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# Planning and Development Bill 2023 -

*Review of Recommendations Made in Submission to the Joint Oireachtas Committee on Housing, Local Government and Heritage*

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# 1. Introduction

On foot of the Government announcement in October of approval by Cabinet of the new Planning and Development Bill 2023, this report is prepared to,

i. examine if the recommendations made in March 2023 by the Construction Industry Federation (CIF) in response to the review process have been implemented.
ii. identify aspects of the Bill that would warrant improvement with regard to the specific interests of the CIFs house-building members. And make recommendations.

The purpose of the Bill is stated as,

*"provides a new and updated legislative framework for the proper spatial planning and sustainable development across national, regional and local levels and ensures that the planning system is focused on both supporting and where appropriate, regulating development on both land and within the maritime area. The Bill aims to provide a planning system which can deliver infrastructure, enhance natural assets and amenities and preserve, protect and improve the quality of the environment."*

This submission should be read with a separate paper prepared by McCann Fitzgerald LLP, which provides a granular assessment of the Draft Bill's provisions. It is submitted that together these two reports, coupled with the CIFs previous submission, proposed modifications and amendments that would if taken forward contribute to achieving the overall purpose of the Bill.

# 2. Recommendation Review

Set out below are the fifteen recommendations formulated by the CIF and submitted to the Department in March 2023. The corresponding column identifies whether or not the Bill includes any provisions that are relevant.

Note: - The numbering of Sections in the Bill differs from the previously published December 2022. References in Column 3 refer to the relevant Sections as now proposed in the Bill.

| Ref. | Recommendation on Draft Act 2022 | Comment – Bill 2023 |
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| **1.** | It was recommended that the timelines for progressing the Bill through the various stages should be reviewed. Any revised programme should allow time for the requisite scrutiny that is needed. By applying this 'less haste, more speed' approach, it is more likely that the overarching objective of this review would be achieved, i.e., a fit for purpose planning system that is clear, consistent and will ensure certainty for all. | This recommendation was acted upon. The Government initially planned to complete this work before the 2023 summer recess.<br><br>The Bill has commenced Second Stage in the Dáil in November 2023, with eleven stages to complete – five with Dail Eireann, five with the Seanad and the final stage is presidential signing.<br><br>A published timetable for the various stages through to enactment has yet to be available. |
| **2.** | Given the complexity of decision-making, it was recommended that the Bill should provide for a minimum of 20 commissioners. | **No change to Bill.**<br><br>The number of commissioners (15) proposed is unchanged.<br><br>The Bill outlines the breakdown in Section 438 (1): -<br><br>• Chief Planning Commissioner<br>• Deputy Chief Planning Commissioner<br>• 13 Ordinary Planning Commissioners |

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| **3.** | It was recommended that it should be mandatory that a qualified ecologist is appointed to one of the ordinary planning commissioner posts. | **No change to Bill.**<br><br>Section 440(2) of the Bill has not been changed to include an ecologist.<br><br>This is disappointing given that the Board also themselves requested this during the prelegislative scrutiny meeting. |
| **4.** | Given the impact that continuing to apply the NPF population projections to housing supply, it was recommended that the review of both the NPF and RSES should be:-<br><br>i. commenced immediately,<br>ii. focussed on population targets, household size and obsolescence,<br>iii. progressed as a Variation and not a full review of these plans.<br><br>The objective should be to expediate the process as soon as possible and the Bill should include specific procedures for a variation process. This public consultation should be limited to 4-weeks consistent with the current Development Plan variation process.<br><br>The variations subject of this section should be complete by September 2023.<br><br>To achieve this, it will be necessary to amend the wording in Part 3, Chapter 2, | **No substantial change** made to the provisions in relevant Sections of the Bill i.e. Part 3, Chapter 2, section 20 (2) and Chapter 4, section 24(4)(a) and 28 (1).<br><br>It is noted that the date for the completion of the first review of the NPF, has been extended from 3 April 2024 to 28 May 2024 (Section 20(2)). |

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| | section 19 (2) and Chapter 4, section 24(5)(a) and 29 (1) | |
| **5.** | It was recommended that section 19 (3) be amended to require a review to be complete within one year, not two, of the occurrence of a census of the population | **No change in Bill.** |
| **6.** | It was recommended that the draft Bill include a direction that National Planning Policies and Measures supersede conflicting policies in lower order plans from the time they are published, to avoid planning authorities having to instigate material contravention processes unnecessarily. | **No change in Bill.**<br>Within 2 months of a National Planning Statement being issued, the Planning Authority must submit a report to the OPR setting out if their development plan is consistent with the National Planning Policies and Measures.<br>If it is not, the Bill allows for an 'Expedited Variation of development plan' (Section 60).<br>While there is no public consultation on this variation process, the timelines will be impacted on response from the OPR, screening / preparation of an AA/ SEA and adoption by the elected members. If the Elected members reject the proposed variation, the OPR / Minster may issue a Direction. |
| **7.** | It was recommended that Section 24 (2) of the draft Bill should require the Minister before publishing a National Planning Statement to consult with other Ministers of the Government and public bodies as appropriate, (any stakeholders or other persons the Minister considers appropriate, and members of the public | **No change to Bill.** |

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| **8.** | It was recommended that the following statutory timelines be introduced: -<br>• Housing Development <100 without EIAR and or NIS – 8 weeks<br>• Housing Development >100 without EIAR and or NIS – 12 weeks<br>• Housing Development >100 with EIAR and or NIS – 16 weeks | The Bill has introduced the following mandatory timelines for decisions by the Planning Authority:-<br>• 8 weeks for applications without EIA or AA<br>• 12 weeks for applications with EIA or AA.<br>This applies to all applications for 'standard development' i.e. any applications made to the Planning Authority, and not applications made directly to the Commission (Section 79 (1)).<br>The Bill has introduced the following mandatory timelines for An Bord Pleanala:-<br>• 18 weeks where no AA or EIA is required, if an RFI is issued 6 further weeks from when the RFI is complied with or is required to be complied with.<br>• 26 weeks where AA or EIA is required if an RFI is issued 10 weeks further from when the RFI is complied with or is required to be complied with.<br>Section 328: Period for decision-making This section requires the Commission to determine appeals, applications, referrals or requests received within 18 weeks (unless that period has been extended or a different period has been specified in a class-specific provision). Under section 126 of the Act of 2000, the Board had an objective of making decisions within 18 weeks but it was optional to do so. Where the Commission fails to determine an |

