CONSTRUCTION INDUSTRY FEDERATION

Construction House, Canal Road, Dublin 6. Tel: 01-4066000. Fax: 01-4966953. E-mail: cif@cif.ie. Website: www.cif.ie

Mr. Stephen Matthews
Cathaoirleach,
Oireachtas Committee on Housing,
Local Government & Heritage
Leinster House,
Kildare Street
Dublin,
D02 XR20

28th March 2023

Dear Cathaoirleach,

RE: CIF SUBMISSION TO THE DRAFT PLANNING & DEVELOPMENT BILL

Please find attached a report prepared by McCutcheon Halley Planning Consultants and McCann FitzGerald LLP on behalf of the Construction Industry Federation (CIF) regarding a submission to the Draft Planning & Development Bill. It is noted that these reports should be read together and that the McCann FitzGerald paper sets out granular recommendations with respect to specific sections of the Draft Bill.

This submission examines key areas of the draft Bill that impact the CIF's membership and, as such, 15 recommendations are proposed.

The stated objective of the review of the Planning and Development Act 2000 is to "bring greater clarity, consistency, and certainty to how planning decisions are made. It will make the planning system more coherent and user-friendly for the public and planning practitioners." This is welcomed by the CIF and in our opinion necessary to deliver essential infrastructure including homes, public transport facilities, roads, water & wastewater facilities, schools and hospitals, to cater for our growing population and economy. Our continued development as a society and economy depends on constructing essential infrastructure.

We believe that many of the decisions in relation to constructing essential infrastructure should take place at the plan making stage rather than the planning application stage. 'The Plan' making stage (whether national, regional, or local) will establish the appropriate parameters for development. We welcome this shift in emphasis and our suggested

amendments to the Planning & Development Bill in the attached submission are all intended to reinforce this process.

While there is no doubt that we are in a housing emergency, we urge careful consideration and time be taken when reviewing this important piece of legislation, particularly given that the effects will be felt for the next 15 – 20 years. This is a once in a generation opportunity to reform the planning system and our first recommendation calls for the proposed timelines for progressing this bill be reviewed. As we hope we have made clear in the attached submission, the issues under consideration by the Committee have wide-ranging implications, not only for the construction industry, but for the socio-economical welfare of Ireland.

Of equally critical importance is the secondary legislation and in order to fully assess the implications of the Planning and Development Bill consideration should be given to publishing all the relevant secondary legislation.

We would like to thank the committee for all their work in assessing the legislation and the opportunity provided to the CIF to appear at the committee hearing on this legislation. Our intention with our submission and commentary is to help the work of the committee in finalising their paper and to assist the Department of Housing Planning and Local Government in their continuing assessment of the legislation.

Yours Sincerely,

Conor O'Connell

Director
Housing, Planning & Development Department

March 2023

Draft Planning and Development Bill 2022

Submission to the Joint Oireachtas Committee on Housing, Local Government and Heritage

McCutcheon Halley
CHARTERED PLANNING CONSULTANTS

1. Introduction

McCutcheon Halley Planning (MHP) Consultants were appointed by the Construction Industry Federation (CIF), to prepare this submission for the Joint Oireachtas Committee on Housing, Local Government and Heritage to inform the pre-legislative scrutiny of the Draft Planning and Development Bill 2022 (henceforth the draft Bill).

On behalf of the CIF, we wish to thank the committee for their work to date and for the opportunity to make this submission following our appearance as a witness before the Oireachtas on the 14th of February 2023.

The stated objective of the review of the Planning and Development Act (PDA) 2000 is to *"bring greater **clarity, consistency, and certainty** to how planning decisions are made. It will make the planning system more coherent and user-friendly for the public and planning practitioners."*[1] (emp. added) This is welcomed by the CIF and in their opinion necessary if their members are to get on with their business, delivering much needed homes across all tenures. Indeed, this draft Bill has been brought forward because of the housing crisis. The Government publication 'Housing for All' identified that reform of the planning system is necessary and includes Objective 13.3: *To carry out a comprehensive review and consolidation of planning legislation.*

This submission (i) sets the context for the CIFs membership's interest in this draft Bill, (ii) examines key areas of the draft Bill that impact the CIFs membership and (iii) makes recommendations on these key areas that would improve the Bill as it passes through the next stages.

It is noted that this report should be read together with a separate paper prepared by McCann FitzGerald LLP, also on behalf of the CIF which is included under separate cover. It sets out granular recommendations with respect to specific sections of the Draft Bill.

In their press statement responding to the publication of the Draft Bill, the Irish Planning Institute (IPI) in state; -

"It presents a once in a generation opportunity to improve the functioning of the planning system for practitioners and the public."

The IPI and Royal Town Planning Institute (RTPI) who acted as witnesses during the pre-legislative scrutiny stage highlighted that in their view the level of engagement/public participation in the drafting of this Bill was suboptimal. They pointed to the limited time they had with a Bill that would introduce significant change and their concern that issues will be missed.

Having regard to the issues raised in this submission together with the comments regarding potential missed issues made by the two bodies that

[1] https://www.gov.ie/en/press-release/3e4e1-improved-planning-regime-takes-step-closer-with-publication-of-draft-planning-and-development-bill-2022/

represent the planning profession in Ireland, the IPI and RTPI, the following recommendation is made with respect to timelines.

