

# Planning and Development (Amendment) (LRD) Bill 2021

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## Abstract

The Planning and Development (Amendment) (Large-scale Residential Development) Bill 2021 introduces a new planning process for Large-scale Residential Developments (LRDs) to replace the current Strategic Housing Development (SHD) arrangements. It also provides for this process to take place at local authority level with an appeal mechanism to An Bord Pleanála. The Bill also amends provisions in relation to the appeal of judicial review decisions to the Supreme Court.



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## Introduction

The [Planning and Development \(Amendment\) \(Large-scale Residential Development\) Bill 2021](#), published on Monday, 8 November 2021, is a Priority Bill on the Government's 2021 [Autumn Legislative Programme](#). It is due to be introduced for Second Stage Debate in Seanad Éireann on 10 November 2021. An [Explanatory Memorandum](#) for the Bill has also been published.

The Bill aims to replace a consultation and application structure for large-scale residential developments, known as the Strategic Housing Development (SHD) arrangements, which was introduced by the [Planning and Development \(Housing\) and Residential Tenancies Act 2016](#). This process is due to expire on 31 December 2021, with remaining applications under the process required to be submitted by 25 February 2022.

The Bill itself introduces the LRD pre-application procedure through the insertion of seven new provisions to the [Planning and Development Act 2000](#) (2000 Act), namely sections 32A to 32G. It also provides for an LRD appeal procedure through the insertion of two further sections to the 2000 Act, namely sections 126A and 126B. The third main amendment the Bill introduces is an amendment to section 50A of the 2000 Act to allow for appeals to judicial review decisions to be made directly to the Supreme Court, bypassing the Court of Appeal. The Bill also contains several technical and consequential provisions to account for these changes.

Given the time between publication of the final Bill and Second Stage debate, this Bill Digest does not propose to provide a complete or detailed analysis of the Bill. It instead provides an overview of the Bill's provisions, outlines the main policy issues related to current SHD process and the new Large-scale Residential Development (LRD) provisions, and discusses the principal provisions of the Bill. Some abbreviations and terms referenced in this Bill Digest are included in the below table.

## List of terms and abbreviations

Abbreviation	Meaning
2000 Act	<a href="#">Planning and Development Act 2000</a> (referenced as Principal Act in the Bill)
2016 Act	<a href="#">Planning and Development (Housing) and Residential Tenancies Act 2016</a>
The Board	An Bord Pleanála
The Department	Department of Housing, Local Government and Heritage
EIAR	Environmental Impact Assessment Report
FI Notice	Further Information Notice
Joint Committee	Joint Committee on Housing, Local Government and Heritage
LRD	Large-scale Residential Development
LSRD	Large Scale Residential Development
NIS	Natura Impact Statement
PLS	Pre-legislative Scrutiny
SHD	Strategic Housing Development

## Table of provisions

The main elements of the Bill are summarised below.

Section	Title	Effect
1.	Definitions	<p>Section 1 sets out two definitions:</p> <ul style="list-style-type: none"> <li>• The Planning and Development (Housing) and Residential Tenancies Act 2016 as the “Act of 2016”; and</li> <li>• The Planning and Development Act 2000 as the “Principal Act”.</li> </ul>
2.	Amendment of section 2 of Principal Act	<p>Section 2 provides for the addition of the following definitions to section 2 of the Principal Act:</p> <ul style="list-style-type: none"> <li>• “LRD”</li> <li>• “LRD appeal”</li> <li>• “LRD meeting”</li> <li>• “LRD opinion”</li> <li>• “LRD floor space”</li> <li>• “large-scale residential development”</li> <li>• “prospective LRD applicant”</li> <li>• “student accommodation”</li> </ul>
3.	Insertion of sections 32A to 32G into Principal Act	<p>Section 3 provides for the insertion of seven new provisions into the Principal Act; sections 32A to 32G, which set out the proposed LRD pre-application consultation process.</p>
4.	Amendment of section 33 of Principal Act	<p>Section 4 provides that the Minister may make regulations requiring applicants to submit further information with respect to their applications, and to specify information or type of information that may be requested in respect of different classes or descriptions of development.</p>
5.	Amendment of section 34 of Principal Act	<p>Section 5 amends section 34 of the Principal Act, which governs applications for planning permissions, to do the following:</p> <ul style="list-style-type: none"> <li>• Requires the planning authority to notify its elected members of the making of the application, where it is available for inspection and such other information as may be prescribed;</li> <li>• Restricts the determination of applications relating to permitted developments, where permission has already been granted under either the SHD or LRD processes, to considering the modifications proposed by the applicant. However, this provision contains an exception for any assessment on the effects of the proposed development on the environment.</li> <li>• The timeframe for considering additional information submitted to the planning authority, before making a decision on the application, is also extended to instances</li> </ul>