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| | | appeal, application, referral or request within 18 weeks, or such extended or alternative period as may be specified, the Commission shall determine the matter notwithstanding the expiry of that period. The Minister may conduct a review of the periods for the making of decisions in relation to appeals, applications, referrals or requests, regarding the resources and functions of the Commission. The Minister may also, having regard to exceptional circumstances, vary the 18 week period, either generally or in respect of a particular class of appeal, application, referral or request. The Minister may also direct the Commission to prioritise determining particular classes of appeals, applications, and referrals. |
| **9.** | It was recommended that the Bill should define 'material contravention' to provide clarity with respect to material and non-material contraventions. | **No change to Bill.** |
| **10.** | It was recommended that section 92 be amended to conclude that where the requested information is not supplied within the timeframe or such other timeframe as may be agreed with the planning authority, the application would be deemed withdrawn and there would be no determination. | **No change to Bill.** |
| **11.** | It was recommended that planning authorities issue a 'proposed decision' and this additional stage would be subject to public consultation prior to the | **No change to Bill.**<br>Regrettably, provision (249(5)(a)) in the draft Bill whereby An Bord Pleanála would have had a grace period to correct an error of law or |

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| | Notification to Grant Permission | fact regarding a decision, was not carried through. The purpose of the provision was to allow any error that was not material to the decision to be corrected. Its omission from the current Bill is perhaps a missed opportunity to provide a remedy that would assist with overcoming procedural issues which can lead to JRs. Very often, it can simply be that the Board must provide a little more detail on their decision. It's not necessarily that the substance of the decision is in question. Allowing the Board a period to 'mend their hand' where the merit of the decision is not being revisited would have been a helpful provision. |
| **12.** | It was recommended that where a new Development Plan is due to take effect and there are pending applications that would be affected, a transparent prioritisation process should be applied to ensure those applications are not negatively impacted unnecessarily. | **No change to Bill.** |
| **13.** | It was recommended that the current provisions of section 48 be baked into the Bill. | Two new sections have been added to the Bill relating to Development Contributions and Supplementary Development Contributions (Sections 504 and 505, respectively).<br><br>These new sections largely repeat the existing provisions in Sections 48 and 49 of the Planning and Development Act, 2000, As Amended. The key changes are:-<br><br>• The transfer of land or the development of infrastructure can be accepted in full or |

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| | | partial discharge for contributions owing.<br>• Definitions for 'public infrastructure and facilities' projects and 'planned public infrastructure projects' expanded.<br>• A development contribution scheme must include an order of priority where at least 30% of the contributions will be focused for spending. The order of priority will align with the zoning of land for new development, of all classes within the development plan.<br>• Where a special contribution is sought, details of the particular works must be specified. |
| **14.** | Section 83(9) states: -<br>*"Where no agreement is reached under subsection (8) or the matter is not referred to the Commission within the period specified in subsection (8), or such longer period as may have been agreed, the authority shall be deemed to have not agreed to the points of detail as submitted*."<br>It was recommended that this proposed amendment is not carried, and it should be replaced with the current s.34(5)(b) wording | **No change to Bill.** |
| **15.** | It was recommended that where a Judicial Review is progressed against a decision of the planning authority/An Bord Pleanála, it is recommended that the time taken to determine the JR should be provided for under the section 'Disregard | **No change to Bill.** |

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| | time limits in certain circumstances. | |

# 3. Further Observations & Recommendations

## 3.1 Extension of Duration

Until 2021, a provision existed that facilitated extending planning permission for a period of 5 years in circumstances where substantial works had not been carried out, where there were commercial, economic or technical considerations, beyond the control of the applicant, which substantially militated against either the commencement of the development or the carrying out of substantial works.

The measure was introduced in response to failing economic conditions when finance to support development was difficult to secure.

According to a Department of Finance Report,[1] there were more than 100,000 dormant or non-activated planning permissions for homes in the State at the end of last year, more than 50,000 of which were in Dublin. This Planning Bill has a key role in supporting these sites' activation.

The Report identifies the following issues as directly impacting the activation of extant planning permission,

i. **Inflation** is impacting construction costs. The Report identifies that the wholesale price of construction materials increased by 37 per cent between January 2021 and April 2023.
ii. **Interest rate increases** have resulted in greater rates of return available from alternative investments, making risk-free investments more attractive than "riskier" residential assets.
iii. **Supply chain issues:** the pandemic and recent wars are delivering shocks to supply chains.
iv. **Scale of Judicial Reviews** within the planning system leads to costly delays, greatly increases risk for funders and developers and ultimately reduces investment in new supply.
v. **Cost and availability of finance:** a report by KPMG on the cost and availability of finance for residential delivery, found that while there is a functioning debt market, comprising several

[1] Economic Insights – Summer 2023

primary and secondary lenders, reduced competition can limit debt financing options for certain projects. The report also found that many home builders remain undercapitalised since the Global Financial Crisis and often rely on private equity partners. Recent uncertainty arising from a changing interest environment also impacts lenders' risk appetite.

vi. **Viability:** a significant proportion of the un-activated planning permission would initially have been considered viable. However, depending on the length of time associated with the planning and pre-commencement periods, it is possible that by the time a site is ready to be developed, costs have increased substantially, thus challenging the viability of the initial development.

The points set out above clearly point to commercial, economic and technical considerations that are beyond the control of those holding planning permissions. Given the significant economic and social implications of a continued housing shortage, it is critical that the activation of these sites is supported.