Recommendation 1:

The CIF recommend that the proposed timelines for progressing this Bill through the various stages should be reviewed and 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.

2. Context

The review of the Planning & Development Act 2000 was largely initiated on foot of the housing emergency. 'Housing for All' identifies a supply target of 33,000 new homes, on average, per annum up to and including 2030. Unpublished research by the Housing Commission states the target could be as high as 62,000 homes built per year until 2050 to meet demand. Under either scenario, the challenge for home builders is significant and having a robust planning framework is critical for the delivery of new homes.

Having regard to the nature of the CIFs membership the key stages of the planning process that are most relevant to the CIF and discussed in this submission fall into the following categories: -

i. Resourcing
ii. Plan making
iii. Development Management

2.1 Housing Delivery Timelines

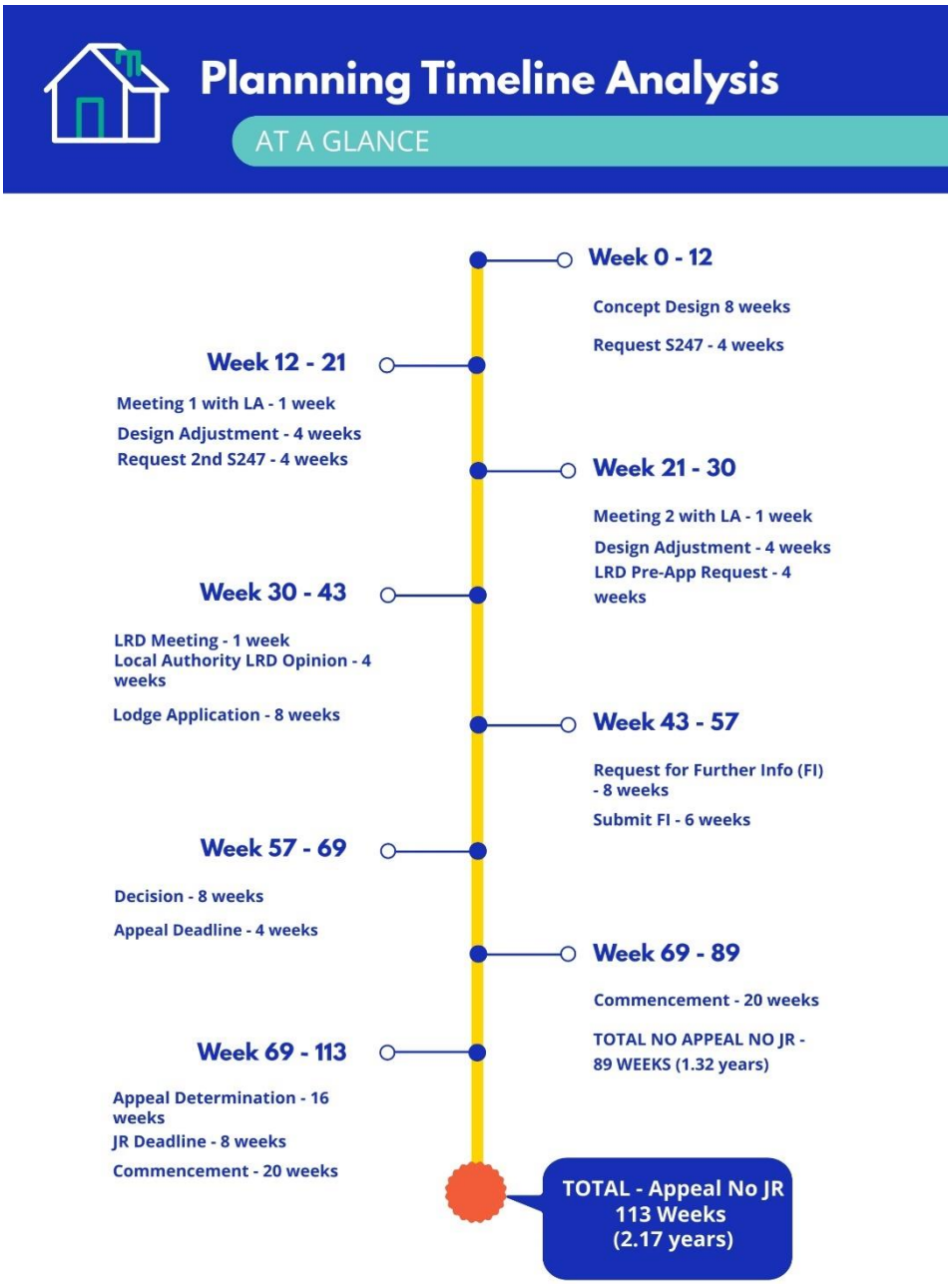
The infographic overleaf is included to demonstrate the timeline for bringing a Largescale Residential Development (100+ homes) from the design development phase through to commencing on site. The assumptions/exclusions built into this timeline are as follows: -

- Site is zoned for residential development.
- 28 weeks: time from receipt of final grant of permission to commencement on site.
- Excludes any further information request/ oral hearings at An Bord Pleanála (ABP) appeal stage.
- Excludes timeline attached to Judicial Reviews.

