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Uisce Éireann
Teach Colvill
24-26 Sráid Thalbóid
Baile Átha Cliath 1
D01 NP86
Éire

Irish Water
Colvill House
24-26 Talbot Street
Dublin 1
D01 NP86
Ireland

T: +353 1 89 25000
F: +353 1 89 25001
www.water.ie

Uisce Éireann Submission to the Joint Committee on Housing, Local Government & Heritage on the draft Planning and Development Bill 2022

Uisce Éireann ("UÉ") welcomes the opportunity to provide commentary on the draft Planning and Development Bill 2022 ("the draft Bill"). There has been a considerable amount of changes since the enactment of the Planning and Development Act, 2000 ("PDA 2000") both in environmental legislation, case law, climate change targets and, at a national level, new agencies established with responsibility for delivering state infrastructure. The publication of the draft Bill represents a once in a generation opportunity to streamline Ireland's much evolved planning system.

The provision of the timely delivery of water and wastewater infrastructure and services by UÉ is a critical component of the Irish Planning system and is the backbone to most social and economic development. Sustainable development cannot happen without appropriate water services infrastructure and therefore it is imperative that it is given appropriate consideration in the legislation at plan / policy and project level.

UÉ considers the draft Bill contains many positive aspects. We would like to acknowledge the amount of work undertaken and appreciate the greater clarity achieved in the draft Bill (including much-improved referencing). This is especially so in an increasingly complex planning and environmental context.

In particular, UÉ welcome the following provisions / amendments:

- Focus on a sustainable, plan-led system and the 10-year duration of development plans
- Certainty around decision making timelines

- Judicial Review provisions
- Environmental Assessment provisions, which for the most part provide increased clarity
- Flexibility within defined parameters for planning applications
- Clearer provisions allowing for alterations and extension to permission durations
- Provisions in relation to An Coimisiún Pleanála (ACP).

In terms of key asks for change / amendment – these and their explanations are set out in further detail below and in the Appendix but, in summary, are, *inter alia*:

- The recognition and prioritisation of key enabling strategic infrastructure for the common good that will facilitate other developments.
- UÉ, as the national authority for water services, is given the appropriate powers to complete its functions, to include, in particular in respect of compulsory purchase order (CPO), taking in charge, and exempted development. These currently rest with the local authority under the draft Bill.
- UÉ are of the view that a concurrent consenting process for planning and environmental legislation is the best solution to fix extreme delays and potential inconsistencies between the planning and environmental processes.
- The provision of adequate resourcing and training and the preparation of a Resourcing Action Plan for both ACP and local authorities.
- The inclusion of UÉ as a statutory consultee in forward planning.
- The monitoring of local authority decision making timelines (Section 92).
- The mandatory decision-making timelines of ACP (of which we are supportive) to be underpinned by resourcing, training, accountability and monitoring.
- Certain suggested changes to the Part 4, Chapter 4 provisions in Schedule 1.
- Suggest the exclusion of UÉ from mandatory directions to cease upon receipt of an application for retrospective consent (explanation below).
- In terms of "maritime area development" – request the ability to conduct preapplication consultation with ACP for land-based elements prior to having a Maritime Area Consent (MAC) and the ability of a planning permission to remain valid until a new MAC is applied for, in circumstances where the MAC is quashed following judicial review. This request is made on the basis that

often only very small portions of UÉ development will be located in the maritime area but yet the entire project will be brought under this regime.