Section	Title	Effect
		where publication of a notice by the applicant is required.
6.	Amendment of section 50A of Principal Act	Section 6 provides for the making of requests for appealing judicial review by the High Court directly to the Supreme Court, thus bypassing of the Court of Appeal.
7.	Insertion of sections 126A and 126B into Principal Act	<p>Section 7 provides for the insertion of two new provisions into the Principal Act.</p> <p><b>Section 126A</b> sets the time limit for an LRD appeal providing that this is set at 16 weeks, unless there is an oral hearing or the Board requires further information. This provision also sets out time limits in which further information may be requested, empowers the Minister to make regulations extending the 16-week period in certain circumstances, and contains a provision preserving the validity of the determination of an LRD appeal where the timeframe has expired.</p> <p><b>Section 126B</b> sets out the consequences of non-compliance with the time limits for LRD appeals, including the progression of an appeal where the timeframe expires, and the notification of parties to an appeal and certain interested parties where an appeal cannot be determined within the timeframe. There is also provision for a penalty payment of €10,000 where an LRD appeal is not determined within the timeframe, and provisions on reporting requirements for the Board.</p>
8.	Amendments consequential to section 7	Section 8 is a technical amendment to account for the proposed Section 126A of the Principal Act, as provided for by section 7 of the Bill.
9.	Amendment of sections 131 and 132 of Principal Act	Section 9 is a technical amendment to provide for the LRD appeal process proposed in the Bill. It prevents the Board from using the process for seeking further information set out in those sections for the purposes of an LRD appeal.
10.	Amendment of section 142 of Principal Act	Section 10 provides for a further power for the Minister to make regulations in relation to information requests in respect of LRD appeals.
11.	Amendment to section 146B of Principal Act	Section 11 is a consequential amendment which requires that proposals to alter planning permissions granted under the SHD process made under section 146B of the Principal Act are no longer submitted to the Board.
12.	Amendment of section 156 of Principal Act	Section 12 is a consequential amendment to account for the addition of section 32G to the Principal Act. It extends the penalties provided for in section 156 to the offence provided for by section 32G.

Section	Title	Effect
13.	Amendment of section 246(1)(d) of Principal Act	Section 13 empowers the Minister to make regulations prescribing fees for the provision of an LRD opinion by a planning authority. Such regulations are required to be laid before and approved by both Houses of the Oireachtas.
14.	Amendments to section 247 of Principal Act	<p>Section 14 provides for the addition of student accommodation developments of 200 bed spaces or more to the mandatory consultation requirement set out in section 247(1A) of the Principal Act.</p> <p>Provides that a written record of a consultation meeting held under section 247 shall only be made public if a subsequent application for planning permission for the proposed development is made.</p> <p>Inserts a new section 247(7), which provides that where an application is made to amend a development that is already approved under the LRD or SHD processes (permitted development), then new section 247 consultations and a new LRD opinion are not required where the proposed development is substantially the same as the permitted development.</p>
15.	Construction of the Fourth Schedule (reasons for the refusal of permission which exclude compensation) to Act of 2000	Section 15 provides for the amendment of the 2016 Act to maintain the temporary compensation exclusion for SHD applications so it applies to all pending SHD applications, including those decided in accordance with the transitional provisions of the Bill.
16.	Repeal and transitional measures	Section 16 provides for the necessary repeal and transitional arrangements for the expiry of the SHD arrangements. It repeals section 4(1) of the 2016 Act, which provided for the making of applications for planning permission for SHDs to the Board. It also provides for some exclusions to this repeal to account for proposed SHDs already in the SHD process but specifies timeframes in which they may be completed. The section also provides for the wider repeal of Chapter 1 of the 2016 Act.
17.	Short title, construction, collective citation and commencement	Section 17 contains standard provisions for the citation of the Act, the collective citation of the Planning and Development Acts 2000-2021 to include the Act, and the commencement of the legislation in whole or in part by the Minister.

Source: Library & Research Service, 2021 and Explanatory Memorandum to the Bill, 2021

## Background

The Bill proposes to replace the current streamlined Strategic Housing Development (SHD) arrangements for planning permission applications. The current SHD process allows for certain developments, including developments of 100 housing units or more, or student accommodation / shared accommodation of 200 bed spaces or more, to be made directly to An Bord Pleanála (the Board) for determination. This removes the initial phase involving local authorities from the planning process for such developments. The introduction of the SHD fast-track process followed the introduction of Rebuilding Ireland, the Government's previous housing strategy.

### Previous legislation related to the current Bill

Following the publication of the Rebuilding Ireland strategy, the Government introduced legislation to establish a fast-track planning process for large-scale residential developments to be built on land already zoned for residential use. This was implemented through Chapter 1 of Part II of the 2016 Act and the implementation of the SHD arrangements. Under [section 3 of the 2016 Act](#), the SHD arrangements apply to the following:

- residential developments of 100 housing units or more on land zoned for residential use or a mixture of residential use and other uses;
- student accommodation developments of 200 bed spaces or more on land that is zoned to facilitate the provision of student accommodation or a mixture of student accommodation and other use;
- shared accommodation units that when combined consist of 200 or more bed spaces on land zoned to facilitate the provision of shared accommodation or a mixture of shared accommodation and its application for other uses;
- development that contains all or two of the above; or
- an alteration of an existing planning permission granted under [section 34 of the 2000 Act](#), where the proposed development relates to any of the above.

Under [section 4 of the 2016 Act](#), SHD applications for planning were made directly to the Board. This followed a consultation process set out by [section 5](#) and [section 6 of the 2016 Act](#). [Section 8](#) of the same Act set out a series of requirements that applicants must fulfil before making an application for planning permission to the Board.

The Government has stressed that the SHD arrangements were never intended to be a permanent process.<sup>1</sup> Under section 4(2) of the 2016 Act, the SHD arrangements are statutorily required to apply for a limited period. Section 4(2)(a) required the Minister to review the operation and effectiveness of Chapter 1 of Part II of the 2016 Act and lay a report of his or her conclusions before each House of the Oireachtas before 30 October 2019. Once these provisions are complied with, the Minister was permitted to extend the SHD arrangements to 31 December 2021.

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<sup>1</sup> Irish Government News Service, [Government approves proposals for termination and replacement of Strategic Housing Development planning arrangements](#) (press release), 13 July 2021.