Assuming no appeal to ABP, the minimum timeline is 1 year and 3 months. However, this would be the exception, as most decisions are appealed and with an appeal this stretches to over 2 years before 'a sod is turned'.

The reasons for appeals are wide-ranging and it is not the purpose of this submission to interrogate them. However, a well-conceived, robust planning framework, that rebuilds confidence in the planning system could positively

impact these timelines and in turn expediate the delivery of much needed housing and other critical infrastructure such as renewable energy installations, public transport etc.



2.2 An Bord Pleanála Backlog

Over the past year there has been significant disruption within An Bord Pleanála (ABP) and it has directly impacted the processing of files. The average case determination rate has plunged from an average of 95% over the period 2018-2021, to a 25% determination rate in 2022. The absence of decisions is directly impacting the timely delivery of the State's most pressing needs, inter alia housing and energy infrastructure, and other development necessary to support the economy and high-quality living standards.

The recent appointments at Board level are an improvement, but more is needed. It is necessary to have at least a full complement for stability within the organisation and to facilitate processing of the more than 2,500 files received per annum.

The disruption within ABP has resulted in a very serious backlog, with over 2,200 files left undecided in 2022. These files include approx. 33,800 new homes (SHDs & LRDs) and 1,800 student bed spaces[2]. This equates to almost a full year of files and this backlog is and will continue to be compounded as new cases flow in.

A further deepening of workload will occur in 2023 with the offshore wind projects that received Maritime Area Consents (MACs) in December 2022 and that must now proceed to planning within 18-months to satisfy the 'use it or lose it' clause.

Having regard to the above our recommendations with respect to resourcing the planning system as set out in Section 3 of this submission are critical.

There is a high risk that a significant proportion of the backlog files will be refused permission due to new Development Plans taking effect since applications were lodged. This is a significant burden for our members to carry and is a devastating result for the delivery of new homes having regard to the delays that it will cause. Our recommendation to prevent this situation arising in the future is set out in Section 5.4 of this submission.

[2] Source: Logue SHD Tracker https://www.fplogue.com/shd-tracker/

3. Resources

3.1 General

The planning system is working well beyond its capacity and this draft Bill would introduce a raft of changes that will place additional responsibilities on the planning profession, public and private.

The Irish Planning Institute has this week (13th March 2023) launched a census of the planning profession in Ireland and it is envisaged that the results from this initiative will be published in June 2023. We would encourage the Department and this Oireachtas committee to consider if the responsibilities being placed on the profession can be reasonably met by the available resources. The consequence of not giving this sufficient consideration is that the risk of procedural errors occurring increases, and this can bring plans and decisions into dispute which in turn results in time delays.

The CIF welcomes the commitment in the Bill to applying statutory timeframes to development consenting processes. This is dealt with further in section 5.1of this report. However, it is an issue that is intrinsically linked to resourcing. Chapters 3 and 4 of the draft Bill reference penalties that would apply to planning authorities and the Commission where they fail to make decisions within the prescribed timelines. Receiving timely permissions is critical for our members, however, the return of planning fees/payment of a penalty to them in lieu of a decision is not an acceptable solution.

Further it is entirely plausible that this 'stick' approach could be counterproductive, whereby under resourced planning authorities would simply take a view from the outset that the fine would be paid. It is our position that a far better approach would be to ensure that planning authorities are appropriately resourced.

Our membership would support the ringfencing of monies to ensure the necessary resources and skills are available in the first instance within planning authorities and the Commission and where necessary to allow them to draw on expert input as required from other professions to ensure sound decision making.

3.2 An Coimisiún Pleanála

3.2.1 Planning Commissioner Posts & Quorum

The increase in commissioner posts (previously Board Members) from the current 10 to 15 is welcomed by the CIF.

However, the backlog that exists in An Bord Pleanála (ABP) is well documented and according to our research it amounts to an approx. 1-year case load. Our research also identifies that when ABP had the full complement of 10 members together with approx. 175 staff, as it did between 2018 and 2020, it was able to determine approx. 2,500 files per annum. However, this period also coincided with significant growth in

challenges brought against decisions made and subsequent quashing of decisions.

This inevitably must lead to questioning if the balance of the numbers involved in decision making is adequate having regard to the complexity of planning and environmental law that must be considered. We would suggest that the evidence from the last 5 years is that at a very basic level it is necessary to substantially increase the numbers, and, in this regard, we would suggest that this Bill does not go far enough.

The draft Bill establishes that the quorum for a meeting of the Planning Commissioners shall be three and five for applications made directly to the commission.

Assuming the commission will receive approx. 2,500 files per annum and if 10% were direct applications, this would leave 2,250 files to be discharged. There are approx. 225 working days per annum so this volume of files would require that the proposed 15-person commission broken into 5 x 3-person quorums would discharge a file every second day. Having regard to the often very complex nature of some of these files, this would appear to be onerous and without an uplift in ordinary commission members there is a high risk that the mandatory timelines would not be met.

Recommendation 2:

Given the complexity of decision making, we would recommend that the Bill should provide for at a minimum 20 commissioners.