- Project consent flexibility – we would like clarity in relation to the relationship and sequencing between the more general pre-application discussions under s111, and pre-application discussions under (s112).
- Suggested changes to the European Union (Waste Water Discharge) Regulations 2007 to 2020. We understand that these are to be reviewed in light of the new legislation and we would very much welcome the opportunity for further engagement on this as these Regulations have a huge impact on the ability for UÉ to provide wastewater infrastructure and upgrades.
- CPO powers need to cater for inclusion of UÉ as an acquiring authority, and adequate compensation provisions need to be added. A more focussed approach also needs to be taken with regard to state land, and the ability to compulsorily acquire state land where the landowner does not object need to be possible.
- Taking in charge powers must allow UÉ to do so directly from developers with all associated rights and easements when the acquisition is on consent.
- Suggestion that the thresholds for EIA Annex II developments be increased and screening is only required above a certain threshold.
- In terms of IROPI, we request that an appropriate extension of time is provided for in the application process to allow the consenting authority to carry out their functions, such as the preparation of a Statement of Case.

As the national water utility, UÉ is uniquely placed to offer our insights in respect of aspects of the draft Bill that we consider have implications for the sustainable and orderly delivery of water and wastewater infrastructure which in turn will help achieve national objectives such as *Housing for All*. We consider that, if the proposals above are not taken into account, the draft Bill will not adequately resolve the current obstacles arising for timely, efficient infrastructure delivery, and may even increase the risks.

However, UÉ (like other organisations) has not, in the time available, been able to robustly analyse and consider all aspects of the draft Bill. It is also difficult to review in the absence of the associated regulations. We will be working with the legislation for decades to come and consider it imperative to get it right. We recommend that the

next iteration of the draft Bill be accompanied by the proposed draft Regulations, together with proposals for transitional arrangements. Therefore, while we appreciate the draft Bill's momentum and urgency, we would appreciate further engagement with the Department.

Format of this Submission

For ease of use, in this submission UÉ has set out an executive summary above and below we have included an explanation of some of more important comments. A more detailed technical commentary (section by section) is appended.

1. State Infrastructure Development

Critical infrastructure delivery contributes significantly to protecting public health, tackling climate change, ensuring compliance with European directives, achieving national objectives and plays an important role in protecting Ireland's reputation on a global stage. Notwithstanding current statutory powers enshrined in legislation, given the complexity of the planning regime and interactions with other consenting processes, it often takes statutory undertakers multiple years to obtain appropriate consents or to undertake relatively routine upgrade or maintenance works. It is becoming a massive issue for UÉ and I am sure other statutory undertakers.

The new legislation must be unequivocal in its support of strategic infrastructure, particularly that of statutory undertakers. This must be considered holistically and over the complete life-cycle of plans and projects (including legal challenge stage). Currently the Bill has not explicitly linked the role of infrastructure to the interests of the common good, nor is it evident that the intention of the planning system is for infrastructure developments of strategic importance to the State to be expeditiously determined.

RECOMMENDATION No.1

The legislation needs to streamline, expedite and provide greater clarity, consistency and certainty to how state infrastructure development progresses through the planning process. The Bill should:

- Expressly call out enabling development, for the common good, by statutory undertakers.

- Establish prioritised consent procedures for statutory undertakers.
- Establish specialist teams within consenting authorities to address all areas of the consenting process in a timely manner.
- Establish a lead authority to co-ordinate the consenting processes for public infrastructure, carrying out one Environmental Impact Assessment (EIA) and Appropriate Assessment (AA), co-ordinating joint oral hearings if necessary, and ensuring concurrent and consistent decisions.

2. Resourcing

The area of Planning and environmental decision-making is incredibly complex, with multi-disciplinary facets. It is made even more complex by ever changing case law, legislation, climate change and technical innovation. Lack of adequate resourcing is a widely recognised issue facing Ireland's planning system, as it is key to robust decision making. The introduction of mandatory timelines will be of little benefit without resourcing and training.

RECOMMENDATION No.2

We strongly urge the preparation and publication of a Resourcing Action Plan to identify the steps to be taken in the short, medium and long term to ensure a properly functioning planning system. The latter should be prioritised and expedited, and the commencement of certain provisions of the legislation should align with a resource plan.