It is recognised that the Bill as currently drafted, facilitates extending the duration of permissions on non-material applications. However, any development with an EIA or AA associated with it will be a 'material application' and require a more detailed application process. Many large-scale housing permissions were subject to EIA and/or AA and will not be eligible for the non-material process.

If large numbers of permissions are not implemented and subsequently lapse, developers would have to make new planning applications for those schemes, which could lead to delays and additional costs. Furthermore, planning authorities could find themselves dealing with a sudden upsurge in applications, placing additional strain on an already under-resourced sector.

The solution is simple - reinstate the provision that was removed in 2021, to allow time extensions to be granted where there are,

> *considerations of a **commercial, economic or technical nature** beyond the applicant's control which substantially mitigated against either the commencement of development or the carrying out of substantial works pursuant to the planning permission, the Planning Authority may grant an extension of duration of planning permission.*

## 3.2 Non-Material Alteration

The Bill will introduce new provisions for Local Authorities to approve non-material changes to an application, without the need for a new application, which is welcome.

The following statutory definition is included for material alteration.

> *"material alteration" includes an alteration which is likely to have significant effects on the environment or on any European site;*

The approach taken by the Board in determining whether a proposed alteration to an SHD granted under ABP ref 305991-19 would be a useful guide (ABP ref 311138-21). In this case, the Inspector concluded that, having considered the requested alterations and having considered the development permitted under the original permission (ABP-305991-19), the Board would not have determined ABP-305991-19 any differently had the requested alterations been included in that development at the application stage. It was, therefore, concluded that the making of the alteration would not constitute the making of a material alteration of the terms of the development concerned. A definition of Material Alterations along these lines would be a useful addition to the Bill.

What constitutes a non-material alteration is not defined, and it is submitted that this leaves planning authorities with too wide a discretion that would leave room for inconsistent assessments. Without a clear definition, the risk of dispute is much higher.

A remedy could be to follow and build on the criteria set out in section 170A of the Planning and Development Act 2000, as amended, whereby a change which is consistent with a stated suite of criteria would qualify as non-material.

i. Would not constitute a change in the overall land uses permitted.
ii. Would not significantly increase or decrease the overall floor area or density of the development.
    a. Changes in internal room arrangements or minor modifications within the building envelope that don't affect its external appearance or size.
iii. Would not adversely affect or diminish the amenity of the area that is the subject of the proposed amendment.
iv. May be required due to considerations of an infrastructural, commercial, or economic nature.

## 3.3 Material Contravention

It is recognised that planning proposals should generally align with the provisions of the local development plan. However, there can be good reasons for deviations. For example, development management standards in a County Development Plan may be out of sync with National Guidance if it is issued after the coming into force of the Development Plan. An imminent example of where this may occur is the Sustainable Compact Settlement Guidelines for Planning Authorities, which will introduce changes to design standards. Unless Specific Planning Policy Recommendations (SPPR) are used, there is the possibility of a divergence. While this remedy exists there are instances where it might not for example where new standards are introduced in other codes e.g. the Building Regulations.

Departures can only be corrected through a variation process which is time-consuming and resource intensive.

To avoid this, it is submitted that Chapter 5 would usefully include a provision that requires the inclusion of a list of the development plan objectives that, if not complied with, would represent a material breach of the plan.

## 3.4 Compliance

The Bill maintains timelines for compliance and allows for referral to the Board in circumstances where:

The Council formally states it cannot reach a decision, or
The Council refers the decision to the Board itself.

However, if the Council does not respond to a compliance submission within 8 weeks, it is deemed unacceptable, with no provision for the Developer to refer to the Board.

The Bill should be changed to allow a developer to refer to the Board if the Council has yet to respond to a submission within the 8-week period. The current Act states that compliance is deemed accepted unless there is a response from the Council. There is, therefore, a real onus on the Council to respond if there is an issue. The provisions of the Bill are a regressive step in terms of getting development commenced after permission has been granted.

The existing provision in section 34 (5) of the Planning and Development Act 2000, as amended, is effective and should be carried through to the new Bill.

## 3.5 Stop the Clock

The Bill must facilitate a fair balance between various interests, including that of the developer and the public interest. The current situation whereby the clock on five-year permission continues to run during a judicial review process must be discontinued.

The critical event which stops time running should occur on the date when an application for leave to apply for judicial review is moved before the High Court.

If the finding of the JR is with the holder of the planning permission, the clock should be reactivated. Any subsequent challenge to the decision of the High Court should have the same effect on the permission i.e. it would stop the clock running on the permission.

By introducing this change, the Bill would,

i. provide an equitable solution that takes into account the diverse needs and concerns of different parties.
ii. limit the number of extension of duration applications and in turn assist the resourcing issue that exists across planning authorities.

## 3.6 Forward Planning

Section 41(6) requires all lands within the functional area of the Planning Authority to be zoned. The Bill is silent on what happens in jurisdictions, e.g. Kildare and Wicklow, where zoning designation is left over to Local Area Plans (LAPs).

### 3.6.1 Local Area Plans

Section 78(1) allows for the continuation of existing LAPs until their expiry date or until a new Development Plan has been made. However, there doesn't appear to be any mechanism to amend a LAP. This will be critical in places such as Kildare and Wicklow, where many existing LAPs for Key Towns identified in the Regional Spatial Economic Strategies (RSES) have only allowed for population growth up to 2024 e.g. Bray and 2027 e.g. Naas. The Wicklow and Kildare Development Plans will run to 2028 and 2029 respectively.

**Recommendation: It is necessary to have a mechanism whereby existing LAPs are deemed to be incorporated into the County Development Plan so that they can be amended and updated.**

### 3.6.2 New Plan Types

The Bill introduces new development plan types: Urban Area Plans (UAPs), Priority Area Plans (PAPs) and Coordinated Area Plans (CAPs).

