

**Property
Industry Ireland**

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**PII Submission to
Oireachtas Joint Committee
on Housing, Planning and
Local Government:**

**PLS of the General Scheme
of the LDA Bill 2019**

October 2019

Introduction

Property Industry Ireland (PII) welcomes the opportunity to contribute to the Pre-Legislative Scrutiny of the General Scheme of the Land Development Agency Bill 2019. PII made a detailed submission on the Land Development Agency (LDA) to this Committee and the Department of Housing Planning and Local Government in December 2018. The below recommendations should be read in conjunction with the December 2018 submission.

In addition to this written submission, PII would welcome the opportunity to directly address the Oireachtas Joint Committee on Housing, Planning and Local Government. As an organisation with a broad spectrum of members across the property industry, PII is well positioned to comment on the potential impact of this draft legislation on the property market and property industry in Ireland.

Vision of the Proposed Legislation and Mission of the LDA

The LDA needs to be a body of considerable influence for the public good. Its primary objective needs to ensure social housing provision in Ireland becomes more dynamic.

It also needs to work in close but appropriate collaboration with the private sector by respecting and actively supporting their role in providing viable but affordable private housing.

Serving the citizen by harnessing the power of the State with a respect for responsible private enterprise must be at the core of the LDA. The collaborative approach of working with private enterprise taken by the IDA over the last 70 years is a role model for the LDA to emulate. After all, if as a nation, we were as good at housing provision as we are job provision, we would not have the housing crisis that we now have.

No Stated Mission

It is noted that no statement of the purpose of the proposed legislation or Mission for the LDA is included in the General Scheme. The risk associated with this is that it is not possible to properly or meaningfully assess the objects, the functions or the ultimate success of the organisation if the purpose of its creation is not clearly set out. The requirement for a clearly stated Mission is therefore also essential.

The LDA's website states its current Mission as follows;

"The LDA is a commercial State sponsored body that has been created to coordinate land within State control for more optimal uses where appropriate with a focus on the provision of new homes".

PII recommends that the mission for the LDA be

"to facilitate provision for current and future social and affordable housing, alongside a mix of other uses, on State-owned land"

This would give the LDA a clear role in providing a socio-economic benefit at a time of a housing crisis. The focus on social and affordable housing ensures the agency is focussed on those hardest hit by the crisis.

PII recommends that the purpose of the legislation should be

"to establish an agency which will act as a facilitator of the coordination of land within State control and facilitate the development of that and other land for optimal uses where

appropriate and to dispose of land on terms that promote their early development so as to accelerate the provision of social, affordable and private homes by the public and private sector and to promote economic growth”

Recommendation: the mission for the LDA be “to facilitate provision for current and future social and affordable housing provision, alongside a mix of other uses, on State-owned land”

Homes England

The feedback on the activities of Homes England¹, the response of the UK to the housing requirement in that country, is very positive. Its role as an active and effective facilitator of land development is generally recognised. The objective of Homes England is to facilitate others including local authorities, housing agencies and private developers to deliver houses. It is outward reaching and inclusive.

Homes England’s first strategic objective is: *‘We’ll unlock public and private land where the market will not, to get more homes built where they are needed.’* The key item here is that Homes England will only intervene in private land where the market is not unlocking or acting to mobilise the land for development and in areas where homes are needed.

Furthermore, the Homes England Strategic Plan 2018-2023 notes the following in relation to unlocking land:

- *Be transparent about our landholdings and act commercially in bringing land to market.*
- *Hold land for no longer than necessary, making sure that it is disposed of to support local plans and local ambitions.*
- *Dispose of land on terms that promote early development, economic growth and achievement of the government’s diversification objectives.*

On page 15 of the strategic plan, Homes England’s performance is set out in a number of Key Performance Indicators. While the organisation is tasked with acting commercially, its core objective is measured against the ‘economic benefit’ provided and not purely the commercial profit.

The General Scheme in its current draft form does not recognise the need to allow or facilitate the market to operate and to intervene only where necessary to unlock public and private land.

This core function of Homes England is to facilitate development rather than undertake the activity itself. Homes England has a highly commendable practice of providing a full support service for authorities that would support Local Authorities who must be allowed to continue to fulfil their mandate as Housing Authorities. This includes procuring panels of pre-approved entities from which offers can be sought, thereby accelerating the initiation of development for responsible bodies. At the moment, the Irish system of public procurement has multiple actions (all slightly different) that are significantly resource-wasting for both promoters and applicants alike.