In July 2021, the wind-up period for the SHD process was envisaged by the Government as follows:

- 29 October 2021: The last day for requesting a pre-application consultation request from the Board.
- 31 December 2021: The last day for submission of an application to the Board for proposals which have completed the pre-application process before 29 October 2021.
- 25 February 2022: The last day for submission of an application to the Board for proposals which have completed the pre-application process after 29 October 2021.<sup>2</sup>

## Policy and legislative context – SHD Arrangements

The SHD arrangements themselves allowed applications for the above types of development to be determined in a timeframe of no later than 16 weeks (or 24 weeks where an oral hearing was required). As noted above, the process may only be used within a ‘specified period’ for which the legislation is valid, that is the provisions would operate up to a certain expiry date. Following a review under section 4(2) of the Act, this timeframe was extended by a further two years to expire on 31 December 2021. The extension came on the foot of the [Report of the Review Group](#) and [Ministerial Conclusions](#), published in September 2019 and October 2019 respectively. The review identified some issues with the process, but on balance it was concluded that the SHD process should be extended, as it had succeeded in achieving significantly faster planning decisions.<sup>3</sup>

The [Programme for Government](#) contains a commitment to not extend the SHD process beyond the end of December 2021, meaning that a replacement fast-track process would be required.<sup>4</sup> In its [Housing for All](#) plan, the Government reiterated its plans to not continue the SHD process.<sup>5</sup>

The Bill sets out the new large-scale residential development (LRD) process the Government intends to put in place, consisting of three stages:

1. **Pre-application consultation stage:** This involves the holding of an LRD meeting, leading to a decision on issuing an LRD opinion.
2. **Application stage:** Once an applicant holds an LRD opinion, they may apply for planning permission.
3. **Appeal stage:** An LRD appeal may be made to the Board.<sup>6</sup>

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<sup>2</sup> Irish Government News Service, [Government approves proposals for termination and replacement of Strategic Housing Development planning arrangements](#) (press release), 13 July 2021.

<sup>3</sup> [Operation of the Strategic Housing Development process 2017-2019: Report of the Review Group](#), September 2019, at p.29.

<sup>4</sup> Government of Ireland, [Programme for Government – Our Shared Future](#), June 2020 (published October 2020), at p.58.

<sup>5</sup> Government of Ireland, [Housing for All – A new Housing Plan for Ireland](#), July 2021, at pp.84-85.

<sup>6</sup> Between the General Scheme and the publication of the Bill, the Government decided to amend the LSRD term to Large-scale Residential Development (LRD). See Government of Ireland, [Bill to restore decision-making on large-scale housing developments to Local Authorities given approval](#) (press release), 5 November 2021.



**Figure: Proposed LRD Process**

The Government also highlighted its intention to return decision-making on planning applications to local authorities:

“These streamlined LSRD arrangements, involving mandatory timelines, have the potential to be almost as time-efficient as the SHD arrangements they are replacing, while also returning the primary decision-making function to the local level, with the associated gains in terms of public participation.”<sup>7</sup>

While the SHD process is considered to be successful in its primary objective of delivering faster planning decisions, it has also received some criticisms. Three of the main criticisms were highlighted to the Joint Committee on Housing, Local Government and Heritage in its Pre-legislative Scrutiny of the General Scheme to the Bill:

“First, while the number of housing units granted planning permission has significantly increased, the actual subsequent activation rate of these permissions has been less than might have been expected given the benefits associated with the fast-track SHD process. Second, they have reduced local authority involvement in final decision-making on planning applications and, third, the only mechanism against planning decisions under the SHD process is by way of judicial review, resulting in a significant increase in the number of judicial review challenges against large-scale housing developments than was previously the case, particularly over the last year or so.”<sup>8</sup>

### Activation rate

The issue of activation / implementation of planning permissions under SHD arrangements was identified by the Review Group in 2019. In its Report, the Group highlighted that the activation rate was less than might reasonably be expected, taking into consideration the benefits of saving time and increased certainty for developers, and the resources invested by the State in operating the SHD process.<sup>9</sup> The Group also highlighted the purpose of the SHD process in expediting the delivery of additional housing rather than enhancing site value and considered ways of increasing the activation rate. It recommended the consideration of policy measures such as a “use it or lose

<sup>7</sup> Government of Ireland, [Housing for All – A new Housing Plan for Ireland](#), July 2021, at pp.84-85.

<sup>8</sup> Mr Paul Hogan, Chief Planning Officer, Department of Housing, Local Government and Heritage, [Pre-legislative Scrutiny of the Planning and Development \(Amendment\) \(LSRD\) Bill 2021: Department of Housing, Local Government and Heritage](#), *Committee Debate*, 7 September 2021.

<sup>9</sup> [Operation of the Strategic Housing Development process 2017-2019: Report of the Review Group](#), September 2019, at p.30. The Review Group noted an activation rate of 58% for permissions granted between January 2018 and 31 August 2018, and an activation rate of 37% for permissions granted between January 2018 and 30 June 2019. The latter rises to 53% if the 15 permissions granted since the most recent permission to be activated are omitted.

it” measure or a vacant site levy to incentivise development within two years of the permission being granted.<sup>10</sup>

In his Ministerial Conclusions, the then Minister for Housing, Planning and Local Government, Eoghan Murphy TD, considered that it would be timely to introduce a “use it or lose it” measure, with such a measure requiring the applicant to commence a certain level of development works within 18 months.<sup>11</sup> In November 2020, the Joint Committee was told that “use it or lose it” laws were being drafted<sup>12</sup>, although this was later delayed due to concerns that it could lead to delays in construction.<sup>13</sup> Some stakeholders have also raised concerns in relation to such requirements.<sup>14</sup> In the recent PLS process, the Joint Committee was told that a “use it or lose it” clause was difficult to legislate for.<sup>15</sup>

