

Appendix 1: Planning and Development Bill 2022 UÉ Submission

Reference	UÉ Comments
General	The Bill should recognise and prioritise key enabling strategic infrastructure for the common good that will facilitate other developments.
General	All provisions of the Water Environment (Abstractions and Associated Impoundments) Act 2022 as they affect PDA should be included (and updated as appropriate).
General	Provisions could be made in the Bill to enable the establishment of a lead authority to co-ordinate consenting authorities on projects that more than one consent is needed.
General	The Bill will result in revisions being required to the European Union (Waste Water Discharge) Regulations and UÉ would welcome an opportunity to input to same.
General	UÉ would welcome input into Transitional Arrangements
General	UÉ would welcome input into the preparation of Secondary Legislation
General	The various provisions in relation to ACP and its governance and procedures are welcomed by UÉ and considered an appropriate legislative response to issues noted in the recent OPR reports and the related Departmental Action Plan.
General	UÉ CPO powers are not reflected in the Bill.
General	UÉ notes reference to Development Contributions is not included in this draft Bill but will be included in the Final Bill. We request that Guidance be provided in respect of the preparation of Development Contribution Schemes whereby consideration is given to UÉ's role and funding.
General	UÉ requests that Development Plan Guidance is updated to ensure that all CDPs provide for water service in their respective zoning matrices.
SECTIONS 5 - 12	PART 2 - CONCEPT OF DEVELOPMENT
Section 7(5)	UÉ welcome the provision of Regulations which would allow for development to be exempt in respect of which an EIA or AA is required if (a) such development is authorised or permitted under another enactment in accordance with a licence / consent etc and (b) consultation with the public takes place under that enactment prior to authorisation of the development.
Section 8 (4)	UÉ welcomes this redrafting of s.5 (7) of PDA 2000, and considers it underlines the importance of consistency in planning decisions and the critical role of the Planning Register in ensuring same. The revisions will provide greater certainty to the delivery of UÉ infrastructure.
Section 8 (11)	UÉ welcomes this provision in the Bill, which clearly prohibits collateral attacks.
SECTIONS 13 - 77	PART 3 - PLANS, POLICIES AND RELATED MATTERS
General	UÉ should be named in legislation as a statutory consultee.
General	Water Services should be included as a matter for consideration as a consultation matter in plan making.
Sections 17 - 21	Chapter 2 - National Planning Framework
Section 20 (2)	UÉ should be included in the list of consultees under this section.
Sections 40 - 65	Chapter 5 - Development Plans
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.
Section 65	The ability of the Minister to provide an urgent direction to amend a development plan under the proposed Section 65 is welcomed. However, UÉ suggest that the legislation recognises that this urgent direction takes into account other development or proposed development of strategic and national importance in the area before making a decision.
SECTIONS 78 - 165	PART 4 - DEVELOPMENT CONSENTS
Sections 78 - 81	Chapter 1 - Preliminary and General

Section 81(1)(c)	UÉ welcomes this provision
Sections 82 - 83	Chapter 2 - Obligations on Planning Authority and Commission
Section 83	UE requests that this section also includes a reference to wastewater pipes.
Section 82 / Section 83	UÉ would welcome the updating of these sections to refer to the abstraction legislation. The draft Bill recognises that the EPA is the responsible authority for controlling emissions for Waste, UE waste water discharge licences etc but abstraction licences are not referenced.
Section 83 (2) (j) (m)	Sections 83(2)(j) and (m) refer to the local authority taking in charge things like sewers, mains etc. UÉ would welcome the updating of this section to reflect UÉ's role in this area.
Section 83(4) and (5)	UÉ would welcome further visibility of / input in respect of how financial conditions might be applied and particularly the interaction of Contributions Schemes and Chapter 4 decisions.
Section 83 (9) - Compliance Agreement	The changes proposed in respect of compliance agreement would appear to result in additional time delays and uncertainty in this area. It should be noted that ACP does not have compliance functions relating to matters of detail on appeals. UÉ would welcome if the current arrangement regarding compliance procedures and agreement as outlined in Section 23(4) of the Planning and Development (Amendment) Act 2018 was maintained.