3. Uisce Éireann (General)

As the national authority for water services, UÉ is responsible pursuant to the Water Services Acts 2007 to 2022 for the majority of water and wastewater services previously provided for by 31 local authorities. As such, we request UÉ be explicitly cited in any provisions of the draft Bill related to local authority functions in water services that would now fall within the remit UÉ (e.g. compulsory acquisition, taking in Charge; exempted development). To ensure smooth transition and the avoidance of unintended consequences, these powers could also remain with local authorities but the draft Bill must also ensure that UÉ has access to these powers, as required. We have considered this in further detail below.

4. Forward Planning

With respect to forward planning, the emphasis on robust forward planning is welcomed, in particular the extension of duration of statutory Development Plans to 10 years. This will assist UÉ in developing strategic objectives to support the plan making process and wider development as a whole.

UÉ welcomes the recognition of plan led development; however, it is imperative that UÉ as the nation's water service provider is included within the legislation as a statutory consultee. In addition, as part of the Planning Authority's role in the development of a "Strategic Issues and Options" paper, UÉ would recommend the inclusion of Water and Wastewater Services as a matter to be considered for consultation of the plan, given their critical impact on nearly all aspects of development. Within Section 41(8) UÉ suggests that "*water source protection*" is included as an objective that a Planning Authority must have regard to when making its plan.

In relation to the National Planning Statements, UÉ welcomes this concept and given the strategic importance of water and wastewater, would welcome the principle of one being in place for water and wastewater. However, we would have to engage in this to understand what status this Planning Statement would have, what impact it would have on UÉ and other developments and any unintended consequences.

RECOMMENDATION No.3

- Retain 10 year County Development Plan duration.
- Engage with UÉ regarding the potential development of Water and Wastewater National Planning Statements.
- Include UÉ as statutory consultee in all elements of forward planning.
- Include 'water source protection' in Section 41(8).

5. Development Consents

5.1 Timelines

Since 2014, UÉ has made approximately 500 planning applications, varying on scale and complexity. The Local Authority consent process has largely worked well.

We note S.92 of the draft Bill enables local authorities to extend the decision-making timeline. We would be eager that the current time-line process would be adhered to in the majority of cases, as this is working well.

Furthermore, UÉ welcomes the focus placed in the Bill on adherence by ACP to decision making timelines. UÉ is of the opinion that final agreed timelines should be realistic, evidence based and provide for accountability by decision-makers. This should be underpinned by a requirement for reporting and monitoring of meeting statutory timelines.

RECOMMENDATION No. 4

- In light of S.92, UÉ would welcome monitoring of local authority decision making timelines to ensure the current timelines are adhered to in the majority of cases.

- We support a range of decision-making timelines for ACP, which must be underpinned by resourcing, training, accountability, and monitoring.

5.2 Direct Applications to An Coimisiún Pleanála (ACP)

The draft Bill appears to now streamline the planning requirements for strategic infrastructure developments into one legislative section, which is welcome compared to the previous, more disparate approach. However, to enable UÉ infrastructure delivery we require certain amendments, which are set out in further detail in the appendix but summarized here.

Currently a waste water treatment plant above 10,000 population equivalent (p.e.) is listed in the Seventh Schedule (Strategic Infrastructure Development) to PDA 2000. This is a very low Strategic Infrastructure Development (SID) threshold and UÉ are often required to undertake pre-application discussions for changes / modifications to existing plants that would push such plants above this threshold. Often these changes can be done expeditiously and correctly via the planning authority. We suggest that the threshold for SID (and EIA – see section 8.1below) be increased to 30,000 p.e. and it is made clear that this only applies to new plants. In UÉ's view this will provide clarity and reduce administrative burdens.

The Water Environment (Abstractions and Associated Impoundments) Act, 2022 (the "Abstractions Act") was passed in December 2022; however, it has not yet commenced. This legislation amends the PDA 2000 to include surface water abstraction above a certain threshold in the Seventh Schedule. This change does not seem to have been carried through to Schedule 1 (developments of strategic importance) of the draft Bill and we ask that this is done.

