

Note 1: Planning and Development Bill 2023 - background and policy context.

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Introduction

The [Draft Planning and Development Bill 2022](#) (the Draft Bill) was published on 26 January 2023, following a 15 month review, led by the Office of the Attorney General in collaboration with the Minister for Housing, Local Government and Heritage, Darragh O'Brien T.D., (the Minister) and dedicated planning law experts.¹ This is akin to a General Scheme, although it was not accompanied by an Explanatory Memorandum. At the time of writing the final Bill has not been published.

Given the length and complexity of the Draft Bill and the anticipated final Bill, the L&RS will produce separate Notes dealing with the background to the Bill and the Bill itself. This first Note provides an overview of the background including the current legal and regulatory framework, as well as the policy context of the Bill. Further briefing material will also be published which will consider the PLS analysis and also examine selected key provisions of the published Bill.

Irish planning law and policy is informed by national law and regulations, Government strategic plans, Ministerial guidelines, and regional and local strategies as well as EU law. This Note provides an overview of the national legal framework, main government strategic policies,

¹ Department of Housing, Local Government and Heritage, '[Improved planning regime takes step closer with publication of Draft Planning and Development Bill 2022](#)', *Press Release*, 26 January 2023.



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governance bodies and EU law, together with a brief analysis of recent figures of planning permissions and commencement notice. It does not attempt to provide a full summary of the planning system but instead the note examines certain selected elements of the system, focusing on key components that are not only pivotal in shaping Irish planning law but are also at the centre of significant debates arising from the Draft Bill. Specifically, this includes the operation and lifespan of local development plans, issues related to access to justice and Judicial Review as well as recent developments and changes within An Bord Pleanála (ABP).

The L&RS has also produced a [Bill briefing page](#), which provides links to a wide range of sources on the Bill (available internally only).

Contents

Glossary and Abbreviations	3
Overview	5
Current Legal and Regulatory Framework	9
<i>Planning and Development Act 2000 & Planning and Development Regulations 2001 - 2023</i>	9
Government Planning and Development Policies.....	12
Project Ireland 2040	12
National Planning Framework.....	13
Report of Expert Group for the First Revision of the National Planning Framework	14
National Development Plan 2021-2030	15
Housing for All.....	16
Planning Advisory Forum	18
Governance Bodies	18
An Bord Pleanála	18
Expert Group Report.....	19
Action Plan for An Bord Pleanála.....	20
Planning and Development and Foreshore (Amendment) Act 2022	21
Current position of ABP	21
Office of the Planning Regulator	22
OPR Review.....	23
Local Authority Development Plans	25
EU Law	27
Environmental Impact Assessment.....	28
Aarhus Convention	28
Access to Justice - Judicial review.....	29
Planning Permissions	31

Glossary and Abbreviations

Table 1 Glossary and abbreviations

Term	Meaning
1992 Act	<i>Environmental Protection Agency Act 1992</i>
2000 Act	<i>Planning and Development Act 2000</i>
2021 Act	<i>Planning and Development (Amendment) Act 2021</i>
ABP	An Bord Pleanála
ACCC	Aarhus Convention Compliance Committee
Action Plan	Action Plan for An Bord Pleanála
An Comisiún Pleanála	New name for An Bord Pleanála
Bill	Planning and Development Bill 2023
CSO	Central Statistics Office
DHLGH	Department of Housing, Local Government and Heritage
EIA	Environmental Impact Assessment
EPA	Environmental Protection Agency
Forum	Planning Advisory Forum
Housing For All	Housing for All - a New Housing Plan for Ireland
IPI	Irish Planning Institute
Minister	Minister for Housing, Local Government and Heritage
NDP 2018-2027	National Development Plan 2018 - 2027
NDP 2021-2030	National Development Plan 2021-30
NPF	National Planning Framework
OPR	Office of the Planning Regulator
Outline	Outline of the proposed Planning and Development Bill
Phase 1 Report	Phase 1 Report Review of the National Development Plan
Regulations 2018	European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018
Regulations 2001-2023	Planning and Development Regulations 2001 to 2023
Report on Phase 1	Report on Phase 1 of a Review by the OPR of certain Systems and Procedures used by An Bord Pleanála

Term	Meaning
Report on Second Phase	Second Phase of the OPR's Review of Certain Systems and Procedures used by An Bord Pleanála
SCSI	Society of Chartered Surveyors

Overview

Society is currently facing major developments and challenges, many of which place increasing demands on planning. Examples include rising local and global environmental burdens, socio-spatial injustices, transitions in technology, longer production and distribution chains, crises of representative democracy, globalization of culture and the economy, migration due to war, the ageing of the population, employment shortages and energy poverty. These developments and challenges not only add to the complexity of planning and its longstanding quest for better coordination between planners and stakeholders, they also call for longer-term thinking, new planning processes and innovative methods.²

The forthcoming Planning and Development Bill 2023 (Bill) aims to address the complex and urgent planning demands facing modern Irish society through a comprehensive legislative framework. This Note will provide an overview of the current legal and regulatory framework for planning and development in Ireland, including legislation and relevant national strategy plans. It will also summarise the policy context, as well as outlining key developments informing the review and reform of the Irish planning system. It will not explore in detail how the Draft Bill will change the current system but instead will provide a comprehensive analysis of the existing planning system to enhance Members' understanding of the complexity of the Irish planning landscape. An overview of the PLS process and analysis of certain key features of the Draft Bill and selected principal provisions of the published Bill will be covered in an additional note.

A recent industry survey revealed that property professionals believe that a streamlined planning system would be the most effective way of improving housing supply. The survey which was carried out at Mason Hayes & Curran's annual property conference, 'Planning & Building for Tomorrow', on 19 May 2023, was attended by 500 industry professionals and included a panel discussion on the Bill. The survey found that 91% of the Conference attendees believe that streamlining planning would have the biggest impact on boosting housing supply. It also found that 57% of industry professionals who were in attendance think that the Bill will have no impact on reducing bottlenecks in the planning system.³

It is well known that currently there is not enough houses to accommodate Ireland's growing population. The most recent homeless figures from July 2023 show that there were 9,018 adults accessing local authority managed emergency accommodation in the last week of July.⁴ This figure excludes those who are homeless but stay with family or friends or access private emergency accommodation so the real figure is certainly higher.

² Dominic Stead & Louis Albrechts (2023) '[European planning studies at 30 –past, present and future](#)', European Planning Studies at p.3.

³ Mason Hayes & Curran, '[Property Industry Survey Results Announced at Annual Conference](#)', News, 19 May 2023.

⁴ Department of Housing, Local Government and Heritage, '[Monthly Homelessness Report July 2023](#)', 25 August 2023.

A commitment to conduct a review of the planning system was made in the Government's '[Housing for All - a New Housing Plan for Ireland](#)' (Housing for All) published in September 2021, within the context of improving the functioning of the planning process. In, 'Housing for All', it stated that the review would "include a fitness check and upgrade of relevant provisions of planning law to ensure that it is more accessible and streamlined from a legal perspective."⁵ 'Housing For All' also included a commitment to establish a [Planning Advisory Forum](#) which played a very important role in contributing to the emerging policy considerations of the Review.⁶

The Draft Bill received [government approval](#) on 13 December 2022 and aims to "bring greater **clarity, consistency and certainty** to how planning decisions are made. It will make the planning system more coherent and user-friendly for the public and planning practitioners."⁷ The Minister in welcoming the approval of the Draft Bill, stated that:

These reforms will ensure we have a modern, efficient planning system, with coherence between policies, plans and decisions. They will ensure key infrastructure like housing and renewable energy systems can be built with certainty for those planning it, and with public participation and environmental protection informing the process.⁸

An [Outline of the proposed Planning and Development Bill](#) (the Outline), which acts as a policy guide was also published on 13 December 2022. The review of the planning system was designed to deliver the Draft Bill without a General Scheme in order to expedite the delivery of an updated Planning and Development Act.⁹ The Outline notes that the review served as "both a legal fitness check and a timely future-proofing exercise" to ensure the resilience of planning legislation to respond to Ireland's modern planning needs over the coming decades. It indicates that the outcome of the review will be planning law that is aligned with policy and more legally accessible and efficient.¹⁰ The Outline also stated that a key aim of the review was to "put plan-making at the centre of the planning system"¹¹. It observes that since the current legislative framework - the [Planning and Development Act 2000](#) (2000 Act) - was enacted, Ireland and the planning landscape has undergone significant change as has EU, environmental and national law.¹² It acknowledges that:

⁵ Department of Housing, Local Government and Heritage, '[Housing for All - a New Housing Plan for Ireland](#)' at 86.

⁶ Department of Housing, Local Government and Heritage, '[Outline of the proposed Planning and Development Bill](#)' December 2022 at 6.

⁷ Department of Housing, Local Government and Heritage, '[Greater clarity, consistency and certainty in planning to be delivered with new legislation.](#)' *Press Release*, 13 December 2022 (emphasis added).

⁸ *Ibid.*

⁹ Department of Housing, Local Government and Heritage, '[Outline of the proposed Planning and Development Bill](#)' December 2022 at 4.

¹⁰ *Ibid* at 1.

¹¹ Department of Housing, Local Government and Heritage, '[Outline of the proposed Planning and Development Bill](#)' December 2022 at 3.

¹² Department of Housing, Local Government and Heritage, '[Outline of the proposed Planning and Development Bill](#)' December 2022 at 1.

Planning law is more complex, as is the nature of plans themselves. Different strategic infrastructure needs, such as renewable energy infrastructure, exist than did at the turn of the 21st century. An Bord Pleanála, Ireland's highest decision-making body, requires the appropriate organisational structure to meet Ireland's modern planning needs.¹³

The Draft Bill, which is regarded as representing "once-in-a-generation legislation"¹⁴, contains 21 Parts, 7 Schedules, 467 Heads and runs to 738 pages. At the start of the Draft Bill, it is advised that further technical drafting will take place before the final Bill is published. Placeholders have also been included in certain sections of the Draft Bill where technical issues still need to be finalised. These include:

- timelines for decision making by An Comisiún Pleanála;
- drafting of local authority development plans;
- costs regime for judicial review proceedings; and
- transitional provisions required to enact the Act on a phased basis.