Developer or Facilitator of Development?

The Agency as proposed in the General Scheme differs significantly from the type of agency welcomed by PII in its submission on the Land Development Agency (December 2018). Rather than creating an agency to facilitate land development, the General Scheme effectively proposes the establishment of a large-scale public developer that would compete in the private market.

¹ <https://www.gov.uk/government/organisations/homes-england>

PII Submission to PLS of the General Scheme of the LDA Bill 2019

This is not what was anticipated when the LDA was first proposed in the Project Ireland 2040 National Planning Framework (as the National Regeneration and Development Agency) or in the briefing document published by the Department of Housing on 13 September 2018.

Any property market intervention must recognise and respect the intricacies and sensitivities of the property market. Failure to do so risks significant market distortion and may undermine our economic recovery and development.

PII is very concerned that the creation of a large scale publicly funded developer which may compete in the private market as proposed in the General Scheme has the potential to undermine the private development of housing and seriously impair the appetite of funders to invest in the private development sector.

Private developers attract investment from national and international funds. These funds are essential to the delivery of homes in Ireland. Without private sector activity in the market, the LDA does not, on its own, have the capacity to deliver the housing and other infrastructure required to sustain our economy. However, the LDA's existence threatens to undermine the willingness of investors to fund private development, resulting in a net loss in development and homes.

Commercial operator or socio-economic facilitator?

The General Scheme refers to the LDA acting on a commercial basis (Head 2 Interpretation). However, this is defined as meaning an activity **“that endeavours to obtain a financial return for the State”**.

PII is of the view that when the agency is performing a social function, the requirement to obtain a financial return may impede its effectiveness.

Consideration needs to be given to the application of State Aid rules in the context of an agency which may have the ability to compete in the private market.

Affordable Homes

While for one segment of the population the average house price may appear affordable, paying the cost of such a home may be insurmountable for many households even with two people in full-time permanent employment. The State has a role to ensure the availability of homes to those people where, because of viability constraints, the private market is unable to.

In recent years there has been much discussion in relation to the definition of an affordable home, and as the example above illustrates, this can be different prices for different people, and is further complicated when regional variations in pay and the cost of land are considered. PII would welcome the opportunity to engage with the Oireachtas on defining what an affordable home is and to propose means by which there can be a role for both the public sector and private sector in providing affordable homes.

General

This is a perfect opportunity to facilitate optimal development of land including State-owned land and accelerate the delivery of housing to the Irish market.

PII continues to support the creation of a Land Development Agency but believes that significant amendments to the General Scheme are required.

Amendments required

- Clearly state the purpose of the legislation and the mission for the agency
- Ensure objectives and functions are aligned with the stated purpose

- PII recommends that the LDA should be a facilitator of development rather than a developer.
- If the primary purpose of the LDA is not to be the acceleration of housing delivery by facilitating the development of land by others, this should be clearly communicated
- The purposes for which and circumstances under which the LDA may acquire “other land” should be clearly stated as should the period for which it may hold such land
- The requirement for 40% social and affordable housing in any housing development on State Owned land as originally envisaged should be retained
- There should be a specific objective to avoid deadweight loss (loss of economic efficiency that would occur when the free market equilibrium for a good or a service is not achieved) and displacement of existing economic activities, including of private development.

Part 1 Preliminary and General

Head 2 Interpretation

‘Relevant public lands’ is specifically defined as *‘all lands, within or contiguous to the built up area of any census town with a population of 10,000 people or more in the last census in the ownership or control of a relevant public body’*. However, when referred to in further sections including Head 8 and Head 9, the term relevant public lands is followed by the words *‘and other lands’*.

The term *“relevant public body”* is defined so that it includes the LDA itself.

Further Head 9, sets out the functions of the LDA including the following;

- Paragraph (2)(b) *“to acquire lands in public or private ownership”*
- Paragraph (2)(d) *“to develop, or facilitate the development of, relevant public lands and other lands;”*

The effect of these combined terms is that the LDA may acquire and develop any land regardless of its location or regardless of its ownership and irrespective of zoning or current use.

If the PII recommended amendments to the purposes are accepted, the ability to acquire and facilitate the development of land without limitation would be a positive development.