3.2.2 Planning Commissioner Expertise & Experience

With respect to the experience of commissioners this is dealt with under Part 17, Chapter 3.

Section 407 (2)(a) refers to the necessary experience and expertise for an ordinary Planning Commissioner. Reference is made to satisfactory experience of, or a satisfactory mix of experience and knowledge of, infrastructure delivery, housing, physical planning, sustainable development, architecture, heritage, community affairs, social affairs, planning and environmental law and corporate governance.

Of note is the absence of environmental specialisms from this list for example, ecologists etc.

Development consent for a project likely to have a significant effect on an area protected under the Habitats Directive is regulated under Article 6(3):

"Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, ***the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site***

concerned *and, if appropriate, after having obtained the opinion of the general public."*

The impact of the Habitats Directive is much greater than the EIA Directive as planning authorities are precluded from granting permission under the circumstances outlined above. It's a very complex area as evidenced in the challenges that have come before the High Court in recent years and subsequent judgments.

Recommendation 3:

It is recommended that it should be mandatory that a qualified ecologist is appointed to one of the ordinary planning commissioner posts.

4. Plan Making

4.1 National Planning Framework Review

In December 2022, the Irish Home Builders Association (IHBA), a constituent association of the CIF, submitted a report to the Department of Housing, Local Government and Heritage, requesting the immediate commencement of a review of the National Planning Framework's (NPF) population projections and household size assumption.

The preliminary Census 2022 were published on June 23rd, 2022, and it provides evidence that the NPFs population projection which inform the population targets in the three Regional Spatial Economic Strategies (RSESs) and in turn the housing Need Demand Assessment (HNDA) and core strategies of all Development Plans is vastly underestimated.

The population projection for Ireland in 2040 could be underestimated by up to 620,000 people. In housing terms, this equates to a shortfall of approx. 260,000 homes, based on Northern Ireland and the UKs current 2.4-person household size. Unless this is rectified, the current undersupply of housing will continue to exist and indeed deepen.

The implications of being conservative with population forecasts and household size in national planning policy should not be underestimated. It is these parameters that guide the Government's investment strategy in public services.

Between 2016 and 2022, the average annual population growth was 60,279. To achieve the current NPF forecast population of 5.7 million in 2040, this annual growth would need to almost halve.

The 2022 Census is likely a conservative estimate as it will not account for a significant proportion of the almost 74,500 Ukrainian nationals now residing in Ireland.

Neither the Census nor the ESRI projections that underpin the NPF account for 'environmental migration' patterns. It is likely that Ireland's temperate

climate will act as a 'pull' factor for international environmental migrants from more vulnerable locations.

The population surge of the last six years means a radical revision of housing supply targets will be required to meet the consequent rise in demand for new dwellings.

This must be coupled with resilience planning where a realistic headroom is factored to account for force majeure events such as a pandemic, a war, or human mobility linked to climate change.

The preliminary results of Census 2022 provide sufficient data to now commence a review of the NPF and this has been acknowledged by Government.

The submission made the following recommendations to the Department: -

"The IHBA recommend that the Government fulfil its duty to keep the implementation of the NPF under review, and, having regard to the information set out in this submission,

i. Revise the population projections in the Framework4 to take account of the preliminary findings of Census 2022.
ii. Revise assumptions with respect to household size, obsolescence of existing housing stock and net migration rates to align with the most current evidence on these matters.

In line with the commitment in the NPFs Implementation Roadmap this review should be co-ordinated with a review of the three Regional Spatial and Economic Strategies (RSESs).

iii. Revise the three RSES in parallel with the NPF review to ensure consistency in the top tier plans and to avoid the lengthy delays that would occur if one review were to follow the other.

That submission requested that the necessary review of the RSES would occur in parallel to avoid a misalignment occurrence and subsequent implications for decision making."

4.1.1 Review of NPF & RSES - Draft Bill Provisions & Recommendations

Part 3, Chapter 2, which deals with the NPF at 19 (2) states: -

"The first review shall be **completed by 3 April 2024,** or such other date as may be prescribed." (emp. added)

Part 3, Chapter 4 which deals with the RSES states: -

"29. (1) **Not later than 6 months** after the publication of a revised or new National Planning Framework by the Government under Chapter 2 of this Part, a regional assembly shall— (a) **commence a review of any regional spatial and economic strategy for the time being in force**, and (b) determine whether it is necessary to replace or revise the regional spatial and economic strategy." (emp. added)

The significant error in population projections that exists in the NPF is acknowledged by Government and policy makers as an issue that requires correction if we are to avoid a deepening of the housing crisis in the years ahead. It is unclear why in these circumstances the bill would allow for an almost 2-year gap between the receipt of the relevant information, (June 2022) and acting on it at national planning policy level.

Set out in the Table below is the programme for the next Census 2022 publications. It is submitted that the already published preliminary results coupled with the summary results and population distribution results due for publication in May and June 2023 respectively would provide sufficient information to robustly review the population targets in the NPF and RSES.