A recent article in the *Irish Examiner*, reported that the Attorney General was urging the Department of Housing, Local Government and Heritage (the DHLGH) to respond to outstanding queries from the office of the Attorney General in relation to the Draft Bill, "in order to meet the 'ambitious' timeline placed on the Bill by the Minister" as the "Bill could not be progressed without the necessary instructions from the Department".¹⁵ A spokesperson from the DHLGH advised that the intention is for the Bill to be ready by late summer and brought to Government in early September.¹⁶

The importance of the purpose being clearly stated was emphasised in the Outline, which articulated the purpose in the following terms:

- Provide the legislative framework for the proper spatial planning and sustainable development of the State, to operate at national, regional and local levels;
- Ensure that there is transparent and timely decision-making within the framework of policy and plans set out in this Bill;
- Facilitate consistency and quality in decision-making that is proportionate and sound;
- Incorporate public participation in plan-making and decision-making processes; and

¹³ Ibid at 1.

¹⁴ Oireachtas Joint Committee on Housing, Local Government and Heritage, '[Report on the Pre-Legislative Scrutiny of the Draft, Planning and Development Bill 2022](#)', April 2023, at 3.

¹⁵ Ciannan Brennan, '[Attorney General warns Department of Housing must respond to queries on contentious planning bill](#)', *Irish Examiner*, 9 July 2023.

¹⁶ Ibid.

- Clarify that the Planning Commission is an independent body that determines appeals on planning consents and applications for strategic and other developments, including those in the maritime area.¹⁷

The following box 1 sets out the key provisions of the Draft Bill as stated in the Outline, this is by no means exhaustive in terms of all the issues contained within the Draft Bill. Instead, it provides a summary of some of the key changes that the Draft Bill proposes to introduce.

Text Box 1: List of key provisions of the Draft Bill from the Outline of the proposed Planning and Development Bill

Key Provisions of the Draft Bill

- **Strengthened legal status for Ministerial guidelines:** Ministerial guidelines and policy directives will be upgraded to 'National Planning Policy Statements' and 'National Planning Policy Guidance';
- **Amended focus and lifespan of Local Development Plans:** these will be extended from six years to ten years, with a review after Year 5;
- **Statutory mandatory timelines for all consent processes,** including An Bord Pleanála (ABP) decisions, to bring certainty to the planning consent process: timelines are being introduced for appeals and consents applications made to ABP (including Strategic Infrastructure Developments);
- **Changes to Judicial Reviews (JRs) of planning decisions:** including the introduction of timelines for the various steps in the Judicial Review process; An Bord Pleanála or the local authority, as appropriate, will be able to correct an error of fact or law in its planning decision and changes made to who has standing to make an application for Judicial Review; and
- **A re-structuring of An Bord Pleanála:** the agency will be re-named An Coimisiún Pleanála and its decision-making and governance structures separated.¹⁸

Pre-Legislative Scrutiny (PLS) of the Draft Bill was carried out by the Joint Committee on Housing, Local Government and Heritage (Joint Committee) between 7 February and 9 March 2023, with the [PLS report](#) published on 26 April 2023.¹⁹ The Joint Committee heard from a wide variety of stakeholders, including Department officials, representatives from ABP and OPR, as well as

¹⁷ Department of Housing, Local Government and Heritage, '[Outline of the proposed Planning and Development Bill](#)' December 2022 at 7-8.

¹⁸ Ibid.

¹⁹ Oireachtas Joint Committee on Housing, Local Government and Heritage, '[Report on the Pre-Legislative Scrutiny of the Draft, Planning and Development Bill 2022](#)', April 2023.

industry representatives, environmental NGOs, and resident associations. The Joint Committee identified particular areas of interest within the Draft Bill and the PLS Report focused on six key issues:

1. Access to Justice
2. Forward Planning
3. Timelines and Resourcing
4. Exempted Development
5. National Planning Policy Statements
6. Omissions

The Joint Committee made 153 recommendations across these six key issues with recommendations ranging from minor technical revisions and highlighting omissions, to more detailed comprehensive ones. A further briefing note will explore the PLS Report in detail, including an analysis of selected recommendations, written statements, hearings and feedback from stakeholders.

Current Legal and Regulatory Framework

Planning and Development Act 2000 & Planning and Development Regulations 2001 - 2023

Currently, there are two main pieces of legislation governing Ireland's planning and development process. These are the [*Planning and Development Act 2000 \(as amended\)*](#) (2000 Act) and the [*Planning and Development Regulations 2001 to 2023*](#) (the Regulations 2001-2023). The Regulations replaced the [*Local Government \(Planning and Development\) Regulations 1994-2000*](#).

The current planning and development framework has been described as:

a web of interconnected pieces of legislation, some of which amend previous amendments, and it is very difficult to maintain full familiarity with planning law... the cumulative result is an almost impenetrable maze.²⁰

The 2000 Act was itself a consolidation, but it has been over twenty years since it was introduced and it has since been amended numerous times. While a [Revised Act](#) is maintained by the Law Reform Commission, the original Act and all individual pieces of amending legislation remain on the [Irish Statute Book website](#) as individual pieces of legislation. The complexity of the 2000 Act is illustrated by the number of amendments made to (in 2019 this was **944 amendments**), and statutory instruments under, the Act since it became law. A list of these amendments is available

²⁰ Dr Berna Grist BL, 'The Planning Regulator', *Irish Planning and Environmental Law* (2019), 26(1), 4-10 at 10.

on the Irish Statute Book website.²¹ The Regulations have also been amended numerous times and the Department of Housing, Local Government and Heritage (DHLGH) offer an [unofficial \(non-legal\) consolidation of the Regulations 2001- 2023](#) on their website for ease of reference.

As outlined on the DHLGH's [website](#), the 2000 Act forms the foundation for the planning system in Ireland. It spans a wide range of planning issues and involves numerous pieces of legislation. The 2000 Act sets out what types of development require planning and the reasons for planning permission exemptions:

- It sets out the detail of regional planning guidelines, development plans and local area plans;
- It explains how Ministerial Guidelines work;
- It sets out how the process of applying for and obtaining planning permission works;
- It contains special requirements for protected structures, conservation areas and areas of special planning control;
- It explains the relationship between planning and social housing supply;
- It sets out Ireland's planning appeals and enforcement processes;
- It describes Strategic Development Zones and Environmental Impact Assessment; and
- It clarifies how a range of particular planning processes, including for State development, operates.²²

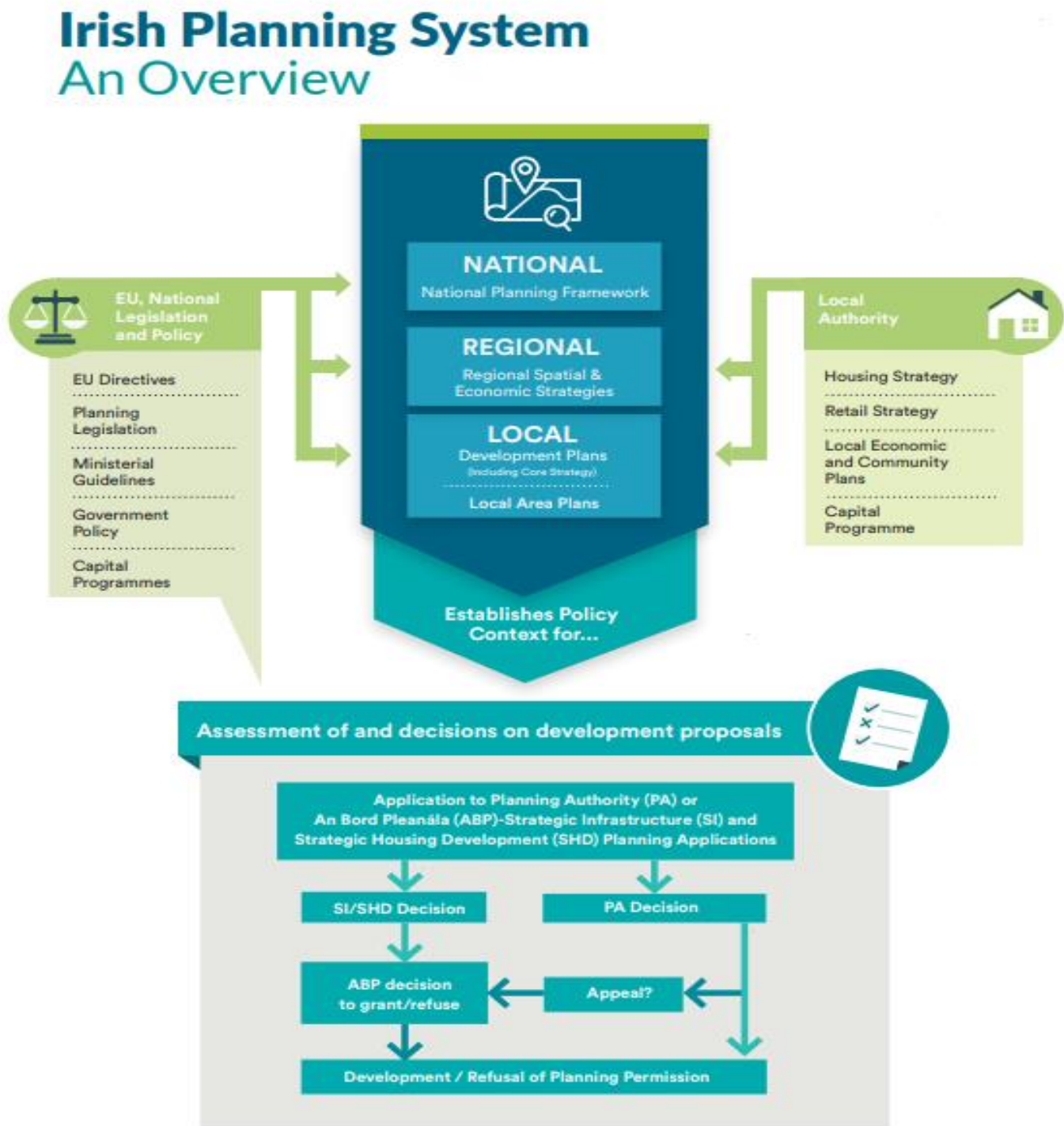
The Regulations 2001-2023 provide details of various processes and procedures including classes of exempted development, specific steps required when making an application to a planning authority or an appeal to ABP, and the process which must be followed by local and state authorities when undertaking certain types of developments.

