

Note 2: Planning and Development Bill 2023 - PLS & Select Principal Provisions – Bill 81 of 2023

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Introduction

The [Planning and Development Bill 2023](#) (the Bill) and [Explanatory Memorandum](#) were [published](#) late on Tuesday 21 November, 2023 with [Second Stage debate in the Dáil](#) scheduled for Thursday 30 November, 2023. Given the length and complexity of the Bill, the L&RS has produced two separate Notes:- [Note 1](#) dealing with the background to the Bill and this Note dealing with the Bill itself. 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). [Note 1](#) provides an overview of the background to the Bill, including of the current legal and regulatory framework, as well as the policy context.

This Note 2 (similar to a Bill Digest) deals with the PLS process, including commentary from the Department on PLS recommendations and also analyses selected key provisions of the published Bill. As with Note 1, this Note does not attempt to provide a full summary of the Bill, but instead seeks to examine certain selected elements of the system, focusing on key provisions not only pivotal in shaping Irish planning law but also at the centre of significant debates arising from the Draft Bill. Specifically, this includes issues related to the operation and lifespan of local development plans, judicial review proceedings and costs, and the restructuring of An Bord Pleanála and renaming it to An Coimisiún Pleanála. Other relevant connected issues such as local democracy, timelines and resources will be briefly considered in the course of the Note, but they will not be examined in the same detail.



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Key messages

- An [Outline of the proposed Planning and Development Bill](#) was published in December 2022. The [Draft Bill](#) (similar to a General Scheme) was approved by Government in December 2022 and published on 26 January 2023. The Joint Committee on Housing, Local Government and Heritage published its [Report on the Pre-Legislative Scrutiny of the Draft Planning and Development Bill 2022](#) (PLS Report) on 26 April 2023.
- [Cabinet approval for publication](#) of the Bill was announced on 3 October 2023. The Bill is the culmination of a 15-month long review of the planning system, including the pre-legislative scrutiny process, and input from various Government Departments.
- The [Bill](#) and [Explanatory Memorandum](#) were published late on Tuesday 21 November, 2023 and [Second Stage debate in the Dáil](#) is scheduled for Thursday 30 November, 2023. The press release announcing the Bill's publication included remarks from Minister Darragh O'Brien, T.D.,

This Bill is momentous not only in its size but in its significance to nearly every aspect of people's lives from infrastructure to tackling the climate transition. This Bill impacts so many areas from housing to roads; from renewable energy to environmental and architectural conservation...¹

- The Bill runs to 716 pages, consists of 22 Parts, 6 Schedules and contains 541 sections. The Explanatory Memorandum is 120 pages and notes that the key aim of the review of the planning system was:

...to put plan-making at the centre of the planning system by bringing increased clarity to the legislation and improving the functioning of the planning system for both practitioners and the general public, whilst protecting public participation, which is a hallmark of the current planning system.²
- The purpose of the Bill is to "revise, extend and consolidate the Planning and Development Act 2000 (Act of 2000) to provide for the proper planning and sustainable development of urban and rural areas."³
- Some of the most significant key aims of the Bill include:
 - Significant **restructuring and resourcing of An Bord Pleanála**, which will be **renamed An Coimisiún Pleanála**;

¹ Department of Housing, Local Government and Heritage, '[Planning and Development Bill 2023 is published](#)', *Press Release*, 21 November 2023.

² Planning and Development Bill 2023, '[Explanatory Memorandum](#)', at 2

³ Planning and Development Bill 2023, '[Explanatory Memorandum](#)', at 3.

- The **introduction of statutory timelines for decision-making**, including for the **first time, for An Coimisiún Pleanála**;
- **New strategic ten-year Development Plans** for Local Authorities;
- **Reform of planning Judicial Review**, including the introduction of a **Scale of Fees** and **Environmental Legal Cost Financial Assistance Mechanism**;
- **New provisions for Urban Development Zones**, underpinning key growth areas.

Further relevant L&RS Resources

Oireachtas Library & Research Service, 2021, [L&RS Bill Digest: Planning and Development \(Amendment\) \(LRD\) Bill 2021](#)

Oireachtas Library & Research Service, 2022, [L&RS Bill Digest: Planning and Development \(Amendment\) \(No. 2\) Bill 2022](#)

Oireachtas Library & Research Service, 2022, [L&RS Bill Digest: Planning and Development and Foreshore \(Amendment\) Bill 2022. Bill No. 115 of 2022](#)

Oireachtas Library & Research Service, 2023, [L&RS Note 1: Planning and Development Bill 2023 -background and policy context](#)

Glossary and Abbreviations

Table 1: Glossary and abbreviations

Term	Meaning
2000 Act	<i>Planning and Development Act 2000</i>
2021 Act	<i>Planning and Development (Amendment) Act 2021</i>
2022 Act	<i>Planning and Development and Foreshore (Amendment) Act 2022</i>
ABP	An Bord Pleanála
Aarhus Convention	UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters
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
CFI	Construction Industry Federation
DHLGH	Department of Housing, Local Government and Heritage
Draft Bill	Draft Planning and Development Bill 2022
Forum	Planning Advisory Forum
Guide	Guide to the Planning and Development Bill 2023
Housing For All	Housing for All - a New Housing Plan for Ireland
IEN	Irish Environmental Network
IPI	Irish Planning Institute
IHREC	Irish Human Rights and Equality Commission
Joint Committee	Joint Committee on Housing Local Government and Heritage
Minister	Minister for Housing, Local Government and Heritage
OPR	Office of the Planning Regulator
Outline	Outline of the proposed Planning and Development Bill
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

Background

As noted at the outset, [Note 1](#) provides Members with an overview of the background to the Bill, including the current legal and regulatory framework, as well as the policy context. This section of Note 2 provides background information on the Bill's progress since the publication of Note 1.

Cabinet approval of the Planning and Development Bill 2023 (the Bill) was announced on 3 October 2023, and was described as representing “the largest reshaping of the planning system in Ireland for more than two decades.”⁴ The press release announcing Cabinet approval of the Bill noted that it is the third largest Bill in the history of the State, the culmination of a 15 month long review of the planning system, including a pre-legislative scrutiny process, and input from various Government Departments.⁵ Taoiseach Leo Varadkar, T.D. stated that the Bill “will bring more **certainty and consistency** to the planning process, and also make it **more coherent and user-friendly**”⁶ (emphasis added). The Minister for Housing, Local Government and Heritage, Darragh O'Brien T.D., noted that the Bill:

...will bring about fundamental improvements to our planning laws, meaning we can get on with the job of delivering Housing for All's objectives and our other major infrastructure plans.⁷

The press release set out some of the key reforms that were be contained in the Bill as follows:

- New ten-year Development Plans for Local Authorities.
- Increased alignment among the tiers of planning.
- A significant restructuring of An Bord Pleanála, with the body to be renamed An Coimisiún Pleanála.
- Mandatory timelines for decision-making by An Coimisiún Pleanála.
- Reform of planning Judicial Review, including the introduction of an Environmental Legal Cost Scheme.
- New provisions for Urban Development Zones.⁸

Alongside the announcement of Cabinet approval of the Bill, a Guide to the Bill⁹ was also published. The Guide sets out the purpose and key policies of the Bill and advises that it addresses broadly how some of the recommendations of the Joint Committee have been incorporated into the Bill. It also includes a FAQ section dealing with common concerns around the Bill. The purpose of the Bill is outlined in the Guide as:

⁴ Department of Housing, Local Government and Heritage, '[Government announces Cabinet approval for Planning and Development Bill 2023](#)', *Press Release*, 3 October 2023.

⁵ Department of Housing, Local Government and Heritage, '[Government announces Cabinet approval for Planning and Development Bill 2023](#)', *Press Release*, 3 October 2023.

⁶ Department of Housing, Local Government and Heritage, '[Government announces Cabinet approval for Planning and Development Bill 2023](#)', *Press Release*, 3 October 2023 (emphasis added).

⁷ Department of Housing, Local Government and Heritage, '[Government announces Cabinet approval for Planning and Development Bill 2023](#)', *Press Release*, 3 October 2023.

⁸ Department of Housing, Local Government and Heritage, '[Government announces Cabinet approval for Planning and Development Bill 2023](#)', *Press Release*, 3 October 2023.

⁹ The Guide was updated late on Monday 27 November 2023.

...a new and updated legislative framework for the proper spatial planning and sustainable development across national, regional and local levels and ensures that the planning system is focused on both supporting and where appropriate, regulating development on both land and within the maritime area.¹⁰

The Guide goes on to conclude that:

[o]verall, the Bill will enable changes to the planning system that will serve to enhance economic prosperity, quality of life, social cohesion and environmental standards for the benefit of present and future generations.¹¹

The Guide also outlines 10 key policies that it proposes the Bill will address. These are:

1. Clearer, more consistent policies and guidance.
2. Longer term, more strategic plans.
3. More agile local implementation.
4. Environmental Assessments.
5. Renewal of An Bord Pleanála as An Coimisiún Pleanála.
6. Statutory, mandatory timelines to give confidence and certainty to applicants.
7. Resources.
8. Reform of Judicial Review.
9. Environmental Legal Costs Scheme.
10. Urban Development Zones.¹²

Commentary following the publication of the Guide, included remarks from the Chair of the Joint Committee on Housing, Local Government and Planning, Steven Matthews, T.D. He noted the concerns the Joint Committee had about restricting access to judicial reviews and that he is reserving judgment until the final Bill is published, observing that the “devil is in the detail”.¹³ The Irish Times also reported that a joint statement, from Community Law & Mediation and Environmental Justice Network Ireland, stated that they were “disappointed that the Bill has proceeded to Cabinet without any prior inclusive public consultation, indicating a weak commitment to genuine democracy”.¹⁴ The article reported that Minister for Housing, Darragh O'Brien, T.D., described the Bill as “well balanced” and stated that “[c]entral to that is individuals and indeed groups having their right to have their say”.¹⁵ Eoin Ó Broin, T.D., Housing Spokesperson for Sinn

¹⁰ Department of Housing, Local Government and Heritage, '[Guide to the Planning and Development Bill 2023](#)', October 2023 at 3.

¹¹ Department of Housing, Local Government and Heritage, '[Guide to the Planning and Development Bill 2023](#)', October 2023 at 5.

¹² Department of Housing, Local Government and Heritage, '[Guide to the Planning and Development Bill 2023](#)', October 2023.

¹³ Jack Horgan-Jones, '[Landmark planning legislation may not be passed by Oireachtas until 2024](#)', The Irish Times, 3 October 2023.

¹⁴ Jack Horgan-Jones, '[Landmark planning legislation may not be passed by Oireachtas until 2024](#)', The Irish Times, 3 October 2023.

¹⁵ Jack Horgan-Jones, '[Landmark planning legislation may not be passed by Oireachtas until 2024](#)', The Irish Times, 3 October 2023.

Féin, who is also a member of the Joint Committee, noted in an [opinion piece for the Irish Examiner](#) the concerns raised during the PLS process of the draft Bill, stating that:

We want a planning system that makes good-quality planning decisions in a timely manner following meaningful public participation.