### Local authority involvement

A central issue in returning responsibility for the fast-track process to local authorities is resourcing. In 2019, the Review of the SHD noted that a combination of intensive pre-consultation processes and adherence to strict deadlines placed significant pressure on staff resources in planning authorities and the Board.<sup>16</sup> In relation to the proposed LRD processes, the additional costs for local authorities were identified as a consideration in the Regulatory Impact Analysis (RIA) for the Bill, although the RIA also noted that these costs may be offset with appropriate fees.<sup>17</sup> In the PLS process, the issue of resourcing was also considered by the Joint Committee, where representatives of local authorities and planners stressed the need for additional resources.<sup>18</sup>

A further aspect to the issue of local authority involvement is public engagement with the process. This was noted by the Joint Committee in its report, where it noted that the lack of a requirement for public participation in the General Scheme might be a missed opportunity.<sup>19</sup>

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<sup>10</sup> Ibid.

<sup>11</sup> [Conclusions of the Minister for Housing, Planning and Local Government on the Review of the Strategic Housing Development Process](#), October 2019, at pp.11-12 and pp.15-16.

<sup>12</sup> [“Use it or lose it” law being drafted for planning permissions](#), The Irish Times, 10 November 2020.

<sup>13</sup> [‘O’Brien to delay ‘use it or lose it’ rule for planning](#), The Sunday Business Post, 30 May 2021.

<sup>14</sup> [‘Government urged on ‘use it or lose it’ law for housing permissions](#), RTÉ News, 21 January 2021.

<sup>15</sup> Mr Paul Hogan, Chief Planning Officer, Department of Housing, Local Government and Heritage, [Pre-legislative Scrutiny of the Planning and Development \(Amendment\) \(LSRD\) Bill 2021: Department of Housing, Local Government and Heritage](#), *Committee Debate*, 7 September 2021.

<sup>16</sup> [Operation of the Strategic Housing Development process 2017-2019: Report of the Review Group](#), September 2019, at p.33.

<sup>17</sup> Department of Housing, Local Government and Heritage, [Planning and Development \(LSRD\) Bill – Regulatory Impact Analysis](#), July 2021, at p.6.

<sup>18</sup> [‘Underresourcing of council planning departments is huge issue for State, committee hears](#), The Irish Times, 9 September 2021; Joint Committee on Housing, Local Government and Heritage, [Pre-legislative Scrutiny of the Planning and Development \(Amendment\) \(LSRD\) Bill 2021: Discussion \(Resumed\)](#), *Committee Debate*, 9 September 2021.

<sup>19</sup> Joint Committee on Housing, Local Government and Heritage, [Report on Pre-Legislative Scrutiny of the General Scheme of the Planning and Development \(Amendment\) \(LSRD\) Bill 2021](#), October 2021, at p.11.

## Judicial Review

One of the central issues in assessing the current SHD arrangements is the lack of an appeal mechanism. This structure means that the only system for reviewing a planning decision made under these arrangements is to seek judicial review in the courts. However, this has been cited as having a detrimental impact on the number of units in planned SHDs that have been delayed or cancelled in relation to judicial review actions.<sup>20</sup>

In September 2019, the Review Group noted that three SHD permissions had been set aside arising from third party objections, with a fourth case pending, although the Group also noted the right to judicial review under the Aarhus Convention and EU environmental directives.<sup>21</sup> In June 2021, the Irish Examiner reported that the Board lost almost 90% of judicial reviews taken against it in relation to SHDs.<sup>22</sup> Reducing the number of judicial reviews has also been reported as an objective of the new rules.<sup>23</sup>

## Regulatory Impact Analysis (RIA)

The Government published the [Regulatory Impact Analysis](#) (RIA) for this Bill with its [General Scheme](#) in July 2021. As noted above, the RIA also pointed out that the Programme for Government committed to not renewing the SHD arrangements beyond their legislative expiry. The RIA identified two possible options for replacing the SHD process, and considered their suitability in terms of costs, benefits and impacts, identifying Option 2 as the preferred option. Both options, and the considerations referenced by the RIA, are summarised below.

**Option 1 – No Change: This option would allow the current SHD arrangements to lapse and for applications to revert to the standard, pre-SHD section 34 planning procedures set out in the Planning Development Acts 2000-2021.**

According to the RIA, Option 1 was likely to incur additional costs arising from the lack of a mandatory approach to pre-application engagement, including a lower-quality application resulting in delays and costs associated with those delays. The State would also incur a cost due to accumulated and future deficits in housing supply and potentially wider social costs arising from delays in approvals and increasing refusals.<sup>24</sup> The existing section 34 framework for planning applications would remain in place and would not require the same level of additional resources as

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<sup>20</sup> '[Judicial reviews delay Strategic Housing Development](#)', RTÉ News, 23 February 2021.

<sup>21</sup> [Operation of the Strategic Housing Development process 2017-2019: Report of the Review Group](#), September 2019, at pp.35-36.

<sup>22</sup> '[State planning agency lost 90% of legal objections to large housing projects](#)', Irish Examiner, 14 June 2021. This number includes decisions that the Board did not contest; See also '[More than half fast-track housing delayed by legal objections](#)', The Irish Times, 22 June 2021.

<sup>23</sup> '[Strategic housing developments to be scrapped following judicial review challenges](#)', Irish Legal News, 14 July 2021.