The infographic on the following page provides a useful visual overview of the planning system as it currently operates in Ireland.

²¹ Irish Statute Book, https://www.irishstatutebook.ie/eli/isbc/2000_30.html.

²² Department of Housing, Local Government and Heritage, '[Planning legislation](#)', last updated 3 April 2023.

Figure 1: Infographic Overview of current Irish Planning System



Source: Government of Ireland, [Project Ireland 2040 National Planning Framework](#).

Government Planning and Development Policies

Project Ireland 2040

The [National Planning Framework](#) and the [National Development Plan 2021-2030](#) combine to form [Project Ireland 2040](#). [Project Ireland 2040](#) “is the government’s long-term overarching strategy to make Ireland a better country for all and to build a more resilient and sustainable future”²³ with wellbeing, equality and opportunity as the core interdependent themes. The policy initiative which deals with long term investment, development and planning, considers the planning context in terms of future needs for the Irish population, which is estimated to grow by one million people by 2040. The strategy acknowledges that “without proper planning, growth will be haphazard and uneven. Without the required infrastructure, our potential for economic growth will stall.”²⁴

Project Ireland 2040 seeks to achieve ten strategic outcomes as follows:

1. Compact Growth
2. Enhanced Regional Accessibility
3. Strengthened Rural Economies and Communities
4. Sustainable Mobility
5. A Strong Economy, supported by Enterprise, Innovation and Skills
6. High-Quality International Connectivity
7. Enhanced Amenity and Heritage
8. Transition to a Low Carbon and Climate Resilient Society
9. Sustainable Management of Water and other Environmental Resources
10. Access to Quality Childcare, Education and Health Services

These shared objectives intend to ensure that there is a consistent approach between planning objectives under the 2018 National Planning Framework and investment commitments under the National Development Plan 2021-2030.²⁵ Project Ireland 2040 is presented as a very different approach to future planning as “it enables proper long-run sectoral planning for areas like housing...”²⁶.

In a 2018 paper from the National Economic and Social Council (NESC)²⁷, entitled, ‘[Urban Development Land, Housing and Infrastructure: Fixing Ireland’s Broken System](#)’, it addresses a

²³ Department of Public Expenditure, NDP Delivery and Reform, ‘[Project Ireland 2040](#)’, last updated 13 March 2023.

²⁴ Government of Ireland, ‘[Project Ireland 2040: Building Ireland’s Future](#)’ at 3.

²⁵ Ibid at 4.

²⁶ Government of Ireland, ‘[Project Ireland 2040: Building Ireland’s Future](#)’ at 9.

²⁷ [NESC](#) is the national advisory body to the Taoiseach and the Irish Government, providing research, dialogue and advice that helps achieve Ireland’s sustainable economic, social and environmental development. The members of the Council are appointed by the Taoiseach, for a three to five year term.

number of challenges identified in Project Ireland 2040, including the provision of affordable rental and/or owner-occupied housing and a sustained increase in the level of investment in public infrastructure. It notes that “achieving the ambitious goals of Project Ireland 2040 will require a fundamentally new approach to relationships between housing, transport and urban development.” While the NESC report focuses on affordable rental and/or owner occupied housing, it highlights a wider systemic issue with land and housing in Ireland, noting that the “availability of land for housing in appropriate locations, in a way that is consistent with affordability, has long been an unresolved policy issue in Ireland.”²⁸ An [article from Ernst & Young in 2021](#) proposed that Project Ireland 2040 should integrate public transport and housing planning and solutions to ensure that Ireland’s mounting transport and climate change challenges aren’t compounded by new housing developments. It called for an aligned and collaborative approach between transport planners, urban planners and private developers.²⁹

In April 2021, the Rural Independent Group tabled a Private Members Motion on Project Ireland 2040, stating, among other issues, that there has been “chronic under-investment in infrastructure across rural Ireland” and that “regional and rural development in Ireland has failed”. The Group called for various changes including that both Houses of the Oireachtas should be given an opportunity to take a democratic vote on Project Ireland 2040.³⁰

National Planning Framework

As stated above, the [National Planning Framework](#) and the [National Development Plan 2021-2030](#) combine to form [Project Ireland 2040](#). The [National Planning Framework](#) (NPF) which replaced the [National Spatial Strategy](#), sets out the overarching policy and framework for future development and infrastructure investment at national level. Across the country. The NPF is the Government’s 20 year national strategic plan for shaping the future growth and development of Ireland until 2040. It was published “following two formal phases of public consultation, over 40 regional events and workshops, four engagements with various Oireachtas Joint Committees, feedback from an expert Advisory Group and detailed submissions from a range of stakeholders.”³¹ As stated in the NPF, “the ambition is to create a single vision, a shared set of goals for every community across the country.”³²

These members are representatives of business and employers’ organisations, trade unions, agricultural and farming organisations, community and voluntary organisations, and environmental organisations; as well as heads of Government departments and independent experts.

²⁸ National Economic and Social Council, [‘Urban Development Land, Housing and Infrastructure: Fixing Ireland’s Broken System’](#), no.145, April 2018.

²⁹ Annette Hughes, EY Ireland Economic Advisory Services Director, [‘Why Project Ireland 2040 needs integrated public transport and housing solutions’](#), 22 June 2021.

³⁰ Dáil Éireann debate - Thursday, 1 Apr 2021, [‘Project Ireland 2040: Motion \[Private Members\]’](#).

³¹ Project Ireland 2040, [‘National Planning Framework’](#).

³² Ibid.

The NPF sets out to achieve the objective of its single vision by:

- developing a new region-focused strategy for managing growth;
- linking this to a new 10-year investment plan, the [Project Ireland 2040 National Development Plan 2018-2027](#);
- using state lands for certain strategic purposes;
- supporting this with strengthened, more environmentally focused planning at local level; and
- backing the framework up in law with an Independent Office of the Planning Regulator.³³

On 20 June 2023, the Minister for Housing, Local Government and Heritage, Darragh O'Brien TD, announced the commencement of the process to revise the NPF and publication of the [Roadmap for a First Revision](#).³⁴ The process to undertake a revision is provided for under [section 20C\(5\)](#) of the 2000 Act. A clear commitment to update the NPF in 2024 was also made in the [Programme for Government](#) (PfG). The Revision will involve five stages of preparation, including an Expert Group undertaking a high-level review of the NPF, technical assessments and publication of a draft NPF revision, as well as a national public consultation. The final stage which involves approval of the finalised NPF revision and subsequent publication is indicated for March 2024.³⁵ Section 17, Chapter 2 of the Draft Bill provides that the NPF that is in force immediately before Chapter 2 is commenced will continue to be in force. It is not clear yet whether the revised version of the NPF will be in force when the final Bill is commenced or whether the section in the final Bill relating to the NPF remains in that form.

Report of Expert Group for the First Revision of the National Planning Framework

The [Expert Group Report in relation to the First Revision of NPF](#) was submitted to the Minister on 16 August 2023 and will inform the preparation of an 'Issues Paper', currently in development for stakeholder consultation.³⁶ The Report prepared by three independent experts made thirteen recommendations in total and concluded that the fundamental principles of the NPF remain highly relevant and strong, noting that "it provides an opportunity for Ireland to embed good spatial planning in all relevant areas of our policy making and policy decisions".³⁷ However, it also highlighted the work to be done in terms of:

³³ Project Ireland 2040, '[National Planning Framework](#)' at 11.

³⁴ Department of Housing, Local Government and Heritage, '[A Road Map for the First Revision of the National Planning Framework](#)', *Press Release*, 20 June 2023.

³⁵ Government of Ireland, '[A Road Map for the First Revision of the National Planning Framework](#)', June 2023

³⁶ Department of Housing, Local Government and Heritage, '[Expert Group Report on the National Planning Framework Published](#)', *Press Release*, 7 September 2023.

³⁷ '[Report of Expert Group for the First Revision of the National Planning Framework](#)', 15 August 2023, at 2.

a historical tendency in Ireland to focus on the issues that surround individual planning applications along with debates around third party rights and the balance between private development rights and the common good... [t]he reality is that, for the most part, the built environment is shared, and Ireland needs to develop a broader understanding of spatial planning, where the focus is on the collective interest.³⁸

National Development Plan 2021-2030

The [National Development Plan 2018 - 2027](#) (NDP 2018-2027) set out the investment priorities underpinning the implementation of the NPF. The PfG provided for a mid-term Review of the NDP to be brought forward with a Review to Renew - the review of the National Development Plan launched on 3 November 2020.³⁹ This review culminated in the [Phase 1 Report Review of the National Development Plan](#) (Phase 1 Report) which was published on 4 April 2021. The Phase 1 Report, prepared by the Department of Public Expenditure and Reform draws upon several research and policy papers, addressing the various strands of the NDP Review process, to form part of the evidence base for finalising the drafting of the revised NDP 2021-2030. Section 5 of the Phase 1 Report deals with Infrastructure Demand Analysis which summarises an analysis, updated from 2017, examining sectoral trends in demand for the largest infrastructure sectors. While the analysis found demand pressures across all of the sectors examined, the analysis suggests that housing is the area where demand for investment is most acute given the pressures a malfunctioning market is putting on affordable and social housing.⁴⁰

A revised [National Development Plan 2021-30](#) (NDP 2021-2030) was launched on 4 October 2021. A review of the NDP was undertaken in October 2020 informing the revised version of the NDP. The [press release](#) announcing its publication stated that the NDP is:

...the largest National Development Plan ever delivered in the history of the State - €165 billion - with a particular focus on priority solutions to strengthen housing, climate ambitions, transport, healthcare, jobs growth in every region and economic renewal for the decade ahead.⁴¹

Minister for Public Expenditure and Reform, Michael McGrath TD stated that:

³⁸ Ibid at 2.

³⁹ MerrionStreet.ie, '[Minister McGrath launches Review of the National Development Plan](#)', *Press Release*, 3 November 2020.

⁴⁰ Government of Ireland, (2021) '[Project Ireland 2040: Phase 1 Report Review of the National Development Plan](#)', at p.12.

⁴¹ Department of Public Expenditure, NDP Delivery and Reform, '[Government launches the renewed National Development Plan 2021-2030](#)', *Press Release*, 4 October 2021.