PII believes that, in the absence of the amendments recommended in the previous section of this submission, the very broad definition of land that may be acquired and developed by a new public developer creates a significant risk of market distortion and threatens delivery of housing by private sector operators.

Part 2 The Land Development Agency

Head 8 Objects of the LDA

Overview

PII recommended in its submission on the Land Development Agency that the objective of the LDA be *“to provide for current and future social and affordable housing provision, alongside a mix of other uses, on State-owned land”* [emphasis added].

The relevant object in the General Scheme is *“(1) (b) 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”* [emphasis added].

The purpose of the PII proposed objective was to ensure that the focus of activities of the LDA would be on providing social and affordable housing, while recognising that a mix of other housing types would be required to ensure that the LDA can generate funds for its continued operations.

However, if the LDA is to compete with private developers as part of its function to deliver social and affordable homes, it must act as a market operator in the pricing of those homes to avoid market distortion and unfair competition.

While accepting that there is a role for private developments to provide social housing under Part V of the Planning and Development Acts, there are challenges that the private market faces in providing social and affordable housing when compared to other types of housing. This is primarily because of the viability of such schemes, notably because of the cost of land on the market due to current zoning practice and indeed the substantial amount of land held by public bodies. The latter of these two issues is one that the LDA would be able to resolve under its mandate.

Recommendation: include a sub-section in Head 8, section 1, that, in addition to the facilitation of the development of land, a main objective for the LDA is the provision of social and affordable housing on State-Owned land.

Displacement of Existing Development

PII supports the objective in section (2) that the LDA shall “endeavour to:

- (a) contribute to the economic and social development of the State;
- (b) enhance the competitiveness of the economy of the State; and
- (c) obtain a positive financial return for the State.”

However, PII has grave concerns as to whether the LDA as currently proposed in the General Scheme can fulfil those objectives. In addition to a new and stated requirement for the Agency to facilitate development of land by others and to act as a market operator in any development undertaken for the private market, all projects should seek to promote economic additionality while avoiding deadweight and displacement of existing economic activities, including of private development.

The development process, from initial site acquisition, through design, planning, tendering and construction, takes a long time. Decisions, including capital investment, are made at an early stage in this process and given the functions provided to the LDA, the Agency has the potential to have serious impacts on existing businesses. For this reason, it is important that the LDA provides an open and transparent process with its proposed developments.

Recommendation: Amend section (2) to include:

(d) avoiding deadweight (loss of economic efficiency that would occur when the free market equilibrium for a good or a service is not achieved) and displacement of existing economic activities, including of private development

Economic activities

PII recommended that the LDA “should not have a requirement to generate an excess of income over expenditure in the pursuit of its objectives”. The proposed objective in the General Scheme to develop land on a commercial basis does not adequately consider the social benefits from some possible LDA projects with social benefit which should in some way be accounted for in any cost benefit analyses. As such, clarity should be provided that the commercial basis the LDA would operate under would be for the activities of the Agency as a whole, rather than on a site-specific/project basis.

Recommendation: clarify that the commercial basis under which the Agency will act are for the body as a whole, rather than a site-specific or project basis

Making land available to the market/ Facilitating Development

PII proposed that the objectives and the remit of the LDA should be:

- i. to make available State-owned land for affordable and social housing development and other appropriate development and,
- ii. where 1) this objective cannot be met by making land available to the private market and 2) the aim is to provide social and/or affordable housing or other social development in the public interest, the LDA may develop this land.

Objective (1) of the General Scheme appears to preclude the possibility of *making land available* to private market developers and appears only to permit LDA controlled land to be developed by or in conjunction with the LDA. This is reinforced by Head 9(2) (c) which permits the disposal of LDA lands only when they are no longer required to enable the LDA to undertake its functions.

This is in stark contrast to Homes England which has a stated objective or function of the acceleration of housing delivery and which can unlock land for development by market operators where the market is unable to do so and, apparently has been very successful in this regard.

PII believes that the policy preference should be for private market developers to provide private housing. The disposition of LDA land to private developers can be legally structured and phased to ensure compliance with covenants regarding the delivery of a stipulated quota of social housing and affordable housing and the meeting of target timelines for this and for the completion of the development. Only where this would not be viable should the LDA become directly involved whether in collaborative structures or otherwise in the construction of affordable or private housing.

