

## **Pre-Legislative Scrutiny of the General Scheme of the Land Development Agency Bill 2019**

Prof. Rob Kitchin, Maynooth University Social Sciences Institute (MUSSI)

I welcome the idea of managing in a coordinated way public land for the public benefit.

However, in my view there is some doubt as to whether the LDA is really for the public benefit. The entire Bill is premised on supporting the use of public lands *in conjunction* with private actors *for profit*. There is an underlying ethos of marketisation and privatisation of public assets and using their value as a means for the private sector to deliver (public) housing and other state building/infrastructure projects. As stated in Heads 8, point 1b: “to develop land for housing or other related development purposes on relevant public lands and other lands in support of the implementation of the National Planning Framework *on a commercial basis*.” It seems more fitting to name the LDA the ‘Land Development Company’ given its registration as a DAC (‘Designated Activity Company’), its commercial orientation, the way in which appointments to director posts will be set up, its proposed exemption from Freedom of Information, and the fact that the Government will be able to sell its shares in the LDA thus privatising it.

Moreover, it is a shame that the LDA is much too late to take advantage of the last property crisis. The key time to have created it would have been 2009-12 when a lot of land went into NAMA. At this time, the State should have acquired necessary future lands through NAMA for delivery of the National Spatial Strategy (now NPF) – for public housing, schools, health centres, transport infrastructure, etc. We have long known that population is increasing, and will continue to do so for the foreseeable future, and the state will need land for housing and infrastructure. In line with many other European countries we had the opportunity to acquire land at very competitive prices to create a land bank for future state needs. NAMA-acquired land has now been bought by vulture funds and others and will be expensive to buy back. Financial interests will have won three times – they were bailed out; they could subsequently purchase assets for sizable discount; and they have/will sell on land assets for a large profit or little overhead beyond the purchase (in the case of selling to the LDA to a public sector company when the public sector did the bailing out).

### **General observations**

It is not clear to me where liabilities fall if LDA schemes/groups fail.

There is no detail on how the LDA will work in practice with local authorities and other public land holders, or which entity has priority or control of decision making. Can the LDA take over ownership or control of public land against the wishes of the present land holder? This is a detail that I feel should be worked out in advance rather than negotiated after the legislation is put in place.

### **Head 10: Board of the LDA**

There is no detail on how the board should be appointed other than ‘The Board of the LDA shall consist of at least five and not more than ten directors (including its chairperson), each of whom shall be appointed by the Minister.’

In my view, the Board of the LDA should be appointed through state boards process and the appointees should have a skill-set appropriate to the work of the LDA. Ideally, there should be

representatives from public sector, industry, academia, civil society. It should not be loaded with developer interests.

### **Heads 24 and 25: Share capital of the LDA; Acquisition and alienation of shares**

Is the LDA 100% owned by the state? It is not clear to me who the shareholder(s) will be.

Moreover, Heads 24 & 25 detail that the state can sell off its shares. Is that something that would be desirable? If the state sells its LDA shares it will no longer be a state-owned body working in the public interest but an entirely commercial entity working for its corporate shareholders (which will not be the Irish public). If the state weakens its holding but retains some shares can it maintain the provisos of this Bill? Does it still have the right to demand information and access from other public bodies? Or to direct the activities of public bodies? Also, presumably a fully privatized, state-disinvested LDA would not be held to the same level of public accountability as a state-owned body?

### **Head 32 National Public Lands Register**

In my view, given the demand for open government (and indeed the Government's commitment to it), the public lands register should be *open data* made available through data.gov.ie (in suitable formats) and also be in the data layers of myplan.ie. This should be stipulated as a requirement in the establishment of the LDA, rather hoping that it occurs voluntarily. I cannot see the commercial sensitivity in saying where public land is and which agency owns it, or indeed what its present status is (e.g., brownfield site, derelict site, green field, etc). In fact, this should already be public knowledge, as it is in other countries.

### **Head 36 Review of achievement of the LDA's purposes**

This Head is vague and basically states that the Minister will assess LDA progress. Perhaps more suitable would a stipulation that an appropriate set of expectations, targets or benchmarks will be set by Minister or DPER that the performance of the LDA will be assessed against over defined time periods. It is difficult to judge performance or hold a body to account if there is no sense of what they are seeking to achieve and what satisfactory or successful outcomes would look like.

### **Head 39 Amendment to the Freedom of Information Act 2014**

Given that the LDA is performing work on behalf of the State and the public, using state-backed funds up to €1.25 billion in value, should the LDA be free from FoI? Should the public have the right to know what work is being undertaken supposedly for their benefit? In my view, it should be available to answer FoI requests, with specific queries that have commercial sensitivity being assessed on a case-by-case basis as to whether information can be made available rather than a blanket exemption.