We need a planning system that ensures we can meet the social, economic, and environmental needs of our society.¹⁶

The Irish Independent also reported observations from Gavin Elliott of Community Law and Mediation who stated that the “changes [to judicial review] were restrictive and may have the overall negative effect of reducing the number of local voices in the process”.¹⁷ The article also noted that a satisfactory explanation as to why these changes were needed was missing from the Bill. The article also highlighted some other unexplained aspects of the Bill, including the plan to rename An Bord Pleanála as An Coimisiún Pleanála, reporting that such “a change [is] not wanted by the functioning side of the organisation, the general staff who were not implicated in the scandals.”¹⁸

On 1 October 2023, the Business Post reported on remarks made by Former Chief Justice of Ireland Frank Clarke in relation to the Bill. He observed that from his experience as both a lawyer and a judge that the:

...government’s push to amend the planning laws will likely lead to a large number of legal cases being referred to European courts... the amendments will slow down the planning process...[i]f the theory is to make quick decisions to allow proper development go ahead, creating a system where there will be references to the Court of Justice of the European Union and the inevitable delay before there’s clarity about the law seems to be counterproductive to the purpose it is intended.¹⁹

Gregory Jones KC, BL, a barrister of planning and environmental law who chaired the review of An Bord Pleanála in March 2016, also offered his observations in relation to the anticipated changes introduced by the Bill:

Some of these changes will not speed up the Irish planning system. We will be on a European tour of Geneva, Strasbourg possibly even, and Luxembourg. Good work for the lawyers who practise in that way, but a depressing thought of delay and adverse impact on the economy. Decisions on developments should be speedily made? False. They must be made fairly...²⁰

¹⁶ Eoin O Broin: Opinion, ‘[As bill goes before Cabinet, finally, it is time to get planning right](#)’, Irish Examiner, 3 October 2023.

¹⁷ Caroline O’ Doherty, ‘[New planning bill drops some contentious proposals but it still lacks detail](#)’, Irish Independent, 4 October 2023.

¹⁸ Caroline O’ Doherty, ‘[New planning bill drops some contentious proposals but it still lacks detail](#)’, Irish Independent, 4 October 2023.

¹⁹ Killian Woods, ‘Former chief justice: Bid to slash planning red tape will actually slow down building process’, Business Post, 1 October 2023 (Word copy of the article obtained from the Reading Room).

²⁰ Killian Woods, ‘Former chief justice: Bid to slash planning red tape will actually slow down building process’, Business Post, 1 October 2023 (Word copy of the article obtained from the Reading Room).

On publication of the final Bill, the Irish Planning Institute (IPI) welcomed its publication with Dr Seán O'Leary, president of the IPI noting that:

A crucial requirement will be the need to adequately resource the planning system across all sectors at national, regional and local levels to ensure the ambition of the Bill is achieved.²¹

A joint press release from the Construction Industry Federation and Irish Home Builders' Association welcomed the Bill "as a step towards reforming and resourcing the system of approving construction and house building projects in Ireland". It also stated noted that [w]e look forward to the resourcing of the planning system to support a modern, dynamic economy. It is essential that the Bill not only delivers proper planning, but also development."²²

Regulatory Impact Analysis

The [Regulatory Impact Analysis \(RIA\)](#) was published late on Monday 27 November 2023 by the Department.²³ The RIA considers 2 policy options noting the costs, benefits and impact of each:

1. Do Nothing
2. Review, consolidate and, where necessary, update the Planning and Development Acts 2000-2022

The RIA also notes that the key aim of the Bill is:

to put plan-making at the centre of the planning system by bringing increased clarity and streamlining to planning legislation and improving the functioning of the planning system for both practitioners and the general public.²⁴

The RIA sets out the policy context and objectives of the Bill including the need for transitional measures which are described as follows:

The reforms contained in the Bill will require significant transitional measures and updated and revised secondary legislation and guidance, as well as training of planning practitioners... [i]nitial findings indicate that the number of regulations currently in place is in excess of 100 individual statutory instruments...[w]ork is continuing to develop the programme to outline the secondary legislation. This work cannot be fully completed until the Bill is enacted...²⁵

²¹ Irish Planning Institute, ' [Irish Planning Institute Statement on Publication of Planning and Development Bill 2023](#)', *Press Release*, 22 November 2023.

²² Construction Industry Federation, ' [The Construction Industry Federation and Irish Home Builders' Association Welcome New Planning and Development Bill](#)', *Press Release*, 22 November 2023.

²³ [Regulatory Impact Analysis of the Planning and Development Bill 2023](#)

²⁴ [Regulatory Impact Analysis of the Planning and Development Bill 2023](#)

²⁵ [Regulatory Impact Analysis of the Planning and Development Bill 2023](#)

Previous legislation related to the Bill.

- [Planning and Development Regulations 2001- 2013](#) (unofficial Department consolidation)
- [General Scheme of the Housing and Planning and Development Bill 2019](#)
- [Planning and Development \(Large Scale Residential Developments\) Act 2021](#)
- [Planning and Development and Foreshore \(Amendment\) Act 2022](#)
- [Planning and Development \(Amendment\) \(No. 2\) Bill 2022](#)

Pre-Legislative Scrutiny of the Draft Bill

The Joint Committee on Housing, Local Government and Heritage (Joint Committee) undertook Pre-Legislative Scrutiny (PLS) of the Draft Bill²⁶ during nine sessions between 7 February and 9 March 2023. The [Report on the Pre-Legislative Scrutiny of the Draft Planning and Development Bill 2022](#) (PLS Report) was published on 26 April 2023.²⁷ The Cathaoirleach of the Joint Committee, Steven Matthews T.D., stated:

The Draft Planning and Development Bill 2022 represents **once-in-a-generation legislation that must endure for the next 20 years to support the needs and ambitions of the Irish People**... The legislation aims to bring greater clarity, consistency, and certainty to planning decision-making, by providing for a planning system which is more coherent and user-friendly.²⁸ (emphasis added)

The Joint Committee heard from a wide variety of stakeholders, including representatives from:

- Department of Housing, Local Government and Heritage (the Department)
- An Bord Pleanála (ABP)
- Office of the Planning Regulator (OPR)
- Construction Industry Federation (CIF)
- Irish Institutional Property (IIP)
- Property Industry Ireland (PII)
- Wind Energy Ireland (WEI)
- Association of Irish Local Government (AILG)
- County and City Management Association (CCMA)
- Local Authority Members Association (LAMA)
- Northern & Western Regional Assembly (NWRA)
- Irish Planning Institute (IPI)

²⁶ This is akin to a General Scheme, although it was not accompanied by an Explanatory Memorandum.

²⁷ 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.

²⁸ 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 (emphasis added).

- Royal Town Planning Institute (RTPI)
- Irish Environmental Network (IEN)
- Royal Institute of the Architects of Ireland (RIAI)
- Environmental and Planning Law Committee of the Law Society of Ireland
- Planning, Environmental and Local Government Bar Association (PELGBA)
- Dublin Democratic Planning Alliance (DDPA)
- Residents Associations²⁹

The Joint Committee identified particular areas of interest within the Draft Bill, which it felt required greater scrutiny and chose to focus on six key issues which emerged from the Draft Bill as set out in the box below.

Six Key Issues in PLS Report

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**³⁰ across these six key issues ranging from minor technical revisions and omissions to more detailed comprehensive recommendations. Typically, as part of the Bill Digest process the L&RS compares the recommendations made in the PLS report with their inclusion, partial or otherwise, in the subsequent Bill. However, due to the complexity and breadth of the Bill and the number of recommendations emerging from the PLS process, the PLS table was adapted to facilitate Departmental commentary. As such, it is not possible to provide a recommendation-by-recommendation comparison. Instead, where possible, analysis of how relevant recommendations have been incorporated or taken on board, is woven throughout the section on Select Principal Provisions.

The PLS table was adapted to group the recommendations according to each of the six key issues identified in the PLS Report and included a column for the Department to indicate whether a recommendation had been partially or fully addressed within the published Bill. The table also provided a column for the Department to provide commentary on recommendations that were not addressed within the final Bill. The L&RS is grateful to the officials in the Department of Housing, Local Government and Heritage for providing their assessment of the actions taken and comments in relation to PLS recommendations, which are replicated in the right-hand column of the table.

The table below prepared by the L&RS summarises the recommendations according to the commentary received from the Department to illustrate how many recommendations have been addressed in full, partially or not addressed in the Bill. Recommendation 143 was split with one element addressed in full and the other not addressed in the Bill.

²⁹ For a full list of witnesses who attended PLS hearings, see 5-8 of the [PLS Report](#).

³⁰ The full list of recommendations can be accessed at 51-75 of the [PLS Report](#).

Table 2: Departmental commentary re 153 PLS recommendations in published Bill

Addressed in full	Partially addressed	Not addressed
38	60	56

Table 3 PLS Committee Recommendations addressed within the Bill

Key Issue as per PLS Committee report	Recommendations from PLS Committee Report*	PLS Recommendations addressed in full within the Bill (e.g., 1-5,)	PLS Recommendations addressed partially within the Bill (e.g., 1-5,)	Commentary on PLS recommendations not addressed within the Bill
Key Issue 1- Access to Justice	Recs 1-14	1, 6, 10, 11, 13, 14	3, 4, 9, 12	<p>2) The function of the Development management system, be it Planning Authorities or An Coimisiún Pleanála, is not to mediate between particular parties but is to assess and determine planning applications/appeals, in an objective, balanced, timely and transparent manner, that reflects and takes appropriate account of national, regional and local spatial planning policies, complies with environmental directives, takes into consideration any submissions made, including those made by third parties, accords with relevant legislative provisions, the common good and the proper planning and sustainable development of the area within which the application or appeal is made.</p> <p>5) The Department can confirm that the earliest failure is the most relevant failure, therefore the wording is correct as published in the Bill.</p> <p>7) Marine Area Consents (MAC) is not a form of development consent, instead it is a process that establishes that the applicant is capable of undertaking the proposed project from a technical and financial point of view. It does allow the MAC holder to occupy that portion of the sea area to which the MAC applies for the activity or development proposed subject to obtaining</p>

Key Issue as per PLS Committee report	Recommendations from PLS Committee Report*	PLS Recommendations addressed in full within the Bill (e.g., 1-5,)	PLS Recommendations addressed partially within the Bill (e.g., 1-5,)	Commentary on PLS recommendations not addressed within the Bill
				<p>the necessary consents and meeting the conditions of the MAC. A MAC does not assess the planning and environmental merits of a proposed project as that is subject to the remit of An Coimisiún Pleanála or the coastal local authorities, as appropriate. It is, however, a requirement that before applying for development consent that a MAC be obtained by the applicant. Any development consent processes that follow the granting of a MAC are subject to judicial review.</p> <p>8) The Bill removes any right of appeal of a decision of the High Court to the Court of Appeal (which was available under the Act of 2000 but only with leave of the High Court) but recognises the constitutional right to seek leave to appeal to the Supreme Court. Applicants will still have an avenue for appeal on the basis of an application for leave to appeal to the Supreme Court pursuant to the criteria applying under Article 34.5 of the Constitution.</p> <p>The removal of the right of appeal to the Court of Appeal, while maintaining the right of appeal to the Supreme Court may reduce delays in the final determination of proceedings. It would also have a positive impact on the costs associated with JRs.</p>

Key Issue as per PLS Committee report	Recommendations from PLS Committee Report*	PLS Recommendations addressed in full within the Bill (e.g., 1-5,)	PLS Recommendations addressed partially within the Bill (e.g., 1-5,)	Commentary on PLS recommendations not addressed within the Bill
Key Issue 2 – Forward Planning	Recs 15-83	17, 29, 39, 40, 44, 45, 47, 57, 59, 61, 65, 68, 73, 78, 81	15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 30, 31, 37, 38, 41, 42, 43, 46, 49, 50, 51, 52, 60, 62, 63, 66, 69, 70, 72	<p>18) This provision only prevents An Bord Pleanála from attaching conditions where a licence applies. An Bord Pleanála may still attach whatever conditions are appropriate when a licence does not apply. The granting of a licence is a separate legislative matter.</p> <p>27) This is more appropriate to Guidelines and Building Control and will be considered as part of the update of the same.</p> <p>28) Although considered in the context of the Attorney General’s review, Government decided it would be prudent for any future reform of Compulsory Acquisition provisions to take account of the recently published findings of the Law Reform Commission on the matter and therefore decided to contain such reforms in separate legislation.</p> <p>For this reason, the provisions within Part 14 of the Planning and Development Bill 2023 remain largely aligned to those currently provided for in the Planning and Development Act 2000 (as amended).</p> <p>32) Having considered, it has been decided that this is not appropriate to primary legislation. Due to the varying circumstances of each case, it is more appropriate that this is decided on a case by case basis by the planning authority involved. SIDs already has significant engagement obligations.</p>