UÉ would welcome the discretion to direct certain development directly to ACP. For instance, for linear development that crosses multiple planning authorities having to always apply to each authority can create administrative hurdles. In that respect UÉ would welcome a discretionary power to apply, where appropriate, to ACP for "*water services infrastructure that crosses the functional areas of more than one planning authority*".

Furthermore, Section 110(3) of the draft Bill provides that where Chapter 4 applies to only part of a development, that the entire development shall be made to ACP. We have a large portfolio of infrastructure which requires maintenance and upgrades and it would not make sense if these types of developments all had to be channeled through ACP. Whilst this provision may be of benefit, particularly for new developments, it would not be appropriate in all instances and would result in unnecessary delay / uncertainty. As such we request that this provision, similar to the request above re infrastructure across multiple planning authorities, be modified to be an "opt-in" rather than a mandatory provision (i.e. change "shall" to "may").

RECOMMENDATION No. 5

- Schedule 1 to be amended to include:
    - ***New*** 30,000 pe waste water treatment plants
    - A groundwater abstraction, artificial groundwater recharge scheme or a surface water abstraction where the annual volume of water abstracted or recharged is equivalent to or exceeds 2 million cubic metres.
- Provide the discretionary power for UÉ to apply directly to ACP for water services infrastructure that crosses the functional areas of more than one planning authority in appropriate circumstances.
- Amend Section 110(3) to be an "opt-in" rather than a mandatory provision (i.e. change "shall" to "may").

5.3 Directions to Cease for Retrospective Consent

Section 127 of the draft Bill notes that, on application for retrospective consent, the Commission **shall** issue a notice directing the applicant to cease all activity or operations. The applicant then has two weeks to make a submission as to why it should not cease and the Commission can then confirm, vary or withdraw the direction. In terms of water or wastewater infrastructure UÉ would not be in a position to cease operations immediately unless there was an immediate environmental or public health risk. The Drinking Water Regulations provide that before taking a such serious action as to limit or cut off a supply the implications of doing so need to be carefully considered by the supervisory authority and the HSE and the issuing of such a direction need to be balanced against public health concerns.

RECOMMENDATION No. 6

- We respectfully suggest that this should not be an automatic requirement and that a direction ceasing activity or operations for UÉ operations only be made as a last resort and where there has been appropriate consultation with the required bodies. This should be the exception as opposed to a mandatory obligation in all circumstances.

5.4 Maritime Development

We welcome the provision that planning permission can be applied for/granted notwithstanding that a Maritime Area Consent ("MAC") may be subject to judicial review.

However, we have concerns that if legal challenge is successful, and a MAC is quashed, that planning permission will be invalidated. Given the time, resources, and administrative burden associated with the lifecycle of a planning application through to permission, we would consider this an overly onerous approach, especially in circumstances where the majority of UÉ infrastructure will be land based with often only small portions in the maritime area. In forming this view we note the general principle underpinning planning legislation that a person shall not be entitled solely by a grant of permission to carry out development (i.e. where other consents are required). We would consider given this principle that it is not inappropriate for a planning permission to remain valid while a MAC is reapplied for. This would reduce

the delay and cost associated with the need to prepare a new planning application and would also represent a more efficient operation of the Planning system.

In addition, section 111(1) of the draft Bill notes that a person who is eligible to apply for permission under this Chapter shall request a consultation with the Commission prior to making its application. Our concern with this is the Maritime Area Planning Act, 2021 seems to require that a person must obtain a MAC before they are eligible to apply for planning permission. While this might make sense for an offshore wind development, unfortunately UÉ development which may only have very small offshore elements attached to it is now brought under this regime. In UÉ's view it should not be required to obtain a MAC in order for it to apply to the Commission for what is a majority land-based development. It can often take years of discussions with the ABP or planning authority in terms of what is the best location or site – to have to obtain a MAC prior to this makes little sense.

