



PERFORMANCE AUDIT REPORT





State Audit Office

"I APPROVE"

Head of Performance Audit Department

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A handwritten signature in blue ink, appearing to be "G. Kapanadze", is written over a horizontal line.

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Management of the Process of
Tbilisi City Development

Table of Content

Definitions.....	4
Executive Summary	5
1. Introduction	12
1.1 Audit Motivation	12
1.2 Audit Objective and Main Questions.....	15
1.3 Audit Scope and Methodology	15
1.4 Audit Criteria	17
2. General Information	19
3. Audit Findings	25
Construction development planned and implemented during 2011-2018.....	25
3.1 Special zonal agreements issued and their parameters.....	25
3.2 Construction permits issued and their parameters.....	30
3.3 Number of completed buildings	32
3.4 Agreed development regulation plans (DRPs) and their parameters	33
4. Consistency of the construction regulation process with the law	35
4.1 Deficiencies in the justification of zonal agreements.....	35
4.2 Administration of the Special Zonal agreement Fees.....	37
4.3 Issues related to the registration and collection of the fee amounts.....	39
5. Changes realised and the quality of the residential environment	43
5.1 Challenges towards ensuring a high-quality residential environment	44
5.2 Consideration of transport-related issues during the permit issuing process	46
5.3 Mechanisms for the consideration of public opinion	49
Bibliography	53

DEFINITIONS

Rescheduling – rescheduling/restructuring the payment of special zonal agreement fee under the condition of completing the construction of the building covered by the permit within the specified deadline.

Realizing the increase of special zonal agreement/development intensity – reflection of the development regulation parameter changed under a special zoning agreement in the agreed construction permit;

Realization of the construction permit – completion of the construction works of a building referred to in the construction permit;

Development parameters – land plot development coefficient (k_1) and land plot development intensity coefficient (k_2);

Area of the building – the value obtained by multiplying the area of the land plot by coefficient k_2 ;

Area of the land plot – area of the land plot on which a special zonal agreement was issued, and land use conditions, DRP or a construction permit was agreed;

Building with residential function – a multi-apartment house, individual residential house, multifunctional building with residential function and a hotel;

Development intensity – relation between the area of the building and the area of the land plot;

Development intensity coefficient – numerical value obtained by dividing the area of the building by area of the land plot;

Owner – a person having established, directly or through the client, relations with a contractor in charge of carrying out the works which shall transfer the completed building or the **part thereof to the owner for exploitation purposes**;

Land use conditions for construction purposes (LUC) – a document laying down the functions and parameters of the building permitted on a specific land plot constituting a precondition for agreeing an architectural design.

Development regulation plan (DRP) – a document whereby the construction development planning of the land plots with relatively large area or unregulated development pattern is managed. It can serve as a basis for agreeing an architectural design;

Natural lighting – daylighting an indoor space of the buildings with natural light;

Insolation – exposure of any surface to the sun rays.



EXECUTIVE SUMMARY

Construction sector has a significant influence over the economic, social and urban development by being a prospective field for investments, by creating jobs and facilitating the satisfaction of the increasing citizen demand on new residential spaces.

The major part of construction sector in Georgia is concentrated in Tbilisi and had been characterised with large-scale rising tendency during the last decade. One of the preconditioning factors for the mentioned rise was deregulation that, along with the positive outcomes, has posed significant hazards to the sustainable urban development of the capital.

The above-mentioned hazards were addressed in both various expert opinions and media and the World Bank report,¹ having outlined that the current construction administration practice has a negative impact over the quality of urban environment and poses hazards to the investment environment. In response to the mentioned problems, development of a new master plan was initiated in 2015 under the commission of the Tbilisi Municipality City Hall the final version whereof was approved in 2019. The year 2018 was marked with significant changes in the approaches to the urban development management of the capital and in the construction permit issuing procedures along with the change in the management of Tbilisi Municipality.

The State Audit Office has studied 3 direction of the city development process:

- Statistics on the number and characteristics (area of a land plot, development intensity, etc.)² of the permits issued during the years 2011-2018 and the status of their realization (completion of the construction /settlement);
- Observance of legislative norms and good public administration principles in the process of issuing construction permits;³
- Effect of changes made to the permit conditions and procedures over the quality of residential environment.

The audit period covers the years between 2016-2019.⁴ An auditee is the City Hall of Tbilisi Municipality and LEPL Municipal Department of Architecture of the city of Tbilisi.

The following findings have been identified as result of audit:

1 Georgia Urban Strategy. Priority Area 4: Housing. 2015, The World Bank document.

2 The State Audit Office has assessed the parameters of the permits issued for the buildings with residential functions.

3 Ref. Audit methodology for the information concerning the audit scope and issues covered according to each direction.

4 Audit period for the first direction covers the years 2011-2018.

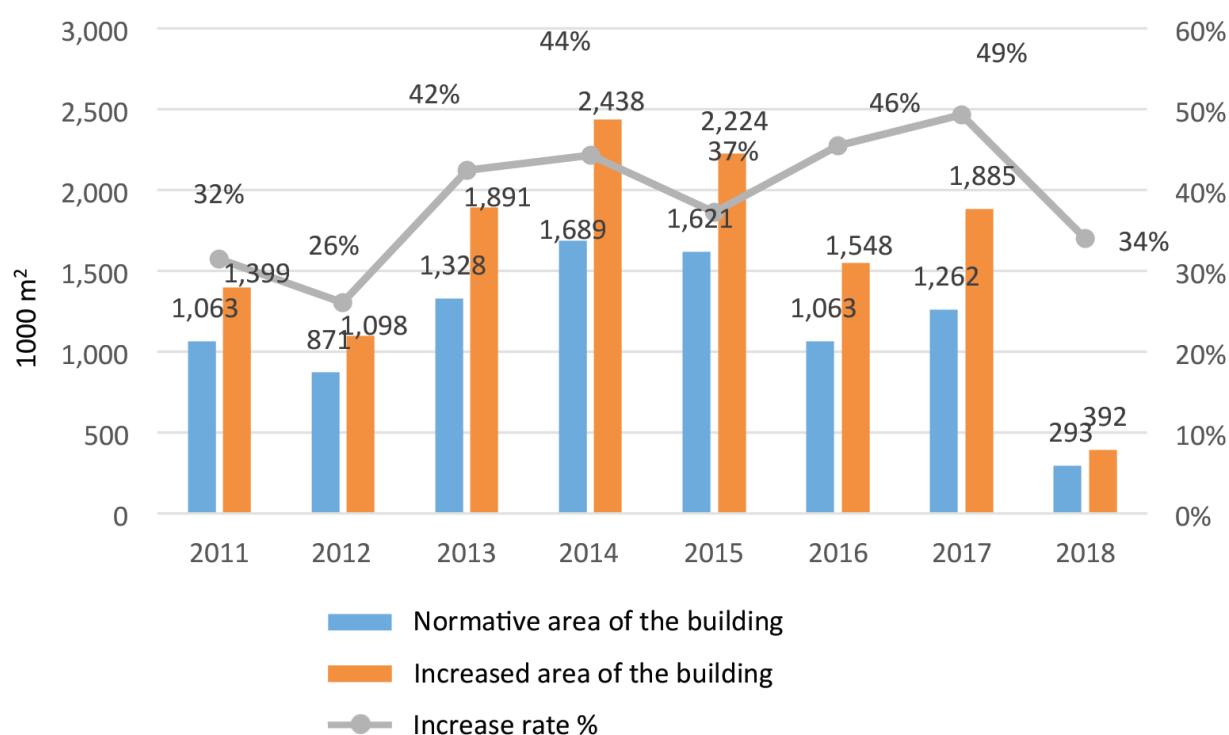


URBAN CONSTRUCTION STATISTICS

Large-scale construction development in the capital during 2011-2018 was conditioned by the following two major factors:

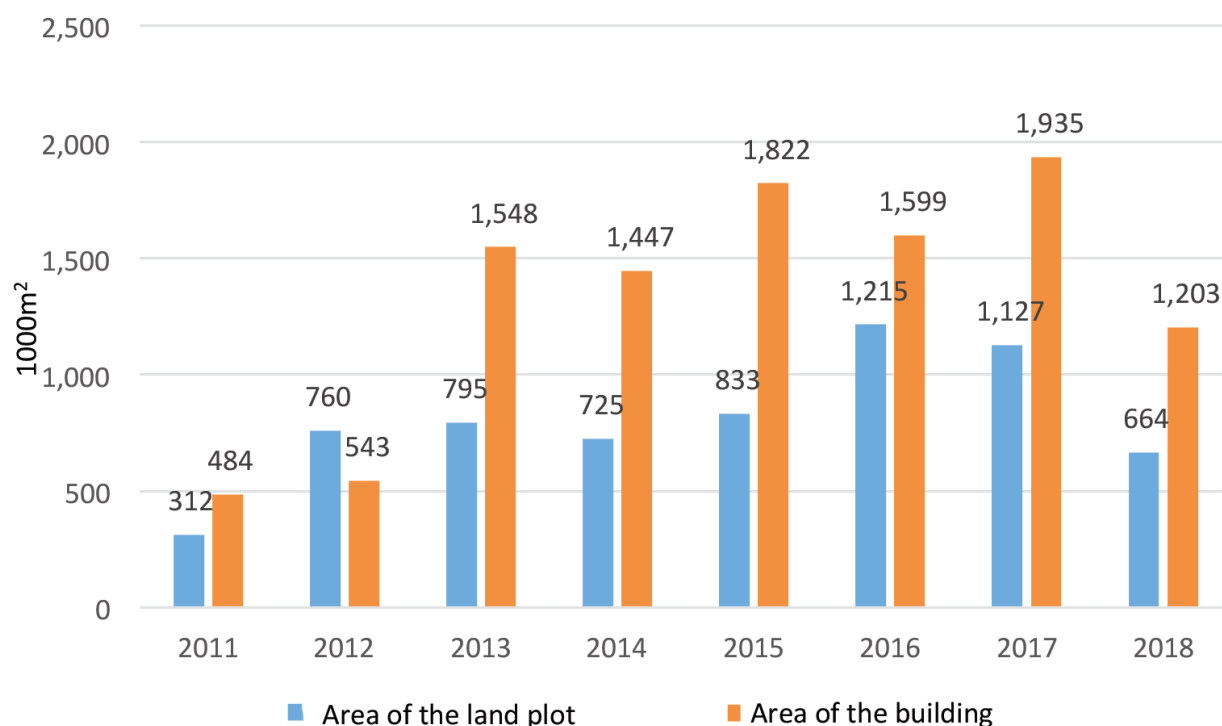
- Changes of the zones established in the capital and increase of construction parameters within the existing zone. In some cases, the constructions were carried out at the expense of using recreation zones. The status of around 55 ha of the recreation zone has been changed into the zone with permitted construction during 2011-2017.
- Increase of development intensity (increase of a coefficient K2 implying the right of construction of a relatively large building as compared to the size permitted in the respective zone). Development intensity has increased by about 50% for the area of 270 ha during 2011-2018.

Graph no 1. Increase of development intensity during 2011-2018 by increasing the coefficient k2



An increase of the development intensity was reflected on the construction permits issued. According to the State Audit Office, the construction intensity was increased for about the third of the construction permits issued during the mentioned period.

Graph no 2. Intensity of the construction permits⁵ issued during 2011 – 2018



Information about the buildings built and the buildings to be built under the permits is incomplete. This is due to the circumstances that putting the building into operation was not a prerequisite condition for its use for residential purposes. As a consequence, only 25% (671 buildings) out of the permits issued during 2011-2018 have been put into operation though in reality minimum 38% (1013 buildings) are used for residential purposes.⁶

Similarly, it is not possible to establish exact number of permits for future constructions to be built (realised). To this end, it is necessary to deduct the number of buildings already having put into operation and used for residential purposes from the number of permits issued during the audit period. According to the estimation made on the basis of the available incomplete information, about 60% of the buildings to be built under the permits issued, were not completed by year 2018.

OBSERVANCE OF THE LEGISLATIVE NORMS AND GOOD PUBLIC ADMINISTRATION PRINCIPLES

The study of this issue has shown that the principles set forth by legislation were not observed in cases where the development intensity was increased. Instead of applying it in the form of an exception permitted by legislation, an increase of development intensity used to be an accepted practice during the audit period: 56% of applications submitted for the increase of development

⁵ Construction permits issued for the buildings with residential functions.

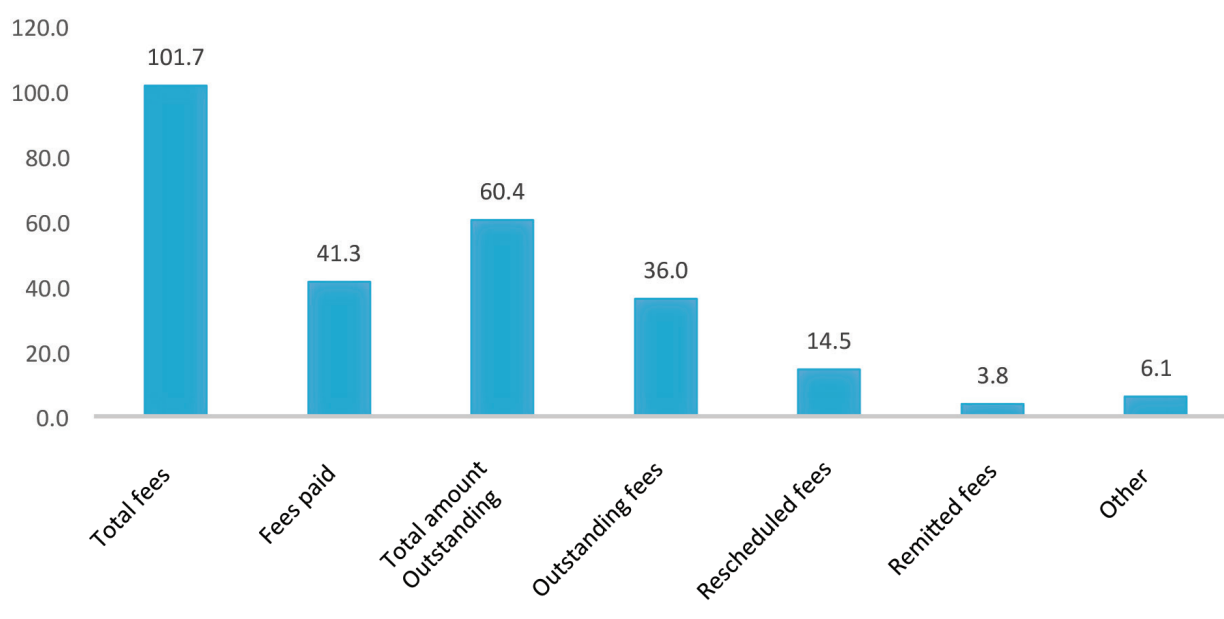
⁶ Considering that the City Hall of the capital does not have comprehensive information about the buildings used for residential purposes without having been put into operation, the given value cannot be deemed accurate.

intensity during 2011-2018 was approved. Legislative requirements were not observed even in terms of justification of the decisions taken.

Decision-making rules have changed as from 2018. The Municipal Department for Urban Development was designated as a decision-making authority in terms of urban issues. Change of functional zones and the increase of development intensities has sharply decreased since 2018.

During the audit period, the City Hall failed to carry out registration and collection of the outstanding fees accumulated mainly during 2011-2016 with respect to the special zonal agreements. The City Hall could not receive the revenues of about 50 million GEL⁷ due to poor administration. The City Hall of Tbilisi Municipality used to apply its discretionary right in the process of collection of fees and allowed a one-year preferential period for the owners for the payment of the fees. In case of failures of the owners to meet the deadlines set for payment of the fees, the Municipality did not take corresponding measures aimed at their collection. Besides, after the expiration of the preferential period the City Hall of the capital has allowed for the concession for 3 times with a view to the collecting the accumulated outstanding fees though it failed to collect significant amounts by doing so. It's worth noting that the preferential period did not apply to the special zonal agreements issued after 2016 and the owners had to pay the fees at the same time the permits were issued.

Graph no 3: Outstanding amounts payable to the budget of the capital from special zonal agreements issued during 2012-2018⁸



Due to the failure of the City Hall of Tbilisi Municipality to control the observance of the schedule of payments of the outstanding fees by the owners and the fact that putting the building into operation was not a prerequisite condition for the use of a building, the buildings in the capital are used for residential purposes without having been put into operation and notwithstanding having accrued significant amount of fees in arrears. According to the estimation of the State

⁷ The mentioned value was calculated by use of the analytical procedures. Ref page 15, 43 for methodology

⁸ „Other“ covers the permits under which construction is underway/not yet started, or filed in the court

Audit Office, the debts accumulated from such permits would account to at least 10 million GEL. Considering the fact that the construction is complete and the apartments are realised, collection of the mentioned fees will be complicated. Due to the ineffective management of the liabilities of payment of the fees, the capital failed to receive significant amount which could have been used for the compensation of large-scale increase of development intensity coefficient apart from various growing needs of the city.