Release name	Date
Census 2022 - Summary Results	Tuesday, May 30th
Census 2022 Profile 1 - Population Distribution and Movement	Thursday, June 29th
Census 2022 Profile 2 - Housing in Ireland	Thursday, July 27th
Census 2022 Profile 3 - Households, Families and Childcare	Thursday, August 31st
Census 2022 - Small Area Population Statistics (SAPS)	Thursday, September 21st
Census 2022 Profile 4 - Disability, Health and Carers	Thursday, September 28th
Census 2022 - Place of Work, School, College - Census of Anonymised Records (POWSCAR)	Thursday, October 19th
Census 2022 Profile 5 - Diversity, Migration, Ethnicity, Irish Travellers & Religion	Thursday, October 26th
Census 2022 Profile 6 - Census 2022 Profile - Homelessness	Thursday, November 16th
Census 2022 Profile 7 - Employment, Occupations and Commuting	Thursday, November 30th
Census 2022 Profile 8 - The Irish Language and Education	Tuesday, December 19th

Table 1 Census 2022 Release Programme

Recommendation 4:

Given the impact that continuing with this population divergence will have on housing delivery, the review of both the NPF and RSES should be:-

i. commenced immediately,
ii. focussed on population targets, household size and obsolescence,
iii. progressed as a Variation and not a full review of these plans.

The objective should be to expediate the process in so far as is possible and the Bill should include specific procedures[3] for a variation process. As part of this public consultation should be limited to 4-weeks consistent with the current Development Plan variation process.

The variations subject of this section should be complete no later than September 2023.

To achieve this, it will be necessary to amend the wording in Part 3, Chapter 2, section 19 (2) and Chapter 4, section 24(5)(a) and 29 (1).

[3] The process should be set out in the Bill to avoid a situation where secondary legislation must be in place before it can proceed, as this would add further delays.

4.1.2 Census Results

Planning in Ireland is predicated on a plan led system. The impact of Ireland's intercensal population growth rates since the millennium is inadequately reflected in national spatial strategies. Census 2022 demonstrates that Ireland needs to be prepared for much higher levels of population increases than the narrow variations conservatively projected in the NPF.

Given the current public acknowledgement that the NPF is very much out of step with actual population growth it seems illogical to apply a restriction within this Bill with regard to limiting reviews of the NPF until after every 2nd Census.

It is acknowledged that the current review provision at section 19(3) would dovetail with the proposed extended Development Plan timeframe of 10 years. However, it is submitted that this should not be a driver for disregarding the outcome of every second Census, given that there needs to be a demand-led perspective to spatial planning and housing provision. Accordingly, the thrust and direction of Ireland's NPF must be driven by rational responses to population projections.

Recommendation 5:

It is 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.

4.2 National Planning Statements

Under the draft Bill, Ministerial guidelines and policy directives will be updated to form "National Planning Statements". These will comprise "National Planning Policies and Measures" and 'National Planning Policy Guidance'. Alignment with the policies and measures will be mandatory, in that there is a requirement for other plans to be materially consistent with them.

The means and mechanisms for integrating these national policies to lower order plans is critical. Without an effective procedure, the result would be a that developments would materially contravene development plans and planning authorities would be restricted in their ability to grant permission. This would be contrary to the overarching objectives of this review and could result in significant delays in decision making.

Further, there is no requirement on the Minister to enter consultations prior to issuing a National Planning Statement. Having regard to the consequences (appeals, legal challenges, delays etc.) we have witnessed when people feel disenfranchised by the planning system, it is recommended that s.24 (2) of the draft Bill be reviewed.

Recommendation 6:

It is recommended that the draft Bill should include a direction that National Planning Policies and Measures supersede conflicting policies in lower order plans from the time that they are published, to avoid planning authorities having to instigate material contravention processes unnecessarily.

Recommendation 7:

It is 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.

4.3 Local Plans

The draft Bill introduces three new plans, Urban Area Plans, Priority Area Plans, and Joint Area Plans with various timeframes attached.

It would be important that unintended consequences would not flow from these plans not being prepared/adopted within the stated timeframes.

We would recommend that consideration is given to the ability of planning authorities to resource the preparation of these plans and any implications delays would have to development management.

5. Development Management

5.1 Statutory Timelines

The CIF welcome the intention to apply statutory timelines to decisions that will be made by the Commission. Of course, the draft Bill does not stipulate what these will be. Having considered the issue, we would recommend that like the existing large scale residential development process, all housing development of 10+ units should now be deemed critical infrastructure. A rigorous preplanning approach should be applied to all residential proposals such that the planning authority should be limited in the information it can request in further information.

The benefit of this approach is that key issues are addressed before the application is lodged and this would mean that significant material planning and environmental matters should be adequately addressed before an appeal reaches An Bord Pleanála.

Recommendation 8:

It is recommended that the following statutory timelines be introduced: -

- Housing Development <100 without EIAR and or NIS – 8 weeks
- Housing Development >100 without EIAR and or NIS – 12 weeks
- Housing Development >100 with EIAR and or NIS – 16 weeks

5.2 Material Contravention

Up to the Ballyboden Tidy Towns Group v An Bord Pleanála judgement in 2022, it was widely held that the issue of material contravention was a matter of planning judgment. Since that judgement issued it has become custom and practice for applications to identify minor transgressions with development management critieria as material contraventions to safeguard permissions from challenge.