Key Issue as per PLS Committee report	Recommendations from PLS Committee Report*	PLS Recommendations addressed in full within the Bill (e.g., 1-5,)	PLS Recommendations addressed partially within the Bill (e.g., 1-5,)	Commentary on PLS recommendations not addressed within the Bill
				<p>33) The Bill enables the Minister to engage with any relevant body as part of the review of the National Planning Framework (NPF). For example all three organisations listed are currently feeding into the revision of the NPF currently underway, via their roles on the Planning Advisory Forum</p> <p>34) Stakeholder and public engagement is a key facet of good planning and is featured heavily throughout the Bill. Such engagement plays an important role informing the policy consideration and formation of the Minister and his or her Department. That said, individual submissions can run from hundreds to thousands of submissions and it is not practicable for individual responses to issue addressing each of the multiple matters raised in each submission.</p> <p>35) This matter was carefully considered as it has some obvious merits. However, there are practical and legal challenges relating to, for instance, the ownership of adjacent properties and applications that may span multiple sites (as is the case with water infrastructure) Thus it has been decided to retain the current notification via Site notice.</p>

Key Issue as per PLS Committee report	Recommendations from PLS Committee Report*	PLS Recommendations addressed in full within the Bill (e.g., 1-5,)	PLS Recommendations addressed partially within the Bill (e.g., 1-5,)	Commentary on PLS recommendations not addressed within the Bill
				<p>36) There is a requirement for objective clarity in the period the time period for making a decision on a planning application. The time period for observations is commenced in tandem with the submission of an application in order to provide certainty to all parties of the start of the period. Prior to the making of an application it should be noted that both a newspaper and site notice are required. From the day of submission of an application, it is available for inspection in the offices of the relevant planning authority and there is clear process for exhibiting applications online. Furthermore the ongoing roll out of electronic planning application process will further expedite the availability of information online.</p> <p>48) The EIA Portal applies where only EIA has been ruled in. Not all screening determine that EIA is required. Those that do not require EIA are not relevant to the EIA portal.</p> <p>53) This is an operational matter that is outside the scope of the primary legislation.</p> <p>54) This is not the function of the application process. Provision has been made under Section 160 for applications to be refused on the basis of past failures to comply.</p>

Key Issue as per PLS Committee report	Recommendations from PLS Committee Report*	PLS Recommendations addressed in full within the Bill (e.g., 1-5,)	PLS Recommendations addressed partially within the Bill (e.g., 1-5,)	Commentary on PLS recommendations not addressed within the Bill
				<p>55) The Department is actively considering this matter and, if appropriate, may propose a related amendment at Committee stage.</p> <p>56) The Department is actively considering this matter and if appropriate, may propose a related amendment at Committee stage.</p> <p>58) This recommendation conflicts with recommendation no.59 which, on consideration, has been implemented.</p> <p>64) This is required to allow for transitional circumstances and to allow for statutory plans to always be in place as legislation is being rolled out.</p> <p>67) There is capability in the NPF and consequential RESES to allow for consideration and identification of appropriate growth centres on a regional scale.</p> <p>71) This is not appropriate for this strategy. This is covered in a different strategy in s46(2)</p> <p>74) This is an operational rather than a legislative recommendation. However it should be noted that planning authorities carry out an important function in providing advice and information in this area at present,</p>

Key Issue as per PLS Committee report	Recommendations from PLS Committee Report*	PLS Recommendations addressed in full within the Bill (e.g., 1-5,)	PLS Recommendations addressed partially within the Bill (e.g., 1-5,)	Commentary on PLS recommendations not addressed within the Bill
				<p>as does a range of material and awareness raising by the OPR.</p> <p>75) These matters pertain to the secondary legislation, which is being considered and prepared presently.</p> <p>75a) See response to Recommendation no. 75 above.</p> <p>76) It will not be possible to list all exceptional circumstances. It will be left to a case specific judgement of the Planning Authority.</p> <p>77) The provisions for allotments maintained in the Bill are aligned to those presently found in the Act of 2000.</p> <p>79) The provisions for allotments maintained in the Bill are aligned to those presently found in the Act of 2000.</p> <p>80) Both sections 135 and 143 of the Bill have been reviewed for internal consistency.</p> <p>82) Having considered in consultation with the AGO and OPC, ambiguous is the correct word.</p> <p>83) It is appropriate for the consenting authority to fully consider the ramifications of a particular proposal from a proper planning a sustainable development perspective.</p>
Key Issue 3 – Timelines & Resourcing	Recs 84-103	84, 91, 96, 98, 100, 101, 103	85, 86, 87, 88, 89, 92, 93, 93a, 97, 100, 102	90) The present structure is deemed appropriate and is subject to ongoing review with regards to resourcing.

Key Issue as per PLS Committee report	Recommendations from PLS Committee Report*	PLS Recommendations addressed in full within the Bill (e.g., 1-5,)	PLS Recommendations addressed partially within the Bill (e.g., 1-5,)	Commentary on PLS recommendations not addressed within the Bill
				<p>Local Government HR matters are under the remit of the Local Government Act.</p> <p>94) There are serious financial, legal and environmental considerations incumbent on fulfilling the proposed obligation for retention in perpetuity. Public records are also adequately legislated for under the National Archives (Amendment) Act, 2018.</p> <p>95) The Bill outlines significant organisational restructuring of An Bord Pleanála, notably the separation of the decision making element of the organisation (the Planning Commissioners) from those with responsibility for oversight of its governance (the Board). It is in this context that the proposed new name of An Coimisiún Pleanála arises.</p> <p>99) This is an operational recommendation outside the scope of the primary legislation. It may be given consideration by the relevant Division of the Department of Housing, Local Government and Heritage.</p>
Key Issue 4 – Exempted Development	Recs 104-121	110, 111, 113, 116	109, 112, 114, 115, 117, 118, 121	<p>104) Currently, “any person” may make a request for a section 5 declaration under section 5 of the 2000 Act. Section 9 of the Bill provides that only a “relevant person” may make a request for a section 9 declaration.</p>

Key Issue as per PLS Committee report	Recommendations from PLS Committee Report*	PLS Recommendations addressed in full within the Bill (e.g., 1-5,)	PLS Recommendations addressed partially within the Bill (e.g., 1-5,)	Commentary on PLS recommendations not addressed within the Bill
				<p>Under section 10(1), a “relevant person” is defined as:</p> <ul style="list-style-type: none"> (a) the owner of land, (b) a person who, in accordance with subsection (2) of section 82, is eligible to make an application for permission for maritime development under Chapter 3 or 4 of Part 4, (c) the occupier of land who— <ul style="list-style-type: none"> (i) carries out or proposes to carry out an act or operation on the land, or (ii) makes or proposes to make a change in use of the land, with the consent of the owner of the land, (d) a person (other than the person referred to in paragraph (c)) who— <ul style="list-style-type: none"> (i) carries out or proposes to carry out an act or operation on the land, or (ii) makes or proposes to make a change in use of the land, with the consent of the owner of the land, or (e) a prescribed person. <p>The original intention of section 5 of the 2000 Act was to function as a mechanism by which a landowner or developer could establish the planning status of</p>

Key Issue as per PLS Committee report	Recommendations from PLS Committee Report*	PLS Recommendations addressed in full within the Bill (e.g., 1-5,)	PLS Recommendations addressed partially within the Bill (e.g., 1-5,)	Commentary on PLS recommendations not addressed within the Bill
				<p>something which it had done or wished to do, in terms of whether something was development or exempted development, and to satisfy a purchaser of the land or a lender as to the status of development that had been carried out on the lands.</p> <p>The challenge that has arisen over time is that increasing numbers of third parties sought section 5 declarations from planning authorities.</p> <p>A number of problems arise from this practice, namely:</p> <ul style="list-style-type: none"> • the owner / occupier of the land might be unaware that a section 5 declaration had been sought in respect of its land, and • the planning authority's consideration of the section 5 declaration is limited to the information put before it by the third party, which may involve incomplete information. <p>Having considered both the recommendation of the JOC and the legal advices of the AGO, the new Bill retains the new provision for "relevant person" rather than "any person".</p> <p>105) See response to Recommendation 104 re: Department's policy on "any person".</p>

Key Issue as per PLS Committee report	Recommendations from PLS Committee Report*	PLS Recommendations addressed in full within the Bill (e.g., 1-5,)	PLS Recommendations addressed partially within the Bill (e.g., 1-5,)	Commentary on PLS recommendations not addressed within the Bill
				<p>106) This has been maintained at 8 weeks to align consistently with the overall timeframes set out in the Bill.</p> <p>107) See response to Recommendation 104 re: Department's policy.</p> <p>108) For certain unauthorised Developments, such as quarries/peat extraction s.320 (3) for example, this is already the case. However, in the interest of the operational requirements of the enforcement authority that an effective statute of limitations is maintained. Also to note, regardless of the expiry of 7 year enforcement period, the development itself will remain unauthorised.</p> <p>119) This should remain "may" to give operational flexibility to the planning authority in their assessment of the site and the level of endangerment involved.</p> <p>120) This has been reviewed and the word "to restore" is not required for the effectiveness of this provision. The notice itself will set out what is required, which may be to restore.</p>
Key Issue 5 - National Planning Policy Statements	Recs 122-134	122	126, 131, 133, 134	123) This is separate to this Bill and being considered by the Department of Housing, Local Government and Heritage.

Key Issue as per PLS Committee report	Recommendations from PLS Committee Report*	PLS Recommendations addressed in full within the Bill (e.g., 1-5,)	PLS Recommendations addressed partially within the Bill (e.g., 1-5,)	Commentary on PLS recommendations not addressed within the Bill
				<p>124) The purpose of National Planning Policy Statements is to articulate policy. This can apply to development and other planning processes, and the Bill as drafted is considered to be appropriate.</p> <p>125) Wording is appropriate as there may be occasions where it is appropriate for the planning authority to depart from the Guidance.</p> <p>127) National Planning Statements replace the current section 28 guidelines and section 29 ministerial policy directives under the Act of 2000.</p> <p>A National Planning Statement will contain two separate parts that have a different status in terms of the obligations attaching to each part and the particular planning function being exercised. The first part is a high-level statement of national planning policies and measures to be integrated into regional and local plan making. The second part is a more granular practical guidance that affords flexibility to planning authorities as to how to implement the principles of national planning policy and measures.</p> <p>Section 24 of the new Bill provides for the matters that must be taken into consideration when formulating a</p>

Key Issue as per PLS Committee report	Recommendations from PLS Committee Report*	PLS Recommendations addressed in full within the Bill (e.g., 1-5,)	PLS Recommendations addressed partially within the Bill (e.g., 1-5,)	Commentary on PLS recommendations not addressed within the Bill
				<p>National Planning Statement and the bodies that the Minister may consult with, including:</p> <ul style="list-style-type: none"> • such other Ministers of the Government as the Minister considers appropriate, • such public bodies as the Minister considers appropriate, • any stakeholders or other persons the Minister considers appropriate, and • members of the public. <p>This means the Minister will be able to consult with elected members, including their representative bodies, and local authorities in relation to any National Planning Statements where it is relevant to do so. Some NPS that may be of a technical nature may not require such consultation but as a matter of course, there will be consultation process, including engagement with relevant public bodies, Departments and stakeholders.</p> <p>128) Under section 23 of the Bill, National Policy Statements require approval of Government.</p> <p>129) See response to Recommendation 127</p> <p>130) Minister can consult anybody considered appropriate for the particular National Planning Statement in question, allowing flexibility to consult with relevant sectoral expertise where required.</p>