RELEVANT QUALITY OF RESIDENTIAL ENVIRONMENT

The following issues were examined within the mentioned component:

- Regulation of the distance between the buildings;
- Transportation planning;
- Consideration of public opinion.

DISTANCE BETWEEN THE BUILDINGS

The issue of distance between the buildings is not regulated pursuant to the better practice, namely:

- The limits of distances between the land plots are not chosen by taking due account of the characteristics of the buildings – height, alignment, etc. whereas consideration of the mentioned characteristics is of crucial importance for ensuring the quality of the residential environment: for instance, the higher the building the more distance should be allowed from the nearby buildings and similarly, attention should be paid to the location of the windows/balconies of the building;
- According to the existing situation, it is possible to construct a building of any height at a distance of 3 meters from the boundary of the adjacent land plot without leaving an opening (without a window, door, pane) to the neighbouring direction, and a building of any height with the openings arranged to the neighbouring direction can be constructed at a distance of 10 meters from the boundary. In some cases, construction permits can be issued for the two adjacent land plots and the buildings can be constructed on the boundaries of the corresponding plots;
- The current rules of alignment of the buildings towards each other do not ensure the observance of an appropriate distance between the buildings thus restricting natural lighting, ventilation and private space for the residents.

During the audit period, the owners fully exercised their rights conferred thereto under law thus deteriorating the quality of the residential environment of the adjacent residents.

New regulations were adopted during the period of audit that provided for relatively better reg-



ulation of the mentioned issues, though the mentioned regulations did not apply to the territory of the capital to the full extent.⁹ Consequently, the current regulations still fail to ensure the observance of the recommended distances between the buildings.

TRANSPORT ISSUES

Until 2018, the construction permits were issued without taking account of the condition of the road infrastructure (traffic capacity, load) thus entailing transport-related problems in some cases.

In 2018, the permit issuing procedures have changed with a view to taking due account of the transport-related issues at the time of issuing the construction permits. Namely, in case of big projects¹⁰ it is obligatory for the owners to conduct a survey for the evaluation of an effect over the transport infrastructure, and for small and also for big projects – to agree the traffic organization schemes with Municipal Department of Transport of the city of Tbilisi and the Ministry of Internal Affairs of Georgia.

Notwithstanding some positive changes, the existing practice in this direction still has some gaps to be improved, namely:

- A study document ordered by an owner for the evaluation of the influence over the transport provides for the possibility of evaluating the impact of only the planned projects/development on the transport and the load of transport infrastructure. The mentioned study does not reflect any planned development covered by other construction permits issued within the area adjacent to the project. As a result, the studies conducted do not fully reflect the total expected load of the transport infrastructure and the decisions made on the basis of the mentioned studies does not provide important information;
- Traffic capacity and the level of load of the access road to the project site is not evaluated at the time of agreement of the scheme. Consequently, such kind of practice poses risks that the planned development may cause overloading of already loaded roads inside the district and other traffic-related problems.

⁹ According to the amendments made to the Code of Georgia on Spatial planning, Architectural and Construction Activities, the articles of the code contradicting the master plan of the capital and the related regulations do not apply to Tbilisi municipality.

¹⁰ In cases where the area of the building exceeds 6,000 square meters.



CONSIDERATION OF PUBLIC OPINION

The mechanisms of studying the public opinion does not ensure the information of the population about the planned development at an early stage and their involvement in the decision-making process:

- There are no mechanisms which would identify and reconcile the positions of the population and the interests of the owners based on objective criteria at an early stage and to the maximum extent possible;
- The main public information tool is an information board which in some cases were not provided on the territory of a construction site;
- The issues that the population is most frequently concerned about (restricted natural lighting, ventilation and private space) are regulated by current legislation in favour of the owner without taking account of the opinions expressed.

RECOMMENDATIONS:

Tbilisi Municipality should:

- Specify the information on the amount of the fees and the time limits for the payment of special zonal agreement fees, develop effective control mechanisms for the collection of the fees within the established deadlines, and take relevant measures for the collection of outstanding amounts in arrears;
- Ensure the development of the rules for the regulation of distance/alignment of the buildings towards each other in conformity with the better practices established in this field which would facilitate the formation of a high-quality residential environment;
- Ensure that the study prepared/ordered by the owner for the evaluation of an impact over the transport reflect and take account of the traffic flow generated by both existing constructions and the on-going and planned constructions within the area of the design building;
- Develop relevant mechanisms for the information of the population and for considering their duly justified comments at an early stage of the permit issuing process.

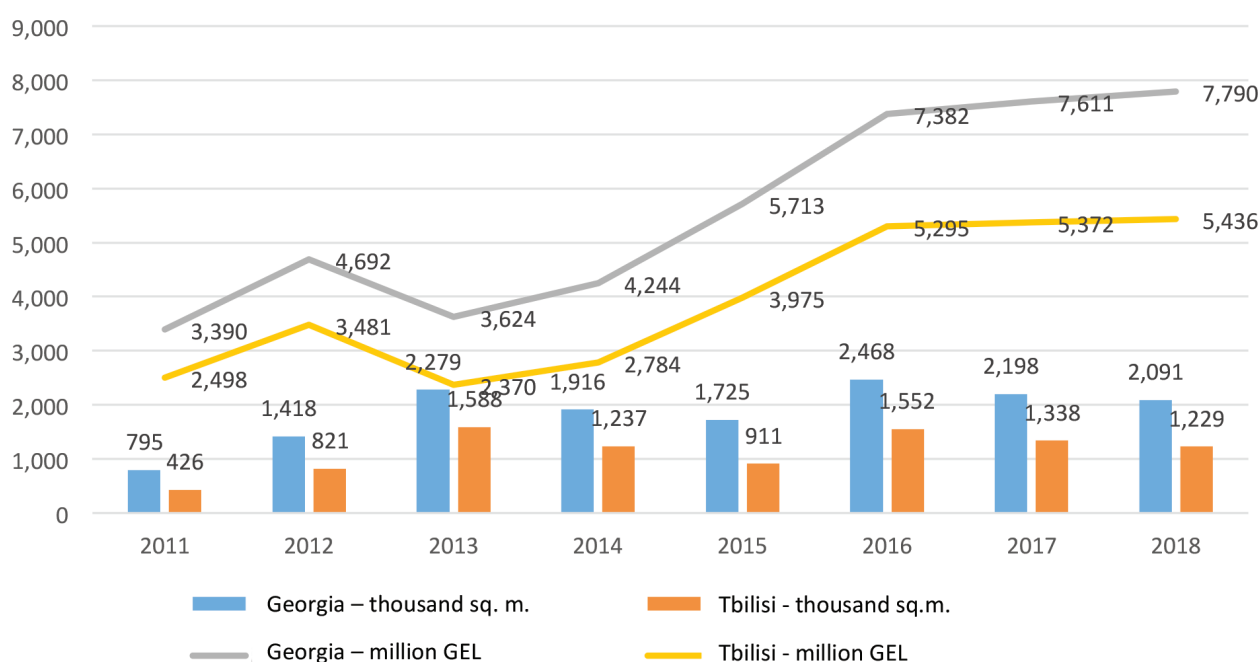


1. INTRODUCTION

1.1 AUDIT MOTIVATION

The last years were marked with increased activation of the construction sector in Georgia especially in Tbilisi. The construction sector is responsible for the creation of a new infrastructure. It is an important source of employment and investment. The information about the economic importance of the given sector is summarised in the graph given below.

Graph no 1. Total area of the completed constructions and the production in the construction sector in Tbilisi and in Georgia¹¹



According to the survey, major part of the housing fund in the capital is very old and needs replacement.¹² For instance, 36% of the housing constructed during the soviet period is significantly damaged. At the same time, housing area per person is far below the average European (recommended) indicator which among other reasons is due to large families (with large number of members). The families/households in Tbilisi consist of 3.1 members which is 35% higher than the average value in the European Union (2.3 members – per household).¹³ Analysis of the modern tendencies have shown that the average size of a family is decreasing thus conditioning an increasing demand on housing.¹⁴

The housing supply is increasing rapidly along with the rise of the demand. Information about the housing fund constructed during different periods is provided on the graph given below.

¹¹ Source: GeoStat.

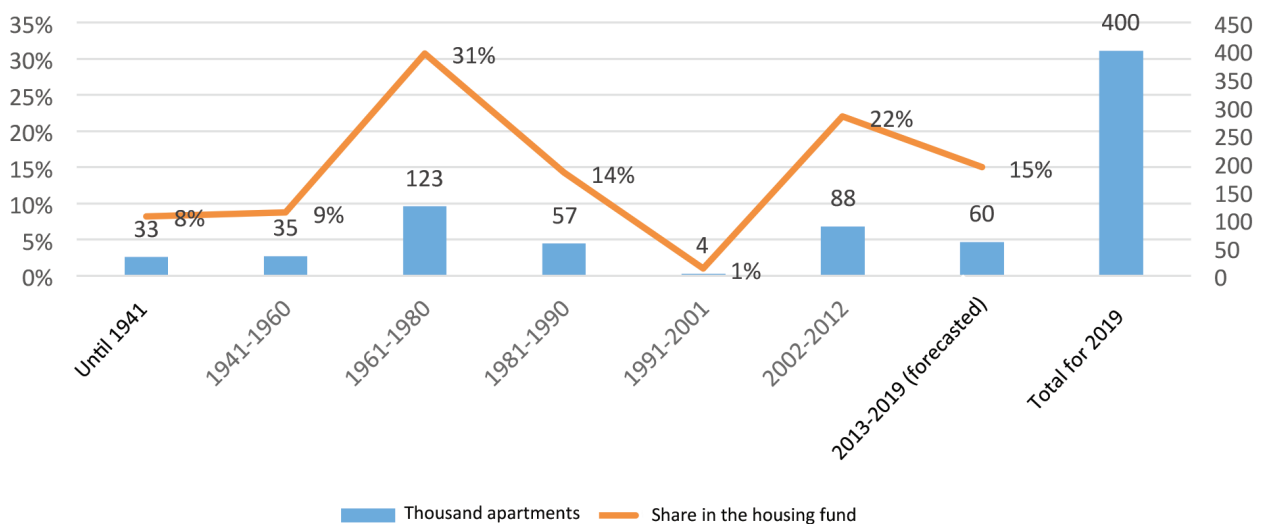
¹² Georgia Urban Strategy. Priority Area 4: Housing. 2015, The World Bank document

¹³ Residential real estate sector analysis, TBC Capital, 2019

¹⁴ Colliers, residential market review, 2017



Graph no 2. Age structure of the housing fund of the capital¹⁵



As shown on the graph given above, the forecasted volume of housing fund by 2019 will be around 400 thousand 37% of which corresponds to the housing fund built after 2001 and 15% - to the housing fund built after 2012. Notwithstanding the rapid growth of the housing fund, it is less concentrated on the renewal and replacement of the old housing fund. Rather it is focused on the districts that has better residential conditions¹⁶. This points to the fact that the growth of the housing fund is carried out with a view to using new areas instead of re-using the areas of existing depreciated housing fund.

Notwithstanding many positive outcomes of the construction activity, poor management of city development process may have a negative impact over the quality of residential environment. Inappropriate planning and implementation of the construction development process may have the following negative effects:

- Reduction of recreation areas;
- Sharp increase of density of residential spaces and, as a result, deterioration of residential conditions;
- Improper functioning of engineering and transport infrastructure;
- Reduction of real estate prices, etc.

Inconsistency of the current construction process of Georgia with the accepted city development practice and the underlying negative effects are outlined both in the studies conducted by international organizations and in the media and civil sector.

¹⁵ Colliers, residential market reviews, 2014, 2017, State Audit Office.

¹⁶ Georgia Urban Strategy. Priority Area 4: Housing. 2015, The World Bank document.

For instance, according to the World Bank report,¹⁷ the current construction practice in the country does not ensure construction of aesthetically acceptable and high-quality buildings. This, together with other significant negative effects will have a negative impact over the quality of urban environment and poses risk to the investment environment.

The following main factors were responsible for the deterioration of the quality of residential environment during the audit period:

- Change of zones of restricted construction referred to in the master plan of the capital into the permitted zones of construction. For instance, change of recreation zones into the permitted zones of construction covered quite large areas. On average, total of 8 ha of recreation zones were changed into the construction zones during 2011-2017;¹⁸
- Increase of development intensity/density as a result of growth of development parameters established for specific zones;¹⁹
- Simplification/liberalisation of the current regulations aimed at the promotion of the construction sector. Legislative amendments have promoted the growth of construction sector though, on the other hand, have posed hazard to urban environment and balanced urban development.

According to the decision of the management of the capital, and due to the deterioration of urban environment of the capital, preparatory works for the elaboration of a new master plan were initiated.²⁰ Development of a master plan was started in 2015 and was approved in March 2019. Along with the approval of the master plan, the management of the capital sought the solution of the existing urban crisis by carrying out complex measures. Structural organization was undertaken in the City Hall, steps addressed at the enhancement of human resources and improvement of permit issuing process were taken.

Considering the intensive construction activities and the implementation of the amendments, it is important to assess the influence of the issued permits on the urban development of the capital and the impact of the amendments made to the permit issuing process on the provision of high-quality residential environment.

Besides, the grounds of audit were the risks related to the process of issuing construction permits that in some cases were revealed in the form of conflict/collision of public and private interests and the general complexity of the field of city development.

17 Georgia Urban Strategy. Priority Area 4: Housing. 2015, The World Bank document.

18 The mentioned values do not include the zones changed through development regulation plans (DRP).

19 Ref. chapter 3 for the detailed summary of the mentioned issue.

20 Master plan procurement order, p. 6.



1.2 AUDIT OBJECTIVE AND MAIN QUESTIONS

Audit objective covers the deterioration of the residential environment of the capital covering different components, including:

- Recreation areas;
- Engineering and transport infrastructure;
- Social infrastructure;
- Safety of the dwelling place and the conditions for healthy lifestyle.

Consideration of the mentioned issues is the prerogative of the urban policy of the capital one of the main tools of which are appropriate urban planning and the availability of the well-functioning process of issuing construction permits in place. Audit goal was specified into the following 3 questions based on the above mentioned issues and the grounds of audit:

- 1. What was the intensity of the planned and implemented constructions in the capital during 2011-2018?**
- 2. To what extent are the current legislative norms and good public administration principles observed in the process of issuing permits?**
- 3. Do the amendments implemented during the audit period²¹ ensure the improvement of the residential environment?**

1.3 AUDIT SCOPE AND METHODOLOGY

Auditee is the City Hall of Tbilisi Municipality and the LEPL Municipal Department of Architecture of Tbilisi city subordinated thereto. The period of 2016-2019²² was determined to be the period of audit in terms of the second and the third questions while the data of 2011-2018 were analysed in terms of the first question.

The following methods were applied during the audit process:

- Introduction and analysis of international practice;
- Analysis of legal bases and regulatory norms;
- Study of functioning and management procedures of the departments;
- Analysis of data bases;
- Analysis of documented information;
- Analysis of statistical information;
- On-site examination of the buildings;
- Interviews with the auditee and the stakeholders;
- Analysis of the planned and ongoing amendments in terms of legislation and procedures.

²¹ Measures taken by the City Hall and legislative changes directed towards the improvement of the administration of the process of issuing permits.

²² Including April 2019.



The following methodology was applied with respect to the questions of audit:

1. What was the intensity of the construction planned and implemented in the capital during 2011-2018?

In this direction, information placed on an electronic portal for issuing construction permits (tas.ge) was analysed, and the information placed on the webpage of the Municipal Department for Urban Development (urban.tbilisi.gov.ge) was processed. See annex no 1 for the detailed methodology with respect to the given question.

2. To what extent are the current legislative norms and good public administration principles observed in the process of issuing permits?

Regarding the mentioned issue, and based on the legislative norms in force during the audit period, the audit team prepared the list of documentation to be submitted to the City Hall by the construction permit seeker in the process of issuing the permit and compared it to the documentation actually requested.

The audit team has also studied the construction permits and decisions relating the changes in the established city development parameters (special zonal agreement) and the subsequent financial liabilities incurred by the owners. The team studied the issues of registration and payment of the fees referred to in the special zonal agreements payable for the growth/breach of the development intensity coefficient that should have been ensured by the Tbilisi municipality. The existing data was processed, the data available on tas.ge was analysed and interviews conducted with the relevant responsible persons.

3. Do the amendments implemented during the audit period ensure the improvement of the residential environment?

To this end, the State Audit Office has evaluated the changes implemented with respect to several important components of the residential environment, namely:

- Regulation of alignment of the buildings to each other and its influence over the residential environment;
- Consideration of the issues related to transport infrastructure during the permit issuing process;
- Consideration of the public opinion in the permit issuing process.

Audit has studied the decision of the LEPL Municipal Departments of Architecture and Urban Development. At the same time, number of legislative changes regulating the field concerned and implemented during the audit period and their expected impact on ensuring high-quality residential environment were taken into consideration.

Study of the complaints expressed by the population and analysis of the permits relating these complaints was undertaken with a view to considering the public opinion.