Section 83(3)(g)(iii) of the draft Bill recognises that a maritime consent may attach conditions to protect, inter alia, water, gas pipes etc; however, this does not refer to wastewater pipes. We ask that this be included for clarity.

RECOMMENDATION No. 7

- We ask that, for predominantly land based developments, planning permission can remain valid while a new MAC is being applied for in circumstances where a MAC has been successfully judicially reviewed.
- We ask that for predominantly land based development a MAC is not a requirement prior to pre-application discussions.
- Section 83(3)(g)(iii) of the draft Bill include reference to wastewater in addition to water.

5.5 Flexibility

The Draft Bill makes provision for certain elements of a proposed development which are not confirmed / will not be confirmed at the time of lodgment. We welcome the introduction of this provision, and it will prove useful to developments where technology advances and procurement related considerations mean some flexibility is needed, as in the case of renewable energy infrastructure, for example. However, we would like

some clarity in relation to the relationship and sequencing between the more general pre-application discussions under s111, and pre-application discussions under (s112).

5.6 Material and Non-Material Alterations

UÉ welcomes the ability to amend by means of material and non-material amendment. This will hopefully assist in providing clarity to our consultants in progressing non-material changes on site.

5.7 Compliance

It is noted that changes have been introduced in respect of compliance submissions and associated timelines. We consider that further clarity is necessary here particularly around the apparent change from a de facto agreement in instances where a local authority does not sign-off on a compliance submission in time to one where this results in a de facto non-agreement requiring the matter to be forwarded to ACP. We consider this would introduce unnecessary uncertainty and delay to the compliance agreement process (and ultimately to the timely implementation of permissions).

RECOMMENDATION No. 8

- Request that this remain the same as it is currently i.e. that there be de facto agreement on the conditions if the local authority fails to respond. This change is adding significant obligations on behalf of ACP and the developer to ensure they
- appeal within a certain time. This should be something that can be dealt with at local authority level and they can appeal in specific circumstances.

6. Interaction with Other Consenting Codes

UÉ has a large portfolio of infrastructure both existing and new. To maintain its existing assets in addition to providing for new infrastructure to accommodate growth, UÉ must engage with both the planning and environmental legislation (European Union (Waste Water Discharge) Regulations 2007 to 2020 ("**WWDA Regulations**") or abstraction licences under the recently enacted Water Environment (Abstractions and Associated Impoundments) Act 2022 ("**Abstraction Legislation**").

6.1 Abstraction Legislation

RECOMMENDATION NO. 9

- The Abstraction Legislation provided for various amendments to PDA 2000 that we see are not contained in the draft Bill, including, *inter alia*, an amendment to the Seventh Schedule and the recognition in Sections 82, 83 and 118 of the draft Bill that the Environmental Protection Agency (EPA) is the relevant authority for controlling abstractions. We respectfully request that these provisions be included.

6.2 Licence Review and EIA

UÉ believes that a key step in ensuring the provision of adequate water and waste-water infrastructure is the coordination and streamlining of the planning and environmental legislation. We understand that the WWDA Regulations will be updated to ensure that the changes in the draft Bill are reflected therein. This is very much welcomed by UÉ and UÉ has made previous submissions on how these Regulations could be amended to provide a more streamlined and targeted approach to regulation.

UÉ is extremely keen to engage in this as it has become increasingly difficult to get wastewater authorisations for both new and existing infrastructure, largely due to administrative hurdles. For instance, the only means to amend a wastewater discharge authorization is via Technical Amendment or full licence review. Therefore, no matter the size or scale of change, if it cannot be accommodated by the Technical Amendment route, UÉ must apply for a full licence review. This is compounded further by Regulation 17 of the WWDA which requires an Environmental Impact Assessment Report to be submitted for every licence review application associated with plants > 10,000p.e. Section 51 of the Abstraction Legislation similarly provides that, where a review of conditions is required for a licence which is above threshold, an EIAR and new licence is required.