<sup>24</sup> Department of Housing, Local Government and Heritage, [Planning and Development \(LSRD\) Bill – Regulatory Impact Analysis](#), July 2021, at p.6.

would be required by Option 2.<sup>25</sup> Furthermore, the quality of applications after the expiry of the SHD process could deteriorate, leading to more refusals or appeals, resulting in time delays and uncertainty in the planning process returning to pre-SHD levels. This, the RIA argues, could adversely impact the viability of proposed housing developments to address the shortage of housing supply.<sup>26</sup>

**Option 2 – Development of new legislative proposals: This option would also allow the current SHD arrangements to lapse but develop new legislative requirements, drawing on best practice from the existing SHD arrangements, to adapt the existing section 34 procedure for the submission of Large Scale Residential Development (LSRD) planning applications to local planning authorities.**

Option 2 was likely to incur additional budgetary costs for staffing and administration for local authorities arising from ensuring mandatory consultations and planning applications are processed within statutory timeframes. However, these costs may be offset by the application and retention of fees for such applications.<sup>27</sup> The new tailored pre-application consultation arrangements for LSRDs would improve the quality and efficiency of the application process and are a core element of returning decision-making for such applications to local authorities.<sup>28</sup> In terms of impacts, the RIA cites that under Option 2, an enhanced pre-application process, and two-stage application process that allows appeals to the Board, will reduce the number of LSRDs subject to judicial review.<sup>29</sup>

## Pre-legislative Scrutiny of the General Scheme of the Bill

The Joint Committee on Housing, Local Government and Heritage held two hearings on 7 and 9 September 2021, where it considered the [General Scheme of the Bill](#). The debates for these hearings may be accessed via the following links:

- [Pre-legislative Scrutiny of the Planning and Development \(Amendment\) \(LSRD\) Bill 2021: Department of Housing, Local Government and Heritage, Committee Debate, 7 September 2021](#)
- [Pre-legislative Scrutiny of the Planning and Development \(Amendment\) \(LSRD\) Bill 2021: Discussion \(Resumed\), Committee Debate, 9 September 2021](#)

The Joint Committee published its [Report](#) on the Pre-Legislative Scrutiny of the General Scheme of the Planning and Development (Amendment) (LSRD) Bill 2021 on 6 October 2021. In its report, the Committee identified five key issues:

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<sup>25</sup> Ibid.

<sup>26</sup> Ibid at p.7.

<sup>27</sup> Ibid at p.6.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid at p.7.

1. **Public Consultation:** In this regard, the Committee highlighted consultation with elected members of local authorities, consultation with communities and the quality of documentation to be provided at pre-application stage.
2. **Resourcing Local Authorities:** The Committee noted concerns that the time limits in the legislation, the increased workload and the increased requirement for planning expertise may impact the ability of local authorities to effectively meet the demand of the LRD process. One of its recommendations is to ensure that local authorities are adequately and appropriately staffed and resourced.
3. **Requests for Further Information:** The Committee referenced how decisions on large-scale housing developments were often delayed because of requests for further information prior to the introduction of the SHD process. However, it also notes concerns that restricting the ability of local authorities to request further information under the new process may lead to planning applications being rushed, further conflict or applications being refused unnecessarily. The Committee recommended that the provision to restrict the ability to request further information be amended to allow for sufficient information to be requested.
4. **Non-Residential Mix in LSRDs:** The Committee considered the issue of the floor space limits for non-residential use being extended to 30% from the current 15%. The Committee welcomed this but recommended that consideration be given to amending the legislation to allow for the inclusion of community and non-institutional use within the commercial use allowance.
5. **Miscellaneous Issues:** The Committee also focused on two further issues, namely the charging of fees and the development of a dedicated website for LRD applications. Its consideration of the first issue in its report noted that there is currently no fee for any pre-planning service. The Committee recommended in this regard that the Department implements an appropriate fee structure for the pre-planning and formal application stages, that adequately reflects the increased workload. The Committee also considered the current website for the SHD process and recommended similar websites for LSRD applications.

## Recommendations of the Joint Committee

The Pre-legislative Scrutiny Report of the Joint Committee contains 11 recommendations in total on the content of the General Scheme, which are summarised in the below table:

### Recommendations

1. The Committee recommends that the proposed Bill include a requirement for all LSRD applications to be presented in public to the elected members of the relevant Local Authority and that briefing documents for these engagements be made available to the public to facilitate further engagement.
2. The Committee recommends that the proposed bill contain a requirement for public consultation at the pre-planning stage within the statutory timeframe as set out in the General Scheme. (The Committee discussed further defining the public consultation process but felt that the matter might be more fully addressed at Committee Stage of the Bill).
3. The Committee recommends that the proposed bill provide for the requirement on planning applicants to submit appropriate, relevant, complete and high-quality documentation relating to the proposal at pre-application stage.
4. The Committee recommends that all documentation submitted at the pre-application stage be made publicly available following the submission of an application under Section 34.
5. The Committee strongly recommends that in advance of the proposed legislation coming into effect, that all local authorities be adequately and appropriately staffed and resourced to ensure the effective and efficient implementation of the LSRD process including forward planning and enforcement requirements.
6. The Committee recommends that the provision in the proposed Bill to restrict the ability of local authorities to request further information on a planning application be amended to allow for sufficient information to be requested.
7. The Committee suggests that the 12-month validity of an opinion under Head 6 (10) may require some flexibility.
8. The Committee recommends that consideration be given to amending the proposed Bill to allow for inclusion of community and institutional use, within the commercial use allowance.
9. The Committee recommends that the Department implement an appropriate fee structure for the LSRD process (pre-planning and formal application) that adequately reflects the increased workload which will be required of local authorities, and to ensure such fees are used to resource local authority planning services.
10. The Committee recommends that the proposed Bill require that LSRD applicants provide high quality websites dedicated to LSRD applications and the Local Authority provide a link to such a website. These dedicated LSRD Websites should employ search engine optimisation techniques to ensure that they are easily located and accessed when searched for.
11. The Committee recommends that a statutory timeline be placed on An Bord Pleanála Appeals with appropriate sanctions where the board misses these deadlines.