It is regrettable that the draft Bill does not define 'material contravention' and the continued lack of clarity on this represents a risk to the delivery of robust planning permissions.

Recommendation 9:

It is recommended that the Bill should define 'material contravention' to provide clarity with respect to material and non-material contraventions.

5.3 Further Information

The draft Bill establishes under section 92, "Procedural powers of planning authority" that where an applicant for permission fails to comply with a request for further information within the prescribed time, the application for permission shall be deemed to have been withdrawn and the planning authority may proceed to perform its functions in relation to, the application as if no such request had been made. In effect, the planning authority can go ahead and make a decision.

Recommendation 10:

It is 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.

5.4 Decision Making

5.4.1 Process

Time is of the essence for our members but equally critical is robust decision making. This Bill must consider all available avenues to stem the flow of appeals and litigation if the supply of new homes required is to be delivered.

EPA licenced facilities generally have complex environmental issues having regard to the nature of the activities. However, the rate of challenge is far lower than planning decision. In this regard, we believe that lessons can be learnt from the Environmental Protection Agency's (EPAs) decision making process with respect to licencing.

Following assessment of the application, the EPA issue a 'proposed decision' and this is made publicly available. Anyone (including the applicant) can make an observation to the proposed decision within 30 days and the EPA then consider all submissions received. The EPA has the power to hold an oral hearing if necessary.

A similar process could be considered for planning applications to Local Authorities. It would allow for another layer of scrutiny and public engagement. As the latter is often citied as a reason for initiating a challenge to a decision, this process could assist with addressing a root cause of delays.

Recommendation 11:

It is recommended that planning authorities issue a 'proposed decision' and this additional stage would be subject to public consultation prior to the Notification to Grant Permission.

5.4.2 Development Plan & Order of Priority

As set out in Section 2 of this report, there is a situation whereby SHD applications currently before ABP for determination may be refused because a new Development Plan has taken effect. Under current planning legislation decisions are based on the Development Plan that is in place at the time the decision is made.

A remedy could be for this to be amended such that the planning decision would be based on the Development Plan in force at the time of lodging the application. However, there may be unintended consequences attached to this approach and so we would recommend that considerable scrutiny should be applied to this strategy.

An alternative would be to again draw on the EPAs processes and procedures, specifically, their Application Prioritisation Scoring System. This is a weighting system to appropriately prioritise and contribute to an efficient process flow, whilst taking account of criteria that incorporate changing sectoral and strategic priorities and to ensure that assessments are always prioritised in an efficient manner.

Recommendation 12:

It is 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.

5.5 Development Contributions

Under section 48 of the Planning and Development Act 2000, as amended, planning authorities may include conditions requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority and that is provided, or that it is intended will be provided, by or on behalf of a local authority and the amount is set out in a Council's Development Contribution Scheme. This approach is transparent and allows certainty.

The draft Bill only references Development Contributions in the context of the commissions obligations at Chapter 2, section 83 (4)(b): -

"conditions requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in the functional area of any planning authority in which the development concerned is (in whole or in part) situated or proposed to be situated."

It is not clear why the draft Bill has substantially removed provisions with respect to development contributions but having regard to the uncertainty that it introduces we would make the following recommendation.

Recommendation 13:

It is recommended that the provisions of the current provisions of section 48 be baked into the Bill.

5.6 Compliance

Currently, section 34(5)(b) of the Planning & Development Act 2000 sets out that the Authority shall be deemed to have agreed to the points of details as so submitted where none of the events referred to in the subparagraphs occur within those 8 weeks or such longer period as may have been so agreed.

Achieving compliance in a timely manner was a significant difficulty for the CIF membership before this section was enacted in late 2021.

It is unclear why the draft Bill would reverse this recent positive change.

Recommendation 14:

Section 83(9) states: -

"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.

It is recommended that this proposed amendment is not carried, and it should be replaced with the current s.34(5)(b) wording.

5.7 Time limits

There is a very serious situation whereby a residential development that receives a permission which is subsequently upheld in judicial review proceedings whether in the High Court, the Supreme Court or on referral by the Court of Justice of the European Union (CJEU) could subsequently wither because the 5-year permission runs from the date of the final grant from the planning authority/An Bord Pleanála.

An example of this is the Bailey Gibson development which received permission in September 2020 for 416 new homes and just this month (March 2023) received notification from the CJEU that means the permission is valid. This permission has had almost half of its life term eroded.

Recommendation 15:

It is 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 time limits in certain circumstances.

6. Conclusions

The Draft Planning and Development Bill 2022 sets the framework for planning in Ireland for the next at least 20 years. Given the significance of the issues that it needs to respond to and facilitate; housing, climate change, biodiversity loss, to name but a few, it is critical that the final Bill is robust and fit for purpose.

Pressing ahead to the next stages would be remiss having regard to the substantial detail that needs greater debate and consideration. The CIF are therefore recommending that the Department of Housing, Local Government and Heritage consider a revised programme that encompasses meaningful engagement with stakeholders.