Section 68 requires a Planning Authority to prepare a UAP where the need is identified in the Development Pan. Section 69 does the same for Priority Area Plans. Section 72 sets out the procedure for making UAPs and PAPs. It seems that UAPs and PAPS can only be made on foot of an objective in a Development Plan, although this is not entirely clear. If this is the case, there will be no such plans made until new Development Plans are made post-2027, as existing Development Plans do not contain such objectives, given that the plan types did not exist at the time of making the current Development Plans.

**Recommendation: There is a need for transitionary measures that allow a Planning Authority to make a UAP or PAP as appropriate where an objective to make an LAP exists in the current Development Plan.**

## 3.7 Development Management

The definition of 'gross floor space' is expanded to exclude 'ancillary residential services including gyms and child-care facilities' when included as part of a Large-scale Residential Development (LRD) in addition to the exclusion of car parking spaces that currently exist.

**Recommendation: It would be helpful if the definition also excluded ancillary plant, bin and bike stores.**

Section 83 sets out matters to which a planning authority or Commission shall have regard when determining a planning application. It includes the Development Plan and any UAP, PAP or CAP applicable. But it is silent on existing LAPs.

**Recommendation: There is a need for regard also to be had to existing LAPs for as long as they remain in force.**

***Appeals to the Commission***

Section 99 allows for planning appeals of decisions made by a Planning Authority under Section 95.

**Recommendation: A transitional arrangement is needed to continue to allow appeals of decisions made under the existing Planning and Development 2000 Act.**

Section 103 allows a first party to submit revised proposals to the Commission in the event of an appeal by either a 1st party or 3rd party, and Section 104 allows the Commission to ask for revised drawings/ documents. These are both helpful provisions.

However, Section 106(7) states that in the case of a 1st party appeal, the Commission does not have the power to grant permission for a

development that 'is not substantially the same as the development or proposed development that decision (the PA's) relates'. This appears to negate the point of Section 103 and Section 104 and would prevent the Commission from granting permission subject to the removal of one or more floors or the omission of one or more blocks, as is common practice. It, therefore, appears to be a regressive step.

Moreover, it is not clear;

i. why this restriction only applies to 1st party appeals and not 3rd party appeals.
ii. if the 'development or proposed development' referenced in S106(7)(a) is the development proposal originally applied for to the Planning Authority, or the development as consented by the Planning Authority.
iii. why this restriction applies to the Board and not the Planning Authority.

**Recommendation: Section 106(7) should be worded to prevent the Commission from granting permission for a development proposal that would have a greater environmental impact than the original proposal considered by the planning authority. The Commission should have the power to grant permission for a reduced-scale development.**

S106(1) repeats the current practice of the Commission considering applications as if made to it in the first instance, disregarding the decision of the planning authority. This is a wasteful use of the Commission's resources and a lost opportunity.

The Bill should seek greater consistency between decisions made by planning authorities and decisions made by the Commission.

According to Table 13B of the Appendices to the ABP Annual Report 2022 (Page 10), only 28.3% of Planning Authority decisions appealed to the Board are upheld by the Board, with 45.4% 'varied' by the Board and 26.3% 'reversed'. This level of divergence undermines the role of the planning system. All professional planners, be they Local Authority or An Bord Pleanála employed are working to the same 'rules' when assessing individual development proposals and decisions should be largely consistent.

**Recommendation: The Commission should be obliged to have regard to original Planning Authority decision, including the Planning Officer's report and, where the Commission decides to overturn a Planning Authority decision, it should be required to give reasons as to why the original Planning Authority's decision**

**erred (i.e. was clearly and unambiguously inconsistent with national, regional or local planning policy).**

Section 109 allows appeals against one or more conditions of a permission granted by a Planning Authority. This is a useful provision.

**Recommendation: It would be helpful if this section were clarified to make it clear that the Commission is only authorised to look at the condition(s) in question and that the rest of the Planning Authority's Decision to Grant Permission stands. In this regard, the power of the Commission to attach new conditions to a permission should be restricted to conditions relating to the conditions being appealed only. S109(2) of the Bill appears to negate the point of S109(1) and should be deleted.**

Moreover, a situation could arise where the Commission may feel compelled to refuse a scheme granted by the Planning Authority under S106(7)(a) if the scheme consented by the PA is not substantially the same as that for which permission was originally sought, even if only minor conditions are being appealed.

**Recommendation: S134(5)(b)(i) The range of plans to which the deciding authority should have regard should include any LAP that is still in effect.**

S135(1)(a) allows for a request to alter a permission. S135(1)(b) allows for a request to extend the duration of a permission. As currently drafted, the Bill allows for an application to alter a permission 'or' extend a permission. **There is a need for a S135(1)(c) which would allow for both.**

S135(3)(c) implies that this is intended, but the wording of S135(1) allows for only one or the other.

The Bill is unclear as to when an application to extend the duration can be made. Presumably, it must be made before the permission expires, but unlike the P&D 2000 Act, the Bill doesn't require the application to be made in the last year of the permission. It also doesn't appear to require substantial works to have taken place, which is helpful.

## 3.8 Statutory Consultees

The role of the National Transport Authority is referenced extensively in the Bill with the aim of coordinating land use planning and transport planning, which is positive.

However, Uisce Éireann (UÉ) has a much less prominent role. It is first referenced as a statutory consultee once a draft Development Plan is made (S53)(1)(x), but this is often far too late in the process. The Planning Authority has already decided where lands are to be zoned. Moreover, there is no obligation for UÉ to respond.

It is widely recognised that one of the major constraints on the building out of zoned lands is the lack of services. UÉ should be involved in the plan preparation process at a much earlier stage so that the Planning Authority only zones lands that are serviced or have a realistic chance of being serviced, and UÉ, in turn, can plan its capital works programme in coordination with the Planning Authority. This is especially important for lands identified for development in the longer term. At the very least, UÉ should be obliged to give written confirmation that the lands proposed to be zoned are serviced or have a realistic prospect of being serviced in the life of the plan if certain specified works are carried out, like the Confirmation of Feasibility for a SHD.