Sections 84 - 109	Chapter 3 - Standard Planning Application
91(7)(b) and (c)	UE consider that more streamlined provisions may be possible in such instances - such as the transfer of the application together with any additional information.
Section 92	UÉ would welcome monitoring of local authority decision making timelines to ensure the current timelines are adhered to in the majority of cases.
Sections 110 - 129	Chapter 4 - Planning Applications Directly to Commission
Section 110	We note that the draft Bill does not include conditions similar to section 37(A)(2) of the PDA 2000 (as amended) (i.e. "SID tests"). This is not an issue for UÉ provided our recommendations re Schedule 1 are taken on board (increase WWTP from 10k p.e. to 30k p.e.); however, to provide further clarity, UÉ requests that, as a statutory undertaker, it should be possible for us to make direct applications to ACP for Schedule 2 development where UÉ is of the view that (i) developments are of strategic importance to the State in the context of UÉ responsibilities and / or (ii) where it would streamline, expedite and provide greater clarity, consistency and certainty.
Section 110	Clarity about how SID will accommodate UÉ projects specifically would be welcomed - particularly extensions / modifications to existing projects (e.g. minor changes that would screen out for EIA / AA).
Section 110 (1)	UÉ considers strategic water infrastructure should be included and the threshold for waste water infrastructure increased from 10,000 p.e. to 30,000 p.e. in Schedule 1.
Section 110(3)	UE has 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 be modified to be an "opt-in" rather than a mandatory provision (i.e. change "shall" to "may") and the same Chapter 4 'tests' described above should apply to this provision. (and any other stand-alone development subject to Chapter 4 e.g. solar development).
Section 112(1)(b)	UÉ welcomes this pragmatic provision.
Section 113 (b) (ii) (II)	UÉ considers the introduction of provisions for flexibility within defined parameters to be pragmatic, and will result in a planning system that is more responsive to change and less congested with minor amendment applications.
Section 118 (d)	UÉ considers that mandatory requirement for the EPA to make submissions to ACP where development requires an abstraction licence should be provided for within this section given the EPA's role vis a vis abstraction.
Section 119 (2)(b)	Welcome that ACP included in feedback loop; but note ACP does not have enforcement powers - therefore also suggest that such condition requires written notification to Planning Authority and / or MARA, as appropriate.
Section 122 (2)	UE would welcome certainty around decision timelines for certain classes of development in the interest of certainty. It is considered that these timelines should be realistic and evidence based (in the interest of robust decision making).

Section 122 (2)	UÉ requests that consideration be given to the prioritisation of UÉ appeals and CPOs in line with Section 302 which allows for the Minister to give a direction to the Commission to give priority to the determination of appeal, referral or applications of certain classes of development (strategic, economic or social importance to the state).
Section 122 (9)	UÉ supports this provision and would note the importance of strategic water infrastructure (and expediting planning decisions in respect of same) in this regard.
Section 127	In terms of water or wastewater infrastructure UE would not be in a position to cease operations immediately unless there was an immediate environmental or public health risk.As such UE requests that this should not be an automatic requirement and that a direction ceasing activity or operations only be made as a last resort and where there has been appropriate consultation with the required bodies.
Sections 127	Retrospective Consent
Section 127	Suggest the exclusion of UÉ from mandatory directions to cease upon receipt of an application for retrospective consent (explanation below).
Sections 130 - 140	Chapter 5 - Alterations, Extensions and Revocations of Permissions
S135	Should this not be relevant to land developments too?
Sections 141 - 150	Chapter 6 - Local Authority and State Authority Development
Section 142	UÉ has assumed responsibility from the local authorities for certain works in this area (for instance, laying sewers and water pipes). Therefore we request that these exemptions be given to UÉ in addition to the LA.
Sections 151 - 165	Chapter 7 - Miscellaneous
Section 157	What if MAC JR is upheld on a procedural ground but there is nothing wrong in principle with the MAC and the permission. Can the Act include a provision whereby the permission remains valid unless a new MAC is not obtained?