A revised programme should also consider the timelines with respect to publishing the draft Planning and Development Regulations. It is critical that there is consultation on this secondary legislation as it will provide a lot of the detail that is missing from the draft Bill. The two go hand in hand and in the absence of the proposed revised Regulations it is very difficult fully understand the implications of this draft Bill.

This submission focuses on the key issues for our members which can generally be grouped into resources, plan making and development management. For each area, we have put forward recommendations that we consider would benefit the Bill and its objective to "*bring greater clarity, consistency, and certainty to how planning decisions are made.*"

We have developed 15 recommendations (see Table below) and respectfully request that they are given full consideration by the Joint Committee on Housing, Local Government and Heritage when formulating your prelegislative scrutiny report for the Department. Once again, on behalf of the Construction Industry Federation, we wish to thank you for your work and the opportunity to make this submission.

Ref	Recommendation
1	The CIF recommend that the proposed timelines for progressing this Bill through the various stages should be reviewed and 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.
2	Given the complexity of decision making, we would recommend that the Bill should provide for at a minimum 20 commissioners.
3	It is recommended that it should be mandatory that a qualified ecologist is appointed to one of the ordinary planning commissioner posts.
4	Given the impact that continuing with this population divergence will have on housing delivery, the review of both the NPF and RSES should be:-
	i. commenced immediately,
	ii. focussed on population targets, household size and obsolescence,
	iii. progressed as a Variation and not a full review of these plans.
	The objective should be to expediate the process in so far as is possible and the Bill should include specific procedures for a variation process. As part of this public consultation should be limited to 4-weeks consistent with the current Development Plan variation process.
	The variations subject of this section should be complete no later than September 2023.
	To achieve this, it will be necessary to amend the wording in Part 3, Chapter 2, section 19 (2) and Chapter 4, section 24(5)(a) and 29 (1).
5	It is 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.
6	It is recommended that the draft Bill should include a direction that National Planning Policies and Measures supersede conflicting policies in lower order plans from the time that they are published, to avoid planning authorities having to instigate material contravention processes unnecessarily.
7	It is 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.

8	It is recommended that the following statutory timelines be introduced: -
	• Housing Development <100 without EIAR and or NIS – 8 weeks
	• Housing Development >100 without EIAR and or NIS – 12 weeks
	• Housing Development >100 with EIAR and or NIS – 16 weeks
9	It is recommended that the Bill should define 'material contravention' to provide clarity with respect to material and non-material contraventions.
10	It is 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.
11	It is recommended that planning authority's issue a 'proposed decision' and this additional stage would be subject to public consultation prior to the Notification to Grant Permission.
12	It is 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.
13	It is recommended that the provisions of the current provisions of section 48 be baked into the Bill.
14	Section 83(9) states: -
	"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.
	It is recommended that this proposed amendment is not carried, and it should be replaced with the current s.34(5)(b) wording.
15	It is 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 time limits in certain circumstances.

Draft Planning and Development Bill 2022 Proposed Amendments		
Section	**Issue**	**Solution**
7	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.
8	The replacement for section 5 declarations is material 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.
9(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).

Draft Planning and Development Bill 2022 Proposed Amendments		
Section	**Issue**	**Solution**
19(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)	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.
39(5)(a)	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".
42	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	Co-ordination of transport and water services with development plan-making.

Draft Planning and Development Bill 2022 Proposed Amendments		
Section	**Issue**	**Solution**
	IW and the NTA confirming Tier 1 lands are in fact serviced and capable of accommodating the scale of development envisaged in the draft.	
47	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.
82(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 different 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:".
82(3)	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	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.

Draft Planning and Development Bill 2022 Proposed Amendments		
Section	**Issue**	**Solution**
	year) or where decisions are quashed, there is unfairness to an applicant for permission that delay means the local planning 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.	
82(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 82(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 82(5).

Draft Planning and Development Bill 2022 Proposed Amendments		
Section	**Issue**	**Solution**
82	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 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.	Insert requirement for the report of the inspector to be published for comment by parties to an appeal *before* being considered by the Commission. For large-scale residential development and direct applications to the Commission.
83(9)	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	Either reinstated section 34(5), by amending section 83(9) to read "deemed to have agreed" or, at least, expand section 83(11) so that the Commission is "deemed to have agreed" points of detailed referred to it.

Draft Planning and Development Bill 2022 Proposed Amendments		
Section	**Issue**	**Solution**
	is also inconsistent with section 83(11), where there is deemed agreement with the Commission.	
92(4)(b)	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.
104	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. Generic "catch all" appeals should be dismissed immediately as being invalid.

Draft Planning and Development Bill 2022 Proposed Amendments		
Section	**Issue**	**Solution**
105	The comments regarding material contravention at section 120 are relevant at other locations in the Bill, including section 105.	
120(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: "(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. (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:"
120(2)(a)-(b)	It is welcome that the word "or" is placed to make clear the criterion are disjunctive.	None.
120(2)(a)	It is not clear what is meant by the new language "arising from policy of the Government". It should be a question of substance whether development is strategic or nationally important. It should	Delete "arising from policy of the Government".

