions do not deal with this situation, and nor do they give effect to the complexities of engineering services. It may be easier to insert a clause that, in certain cases, a municipality can, with the agreement of the developer, classify an engineering service as either external or internal.
8.	**CHAPTER 3A** **DEVELOPMENT CHARGES** **Power to levy development charge**	**9F Engineering services agreement**	"An engineering services agreement must— (a) be concluded in respect of any approved land development which necessitates the installation of internal engineering services or external engineering services, whether by the municipality or an applicant; (b) be consistent with the conditions of approval of the land development; (c) in the event of any changes to the conditions	Given that section 49 of SPLUMA refers to the provision of engineering services and this requirement will be imposed through planning legislation, should this clause not be inserted into SPLUMA? At present, it is confusing to work through two totally different laws to piece together the process required when imposing a requirement for municipal engineering services. Further the relationship of the applicant referred to in SPLUMA, who is not necessarily the land owner, and

			of approval of the land development, be amended to the extent necessary for consistency with the changed conditions of approval; and (d) include provisions regulating at least the following matters: (i) The nature and extent of the internal engineering services or external engineering services that must be installed by the municipality or an applicant; (ii) the timing of commencement and completion of the internal engineering services or external engineering services that must be installed by the municipality or an applicant; (iii) the amount of an applicant's costs of installation, or the process for determining that amount, where an applicant is to install link engineering services or bulk engineering services, including the process, after installation, for making any adjustments to that amount; (iv) dispute resolution; (v) the engineering and other standards to which the installed internal engineering services or external engineering services must conform; (vi) external engineering services of greater capacity than that which is required by the applicant; and	the definition of owner in the MFPFA, should be carefully looked at, given that the two Acts will have to be read together. For example, an agent as contemplated in section 45 (1)(b) of SPLUMA could be a planner making an application on behalf of an owner. Lastly, in specific reference to sub-clause (v), the City cannot contractually commit to future repayments to developers as it might not be in line with our budget process and budget provision. It is suggested that this sub-clause be removed, and for the municipality to exercise its discretion instead.

			(vii) the party responsible for the ownership of the internal engineering services after completion."	
9.	**DEVELOPMENT CHARGES** **Power to levy development charge**	**9G: Installation of external engineering services by land owner**	(1) A municipality which levies development charges may agree in writing with an applicant that the applicant installs all or part of the bulk engineering services required for an approved land development, and the municipality may off-set the costs of installation of such bulk engineering services against the associated development charge. (2) The costs referred to in subsection (1) must be determined in the prescribed manner. (3) Upon completion, any capital infrastructure asset installed by an applicant in accordance with an agreement referred to in subsection (1) becomes the property of the municipality, and the municipality bears the responsibility of ensuring that registration of transfer of any rights in the affected capital infrastructure asset to the municipality is effected, to the extent necessary. (4) A municipality may require that bulk engineering services are installed to accommodate a greater capacity than that which is required for the land development, in order to support future development in the area	This clause provides that a municipality must reimburse a developer the cost of installing bulk engineering services where it exceeds the development charge liability. In practice, this would then commit the City's budget prioritisation in areas which are not necessarily a priority in terms of the IDP. Generally, developers will gladly install additional infrastructure to suit their needs with the assurance that they will be reimbursed by the municipality. In practice, the City negotiates the provision of the required bulk engineering infrastructure to mitigate the impact of the development upfront, and if there is a shortfall on development charges the City can offset it and it becomes the developer's choice to fund the shortfall or wait until the City's capital programme addresses the required bulk infrastructure. This is accommodated in the clause through the waiver by the developer, and the City would normally not enter into an agreement without a developer waiving this right as it is impossible to predict and make budget provision for developers who respond

			of the land development as determined by the municipality. (5) If in the circumstances provided for in subsection (4) the cost of installing bulk engineering services by an applicant exceeds the development charge for the land development, the municipality must reimburse or off-set the amount in excess of the development charge, in accordance with an agreed payment schedule, by a period not exceeding three years from the date of completion of the installation by an applicant, unless an applicant waives his or her right to reimbursement of that amount or any part thereof. (6) A municipality may require that link engineering services are installed to accommodate a greater capacity than that which is required for the land development, in order to support future development in the area of the land development. (7) If in the circumstances provided for in subsection (6), the municipality does not require the installation of link engineering services to accommodate a greater capacity, the municipality must reimburse or off-set the amount of the development charge by the difference	ad-hoc to market demands. The City suggests the following amendment: "……development, the municipality may reimburse or offset the amount in excess of the development charge provided that it forms part of the municipality's master planning and capital budget prioritisation……..." Alternatively, the City requests that the clause be deleted as it could create unrealistic expectations with developers and skew the alignment of the municipality's budget priorities & IDP. Furthermore, this clause deals with the power to request the developer to install link and bulk engineering services to accommodate a greater capacity than is required for this development, but requires the municipality to reimburse the developer within a specified period. Section 65(2)(c) of the MPBL provides as follows: An applicant is responsible for the- "(c) installation of a bulk engineering service if the land development requires the installation of the bulk engineering service other than in accordance with

			between the costs of the link engineering services installed, and the costs of those link engineering services that would have been required for that land development. (8) The installation of external engineering services by an applicant as contemplated in this section does not constitute an external mechanism for the provision of municipal services as contemplated in section 76 of the Municipal Systems Act.	the applicable service master plan or capital budget of the City, and if the City in the conditions of approval requires the applicant to perform the installation." This scenario is not catered for in the amendments to the MFPFA, presumably because it is assumed that, if the development is in accordance with the MSDF, it will be budgeted for at the time that the development is implemented.

CONCLUSION

The City thanks the Select Committee for the opportunity to provide comment and trusts that they will be duly considered in your deliberations to finalise the Bill.

Yours faithfully,

GEORDIN HILL-LEWIS
EXECUTIVE MAYOR

DATE: 01/09/2023