SECTIONS 171 - 217	PART 6 - ENVIRONMENTAL ASSESSMENTS
Sections 176 - 191	Chapter 2 - Habitats Assessment
Section 180 (2)(b)	Act states at present - significant effects that can ' <i>reasonably be expected</i> ' should be assessed. This appears to reflect a more practical approach whilst also ensuring that directive reqs are met. Request that current wording in PDA 2000 be retained.
Section 186	If the planning authority determines that an AA is required and the applicant did not submit a NIS the planning authority can refuse the application or request the submission of the NIS. UÉ considers it overly onerous to refuse the application if AA screens in rather there should just be a direction to reqUÉst a NIS - alternatively this would result in developers taking a very conservative approach and submit NIS for everything in the risk that the application would be refused if it ultimately screens in.
Section 191	The Bill should include that an appropriate time extension is provided for in the application process to allow for the preparation of a Statement of Case by a local authority and ACP.
Sections 192 - 208	Chapter 3 - Environmental Impact Assessment
Section 198 (3)	A more detailed list of criteria is now outlined. Clarity welcomed.
Section 198(4C)	UÉ welcomes the clarity that would be facilitated by this provision
Section 199	Scoping opinions available on request to competent authority for all applications requiring environmental impact assessment rather than SID applications only as previously stated in section 37 of current act. This is a significant change. The deadline for the competent authority to return an opinion as soon as is practicable does not however provide reassurance that such opinions will be forthcoming in a timely manner. Potential for specific period of time / objective time period to be stated? How will this new broad provision be resourced and administered.
Section 200 (2) (b)	Reference to paragraph b section 174 appears incorrect. Clarity needed.
Section 204	Greater clarity and efforts to achieve increased transparency to be welcomed.
SECTIONS 233 - 247	PART 8 - MISCELLANEOUS POWERS OF PLANNING AUTHORITIES
Sections 236 - 239	Chapter 2 - Public components of certain developments

S237(9)	<p>We suggest that the wording of Section 237 (9) is amended as follows:</p> <p><i>(9) For the avoidance of doubt, a request under section 237(1) is, for the purposes of the definition of “public components” in section 236(4), a dedication of the public components the subject of the request to the public and an order to take public components in charge under subsection (4)(e) is an acceptance of the dedication, in so far as it relates to the second mentioned public components, together with all easements, rights and privileges appurtenant thereto subject to all or any easements, rights and privileges previously granted for the benefit of any houses or other units in the development”</i></p> <p>*this additional text mirrors the draftman’s language in S.238(7)).</p>
S237(10)	<p>UÉ should also be able to Take in Charge (TIC) the Water Services Infrastructure aspect of the “Public components” as defined under the Bill directly from developers on consent, the current wording requires the LA to do so and thereafter UÉ to do so.</p> <p>In order to address this, we suggest that the wording of S.237 (10) be amended as follows:</p> <p><i>(10) Water services infrastructure conduits to be taken in charge, under this section may, pursuant to an agreement between Irish Water and the planning authority, be taken in charge directly by Irish Water as if it were a planning authority for the purposes of this section and in that case be deemed to have been taken into public charge under section 95 of the Water Services Act 2007.</i></p>
Sections 245 - 247	Chapter 4 - Miscellaneous
Section 246	<p>As the National Authority for Water Services, Uisce Éireann should be afforded the same powers under this section insofar as it relates to its functions.</p> <p>In order to address this, we suggest that the wording of S.246 (1) be amended as follows:</p> <p><i>246. (1) Where it considers it necessary to do so a planning authority to include Uisce Éireann in the performance of its statutory functions, for the purposes of this section may—</i> <i>(a) place, construct etc.</i></p>
Section 247	<p>As the National Authority for Water Services, Uisce Éireann should be afforded the same powers under this section insofar as it relates to its functions.</p> <p>In order to address this, we suggest that the wording of S.247 (1) be amended as follows:</p> <p><i>247. (1) Where it considers it necessary to do so a planning authority to include Uisce Éireann in the performance of its statutory functions, for the purposes of this section may—</i> <i>(a) place, construct etc.</i></p>
SECTIONS 248 - 250	PART 9 - JUDICIAL REVIEW UNDER THE ACT
Section 249 (5) (a)	UÉ welcomes the pragmatic approach here to facilitating amendments in the cases of correcting errors of law or fact within a decision. This will ensure that sound decisions will not be needlessly quashed and will ultimately result in greater efficiencies and certainty in the system.