Delimitation: the process of monitoring by the City Hall of the observance of the requirements of the construction permit issued and the engineering-structural or construction quality of completely new constructions is beyond the scope of the audit study.

1.4 AUDIT CRITERIA

National regulations laying down the principles of urban development as well as examples of good international practice were used as an audit criterion.

National legislation regulating spatial arrangement, planning and territories is based on the following hierarchy:

1. Code of Georgia on Spatial Planning, Architectural and Construction Activities and the Law of Georgia "On the Bases of Spatial Arrangement and City Development"²³ lay down the main principles of spatial arrangement/planning and specify the city development documentation required in this process on the level of state, municipality and settlement.
2. Resolutions of the Government and other national legislation lay down the rules of fulfilling the mentioned principles through the implementation of the relevant procedures and technical requirements.
3. The municipalities prepare development regulation rules based on the mentioned principles, approve municipal city development documentation and ensure the implementation of permit issuing procedures.

Graph no 3. Primary legislation regulating the field of construction during the audit period



²³ The above mentioned laws were in force during the audit period and were repealed on 3 June 2019 following the entry of the Code of Georgia on Spatial Planning, Architectural and Construction activities into force.

The best international practice of management of the process of issuing construction permits and construction field is important criterion to be applied during the audit process. To this end, the audit team has used the following main documents: World Bank Guideline,²⁴ World Health Organization Guideline²⁵ and Sustainable Urban Management Guidelines of Ireland,²⁶ and the documentation related thereto.²⁷

24 Good Practices for Construction Regulation and Enforcement, Reform Guidelines for Reformers, World Bank Group, 2013.

25 Guidelines for healthy housing, World Health Organization Regional Office for Europe, Copenhagen, 1988.

26 Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, government of Ireland, 2009.

27 Urban Design Manual A best practice guide, A companion document to the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, government of Ireland, 2009; Residential Density, Guidelines for Planning Authorities, Government of Ireland 1999.



2. GENERAL INFORMATION

MAIN CITY DEVELOPMENT DOCUMENTATION

The Law of Georgia “On the Bases of Spatial Arrangement and City Development”,²⁸ Code of Georgia on Spatial Planning, Architectural and Construction Activities and other normative acts determine the documentation necessary for urban development planning and implementation. The mentioned documentation constitute the basis for the issue of construction permits.

Graph no 4. Hierarchy of city development documents²⁹



When issuing the construction permits, the authorities in charge of issuing the permits use the mentioned city development documentation as a basis.

MASTER PLAN FOR LAND USE

General land use plan is a high level city development document laying down the **main parameters of development** and use of the territories (land use) and other important issues. A master

²⁸ The Law of Georgia “On Spatial Arrangement and City Development Bases”, Chapter IV, article 29-30.

²⁹ The given hierarchy was in force during the audit period. As from June 2019, as a result of entry of the Code of Georgia on Spatial Planning, Architectural and Construction Activities into force, the following documents were covered by the main city development documentation: a master plan, development plan and a detailed development plan.

plan is a general document and, as a rule, it is prepared in larger scale.³⁰ The main tool of implementation of a master plan is functional and performance zoning. Functional zoning is used to determine the designation of the use of territories in the city. The functional zones distinguished on the territory of Tbilisi are the following:

Graph no 5. The main functional zones of the territories of Tbilisi³¹



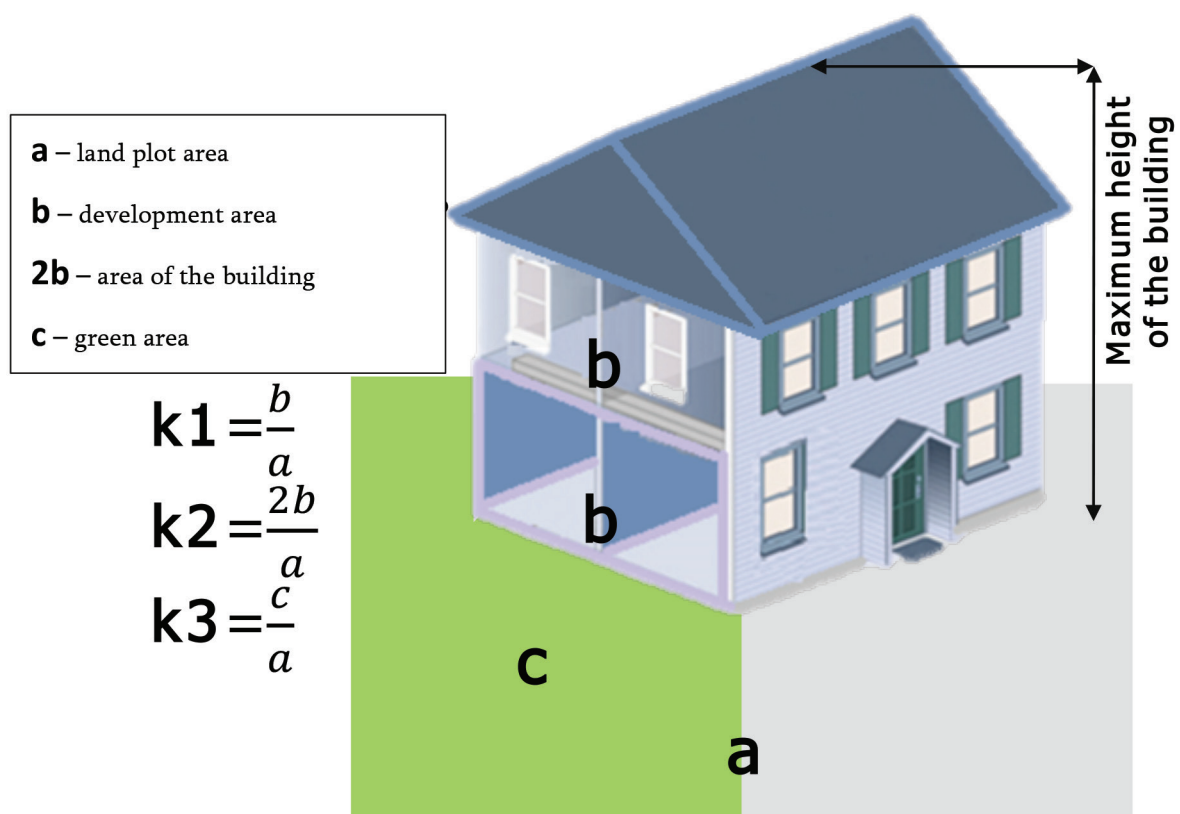
- **Industrial zone** – territories for use for industrial purposes and for handling substances dangerous for human health.
- **Residential zone** – territories for residential use.
- **Public-business zone** – territories for commercial or other public use.
- **Transport zone** – roads, territories designated for transport infrastructure.
- **Agricultural zone** – territories for agricultural use.
- **Recreation zone** – green territories for leisure and recreation.
- **Landscape-recreation zone** – natural landscape or artificial landscape territories of value.
- **Forest zone** – state forest territory.
- **Special zone** – territories of special use (for instance: medical, cemetery, military, etc.).
- **Sanitary zone** – territories of protection from harmful impacts.

Performance zoning determines the types and designations of buildings permitted for construction in the functional zones and lays down the permitted regulation parameters. Information about the mentioned parameters is provided in the graph given below:

30 1:25000 and 1:15000

31 The above mentioned main zones are presented according to the master plan. Other zones are established in accordance with the zones

Graph no 6. Main development regulation parameters³²



For instance, the parameters permitted for residential zone no 6 are the following: k-1 – 0.5, k-2 – 2.5 and k-3 – 0.3. The height of the building is not regulated in the mentioned zone.³³ The above mentioned parameters imply that, for instance, a building may occupy maximum 500 sq. meters of the land plot having the size of 1000 sq. meters in case of residential zone no 6³⁴ – **development area (established by a normative document/master plan)**, total floor area of the building may be maximum 2,500 sq. meters³⁵ – area of the **building (established by a normative document/master plan)**, and the green area should occupy minimum 300 sq. meters.³⁶

It is possible to allow exceeding the norms established by performance zoning for the mentioned parameters through special zonal agreements. Special (zonal) agreement³⁷ constitutes a rule of exception in terms of regulation of the use and development of the territories and is issued in cases where the planned construction is not consistent with the development regulation parameters established for the territory through performance zoning and with the types of buildings determined for a functional zone.

32 k1 – land plot development coefficient, k2 – land plot development intensity coefficient, k3 – land plot greening coefficient. Development regulation parameters are also: dimensions of the land plot, red and blue development lines, number of parking lots and other possible parameters.

33 Regulation thereof is subject to the so-called “beam rule” laid down by regulation.

34 1000X0.5

35 1000X2.5

36 1000X0.3

37 Special zonal agreement implies the change of k1 and/or k2 coefficients.

With a view to implementing the views outlined in the master plan it is necessary to ensure the availability of the lower level documents which would describe the prospects of the development of the territory more specifically, in smaller scale.

FRAMEWORK PLAN

As compared to the master plan, the framework plan sets forth the directions and priorities of the planning within the procedure and the provisions established for smaller territories.³⁸

DEVELOPMENT REGULATION PLAN

The following lower level document is the development regulation plan (DRP) which establish the development regulation parameters for a settlement area. The DRP is developed in case of large territories allocated for construction³⁹ or the territories positioned in the unregulated development conditions. Development regulation plan is a complex document covering different types of feasibility and justification, including study of physical environment, feasibility study, zoning and engineering studies.

LAND USE CONDITIONS FOR CONSTRUCTION PURPOSES

Conditions for land use for construction purposes (LUC) is the list of requirements that shall be met during the construction of buildings on a specific land plot. The LUC shall be developed in cases where the development is planned on a small territory and the land plot is positioned in a regulated development conditions. Establishment of the conditions for the use of land for construction purposes is the first stage of issuing a construction permit. Development of the LUC is not necessary in case the development regulation plan is prepared for the land plot, since the construction permit is issued on the basis of a development regulation plan.

The design of the building is developed and agreed on the basis of a land use conditions/development regulation plan that is the second stage of issuing a construction permit.

PROCEDURES FOR ISSUING CONSTRUCTION PERMITS

The following authorities are involved in the process of issuing a construction permit and in the execution of the permit requirements: the LEPL Municipal Department of Architecture of Tbilisi City Hall, Municipal Department for Urban Development, Municipal Department of Environment Protection and Municipal Department for Supervision.

The buildings and the construction works are divided into 5 categories for the purposes of issuing a construction permit and putting it into operation.

³⁸ Framework plan is a non-legal document, though, according to the existing practice, is was developed and agreed by the Municipal Department of Architecture of Tbilisi city.

³⁹ In case of Tbilisi, the territories exceeding 7000 sq. meters.



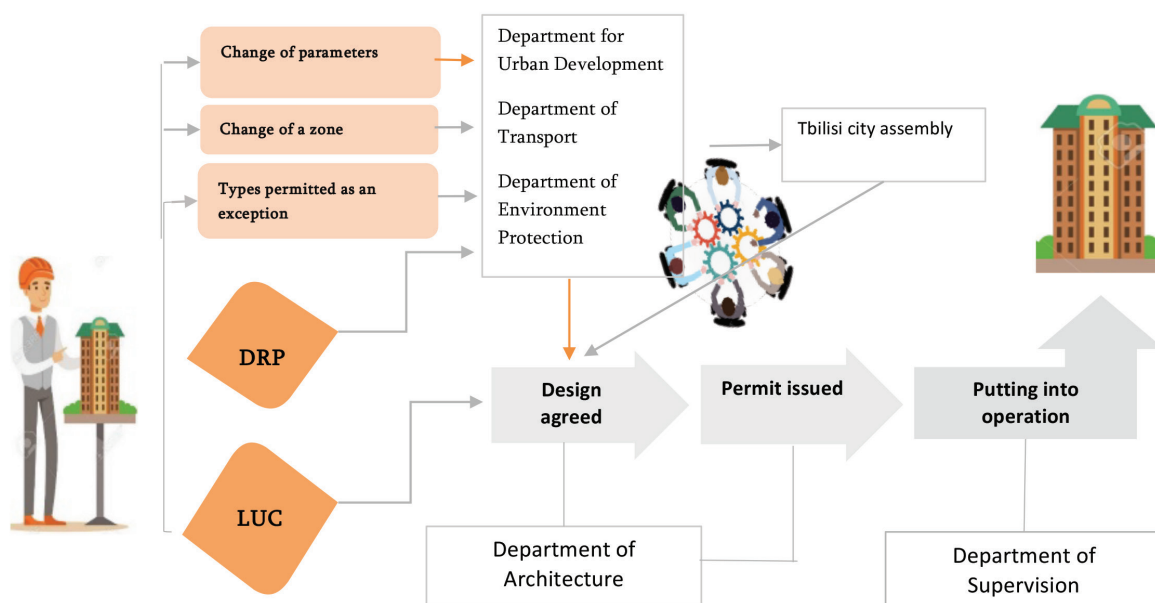
Graph no 7. Building classes



In case of buildings subject to class V, the construction permit is issued and the construction supervision carried out by the LEPL Technical and Construction Supervision Agency of the Ministry of Economy and Sustainable Development of Georgia. In case of buildings subject to class I-IV, the construction permit is issued and the construction supervision carried out by the executive authority of the relevant local self-government unit which in case of Tbilisi is the **LEPL Municipal Department of Architecture of Tbilisi city**.

The process of issuing construction permits is provided on the graph given below.

Graph no 8. Process of issuing construction permits



- I. During the first stage of the issue of a construction permit, a permit seeker shall obtain the conditions for the land use for construction purpose or a GRP. Agreement of a DRP is the competence of the **Municipal Department for Urban Development**.⁴⁰ LUC is issued by the LEPL **Municipal Department of Architecture**.
- II. In cases where a permit seeker intends to change the established development regulation parameters or construct a building that is not consistent with the performance zoning, a permit seeker shall apply to the Municipal Department for Urban Development with a view to obtaining a special zonal agreement. The Department, with a view to considering the advisability of issuing a special zonal agreement, shall require relevant justification from the permit seeker containing the description of the influence of the changes on the public interests and the justification that the mentioned changes will not cause deterioration of the residential environment. The Municipal Department of Transport and the Municipal Department of Environment Protection shall also take part in the mentioned process. In case of consent of the Department for Urban Development, a special zonal agreement is concluded on the basis of the resolution of the Tbilisi Mayor. In cases where a special zonal agreement implies the increase of a k-2 coefficient a permit seeker shall pay the amount calculated by using the relevant formula.

In cases where the construction is inconsistent with the relevant zoning of the land plot, a permit seeker may request the change of the zone established by the master plan into the zone desired thereby. The proposal of change of the zone shall be reviewed by the Department for Urban Development which, where necessary, shall apply to the Municipal Department of Transport and the Municipal Department of Environment Protection for their opinion.

- III. Subsequent to the completion of the first stage of a permit issuing procedure, a permit seeker shall submit the architectural design to the Department of Architecture for agreement.⁴¹ The design shall present the data of the building in terms of both internal and external planning. An architectural design shall be consistent with the conditions of land use for construction purposes, development regulation rules and other regulatory norms.
- IV. Subsequent to the issue of the permit, the competences of **Municipal Department of Supervision Tbilisi city** cover checking the consistency of the construction process with the permit conditions during the construction period and putting the building into operation after the completion of the construction. Putting the building into operation implies confirmation of the consistency of the building with the architectural design by the Department.

40 Eventually, the Development Regulation Plan is approved by the Tbilisi Municipal Assembly.

41 Resolution no 57 of the Government of Georgia of 24 March 2009 "on the Rules of Issuing Construction Permits and Permit Conditions".



3. AUDIT FINDINGS

CONSTRUCTION DEVELOPMENT PLANNED AND IMPLEMENTED DURING 2011-2018

Statistics of the construction permits issued by the Tbilisi municipality during 2011-2018 and the status of their realisation (practical use) was assessed within the audit.

The assessment was implemented in the following directions:

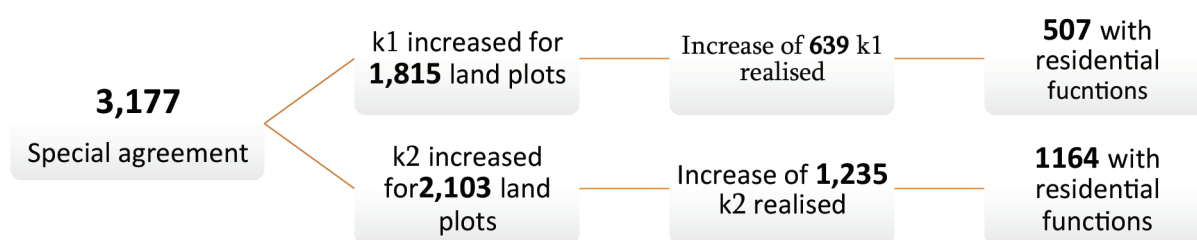
- Parameters and the status of realisation of special zonal agreements⁴² and permits issued on the their basis;
- Construction permits issued, their parameters and status of realisation;⁴³
- Development regulation plans agreed and their parameters.

