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**An Bille um Pleanáil agus Forbairt (Eastáit a Ghlacadh  
Faoi Chúram), 2015**  
**Planning and Development (Taking In Charge of Estates)  
Bill 2015**

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*Meabhrán Míitheach*  
*Explanatory Memorandum*

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**AN BILLE UM PLEANÁIL AGUS FORBAIRT (EASTÁIT A  
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PLANNING AND DEVELOPMENT (TAKING IN CHARGE OF  
ESTATES) BILL 2015**

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**MEABHRÁN MÍNITHEACH  
EXPLANATORY MEMORANDUM**

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**Purpose of the Bill**

The key objectives of the Bill are:

- To abolish the seven years period after expiry of a planning permission for an estate for which residents in an unfinished housing development must wait before they can initiate taking in charge of the development by a local authority.
- To remove the situation which exists at the moment whereby an estate with its own sewerage treatment plant will not be taken into charge as it can only be taken by a local authority with the agreement of Irish Water which declines to accept responsibility for such plants or their replacement.
- To specify the power of elected members of local authorities to require that a plebiscite be held to determine the wishes of owners of houses or units.
- To specifically include multi-unit developments in the taking in charge procedure for roads, open spaces, car parks, sewers, watermains or service connections (within the meaning of the Water Services Act 2007).

**Background**

Section 34 of the Planning and Development Act 2000 provides that a planning authority may decide to grant permission for a development subject to or without conditions, or to refuse it.

Conditions may include:

- conditions for requiring the satisfactory completion within a specified period from the commencement of any works, of the proposed development (including any roads, open spaces, car parks, sewers, watermains or drains or other public facilities);
- conditions for requiring the giving of adequate security for satisfactory completion of the proposed development;
- conditions for determining the sequence and timing in which works shall be carried out;

- conditions for the maintenance or management of the proposed development (including the establishment of a company or the appointment of a person or body of persons to carry out such maintenance or management);
- conditions for the maintenance, until taken in charge by the local authority, of roads, open spaces, car parks, sewers, watermains or drains and other public facilities.

Section 180 of the Act deals with taking in charge of estates. It states that, where the development of an estate including new roads, open spaces, car parks, sewers, watermains or drains has been completed to the satisfaction of the planning authority in accordance with the permission and any conditions to which the permission is subject, the authority shall, where requested by developer or by the majority of the owners of the houses involved, as soon as may be, initiate procedures under section 11 of the Roads Act 1993.

Those procedures have the effect of making the roads public roads, maintainable by the local authority, and also result in the taking in charge of open spaces, car parks, sewers, watermains and drains within the development.

However, where a development has not been completed to the satisfaction of the planning authority and enforcement proceedings have not been commenced by it within seven years of the expiry of the planning permission, the authority must, where requested by the majority of qualified electors who own or occupy the houses in question, comply with section 11 of the Roads Act 1993.

### **Provisions of the Bill**

The primary purpose of this Bill is to abolish the seven years after expiry of a planning permission which residents in an unfinished estate must wait before they can initiate the taking in charge of the estate by a local authority.

#### *Section 1*

This is the definition section.

#### *Section 2*

*Subsection (1)* specifically includes units in multi-unit developments. The Law Reform Commission's 2008 Report on Multi-Unit Developments found that some local authorities erroneously believe that apartment developments do not come within the scope of section 180.

*Subsection (2)* abolishes the seven years after expiry of a planning permission which residents in an unfinished estate must wait before they can initiate the taking in charge of the estate by a local authority.

*Subsection (3)* specifies that a local authority may be required by the elected members to hold a plebiscite to ascertain the wishes of the owners of the houses or units on taking into charge by the council. This provision is not availed of as extensively as might be expected given the prevalence of unfinished estates and multi-unit developments and estates and multi-unit developments in which the management company is in financial distress combined with the introduction of the Local Property Tax to fund the cost of providing a range of local council services including roads, open spaces and car parks and the transfer to Irish Water of local authorities' responsibility for sewers and watermains.

*Subsection (4)* provides that the fact that local authorities are effectively no longer water services authorities shall not prevent them taking estates into charge. Instead, when an estate or development is taken into charge

the Minister is requested to appoint a day pursuant to section 12 of the Water Services (No. 2) Act 2013 for the purposes of vesting any sewers, watermains or service connections in a water services authority i.e. Irish Water. The watermains will already invariably be vested in Irish Water but the residents are frequently left with a defective sewerage treatment plant with Irish Water “washing their hands” of the problem. Irish Water is empowered to pursue the developers for any cost arising from fixing problematic mains, sewers, etc.

*Section 3*

This section details the title to the Bill.

*Deputy Michael McNamara,*

*Deireadh Fómhair, 2015.*