

Joint Oireachtas Committee
on Housing, Local
Government and Heritage

7th March 2023

RE: THE DRAFT PLANNING & DEVELOPMENT BILL 2022

We write in respect of the Draft Planning (the ‘Draft Bill’) currently under consideration by the Joint Oireachtas Committee on Housing, Local Government and Heritage.

We represent semi-State and State authorities¹ responsible for the provision of national utilities, transport infrastructure, and the management of State assets. Our collective capital expenditure represents billions of euro investment on behalf of the Irish State. Together, we are responsible for providing essential national enabling infrastructure for housing, industry and commercial development, as well as global connectivity and economic stimulus through our airport and port connections. We have been set the considerable task of delivering on key strategic national objectives as enshrined in the *National Planning Framework, National Development Plan and Climate Action Plan*.

Proper planning and sustainable development in the interest of the common good, relies on timely delivery of enabling infrastructure. To this end, the importance of an effective planning system cannot be overstated. We welcome many of the positive changes set out in the Draft Bill; in particular, the clear refocusing on forward planning and the strategic direction of the Development Plan; the commitment to certainty around timelines for appeals; and proposals which facilitate greater flexibility.

As state infrastructure providers and statutory consultees, many of this group face similar planning challenges. Recognising mutual concerns, this letter represents a collective effort to highlight a series of strategic recommendations which we respectfully ask are taken into consideration as the legislative process progresses. While the following recommendations represent overarching issues of concern, each organisation faces unique challenges. Individual submissions setting out the particular concerns of respective organisation, will follow in due course.

¹ Ref signatories

KEY RECOMMENDATIONS

Recommendation 1: As the draft Bill and Regulations progress, a formal route to engage with State infrastructure providers should be established as a priority to ensure key views are appropriately captured.

The reform of the planning system through the Draft Bill and ensuing secondary legislation, represents a rare opportunity to create a robust planning system to serve the common good in terms of public infrastructure provisions for many years to come. However, the timeline between publication of the draft Bill (January 2023), and the Q3 2023 target of enacting it, is extremely ambitious. We would caution against meeting a short-term objective to expedite planning reform at the expense of proper engagement with key State infrastructure providers.

A formal route for State bodies to have their views known on all aspects of planning system reform, including secondary legislation and transitional arrangements, should be identified and communicated to all relevant parties as a priority.

Recommendation 2: The absence of associated Regulations and any detail on Transitional arrangements creates uncertainty. There is a requirement to publish and facilitate consultation on the Draft Regulations prior to finalising the Bill.

In the absence of draft Planning Regulations or the transitional arrangements, a holistic understanding of the new legislative framework for the planning system is difficult. The next iteration of the Draft Bill should be accompanied by the proposed draft Regulations and transitional arrangements in order to allow for proper commentary.

In advance of publication of the Draft Regulations, the following comments should be considered:

Exempted Development

The ability of any person, developer or infrastructure provider to avail of exempted development provisions is key to the expedient delivery of infrastructure and minimising the burden on the planning system. We would reinforce the imperative that forthcoming secondary legislation makes explicit provision for exemptions currently provided for under s.4 of the Planning and Development Act 2000 – which are not currently represented in the draft Bill.

We would also reiterate the importance of State infrastructure providers, being actively engaged in the drafting of all secondary including any review of exempted development provisions. We would strongly resist any proposals to curtail planning exemptions for statutory undertakers, particularly where it might impact on their ability to undertake their statutory role. In this regard, we note and welcome provisions under Part 8(6) *Where the Minister proposes to make regulations under this section and considers that the proposed regulations are likely to affect the performance by a State authority of its functions, he or she may, before making the regulations, consult with that State authority in relation to the proposed regulations.*

EIA

We acknowledge the important obligations placed on the Irish planning system arising from European Directives. However, we consider there are key opportunities to reduce administrative burdens stemming from EU law, in line with the European Commission's drive for smarter regulation. A key area for review is the transposition of Annex II of the EIA Directive into Irish law

(through planning legislation) which currently requires mandatory assessment of projects exceeding the Annex II thresholds. We consider this is not necessary and note that it is not implemented with such rigidity in other jurisdictions. We consider that each project should be examined on a case-by-case basis against the applicable thresholds, requiring EIA to be undertaken only where there is potential for significant environmental effects. Any forthcoming secondary legislation should reconsider the way in which Annex II thresholds are transposed into Irish law, to ensure a pragmatic approach to environmental assessment.

Recommendation 3: There is a need to acknowledge the strategic importance of delivering State Infrastructure Development across all aspects of the Draft Bill and forthcoming Draft Regulations.

Nowhere in the draft Bill (including section 1A, the ‘Purposes of the Act’), is the spirit and thrust of the 2006 (Strategic Infrastructure) Act captured. The role of infrastructure and planning is not linked to the interests of the common good, nor is it sufficiently evident that the intention of the planning system is for infrastructure developments of strategic importance to the State to be expeditiously determined.