The NDP is ambitious, with record levels of investment, but it is achievable. This ten year plan will deliver for our country. It will build a more resilient, sustainable future to improve lives and living standards for all of our people.⁴²

Housing for All

[Housing for All - a New Housing Plan for Ireland](#) (Housing for All) published on 2 September 2021, is the Government's long term housing plan for Ireland until 2030. In the [press release](#) announcing the publication of Housing for All, the Government stated that the overall objective is that:

...every citizen in the State should have access to good quality homes:

- to purchase or rent at an affordable price
- built to a high standard and in the right place
- offering a high quality of life⁴³

In the foreword to Housing for All, it states that it:

...will ensure that we achieve a more sustainable housing system with a planning system that is fit for purpose and that will create long-term vibrant communities with the necessary supporting infrastructure.⁴⁴

Housing for All predicted that Ireland requires an average of **33,000 homes built each year until 2030** to meet targets for additional households, as outlined in the NPF.⁴⁵ The long term housing plan includes four pathways for delivering access to good quality housing for all of Ireland:

1. Supporting home ownership and increasing affordability.
2. Eradicating homelessness, increasing social housing delivery and supporting social inclusion.
3. Increasing new housing supply.
4. Addressing vacancy and efficient use of existing stock.⁴⁶

The Housing for All plan comprises 231 actions divided between the four pathways and spread across various government departments, local authorities, State agencies and other stakeholders. Pathway 3, which involves increasing new housing supply, specifically refers to the need for reform of the planning system:

⁴² Department of Public Expenditure, NDP Delivery and Reform, '[Government launches the renewed National Development Plan 2021-2030](#)', *Press Release*, 4 October 2021.

⁴³ Department of Housing, Local Government and Heritage, '[Housing for All - a New Housing Plan for Ireland](#)', *Press Release*, 2 September 2021.

⁴⁴ Department of Housing, Local Government and Heritage, '[Housing for All - a New Housing Plan for Ireland](#)', *Foreword by Taoiseach, Tánaiste and Minister Ryan*, September 2021 at 8.

⁴⁵ Department of Housing, Local Government and Heritage, '[Housing for All: A New Housing Plan for Ireland - Executive Summary](#)'.

⁴⁶ Ibid.

The planning system must be reformed to ensure that there is certainty and stability for those providing housing in Ireland ...

The judicial review process will also be reformed and planning legislation will be reviewed to ensure the planning system is plan-led, has greater public acceptance and reflects the needs of existing and new populations. The planning system needs to be balanced in terms of land use, value-sharing, and community gain to deliver sustainable levels of housing output in the right places.⁴⁷

In September 2022, the *Irish Independent* reported that Cabinet Ministers had been warned of missing key targets in Housing for All for the next two years. The article claimed that the briefing had warned that Housing For All needed to be urgently revised and that additional budget funding may also be needed if it is to meet its objectives.⁴⁸

In April 2023, the Society of Chartered Surveyors (the SCSi) suggested that targets in Housing for All would still not be met and will in fact need to be increased:

Based on housing completion projections, the SCSi estimates there will need to be an increase of almost 5% in new home output each year to 2030 to meet the targets outlined in 'Housing for All'. According to this measure, Ireland would need to be building 27,000 new homes this year, rising to 39,000 in five years' time and over 45,000 by 2030... It's clear the scale of Ireland's housing challenge is set to intensify...⁴⁹

The most recent quarterly update on Housing for All was released in July of this year, with Taoiseach Leo Varadkar stating at the time of its launch that, "[p]lanning permissions granted in quarter 1 were 40% higher than the same period last year, and more people are buying their first home than in any period in well over a decade." Members of the Opposition criticised the timing of the launch of update as it coincided with the appearance of Ryan Tubridy before the Oireachtas Public Accounts Committee, although this was disputed by a Government spokesperson who stated that the report launch had been scheduled prior to Mr Tubridy's appearance. It was also claimed that the report "contains no affordable housing delivery figures for the first half of 2023 and fails to mention that last year's affordable housing targets were missed..."⁵⁰

However, an article in the *Irish Independent* reported that Minister Darragh O'Brien T.D., was planning to produce figures to Cabinet on 13 September showing 14,017 homes were completed between January and June 2023, - the highest number since the collating of completion statistics

⁴⁷ Department of Housing, Local Government and Heritage, [Housing for All - a New Housing Plan for Ireland](#), September 2021 at 25.

⁴⁸ Philip Ryan, '[Housing crisis: Dire warnings as ministers told Housing For All plan is falling short of key targets](#)', *Independent.ie*, 23 September 2022.

⁴⁹ The Society of Chartered Surveyors, '[Gov't Measures Welcome, But 'Housing For All' Targets Facing Review](#)', *Press Release*, 25 April 2023.

⁵⁰ Jane Matthews, '[Government criticised for giving housing update during Tubridy hearings](#)', *The Journal*, 11 July 2023.

began in 2011. It also noted that more than 18,500 new homes were commenced (not necessarily completed) between January and July 2023.⁵¹

Planning Advisory Forum

Under objective 13.7 of [Housing for All](#), a commitment was made to establish a [Planning Advisory Forum](#) (the Forum), with wide stakeholder membership, to input to the evolving policy and legal agenda regarding planning matters. The Forum's [Terms of Reference](#) state that the initial focus of its work would be on stakeholder engagement around the comprehensive review and consolidation of planning legislation undertaken in collaboration with the Office of the Attorney General. The Terms of Reference state that the "overall scoping document for the planning review set out in the attached document, will form the basis of this work of the Forum."⁵² The Forum, chaired by Minister of State Peter Burke, TD, included representatives from a broad range of sectors, including the public sector, business, environmental, social and knowledge based sectors.

During PLS hearings (which will be explored in greater detail in a future publication), Mr. Philip Jones from the Irish Planning Institute noted that engagement with the Department on the Bill was limited to the Forum and that many of the provisions within the Draft Bill were only spoken about in general terms while "some of the provisions [were] a complete surprise."⁵³

Some criticism has been levelled at the Forum in regard to its closed nature without the possibility of public consultation. In an article by Alison Hough, head of the Access to Justice Observatory at the Environmental Justice Network Ireland and Gavin Elliott, environmental justice lawyer at Community Law & Mediation, they raised concern that the Forum was a closed, invitation-only stakeholder group with the majority of its members from industry and government and therefore may not meet the international law requirement to consult with the public.⁵⁴

Governance Bodies

An Bord Pleanála

One of the key reforms contained in the Draft Bill is the restructuring of An Bord Pleanála into An Coimisiún Pleanála (The Planning Commission or the Commission), with a different structure to the current body. The structure of the new Commission will be explored in further detail in the final

⁵¹ Senan Molony, '[Housing figures on the rise with over 14,000 homes built in first half of year](#)', Irish Independent, 13 September 2023.

⁵² Planning Advisory Forum, '[Terms of Reference](#)', at 1.

⁵³ Joint Committee on Housing, Local Government and Heritage, '[General Scheme of the Planning and Development Bill 2022: Discussion \(Resumed\)](#)', 23 February 2023.

⁵⁴ Alison Hough and Gavin Elliott, Opinion, '[We could improve our planning law - instead the public is being excluded](#)', The Journal, 24 March 2023. Article 8 of the [Aarhus Convention](#), which stipulates that legislative proposals under development by the executive must be subject to broad public participation through the publication of draft legislation and provision of sufficient time for response.

note dealing with the published Bill. Under the 2000 Act, An Bord Pleanála (ABP) is the national independent statutory body to determine appeals on planning and other cases, as well as direct applications for strategic infrastructure and other developments. It was established in 1977 under the [Local Government \(Planning and Development\) Act 1976](#) and is also responsible for dealing with proposals for the compulsory purchase of land by local authorities and others, and it may also determine appeals under the Local Government (Water Pollution) Acts and Building Control Acts.⁵⁵

The current legislation governing the establishment and functioning of An Bord Pleanála is set out in [Part VI](#) of the 2000 Act. Part VI is divided into four chapters as follows:

- Establishment and Constitution
- Organisation, Staffing, etc.
- Appeal Procedures, etc.
- Additional powers of Board in relation to permissions, decisions, approvals, etc.

[Part VII](#) of the 2000 Act sets out provisions on matters relating to the disclosure of interests and codes of conduct which apply to members and staff of both the ABP and planning authorities.

Expert Group Report

In 2015, the Minister for the Environment, Community and Local Government, Alan Kelly TD, appointed an external review group (Expert Group) to independently review An Bord Pleanála.⁵⁶ The Expert Group [published its report](#), which contained 101 recommendations, on 14 March 2016.⁵⁷ Chapter one of the report provides an overview of An Bord Pleanála's history and acknowledges the following:

The Review Group notes that this organisational review is not the first such exercise that has been undertaken. An Bord Pleanála has been the subject of several reviews since its establishment, which is not unexpected given An Bord Pleanála's role and prominence in the public eye. Some of the previous reports were motivated, in part at least, by concerns regarding output and productivity.⁵⁸

Chapters 2 and 3 of the Report deal with the 'Changing Legal and Policy Environment' and the 'Organisational Structure' of ABP, which reflects the focus of the OPR review and appear to indicate that the challenges the ABP are currently facing are not novel ones.

⁵⁵ An Bord Pleanála, [Functions of the Board](#) (webpage).

⁵⁶ Department of Housing, Local Government and Heritage, [An Bord Pleanála Review](#) (webpage), published 7 March 2019. Details of the Expert Group's membership, terms of reference and background can be found here.

⁵⁷ Independent Review Group, [Organisational Review of An Bord Pleanála](#), February 2016.

⁵⁸ Ibid, at 30.