## Principal provisions of the Bill

This section of the Bill Digest examines the main provisions of the Bill, which contains a total of 17 sections. A short synopsis of each provision is given in the Table of Provisions above.

### Definition of an LRD Development

**Section 2** of the Bill sets out the definitions for large-scale residential development (LRD), LRD floor space and student accommodation. It defines an **LRD** as a development that includes:

- The development of 100 or more houses;
- Student accommodation in includes 200 or more bed spaces;
- Both the development of 100 or more houses and student accommodation;
- Both student accommodation of 200 or more bed spaces and houses.

Unlike the SHD process, the Bill does not reference shared accommodation.

The definition also specifies that to meet the definition the total LRD floor space of the above types of development comprises at least 70%, or such other percentage as may be prescribed, of the total LRD floor space of the buildings comprising the development. **LRD floor space** means the area ascertained by internal measurement of the floor space of the floor space of each floor of a building or part of a building, including any internal walls and partitions, but excludes parking facilities and ancillary residential services, such as gyms or childcare facilities.

The Bill also defines **student accommodation** as a building or part of a building used for the sole purpose of providing residential accommodation to students during academic term times, and that is not used or to be used as permanent residential accommodation or as a hotel, hostel, apart-hotel or similar type of accommodation, other than for providing accommodation for tourists or visitors outside of academic term times.

Section 2 also contains definitions for LRD appeal, LRD meeting, LRD opinion and prospective LRD applicant, in reference to the amendments to the 2000 Act proposed by section 3 of the Bill:

- **LRD appeal:** An appeal against the decision of a planning authority that relates to an application for permission to which section 32A (of the amended 2000 Act) applies.
- **LRD meeting:** A meeting in accordance with section 32B and 32C of the amended 2000 Act.
- **LRD opinion:** The meaning given to it by section 32D.
- **Prospective applicant:** The meaning given to it by section 32A.

### LRD Consultation and Application Process

**Section 3** of the Bill makes the necessary amendments to the 2000 Act to facilitate the introduction of the LRD pre-application consultation procedure. This procedure consists of several steps, which are set out as follows in the order of the proposed sections 32A to 32G of the 2000 Act included in the Bill.



**Table: LRD Pre-Application Process to be inserted into the 2000 Act**

Section	Effect
<b>32A</b>	<p>This provision provides for the making of an application to the planning authority (the local authority under the 2000 Act) for a large-scale residential development on land that is:</p> <ul style="list-style-type: none"> <li>a) Not in a strategic development zone; and</li> <li>b) Zoned for the purposes set out in the application.</li> </ul> <p>The section explicitly prohibits a planning authority from accepting such an application unless it is accompanied by an LRD opinion, or a written confirmation under section 247(7) of the 2000 Act. The section further provides for the return of the application fee and the provision of reasons to the applicant in circumstances where it is obliged to reject the application.</p>
<b>32B</b>	<p>This provision provides for the request for an LRD meeting, which may take place once the applicant has made the appropriate consultations under section 247 of the 2000 Act. The section also specifies the information to be included by the applicant, as well as information that the Minister may specify. The planning authority may also undertake consultation with any other person who in its opinion may have information for the purposes of the LRD meeting that is of relevance to the proposed development.</p>
<b>32C</b>	<p>This provision provides for the conducting of the LRD meeting itself:</p> <ul style="list-style-type: none"> <li>- This meeting must take place within 4 weeks of the receipt of the LRD application.</li> <li>- The planning authority and the applicant are required to attend the meeting. The planning authority must also ensure that the planning officials attending the meeting have sufficient expertise and knowledge of the matter concerned.</li> <li>- The planning authority must also keep specified records of the LRD meeting, which may only be made public once a planning application under section 34 of the 2000 Act is made.</li> <li>- Empowers the Minister to make regulations in respect of LRD meetings.</li> <li>- Provides for the local authority to convene an LRD meeting as soon as practicable after the expiry of the 4 week deadline, but must provide a written explanation for the delay to the applicant.</li> </ul>
<b>32D</b>	<p>This provides for the issuing of the LRD opinion:</p> <ul style="list-style-type: none"> <li>- The planning authority is required to issue an LRD opinion to the applicant stating whether or not the documents submitted for the LRD meeting constitute a reasonable basis to proceed to an application for planning permission for the proposed LRD. This must be done within 4 weeks of the LRD meeting.</li> <li>- Where the documents do not constitute a reasonable basis to proceed to an application for planning permission, the planning authority must specify the areas or issue which do not constitute a reasonable basis and any issues, which if addressed, could result in the documents constituting a reasonable basis.</li> <li>- Empowers the Minister to make regulations to provide for such matters of procedure and administration as appear to be necessary or expedient for the purposes of a planning authority issuing an LRD opinion.</li> <li>- Provides for the local authority to issue an LRD opinion as soon as practicable after the expiry of the 4 week deadline, but it must provide a written explanation for the delay to the applicant.</li> </ul>
<b>32E</b>	<p>This provides that the procedure for the LRD meeting and opinion is without prejudice to the formal planning process or any legal proceedings.</p>
<b>32F</b>	<p>This provides that a person may not question the validity of any steps taken by a planning authority in relation to the LRD meeting or LRD opinion where these steps were not taken within the 4 week timeframes.</p>
<b>32G</b>	<p>This provision expressly prohibits any planning official from directly or indirectly accepting any favour, benefit or payment, on their own behalf or on behalf of another person, in relation to the provision of an LRD opinion.</p>

**Section 4** of the Bill proposes to add an amendment to [section 33 of the 2000 Act](#). Section 33 empowers the Minister to make regulations for such matters of procedure and administration as appear to be necessary or expedient in respect of applications for planning permission. The Bill proposes to empower the Minister to make regulations to enable planning authorities to request further information from applicants with respect to their applications, providing for the information or type of information that may be requested in respect of different classes or descriptions of development, as well as the number of requests that may be made.