Draft Planning and Development Bill 2022 Proposed Amendments		
Section	**Issue**	**Solution**
	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 language is not necessary, and limits the paragraph to little more than is contained at (c).	
120(2)(c)	It is not clear what is meant by the new language "that are not articulated in the development plan". We expect 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 "that are not articulated in the development plan", and/or add "whether or not those provisions were made after the development plan".
120(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	See above.

Draft Planning and Development Bill 2022 Proposed Amendments		
Section	**Issue**	**Solution**
	significant. See proposed amendment above to make clear that the date when NPF, NPS and RSES made is not relevant.	
120	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.
131(1)(c)	The new power to clarify a permission is welcome.	
134	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. 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	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.

Draft Planning and Development Bill 2022 Proposed Amendments		
Section	**Issue**	**Solution**
	extended iterative process that makes clear the focus is on the balance of development yet to be completed after the expiry of the permission. The time lost in legal challenge should be automatically extended.	In particular, all time lost to legal challenge should be automatically extended.
134	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.
135(6)	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.
136	The comments regarding material contravention at section 120 are relevant at other locations in the Bill, including section 136.	

Draft Planning and Development Bill 2022 Proposed Amendments		
Section	**Issue**	**Solution**
153	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 "structure".
249(6) and (7)	The clarification of the burden when commencing a late challenge or, in particular, when amending proceedings late, is welcome.	
249(10)(c)(iv)	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. At paragraph (iv), we acknowledge that European law allows a person access to justice to agitate issues raised by them in the planning process. 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 250 of the Bill, the need for such opaque entities to access the court process is not justified.	Delete the phrase "that relates to matters".

Draft Planning and Development Bill 2022 Proposed Amendments		
Section	**Issue**	**Solution**
	It is unclear what the phrase "any ground that relates to matters raised". We expect it to be more broad than simply "any ground raised".	
249(10)(c)(iii)	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 (IV), 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 (IV), where not practicable to pass the required resolution before proceedings are issued, allow some limited added period of time to pass that resolution.
249(10)(c)(iii)	It is not clear why only one year is required at paragraph (I). 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 (I) from one to three, or longer.
249(10)(c)(iii)	It is not clear why only 10 members are required at paragraph (III). We expect a true NGO would have wider representation, so that 50 would be more sensible.	Increase the figure at paragraph (III) from 10 to 50.

Draft Planning and Development Bill 2022 Proposed Amendments		
Section	**Issue**	**Solution**
249(10)(c)(i)	It is not clear whether persons that claim to be materially affected are required to have legal capacity. Where that language is express at paragraph (iv), but not at paragraph (i), we expect it can be read to mean that no such pre-condition applies. That would be unwelcome. Capacity is a matter for the domestic law. Also, it is not clear what the phrase "is or may be directly or indirectly materially affected" 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.	Require legal capacity for those relying on sub-paragraph (i). Limit access to those that maintain "impairment of a right", not direct or indirect material affect.
249(15)	The clarity regarding appeal to the Court of Appeal and removing the unpopular certification process is welcome.	
249(5)	The power to amend is welcome. It would make sense for the process to provide for public participation, or public notice of outcome.	Require public notice of outcome, and a power for public participation.
249	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 are prohibited from quashing a permission in that circumstance. The same should be true here.	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.

Draft Planning and Development Bill 2022 Proposed Amendments		
Section	**Issue**	**Solution**
249	As noted, the power to amend at section 249(5) is welcome. It suggests 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. 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 249(5) 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.
249	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.
249	The number of permissions quashed by consent is now more than double historic levels. According to most recent published data from An Bord Pleanála, one in five 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 concern. The knowledge is trapped in a narrow cohort of informed persons, and	Require consent orders to be published by the Commission.

Draft Planning and Development Bill 2022 Proposed Amendments		
Section	**Issue**	**Solution**
	is not transparent for all interested persons to learn from the outcomes.	
250	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.	The UK model of cost capping is effective.
250(1)	The phrase "national law … relating to the environment" remains the subject of debate. Clarity would be welcomed. 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.	The provision should confirm whether all challenges to decisions under the Planning Acts are covered.
250(2)	We are anxious to see the scheme. 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 will surely be motivated to bring a greater number of challenges,	The scheme should not reward unmeritorious claims and should be designed to ensure no incentive to bring a greater number of challenges.

Draft Planning and Development Bill 2022 Proposed Amendments		
Section	**Issue**	**Solution**
	particularly where the amount paid might be less than when granted an order for costs against An Bord Pleanála under the current Act.	
407(2)(a)	The list of experience for Commissioners should include environmental and ecological expertise.	Amend to include environmental and ecological expertise.
Part 20	This Part is reserved for transitional provisions, and is blank. This should be used to resolve important issues regarding the transition from development contribution schemes and other levies under section 48 and 49 of the current Act to the anticipated Land Value Sharing Act. An appropriate funding mechanism for local authorities is urgently required. This funding system must reward local authorities that achieve the targets set in the development plan, including housing starts etc. 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 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	Development contribution schemes and other levies under section 48 and 49 of the current Act should remain the basis for conditions, pending the anticipated Land Value Sharing Act. 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.

Draft Planning and Development Bill 2022 Proposed Amendments		
Section	**Issue**	**Solution**
	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.	