Action Plan for An Bord Pleanála

The [Action Plan for An Bord Pleanála](#) (Action Plan) was published by the Department on 4 October 2022. On publishing the Action Plan, the Minister stated that:

This action plan will serve to underpin confidence in the capacity of the Board to make planning decisions in a fair manner, supporting the values of independence, impartiality and integrity as articulated in its statement of strategy. We are making fundamental and legislative changes which will impact on the Board appointment process, structure, capacity and operations.⁵⁹

The Action Plan responded to Phase 1 of the OPR Review, outlining 24 actions across a range of areas. These areas are set out in the Action Plan as follows:

- Dealing with conflicts of interest (Actions 1-5)
- Changes to An Bord Pleanála decision making process (Actions 6-9)
- Refresh the Board (Actions 10-15)
- Strengthen the Senior Management Structure (Actions 16-19)
- Organisational Resourcing (Actions 20-22), and
- Customer Service and Stakeholder engagement (Actions 23-24).⁶⁰

In terms of Action 1 of the Action Plan, this included an undertaking that the Code of Conduct for ABP will be updated by mid-November (2022) to ensure sufficient unambiguous guidance for conflicts of interest for all individuals in ABP.⁶¹ In early July, the [Irish Times reported](#) that a new Code of Conduct for ABP was introduced at the end of June of this year.⁶² The new code was introduced just after the former deputy chairman, Paul Hyde, was convicted for failing to declare certain property interests. A significant clarification in the new Code of Conduct was the interpretation of “immediate neighbourhood” in which board members, planning inspectors and other staff may not have involvement in a case.⁶³ The existing legislation also provides for conflicts of interests as under [section 147](#) of the 2000 Act, it requires that members of ABP and planning

⁵⁹ Department of Housing, Local Government and Heritage, ‘[Minister O’Brien publishes Action Plan for reform of An Bord Pleanála](#)’, *Press Release*, 4 October 2022.

⁶⁰ Department of Housing, Local Government and Heritage, ‘[Action Plan for An Bord Pleanála](#)’, October 2022.

⁶¹ *Ibid* at 7.

⁶² Arthur Beesley, ‘[An Bord Pleanála introduces new code of conduct to tighten internal rules](#)’, *The Irish Times*, 4 July 2023. The new Code does not appear to be available yet on the ABP website.

⁶³ Arthur Beesley, ‘[An Bord Pleanála introduces new code of conduct to tighten internal rules](#)’, *The Irish Times*, 4 October 2023. Some Board members appear to have interpreted ‘immediate neighbourhood’ to mean a certain location or street while others considered it to encompass a whole county. The Irish Times article advised that the new definition of “immediate neighbourhood” for an urban setting was an area within a 0.5km radius of the private home or other property interests of the ABP official. In rural settings, this was “within a 5km radius of the private home or other property interest of that person”.

authorities must declare, on at least an annual basis, any relevant interests in property or land or any business dealing with property or developing land.

Planning and Development and Foreshore (Amendment) Act 2022

A number of temporary reforms to the Board were enacted as part of the [*Planning and Development and Foreshore \(Amendment\) Act 2022*](#) (2022 Act), which made provision for the appointment of additional members of the Board. [Section 104](#) of the 2000 Act provided for a Board of eight members - a chairperson and seven ordinary members. [Section 4](#) of the 2022 Act increased this to a Board consisting of a chairperson and a maximum number of 14 ordinary members. [Section 6](#) of the 2022 Act inserted a new section 105A to the 2000 Act, providing for the appointment of an interim Chairperson for no longer than a year. [Section 7](#) of the 2022 Act amended section 106 of the 2000 Act in terms of the knowledge and experience required by ordinary members of the Board, gender composition of the Board, as well as the appointments procedure. Provision is also made for the deputy chairperson to perform the functions of chairperson where that office is vacant.⁶⁴

Current position of ABP

On 7 July 2023, the interim Chairperson of ABP, Oonagh Buckley, along with senior management, appeared before the Joint Committee to provide an update on recent and future developments in ABP. This involved discussing staffing issues, current workload, judicial reviews of ABP decisions and related matters.⁶⁵ As of 25 July 2023, Peter Mullan was appointed as a new interim Chairperson to ABP, taking over from Ms Buckley on 2 September 2023. PAS is currently putting in place arrangements by the Department for the recruitment of a full term (seven year) Chairperson, and permanent Ordinary Board Members, to the Board of An Bord Pleanála.⁶⁶

Ms Buckley updated the Joint Committee in terms of the composition of the current ABP Board, advising that “an additional 11 board members were appointed, all but one on an interim (1 year) basis, between January and April 2023, bringing the total number of Board members to the statutory limit of 15.”⁶⁷ She also noted that by the end of June, ABP had 221 staff, with a third working within the Planning Inspectorate. There is sanction from the Department to increase this to

⁶⁴ [Section 9](#) of the 2022 Act inserted a new section 107A into the 2000 Act.

⁶⁵ Joint Committee on Housing, Local Government and Heritage, ‘[Joint Committee on Housing, Local Government and Heritage to discuss recent and future developments in An Bord Pleanála](#)’, *Press Release*, 6 July 2023.

⁶⁶ Department of Housing, Local Government and Heritage, ‘[Appointment of Interim Chairperson to An Bord Pleanála](#)’, *Press Release*, 25 July 2023

⁶⁷ Ms Oonagh Buckley, Chairperson ABP, Joint Committee on Housing, Local Government and Heritage debate, ‘[Recent and Future Developments in An Bord Pleanála: An Bord Pleanála](#)’, Thursday 6 July 2023.

313 staff by the end of 2023. In terms of caseload, Ms Buckley advised the Joint Committee that currently there are:

...3,400 cases are on hand in the board awaiting analysis or decision, which is roughly a year's intake. Of those, 1,100 have inspectors' files discharged and are awaiting a decision by the board, which as the committee knows, now sits in meetings of a minimum of three members.⁶⁸

Ms Buckley also updated the Joint Committee on the position of Judicial Reviews (JRs) in relation to decisions of ABP, noting that it faces an increasing case load of judicial reviews including managing several hundred JRs taken over the last few years. She stated that:

I think that the **board's rate of judicial review will remain at a high level**. These are contentious decisions we are taking and people are incentivised to seek review of them.⁶⁹

When asked what the legal costs for ABP were in 2022, Ms Buckley advised that it spent just under €10 million on legal fees, half of which related to ABP's costs while the other half were costs paid to the other side. She also noted that there were costs outstanding in cases where the Board had conceded or lost.⁷⁰

In an article for the *Irish Times* in July 2023⁷¹, Gregory Jones KC, BL, in proposing how the Irish planning system could be reformed focused exclusively on proposed changes to ABP. He outlined three key steps to take in relation to ABP to achieve much needed reform:

1. Appointment of a High Court Judge as Chair of the renamed ABP to restore public confidence,
2. Delegate routine planning decisions to inspectors like in the U.K. and Scotland, and
3. Invest in a high-quality, in-house legal service to deal with the increasingly legally complex planning decisions.⁷²

Office of the Planning Regulator

[Part IIB](#) of the 2000 Act provides for the establishment and operation of the Office of the Planning Regulator (OPR). It was formally established in April 2019 on foot of recommendations made by the Tribunal of Inquiry into Certain Planning Matters and Payments (the Mahon Tribunal). The

⁶⁸ Ibid.

⁶⁹ Ms Oonagh Buckley, Chairperson ABP, Joint Committee on Housing, Local Government and Heritage debate, '[Recent and Future Developments in An Bord Pleanála: An Bord Pleanála](#)', Thursday 6 July 2023 (emphasis added).

⁷⁰ Ibid.

⁷¹ In 2015, Gregory Jones KC was appointed by Alan Kelly TD, the Minister then responsible for planning, to chair the independent organisational review of ABP that reported in March 2016.

⁷² Gregory Jones KC, Opinion, '[How to reform the Irish planning system in three steps](#)', *The Irish Times*, 19 July 2023.

OPR carries out planning research, training and public awareness in order to promote the public's engagement in the planning process and to enhance knowledge and public information about planning in Ireland.⁷³ The OPR's role is to ensure that local authorities and An Bord Pleanála support and implement Government planning policy. [Section 31Q](#) of the 2000 Act, gives the OPR a statutory remit to conduct research and it is carried out under three key themes of (1) planning issues; (2) planning performance; and (3) planning practice. A new [Strategic Planning Research Programme](#) was published in November 2022 and sets out the work programme for the period 2023-2025 for the OPR. The Planning and Development Bill is among the policy areas that it is tracking.

On 30 December 2022, the OPR published its [Annual Overview of the Planning System 2021](#). The report reviews key trends and outputs over the year in the wider planning system in Ireland, including a comparison with patterns from previous years. Some of the key findings from the report included the following:

- 29% increase in planning applications made in 2021 compared to 2020, with the **total figure of applications (39,934) the highest figure since 2008**⁷⁴;
- **Declining approval rates for planning permissions continued** in 2021, with a 2.5% decrease since 2016;
- 88.5% of planning applications were granted permission in 2021;
- An Bord Pleanála received its **highest number of planning appeals (2,321) since 2012**⁷⁵

[Chapter IV](#) of the 2000 Act empowers the OPR to conduct reviews of the systems and procedures used by local authorities and An Bord Pleanála to deliver their planning functions. Under [section 31AS](#) of the Act, the OPR has discretion to conduct reviews while [section 31AT](#) provides that the Minister can request the OPR to conduct a review.

OPR Review

On 24 August 2022, the OPR initiated a review of certain systems and procedures used by An Bord Pleanála in the delivery of its statutory planning functions. The review was undertaken in two parts in line with the [Terms of Reference](#). It was conducted in response to an urgent need to progress measures aimed at restoring public confidence in ABP, as well as reviewing wider matters of concern relating to systems and procedures used in delivering certain functions.⁷⁶

⁷³ Office of the Planning Regulator, '[About the Office of the Planning Regulator](#)',

⁷⁴ The OPR's Annual Overview suggests that this increase may reflect the increased economic activity following the removal of Covid restrictions and a release of pent-up demand.

⁷⁵ Office of the Planning Regulator, '[Planning Regulator Publishes Overview of Planning System Reviewing Key Trends and Outputs](#)', *Press Release*, 30 December 2022 (emphasis added).

⁷⁶ Office of the Planning Regulator, '[OPR Initiates Review of An Bord Pleanála](#)', *Press Release*, 24 August 2022.