Key Issue as per PLS Committee report	Recommendations from PLS Committee Report*	PLS Recommendations addressed in full within the Bill (e.g., 1-5,)	PLS Recommendations addressed partially within the Bill (e.g., 1-5,)	Commentary on PLS recommendations not addressed within the Bill
				132) This is an operational recommendation outside the scope of the primary legislation. It may be given consideration by the relevant Division of the Department of Housing, Local Government and Heritage.
Key Issue 6 - Omissions	Recs 135-153	135, 138, 139, 143a, 153	136, 137, 140, 144, 145, 146, 152	<p>141) This is a drafting convention. The term is not capitalised in climate legislation and in the interests of consistency will remain lower in the new Bill.</p> <p>141a) The word ‘promote’ reflects the positive purpose of the development plan which is to set out a framework for future development in an area.</p> <p>142) The words ‘facilitate’ and ‘promote’ reflect the positive purpose of the development plan which is to set out a framework for future development in an area.</p> <p>143) The policy of Government is reflected in considerations attached to development of the NPF policy.</p> <p>147) This is an operational recommendation outside the scope of the primary legislation. It may be given consideration by the relevant Division of the Department of Housing, Local Government and Heritage.</p>

Key Issue as per PLS Committee report	Recommendations from PLS Committee Report*	PLS Recommendations addressed in full within the Bill (e.g., 1-5,)	PLS Recommendations addressed partially within the Bill (e.g., 1-5,)	Commentary on PLS recommendations not addressed within the Bill
				<p>148) This Section of the Bill relates to public components which may be ‘taken in charge’ and therefore not appropriate to the suggested definitions.</p> <p>149) The Bill retains “may” to allow for the necessary flexibility to take consideration of conditions. Tree Preservation Orders are provided for in Part 8 (sections 242 and 243) and further direction may be issued, if appropriate, via Guidance and/or Circular rather than in the primary legislation.</p> <p>150) Sites designated for environmental protection are already set out in Irish and European legislation.</p> <p>151) Wording in Bill takes account of the status of existing property rights.</p>

Recommendations have been numbered according to the numbering system used in the Recommendations section of the PLS report

Part 3, Chapter 5- Local Development Plans

Chapter 5 of Part 3 provides for the making of a development plan, including the procedures for preparing, making, and varying the development plan, and ensuring the alignment of the development plan with national and regional policy. Chapter 5 comprises of section 40 – 66 of the Bill.

The Current Legislative Framework for Local Development Plans

County/City Development Plan (CDP)

In Ireland, local authorities, either City or County Councils, act as planning authorities within their respective areas. Currently, they are obliged under Section 9 of [the Planning and Development Act 2000](#) (as amended) to create a Development Plan (City/County Development Plan [CDP]) for their entire functional area. This statutory plan, comprising a written statement and maps, sets the strategy for proper planning and sustainable development, aligning with regional and national plans, policies, and strategies.³¹ The CDP, which is the primary planning policy document for the local area, includes zoning of land for specific types of development and may list sites and features for protection.

CDPs are updated every six years, with a mandatory review process starting within four years of each plan's adoption. Elected council members, with technical support from the planning authority and following public consultation, are responsible for creating, reviewing, varying, and adopting the CDP.

A Strategic Environmental Assessment is required during the CDP creation to integrate environmental considerations.

Local Area Plans

Additionally, planning authorities can create Local Area Plans (LAPs) for specific areas, particularly where significant development is expected. LAPs provide more granular planning policies and must be consistent with the CDP's objectives. They include detailed provisions for zoning, development phases, and community amenities. The creation and maintenance of LAPs are also governed by the [Planning and Development Act 2000](#), particularly Sections 18, 19, and 20. Detailed plans for specific areas can be reviewed and potentially revised every six years, though this can be deferred if they remain aligned with the CDP.³²

Local Economic and Community Plans (LECPs)

Introduced by the [Local Government Reform Act 2014](#), section 44, LECPs are six-year plans focusing on the social, economic, and environmental wellbeing of communities. They are prepared by local authorities in association with Local Community Development Committees and must be consistent with the CDP and Regional Spatial and Economic Strategies.

³¹ *Planning and Development Act 2000* available at: [here](#)

³² Department of Housing, Local Government and Heritage, "Development Plans" updated 25 November 2021 available [here](#).

The Major Changes

The major changes in the new section on Local Development Plans in the Planning and Development Bill include:

Extended Lifespan of the Development Plan

[Section 40](#) of the new Bill proposes extending the lifespan of the plan from six to 10 years, with the option for the Minister to extend it by up to 2 years in exceptional circumstances. The development plan must be completed within 2 years and 3 months from the giving of notice of intention to make a development plan under section 52 (per section 53(18)). According to the [Explanatory Memorandum](#) for this Bill, an interim review plan must occur at year 5 to ensure effective alignment with the Census, the National Planning Framework and the relevant regional spatial and economic strategy.³³

The Local Authorities Members Association (LAMA) had noted their concern about the extended ten year duration development plans without what they call “substantial mid-term reviews”, as this could limit the input of newly elected Councillors. They advocated for more meaningful mid-term reviews to ensure the plans reflect local intentions and align with national strategies.³⁴ However, the County and City Management Association approve fully the extension to ten years of the lifespan for development plans but do not agree with the time span of 1-2 years for the preparation of the plan. They call for this to be extended to a 3 to 4 year period due to the level of complexity, consultation and resource requirement needed.³⁵

IHREC also called for the Bill for development plans to be compiled and finalised in five-year cycles as opposed to the proposed ten-year cycles, with a review period of three-years for each development plan. They asked for this in order to bring this Bill in line with the periods provided for in respect of Traveller accommodation programmes under the [Housing \(Traveller Accommodation\) Act 1998](#).³⁶

Section 41 Content of Development Plan

Under [Section 41](#) of the proposed bill, development plans shall set out:

- an overall strategy for proper planning and sustainable development,
- strategies and statements prepared under sections 42 to 49 which relate to sustainable development and regeneration, economic development, housing development, creation, improvement and preservation of sustainable places and communities, environment and climate change, and conservation of heritage.

³³ Section 54(2) of the Planning and Development Bill 2023 states that “The chief executive of a planning authority shall, not earlier than 4 years and not later than 4 years and 9 months after the making of a development plan, give a report on the progress achieved towards securing the implementation of the development plan to the members of the authority (in this section referred to as an “interim implementation report”).”

³⁴ Local Authorities Members Association, '[LAMA Presentation to JHLGH Committee 22/02/2023](#)'.

³⁵ County and City Management Association, '[CCMA Opening Statement to the Joint Committee on Housing, Local Government and Heritage on the Pre-Legislative Scrutiny of the Draft Planning and Development Bill 2023](#)'.

³⁶ Irish Human Rights and Equality Commission, '[Submission on the Planning and Development Bill 2022](#)' October 2023.

- objectives for the promotion, management and protection of areas, uses and structures which relate to the aforementioned strategies;
- settlement objectives of the planning authority (per section 50);
- a record of protected structures in the functional area.

The “integrated overall strategy” must be set out in a written statement under section 41(2). Section 41(6) states that this written statement must include objectives for the zoning of land and a map which illustrates the zoning objectives applicable to all land in the functional area of the planning authority. This is a change from section 10 of the Act of 2000 which afforded the planning authority a discretion to zone only areas that in its opinion required uses to be so indicated.

The section also requires that where a development plan departs from National Planning Policy Guidance a statement of the reasons for the departure be included in the written statement. Planning authorities will now be asked to explain why, in their opinion, “the departure is not detrimental to the proper planning and sustainable development of the area” and “the departure is justified having regard to the proper planning and sustainable development of the area” (per section 41(8)).

Section 41(10) states that there “shall be no presumption in law that any land zoned in a development plan for a particular use or range or mixture of uses shall remain so zoned in any subsequent development plan”.

Section 42-48 Obligation to prepare strategy for sustainable development and regeneration

The Development Plan shall include “six thematic strategies” (per the [Explanatory Memorandum](#)) and shall ensure they are coordinated and consistent with each other and the integrated overall strategy. The contents of these thematic strategies are set out in sections 42 to 48 of the Bill and include:

- a strategy for the sustainable development and regeneration of the functional area of the planning authority (section 42);
- a strategy for the appropriate economic development of the functional area of the planning authority (section 43);
- a housing development strategy (sections 44 and 45);
- a strategy for the creation, improvement and preservation of sustainable places and communities for the functional area of the planning authority (section 46);
- a strategy for the conservation, protection and improvement of the environment (including the facilitation of climate adaptation and mitigation) for the functional area of the planning authority (section 47);
- a strategy for the conservation, protection, management and improvement of the natural and built heritage and landscape in the functional area of the planning authority (section 48).

These strategies encompass urban development, transportation systems, infrastructure provision, economic activities including retail, housing distribution, and infrastructural investment. They also cover the preservation of linguistic and cultural heritage, climate adaptation, and management of natural and built environments. Development plans must contain specific objectives for land management and use, including detailed objectives for settlements over 1,500 population (per [explanatory memorandum](#)).

The plans are required to be consistent with existing housing strategies and consider the needs of diverse communities, including the traveller community. IHREC had recommended that section 45(3)(g) of the Bill should be amended to reflect that local authorities are under obligations to put forward objectives in respect of Traveller-specific accommodation in their respective development plans as opposed to simply setting out statements in respect of same and this change was made.³⁷

Development Management Statement (Section 49): under this section, planning authorities shall prepare a statement containing objectives for the control of areas, uses of land and structures in its functional area, which is as a “development management statement”. This new requirement underscores the importance of clear guidelines for managing development in various areas.

Enhanced Role of the Office of the Planning Regulator (Section 51)

This section of the Bill provides that at least three months before commencing a review of a development plan, a planning authority shall consult the Office of the Planning Regulator (OPR) in relation to the preparation of an integrated overall strategy. The increased involvement of the Office in the early stages of development plan preparation aims to streamline the process and ensure alignment with national and regional policy.

Public Rights of Way (Section 58):

The new provisions concerning public rights of way indicate an emphasis on preserving public access and mobility within development plans. Subsection 1 of this section provides:

“Where a planning authority proposes to include a provision in a development plan relating to the preservation of a specific public right of way, it shall, prior to the publication of notice of the preparation of the draft development plan under section 53 or notice of the proposed variation of the development plan under section 56, serve notice (which shall include particulars of the provision and a map indicating the right of way) of its intention to do so on any owner and occupier of the land over which the right of way exists.”

Expedited Procedure for Amendments:

Sections 59 and 60 of the Bill provide for a new expedited procedure for amending development plans to align with new or amended National Planning Statements. Section 59 relates to the obligations of planning authorities following the issue or amendment of a National Planning Statement. Under this section, planning authorities shall submit a report to the Office of the Planning Regulator setting out their view as to whether their development plan is “materially consistent with the National Planning Policies and Measures”. If it is their view that there is a material inconsistency, then the planning authorities shall set out in their report the steps they propose to take to rectify this inconsistency. If the OPR informs the planning authority that the Office is “satisfied with the steps proposed by a planning authority”, then under section 60(2) the chief executive of the planning authority, within six weeks of being informed by the OPR, “shall prepare a draft variation to the development plan concerned and shall conduct a screening for strategic environmental assessment in respect of the draft variation”.

³⁷ Irish Human Rights and Equality Commission, ‘[Submission on the Planning and Development Bill 2022](#)’ October 2023.

Ministerial Powers

Section 61-65 relates to the powers of the Minister for Housing, Local Government and Heritage. The enhanced powers of the Minister, including the ability to issue urgent directions under section 65, is a significant change that provides a mechanism for rapid adjustments to development plans in response to national or strategic needs. The expansion of the Minister's powers to issue directions reflects a move towards more centralised control in certain circumstances, especially for developments of national or strategic importance.

These changes aim to provide more up-to-date plans with greater certainty for stakeholders and align local planning with broader regional and national strategies.