In UÉ's view, a change (unless it is above a mandatory threshold) should only be screened in where there is a likely significant effect on the environment. Changes to existing infrastructure can be legitimately screened out for EIA at planning stage (i.e. mandatory EIA is only required for changes above a certain threshold), but, due to *inter alia* Regulation 17 and 28 of the WWDA Regulations these same changes

automatically require an EIAR to be submitted with a licence review. This is not practical, logical, or consistent with European legislation. It creates major delays to projects and requires extensive resources (both time and persons) for something which often has little or no environmental benefit.

We understand that the Department of the Environment, Climate and Communications is currently looking at changes to the Environmental Protection Agency Act 1992 (as amended) to allow the EPA to assess the proposed change to the licence in isolation and UÉ would very much welcome the same changes be made to the WWDWA and the Abstractions Act. UÉ has previously raised other items in relation to interaction of the planning legislation with the WWDA Regulations and Abstractions Act and would welcome further engagement. A streamlining of these processes is essential to ensure resources and money are focused in the right areas and national objectives are achieved.

RECOMMENDATION No 10

- UÉ and the Department engage in the redrafting of the WWDA Regulations.

6.3 Sequential vs Concurrent Statutory Consents

Statutory consents, whether they are environmental, development/planning, foreshore/maritime, compulsory purchase or abstraction related are most often required to be applied for and considered by the applicable competent authority *sequentially* as opposed to *concurrently*. Sequential applications for each consent necessitate the consenting authority to enter into separate independent bureaucratic processes each of which are subject to its own timelines, delays and the potential for judicial review of each decision. It can also cause confusion for public participation and potential inconsistencies between different consents. A sequential approach is not conducive to facilitating holistic environmental assessment and analysis of proposed development. It also results in duplication of work on EIA and AA e.g. as between An Bord Pleanala (ABP) and the EPA.

RECOMMENDATION No 11

- A lead authority be established to co-ordinate consenting authorities on projects where more than one consent is required. In the case of UÉ, ACP Is likely the best entity.

- Legislative amendments would be needed to allow for that role, and to allow that lead authority give directions on public consultation, submission of documents and information, holding of coordinated oral hearings, consideration of submissions from the other consenting authorities and deliver of compatible consents on a coordinated basis. A pre application meeting process akin to SID but attended by representatives of all the consenting authorities would allow the directions to be agreed. Each consenting authority would make their own decision but each would be required to "speak" to the other so the conditions were compatible. This would also have the advantage of the lead authority (only) carrying out the EIA and/or AA for any such project without, as is currently the case, the EIA and AA effectively being duplicated by subsequent consenting authorities.

6.4 Planning Authority and EPA Consultation

The mandatory consultation requirements under the WWDA Regulations between EPA and the planning authority are very confusing, without clear steps to follow. Section 217 of the draft Bill provides the obligations on when a planning authority or ACP must respond to a request from the EPA; however, the WWDA have multiple avenues and timelines for when this consultation might happen. It is unclear in many instances when the EPA are required to consult, what they need to consult on and what triggers consultation. In addition, Section 217 does not include the requirement for the planning authority or ACP to consult with the EPA under Regulation 44, as required. In the Kemper v ABP litigation concerning the GDD Project, inadequate consultation between ABP and the EPA pursuant to Regulation 44 was the only reason that planning permission was overturned.

Both the WWDA Regulations and Planning regime should provide clear, simple steps regarding consultation, to reduce risks to developers and consenting authorities and to provide transparency to stakeholders.

RECOMMENDATION NO 12

- As per above a lead authority to coordinate assessment be established.

- Section 217 of the draft Bill be amended to refer to the legislative requirement contained in Regulation 44 of the WWDA Regulations for the planning authority or ACP to consult with EPA in specified circumstances.
- If not lead authority can be established, to streamline consultation provisions between ABP / Planning Authorities and EPA where any proposal requires both permission for development and a licence for any activity.