## 3.9 An Coimisiún Pleanála

The proposed renaming of An Bord Pleanála to An Coimisiún Pleanála is an unnecessary step that will have no tangible impact on the issues that the Board is dealing with and will carry a cost. An Bord Pleanála's key focus should be restoring public confidence, resourcing, clearing the backlog and making timely decisions.

There is a need for clarity in the forthcoming Planning Regulations on what happens if the timelines established for decision-making are not achieved. It would be preferable if this did not solely rely on the paying of fines as this does nothing to assist with making more timely decisions, which is what our members ultimately want to see.

Alternative measures for ensuring accountability must be established and set out below are some suggestions.

i. **Transparency & Reporting**: regular reporting mechanisms is an effective measure to foster accountability. The reporting should include publicly sharing information about actions taken, decisions made, and progress achieved.

ii. **Training and Development**: Provide ongoing training and development to help individuals improve their skills and knowledge, thereby enhancing their ability to fulfil responsibilities and be accountable.

iii. **Recognise and Reward**: Recognising and rewarding individuals or teams for showing accountability can encourage a positive cycle where individuals strive for accountability to achieve recognition.

### 3.10 Resources

It is a welcome step that additional resources are being allocated to the Commission, but this is adding to the pressure for Local Authorities and Private Practice (particularly in the Dublin and Eastern Region), as experienced planners are being recruited to the Commission – leaving gaps in resources elsewhere. It is important that resourcing the planning profession is considered in the round.

There is also a need for continued upskilling of the Planning profession. The Department has been working with the Irish Planning Institute and RTPI on training programmes and these need to be continued and increased.

# 4. Conclusions

Over the last year, there was a prevailing consensus of an inevitable recession across European economies. This pessimism stemmed from the Ukrainian war, triggering an energy crisis, coupled with escalating inflation and an apparent, relentless surge in interest rates. The situation intensified with the compulsory acquisition of Credit Suisse by UBS.

Contrary to the doomsday predictions, the current scenario presents a more optimistic outlook. Forecasts indicate a continued decline in inflation, attributed to reduced energy prices and alleviated supply bottlenecks. This downward trend in inflation is anticipated to have a ripple effect on interest rates.

Against this positive environment, the Bill must respond and support the activation of the significant number of uncommenced permissions. The key areas where interventions can be made that would have a positive impact relate to provisions with respect to,

i. Extending the duration of extant planning permissions that have been deemed in accordance with proper planning and sustainable development.
ii. Clearly defining the limitations of non-material alterations and facilitating a streamlined process for these to occur.
iii. For permissions subject to judicial challenge, pausing the timeline at the point that the case is accepted.

It is acknowledged that to achieve proper planning and sustainable development, proposals should align with Development Plans. However, this assumes that the plans are flexible enough to deal with external factors that can affect policies and objectives over the course of their life term. The Material Contravention process is a mechanism for providing flexibility; however, in recent years, it has been shown to be problematic. Not all provisions in Development Plans are material and to overcome the issue of an absence of definition in the Bill, a useful requirement would be for Plans to include a list of provisions that if breached would be deemed material. In this way there would be certainty for all.

The Bill must bring clarity in relation to current zoning designations established in Local Area Plans and how these will be dealt with under the new Act.

Finally, the recommendations made in our original submission in our opinion still have value and it is respectfully requested that consideration is given to adopting them into future revisions to this Bill.

| Planning and Development Bill 2023 (No. 81 of 2023) | | |
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| **Section** | **General Scheme** | **Solution** |
| 9 | The exemptions in section 4(1) are important. Those have been fundamental since 1963, both under the first planning act, and the most recent. It is not clear why those should be limited to secondary legislation, as that will might limit their availability in unexpected ways, including by reference to the Habitats Regulations, the current article 9 of the Planning Regulations and otherwise. | Reinsert the exemptions at section 4(1) of the current Act. |
| 10 | The replacement for section 5 declarations is materially different. We do not understand why the process is limited to a "Relevant Person" (excluding the public). Section 5 provided a cost effective and independent process that acted like an alternative dispute resolution method to spare parties from enforcement in court. | Amend to allow the public to make a request. |
| 11(2) | We do not understand why a declaration should be inadmissible in proceedings. The views of the planning authority have long been a relevant consideration in the exercise of court discretion on enforcement. There is no good reason to reverse that authority. Further, the binding characteristic of these declarations is well established, and important to the development finance and completion of many projects. That being so, it is unhelpful for their significance to be dilute in this very material way. | Delete subsection (2). |

| Planning and Development Bill 2023 (No. 81 of 2023) | | |
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| **Section** | **General Scheme** | **Solution** |
| 20(3) | It does not make sense for the review of the National Planning Framework to be delayed until after there has been two censuses of the population. The data from a census is immediately relevant to the needs of the current and future population, trends in net inward migration, household size, vacancy, and dilapidation. | The review should be complete within one year, not two, of the occurrence of a census of the population, not the second occurrence of a census. |
| 24(1)(b) | It is welcome that principles and policies are now expressed for the making of National Planning Statements. We expect paragraph (b) is intended to contemplate height and density, but recommend that both are listed to avoid any doubt. | Insert reference to height and density at paragraph (b). |
| 24(2) | There is a discretion to consult on National Planning Statements; there should be an obligation. | Revise from "may" to "shall" consult. |
| 38(5)(b) | The Minister is limited to only minor amendments to the draft direction proposed by the Office of the Planning Regulator. It is far from clear that the Office should have such control and influence over this intervention in the democratic expression of the planning authority. The Minister should have greater discretion. | Remove the word "minor". |
| 41 | The OPR should have responsibility for ensuring coordination of development plans with NTA Transportation Strategies and with Irish Water capital investment programmes with a statement from IW and the NTA confirming Tier 1 lands are in fact serviced | Co-ordination of transport and water services with development plan-making. |