The expansion of the Office of the Planning Regulator's oversight and the increased authority of the Minister to issue directives under the new provisions of the Planning and Development Bill could potentially reduce the decision-making powers of county councillors in specific areas. The Association of Irish Local Government (AILG) expressed concern that the Bill reinforces a centralised planning structure with the County Development plan locked into rigid National and Regional Planning frameworks. They argue that the increased authority of the Office of the Planning Regulator would curtail the discretion of councillors in shaping their local areas based on their practical understanding of local needs and capabilities. With these changes, county councillors might find their decisions more scrutinised for alignment with national and regional strategies, and they may have to adhere to more stringent guidelines set by higher authorities. This could limit their ability to make autonomous decisions on local development plans, especially if these plans diverge from broader governmental objectives or require expedited amendments to align with national planning statements.³⁸

This limiting of local authorities' powers are not in line with the recommendation of the Congress of Local and Regional Authorities of the Council of Europe. In their October 2023 "[Monitoring of the application of the European Charter of Local Self Government in Ireland Report](#)" Ireland's progress in local government reform was assessed and recommendations were made. While acknowledging Ireland as a strong democracy, the report noted that the country remains highly centralised compared to other European nations. The rapporteurs expressed concern over several issues, including that local authorities have limited autonomy in public affairs and resources and excessive administrative oversight. To address these concerns, the report recommends *inter alia*, transferring more functions to local authorities, continuing executive reforms, enhancing local democratic control over internal administration, reducing administrative supervision and increasing local governments' discretionary funds.

Chapter 6 – Urban Area Plans, Priority Area Plans and Coordinated Area Plans

In addition to Development Plans, local authorities will be able to choose from a suite of other plans to adopt which are covered in Chapter 6 of the Bill and which replace the previous Local Area Plans established by the [Planning and Development Act 2000](#).

³⁸ Association of Irish Local Government, '[Opening remarks by Cllr Pat Fitzpatrick, President, Association of Irish Local Government to members of the Oireachtas Committee on Housing, Local Government and Heritage regarding the Planning & Development Bill 2022](#)'.

Section 67 -78 provides details on three distinct types of Area Plans, each designed to cater to specific developmental needs and contexts. These plans aim for a more localised and focused approach, promoting active engagement with local communities and offering clearer expectations for stakeholders involved in planning and consent processes (per [Explanatory Memorandum](#)).

1. **Urban Area Plans:** These plans are designated for regional growth centres and key towns recognised at the regional level in the regional spatial and economic strategy. They are applicable where the scale of planned growth necessitates an integrated approach to land use and transportation planning across the whole urban area.
2. **Priority Area Plans:** Targeted for specific parts of towns and cities, these plans focus on areas capable of significant housing or other developments, or areas needing a custom plan for regeneration and renewal.
3. **Coordinated Area Plans:** These are prepared jointly by multiple planning authorities. They focus on the development of a settlement or a part of an urban area that spans across their functional areas. Such areas are identified in the regional spatial and economic strategy.

Chapter 6 of the Bill also updates the process for preparing and implementing Area Plans, replacing the methodology set out in Chapter II of Part II of the [Planning and Development Act 2000](#). Additionally, it enhances the oversight role of the Office of the Planning Regulator regarding Area Plans.

Part 9- Judicial Review and Decision-Making

Chapter 1 – Judicial Review Process

Part 9 consists of two Chapters and comprises sections 250-274 of the Bill. Chapter 1 (ss 250 - 262) provides for the Judicial Review Process while Chapter 2 (ss 263 – 274) deals with costs relating to bringing and defending judicial review proceedings under this Part or otherwise relating to the environment.

Section 250 deals with interpretation under this Part, setting out various definitions including “relevant body” to mean —

- (a) a planning authority or local authority,
- (b) the Commission,
- (c) a Minister of the Government,
- (d) the Office of the Planning Regulator,
- (e) the competent authority within the meaning of the Aircraft Noise (Dublin Airport) Regulation Act 2019,
- (f) the Government, or
- (g) a regional assembly;

The section also provides when failure to perform a function occurs in the context of timelines.

Section 251 provides that the process of judicial review under Part 9 is the only means of challenging the validity of any decisions made, acts done, or failure to perform a function by a relevant body under this Act.

Section 252 sets out the procedure for initiating Part 9 judicial review proceedings in the High Court. This remains largely unchanged from the Draft Bill. For proceedings to commence, an application must be made to the High Court by way of notice of motion and the party making the application must notify the relevant body, the notice parties, and any other intended respondents. The motion must be grounded in a statement and accompanied by a sworn affidavit. During PLS, it was highlighted that section 249(2) of the Draft Bill (akin to section 252 of the published Bill) also required proceedings to be commenced by notice on motion and legal professional witnesses advised that this approach “requires additional administrative and judicial resources, time and costs for proceedings, thereby causing delays in the process.”³⁹ It means that an additional time frame of approximately four days is required to allow for any dispute of the application. The “on notice” application process was abolished by [section 32](#) of the *Planning and Development (Amendment) Act 2010* for this reason and an *ex parte* application was introduced. In the [General Scheme of the Housing and Planning and Development Bill 2019](#), subsection 1 of Head 4 of that Bill proposed to revert back to the pre-existing provisions removed in 2010, providing that judicial review leave applications be made by “motion on notice”. While the Bill lapsed with the previous Dáil, an early 2020 submission from the Law Society of Ireland in relation to the 2019 Bill, raised concerns around the proposed change noting that:

...it may be that the suggested saving of court time and expense is illusory and the reduction in cases going to full hearing may not be set off by the number of cases where hearing time is increased by an additional hearing, before all evidence is filed.⁴⁰

The Joint Committee under Recommendation 4 of the PLS Report, recommended “that section 249(2) of the Draft Bill be amended to reflect that Judicial Review applications shall commence *ex parte*.”⁴¹ Although the leave of the High Court is no longer required to make an application which is a change from the 2000 Act where this was a requirement before bringing such proceedings, the change from an *ex-parte* application to a notice on motion may nevertheless result in increased delays and costs. As seen in the PLS table above, while the Department advised that recommendation 4 from the Joint Committee to retain *ex-parte* applications was partially addressed, it is not clear from the commentary provided or indeed the Explanatory Memorandum as application on “notice on motion” was introduced and the *ex-parte* procedure removed.

Section 253 sets out the timelines within which judicial review proceedings can be commenced. This remains unchanged from the 2000 Act, as it must be within eight weeks of the decision, act or failure being challenged. Provision is also made for the extension of the timeline where the High Court is satisfied there is a good and sufficient reason for doing so and the delay was outside the control of the party applying for the extension. It also provides that where the eight-week period expires on a day that is a Saturday, Sunday, or public holiday the time frame will be deemed to expire on the next working day.

³⁹ 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 11.

⁴⁰ Law Society of Ireland, ‘[Submission on the General Scheme of the Housing and Planning and Development Bill 2019](#)’, January 2020 at 8.

⁴¹ 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 20.

Section 254 provides that an applicant may only rely on the grounds set out in the statement of grounds filed with their judicial review application which largely reflects the current position. An applicant will only be able to amend their statement of grounds by application to the High Court for leave to do so and on notice to all respondents and notice parties. The High Court must be satisfied there is a good and sufficient reason for doing so and that the failure to include the matter in the statement of grounds was outside the control of the party making the application.

Section 255 provides for applications to strike out Part 9 judicial review proceedings at any time. The High Court can make an order to strike out proceedings where it is satisfied of at least one of the following:

- lack of standing
- being out-of-time
- a failure to exhaust appeals and administrative procedures
- a failure to disclose an arguable case or bound to fail

Where the application relates to a lack of sufficient interest and the High Court considers that some, but not all, of the applicants in the proceedings do not have such a sufficient interest, or that an applicant has a sufficient interest in some, but not all, of the related matters, it can take several actions. This includes striking out the proceedings against any applicant it is satisfied the applicant does not have such a sufficient interest, without striking out the proceedings in their entirety or directing an applicant to discontinue the proceedings regarding a specified matter which the Court is satisfied that the applicant does not have a sufficient interest in. The High Court has the power to make orders to give effect to these decisions.

Where the reason relates to an applicant disclosing no arguable case or proceedings are bound to fail, and the High Court is satisfied that some, but not all, such grounds disclose no arguable case or are bound to fail, it may direct the applicant to discontinue proceedings in relation to ground(s) that it considers disclose no arguable case or are bound to fail.

Section 256 provides for applications to be made by a relevant body to the Court to stay (pause) judicial review proceedings when a decision by that body is pending which is the subject matter of the proceedings.

Section 257 provides that a party in judicial review proceedings may only plead grounds in relation to which that party has a sufficient interest.

Section 258 sets out the definition of sufficient interest and sets out the criteria for certain groups to meet this definition who may bring judicial review proceedings. A sufficient interest is not limited to an interest in land or a financial interest. Subsection 1 provides that a sufficient interest is one where the applicant is directly or indirectly materially affected by the matter. Subsection 2 provides that environmental organisations may bring proceedings, regardless of whether they are directly or indirectly affected by the matter once several governance criteria are met. While this aligns with the current provision under [section 50A](#) of the 2000 Act which requires an applicant has a 'sufficient interest'. The governance criteria are:

- in existence for at least a year prior to the proceedings being issued and
 - is a company or
 - an undertaking incorporated under the laws of a Member State that has limited liability and a constitution
- the constitution includes an object related to the promotion of environmental protection relevant to the proceedings and this has been pursued for at least one year prior to bringing the proceedings

- has at least 10 members at the time proceedings are taken
- a resolution has been passed by the board of directors (or equivalent governing body) authorising the bringing of the proceedings prior to them being brought

Applicants other than an unincorporated (a group that does not have separate legal personality from its members such as a residents' association) body of persons can be regarded as having a sufficient interest in a matter, regardless of whether it is, or may be, directly or indirectly materially affected by the matter. This is possible where the applicant made:

- submissions of a material nature to or before the relevant body whose decision, act or failure is at issue in the proceedings, and
- made such submissions in accordance with the requirements applicable to such submissions.

For an unincorporated body or persons to be regarded as having a sufficient interest, it must also satisfy several governance requirements as follows:

- be a partnership, or
- a limited partnership, or
- may sue/be sued in the High Court in its own name, or
- the body
 - has a constitution,
 - holds a vote among its members, in accordance with its constitution (written governing document), on whether to apply for judicial review proceedings
 - authorised to bring the proceedings in relation to the ground by at least two thirds of the members casting a vote, and
 - provides, with its application an affidavit sworn or attested to by a person on behalf of the body, in which the person swears to the body's compliance with the prior listed requirements, the total number of members of the body, and exhibits a list of the names and addresses of the members of the body who cast a vote in favour of bringing the proceedings.

While Section 258 retains the current 'sufficient interest' test provided for in the 2000 Act, there are some amendments which appear to result in a narrower and more restrictive test. During PLS, legal professional witnesses observed the impact of a more restrictive approach, including the Law Society Environmental and Planning Committee who stated that:

...rules on standing which are too narrow could deprive people of their right to seek legal review of planning decisions and delay proceedings where the new standing requirements are challenged. Consequently, questions remain regarding the interpretation and compatibility of these standing rules with the Aarhus Convention and EU Law.⁴²

Section 258 introduces a new dimension requiring that an applicant must be 'directly or indirectly materially affected by the matter'. As noted above, for an unincorporated body or persons (like a

⁴² 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 15. Also see [Note 1](#) on how the Aarhus Convention intersects with the Bill.

residents' association) to be regarded as having a sufficient interest, it must satisfy several governance requirements. Currently, under the 2000 Act this is not the case.

During PLS hearings, witnesses raised concerns around these amendments which appear to be largely unchanged in the final published Bill. In particular, legal experts, such as Professor Áine Ryall⁴³, in her personal submission to the Joint Committee noted that:

...the current law on 'sufficient interest' is relatively stable following the decision of the Supreme Court in [Grace and Sweetman v An Bord Pleanála \[2017\] IESC 10](#). There is an obvious danger here that interfering with the current definition of 'sufficient interest' will trigger further uncertainty and, inevitably, further litigation... It is important to be alert to the risk of unintended consequences.⁴⁴

The Joint Committee made a recommendation for further clarification to be provided as to the rationale for introducing governance obligations on unincorporated associations.⁴⁵ The Explanatory Memorandum nor the Departmental commentary in the PLS table in the previous section appear to provide the rationale for this change.