7. Compulsory Purchase and the power to lay pipelines

The attempt to create a uniform approach to compulsory purchase is very much welcomed. While our schedule will outline our specific points on the current drafting, there are also some fundamental omissions which we must highlight. Most importantly, Uisce Éireann has no compulsory purchase order (CPO) powers contained within the Bill in its current form. We appreciate that the current drafting of the "Acquiring Authority" provisions at S.362 are incomplete, so we expect this will be addressed and we will have the opportunity to feed into this wording. Also, the compensation provisions neglect to interact with the Bill's compulsory purchase provisions. We presume this is simply an oversight, however it needs to be addressed. If possible, we would appreciate some clarity on this particular matter as it is fundamental to the impact and suitability of the proposed new CPO regime.

One aspect of the Bill wording which has a very important practical impact is its limitation on applicability of CPO to state land. We feel this is problematic on two fronts:

(i) The definition of State Land pursuant to the 1954 Act is very broad and has the unintended consequence of insulating many public entities from compulsory purchase by an acquiring authority, and we presume this is not the intention.

(ii) The Bill removes the ability to compulsorily acquire state owned land in circumstances where the relevant landowner has no objection. This consensual CPO approach is habitually utilized by all party agreement where, for example, third party land has reverted to the state by operation of law, or a state landowner has inadequate title documentation due to fire, flood etc.

We would request that a pragmatic approach is taken to the above, we have included suggestions in the schedule.

Finally, the power to lay pipelines (including water pipes, sewers drains and district heating systems) is granted to the planning authority in S.246 and S.247 but not to UÉ, this would appear to be an oversight. As the National Authority for Water Services, UÉ should be afforded the same powers under these sections insofar as these powers relates to the functions of UÉ.

RECOMMENDATION No. 13

- CPO powers need to cater for inclusion of UÉ as an acquiring authority.
- CPO compensation provisions need to be added to the Bill wording.
- A more focussed definition of the state land concept is required, and the ability to compulsorily acquire such land where the landowner does not object needs to be catered for.

8. Taking in charge Water Services infrastructure under the Bill

The placing of taking in charge onto a better statutory footing is long overdue and we welcome the general approach of the Bill in this area, but there two important issues which need to be addressed. Firstly, the Bill's treatment of taking in charge of water services infrastructure on consent is welcomed; however, without the associated rights needed to access, maintain, and operate this infrastructure UÉ's efficiency in relation to the Housing for All agenda is constrained. Where infrastructure is being taken in charge on consent from developers it is clear that the act of "dedication" is intended to include all rights needed to access, maintain and operate this infrastructure. A subsequent legal requirement to enter into additional Deeds of Easement, Deeds of Wayleave and/or a Deeds of Dedication to acquire the associated property rights, which is found in section 238(1)(b), creates additional bureaucracy and avoidable delay. Public Components being taken in charge on consent under S.237 should be statutorily confirmed as being taken in charge with the benefit of all easements and rights. Such an approach would be welcomed by <u>all</u> stakeholders in the housing development sector.

Secondly the Bill requires that taking in charge of water services infrastructure to be via the planning authority, this adversely impacts on efficiency in relation to the Housing for All agenda. UÉ should also be able to *directly* Take in Charge (TIC) the

Water Services Infrastructure. The current Bill wording requires the LA to do so and thereafter UÉ to do so, this will cause unnecessary and avoidable delay.

RECOMMENDATION No. 14

- Taking in charge powers must allow UÉ to do so directly from developers with the benefit of all associated rights and easements, when the acquisition is on consent. We ask that Section 237 be amended to reflect this.

9. Environmental Assessments

9.1 Environmental Impact Assessment (EIA) Thresholds

On the whole, UÉ generally welcomes the provisions in the draft Bill on environmental assessments. They are helpfully contained in one section and are far more streamlined than current provisions. However, we would make some observations as per below.