| Planning and Development Bill 2023 (No. 81 of 2023) | | |
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| | and capable of accommodating the scale of development envisaged in the draft. | |
| 55 | The Chief Executive may vary a housing strategy, but only in response to changes in the housing market. The freedom should extend to other considerations, such as failure of existing zoned land to deliver on housing targets. | Expand the considerations relevant for the Chief Executive to change the housing strategy, including to respond to failure to achieve housing targets. |
| 83(1) | The core touchstone for planning decisions of "proper planning and sustainable development" is now listed as a matter to which regard must be had. Previously, under section 34(2)(a) of the current Act, "the planning authority shall be restricted to considering the proper planning and sustainable development of the area". The difference might seem small, but is important. The obligation to have regard is well understood and allows for significant departure, where explained and clear the requirement was understood. The restriction in the current Act is more central and important. | Reinstate the language from section 34(2)(a) of the current Act so that "When making its decision in relation to an application under this section, the planning authority or the Commission shall be restricted to considering the proper planning and sustainable development of the area, regard being had to:". |
| 83(1)(a)(i) | This provision restates the current common law that the relevant plan is the one that has "effect on the date the decision concerned is made". Where decision-making processes are elongated (many applications for housing, transport infrastructure and energy infrastructure are with An Bord Pleanála for much longer than one year) or where decisions are quashed, there is unfairness to an applicant for permission that delay means the local planning | Amend so that the relevant plan etc. is the one in force at the date the application for a decision is made, not the date a decision is made. |

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| | policy might have changed. This means there is advantage for those questioning the validity of permission to prolong the dispute process, to consume the duration of a permission that is hard to extend and to increase the prospect the development plan might change in the meantime. This perverse incentive would be removed if the relevant plan is the plan at the date the scheme was designed, and the application made. There is no particular prejudice to the public or other persons, either, as the ruleset is clear and this encourages swift resolution. | |
| 83(5) | The method for plan-led decision-making, with important features set by the National Planning Framework and National Planning Statements is welcome. However, we cannot understand why planning decisions are allowed to simply "have regard" to the National Planning Statements, and to explain material inconsistencies. The National Planning Statements should be a more significant weight in the planning process, particularly now these are made by the Government, after consultation and strategic assessment. Section 83(1)(a)(ii) already makes clear that the relevant National Planning Statements are the ones that are not the subject of a provision in the development plan. Where the plan has not been upgraded to comply with the statement, the planning decision must respect the latter. | Planning decisions should be materially consistent with any National Planning Statement. The planning authorities and the Commission should not be free to depart from the statement, as contemplated by section 83(5). |
| 83 | Unlike the process for environmental licensing, the planning process does not invite those participating to comment on a draft, recommended or proposed decision. This method is used for | Insert requirement for the report of the inspector to be published for comment by parties to an appeal *before* being considered by the |

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| | Ministerial directions, but not planning decisions. We expect that errors of fact or law could be avoided if the report of the inspector was published *before* being considered by the Commission. The process does not have to be complicated. The report could be published soon as ready for consideration by the Commission. The parties could have four weeks to make comments. The Commission can then consider the report, together with those further comments. The Commission might be spared confusion, wasted effort on repeat meetings and delay by the need for further information requests. This is probably not necessary for normal planning applications, but would be helpful for large-scale residential development and direct applications to the Commission. | Commission. For large-scale residential development and direct applications to the Commission. |
| 84(11) | We do not understand why section 34(5) of the current Act is reversed. Section 34(5) was amended by the Planning and Development (Amendment) Act 2018, and commenced on 17 December 2022. It forces the planning authority to engage, or suffer deemed agreement. In practice, it has provoked welcome feedback on compliance submissions in a timely manner. Section 83(9) reverses that provision, and deems disagreement. This forces a blind reference to the Commission, without any insight on what the planning authority might think, and exposes the compliance submissions to the delays at the Commission. This is unwelcome. It is also inconsistent with section 83(11), where there is deemed agreement with the Commission. | Reinstate section 34(5), by amending section 84(11) to read "deemed to have agreed". |

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| 94(4)(a) | This allows the planning authority to make a decision on a planning application where revised particulars are not provided. However, where further information is not provided, or not advertised, the application is deemed withdrawn. It would be more clear for the outcome to be the same in both: application deemed withdrawn. | Where revised particulars are not provided, the application should be treated the same as where further information is not provided. |
| 106 | Consistency in decision making between Local Authorities and the Commission will restore confidence in the planning system and shift the focus of decision making back to the Local Authority. Limiting the scope of the Commission's deliberations to issues raised in an appeal only, with that in turn limited to an examination of whether the Local Authority's decision was properly made, will greatly reduce pressure on the Commission's resources. If 90% of appeals are unsuccessful, the number of appeals will reduce, further reducing pressure on the Commission. If the Commission only has to focus on the issues raised in the appeal, it can make determinations much faster. Speed of decision making and consistency in decision making would both be enhanced. | Appeals to the Commission should only be examined "as if made in the first instance" where the application being considered by the Commission is different to the one originally made to the Local Authority. Where the drawings and documents before the Commission are identical to those originally considered by the planning authority, the Commission should confine itself to considering the specific issues raised in the appeal. Where appeals are made to the Commission, the appellant (first or third party) should be obliged to identify specifically where and how planning policy has been misinterpreted by the planning authority, citing the specific policy, objective or National Planning Statements that have been misinterpreted or ignored by the planning authority.<br><br>Generic "catch all" appeals should be dismissed immediately as being invalid. |
| 107 | The comments regarding material contravention at section 122 are relevant at other locations in the Bill, including section 107. | |