It was also noted during PLS that there was no definition provided of what 'materially affected' entails in the Draft Bill⁴⁶ and none appears to have been included in the published Bill or Explanatory Memorandum.

Section 259 provides that there is no appeal from a decision of the High Court to the Court of Appeal. Provision is made for an appeal to the Supreme Court, according to Article 34.5.4° of the [Irish Constitution](#) where the matter gives rise to questions of public importance or in the interests of justice. Currently, the decision of the High Court is final, and no appeal lies from it to the Court of Appeal save with the leave of the High Court. Leave can only be granted where the High Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken.⁴⁷ Section 259 reflects what was contained in section 249(15) of the [Draft Bill](#) and the Joint Committee made a recommendation that the jurisdiction of the Court of Appeal should be reinstated⁴⁸. During PLS, legal professional witnesses also warned of potential constitutional issues with the section and noted that it represents a general restriction of access to justice.⁴⁹ IHREC in their September 2023 [submission](#)

⁴³ Prof Áine Ryall is Chair of the [UN ECE Aarhus Convention Compliance Committee](#) but the submission was made in her personal capacity.

⁴⁴ Professor Áine Ryall, '[Submission to the Joint Committee on Housing, Local Government & Heritage on the Draft Planning and Development Bill 2022](#)', 8 March 2023 at 7 (emphasis added).

⁴⁵ Recommendation 12 - 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 21. See [Note 1](#) for how the Aarhus Convention intersects with the Bill.

⁴⁶ 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 14.

⁴⁷ See De Blacam, *Judicial Review*, at para 54.26.

⁴⁸ Recommendation 9 - 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 20.

⁴⁹ 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 13.

[on the Bill](#)⁵⁰ highlighted their concern at this proposal as it suggested that it “extinguishes any right of appeal unless issues of constitutional validity or matters of general public importance are raised.”⁵¹ IHREC recommended that section 249(15) should be amended to reinstate the jurisdiction of the Court of Appeal, which echoes recommendation 8 of the Joint Committee. In their submission, IHREC also expressed concern that the limitation could potentially undermine and infringe article 9(2) of the [Aarhus Convention](#) which provides that the public should have wide access to justice in environmental matters, including planning.⁵² In the Departmental commentary provided in the PLS table (see recommendation 8), it advised that this change is retained as it “may reduce delays in the final determination of proceedings” and could also “have a positive impact on the costs associated with JRs.”⁵³

Section 260 provides that the High Court can direct that a relevant body amends a decision or document, performs a function, or exercises a power, where the Court considers that such a direction is a satisfactory remedy in relation to a ground pleaded concerning an error. Where this is done to the Court’s satisfaction and the relevant body has addressed the ground to which such an order relates, or rendered it moot in whole or in part, the Court can make an order striking out the ground.

Section 261 empowers the High Court to take a number of actions where it considers that a decision, failure or act by a relevant body, the subject of the judicial review, is invalid or ought to be quashed. It can make declarations of invalidity, quash particular aspects of the decision or remit matters to the relevant body.

Section 262 provides that judicial review proceedings, and an appeal from such proceedings, must be dealt with swiftly and be consistent with the administration of justice.

Chapter 2 – costs in relation to certain proceedings

Chapter 2 (ss 263 – 274) deals with the costs of bringing and defending judicial review proceedings under this Part or otherwise relating to the environment. It introduces new rules on costs, including a scale on fees as well as the Environmental Legal Cost Financial Assistance Mechanism.

Section 263 provides definitions relevant to the Chapter. This includes setting out what is meant by “Aarhus Convention proceedings” and what is not included in the meaning.

Table 4: Types of proceedings considered “Aarhus Convention proceedings” in the Bill

Included	Excluded
Part 9 judicial review proceedings	Claim against any public body acting in a judicial or legislative capacity

⁵⁰ Irish Human Rights and Equality Commission, ‘[Submission on the Planning and Development Bill 2022](#)’, September 2023.

⁵¹ Irish Human Rights and Equality Commission, ‘[Submission on the Planning and Development Bill 2022](#)’, September 2023, original emphasis at 51.

⁵² Irish Human Rights and Equality Commission, ‘[Submission on the Planning and Development Bill 2022](#)’, September 2023, original emphasis at 51.

⁵³ See PLS table in section entitled ‘PLS’.

Other proceedings where an applicant challenges an act or omission by any person that contravenes a provision of this Act, or an enactment made under this Act, relating to the environment.	Proceedings, or any part of proceedings for which damages, arising from damage to persons or property, are sought
	Proceedings instituted by a body established by or under statute, a local authority within the meaning of the <i>Local Government Act 2001</i> or a Minister of the Government.

Source: Planning and Development Bill 2023

Section 264 sets out what type of proceedings this Chapter applies to. These are Aarhus Convention proceedings and related proceedings involving the Aarhus Convention.

Section 265 provides for costs in relation to certain proceedings. It provides that each party must bear their own costs, subject to certain exceptions. These exceptions include:

- where the actions/omissions of the respondent or notice party, or both, contributed to the applicant obtaining relief. Such costs must not exceed the monetary amount prescribed under section 266 (that will be set out in Regulations) unless the court is satisfied that, due to the exceptional circumstances of the case there is:
 - a reason of exceptional public importance for awarding costs exceeding that amount, and
 - it is in the interests of justice to so award.
- the court considers:
 - that a claim or counterclaim by the party is frivolous or vexatious
 - because of the manner in which the party has conducted the proceedings, or
 - where the party is in contempt of court.

There is also no obligation on the part of an applicant to give security for costs or an undertaking as to damages in cases.

Section 266 provides for the regulation of costs payable in respect of specified cases. It does this by empowering the Minister for the Environment, Climate and Communications, after consultation with the Minister for Housing, Local Government and Heritage and the Minister for Public Expenditure, National Development Plan Delivery and Reform, to make regulations to prescribe monetary amounts in relation to prescribed cases. These are:

- costs awarded to an applicant, in respect of applicable proceedings in which the applicant succeeds in obtaining relief;
- contribution made from the environmental legal costs financial assistance mechanism to the costs of an applicant who failed to obtain relief or only in part;
- contribution made from the environmental legal costs financial assistance mechanism to the costs awarded to an applicant where an application has been made for a determination to confirm whether the proceedings are proceedings to which the special costs rules in this Chapter apply.

The Minister for the Environment, Climate and Communications is also empowered to prescribe varying monetary amounts for:

- different types of legal work conducted by legal practitioners;

- different types of legal proceedings and applications;
- different court jurisdictions in which proceedings are taken;
- proceedings of differing durations;
- work carried out by different categories of legal practitioners, including by reference to the amount of experience possessed by, and the nature of legal qualification of, the legal practitioner.

A review of the monetary amounts prescribed in regulations by the Minister for the Environment, Climate and Communications in consultation with the Minister and the Minister for Justice must be conducted every period of 5 years after the making of the regulations.

Section 267 provides for the establishment of a new environmental legal costs financial assistance mechanism, the purpose of which is to contribute to legal costs incurred by applicants that received none or only part relief. The Minister for the Environment, Climate and Communications is responsible for operating and administering the environmental legal costs financial assistance mechanism. That Minister may authorise another person, via regulations, to administer the mechanism. The financial assistance mechanism is to be funded out of moneys provided by the Oireachtas for that purpose. Section 268 sets out the application process for accessing assistance from the environmental legal costs financial assistance mechanism. Applicants who have not obtained relief or have only done so in part are eligible to apply for a contribution to their legal costs. The section also sets out the circumstances which exclude an applicant from being entitled to the contribution as follows:

- failure to submit a statement of financial resources in the prescribed form and manner;
- failure to submit a statement of eligibility in the prescribed form and manner;
- where a determination is made that the applicant has sufficient financial resources or does not meet eligibility criteria;
- costs are awarded against the applicant;
- High Court on its own Motion or by application by any party to the proceedings or the administrator of the mechanism (within 8 weeks determination of proceedings) due to:
 - Frivolous or vexatious proceedings
 - Inappropriate manner of proceedings by applicant
 - Applicant is in contempt of court
 - Not in the interests of justice;
- insufficient interest in one of the grounds pleaded.

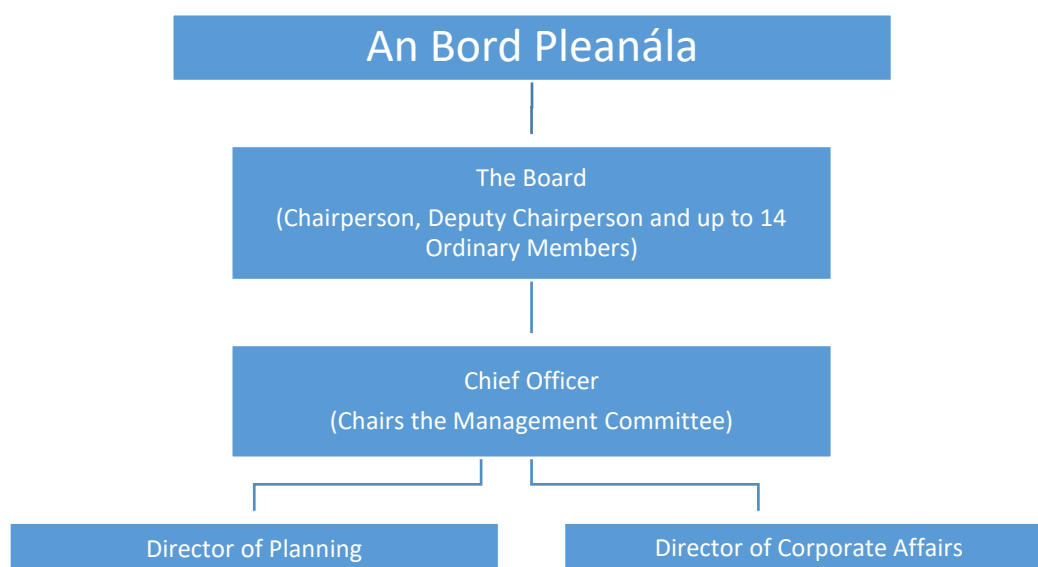
Part 17 – An Coimisiún Pleanála

Part 17 provides for a new organisational structure for An Bord Pleanála (ABP), separating its decision-making and corporate/organisational roles and renames ABP, An Coimisiún Pleanála (the Commission). This largely reflects what was proposed under Part 17 of the Draft Bill, which proposed a new Planning Commission which would comprise of a Chief Executive Officer and executive board (called the Governing Executive), as well as the Planning Commissioner. During PLS, the Joint Committee noted that [Dr Berna Gist in her submission](#) had highlighted the importance and value of retaining the original name and it was of the view “that a name change is unnecessary”. The Joint Committee agreed that the “organisation has a unique identity and has

been viewed as an independent, impartial, and ethical organisation for almost half a century.”⁵⁴ A recent article in the *Irish Times* also highlighted concerns of staff with the renaming, while the Fórsa union advised that for Fórsa members in An Bord Pleanála, “there is a much bigger problem arising from the lack of meaningful engagement with the department on the legislation and its operational and resource implications.”⁵⁵

The current structure of ABP is set out in the figure below.

Figure 1: Current Structure of An Bord Pleanála



Part 17 contains 5 Chapters (also set out in the Draft Bill) which set out these changes as follows.

Chapter 1 - Definitions

Chapter 1 provides for relevant definitions in Part 17 including “chief executive officer”, “code of conduct” and “inspector”.