Section 194 of the draft Bill provides that regulations shall be made for the establishment of thresholds to give effect to the provisions of the EIA Directive. UÉ would very much welcome a change in our national EIA thresholds in respect of Annex II and would be eager to engage in this. Ireland's approach to Annex II thresholds is extremely restrictive. Currently all sub-threshold development of an EIA class requires screening and the thresholds for mandatory EIA are very low. Ireland's approach to mandatory EIA in environmental licensing is even more restrictive, as mentioned in section 6 above and is in our view unworkable.

RECOMMENDATION No. 15

- In the UK they have a threshold for Annex II development above which they require screening. UÉ would welcome this in our national legislation. This is a logical approach as a mandatory requirement for this assessment should not be required just on scale. At the very minimum UÉ would require the Annex II thresholds for WWTP be amended from 10,000 p.e. to plants above 30,000 p.e. A 10,000 p.e. plant is relatively small in scale and does not necessarily have a significant environmental impact.

9.2 Imperative Reasons of Overriding Public Interest (IROPI)

We note the timelines have not been included in relation to IROPI (imperative reasons of overriding public interest applications).

RECOMMENDATION NO. 16

- We request that that the draft Bill include the ability for the consenting authority to extend time where IROPI provisions are triggered. This is to allow the consenting authorities to carry out their functions, such as the preparation of the required 'statement of case'. UÉ has experience with IROPI applications and appreciates their complexities. In terms of timelines for considering IROPI UÉ is of the opinion that mandatory timelines should be included but that these should be realistic, evidence based and provide for accountability by decision-makers. This should be underpinned by a requirement for reporting and monitoring of meeting statutory timelines.

9.3 EIA Screening

Section 198(14) note that notwithstanding the competent authority having already determined that an EIA is not required it can subsequently make a decision that one is required. This seems to be possible at any time and is not limited to any specific parameters. There must be certainty for developers, and they must be allowed to rely on decisions from the competent authority. This is similar to the case law on sections 5 declarations, i.e. that unless something has changed with the project the section 5 declaration remains valid. Schedule 7 of the PDA 2000 provides the circumstances which must be looked at when determining whether something is screened in for EIA and these are all project specific. So unless there is something changed at project level we cannot see how this section is triggered or required. This would generally be picked up at RFI stage in any event and if the change is material there is a requirement to readvertise etc.

RECOMMENDATION No. 17

- If this section is to remain it must be caveated and only triggered when certain parameters are met. It must be linked back to the screening criteria in Schedule 7 and the competent authority must give sufficient justification and reasoning.

10. Judicial Review

The changes introduced by the draft Bill to the judicial review process are supported by UÉ insofar as they will increase certainty and reduce delay without stifling the ability of those with sufficient interest to challenge planning decisions. The changes made better align with other Member States who are also governed by the Aarhaus Convention and EU Directives.

11. Declarations (Section 8)

We welcome the newly drafted Section 8 and consider it underlines the importance of consistency in planning decisions and the critical role of the Planning Register in ensuring same. We further welcome the amendments providing that only a "relevant person" may make a request under this section.

12. Exempted Development

Currently, both the Planning Act (section 4 and 4(1)(A)) and Planning Regulations identify developments / classes of development which are exempt from the requirement to obtain planning permission. These, or an equivalent, are omitted from the draft Bill; however, we note that they are to be provided for in regulations. UÉ uses the exemptions provided for in Section 4 in addition to those found in Schedule [2] of the Planning Regulations, in particular Class 58 which is specific to UE. In order to avoid overwhelming the planning system it is imperative that these exemptions remain and UE would welcome engagement on how they might be strengthened, for instance, further measures re solar panels, etc. UE also welcomes section 7(5) which will regulate certain exempted development governed by another authorization or permit.

RECOMMENDATION No. 18

- Further engagement on strengthening exempted development provisions.

Appendix 1: Planning and Development Bill 2022 UÉ Submission

(Excel attached)