While we acknowledge the Bill makes certain Ministerial provisions to give direction to a class of special strategic, economic or social importance to the State, we believe that the Act should be unequivocal in its support of infrastructure development generally. This should include infrastructure of strategic importance to the State, in particular the infrastructure undertaken by statutory undertakers. This is not just in the case of major developments (Strategic Infrastructure Developments’ or Chapter 4 Developments) but everywhere – in terms of national policy, plan making, exempted development provisions including Section 4 or Part 8 referrals), allowing for prioritised and expedited decision making (including through the courts. This needs to be stitched into the legislative fabric of all parts of the Bill, the details of which can be prescribed by regulation.

Planning for, promoting and delivering major developments (Strategic Infrastructure Developments’ or Chapter 4 Developments) is only one way in which we interact with the planning system, and while we welcome continued focus on these types of developments, it involves a relatively small number of the projects we deliver. Many of infrastructure projects involve more straightforward developments (including refurbishments, upgrades and extensions to existing infrastructure, which are often critically important enablers for ambitions in other policy areas such as climate action, sustainability, energy efficiency etc). We need the Act to provide a legislative basis for the new planning system to streamline, prioritise and provide greater clarity, consistency and certainty on how we can deliver all State infrastructure development through the system irrespective of any planning process, the detail of which can be prescribed by regulation.

Recommendation 4: We support a strengthened Legal Status for Ministerial Guidelines to support Government objectives for the development of national infrastructure.

As providers of infrastructure, we consider there is a clear role for strengthened national policy in setting out the Government’s objectives for the development of national infrastructure. National Planning Statements (NPSs) should be at the heart of the ‘policy’ regime and provide guidance to both Planning Authorities and the Commission on the need, benefits and impacts of such infrastructure from both a forward planning and development management perspective. This is not clear in the draft Bill.

We believe the final Act must provide additional legislative context for what is intended to be covered by 'National Planning and Policy Measures' that acknowledges and highlights the importance of planning and delivering infrastructure to meet the future needs of the country. For example, in the UK there are 12 NPSs setting out government policy on different types of national infrastructure development which relate to:

- Energy NPSs (including Overarching Energy, Renewable Energy, and Electricity Networks)
- Transport NPSs (including Airports, Ports and National Networks)
- Water, Waste Water and Waste NPSs (including Hazardous Waste, Waste Water and Water Resources).

We recommend explicit reference in the final Act for the Minister to prescribe National Planning Policy and Measures to address different types of national infrastructure, to include Energy, Transport and Water, Waste Water and Waste, with the appropriate levels of consultation with our respective members on their respective sector in the preparation of such policies.

Further, there needs to be greater clarification in respect of the hierarchy of policy in plan-making.

Recommendation 5: Clarity must be provided in respect of the basis for Strategic Infrastructure Development

We note that the Commission can form an opinion that a particular proposed development would not constitute Chapter 4 development. However, the basis on which the Commission can do this, and what discretion it may have in forming its opinion, is not clear. In this regard, the draft Bill does not include conditions like section 37(A)(2) of the PDA 2000 (as amended) which the Board can currently use to determine its jurisdiction in relation to certain planning applications.

We also consider there is an opportunity to provide clarity in relation to the status of infrastructure works of a relatively minor nature insofar as Chapter 3 or Chapter 4 development is currently prescribed.

Recommendation 6: Timelines for serving Notices to Treat in Compulsory Purchase Notices is too restrictive and should be reconsidered.

The proposed period for service of notices to treat as provided for in section 370 (1) is too restrictive. Provision is made in sub-section (2) for possible extension in certain circumstances. The periods provided remain too short and will result in applications to the High Court on a regular basis seeking further extensions with implications for resources, court time and additional expense.

To conclude, we are very concerned that efforts to expedite the finalisation of the Act will prevent valuable insight from members of the State Infrastructure Forum, who are integral to delivering on national planning objectives. We strongly advise the Department to review its expectations and timeline for the publication of the amended Bill to ensure that valuable insight from State bodies responsible for enabling infrastructure, who are only now in a position to engage in informed discussions and debate about the content of what is a very lengthy Draft Bill.

Finally, adequate funding and resourcing of the Irish planning system will determine its ability to deliver on its objectives. As many commentators have noted in Committee hearings to date, in order for the positive changes to take effect, including the implementation of timelines for deciding of appeals, adequate resourcing needs to be a priority focus.

We would reiterate that a formal route for State infrastructure providers to engage meaningfully and collaboratively with the Department on all aspects of planning system reform should be identified and communicated to all relevant parties as a priority. This will ensure the best possible outcome in terms of robust legislation for driving and supporting the delivery of critical infrastructure through the planning system.

For and on behalf of (In alphabetical order):

Bord na Mona

daa plc.

Eirgrid

ESB Networks

Gas Networks Ireland

Irish Rail

Uisce Éireann