

**Joint Oireachtas Committee on Housing, Planning and Local
Government**

12 November 2019

**Opening Statement on the General Scheme of the
Land Development Agency Bill 2019**

by the Department of Housing, Planning and Local Government

1. Background and Context

I would like to thank the Chair and Committee members for offering the Department a further opportunity to discuss the General Scheme of the Land Development Agency Bill 2019.

I am joined today by Mr. Frank Gallagher, Principal Officer and Ms Mary Jones, Assistant Principal Officer who have responsibility within the Department for matters relating to the Land Development Agency (LDA).

We have followed the public discussions in the Committee in the past few weeks and I propose in my opening statement to pick up on some of the key themes from our perspective, and to provide some further clarifications to assist the Committee in its work. Of course, as part of the drafting of the Bill, there will be a thorough and detailed consideration of the Committee's report on the General Scheme.

As appropriate for a General Scheme dealing with the establishment of a new body, the debate to date has appropriately focussed on the **role and functions** of the LDA and its **governance**. These are matters, which I might briefly address.

2. Role and Functions of the LDA

2.1 Context for the LDA

The National Planning Policy Statement published in 2015 recognised the importance of creating sustainable communities by ensuring that the right development takes place in the right locations and at the right time. Following on from this, the Project Ireland 2040 through the National Planning Framework (NPF) and National Development plan provide for the alignment of spatial and investment policy so as to ensure that future developments are plan-led rather than developer-led.

The LDA is being established in this context and responds to the need for more active land management by the State, which has been articulated in many policy documents over the years; including the 1973 Kenny Report and various reports of the National Economic and Social Council (NESC). Indeed in their latest report on this issue (report no.145¹), NESC stated that Project Ireland 2040 provided the perfect moment to transition to a new system of urban development and land management. In this regard, NESC strongly supported the concept of a national regeneration and development agency as proposed in the NPF, and now established under secondary legislation as the LDA.

¹ [Urban Development Land, Housing and Infrastructure: Fixing Ireland's Broken System](#)

The LDA's immediate focus is on managing the State's own lands to develop new homes and regenerate under-utilised sites. In the longer-term, it will assemble strategic land banks from a mix of public and private lands, making these available for housing in a controlled manner, bringing essential long-term stability to the Irish housing market.

Allied to this, the LDA will also act as a national centre of expertise, supporting and complementing the ongoing work of local authorities, public bodies and other interests, to harness public lands as catalysts to stimulate regeneration and wider investment and to achieve compact, sustainable growth, with a particular emphasis on complex regeneration projects and the provision of affordable housing.

The General Scheme seeks to ensure that the primary legislation provides for both the immediate and longer term roles of the LDA.

2.2 State Aid

State intervention in this manner invariably gives rise to considerations regarding potential State Aid. In developing the legislative approach, we are working with both the Office of the Attorney General and the LDA legal team, to ensure that the evolving model is compliant with all aspect of European Union law. The advices to date have informed our approach to setting out the functions within the General Scheme.

In particular, Head 9 of the General Scheme draws a distinction between a range of **non-economic** functions which the LDA will carry out on behalf of the State in support of the NPF and management of public lands, such as the proposed register of public lands and an advisory role to the Minister, and the core

economic functions which it is intended will be undertaken on a commercial basis, without providing an advantage to either the LDA or other parties under State Aid rules.

As the legislative process evolves, including having regard to proposals which may emerge from the Committee, we will continue to examine the various legal dimensions; including matters of EU law such as State Aid and engagement with the European Commission.

The European Commission was informed about the Land Development Agency at the time of its establishment in August 2018. The next step will be a structured engagement with the Commission through its informal preliminary procedure. This will be based on information from the LDA on its business model as well as the draft LDA Bill, outlining the nature and role and functions of the LDA. This structured engagement is consistent with the approach taken in relation to other commercial state bodies and reflects the specific nature of the LDA.

2.3 Affordable Housing

An important function of the LDA is the delivery of affordable housing on public lands, both through activation of the lands transferred from Ministers to the LDA and through services it provides in partnerships with local authorities in relation to the activation of local authority lands.

While the nature of the provision on local authority lands is as matter for the respective local authorities, in the case of public lands Government has decided that a minimum of 30% affordable housing should be provided on such lands in addition to the 10% social housing requirement under Part V of the Planning

and Development Acts. This has been articulated to the LDA and other public bodies as a matter of policy, but the Minister is opening to exploring if this requirement should be placed on a statutory footing.

3. Governance and accountability of the LDA

Having regard to the proposed roles and functions of the LDA, it is important that its legislative framework provides the appropriate balance between the commercial freedom to fulfil these functions and the accountability to the State as the owner of the LDA.

A key document in this regard, is the Code of Practice for the Governance of State Bodies. This Code was updated and revised in 2016 and is designed to ensure that both commercial and non-commercial State bodies meet the highest standards of corporate governance. The Code is based on the underlying principles of good governance: accountability, transparency, probity and a focus on the sustainable success of the organisation over the longer term.

The LDA will have to comply with this Code, and this will include the issue by the relevant Ministers of a shareholder expectations letter, which will outline both policy, corporate governance and financial expectations. This letter will be developed with the support of NewERA.

In addition, key components of governance and accountability are reflected in the General Scheme, based on the most recent legislative approaches for other similar bodies. I might highlight the following elements:-

- Head 6 refers to the development of the Constitution of the LDA, such documents are required under the Companies Acts, and were previously

known as Memorandum and Articles of Association. This will set out the powers of the LDA consistent with its governing Statute and the actions requiring Ministerial consent;

- Head 10 deals with Board of the LDA, which will be appointed through the Stateboards.ie process;
- Head 27 deals with borrowing by the LDA, with the limit to be set in Statute;
- Head 29 deals with the financial statement of the LDA and provides that the Comptroller and Auditor General will audit the LDA and Head 30 deals with accountability to the Committee of Public Accounts;
- Head 31 deals with reporting arrangement and Head 36 specifically provides for a review of achievement of the LDA's purposes by the Minister.

I am aware that in the context of the governance of the LDA, the approach to both Freedom of Information and Lobbying has been the subject of debate. The approach currently being adopted aligns with the general norms for commercial bodies, set out in legislation which is generally a matter for the Minister for Public Expenditure and Reform. The Minister is open to proposing alternative approaches to Government, where measures are identified which would enhance accountability without compromising on the LDA's capacity to execute its proposed statutory role. Therefore we will consider any recommendations of the Committee in this regard.

4. Concluding Remarks

Again, I thank the Chair and Committee members for offering us the opportunity to further update you on the General Scheme of the LDA Bill and I hope I have clarified many of the issues, which were raised in previous sessions. As always, the Department team here are happy to clarify any further matters.