Where the permits are concerned, the permits of class III and IV with residential function were summarised according to their materiality.⁴⁴

3.1 SPECIAL ZONAL AGREEMENTS ISSUED AND THEIR PARAMETERS

The audit team has assessed the total values of exceeding coefficients k1 and k2 based on special zonal agreement issued during 2011-2018. The mentioned information is provided on the graph given below.

Graph no 9. Special zonal agreements issued during 2011-2018⁴⁵⁴⁶



The details of the above mentioned information is provided in the graphs given below.

⁴² Increase of k1 and k2 coefficients.

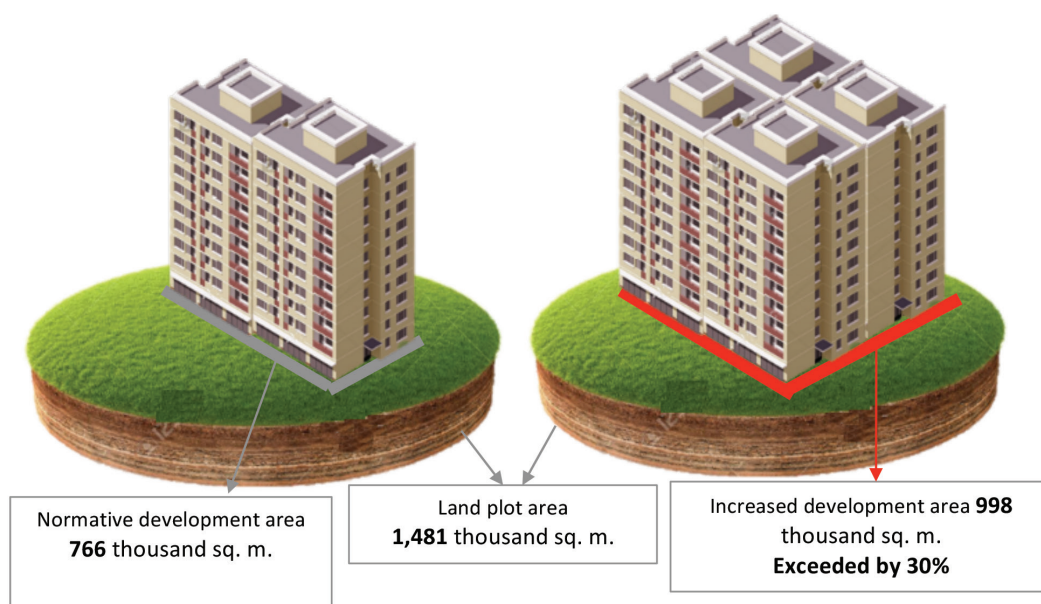
⁴³ k1 and k2 coefficients, development area and building area.

⁴⁴ A multi-apartment, single-apartment and double-apartment multifunctional residential building and a hotel.

⁴⁵ 741 land plots had an increase of both k1, and k2 coefficients whereby the total of the number of increases of k1 and the number of increases of k2 exceeded 3177.

⁴⁶ Buildings with residential functions cover: the multiapartment, multifunctional, single/double-apartment and hotel type buildings. Realisation implies the issue of a new construction permit on the basis of increased parameters.

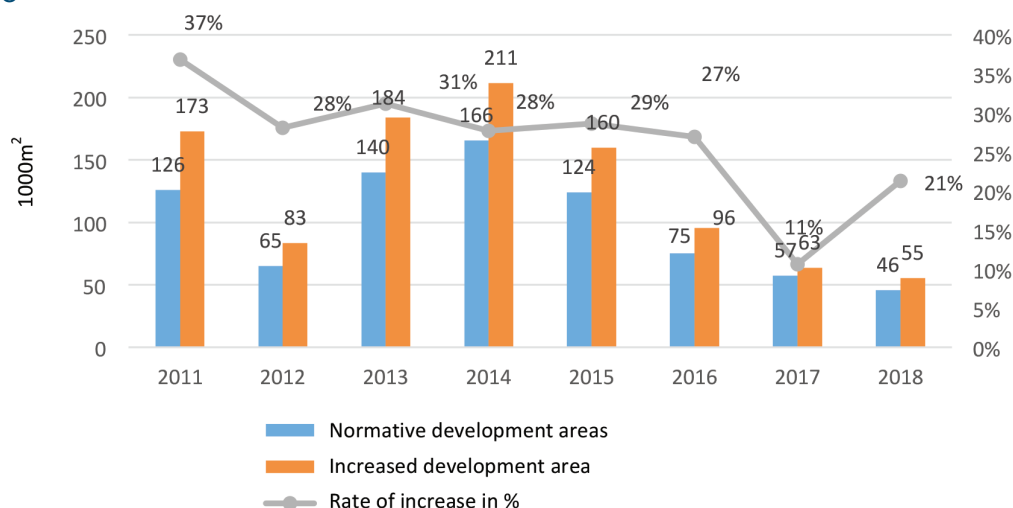
Graph no 10. Increase of development area as a result of increase of a coefficient k1 during 2011-2018



As shown on the graph given above, construction of buildings was permitted in case of 67% of the land plots⁴⁷ with the total area of 1,481 thousand sq. meters, as compared to 52% established by normative acts⁴⁸ based on the special zonal agreements issued during 2011–2018. This means increasing the development area by 30% as compared to the one established in the master plan.

The tendency of increase of the development area as a result of increase of a coefficient k1 by years is provided on the graph given below.

Graph no 11. Increase of the development area as a result of growth of a coefficient k1 during 2011-2018⁴⁹



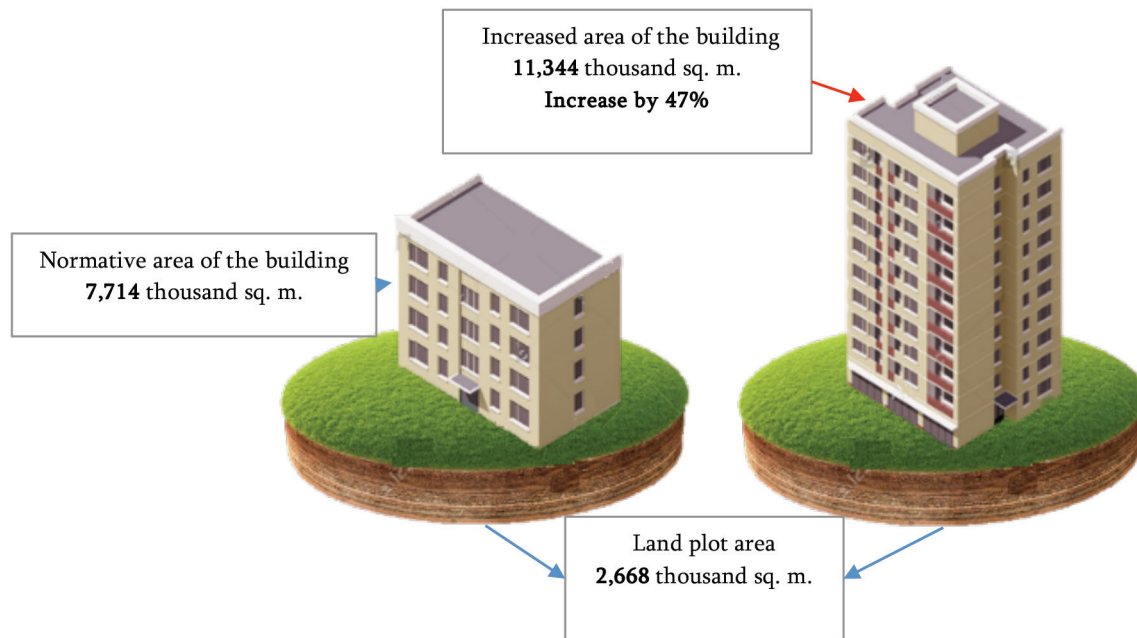
47 998/1,481

48 766/1,481

49 The total of the values provided on graph no 12 exceeds the values presented on graph no 11 since the graph no 12 covers the multiple increases carried out on the same land plot.

Increase of a coefficient K2 was more intensive and, subsequently, the development intensity as compared to the increase of a coefficient k1. Total values of increase of development intensity during 2011–2018 as a result of increase of a coefficient k2 is provide on the graph given below.

Graph no 12. Increase of development intensity during 2011–2018



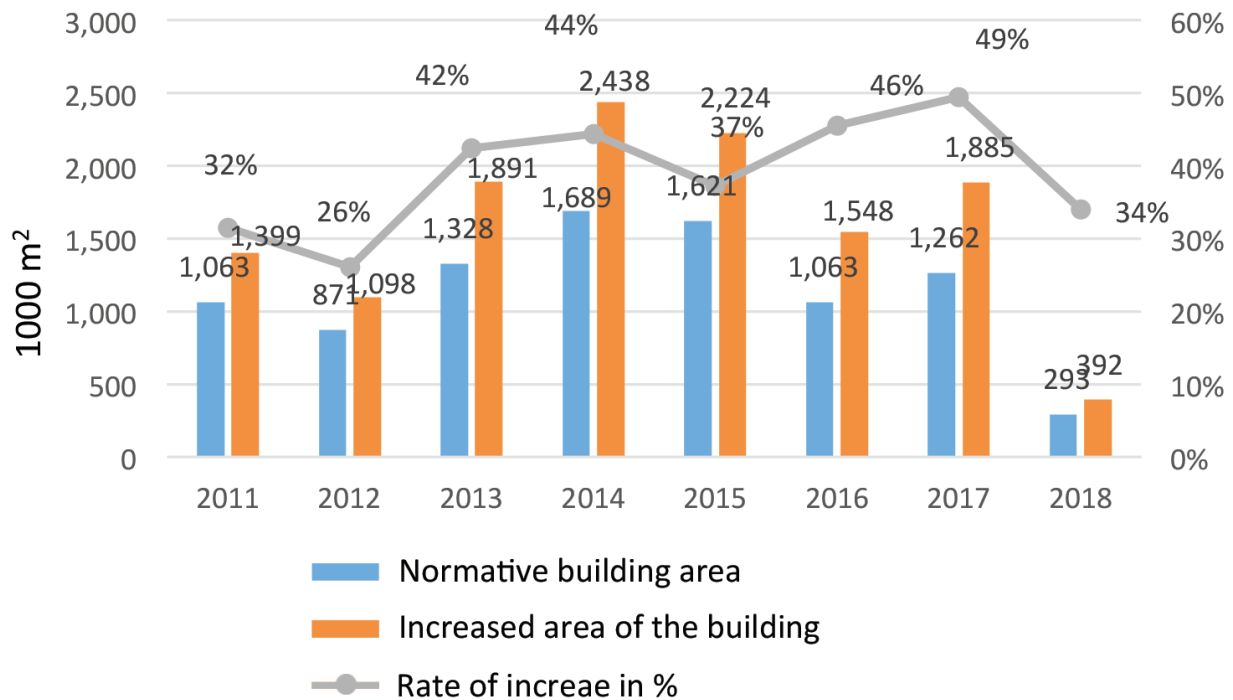
As shown on the graph, construction of 11,344 thousand sq. meters instead of 7,714 sq. meters established in the master plan was permitted on the land plot with total area of 2,668 thousand sq. meters during 2011–2018 as a result of special zonal agreements. This points to the fact that the **development intensity permitted in the capital through special zonal agreements increased by 1,5 times the one established in the master plan**. Average coefficient k2 accounted for 4,25⁵⁰ instead of 2,89 established in the master plan.⁵¹

A year-based tendency of growth of development intensity is provided on the graph given below.

50 11,344/2,668

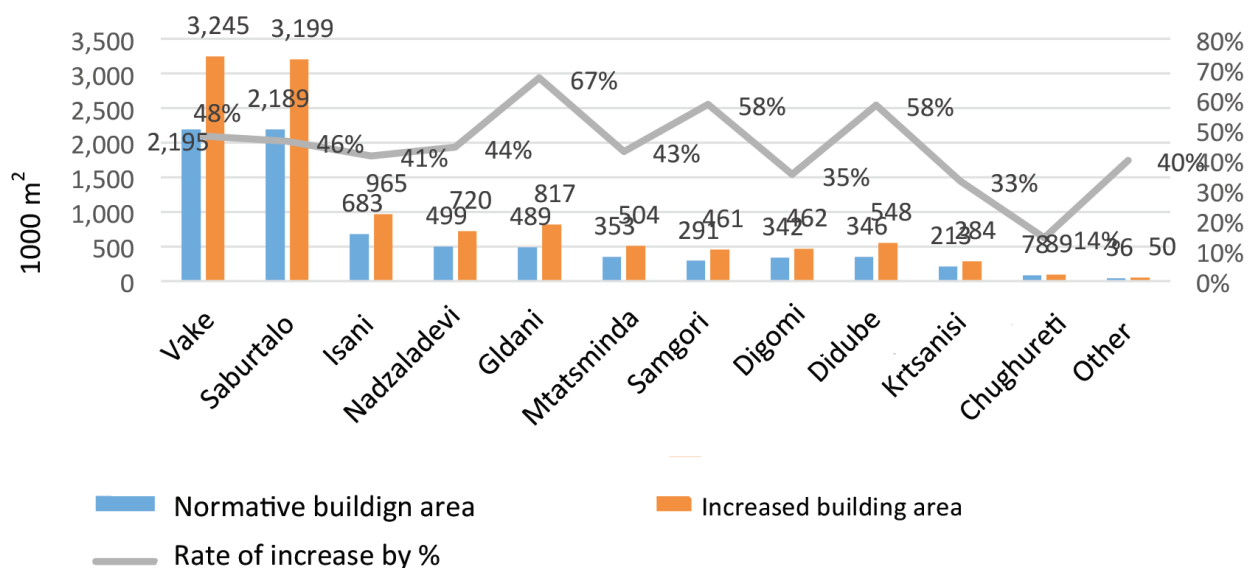
51 7,714/2,668

Graph no 13. Increase of development intensity based on special zonal agreements during 2011–2018



The greater increase of development intensity was observed during 2014-2015 while the lower increase rate was observed during the year 2018. Increase of development intensity according to the districts of the capital is provided on the graph given below.

Graph no 14. Increase of development intensity according to the districts⁵²

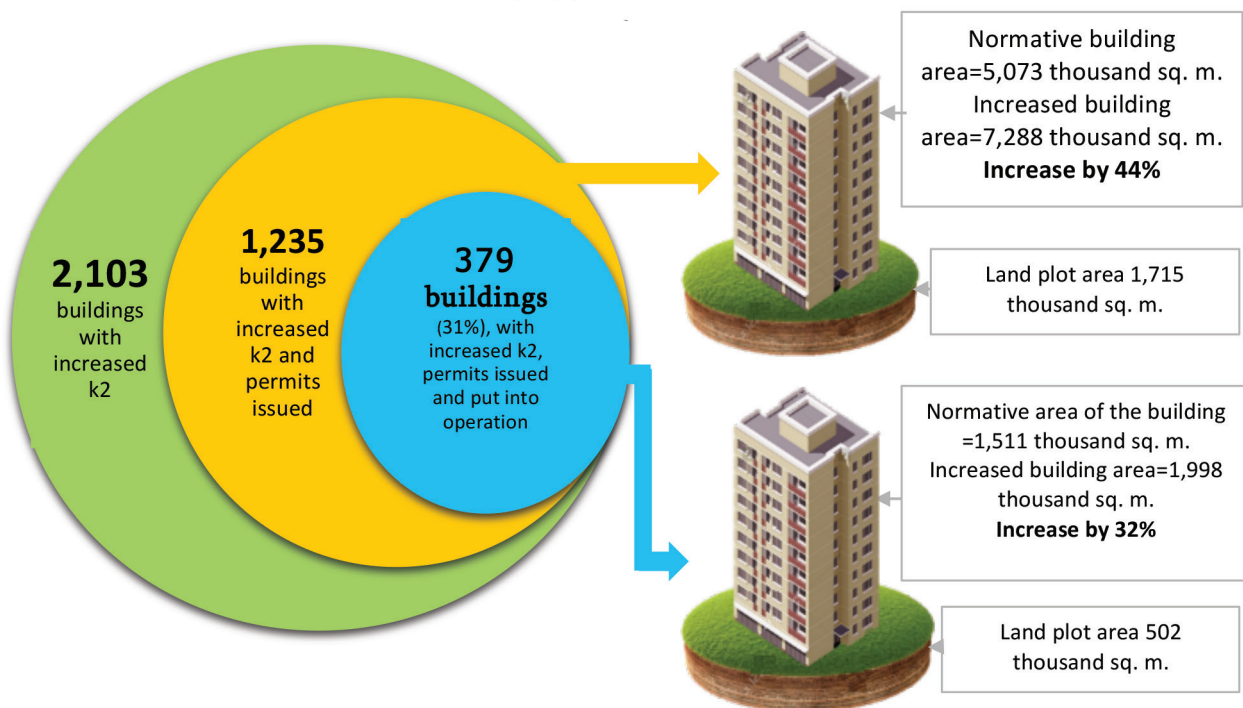


⁵² Data: „Other“, includes the aggregate of data of the following territories: Lisi, Kojori, Tskneti, Tabakhmela, Didi Lilo, Fonichala, Zahesi, Village Gldani, Khekhilsanerge. Division by regions is based on the map of the public registry.