The [Report on Phase 1 of a Review by the OPR of certain Systems and Procedures used by An Bord Pleanála](#) (Report on Phase 1) was formally submitted to the Minister and the Chairperson of ABP on 3 October 2022.⁷⁷ Following publication of the Report on Phase 1, one of the independent external experts involved in the Review, Paul Cackette, former Chief Planning Reporter to the Scottish Government, , stated:

An Bord Pleanála has a critical role in the effective operation of the Irish planning system. As currently constituted, it faces multiple and complex challenges to restore public confidence. In our work on phase one of this review, we conclude that without major reform, An Bord Pleanála will find it increasingly difficult to function effectively. We recognise the many strengths of An Bord Pleanála's expertise as demonstrated in the past. However, in our work and in our recommendations, we have focused on urgently identifying systems and procedures which are not, at present, adequate.⁷⁸

The Report on Phase 1 made 11 recommendations⁷⁹, on an immediate, short term or medium/longer term basis. Two recommendations that were to be effected immediately were:

- (Recommendation 1) the need to appoint additional ordinary members to the board of ABP on a temporary basis of up to 12 months each to ensure the Board will have more than 10 members available at all times over the next year and;
- (Recommendation 3) an end to the practice of utilising two-person quorums of the board to make decisions, with a further suggestion that consideration be given to the permanent removal of the relevant provisions by way of legislative amendment.

Recommendations 1 to 3⁸⁰ of the Report on Phase 1 appear to have been dealt with in the [Planning and Development and Foreshore \(Amendment\) Act 2022](#) which was enacted on 20 December 2022. The Library & Research Service prepared a Bill Briefing and Bill Digest for the Planning and Development and Foreshore (Amendment) Bill 2022 which can be accessed [here](#). Further details of the changes the Act brought in terms of changes for ABP are outlined in a section below.

The second and final report on the [Second Phase of the OPR's Review of Certain Systems and Procedures used by An Bord Pleanála](#) (OPR Report on Second Phase) was published on 20 December 2022, highlighting "an urgent need for a 'reset' in the way An Bord Pleanála delivers its functions."⁸¹ The Report considered that the current structures of ABP "neither work in theory nor

⁷⁷ Office of the Planning Regulator, '[Office of the Planning Regulator Publishes Report on Phase One of Review of An Bord Pleanála](#)', *Press Release*, 4 October 2022.

⁷⁸ Ibid.

⁷⁹ Office of the Planning Regulator, [Report on Phase 1 of a Review by the OPR of certain Systems and Procedures used by An Bord Pleanála](#), List of Recommendations at p.75-76.

⁸⁰ Recommendation 2 relates to implementing a proactive system of forward-filling of vacancies as a matter of urgency to ensure that, as board members vacate their positions, replacements are ready to take up duty immediately.

⁸¹ Office of the Planning Regulator, '[Office of the Planning Regulator Publishes Report on Second Phase of An Bord Pleanála Review](#)', *Press Release*, 20 December 2022.

in practice”⁸², suggesting two possible models; a model with the ‘Chairperson as the most Senior Appointee’ and a ‘CEO Model’, setting out the advantages and disadvantages of both.⁸³ Building on the OPR Report on Phase 1, the OPR Report on the Second Phase contains 23 recommendations set out under the following headings:

- Overall Structure of An Bord Pleanála;
- Board Procedures
- Preparation of Reports by Inspectors
- Presentation of Cases by Inspectors
- Delegation
- Staff Engagement and Protection
- Engagement and Implementation of Reform

As stated in the OPR [press release](#) announcing the publication of the Report on Second Phase, the aim of the recommendations arising from the Review process was to:

- **Restore An Bord Pleanála’s capacity to deliver timely, robust, balanced and independent quasi-judicial planning decisions**, so as to uphold its standing as the independent arbiter of planning and sustainable development matters in Ireland;
- Address a breakdown of trust within key areas of the organisation. Aligned to this is the need to ensure a positive culture in leadership and management; and
- **To quickly turn around a major and rapidly increasing overhang of planning cases** which must be delivered with improved arrangements for internal governance and procedural transparency.⁸⁴

Local Authority Development Plans

In the leading textbook, *Simons on Planning Law*, Browne emphasises how:

[t]he **development plan lies at the heart of the planning legislation**. It involves the **exercise of significant powers by planning authorities** who are entitled to adopt such plans by virtue of their constitutional status in Art 28.A of Bunreacht na hÉireann and enabling powers conferred by statute.⁸⁵

⁸² Office of the Planning Regulator, ‘[Report on the Second Phase of the Office of the Planning Regulator’s Review of Certain Systems and Procedures used by An Bord Pleanála](#)’, 16 December 2022, at p.20.

⁸³ Office of the Planning Regulator, ‘[Report on the Second Phase of the Office of the Planning Regulator’s Review of Certain Systems and Procedures used by An Bord Pleanála](#)’, 16 December 2022, at p.24-25.

⁸⁴ Office of the Planning Regulator, ‘[Office of the Planning Regulator Publishes Report on Second Phase of An Bord Pleanála Review](#)’, *Press Release*, 20 December 2022 (emphasis added).

⁸⁵ Browne, David, (2022) ‘*Simons on Planning Law*’, 3rd edition, Round Hall at 3 (emphasis added).

Currently, [section 9](#) of the 2000 Act provides that every planning authority has an obligation to prepare a Development Plan every six years. It must have regard to and coordinate with the objectives of adjoining planning authorities.⁸⁶ There is a possibility of an extension for up to two years [Section 10](#) sets out what must be contained in the development plan. The development plan must include a written statement and a series of maps which indicate the development objectives for the area, including proposals for residential, industrial or agricultural areas. It also sets out development objectives for the area, such as plans to improve roads and local amenities. Browne notes that the development plan “regulates the use and future development of property by setting zoning and policy objectives and indicating the parameters within which permission may potentially be granted or indeed restricted.”⁸⁷ As far as possible, local development plans must be compatible with national and regional planning strategies, including:

- The [National Planning Framework](#), which sets out the national strategy for developments (detailed above under Government Strategic Plans).
- The Regional Spatial and Economic Strategies, which detail plans for the three regional areas in Ireland.⁸⁸

The development plan must also be accompanied by an Environmental Report prepared on foot of the [EU Strategic Environmental Assessment Directive](#)⁸⁹ and, in certain circumstances, a Natura Impact Report prepared under the [Habitats Directive](#)⁹⁰. The OPR have developed a document ‘[A Guide to the Development Plan](#)’ which “explains how the development plan is prepared, and the important role that the public and communities play in contributing to it.”⁹¹

The [Planning and Development \(Amendment\) Act 2021](#) (2021 Act) was enacted to allow time-limited extensions to certain obligations and permissions under the 2000 Act, necessitated by Covid-19 related disruptions. These included an extension to the time planning authorities have to review and publish a development plan, and an extension to the duration of an existing development plan (subject to the requirement to conduct certain environmental assessments).

⁸⁶ [Section 11](#) of the *Planning and Development Act 2000* provides for a review after four years.

⁸⁷ Browne, David, (2022) ‘Simons on Planning Law’, 3rd edition, Round Hall at 1.

⁸⁸ See Office of the Planning Regulator, ‘[Introduction to Planning](#)’. The objective of the Regional Spatial and Economic Strategies is to support the NPF and the economic policies and objectives of the government. Each strategy is a long-term planning and economic framework for the development of each region, which is split into three strategic planning areas:

- Eastern and Midland Region,
- Southern Region, and
- Northern and Western Region.

These regions are governed by regional assemblies. Regional assemblies consist of members of the local authorities within the region. The regional assembly adopts the Regional Spatial and Economic Strategy.

⁸⁹ [Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment.](#)

⁹⁰ [Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora](#)

⁹¹ Office of the Planning Regulator, ‘[A guide to the Development Plan](#)’, Planning Leaflet 2.

[Section 2](#) of the 2021 Act inserted a new section 9A into the 2000 Act which gave planning authorities an additional period of up to 1 year for the completion of the review, the preparation and the making by a planning authority of a development plan. This will apply until 1 January 2024.

[New national guidelines](#) (Development Plan Guidelines) for the preparation of local authority development plans were issued on 1 July 2022. The Development Plan Guidelines constitute Ministerial Guidelines under [Section 28](#) of the 2000 Act. The aim of the revised guidelines (unrevised since 2007) is “to ensure Development Plans take into account the forecasted amount of housing in an area and that sufficient new homes can be built in key areas of housing demand.”⁹² Some of the Development Plan Guidelines include:

- a clear approach to ensuring that every development plan includes a sustainable long-term housing strategy, consistent with national housing targets and policies,
- a clear method for identifying and zoning lands for new housing, and prioritising lands that can most quickly and appropriately provide new homes. Longer-term development areas and strategic development sites that need more infrastructure work can also be facilitated for development in the future.⁹³

Under Chapter 5 of the [Draft Bill](#), the lifespan of a local development plan is extended from six years to 10 years, with an interim implementation report prepared at year five. The Irish Planning Institute (IPI) in a submission to Minister Burke, T.D., Department of Housing, Local Government and Heritage on the planning legislation review offered observations regarding development plans. The IPI generally welcomed an extended lifespan for development plans:

[i]n terms of the duration of County Development Plans, the Institute broadly welcomes the idea of a ten to twelve year duration, with statutory reviews at perhaps four or five year intervals (where Variations could be made).⁹⁴

EU Law

EU environmental policy plays an increasingly important role in Irish planning and development and rests upon “the principles of precaution, prevention and rectifying pollution at source, and on the ‘polluter pays’ principle.”⁹⁵ The [Environmental Protection Agency](#) (EPA) is an independent public body established under the [Environmental Protection Agency Act 1992](#) (1992 Act) and is responsible for protecting and improving the environment as a valuable asset for the people of Ireland. Part of the remit of the EPA includes implementing regulation and environmental

⁹² Department of Housing, Local Government and Heritage, ‘[Development Plans - Guidelines for Planning Authorities](#)’, *Press Release*, 1 July 2022.

⁹³ Department of Housing, Local Government and Heritage, ‘[Development Plans - Guidelines for Planning Authorities](#)’, *Press Release*, 1 July 2022.

⁹⁴ Irish Planning Institute, ‘[Irish Planning Institute Submission on Planning Legislation Review](#)’, 9th June 2022.

⁹⁵ European Parliament, ‘[Fact Sheet on Environment policy: general principles and basic framework](#)’.

compliance systems to deliver good environmental outcomes and target those who do not comply.⁹⁶ The EPA is the competent authority for environmental impact assessments (EIA) which examine the anticipated environmental effects of a proposed project.