SECTIONS 301 - 355	PART 12 - PROCESS
Sections 301 - 325	Chapter 1 - Procedures in relation to appeals, referrals and applications
Section 302 (1)(a)	UE would welcome certainty around decision timelines for certain classes of development in the interest of certainty. It is considered that these timelines should be realistic and evidence based (in the interest of robust decision making).
Section 302 (7)	UÉ supports this provision and would note the importance of strategic water infrastructure (and expediting planning decisions in respect of same) in this regard.
Section 303 (1)	There does not appear to be the inclusion of s.127 (e) of the 2000 Act in the draft Bill (i.e. acknowledgement by planning authority of submission / observation). Query whether this is deliberate?
Section 304 (3)	UÉ welcomes this provision and the authority and flexibility it provides to ACP in respect of what is considers the appropriate nature and extent of public notifications in respect of cases within its jurisdiction. It is considered this provision will facilitate a pragmatic and transparent approach to public notification requirements and balance these with easing the administrative burden for applicants.

Section 312 (5)	The text within this section would appear to create a very onerous administrative burden on ACP if every landowner affected by a Compulsory Purchase Order was considered a "party" to the application. This is unnecessary, will create delay and will where not adhered to allow cause for challenge. For example in an Oral Hearing scenario where there is only one or two objectors there would be a strict statutory obligation to inform multiple non objecting landowners Clarity is needed as to what is the DHLGH intention. ACP will have definite views on how to determine applicable parties.
Section 312 (7)(g)	Query whether this provision could be made more flexible (i.e. legislate for circumstance whereby an Oral Hearing could be reconvened by another person if considered necessary by Commission)
Sections 333 - 339	Chapter 3 - The planning register and records
Section 335(3)(b)	UÉ welcomes this provision and considers it will aid transparency and facilitate robust cumulative impact assessment and in-combination assessments in EIARs and NISs (i.e. because information on other planned / permitted development is readily available).
SECTIONS 359 - 374	PART 14 - COMPULSORY PURCHASE AND ACQUISITION
SECTIONS 359 - 370	Chapter 1 - Compulsory Purchase and Similar Orders
Section 359 (1)	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 e.g. UÉ can still be subject to a CPO by another acquiring authority when it is justifiable in terms of the common good. We suggest that the statutory intention was in fact only to remove land owned by a State Authority pursuant to the 1954 Act (i.e. land owned by the Minister or Commissioners, not in fact all state land). In order to address the above, it is suggested to remove S.359(1)(i) and for Section 359(1) to read as amended below: <i>"...but does not include - land owned by a "state authority" within the meaning of section 2(1) of the State Property Act 1954,"</i>
Section 359 (1)	The Bill also 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 suggest an addition to the amended S.359 to afford the State Authority the right to veto any CPO by objection, rather than to remove the right to allow a CPO where it is agreeable to both parties. In order to address the above, it is suggested to amend S.359(1) to read as follows: <i>"...but does not include land owned by a "state authority" within the meaning of section 2(1) of the State Property Act 1954, where the State Authority objects to the CPO "</i>
Section 360 / 361	Clarity on naming, notification and service of landowners needed. The relevant forms etc will have to be drafted. If possible, can we be consulted on these or drafts made available? We presume these will of course stipulate the inclusion of the names and addresses but clarity at this point would allow a proper interrogation of the provision.
Section 360 (3) (b)	We note that there are additional administrative steps provided for and query the reasoning for same.