As shown on the graph, the highest development intensity is observed in Vake and Saburtalo regions.

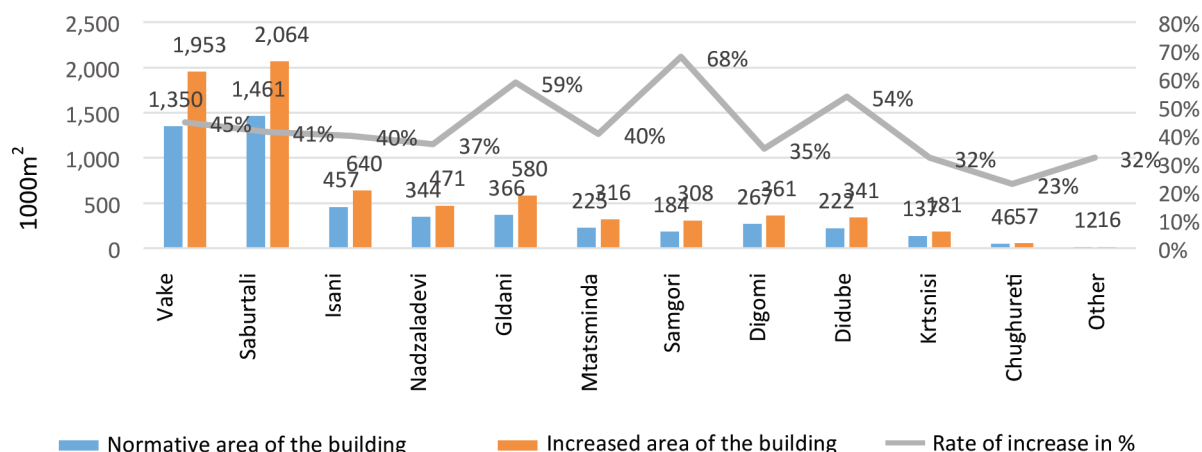
Considering that the special zonal agreement does not automatically imply the construction permission, the audit team has evaluated the realisation values of increase of development intensity. This means special zonal agreements based on which the construction permits were issued with increased parameters. At the same time, values of putting into operation of the permits issued on the basis of increase of development intensity coefficients were also evaluated.

Graph no 15. Increase of development intensity realised during 2011 – 2018



The assessment covered as well the indicators of realisation of the growth of development intensity according to the districts of the city. Information about the realisation of growth of development intensity permitted during 2011-2018 as a result of the increase of a coefficient k2 is presented according to the districts of the city on the graph given below.

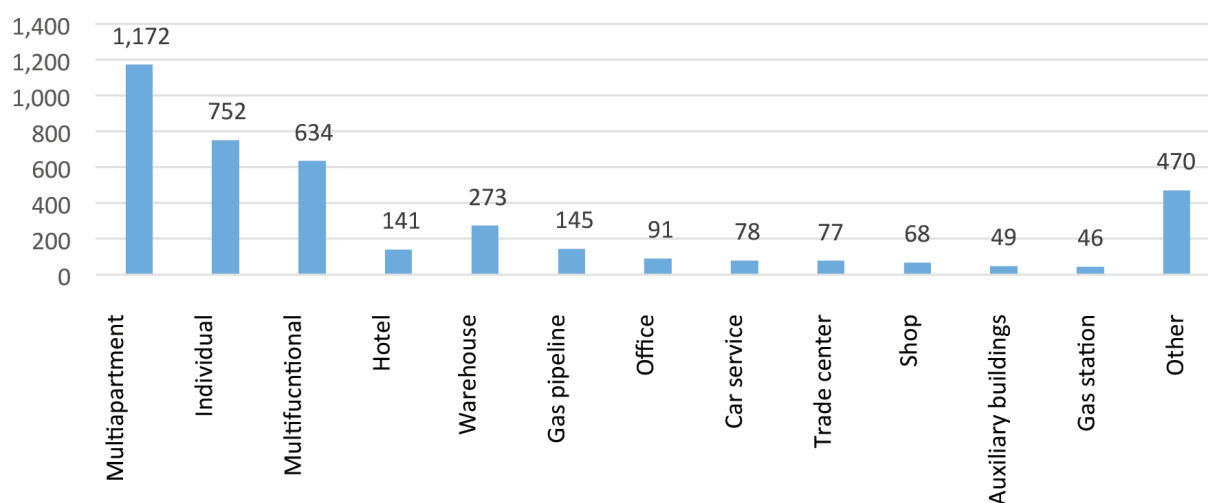
Graph no 16. Realisation of increase of development intensity according to the districts



As shown on the graph, the most of the realisation of the increase of the construction intensity through the issue of the construction permits corresponds to the regions of Vake and Saburtalo.

3.2 CONSTRUCTION PERMITS ISSUED AND THEIR PARAMETERS

Graph no 17. Permits issued for III-IV class buildings during 2011-2018⁵³



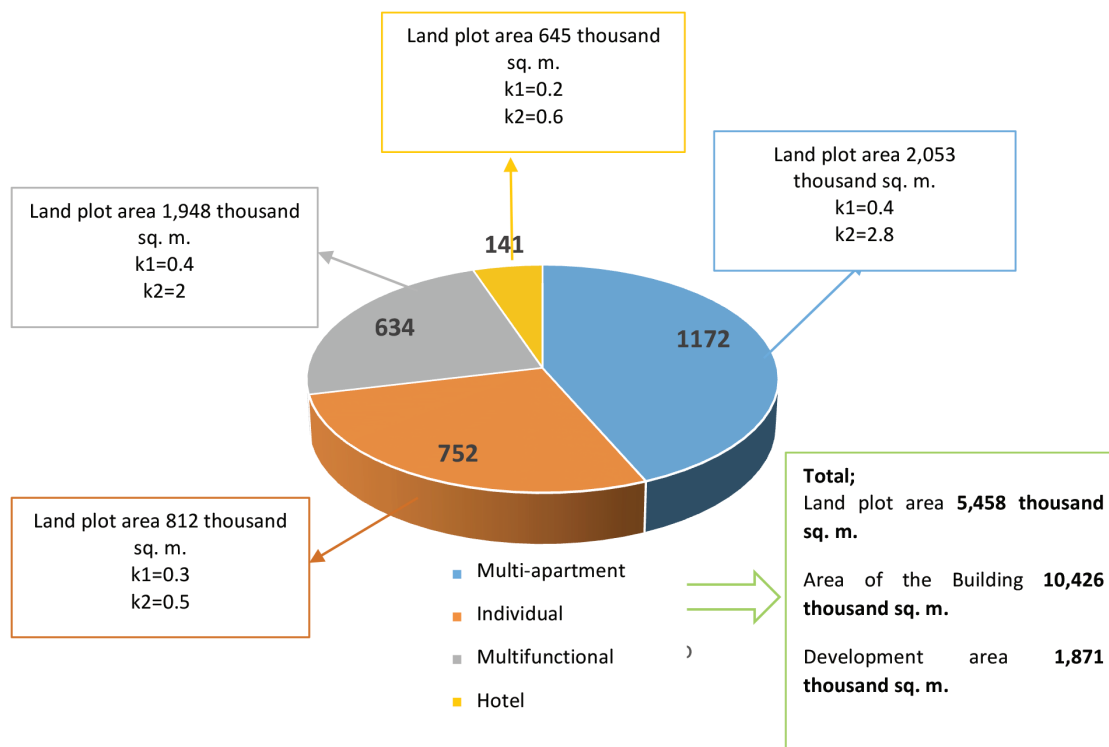
As shown on the graph, most of the permits are issued for the buildings with residential functions⁵⁴.

The audit team has carried out detailed assessment of the parameters of the permits issued for residential buildings. The results of the assessment are presented on the graph given below.

⁵³ The given numbers imply the permits issued on unique land plots issued under the "new construction" nomenclature.

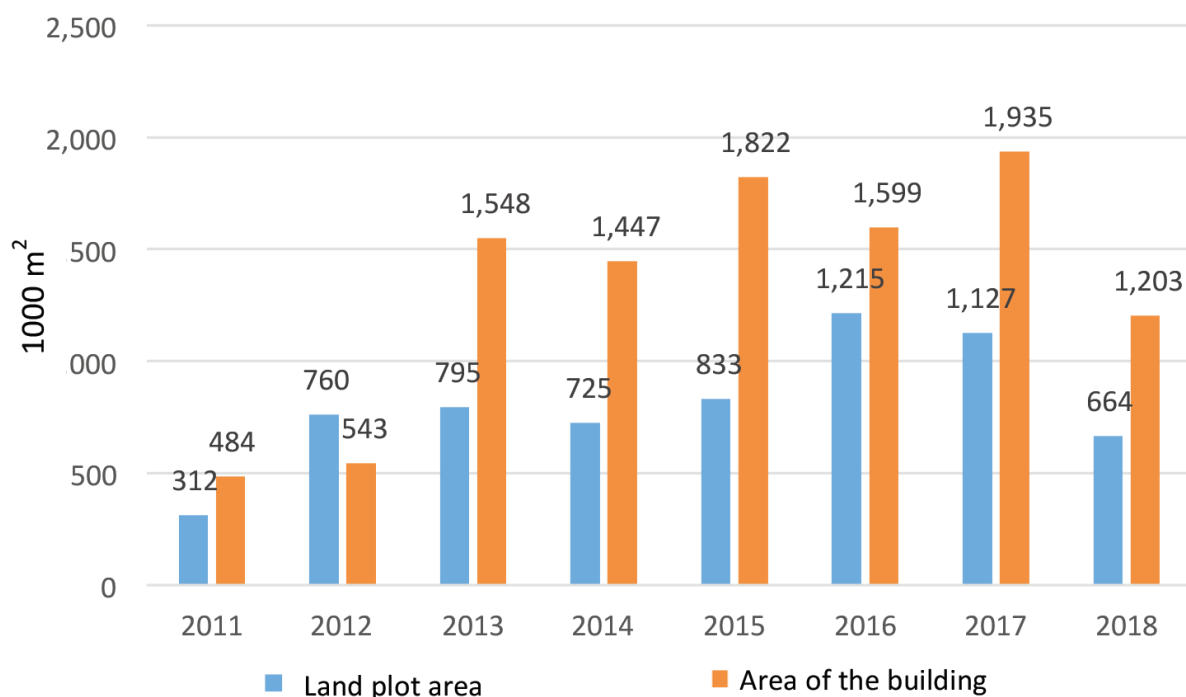
⁵⁴ Multi-apartment, multifunctional, single-apartment/double-apartment, hotel.

Graph no 18. Parameters of the permits issued for buildings with residential functions



As shown on the graph, most of the permits were issued for the multi-apartment residential houses. At the same time, the permits issued on multi-apartment houses are distinguished with the highest development parameters. The parameters of the permits according to the years are shown on the graph given below.

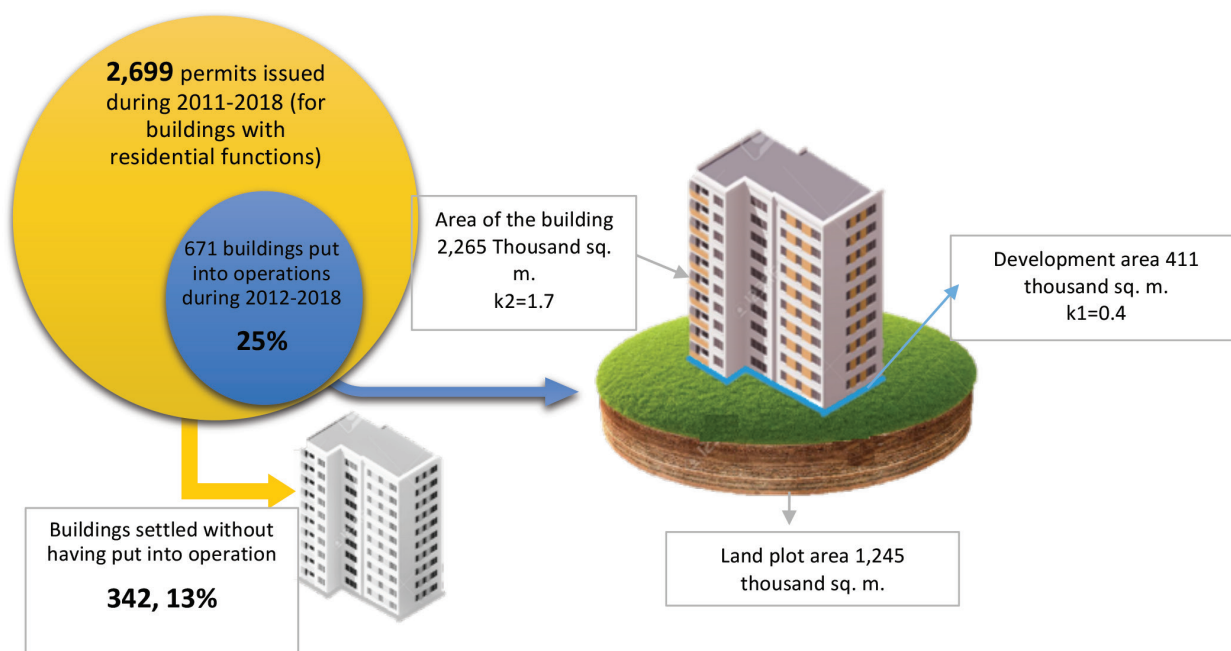
Graph no 19. Characteristics of the permits issued during 2011-2018



3.3 NUMBER OF COMPLETED BUILDINGS

The share of the completed constructions in the total number of permits issued for the buildings with residential functions as by 2018 was assessed during the audit. To this end, the number of the permits issued for the construction of the buildings having entered into operation was summarised. The results are provided on the graph given below.

Graph no 20. Realisation indicator of permits issued for residential buildings

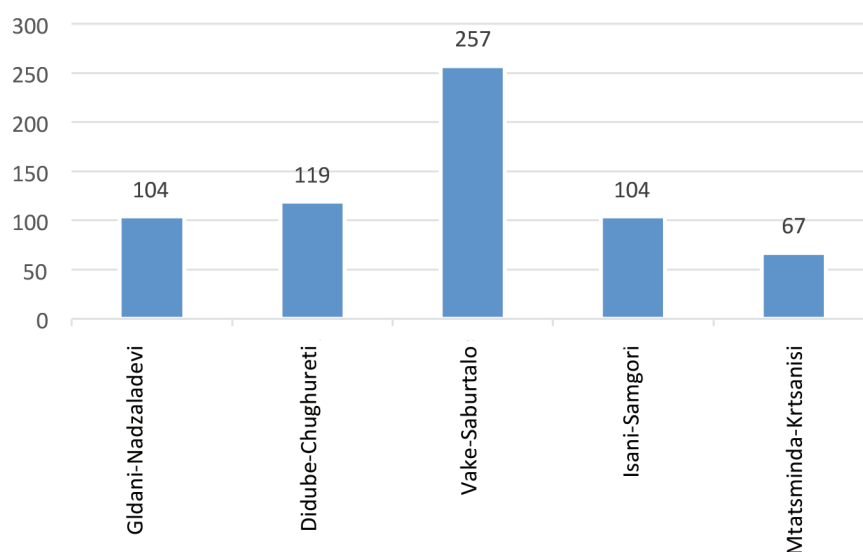


As shown on the graph, number of completed/settled multi-apartment buildings exceeds the number of buildings having put into operation by minimum 342. It should be noted that according to the regulation in force during the audit, settlement of buildings without having put into operation is deemed as infringement of law. Subsequently, the mentioned regulation caused the buildings that are settled without having been put into operation.⁵⁵ Exact number of such buildings is unknown but it would not be less than the value presented on the graph. The audit team has estimated the number of buildings used for residential purposes without having been put into operation based on the information provided by the municipality of the city (including the buildings constructed under the permits issued during 2011).

Distribution of the above-mentioned buildings according to the districts are provided on the graph given below.

⁵⁵ The value presented on the graph was calculated based on the information provided by the municipality, which, according to the municipality, is incomplete.