Environmental Impact Assessment

An environmental impact assessment procedure is required by way of EU law and national law. In July 2018, Ireland transposed the 2014 EIA Directive⁹⁷ by way of the [European Union \(Planning and Development\) \(Environmental Impact Assessment\) Regulations 2018](#) (Regulations 2018), which came into operation on 1 September 2018. The Regulations 2018 provide for the transposition of the [2014 EIA Directive](#) and give further effect to the [2011 EIA Directive](#) by way of extensive amendments to existing planning law.

An EIA must be conducted before consent is granted for a project to be developed. The EPA describe an EIA as:

the process of examining the anticipated environmental effects of a proposed project - from consideration of environmental effects at design stage, through consultation and preparation of an Environmental Impact Assessment Report (EIAR), evaluation of the EIAR by a competent authority and the subsequent decision as to whether the project should be permitted to proceed.⁹⁸

[Planning guidelines](#) for planning authorities and An Bord Pleanála on conducting EIAs were published by the Department in August 2018. [Section 72](#) of the 1992 Act provides for the preparation by the EPA of 'guidelines on the information to be contained in environmental impact assessment reports' and the [most recent guidelines](#) were published by the EPA in May 2022.

Aarhus Convention

The [UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters \(Aarhus Convention\)](#) was adopted on 25 June 1998 and is the leading international agreement on environmental democracy. The EU and its 27 Member States, including Ireland are all Parties to the Aarhus Convention. Ireland ratified the Aarhus Convention and the associated Genetically Modified Organisms (GMO) Amendment and the Pollutant Release Transfer Register (PRTR) Protocol in June 2012.⁹⁹ The [Aarhus Convention](#)

⁹⁶ Environmental Protection Agency, [Roles & Responsibilities](#) (webpage).

⁹⁷ [Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment.](#)

⁹⁸ Environmental Protection Agency, [Environmental Impact Assessment](#), (webpage).

⁹⁹ Department of the Environment, Climate and Communications, '[Aarhus Convention](#)', (webpage), last updated 22 March 2022.

[Compliance Committee](#) (ACCC) was established under Article 15 of the Aarhus Convention and acts as a non-confrontational, non-judicial and consultative mechanism established to review compliance by Parties to the Convention. Convention parties and members of the public may make a submission regarding the compliance of Parties with the Aarhus Convention.¹⁰⁰

[Section 8](#) of the *Environment (Miscellaneous Provisions) Act 2011* requires that judicial notice be taken of the Aarhus Convention. The Aarhus Convention Bill (to consolidate and further Ireland's implementation of the access to justice provisions of the Aarhus Convention) has been on several Government Legislation Programmes in recent sessions. Currently it is listed under *All other legislation* (not priority legislation for drafting and publication this session) in the latest Government Legislation Programme ([Summer 2023](#)). The General Scheme is yet to be published.

The Aarhus Convention guarantees the public three key rights on environmental issues:

1. Access to environmental information (public's right to receive environmental information held by public authorities),
2. Public participation on decision-making (public's right to meaningful participation in environmental decision-making), and
3. Access to justice (public's right to review by a court or another independent body to ensure that public authorities respect environmental rights).¹⁰¹

[Access to Justice - Judicial review](#)

Of particular interest in the context of the Draft Bill is the right of access to justice which means that individuals and NGOs have the right to seek a review of decisions made by the public authority which may affect the environment. This generally involves an administrative appeal to the public authority (ABP) in the first instance, with the potential for decisions to be judicially reviewed by the High Court. Judicial review is primarily concerned with the lawfulness of the decision-making process rather than with the substance of the decision and special procedures apply to planning decisions involving the planning authorities or An Bord Pleanála.¹⁰² Currently, these are set down under sections [50](#) and [50A](#) of the 2000 Act and provide that an applicant must have a 'sufficient interest' in the matter, the subject of the application and this is not limited to an interest in land or other financial interest.¹⁰³ Further, an applicant will have standing to initiate Judicial Review proceedings where it is a body or organisation whose aims or objections relate to the promotion of

¹⁰⁰ Aarhus Convention Compliance Committee, '[Background](#)' (webpage).

¹⁰¹ European Commission, '[The Aarhus Convention and the EU](#)' (webpage).

¹⁰² Citizens Information, '[Judicial review of public decisions](#)', (webpage) last updated 22 February 2022.

¹⁰³ When the 2000 Act was initially enacted, it provided for a 'substantial interest' requirement. This was amended by [section 20](#) of the *Environment (Miscellaneous Provisions) Act 2011*, which introduced the 'sufficient interest' requirement. The [General Scheme on the Housing and Planning and Development Bill 2019](#) was published on 9 December 2019 and proposed changing the test to applicants who have a "substantial interest".

environmental protection for at least the previous year. Currently, under the 2000 Act, the general rule regarding costs is that each party will bear their own costs save for certain circumstances.¹⁰⁴

Part 9 of the Draft Bill, which encompasses Heads 248 to 250, proposes a modified Judicial Review process. While this will be examined in further detail in the additional publication analysing the final published Bill, it is useful to briefly outline here the changes envisaged by the Draft Bill. The 8 week deadline to bring an application for Judicial Review is retained in the Draft Bill. The Draft Bill sets out a similar test for standing as currently in place, including that the applicant must have a 'sufficient interest' in the matter, which is the subject of the pleadings. An applicant has a 'sufficient interest' where:

- the applicant is or may be directly or indirectly materially affected¹⁰⁵ by the matters to which the application relates,
- is not limited to an interest in land or a financial interest,
- where an application relates to a development which may have significant effects on the environment or that is likely to have a significant effect on a European site :
 - an NGO or association has been incorporated as a company;
 - has a minimum of 10 members;
 - has a constitution with an object of protection of the environment and has been pursuing these objects for at least one year;
 - has passed a resolution authorising the bringing of the Judicial Review and;
 - has legal capacity to bring proceedings.

The Outline to the Draft Bill observes that resident associations can still take Judicial Review proceedings. but to do so they must comply with the above requirements. If they do not comply, the individual residents can choose to sue either individually or collectively as the provisions in the Draft Bill do not prevent this.¹⁰⁶ This was restated by the Minister for Housing, Local Government and Heritage, Deputy Darragh O'Brien T.D., in a written response to a question on Housing in the Dáil.¹⁰⁷

It also introduces a significantly broader power for relevant bodies including ABP to be able to make an amended decision, correcting any error of law or fact contained in the relevant decision.

¹⁰⁴ [Section 50B](#) of the *Planning and Development Act 2000* provides that costs can be awarded against a party in proceedings where the Court considers the claim is frivolous or vexatious, or where the party is in contempt of the Court. The Court also has the power to award costs in favour of a party in a matter of exceptional public importance and where in the special circumstances of the case it is in the interests of justice to do so.

¹⁰⁵ It has been noted that there is no definition of "materially affected" in the Draft Bill and it remains to be seen if that will be included in the final Bill. Most likely, this will need to be interpreted by the Courts. See Alison Hough and Gavin Elliott, Opinion - '[We could improve our planning law - instead the public is being excluded](#)', The Journal.ie, 24 March 2023.

¹⁰⁶ Department of Housing, Local Government and Heritage, '[Outline of the proposed Planning and Development Bill](#)' December 2022 at 15.

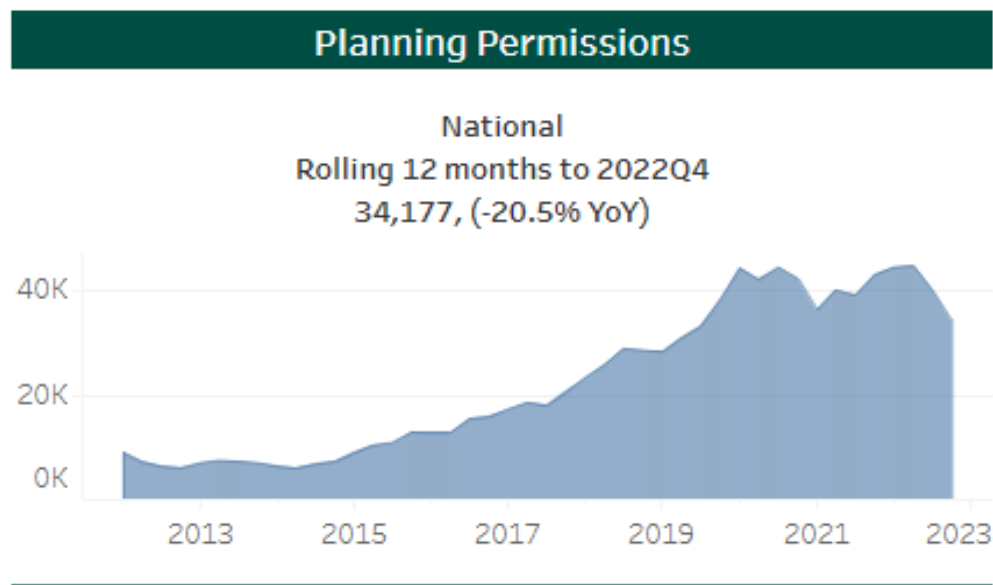
¹⁰⁷ Minister for Housing, Local Government and Heritage, Deputy Darragh O'Brien, T.D., '[Questions on Planning Issues](#)', *Dáil Éireann Debate*, 15 December 2022.

This can be done at any time within 8 weeks from the date of the decision, the date of the act done or the date of the failure to perform a function. Currently, this power to amend is limited to a clerical error or a clarification and must not result in a material alteration to a decision¹⁰⁸.