Chapter 2- renaming of An Bord Pleanála to An Coimisiún Pleanála

Chapter 2 provides for the renaming of ABP to An Coimisiún Pleanála (the Commission). The Explanatory Memorandum explains that the “principal objective of this Part is to ensure that the Commission’s decisions are made with independence, impartiality and integrity.”⁵⁶ This is within the context of 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) undertaken by the Office of the Planning Regulator (OPR) and the [Action Plan for An Bord Pleanála](#) (Action Plan) [published](#) by the Department on 4 October 2022. The findings of these reports are set out in greater detail in [Note 1](#). Some of the

⁵⁴ ⁵⁴ 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 36.

⁵⁵ Arthur Beesley, ‘[An Bord Pleanála officials ‘restive’ over move to rename planning body](#)’, *The Irish Times*, 14 November 2023.

⁵⁶ [Explanatory Memorandum](#), Planning and Development Bill 2023 at 100.

changes contained in the Action Plan included dealing with conflicts of interest (Actions 1-5), changes to An Bord Pleanála decision making process (Actions 6-9), strengthening the senior management structure (Actions 16-19) and organisational resourcing (Actions 20-22).

Section 428 of the Bill provides that immediately before the commencement of the section, ABP will continue in being and will be renamed An Coimisiún Pleanála (the Commission). The Commission will consist of the Governing Board and the Planning Commissioners.

Once this section has commenced, any references to ABP will be construed as the Commission. It also provides that the chairperson of ABP in office, immediately before the date this section commences will stand appointed as the chief executive officer of the Commission, in accordance with the terms and conditions of their appointment under the 2000 Act. The deputy chairperson and any other member of ABP in office immediately before this section commences will continue in office as Deputy Chief Planning Commissioner and an ordinary planning commissioner of the Commission respectively. These amendments appear to be unchanged from the proposals set out in the Draft Bill.

Section 429 provides that the Commission will be a body corporate with the contingent powers and will be independent in the performance of its functions.

Chapter 3 - Governing Board and Chief Executive Officer of Commission

Chapter 3 provides for the new governance and corporate structure of the Commission. It also amends sections 147, 148 and 150 of the 2000 Act as it relates to disclosure of interests.

Section 430 provides that the Commission must have a Governing Board which will be known as the Governing Board.

The Governing Board must perform the following functions:

- review and guide the strategic direction of the Commission
- review and oversee the implementation of major plans of action, risk management policies and procedures, annual budgets, and business plans of the Commission
- set the performance objectives of the Commission, and monitor the attainment of those objectives by the Commission, and
- approve and oversee significant capital expenditure by, and investment decisions of, the Commission.

The Governing Board is not allowed to consider and determine an appeal, application, referral or request under the Bill or any other enactment.

The Governing Board must consist of at least five (5), and not more than nine (9), members (including a chairperson), and as far as possible include an equitable balance between men and women. It can delegate the performance of any of its functions, to the chief executive officer, and may revoke such a delegation as it considers appropriate. The chief executive officer will be accountable to the Governing Board for the performance of a function delegated to him/her. A delegated function is concurrently vested in both the Governing Board and the chief executive officer so that both are capable of being performed by either the Governing Board or the chief executive officer. The Governing Board will regularly meet with the chief executive officer and the Chief Planning Commissioner in discharge of the performance of their duties. The Governing Board can request a Planning Commissioner to attend before it and give such information to the Governing Board as it may require.

Section 431 contains 16 subsections and provides for the appointment and terms and conditions of members of the Governing Board as follows:

- The Minister appoints the members of the Governing Board (including a chairperson) with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform.
- The Minister where necessary must request the Public Appointments Service (PAS) to hold a selection process to identify and recommend a person(s) who PAS is satisfied are suitable for appointment to be a member of the Governing Board.
- The PAS when requested must hold a selection process and recommend to the Minister such person or persons who it is satisfied are suitable for appointment and provide the Minister with particulars of the relevant knowledge, experience, qualifications, training or expertise of each person whom it recommends.
- The Minister must ensure that each member of the Governing Board is a person who, in their opinion, has sufficient experience of legal, corporate governance or management matters, or other relevant expertise, to enable that person to effectively perform their functions as a member of the Governing Board.
- The Minister has the power, prior to ABP being renamed the Commission, to designate persons to be the first members of the Governing Board and, from among those persons, one to be the first chairperson. A member can hold office for five (5) years and may be reappointed, the total of which may not exceed ten years.
- The terms and conditions of the posts as well as remuneration and allowances for expenses must be determined by the Minister, with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform.
- Resignation of a member must be in writing to the Minister and takes effect on the date received by the Minister.
- A member is ineligible or ceases to be a member (typical scenarios in company law) where:
 - declared bankrupt (until certificate of discharge issued)
 - makes a composition/arrangement with his/her creditors
 - convicted of an indictable offence in relation to a company or body corporate
 - convicted of an offence involving fraud or dishonesty, whether in connection with a company or not
 - is sentenced to a term of imprisonment by a court of competent jurisdiction
 - has a declaration of insolvency made against him/her, or is deemed to be subject to such a declaration by virtue of Chapter 5 of Part 14 of that, is subject, or is deemed to be subject, to a disqualification order, within the meaning of Chapter 4 of Part 14 of the *Companies Act 2014*, whether by virtue of that Chapter or any other provision of that Act.

The section also provides the same reasons for removal from the Board as set out in the 2000 Act, without the proviso that a statement of the reasons for the removal must be laid before each House of the Oireachtas.

Section 432 sets out the rules for meeting of the Governing Board and in addition to these, the Governing Board can determine its own procedures. The section provides that the Governing Board must hold meetings in one year no less than once in three (3) months and there must be a quorum of three (3) members for a meeting. Meetings can take place in person or via online communication and where the chairperson is not present, a chairperson from the members attending must be chosen. Each member present has a vote and is determined by a majority of votes.

Section 433 provides for the appointment of a new chief executive officer by the Governing Board, including terms and conditions, with the consent of the Minister and approval of the Minister for Public Expenditure, National Development Plan Delivery and Reform. Where necessary, the Governing Board must request PAS to hold a selection process to identify and recommend a person(s) who PAS is satisfied are suitable for appointment to be a chief executive officer of the Governing Board. The Governing Board, with the consent of the Minister, can appoint from the persons recommended by PAS.

A chief executive can hold office for five years and may be reappointed, the total of which may not exceed ten years and must not hold any other office or occupy any other position involving monetary gain, or carry on any business, without the consent of the Governing Board.

If the office of the chairperson of An Bord Pleanála is vacant immediately before section 428 commences, the Minister, with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform, can designate a person to be appointed the first chief executive officer on such terms and conditions as they determine. If a person is designated then they will stand appointed as the first chief executive officer when section 428 commences.

The functions of the chief executive officer are:

- in consultation with the Governing Board, to manage and control the administration and business of the Commission
- advise the Governing Board, and make proposals to it in relation to the performance of the Commission's functions, for that purpose, may request to attend meetings of the Governing Board, and
- in consultation with the Governing Board, perform any other functions delegated to them by the Governing Board

The chief executive officer must take all practical steps to ensure that the organisation and staff and resources are available to the Planning Commissioners to support them to perform their functions and particularly to determine an appeal, application, referral or request efficiently and expeditiously.

The chief executive officer must attend meetings of the Governing Board when requested by the Board and give such information to the Governing Board as it may require. They are entitled to speak at and advise at such meetings, but are not entitled to vote.

The chief executive officer can be removed from office by the Governing Board, with the consent of the Minister, for stated reasons.

Section 434 provides for a new written Code of Conduct which must be adopted by the Governing Board. This will replace the current [Code of Conduct](#) of ABP which was adopted by An Bord Pleanála on 29 June 2023, to commence on 1 September 2023.

Action 1 of the [Action Plan](#) mentioned above included an undertaking that the Code of Conduct for ABP⁵⁷ would be updated by mid-November 2022 to ensure sufficient unambiguous guidance for conflicts of interest for all individuals in ABP. This was within the context of the former deputy chairman being convicted for failing to declare certain property interests. He denied any

⁵⁷ As provided for under [section 150](#) of the 2000 Act.

wrongdoing, claiming there was a simple explanation for failing to declare he was conflicted.⁵⁸ A significant clarification in the newest ABP Code of Conduct is the interpretation of “immediate neighbourhood” in which there is a “general requirement that a Board or staff member should not be involved in any case that is in close proximity to any property with which they have a personal or business interest.”⁵⁹ It also gives specific guidance noting that:

For the purposes of this Code of Conduct, the following meaning of ‘immediate neighbourhood’ applies:

- In an urban setting, within a 0.5 km radius of the private home or other property interest of that person
- In a rural setting, within a 5km radius of the private home or other property interest of that person.⁶⁰

The code of conduct proposed within the Bill must provide:

- the manner in which conflicts of interest on the part of a member of the Governing Board, a Planning Commissioner, a member of the staff of the Commission (including the chief executive officer) and any consultants or advisors engaged,
- the means by which public confidence in the integrity of the Commission in the conduct of its business is to be promoted,
- such matters specified in the Code of Practice for the Governance of State Bodies for the time being published by the Minister for Public Expenditure, National Development Plan Delivery and Reform as the Governing Board considers appropriate, and
- compliance with requirements imposed by or under this Act or any other enactment.

The code of conduct must make provision for specified matters including the following:

- disclosure of interests and relationships of persons to whom the code applies where the interests and relationships are of relevance to the work of the Commission,
- acceptance of gifts, sponsorship, considerations or favours by persons to whom the code applies,
- the steps to be taken in the event a conflict of interest arises in the course of determining an appeal, application, referral or request.

The code must be complied with by a member of the Governing Board, a Planning Commissioner, a member of the staff of the Commission (including the chief executive officer) and any consultants or advisors engaged.

The code must be published on the Commission’s website within 2 weeks of adoption. The Governing Board must adopt the first code of conduct within 6 months of this section commencing and the Board may amend the code of conduct or adopt a new code of conduct.

Section 435 largely restates [section 110](#) of the 2000 Act which provides for the Chairperson to ensure efficient discharge of the business of the Board, with amendments to include for the new governance structure. It provides for a complaint procedure where a complaint can be made to the

⁵⁸ Arthur Beesley, ‘[An Bord Pleanála introduces new code of conduct to tighten internal rules](#)’, *The Irish Times*, 4 July 2023.

⁵⁹ An Bord Pleanála, ‘[A Code of Conduct for Board Members, Employees and Certain Other Persons](#)’, June 2023 at 16.

⁶⁰ An Bord Pleanála, ‘[A Code of Conduct for Board Members, Employees and Certain Other Persons](#)’, June 2023 at 17.

chief executive officer about any alleged failures to comply with the Code of Conduct. Where the chief executive officer believes there is sufficient evidence that failure to comply with the code of conduct has occurred they can inform the person accused and conduct an investigation into the matter.

The chief executive officer can report the result of the investigation to the Minister where they consider it appropriate. They may also ask the Minister to direct the subject of the complaint to refrain from carrying out their functions and a member of the Governing Board or Planning Commissioner who receives such a direction must comply with the direction. Where there has been a breach of the code of conduct, the Minister may take such action as considered appropriate. This includes directing the chief executive officer to conduct an investigation. Where a person makes a complaint against the chief executive officer, the complaint must be referred to the Chief Planning Commissioner with the same powers of investigation and reporting applicable.

Section 436 provides for the chief executive officer to publish on the Commission's website written procedures to be followed by the Planning Commissioners when performing their functions in order to ensure the effectiveness of their decision making, and also for the review of such procedures. The first written procedures must be published within eight (8) months of this section commencing.

The procedures must include certain issues, such as the process by which an appeal, application, referral or request must be dealt with by the Planning Commissioners once received, the process by which Planning Commissioners will be assigned to particular divisions and the conduct of meetings by the Planning Commissioners.

Procedures must be reviewed by the chief executive officer in consultation with the Chief Planning Commissioner or Deputy Chief Planning Commissioner, as appropriate, at least annually. The Governing Board can approve amendments to, or revocations of procedures and these must be published by the chief executive officer on the Commission website and a copy of the amendment available for inspection at its offices.