Graph no 21. Number of buildings settled without having been put into operation

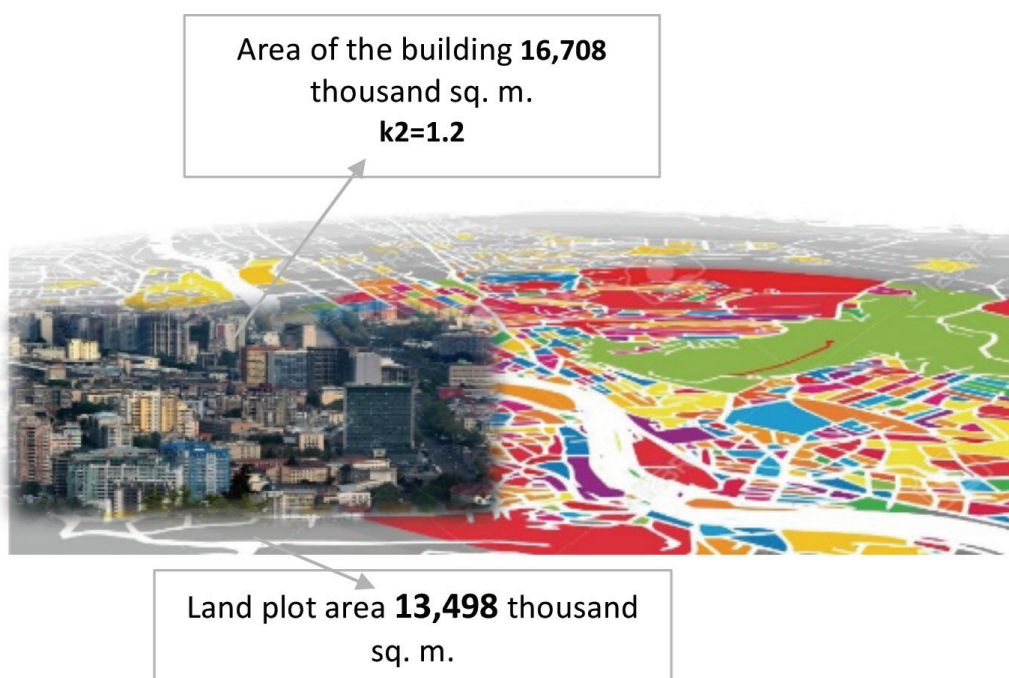


As shown on the graph, minimum 651 buildings are used for residential purposes in the capital without having been put into operation of which 342 were constructed based on the permits issued during 2011-2018 and 309 were constructed on the basis of permits issued before 2011.

3.4 AGREED DEVELOPMENT REGULATION PLANS (DRPS) AND THEIR PARAMETERS

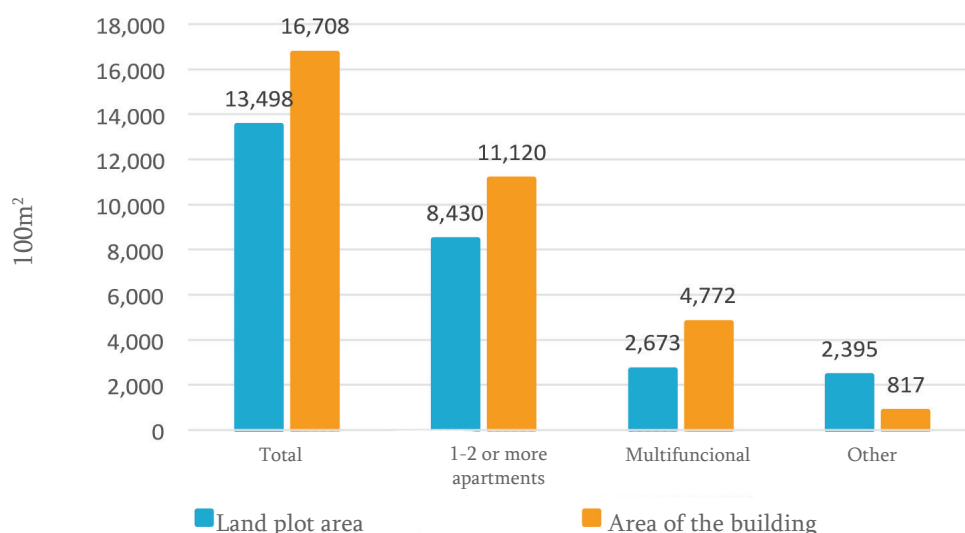
The total of the areas in the capital planned during 2011-2018 through the agreement of the development regulation plans was significant.

Graph no 22. Summary of the characteristics of the DRPs agreed during 2011-2018



According to the development regulation plans agreed during the mentioned period, development of 1,671 ha building area was planned on the land plot of 1,350 ha. Considering that the agreement of DRPs was mainly ensured for larger areas, excessive growth of development intensity coefficient k_2 was not necessary any more that can be seen from statistical analysis as well.

Graph no 23. Agreed DRPs according to the functions and areas



CONCLUSION

The period of 2011-2018 was marked with intensive construction development in Tbilisi. This was due to the intensive growth of the established parameters and the permits issued according to the increased parameters. Development intensity coefficient was increased by 47% on 267 ha⁵⁶ during the mentioned period of which only 67% (i.e. 171 ha) had the increased coefficient realised through the construction permits issued. Considering the fact that special zonal agreements were applied in case of about half of the construction permits issued during this period, this has changed the exceptions permitted by law into the generally accepted practice.

Higher growth in development intensity was marked in relatively prestigious districts – Saburtalo and Vake. The analysis has shown that almost half of the special zonal agreements was issued on the mentioned districts. The reforms initiated from 2018 have sharply reduced the number of special zonal agreements and the tendency of development intensity growth.

Large areas were planned during this period through the agreement of development regulation plans as well. Approximately 1,350 ha was planned through DRPs during 2011-2018 constituting about 6-7% of the developed part of the capital city. Most of the permits issued during 2011-2018 were for the construction of buildings with residential functions. By 2018, only 25% of the buildings constructed under the permits issued during the mentioned period were put into operation. Though, the number of buildings used for residential purposes without having been put into operation accounted for at least 13%. Subsequently, minimum 38% of the buildings with residential functions constructed under the permits issued during 2011-2018 has already been completed and is used for residential purposes.

⁵⁶ For comparison purposes, the mentioned area accounts for about 30% of Didube region.

4. CONSISTENCY OF THE CONSTRUCTION REGULATION PROCESS WITH THE LAW

4.1 DEFICIENCIES IN THE JUSTIFICATION OF ZONAL AGREEMENTS

According to legislation in force during the audit period⁵⁷, change of the maximum values of the established main development regulation parameters were permitted on the basis of the approved development regulation plan or a special (zonal) agreement on provision that:

- a) This is conditioned by spatial-territorial planning and architectural as well as other development-related needs identified on the settlement;
- b) The change is compensated by other measures;
- c) It does not contradict other public interests.

According to the explanation, a special zonal agreement is an exceptional condition and it may be issued only under the condition that all off the three above mentioned provisions are met.

Until 2018, the decisions on advisability of the special zonal agreements were made by the Committee.⁵⁸ In case of a positive decision of the Committee a special zonal agreement was issued on the basis of an order of the Mayor of the capital.

The audit team has studied the decisions taken by the Committee during 2016-2017 on special zonal agreements and the permits issued accordingly. In none of the cases of 80 agreements⁵⁹ studied by the audit team, the provided materials did not contain the justification of the advisability of the issue of a special zonal agreement in accordance with the criteria presented in the law.

The Committee was cancelled in 2018 and the advisability of the issue of special zonal agreements is reviewed by the Municipal Department for Urban Development of Tbilisi. Following the adoption of a new master plan by the capital in March 2019 the issue of special zonal agreements was limited to the exceptional cases.⁶⁰

It should be noted that since April 2018, following the creation of the Department for Urban Development, the share of applications and positive decisions concerning the change of development regulation parameters has sharply declined. As shown by the study, the Department refused the proposed growth of the parameters quite frequently – due to lack of sufficient justi-

57 Law of Georgia “on the Bases for Spatial Arrangement and City Development”, article 31.

58 Resolution no 16-32 of the City Assembly of Tbilisi Municipality of 05 December 2014 „Approving the Regulation of the Committee in Charge of the Issues of Regulating the Use and Development of the Territories of Tbilisi Municipality“.

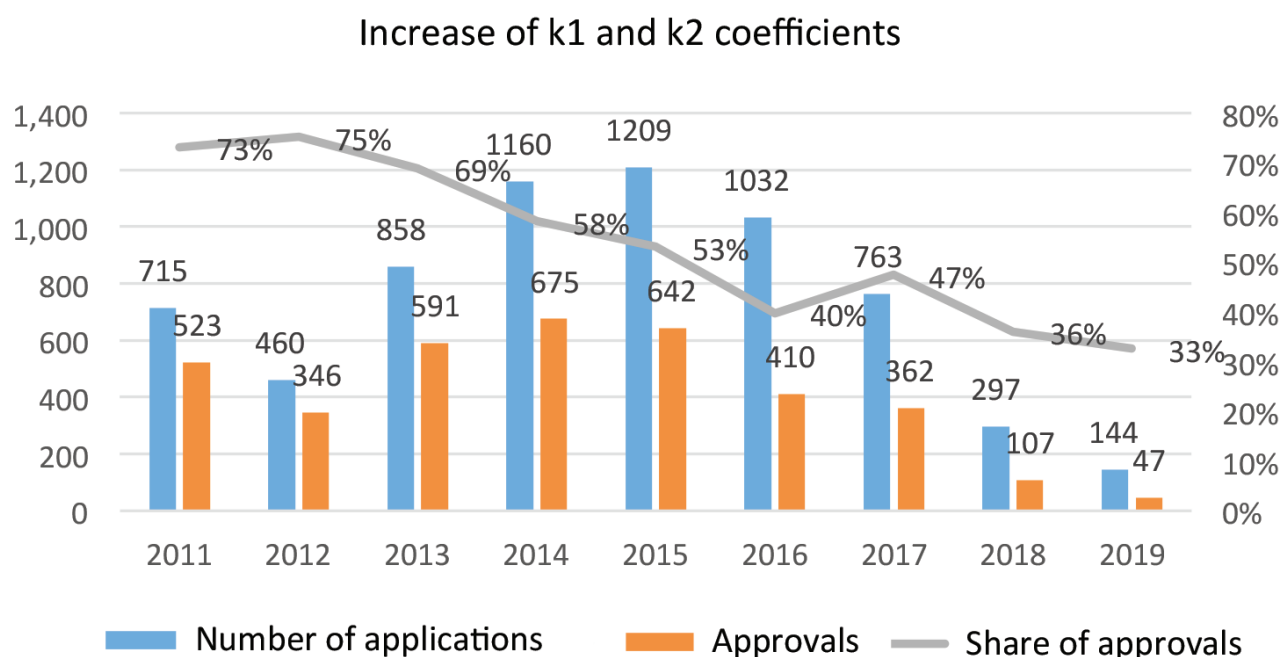
59 The study has covered the agreements issued for the construction of class III or class IV buildings.

60 Resolution no 14-39 of the City Assembly of Tbilisi Municipality „Approving the Rules for the Regulation of Use and Development of the Territories of Tbilisi Municipality“, article 21.



fication or based on the argument that they opposed public interests. The corresponding values of applications having entered the Department of Architecture and the Department for Urban Development and positive decisions made during 2011 – 2019⁶¹ are summarised on the graph given below.

Graph no 24. Number of applications having entered the departments and the approvals issued during 2011 – 2019⁶²

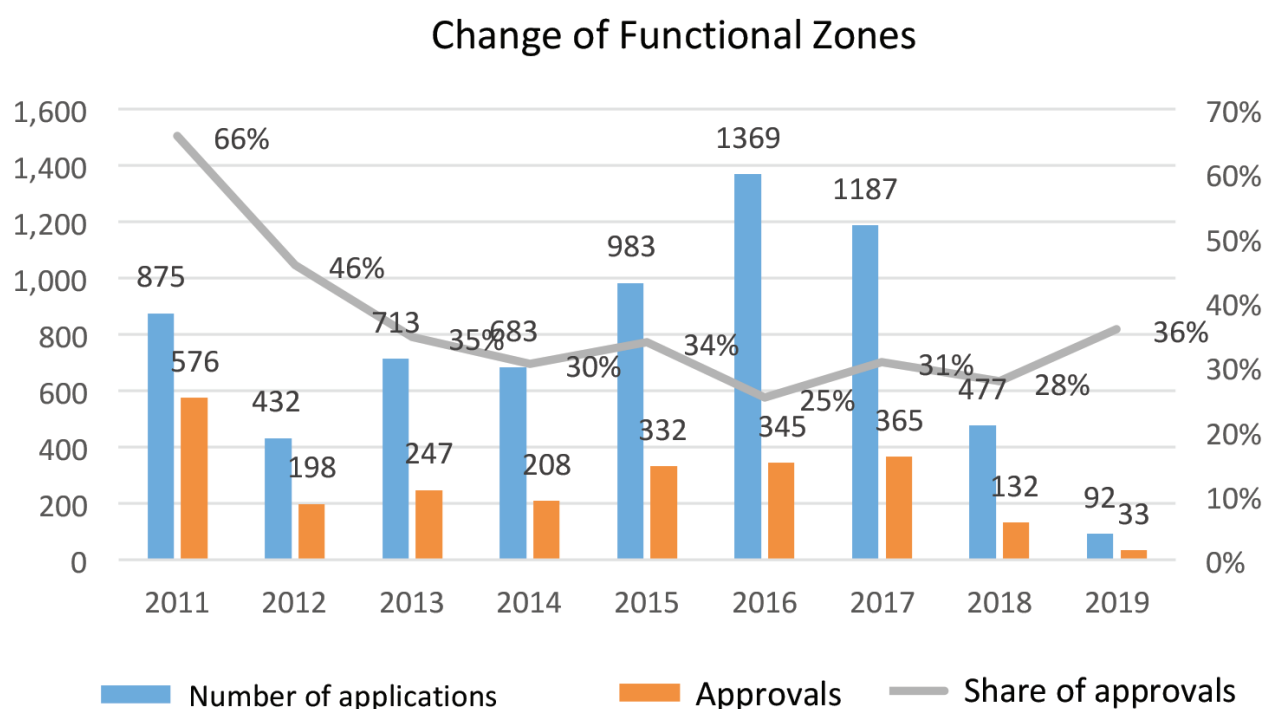


Significant reduction was also marked in terms of changes of functional zones established by the master plan. According to the existing data, the number of applications for the changes of the functional zones has sharply declined during 2018-2019 while the share of the positive decisions remained the same on average.

61 Data of 2019 contain data including the month of April.

62 Data of 2019 contain data including the month of April.

Graph no 25. Indicators of changes of functional zones



As shown in the presented analysis, the special zonal agreements were not issued in observance of the relevant legislative norms. Notwithstanding that the legislative norms were quite general and provided for broad interpretation possibilities, the administrative authorities of the capital city failed to observe the above-mentioned legislative norms. It should be noted that positive tendencies were marked since 2018 towards the justification/restriction of special zonal agreements.

4.2 ADMINISTRATION OF THE SPECIAL ZONAL AGREEMENT FEES

According to the amendments made in 2007 to the law of Georgia “on Local Fees”, fees were required in case of changes in the maximum permitted indicators of development parameters.⁶³

According to the explanatory note of the draft law, the purpose of the above-mentioned fees was the increase of budget revenues.⁶⁴ The law set forth the upper limit of the fee per square meter of the area of construction of 400 GEL. The fee was calculated according to the formula provided in the law⁶⁵ and the law required payment thereof at the time of issue of the permit.

In 2007 the City Assembly of the capital approved the instruction on determination and payment of the fees for issuing the special zonal agreements based on the Law “on Local Fees”.

⁶³ The amendments were initiated by the President of Georgia and developed by the City Hall of the Capital.

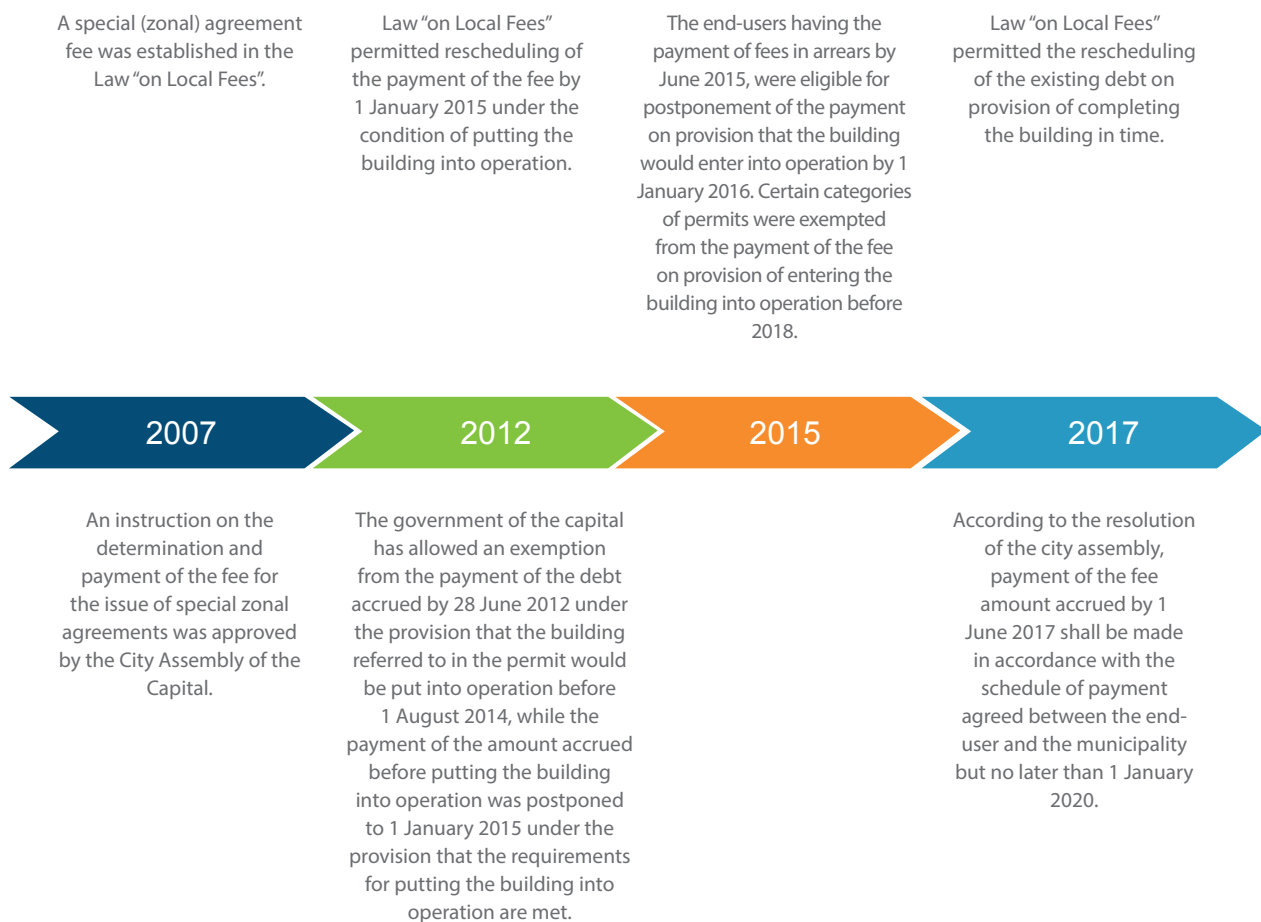
⁶⁴ Draft amendments to the Law of Georgia “on Local Fees”, explanatory note, 2007.