The Briefing Document published by the Department of Housing on 13 September 2018 promised two main objectives which were supported by PII, namely;

- i. "Open up appropriate State Lands for development especially housing; and
- ii. Initiate and drive strategic land assembly, working with both private and public sector land owners"

The General Scheme in its current form, appears to take the narrowest possible approach to working with the private sector and other public sector bodies because of the absence of an objective to dispose of land to private developers, local authorities and housing agencies

Recommendation: Include an objective for the LDA, as a preference, to make land available for private market development and development by local authorities and housing agencies, in each case tied to the delivery of optimal development in accordance with a masterplan if one has been prepared by the LDA within stipulated time frames.

Objectives of the National Planning Framework

PII welcomes the reference relating to meeting the objectives of the National Planning Framework as the objectives, particularly in urban areas, of increased development in existing built-up footprint is a concern for the viability of many housing developments.

Transparency

Head 8 (4) would permit the expansion of the objects and powers of the LDA in a manner consistent with the Legislation. PII submits that all functions and powers of the LDA should be set out clearly in the legislation and not in a constitution which can be developed or varied by the Board without legislative supervision or oversight by the Oireachtas.

Recommendation: Delete Head 8(4)

Head 9 Functions of the LDA

Minimum social and affordable housing requirement

The Briefing Document outlined key functions² of the LDA:

- **II Strategic Land Assembly;** Consolidate strategic privately owned lands, for example, lands which may be key to opening up the potential of public lands, or which may present long-term strategic land-assembly opportunities, to ensure land supply to the market on an enduring basis, including the potential use of CPO where required
- **III Affordable Housing Delivery;** Deliver significant volumes of housing in general, while providing at least 40% social/affordable on State sourced land [*emphasis added by PII*]

The functions under the general scheme no longer refer to the minimum 40% social/affordable requirement and PII believes that it would be entirely appropriate for this reference to be retained as outlined under Head 8 Objects of the LDA.

Recommendation: Re-introduce a minimum requirement for the provision of a minimum quota of social/affordable housing in any housing development undertaken by the LDA

Acquisition of private land

A function mentioned in this head is to “(2) (b) to acquire lands in public and private ownership”. As previously submitted by PII, the LDA’s resources should be applied in the assembly of the sites and making those sites available, using the most efficient means to ensure housing delivery through an open process that identifies and employs the means and entities best placed to do so by virtue of their experience and capacity.

For example, where it would facilitate the development of privately-owned land by the market, the Agency should use its powers to acquire State-owned land and make it available for this purpose. A direct development mandate should be used only where a development partner is not available for public lands.

Although the General Scheme refers to land acquisition, it does not include any power of compulsory purchase. As such, the ability of the LDA to unlock land for development is no greater than that of a private developer.

Without the benefit of powers of compulsory purchase, the LDA may be very limited in achieving the unlocking of land required to implement development plans, local area plans or the LDA’s own masterplans. Caution is required, however, because unless the objectives of the LDA are amended so that any risk of unfair competition with the private sector are removed, there may be legal issues in relation to granting the LDA compulsory purchase powers.

Recommendation; Revise the objectives of the LDA to prioritise the facilitation of the development of land by the public and private sectors and the acceleration of housing delivery and include compulsory purchase powers to aid the fulfilment of this objective.

Timelines should also be set for the LDA to act on ‘other relevant lands’ which they acquire so that if they do not act to ‘facilitate the development of those lands within a certain timeframe, that the other lands would return to private ownership.

² Page 8

Recommendation: Timelines should be set for the LDA to act on ‘other relevant lands’ which they acquire so that if they do not act to ‘unlock’ those lands within a certain timeframe, that the other lands would return to private ownership.

Master-planning of areas

PII supports the function at Head 9 paragraph (2) (f) with regard to drawing up and assisting relevant public bodies and owners of other lands to draw up master plans for the development of relevant public lands and other land.

The role for the LDA in respect to the implementation of the National Planning Framework as outlined under section (3) is also welcome.

In a recent study trip organised by PII to Cambridge, we saw first-hand the role such sites and development agencies can play in the creation of new communities, including through the provision of substantial social and affordable housing as well as key social infrastructure.

Justification to retain relevant public lands

The LDA should also have the function under section (3) to require that all State-owned land zoned for development should be assessed and a justification for the retention of that land should be made by the relevant public body to the LDA within 12 months of the establishment of the Agency. Where no justification is forthcoming, or the Agency deems that there is not sufficient justification for the retention of the specific site, the Agency should prepare a plan for development of the site in line with its mandate.