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| 122(2) | The first line is different from section 37(2)(b) of the current Act. That being so, we expect this can be read to reverse the findings in South West Regional Shopping Centre [2016] IEHC 84 (§ 95) and Balz [2016] IEHC 134 (§ 115) to the effect An Bord Pleanála remained free to determine whether or not there existed a material contravention before the restrictions applied. | The Commission should remain free to determine whether or not there exists a material contravention before these restrictions apply. The language at section 37(2)(a) and the commencement of section 37(2)(b) should be reinstated:<br><br>"(a) Subject to paragraph (b), the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates.<br><br>(b) Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Commission may only grant permission where it considers that:" |
| 122(2)(a)-(b) | It is welcome that the word "or" is placed to make clear the criterion are disjunctive. | None. |
| 122(2)(a) | It is not clear what is meant by the new language "having regard to the policy of the Government". It should be a question of substance whether development is strategic or nationally important. It should not be necessary that Government have anticipated that importance in an expression of formal policy. The prospect that housing projects of 101 units might be described as nationally important does not arise where there is clear disjunction between the different justifications. The added | Delete "having regard to the policy of the Government". |

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| | language is not necessary, and limits the paragraph to little more than is contained at (c). | |
| 122(2)(c) | It is not clear what is meant by the new language "as deal with the matter dealt with by provisions of the development plan". We fear this can be read to mean that paragraph (c) is irrelevant to contravention of plans made *after* the relevant NPF, NPS or RSES is made. This would ignore the fact that some plans fail to properly or fully give effect to the provisions of the NPF, NPS or RSES. For example, Ministerial guidance on density from 2009 has been relevant to justification of contraventions of plans made in 2010, 2016 and 2022. If there is planning authority default in respecting Government policy, that should not limit justification based on the policy. | Delete "as deal with the matter dealt with by provisions of the development plan", and/or add "whether or not those provisions were made after the development plan". |
| 122(2) | We note that section 37(2)(d) of the current Act is not repeated. We acknowledge that should not be material, given first justification giving rise the "pattern of development" must be made by reference to one of paragraphs (a) to (c) regardless and the same justification can be repeated. The only concern is that the phrase "since the making of the development plan" was express in that sub-paragraph, so that omission from paragraphs (a) to (c) was significant. See proposed amendment above to make clear that the date when NPF, NPS and RSES made is not relevant. | See above. |

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| 122 | The proliferation of material contravention statements in applications for strategic housing development arose from a sensitivity to unexpected matters being deemed material, and applications being treated as invalid for that reason. This lead to a wide number of "mere contraventions" labelled as "material contravention" to avoid any criticism. The distinction between mere and material is important, and there is little or no guidance in the Bill on how to make that distinction. It would help to make clear that housing supply targets are not ceilings consumed by mere grant of permission, that height greater than contemplated in a plan is not automatically material and to emphasise that planning judgment is required to form a view on materiality. | Statutory basis for differentiating between mere contravention and material contravention. |
| 133(2)(c) | The new power to clarify a permission is welcome. | |
| 135 | The process for extension of duration is materially different. It would help to understand better when extensions of duration should not be considered material, so that extension is expected and automatic.<br><br>The language at section 134(5) can be read to unwind the clarification in section 42(8) of the current Act, which was the result of an extended iterative process that makes clear the focus is on the balance of development yet to be completed after the expiry of the permission. | Amend section 134(5) to reflect section 42(8) of the current Act. Insert statutory basis for differentiating between non-material and material extensions of duration, so that certain periods of time are automatically granted.<br><br>In particular, all time lost to legal challenge should be automatically extended. |

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| | The time lost in legal challenge should be automatically extended. | |
| 136 | It should be made clear that amendments to strategic housing and / or large-scale residential development ("LRD") are not subject to the LRD procedures. | Exclude that amendments to strategic housing and / or LRD from the LRD procedures. |
| 137(4) | The process for a material extension of duration is new. The power to grant extension where environmental assessments are required, or material contravention arises, and to appeal, are all welcome. We note the power, when dealing with maritime development, to have regard to social or economic benefit, contractual commitments and the extent to which advanced. Those matters are no less relevant to land-based development. Where required to be relevant for one class of development, but not the other, we fear the distinction might be relied upon to disadvantage land-based development. These criterion are relevant to all. | Extend the criterion to all development, not just maritime development. |
| 142 | The comments regarding material contravention at section 122 are relevant at other locations in the Bill, including section 142. | |

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| 157 | The protection for protected structure is based on an expanded definition of structure that means interiors are included, whether worthy for listing or not. This appears unintended, and should be removed. | The interior of a protected structure should only be protected where worthy. Remove reference from the definition of "proposed protected structure" and "protected structure". |
| 254(2) | The clarification of the burden when commencing a late challenge or, in particular, when amending proceedings late, is welcome. | |
| 258(3) | We acknowledge that European law limits the discretion for the State in how to regulate access to the courts for those dissatisfied with outcomes in the planning process.<br><br>We acknowledge that European law allows a person access to justice to agitate issues raised by them in the planning process.<br><br>It is welcome that legal capacity is acknowledged as a pre-condition. The proliferation of challenges by unincorporated associations of persons, with uncertain and unfunded mandates, and without clear decision-making procedures, was unwelcome and spawned in response to doubt about costs protection. With clarity in section 258(2) of the Bill, the need for such opaque entities to access the court process is not justified.<br><br>It is unclear what the phrase "made submissions of a material nature" is to mean. A person can secure interest in a "matter" (not just a ground), where "submissions of a material nature" have | Insert requirement for the submissions to relate to the ground raised. |

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| | been made. There is no requirement for the submissions to relate to the ground raised. | |
| 258(2)(d) | It is welcome that bodies corporate should have vires and a mandate to sue. Recourse to the High Court is a serious matter and should not be undertaken lightly, and should not be undertaken without an opportunity for all members of the body corporate to be heard. Where there is practical difficulty in completing the resolution making process under sub-paragraph (d), it would be better for there to be a limited added period of time to pass that resolution, rather than to omit the requirement. | At sub-paragraph (d), where not practicable to pass the required resolution before proceedings are issued, allow some limited added period of time to pass that resolution. |
| 258(2)(a) | It is not clear why only one year is required at paragraph (a). We expect a true NGO would have longer relevance. There is no need for the State to encourage project specific special purpose corporate vehicles to shelter objectors from exposure to consequences for frivolous, vexations or abuse of process. | Increase the figure at paragraph (d) from one to three, or longer. |
| 258(2)(c) | It is not clear why only 10 members are required at paragraph (c). We expect a true NGO would have wider representation, so that 50 would be more sensible. | Increase the figure at paragraph (c) from 10 to 50. |