⁶⁵ Law of Georgia “on Local Fees”, article 122.

The instruction permitted imposition of the liability of payment of the fee within one year after issuing the permit according to the schedule presented by the owner but not later than the entry of the building into operation, instead of paying it upon the issue of the permit.

Considering a large number of special zonal agreements, the significant amount of fees accrued payable by the owners to the City Hall. Several amendments were made to the Law on Local Fees periodically with a view to facilitating of incomplete constructions and boosting the construction sector by granting certain concessions on the arrears related to the special zonal agreements.

Graph no 26. Concessions granted with respect to the fees of special (zonal) agreements



It should be noted, that the purpose of the above mentioned concessions was the facilitation of a timely completion of the buildings.

In 2019, fee for the issue of a special zonal agreement was abolished according to the amendments made to the Law "on Local Fees" along with the entry of the Code into force since the code does not envisage the possibility of increasing the development intensity coefficient based on a special zonal agreement.

4.3 ISSUES RELATED TO THE REGISTRATION AND COLLECTION OF THE FEE AMOUNTS

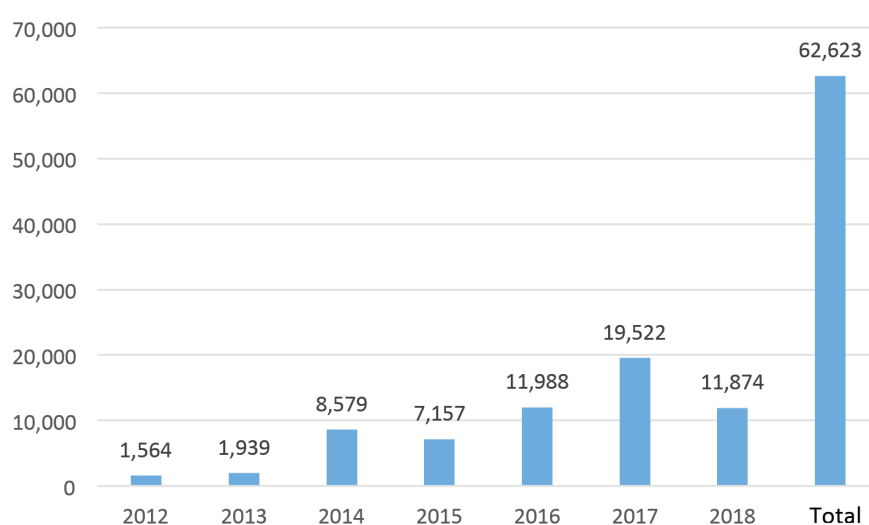
The resolution of the Tbilisi City Mayor concerning the issue of a special zonal agreement reflected the agreed parameters and the account number on which the fee for the special zonal agreement would have to be paid. At the time of issuing a permit, a permit seeker would present the calculation of a k-2 fee and the schedule of its payment to be approved by the authority issuing the permit. In general, permit seekers use a preferential period of one year according to the resolution of the Tbilisi City Assembly⁶⁶.

Tbilisi municipality failed to register the amounts of fees incurred against the issue of special zonal agreements in due manner. Namely, according to the information provided to the State Audit Office, the amount of fees was not indicated in case of 2/3 of the special zonal agreements. Moreover, neither did the municipality maintain the registry of the liabilities of paying the fees incurred for the issue of permits. Namely, the municipality does not have a consolidated information concerning the debts accrued and the payment schedules with respect to specific permits. Subsequently, it was impossible to identify the specific building on which the liability of paying the fee of a special zonal agreement was fulfilled in case of payment of the amount of a fee by the owner. The main control mechanism of collection of the fees in the mentioned process was the entry of the buildings into operation when the owner has to present the receipt verifying full payment of the fee.

Liability of payment of a fee is incurred only in case of increase of a coefficient k2 provided that the requirements of the Instruction are met.⁶⁷ Consequently, the audit team studied the special zonal agreements implying the implementation of increase of a coefficient k2.

According to the information provided by the municipality, total amount paid to the relevant account of the treasury during 2012-2018 in the form of fees accounted for 62.6 million GEL.

Graph no 27. Amounts of fees received during 2012 – 2018 (thousand GEL)



66 Decisions no 7-41 of 29 June 2007 and no 17-49 of 12 December 2014 of the Tbilisi City Assembly on the Determination and Payment of the Fees for the Issue of Special (zonal) Agreements on the Territory of Tbilisi Municipality and the amendments made thereto.

67 An increase exceeding 20% (only in case of primary increase), without carrying out demolition of depreciated buildings, etc.

The mentioned amounts cover the payment of special zonal agreement fees incurred before 2012. Subsequently, it is necessary to distinguish the amounts of liabilities incurred during the calculation period from the total amounts paid in order to identify the outstanding debt from fees incurred during 2012 – 2018.

Due to improper registration of the amounts of fees, the audit team was not able to obtain full and accurate information about the number of fees incurred, paid and outstanding during the mentioned period. Due to the low quality of the information provided by the municipality, the audit team has carried out analytical estimation of the number of fees payable to the capital. Based on the information provided and placed on the official web-page of the LEPL Municipal Department of Architecture, the audit team studied 150 major special zonal agreements and the permits related thereto for the purposes of the above-mentioned estimation. The amount of the mentioned agreements accounted for about 70% of the total fees. For the estimation of the total amount of the fees to be paid, the results of 150 agreements were distributed on all the special zonal agreements issued during 2012-2018.

The results of study of 150 special zonal agreements are presented in the table given below.⁶⁸

Table no 1. Results of study of special zonal agreements

Number of special zonal agreements	150
Total amount of the agreements	75,5 million
Agreed permits	133
Total fees of the permits	68,6 million
Paid	20,4 million
Outstanding	48,2 million

It should be noted that the outstanding fees are classified into different categories. As mentioned above, in some cases the owners were exempted from the obligation of payment of the fees while some of the owners concluded an agreement with Tbilisi municipality on rescheduling the debt of the fees. The information on the status of outstanding amounts is provided in the table given below:

Table no 2. Outstanding amounts according to status (million GEL)

Total amount:	48,2
Rescheduled	15,3
Outstanding	23
Exempted	3,8
Other ⁶⁹	6,1

The data obtained as a result of distribution of the mentioned values on all the special zonal agreements are provided in the table given below.

⁶⁸ The mentioned data is analytical since it is based on the results of verification carried out by the State Audit Office on the basis of the information provided by the municipality and the information placed on tas.ge.

⁶⁹ Construction not yet started; construction suspended by court; construction underway.

Table no 3. Analytical data from the proportional recalculation of the study results (million GEL)

	Recalculation according to the number of permits	Recalculation according to the amounts
Total fees	101,7	102,4
Paid	41,3	30,6
Outstanding, including:	60,4	71,8
Rescheduled	14,5	22,9
Outstanding	36	34,2
Exempted	3,8	5,5
Other ⁷⁰	6,1	9,2

According to the regulation, the payment of the fees shall be executed no later than the entry of the building into operation. Subsequently, entry of the building into operation is one of the leverages for the collection of the amount of the fees, though, as mentioned above, entry of the building into operation is not a prerequisite condition for the use of the building for residential purposes. The audit team has studied the extent to which the fees were paid at the time of entry of the building into operation and the number of buildings used for residential purposes without having been put into operation and without having paid the fees.

Based on 150 special zonal agreements studied, the data of the given buildings were compared to the permits for which the special zonal agreement fees were not paid. This information is provided on the graph given below.

Graph no 28. Study results



70 Construction not yet started; construction suspended by court; construction underway.

As shown on the graph, in case of 23 permits out of the studied ones the buildings were settled though the fees amounting to 10 million GEL are still outstanding. Information about some of the buildings is provided in the table given below, for clarification purposes.

Table no 4. Number of settled buildings and the outstanding amount of fees (million GEL)

Address	Volume of k2	Amount of fee (million)	Status
Building no 1	35,996 (approximately, 300 apartments)	3,4	Outstanding
Building no 2	28,122 (approximately, 250 apartments)	0,7	Outstanding
Building no 3	3,717 (approximately, 40 apartments)	0,7	Outstanding

It should be noted that entry of all the buildings into operation is not an effective control mechanism of payment of fees either. The audit team identified one case where the building was put into operation without the submission of a document verifying the payment of the fee. The amount of the fee for the mentioned building accounted for 18.3 thousand GEL.

CONCLUSION:

The management of the fees for the issue of special zonal agreements was carried out with some deficiencies. The outstanding fees were not registered in due manner which complicated the calculation of the debt and the control of its payment. At the same time, the municipality used the discretionary authority envisaged by the Law "on Local Fees" and allowed the owners to pay the fees within one year after the issue of a permit, and the municipality did not take any measures for the collection of the outstanding fees after the expiration of the relief period. As a result, the municipality failed to direct significant amount of revenues into the capital's budget.

The deficiencies identified in the management of the fees was also conditioned by mismanagement of the system of putting the buildings into operation. Optional nature of putting of the buildings into operation enabled the use of the buildings for residential purposes without having been put into operation and without having fulfilled the liabilities of payment of the fees. As a result, hundreds of buildings in the capital are settled without having been put into operation. In case of major part of the mentioned buildings the liability of payment of a special zonal agreement fee is not fulfilled. According to the estimation of the audit team, the mentioned debt is significant and exceeds 10 million GEL. At the same time, the system of putting the buildings into operation failed to ensure effective control of payment of the fees since there was a case where the building was put into operation without payment of the fee.

RECOMMENDATION:

- Tbilisi municipality should specify information about the amount of special zonal agreement fees and the payment deadlines, develop the effective control mechanisms for the collection of the fees according to the established time limits and take relevant measures for the collection of the existing debt.

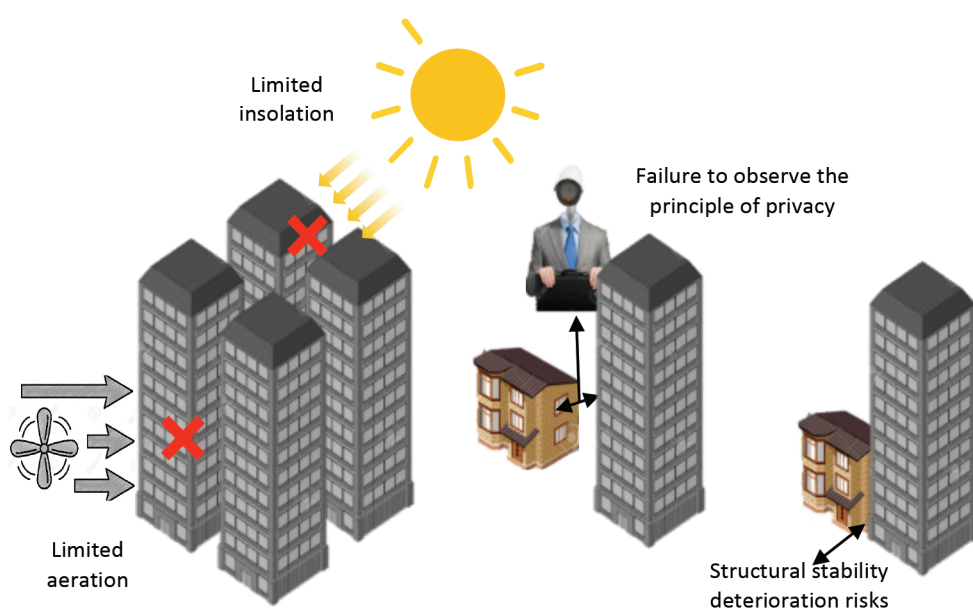
5. CHANGES REALISED AND THE QUALITY OF THE RESIDENTIAL ENVIRONMENT

Availability of a robust legislative framework regulating the issue of construction permits is necessary for ensuring a high-quality residential environment. It is important that the legislative statements concerning the high-quality residential environment were not developed on the level of principles alone but by taking account of the practical ways and procedures of implementing the mentioned principles.

According to the study of the existing legislative framework and the public opinion, violation of public interests during the permit issuing process and deterioration of the residential environment are related to the following main risks:

- Deterioration of residential conditions of the population as a result of alignment of the buildings close to each other (limitation of aeration and insolation/natural lighting);
- Encroaching the private space of the population (failure to observe the so-called principle of privacy);
- Deterioration of the structural stability and deconstruction of the existing buildings;
- Overloading of the road infrastructure of the district due to the planned construction and the related increase of density, that may cause traffic problems and deterioration of the adjacent residential environment;
- Overloading of the existing engineering infrastructure (especially, water supply and sewerage systems) which may cause interruptions in the supply of utility services to the population;
- Increase of load on the existing recreation and social infrastructure of the district (for instance: school, kindergarten, garden, park).

Graph no 29. Consequences of aligning the buildings close to each other



The following was analysed within the audit scope: central and local legislative requirements for the maintenance of the quality of the residential environment and better practice of issuing construction permits. The following issues were covered by audit in this direction: alignment of the buildings towards each other, transport-related issues and consideration of public opinion.

5.1 CHALLENGES TOWARDS ENSURING A HIGH-QUALITY RESIDENTIAL ENVIRONMENT

According to the World Health Organization,⁷¹ one of the important preconditions for a healthy residential environment is ensuring relevant distance between the buildings. Subsequently, it is important that the permit issuing process ensures acceptable sanitary-hygienic (aeration, natural lighting, insolation) conditions and protection of private space by way of considering the issue.

Different countries have different practices for the regulation of distances between the buildings. According to the recommended norm, 22-meter distance between the windows is necessary for the protection of private space and ensuring natural daylight/insolation. At the same time, in cases where the windows or the balconies of the living rooms are aligned opposite to each other it is recommended to increase this distance to 35 meters.⁷²

In the developed countries decent natural lighting in the residential space is the right of a human being. For instance, in Ireland, according to the existing practice, an apartment owner is entitled to request the demolition of the buildings restricting natural lighting of their residential place.⁷³

According to the norms existing in Canada, the distance between the buildings depends on the height of the building and the type of the rooms aligned opposite to each other. The norms of distances set forth by the mentioned standard are presented on the table given below.⁷⁴

Table no 5. Better practice of regulating the distance between the buildings

Height/storeys of the building	Minimum distance	Type of rooms aligned opposite to each other
9 storeys and more	12-24 m	Residential rooms – 24 m Residential and non-residential – 18 m Non-residential – 12 m
5-8 storeys	9-18 m	Residential rooms – 18 m Residential and non-residential – 12 m Non-residential – 9 m
1-4 storeys	6-12 m	Residential rooms – 12 m Residential and non-residential – 9 m Non-residential – 6 m

71 Guidelines for healthy housing, WHO, 1988.

72 Guidelines for healthy housing, WHO, 1988 Residential Density, Guidelines for Planning Authorities, Government of Ireland, 1999.

73 Site layout planning for daylight and sunlight, a guide to good practice, Paul J littlefair, 2011.

74 Apartment design guidelines, residential flat design code, Government of New South Wales, 2015.



Several legislative norms regulated the distances and alignment of the buildings towards each other during the audit period. The main development regulation provisions⁷⁵ lay down the permitted parameters and alignment rules for the buildings at the country level whereas the local development rules⁷⁶ regulate the same issues on the territory of the capital.