**Section 5** makes a number of amendments to [section 34 of the 2000 Act](#). Section 34 provides for permission for the development of land:

- It adds a new section 34(1B) in relation to planning applications to which section 32A(1) applies, which requires a planning authority to notify its elected members of the making of the application, where it is available for inspection, and such other information as may be prescribed.
- It also added a new section 34(3C), which applies to applications relating to developments that have been previously granted permission under the SHD or LRD processes. It restricts the consideration of such an application to the modifications proposed by the applicant, with the exception of any assessment of the effects of the proposed development on the environment.
- It also makes amendments to section 34(8) in circumstances where the planning authority has requested further information and decides that this information contains additional data requiring the publication of a notice. These amendments align the timeframe for doing this with the timeframe for making its decision on the planning application with respect to the application itself, applications requiring an EIAP or a Natura impact statement, and applications where an EIAP is submitted under [section 172\(1C\) of the 2000 Act](#), or a Natura impact statement under [section 177T\(5\) of the 2000 Act](#).

## Judicial Review

**Section 6** of the Bill makes amendments to [Section 50A of the 2000 Act](#) in relation to judicial review. It amends section 50A(10) to extend its provisions to section 50A(7), concerning applications for leave granted by the High Court to appeal its decision to the Supreme Court, where the decision is of such exceptional public importance that it is in the public interest to allow such an appeal. It also provides for the addition of three new subsections to section 50A.

The proposed section 50A(13) of the 2000 Act provides for the application of Article 34.5.4° of the Constitution, which allows the Supreme Court to have appellate jurisdiction of decisions of the High Court where the decision involves a matter of general public importance and / or in the interests of justice. Such an application may be made where the High Court has granted leave to appeal under section 50A(7) and an appeal has been brought before the Court of Appeal under section 50A(8).

[Article 34.5.4° of the Constitution](#) is as follows:

“Notwithstanding section 4.1° hereof, the Supreme Court shall, subject to such regulations as may be prescribed by law, have appellate jurisdiction from a decision of the High Court if the Supreme Court is satisfied that there are exceptional circumstances warranting a direct

appeal to it, and a precondition for the Supreme Court being so satisfied is the presence of either or both of the following factors:

- i. i the decision involves a matter of general public importance;
- ii. ii the interests of justice.”

The proposed section 50A(14) obliges the Court of Appeal to discontinue appeal proceedings where an Article 34.5.4° application has been granted by the Supreme Court. The proposed section 50A(15) requires the Supreme Court to act as expeditiously as possible, consistent with the administration of justice, in determining an application under the proposed section 50A(13).

## Appeal Process

**Section 7** of the Bill proposes to establish an appeal process for LRD applications, through the addition of two new sections to the 2000 Act; sections 126A and 126B.

**Table: Provisions on the LRD Appeal to be inserted into the 2000 Act**

Section	Effect
<b>126A</b>	<p>Requires the Board to determine an LRD appeal within 16 weeks of receiving it where there is no oral hearing, or within such period as may be prescribed where an oral hearing is held.</p> <p>Empowers the Minister to extend the period of 16 weeks either generally or for any particular category of LRD appeals where it appears necessary to him or her to be necessary, by virtue of exceptional circumstances, to do so. The section is to be construed and have effect in accordance with such regulations.</p> <p>Sets out provisions for the determination of an appeal where the Board serves notice requiring the applicant to provide further information (FI notice). The Board must make its decision on the appeal, or a decision to notify parties to the appeal of significant further data arising from the further information, within 4 weeks. In the latter case, the decision must be made with four weeks of all parties to the appeal being notified.</p> <p>In the case of applications accompanied by an EIAR or NIS, and applications where the EIAR is submitted under section 172(1C) or the NIS is submitted under section 177T(5), this timeframe is increased to 8 weeks.</p> <p>The section contains a further provision barring the questioning of the validity of an appeal if it is not determined within the specified timeframes.</p>
<b>126B</b>	<p>This section sets out the consequences of non-compliance with time limits for LRD appeals.</p> <p>Where it becomes aware that it has failed to determine an appeal within a specified or prescribed timeframe under section 126A, the Board is required to proceed to determine an LRD appeal notwithstanding that the period has expired.</p> <p>Where it appears to it that it would not be possible to determine an LRD appeal within the period specified or prescribed under section 126, the Board is required to notify the parties to an appeal in writing of the reasons why it will not be determined and specify a date before which it intends to determine it. This requirement also extends to persons who made submissions or observations in relation to the appeal. The Board is also required to take all such steps open to it to ensure the appeal is determined by the date specified in such a notice.</p> <p>Section 126(4) provides for the Board to pay a penalty of €10,000 to the applicant where it fails to determine an LRD appeal within the timeframes specified or prescribed under section 126A. The Board has 4 weeks to pay this amount after it becomes due.</p> <p>The Board is also required to report on the number of LRD appeals determined within the timeframes referred to in section 126A, and the aggregate amount of payments made, if any, under section 126B(4).</p>

**Section 8** of the Bill makes some technical amendments to the [section 104 of the 2000 Act](#) to account for the insertion of section 126A. These include extending to LRD appeals the provisions in the 2000 Act for increasing the number of ordinary members (section 104(2) of the 2000 Act), or not filling vacancies for ordinary members (section 104(2A) of the 2000 Act), based on the level of applications, appeals, referrals or other matters. This section also extends the requirement to lay regulations before the Houses of the Oireachtas to regulations made under the proposed section 126A(2).