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| 258(1) and (4) | Persons that claim to be materially affected are required to have legal capacity. This is welcome. Capacity is a matter for the domestic law.<br><br>Also, it is not clear what the phrase "is, or may be, directly or indirectly materially affected by the matter" means. The language is different from Article 11(1) of the EIA Directive or Article 9(2) of the Aarhus Convention. It would make sense to limit this to "impairment of a right", as expressed in the Directive and Convention. | Retain requirement for unincorporated associations to have capacity.<br><br>Limit access to those that maintain "impairment of a right", not direct or indirect material affect. |
| 259 | The clarity regarding appeal to the Court of Appeal and removing the unpopular certification process is welcome. | |
| 260 | The power to amend at section 249(5) of the General Scheme was welcome. We recommend reinsertion, but for the process to provide for public participation, or public notice of outcome. | Reinsert section 249(5) of the General Scheme, but require public notice of outcome, and a power for public participation. |
| 260 | We note that section 260 does require the court to consider, in its discretion, making an order to give effect to an amendment, instead of quashing a permission.<br><br>We cannot understand why a permission should be quashed where the conduct complained about did not make a significant difference to the outcome of the decision. In the UK, the courts | Amend to reflect section 31(2A) of the Senior Courts Act 1981 in the United Kingdom, so that the court must refuse relief in judicial review if it is "highly likely" that the conduct complained of did not make a significant difference to the outcome of the decision. |

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| | are prohibited from quashing a permission in that circumstance. The same should be true here. | |
| 260 | As noted, the power to amend at section 249(5) of the General Scheme was welcome. It suggested a policy choice by the Oireachtas for the court to defer to the planning process, and to allow the Commission to resolve matters by amendment, where possible.<br><br>As suggested, and based on section 31(2A) of the Senior Courts Act 1981 in the United Kingdom, we believe the court should refuse relief where the conduct complaint of did not make a significance difference to the outcome OR where the Commission can resolve the matter by amendment. | As noted, amend section 260 to reflect section 31(2A) of the Senior Courts Act 1981 in the United Kingdom AND require the court to refuse relief in judicial review where the Commission can resolve the matter by amendment under section 249(5) or otherwise. |
| 260 | We acknowledge the constraint on judicial resources and the principle of judicial restraint, but there would be real value for participants to learn the views of the court on all issues raised in proceedings, even provisionally, before a matter is returned to the decision-maker for fresh decision. | Require the court to address all issues raised in proceedings. |
| 260 | The number of permissions quashed by consent is now more than treble historic levels. According to most recent published data from An Bord Pleanála, more than one in four cases are conceded. The reasons for these are not always shared, so that only the parties and those representing them are informed of the issues of | Require consent orders to be published by the Commission. |

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| | concern. The knowledge is trapped in a narrow cohort of informed persons, and is not transparent for all interested persons to learn from the outcomes. | |
| 263-274 | The requirement for access to justice to be "not prohibitively expensive" is acknowledged. That does not mean those bringing challenges should not have any exposure whatsoever or should not be forced to hesitate before engaging in the court process. If a challenge is not successful, there should be some proportionate exposure to the costs that other parties have incurred. Successful objectors can seek costs from the decision-maker and any notice party, to the extent they are successful. However, there is provision for the Minister to cap their recovery.<br><br>Unsuccessful objectors will now be able to seek legal aid. We cannot understand this. | The UK model of cost capping is effective.<br><br>No costs should be paid to unsuccessful objectors. |
| 263 | It would be unhelpful for this change in cost protection to spawn a fresh wave of PCO (protective costs order) motions that delay the progress of proceedings, pending clarification from superior courts or the Court of Justice of the European Union. | Retain clarity that all challenges to decisions under the Planning Acts are covered. |
| 267(2) | This will reward unmeritorious claims. There is great risk that this will introduce perverse incentives to question the validity of permissions that would not otherwise have been challenged. If the scheme offers a sum, regardless of outcome, those funded by | The scheme should not reward unmeritorious claims and should be designed to ensure no incentive to bring a greater number of challenges. |

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| | the scheme will surely be motivated to bring a greater number of challenges, particularly where the amount paid might be less than when granted an order for costs against An Bord Pleanála under the current Act. | |
| 440(2)(a) | The list of experience for Commissioners should include environmental and ecological expertise. There is a welcome change from the General Scheme. | Retain long list of experience relevant. |
| Part 20 | Part 20 of the General Scheme had been reserved for transitional provisions, but was blank. The Bill does not include much by way of transitional provision, which is unusual.<br><br>For development contributions, sections 48 and 49 are repeated at sections 504 and 505.<br><br>For pending applications, those are ignored. There is no other relevant transitional provision, save for compulsory purchase matters. The transition from current to proposed is not addressed, and appears left for management by careful timing of commencement orders under section 1(2).<br><br>It should also be used to resolve the backlog of pending applications with An Bord Pleanála. In particular, this should address the prospect that applications made in time to expect an outcome under a given development plan might be stalled or refused solely because An Bord Pleanála believe it cannot deal | The Commission should remain obliged to determine pending applications for strategic housing development, notwithstanding change in development plan or policy after those applications were made. To the extent necessary, the Commission should have the flexibility to request submissions or observations from the parties in relation to any such change. The Commission should not be allowed delay those applications, merely because it has paid the "fine" under the current Act. |

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| | with an intermediate change in development plan or other policy. That is not legally correct, but it would help for An Bord Pleanála to have a clear obligation to make a decision, and a clear power to address the change in development plan or policy. This is the only fair resolution where delay in the planning process, beyond the control of the applicant, is the reason for the issue. The cost of preparing a planning application, the planning application fee and the holding cost of land, are material factors that mean it would be wrong to allow the Commission to simply refuse to assess the application and to permission. | |