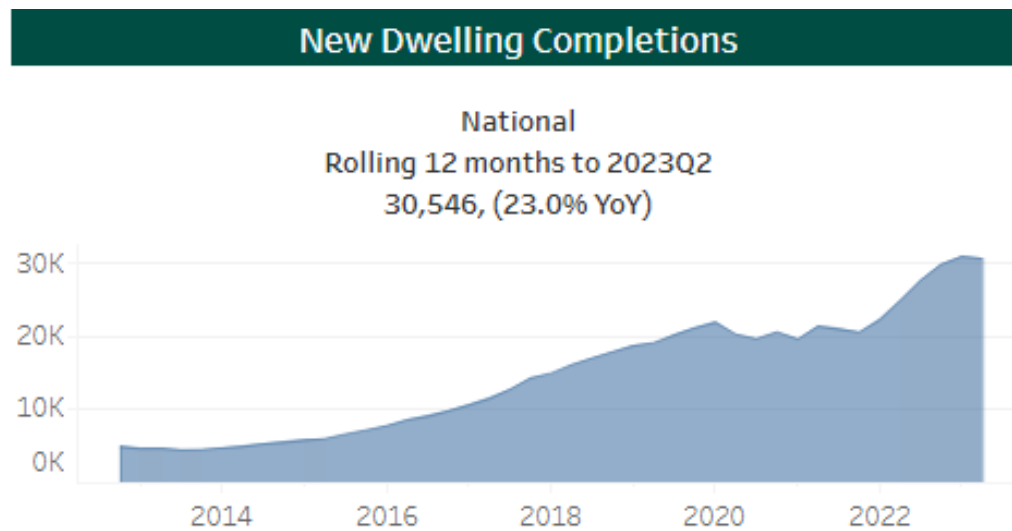
Planning Permissions

The DHLGH maintains a Housing for All [Statistics Dashboard](#) which contains a collection of datasets relating to the housing sector. As advised on the DHLGH's website, the aim of the Dashboard is to coordinate data which indicates trends in housing supply and affordability. These are updated on a monthly and quarterly basis and some of the key metrics of the most recent Housing for All Quarterly Progress Report are set out below.

¹⁰⁸ [Section 146A](#) of the *Planning and Development Act 2000*.

Figure 2: [Planning Permissions Rolling 12 months to Q4 2022](#)

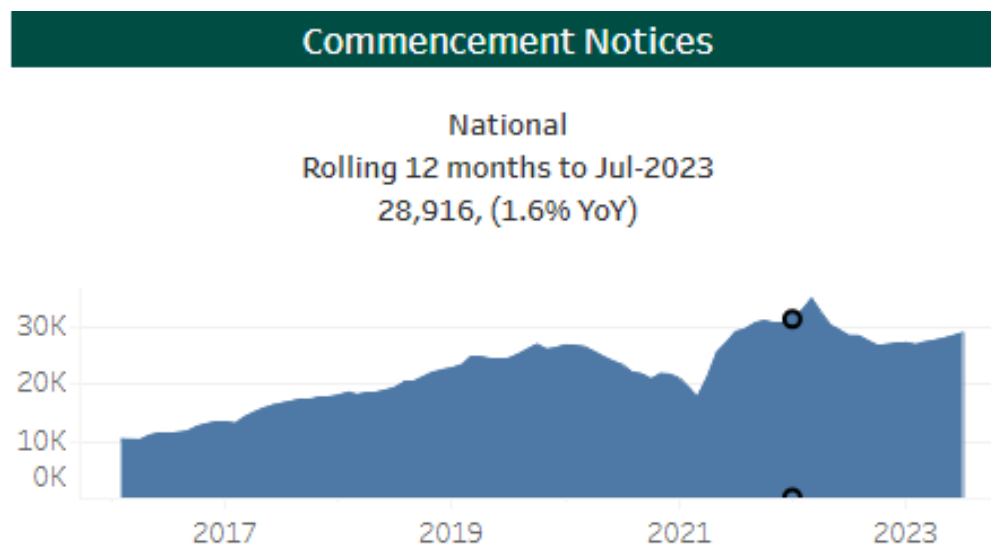
This is compiled by the Central Statistics Office (CSO) and drawn from data provided by 34 local authorities and ABP. It provides a short-term indicator on construction and aims to provide data enabling some insight into the amount of building activity likely to take place in the State. Planning Permissions data is reflected as rolling 12 month total and is updated quarterly.¹⁰⁹

Figure 3: [New Dwelling Completions rolling 12 months to Q2 2023](#)

¹⁰⁹ Department of Housing, Local Government and Heritage, [‘Housing for All – Statistics Dashboard’](#)

New Dwelling Completions data is compiled by the CSO and the primary data source used for this is the ESB Networks new domestic connections dataset, where the date that the connection is set up determines the date of completion. New Dwellings Completions data is reflected as rolling 12 month totals and is updated quarterly.¹¹⁰

Figure 4: [Commencement Notices rolling 12 months to July 2023](#)



Commencement Notice data is compiled by the [Local Government Management Agency](#)¹¹¹ through the [Building Control Management System](#). A Commencement Notice acts as a notification to a Building Control Authority of a person's intention to conduct either works or a 'material change of use' to which the Building Regulations apply. The DHLGH cleans and collates the data before publishing it. Commencement Notices data is reflected as rolling 12 month totals and is updated monthly.

As already noted, the (CSO) compile statistics on planning permissions and in September 2023, released their most recent publication [Planning Permissions Quarter 2 2023](#). In the press release announcing the publication, the CSO issued an advisory note stating that users should exercise caution in interpreting long-term trends on the basis of a single quarter's data. This is due to the fact that the number of planning permissions can be impacted by application processes for Strategic Housing Developments (SHD) and related issues in ABP from 2022 including the backlog of SHD applications both processed and still awaiting decision.¹¹²

¹¹⁰ Department of Housing, Local Government and Heritage, '[Housing for All – Statistics Dashboard](#)'.

¹¹¹ The Local Government Management Agency is an agency of the Department of Housing, Local Government and Heritage, provides a range of professional services to local authorities.

¹¹² Central Statistics Office, '[Planning Permissions Quarter 2 2023](#)', CSO Statistical Publication, 8 September 2023.

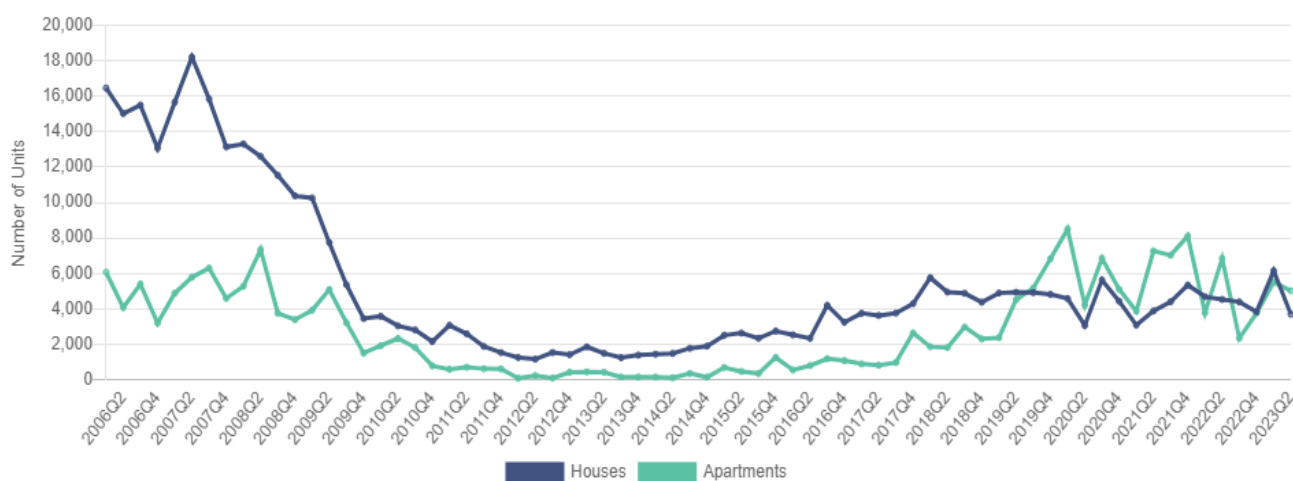
Some of the key findings from the publication include:

- an annual decrease of more than 23% in the total number of dwelling units approved in Quarter 2 (Q2) 2023 at 8,723 units compared with 11,374 units in Q2 2022, while in Q1 2023 an annual increase of 38% was recorded.
- The number of houses granted planning permission fell by 18% on an annual basis to 3,702 housing units, while apartment approvals were down by 27% to 5,021 units.
- In Q2 2023 there was an annual decrease of more than 36% in the number of one-off houses receiving planning permission, compared with an annual decline of 32% in Q1 2023.
- There was an annual fall of 6% in multi-development houses receiving planning permission in Q2 2023 compared with an annual increase of 81% in Q1 2023.¹¹³

As part of the publication, the CSO produced tables and infographics including the following graph which plots the numbers of houses and apartments granted planning permission from Q1 2006 to Q2 2023. While the CSO cautions against extrapolating long term trends from a snapshot of a quarter, this graph still provides a useful overview of the rate of planning permissions over more than 15 years, highlighting the impact of the Celtic Tiger, the recession and the most recent downward shift, amongst other things on the rate of permissions.

Figure 5: CSO Planning Permissions Q1 2006 – Q2 2023

Figure 2: Dwelling units granted planning permission, Q1 2006 - Q2 2023



© Central Statistics Office, Ireland
<https://data.cso.ie/table/BHQ16>

¹¹³ Ibid.

A [report](#) prepared by IGEES Unit in the Department of Public Expenditure and Reform highlighted what appears to be a gap between planning permissions granted and those activated and used to build. The Report also highlights the long standing debate around whether planning is an obstacle to growth and competition, noting that despite this there has been “limited quantitative treatment of the planning system in Ireland to establish an evidence base”.¹¹⁴ The analysis which was based on a sample of 34,875 planning applications submitted to Local Authorities (LAs) between 2012 and 2021 found that there has been a greater rate of apartment units with planning permission than those completed, pointing to a growing gap between permissions and completions.¹¹⁵ Further, it found that as of Q4 2021, over 42,000 apartment units with planning permission had yet to commence in Dublin alone.¹¹⁶ The Report considered that this phenomenon might be explained due to several factors including land banking, viability due to increased construction costs and speculative purchasing to increase resale value.¹¹⁷

¹¹⁴ John Reidy and Ben Breen, Department of Public Expenditure and Reform, ‘[Planning Permissions and Housing Supply](#)’, IGEES Unit, December 2022 at 3.

¹¹⁵ Ibid at 2.

¹¹⁶ John Reidy and Ben Breen, Department of Public Expenditure and Reform, ‘[Planning Permissions and Housing Supply](#)’, IGEES Unit, December 2022 at 2.

¹¹⁷ Ibid at 2.

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