Infrastructure Provision

Delays caused by engagement on public infrastructure, notably by Irish Water and ESB, are a key concern in housing development. PII therefore recommends that for the LDA to deliver on its housing objective that its functions must include co-ordinating the provision of infrastructure. The Agency should be given a specific objective to implement an Infrastructure and Services Installation Programme to advance the availability of zoned land available for residential development. This should include the ability for the LDA to secure prioritisation of its projects from the relevant infrastructure entities (Transport Infrastructure Ireland, Irish Water etc.).

The LDA should also be empowered to secure prioritisation for the delivery of infrastructure of other ready to go projects which are privately-owned and either have planning permission or would be likely to get planning permission if the services were in place and where the developer commits to a commencement once the services and planning are in place. The LDA and infrastructure bodies should closely co-ordinate on their activities achieve this.

Recommendation: LDA to be given a function in securing prioritisation of infrastructure on public and private sites capable of delivering significant numbers of housing units.

Part 6 The LDA and Land Management

Head 32 National Public Lands Register

This head refers to keeping a register of relevant public lands, the LDA should also keep a register of ‘relevant other lands’ to fit within a definition of relevant other lands referred to above.

Specific Recommendations to the Minister, Board and/or CEO

Appointment of Board

If the LDA is genuinely intended to work collaboratively with the private sector and local authorities, then it is essential that there is appropriate representation from the private development sector on its Board. This will assist in avoiding the risk of decisions being made without being aware of unintended repercussions for housing delivery by other essential participants in the drive to deliver housing.

The practice for current board composition for the commercial semi-state groups where there is substantial private industry representation should be followed and enshrined in the proposed legislation.

SME involvement in LDA developments

The Agency clearly proposes to procure significant private sector involvement by means of collaborative structures in order to fulfil its housing delivery mandate. Whatever form this private sector involvement takes it must facilitate and assist small scale developers and SMEs in participating in the process.

Interface between public and private stakeholders should facilitate timely and consistent decision making and accelerated development. Oversight structures should be put in place for this purpose. These should include input/advice from independent constituents, to assist in the creation of a commercially viable/attractive proposition.

Examples can be sought from existing models in which semi-state bodies that have achieved this. For example, a model of contract for sale conditioned on delivery and coupled with an option for the private operator to acquire and extended only if the delivery requirements are on target, and with clear break clauses for the LDA where there is insufficient progress made, could be used. Agency-developed master-plan proposals should facilitate the participation of small-scale developers and SMEs in such projects.

Many licensee type arrangements exclude normal range of housing developers from participating and this could be to the detriment of a fair and competitive process and holds likely the creation of a small number of large players or monopolies where, elsewhere, these have been seen to exert undue influence over housing delivery with all the implications arising.

Raising of Finance

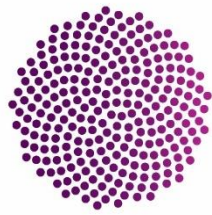
In relation to the need to raise finance, the LDA must ensure that structures that it may propose for housing delivery are “bankable”, in particular, looking at how title to the relevant land may be held, being cognisant of the fact that any third-party funder will likely seek security over the real estate. If the LDA is to have a meaningful role in the assisting of housing delivery by all sectors, structures which facilitate participation by medium and smaller scale private operators must be developed.

PPP type projects and NAMA’s Licence arrangements have the effect of discriminating against smaller operators or those whose funding model requires that security is provided over the lands being developed. Concentration on PPP or Licencing type structures primarily favour PLCs, REITs, ICAVs etc. Any practices which provide advantage to those structures risk the disappearance of other structures and dominance by a small number of larger players with consequent risks for house prices, as also referred to in d) above.

A simple model of sale of smaller lots of land with options over other lots in the event of meeting performance requirements on the first lot would be effective. Re-transfer obligations in the event of failure to perform are also possible.

Organisation of activities

The Agency's activities would best be organised geographically in line with the Regional Assembly areas and Metropolitan areas. This will ensure alignment with the Project Ireland 2040 plan and funding distribution. It also needs to have a strong presence in all three regions as a Dublin based organisation may not be able to build the necessary relationships with the local authorities and the various regional public bodies currently controlling state land and planning e.g. HSE, TII, etc. who already have regional structures.



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