Section 360 (6)	<p>Where there are no valid objections to a CPO, and after APS have determined this to be the case, responsibility for confirmation of the CPO should rest with Acquiring Authority. This is in line with current practise.</p> <p>The wording of the Bill creates an unnecessary positive obligation on ACP to confirm the CPO after a cursory review. This is a variation from current practise and no further process is detailed in relation to this, however it will serve to increase workload unnecessarily on the ACP.</p> <p>Wording is a matter for the OPC but suggested text red below:</p> <p><i>“the Commission shall, unless it is manifest from the terms of the draft order that the acquisition concerned is not reasonably required for the purpose of performing a function of the local authority, confirm the draft notify the Acquiring Authority that it may proceed to confirm the draft compulsory purchase order” .</i></p>
Section 360 (10)	<p>Our reading of this provision leads us to conclude that the “decision” is not in fact intended to be the “decision made under subsection (6) or (7), because if it is one week is far too short a timeframe to get an add drawn up and published. Instead it is likely intended to be one week of the CPO Operative Date.</p> <p>In order to address the above, the following amended wording (in red) is suggested:</p> <p><i>360 (10) A compulsory purchase order shall become operative on–</i></p> <p><i>(a) the date that is 3 weeks from the date on which a decision was made under subsection (6) or (7), or</i></p> <p><i>(b) such date, which shall be –</i></p> <p><i>(i) no less than 3 weeks from the date on which a decision was made under subsection (6) or (7), and</i></p> <p><i>(ii) not more than 4 months from the date on which a decision was made under subsection (6) or (7),</i></p> <p><i>as the local authority concerned may specify, and within one week of the decision in advance of of the Operative Date so specified , by publishing a notice in one or more newspapers circulating in the area or areas to which order relates, notice in writing.</i></p>
Section 360 (13) (c)	<p>The wording in this section appears to provide an opportunity on ACP to impose Community Gain as a condition of any CPO application when heretofore Community Gain was limited to SID planning permissions.</p> <p>An explanation of the intent is required on this issue:</p> <p>Is it DHLGH intention to expand the powers of ACP to allow it to compel an acquiring authority to deliver community gain measures when ACP is adjudicating on a CPO application?</p>
Section 362 (1)	<p>Uisce Éireann derives its CPO powers from the Water Services Acts via the Planning and Development Act 2000 which invokes local authority CPO powers pursuant to the 1966 Housing Act.</p> <p>The Water Services Acts 2007- 2022, the Planning and Development Act 2000 and the 1966 Housing Act should all be listed in 362(1).</p>
Section 363 (1)	<p>It would appear that as it is listed within Column 3 of Schedule 3 that the Housing Act 1966 no longer applies. Consequently, there appears to be no provision for assessment of compensation under CPO.</p> <p>UE requests that such a provision for assessment of compensation under CPO is provided for within the new Bill. It is crucial that this is addressed as it is fundamental to the impact and suitability of the proposed new CPO regime</p>
SECTIONS 395 - 425	PART 17 - AN COIMISIÚN PLEANÁLA
Sections 396 -397	Chapter 2 - An Coimisiún Pleanála
Section 396 (2)	UÉ welcomes the separation of the planning decision making and corporate / governance functions of ACP.
Sections 405 -416	Chapter 4 - 24 - The Planning Commissioners
Section 405(4)	The flexibility provided for by this provision is welcome (as is that provided for by s.405(6). UÉ would suggest that given the current significant backlog of cases at ACP that the Minister should avail of this Section when (if) enacted.
Section 411 (4)	Query whether there should be an "and" or an "or" between subsections (a) and (b) for clarity.

SECTIONS 449-460	PART 19 - FURTHER PROVISIONS RELATING TO PLANNING BODIES
Sections 449 - 455	Chapter 1 - Independence and Impartiality of Regional Assemblies, Planning Authorities and Commission
Section 453 (12)	UÉ welcomes clear definition "connected person"
	SCHEDULE 1 - STRATEGIC INFRASTRUCTURE DEVELOPMENT
Schedule 1	UE requests that Schedule 1 be amended to include the following: - 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.
	SCHEDULE 2 - CLASSES OF DEVELOPMENT SPECIFIED FOR PURPOSES OF CHAPTER 4 OF PART 4
Schedule 2	In terms of Schedule 2 (applications that go directly to the Commission) we ask that this include "upgrades to existing water services infrastructure" and "water services infrastructure that crosses the functional areas of more than one planning authority" in certain circumstances.