Section 437 largely restates [section 109](#) of the 2000 Act which provides for the performance of the Board. Section 437 deals with the review of performance of the Commission by the Governing Board. It provides that the Governing Board, or the chief executive officer on request of the Governing Board, must review the performance of the Commission in executing its functions at intervals as it considers appropriate or as the Minister directs but not less than every three (3) years. The results of such reviews must be reported to the Minister and the Governing Board must comply with any requirement that the Minister may, impose in relation to all or any of the matters, the subject of the review. The Governing Board may make submissions to the Minister and the Minister may consult with the Governing Board as regards any matter pertaining to the performance of the functions of the Commission.

Chapter 4 - Planning Commissioners

This Chapter makes provision for the appointment of Planning Commissioners, essentially restating amended provisions in Chapters I and II of Part VI of 2000 Act regarding the current ABP Board. It is relatively unchanged from the Draft Bill and significantly involves considerable resourcing of the renamed Commission. The Bill itself does not set out how the resourcing of the changed Commission will be addressed. However, Minister of State with responsibility for Local Government and Planning, Minister O'Donnell welcomed the provision for planning in Budget 2024 with a total in excess of €230 million being provided in 2024 for the Department's planning

programme, of which €65 million relates to current services and €166 million for capital expenditure.⁶¹ Minister O'Donnell added:

The current budget for planning has been substantially increased to allow for increased investment in the resourcing of the planning system, including additional staff for An Bord Pleanála and the local authorities. Also, it is vitally important, as we proceed with our new planning legislation, that the sector is fully resourced to introduce the necessary reforms when the Bill is enacted.⁶²

Section 438 provides that Planning Commissioners will comprise of the Chief Planning Commissioner, the Deputy Chief Planning Commissioner and 13 ordinary planning commissioners. They will be independent in the performance of their functions, which will be to consider and determine an appeal, application, referral or request required to be considered and determined by the Commission. The Minister is empowered to appoint more than 13 ordinary planning commissioners where they consider it necessary but for no longer than five (5) years. Where a vacancy occurs or is due to occur among the Planning Commissioners, the Minister or the Governing Board must as soon as possible take steps to appoint a person to fill the vacancy. Equally such a vacancy will not be filled where the Minister or the Governing Board do not consider it necessary to ensure the Commission fulfils its functions.

Sections 439 and 440 deal with the appointment of the Chief Planning Commissioner, the Deputy Chief Planning Commissioner, and ordinary planning commissioners. The Governing Board must ensure, in so far as possible to have satisfactory experience of, or a satisfactory mix of experience and knowledge of, one or more than one of the following: infrastructure delivery, housing, physical planning, sustainable development, architecture, heritage, community affairs, social affairs, planning, the environment, the marine, climate change, law and corporate governance. There must also be an equitable balance between men and women amongst the ordinary planning commissioners.

Until the enactment of the [Planning and Development and Foreshore \(Amendment\) Act 2022](#) (2022 Act) there were no requirements as to the expertise that members of ABP should possess. [Section 106](#) (a) of the 2000 Act introduced knowledge and experience requirements which are restated in section 439 and 440 of the Bill.

Section 441 provides for the preparation of a panel of candidates by PAS for appointment as Chief Planning Commissioner, the Deputy Chief Planning Commissioner, and ordinary planning commissioners having regard to the knowledge, experience, qualifications and personal qualities required. PAS must also make recommendations to the Governing Board as to who should be appointed.

Section 442 provides for the temporary appointment by the Minister of a suitably qualified civil servant or public servant to act as the Chief Planning Commissioner, Deputy Chief Planning Commissioner, or ordinary planning commissioners where a vacancy has arisen and the Minister believes it must be urgently filled. It can be for no longer than 12 months.

⁶¹ Department of Housing, Local Government and Heritage, '[Housing budget package of nearly €7 billion announced](#)', *Press Release*, 10 October 2023.

⁶² Department of Housing, Local Government and Heritage, '[Housing budget package of nearly €7 billion announced](#)', *Press Release*, 10 October 2023.

Section 443 provides for the terms and conditions of the appointment of planning commissioners largely repeating that of the terms and conditions of members of the Governing Board set down under Section 431. In addition, it also provides for the retirement of planning commissioners at the relevant applicable age. This too largely restates [section 106](#) of the 2000 Act which was amended by the 2022 Act.

Section 444 provides that the functions of the Chief Planning Commissioner and Deputy Planning Commissioner is to ensure efficient performance of functions of the Planning Commissioners.

Section 445 and 446 provide for the procedure of meetings of planning commissioners. Section 445 largely restates [section 111](#) of the 2000 Act which provides for the procedures of the meetings of the Board. Under section 445, the Planning Commissioners have the power to correct a clerical or administrative error in the written record of a decision on a particular appeal, application, referral or request. Section 446 restates the quorum of three (3) for Board meetings under [section 108](#) of the 2000 Act, but also makes exception for an increase to five (5) in certain situations or a quorum as the Minister prescribes. It also aligns with Action 14 of the [Action Plan](#) in the context of the refreshment of the Board to exclude any possibility for two person boards, providing that the Board should:

... operate with a minimum quorum set at three. The Board has recently formally rescinded the resolution to allow two person boards, following on the temporary suspension of these boards by the Chair. These should no longer be a feature of the decision making process...

Section 447 largely restates [section 112](#) of the 2000 Act which provides for divisions of the Board. It also restates section 413 of the Draft Bill including the requirement for the Commission to publish on the Commission website, and maintain at the offices of the Commission, a register of the divisions of the Commission and the Planning Commissioners assigned to each division, and the business to be transacted by each division.

Section 448 provides that the Minister may provide by regulations for such procedures as is considered necessary or appropriate for the efficient, expeditious, and transparent performance by the Planning Commissioners of their functions.

One issue which arose during PLS was that of resourcing which is particularly significant in the context of the changes in the governance and structure of the new Commission. Specifically, witnesses expressed concerns around “structural and long-standing resourcing issues”, while ABP itself acknowledged the difficulty it was having in “acquiring technical expertise to assist with analysing submissions on complex or technical areas of planning, leading to delays.”⁶³ This is illustrated by recent reporting of a backlog in ABP of more than 22,000 applications made under the Strategic Housing Development (SHD) system designed to fast-track the development of homes. The statutory mandate is for decisions to be issued within 16 weeks but the average wait is now waiting an average of 79 weeks for determination by the board.⁶⁴ More generally, during PLS,

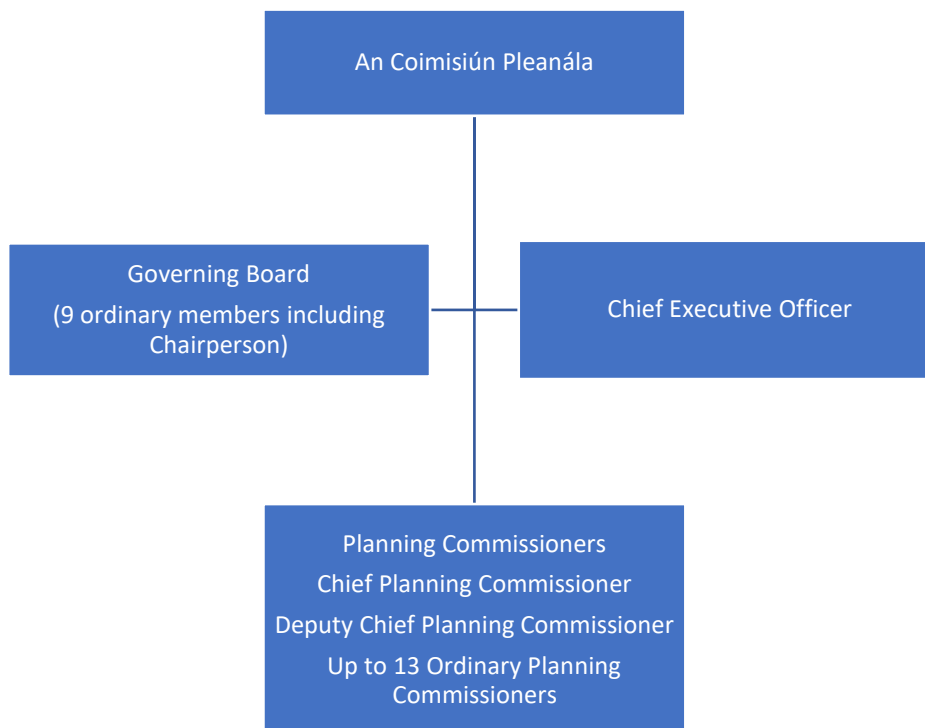
⁶³ Oireachtas Joint Committee on Housing, Local Government and Heritage, ‘[Report on the Pre-Legislative Scrutiny of the Draft, Planning and Development Bill 2022](#)’, April 2023 at 38.

⁶⁴ [Olivia Kelly, ‘An Bord Pleanála backlog delays construction of more than 22,000 homes’, *The Irish Times*, 27 November 2023.](#)

ABP acknowledged the shortage of planning professionals such as planners, archaeologists, ecologists and marine planners”.⁶⁵

The figure below provides a visual overview of the structure of the new Commission as proposed within the Bill.

Figure 2: Proposed Structure of the Commission in the Bill



Chapter 5 – Organisational matters

Chapter 5 deals with organisation matters and appears to largely restate what was set out in the Draft Bill. It introduces new sections 451 and 452 providing that the chief executive officer must attend before the Public Accounts Committee and any other Oireachtas Committee respectively when requested to do so. Section 457 also introduces a new section which limits the liability for damages of the Planning Commissioners, members of the Governing Board and present and former staff of the Commission, unless an act or omission in performing a function was done in bad faith.

Timelines

Another area of particular relevance to the Commission is Chapter 4 of Part 4 which introduces planning applications made directly to the Commission. It applies to the following classes of development:

⁶⁵ 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 38.

- strategic infrastructure development,
- electricity transmission infrastructure development,
- strategic gas infrastructure development,
- Chapter 4 maritime development,
- Chapter 4 local authority development,
- Chapter 4 State authority development, and
- development for which retrospective consent is required.

Section 124 of the Bill provides for the imposition of mandatory timelines on decisions on applications made directly to the Commission for certain qualifying developments. It provides that the Commission must make a decision under section 121 in relation to an application for permission for Chapter 4 developments before the expiration of the relevant period or longer where the applicant has consented. This revised period must be published on its website.

Where the Commission fails to decide the matter within the prescribed timeframe it must determine the application within a further period of not more than 6 weeks, notify the applicant about the reasons why it has not and publish these reasons within the timeframe on its website.

Where the Commission fails to deal with the matter within this additional period of time, it must pay to the applicant a fixed percentage of the application fees paid to the Commission within 4 weeks of the expiration of the relevant period applicable. It must also publish a further notice stating the reason for the delay and advising of the sum paid to the applicant. The percentage of fees to be paid will be set out in regulation.

The Commission must then deal with the application within a further additional period of not more than 6 weeks. In the event that it fails to do so within the 6 weeks, it must notify the applicant of the reason why and the period within which it will make its decision of no more than 1 week. The Commission must also notify the Minister and the Office of the Planning Regulator that it has not made the decision within the period specified. The Minister may, upon receiving this notification request the Office of the Planning Regulator (OPR) to conduct a review of the performance by the Commission of its functions and prepare and submit to the Minister a report in relation to that review.

A failure by the Commission to make a decision in relation to an application within a specified time period will not invalidate the decision.

During PLS, the Joint Committee along with other witnesses agreed that the imposition of fines for delays in decision making is “a counterintuitive measure which could lead to rushed decision-making and subsequent Judicial Reviews.” The Joint Committee advised that “an alternative accountability mechanism is required for adherence to statutory timelines.”⁶⁶

⁶⁶ 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 37.

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