As it can be seen from the analysis, according to the current development regulation rules it is permitted for Tbilisi to align the buildings towards each other without observing the private space of the population and by deteriorating the sanitary-hygienic conditions, for instance:

- According to the current legislation, it is possible to construct multi-storey buildings in Tbilisi at a distance of 6 meters from each other – without any restriction of height of the building;
- In cases where there is a building on the border of the land plot adjacent to the planned construction, it is still possible to obtain a permit for carrying out another construction on the border of the adjacent land plot;
- It is possible to arrange windows just opposite the existing building having the windows on the side of the planned construction at a distance of 10 meters from the building, without any restriction of the height of the building. For instance, it is possible to construct a 20-storey building opposite a 3-storey building with the windows arranged opposite the windows of the existing buildings on all the 20 floors.

The Code of Georgia on Spatial Planning, Architectural and Construction Activities entered into force in 2019. The entry of the Code into force was accompanied by the enactment of its by-law acts as well,⁷⁷ though, without repealing the old development rules since the old development rules still remain in force for Tbilisi.⁷⁸ Subsequently, the permits are issued and administered in Tbilisi according to the old rules.

Analysis of the new development rules have shown that the mentioned issues are better regulated and, subsequently, they provide little space for the deterioration of the residential environment by issuing the permits⁷⁹, namely:

- The existing rules provide for better regulation of the distance between the buildings through widening the boundary zones of the land plots⁸⁰;
- The existing rules envisage the obligation of calculating the lighting and insolation and setting the norms for both existing and planned buildings at the time of issuing the permits.

75 Resolution no 59 of the Government of Georgia „Approving the Technical Regulation – the Main Provisions for the Regulation of the Use and Development of the Territories of Settlements”, 2014.

76 Resolution no 14-39 of the City Assembly of Tbilisi Municipality of 24 May 2019 „Approving the Rules for the Regulation of Use and Development of the Territories of Tbilisi Municipality”.

77 Resoluton no 261 of the Government of Georgia of 3 June 2019 „on the Main Provisions for the Regulation of the Use and Development of the Territories”; Resoluton no 255 of the Government of Georgia of 31 May 2019 „on the Rules and Conditions for the Issue of Construction Permits and for the Entry of the Buildings into Operation”.

78 Code of Georgia on spatial Planning, Architecture and Construction Activities, article 141.

79 Resolution no 261 of the Government of Georgia on 3 June 2019 “on the Main Provisions of Regulating the Use and Development of the Territories”, article 41.

80 3-15 meters instead fixed 3 meters set forth in the old regulation.

Thus, transition to the new regulation would have improved the residential environment planned against the new construction permits and would have a positive impact on the urban development of the capital.

As it can be seen from the analysis of the practice of issuing the construction permits, the owners, as a rule, fully exercised their rights conferred thereto by the development regulation rules in designing the buildings. Neither did the local development rules developed by Tbilisi municipality provide any basis for the prohibition of constructions close to the existing buildings. As a result, the current regulations fail to ensure the maintenance of the quality of the residential environment.

RECOMMENDATION:

- Tbilisi municipality should ensure the development of the rules of separation/alignment of the buildings towards each other which will be consistent with the better practice introduced in the given field and will facilitate the formation of a high-quality residential environment.

5.2 CONSIDERATION OF TRANSPORT-RELATED ISSUES DURING THE PERMIT ISSUING PROCESS

Evaluation of the situation of traffic flows and study of the adequacy of road infrastructure with respect to the existing and planned construction is important for ensuring proper functioning of the transport infrastructure. As shown by the study of better practices, it is important to take account of the total influence the construction covered by the permit and the constructions planned adjacent to the building may have on traffic flows and on road infrastructure in the future apart from the situation in terms of traffic flows within the construction area when evaluating the effects of the planned constructions.⁸¹

Until 2018 there was no mechanism applied at the time of issue of the permit that would ensure the evaluation and consideration of the effects of the planned construction on the transport infrastructure. Legislative statement related to the transport and engineering infrastructure in force during this period specified that a proper engineering and transport infrastructure should have been ensured on the land plot implying availability of minimum one access road to the land plot (including by use of servitude).⁸² Subsequently, the regulation did not specify the minimum parameters of the access road to the planned building thus providing the possibility to use the roads which allowed only one direction traffic due to its small size for accessing the land plot. At the same time, legislative norm did not specify the population density for the specific area.

81 Transportation Impact Assessment Guidelines, city of London, 2012.

82 Resolution no 57 of the Government of Georgia "on the Rules of Issuing Construction Permits and Permit Conditions", article 6.



In 2018, according to the amendments made to the permit issuing rules,⁸³ agreement of the traffic organization schemes at the time of issuing the permits became obligatory. The scheme should reflect the transport/road infrastructure of the design territory and the connection to the adjacent territory, while in case of planned constructions (planned area of the building) exceeding 6,000 sq. meters, evaluation of the impact of the design solution over the existing study transport/road infrastructure shall be ensured.⁸⁴

During the permit issuing process decisions related to the transport issues are taken by the Municipal Department of Transport. Apart from taking part in the process of agreement of the design and issuing the permit, the Municipal Department of Transport shall also participate in the revision of issues falling within the competences of the Municipal Department for Urban Development. Namely, the Department shall express opinion on the change of functional zones, increase of a coefficient k₂, agreement of a development regulation plan and other urban issues.⁸⁵ In the mentioned process the Municipal Department of Transport may request the submission of an evaluation of an impact of the design solution. The statistics of the decisions taken by the Municipal Department of Transport between 2018 and May 2019, inclusive, is provided in the table given below.

Table no 6. Decisions taken by the Municipal Department of Transport

	Approval	Refusal	Deemed deficient	Total:
Urban issues (impact assessment presented)	51 48%	4 4%	52 48%	107
Architectural issues (impact assessment presented)	91 46%	3 2%	103 52%	197
Urban issues (impact assessment not presented)	158 65%	86 35%	-	244
Architectural issues (impact assessment not presented)	5 100%	0	-	5

The department shall base its decisions on the principles set forth in the transport policy and the opinion on consideration of the impact of the design solutions over the large city areas.

As shown by the analysis of the standard for assessment/study of the impact of design solutions and the study ordered and submitted by the owner, the studies presented do not provide an objective reflection of the expected load on the transport infrastructure since they do not cover the consideration of the development planned adjacent to the design building. The assessment/study of the project impact shall cover the following components:

⁸³ Resolution no 57 of the Government of Georgia of 24 March 2009 "on the Rules of Issuing Construction Permits and Permit Conditions", article 47.

⁸⁴ Except for the construction of night clubs, warehouses, production and industrial buildings, museums, libraries, cultic constructions.

⁸⁵ Resolution no 14-39 of the City Assembly of Tbilisi Municipality of 24 May 2016, "Approving the Rules for the Regulation of Use and Development of the Territories of Tbilisi Municipality".

Table no 7. Structure of the project impact assessment document

	Study components	Explanation
1	Traffic study of the study area	For the impact assessment purposes it is necessary to study the existing transport situation within the design area.
2	Background information on the project	Calculation area of the coefficient k2 of the design territory according to the functions – for the determination of the (approximate) number of future residents and visitors on the design territory.
3.	Number of trips (forecasted) generated/attracted by the design territory	Number of trips generated/attracted on the design territory; Share of different means of modal distribution-movement of the number of trips in the total number of trips; Spatial distribution of trips.
4	Assessment of impact by the number of new trips generated	Considering the previous components of the study, it is necessary to assess the impact of the planned development over the transport and separate types of transport.
5	Recommendations	The measures necessary for ensuring transport for future residents, employees and visitors of the planned development and for reducing the role of a vehicle in a modal distribution shall be determined based on the impact assessment.

As it can be seen from the table, the impact assessment study covers only the existing situation and the assessment of the impact of the planned project/development over the transport and over the load of transport infrastructure. The study does not reflect the planned development covered by the construction permits issued on the territories adjacent to the project.

Several permits were identified within the audit adjacent whereto the construction permits were issued for large-scale constructions without due account and consideration of the traffic flows generated from the mentioned constructions in the study ordered and submitted by the owner.

There are some challenges in terms of traffic organization schemes as well. Notwithstanding that the access road to the building shall meet the minimum parameters at the time of agreement of the scheme, no assessment of traffic capacity and level of load of the access road to the design building is ensured at the time of agreement of the scheme. There are districts in the capital city where the existing roads were meant to serve low intensity developments with individual residential houses though later the density has increased and multi-storey residential buildings were constructed⁸⁶. As a result, the existing roads got overloaded and cannot ensure due traffic capacity any more. It is not obligatory to conduct a traffic study in the mentioned districts at the time of issue of the permits unless the area of the building exceeds 6,000 sq. meters and only an agreement of a traffic organization scheme is required. The share of permits agreed through the studies and through the schemes in the permits issued during 2018 following the amendments to the regulations in terms of transport-related issues was estimated within the audit.

86 For instance, territories adjacent to Delisi street, Tsagareli, Burdzgla and the adjacent streets.

Table no 8. Share of permits issued on the bases of traffic organization schemes in the total number of permits⁸⁷

	According to the k2 area	According to the number of permits
Subject to agreement of a traffic organization scheme alone	30%	72%
Subject to preparation of the study	70%	28%

As it can be seen from the table, only 28% of the permits were subject to preparation of the study constituting 70% of the total construction area. Under the circumstances where a significant number of permits were issued only on the basis of agreement of traffic organization schemes, it is important to ensure the availability of a mechanism which would ensure relevant assessment and consideration of the assessment results in case of construction of the buildings close to the overloaded traffic areas.

RECOMMENDATION:

- Tbilisi municipality should ensure the reflection and consideration of the traffic flows generated as a result of existing as well as ongoing and planned constructions within the area of the design building in the study conducted/ordered by the owner for traffic impact assessment.

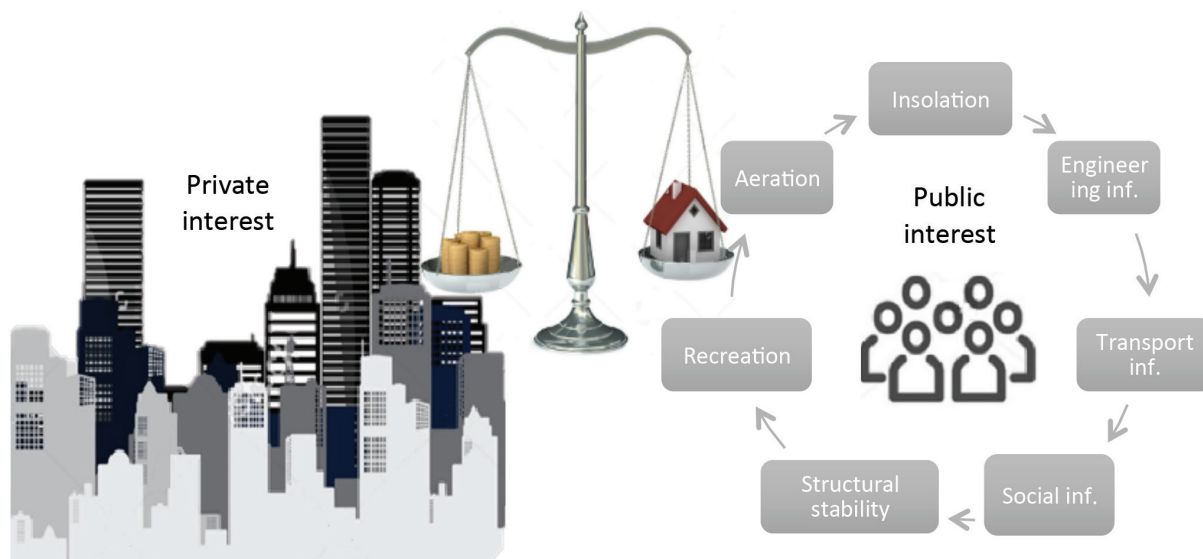
5.3 MECHANISMS FOR THE CONSIDERATION OF PUBLIC OPINION

The planned construction is often connected to the changes in the residential environment of the population of the adjacent territories. In most cases, the mentioned changes has a negative impact on the neighbour interests since it causes intensity growth and subsequently, additional loads on engineering, transport and social infrastructure, whereas in case of adjacent buildings it may pose risks related to the structural stability, restriction of aeration and insolation, especially under the conditions of increased development intensity on the construction land plot.

Subsequently, such cases require the mechanism based on which the opinions and comments of the population living adjacent to the planned construction will be reflected and compared to the interests of the owner at an early stage with a view to ascertaining the optimal balance between the private and public interests.

⁸⁷ Analytical assessment.

Graph no 30. Comparison of private and public interests at the time of issuing the permits



Study of better practice of public involvement has shown that the preparation of detailed development plans is the most effective mechanism for the consideration of public opinion.⁸⁸ Preparation of the mentioned plans is carried out according to the public administration procedure implying active public involvement in long public discussions. Involvement in the process of agreement of a detailed development plan enables the population/stakeholders to reflect their opinions at the planning stage thus reducing the need of their involvement at the time of issuing the construction permit. According to the better practice, construction permit is also carried out through public administration procedure thus enabling the population to have access to the details of the design at an early stage.⁸⁹

Permit issuing process used to be carried out through simple administrative procedure during the audit period, which provides less rights to the population in terms of participating in the process. During the audit period, the main means for the provision of information by the owners to the population about the planned project was an information board placed on the construction site.

It should be noted that in 10 cases of the permit documentation studied (36 units)⁹⁰ by the audit team no image of an information board was presented. This indicated to the fact that even the minimum standard of public information was not duly met during the audit period.

Apart from proper provision of information, public involvement in the decision-making process at an early stage and availability of the relevant mechanism of consideration of their duly justified comments is of critical importance due to the fact that abolition of the decisions already adopted is connected with significant complications.

⁸⁸ Spatial planning in Denmark, Danish ministry of the environment, 2007.

⁸⁹ Journal of Environmental Law and Litigation, VOL 32, pp 247-270.

⁹⁰ Conditions for using land plot for construction purposes.

According to the legal practice, even the issue of a permit in contradiction with the law does not constitute sufficient basis for its cancellation. This is due to the fact that a permit seeker is carrying out construction works based on the mentioned permit which is related to the expenses. In order to cancel or revise the permit it is necessary to justify that it does not pose any material damage to the public interests. After that, the private expenses related to the cancellation of the permit shall be compared against the damages caused to the public interests by the permit. Considering the fact that monetarisation of the private expenses related to the cancellation of the permit is easier and is obvious, whereas monetarisation of the damage caused to the public interests is difficult, the court, as a rule, avoids taking decisions concerning the cancellation of permits and confines itself only to the assignment to the administrative authority to take a decision with better justification.⁹¹

Consideration of the public opinion is especially important during the discussions of cases which are not regulated by legislation. For instance, legislation in force during the audit period did not regulate the issues for ensuring natural lighting and aeration during the permit issuing process. Subsequently, the population often complained in this direction. As shown by the study, as administrative authority in such cases would use its discretionary authority in favour of private interests without considering the public complaints. Considering the fact that the permits in the capital are still issued in accordance with legislation which was in force before 2019, the above-mentioned issues still remain problematic.

RECOMMENDATION

- The City Hall of Tbilisi municipality should develop a relevant mechanism for the information of population and for the consideration of their duly justified comments at an early stage of permit issuing process.

CONCLUSION:

Significant changes were made in the rules of administration of construction permits during the audit period. A master plan of the capital and the related regulations were approved, increase of a coefficient k_2 was restricted, consideration of the issues related to transport and ecology at the time of issuing the construction permits became obligatory. The mentioned changes are important for enhancing consideration of public interests at the time of issuing construction permits.

Notwithstanding positive changes, there still exist some challenges in terms of ensuring a high-quality residential environment:

- Rules of alignment of the buildings towards each other has significant impact over the quality of residential environment. To this end, the most important is to ensure adequate distance between the buildings. The rules that are in force in the capital provide the possibility to construct the buildings at a distance from each other that is smaller than the recommended distance. The audit period was marked with the adoption of regulations throughout the

⁹¹ Materials from the Tbilisi City Court and the Appeals Court from 2014-2018.

country which ensure better management of the mentioned issues. Tailoring the provisions of the mentioned regulations to the capital will play a positive role towards the improvement of a residential environment.

- Due consideration of the traffic-related issues at the time of issuing a construction permit is important for ensuring high-quality residential environment. According to the analysis, there are better possibilities to assess and consider total traffic influence of the development during the assessment of the effects of the planned constructions. There are cases where neither the traffic impact assessment nor the prevention of overloading the traffic infrastructure is undertaken.
- Consideration of the public opinion concerning the initiated construction at an early stage is particularly important due to the complexity of the procedures related to the cancellation or change of already adopted decisions. During the audit period, information of population concerning the planned constructions was ensured by placing a banner on the construction site though their opinion was not actually considered and the owners fully exercised their rights granted thereto by the law in designing the buildings. Under such circumstances it is important that the City Hall develops mechanisms that would ensure effective basis for the consideration of public opinion.



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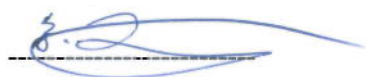
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