**Section 9** makes further amendments to [section 131](#) and [section 132 of the 2000 Act](#) to account for LRD appeals. These amendments expressly exclude an applicant for permission, in the case of an LRD appeal, from the persons from whom the Board may request submissions or observations (section 131 of the 2000 Act) or require the submission of documents (section 132 of the 2000 Act). Section 9 would have the effect of requiring the Board to not use section 131 or 132 of the 2000 Act in seeking further information from an applicant when determining an LRD appeal.

**Section 10** provides that powers conferred on the Minister by [section 142 of the 2000 Act](#) include an additional power to make regulations that empower the Board, where it is determining an LRD appeal, to serve notice on the applicant for permission requesting further information, or type of information, with respect to the appeal as may be prescribed in the regulations. Regulations made to this effect may be made generally or in specified circumstances.

## Related Provisions to the Implementation of the LRD Process

**Section 11** amends [section 146B of the 2000 Act](#) to exclude developments approved under the SHD process from the scope of section 146B(1). This has the effect of providing that proposals for alterations to strategic infrastructure development relating to SHD planning permissions shall no longer be submitted to the Board.

**Section 12** amends [section 156 of the 2000 Act](#) to bring an offence under the proposed section 32G within the penalties it sets out. These penalties are a fine of up to €10 million and / or a prison term of up to 2 years for conviction on indictment, and a fine of up to €5,000 and / or a prison term of up to 6 months for summary conviction. Section 156 contains further penalties for the continuance of offences listed in section 156(1).

**Section 13** amends [section 246\(1\)\(d\) of the 2000 Act](#) to extend its scope to empower the Minister to make regulations to prescribe fees to be paid to planning authorities in relation to the provision of an LRD opinion. Such regulations still require the approval of the Oireachtas under [section 262\(4\) of the 2000 Act](#).

## Section 247 Consultations

**Section 14** makes several amendments to [section 247 of the 2000 Act](#). Section 247 provides for consultations between a person who intends to make a planning application and a planning authority. The most significant amendment it proposes is to insert a new provision, section 247(7). This provision accounts for requests received by a planning authority concerning a proposed development in respect of a part of which has already been granted under [section 9 of the 2016 Act](#) or the section 32A proposed by the Bill (permitted development). It would allow a planning

authority to provide written confirmation that no consultation is required where, having compared the proposed and permitted developments, it is satisfied that:

- the proposed development is substantially the same as the permitted development, and
- the nature, scale and effect of any alterations to the permitted development are not such to require the consultation process to be repeated.

The Bill also proposes a new section 247(8), which clarifies that a determination under section 247(7) shall not prejudice the performance by the planning authority of its functions and cannot be relied upon in the formal planning process or in legal proceedings, and a new section 247(9), which makes it an offence for a member or official of a planning authority to take or seek any direct or indirect favour, benefit or payment in connection with a section 247(7) determination.

The Bill further proposes to amend section 247(1A)(a) to include reference to section 247(7) and extends its scope to developments that consist of student accommodation that includes 200 or more bed spaces. It also proposes to amend section 247(1A)(b) to account for the written confirmation process outlined in the proposed section 247(7).

## Transitional and Final Provisions

**Section 15** of the Bill removes reference to the specified period from [section 25 of the 2016 Act](#). According to the Explanatory Memorandum, the intention of this provision is to maintain the arrangements for excluding compensation where there is a refusal of planning permission, as set out in the Fourth Schedule of the 2000 Act, for pending SHD applications.

**Section 16** repeals [section 4\(1\) of the 2016 Act](#), which sets out the process for SHD applications. The provision however contains provisions for pending SHD applications, providing for the following:

- Where a prospective applicant has been issued with a notice under [section 6\(7\)\(b\) of the 2016 Act](#) may, subject to Part 2 of the 2016 Act, proceed to apply for planning permission. The applicant must 1) notify the Board of their intention to proceed as soon as practicable, and 2) make the application within 16 weeks. Both timeframes start after section 16(1) of the Bill comes into operation
- Where a prospective applicant has made a request to the Board to enter consultations under [section 5 of the 2016 Act](#) and has not been issued with a notice under section 6(7)(b) of that Act, that applicant may subject to Part 2 of the 2016 Act, proceed to apply for planning permission. Again, the applicant must notify the Board of their intention to proceed as soon as practicable after section 16(1) of the Bill comes into operation. The application must be made within 16 weeks after receipt of the notice under section 6(7)(b).

Section 16 also makes provision allowing a person who has made an application under [section 4\(1\) of the 2016 Act](#) for an SHD planning permission, may withdraw the application within 8 weeks of making written notice of the application to the Board. The Minister is also empowered to make regulations providing for the refund of any fees paid to the Board in respect of a request to enter into consultations with the Board under [section 5 of the 2016 Act](#), or an application for planning permission under section 4(1) of the 2016 Act, provided that the request has yet to be determined when section 16(1) of the Bill comes into operation and is subsequently withdrawn.

Finally, Section 16(6) sets out provision for the repeal of Chapter 1 of Part 2 of the 2016 Act. Once commenced, this provision would have the effect of removing the SHD process from the Statute Book.

**Section 17** sets out standard provisions on the short title, citation and commencement of the Bill once enacted. The Minister may commence the Bill by order(s) either generally or with reference to particular purposes and provisions, and different days may be appointed for different purposes or provisions.

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