



A PRACTICAL GUIDE

Accelerating the National Development Plan

Arthur Cox and KPMG are pleased to provide this Submission identifying **key specific recommendations designed to accelerate the National Development Plan**. Arthur Cox and KPMG as legal and financial advisers respectively have advised the State, funders and investors on infrastructure development in Ireland for many, many years, across a broad range of sectors and based on a wide variety of financing models. KPMG is also part of an extensive global network which enables us to stay at the forefront of emerging trends and best practice in infrastructure development across the globe.

Given our respective practices and client base, we clearly recognise that effective and efficient capital infrastructure is key to driving economic growth. In that context it is very encouraging to see the intent to focus in the Programme for Government on an investment-led recovery, prioritising investment in capital spending. We also recognise that moving that intent into shovel ready projects can be slow, for many reasons. However, we do believe there are bottlenecks in key sectors that are stalling the pace of development unnecessarily.

We have **combined our extensive experience and expertise** therefore to identify specific practical measures capable of early adoption. Quick wins in effect, that could be implemented now and importantly prior to the formal review of the National Development Plan planned for October. It is not intended to be a policy document or to reinforce understood concepts. Rather it identifies a number of measures that are relatively easily implementable to unblock certain capital projects immediately in some sectors whilst others work through the necessary development lifecycle.

We would be happy to discuss this with you.



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Overview

Infrastructure development is an acknowledged means of generating economic activity as reaffirmed recently in the Programme for Government. This is both from the development activity itself but infrastructure is also a specific pre-requisite to enable and sustain businesses, societies and economic growth. Prioritising infrastructure development is one of the tools available to the Government to respond to the impact COVID19 is having on the Irish economy. It does make sense, however, as proposed, to review the National Development Plan, which sets out an ambitious infrastructure delivery plan for Ireland across a number of areas. This review is an approach being taken in other jurisdictions internationally to prioritise shovel ready projects alongside those that generate most economic benefit. There is, however, also an opportunity to stand back now to see if there are simple, practical suggestions which could be made to promote or accelerate infrastructure development and in doing so generate some early critical economic activity for Ireland.

HOW HAVE WE COME UP WITH THE MEASURES?

To come up with the measures, we have looked at what are the optimum conditions to promote and incentivise public infrastructure development generally. There are four main conditions: robust, timely delivery of planning permissions; a balanced contractual risk allocation; a stable and predictable State backed receivable; and the ability for the project to be "fixed" before it is terminated. The proposals below aim to enhance existing structures to include these components.

Housing, healthcare, energy and renewables are some of the key cornerstones of the National Development Plan. We have focused the Submission on those sectors but the principles and type of measures set out here can equally be applied across all infrastructure sectors such as transport.

We also set out specific proposals for the planning system, which requires certain fundamental adjustments if Ireland is to have any real prospect of delivering the National Development Plan.

Housing

SOCIAL HOUSING

Some very large international sources of capital (blue chip EU pension funds, etc.) are currently considering if they might make large investments in the development of social and affordable housing stock in Ireland. In broad terms, how this would work is that these investors (together with their bank lenders) would provide the necessary funding and expertise to develop significant stocks of social housing. They would then lease the entire development to Local Authorities for onward sub-letting to individual tenants.

There are a number of key issues that we have considered in the context of social housing. These include the following:

- the delivery of scaleable amounts of social and affordable housing stock is a key societal (and political) objective;
- attracting international capital to invest in Ireland will be absolutely central to us rebooting our economy. This was also the case with the recovery following the 2008 financial crisis. However, with so many countries badly affected by COVID-19, there will be extremely strong competition globally to attract this capital. We therefore need to be smart, strategic and timely in how we go about this;
- the State has invested considerable time and effort in developing a model form of Long-Term Local Authority Social Lease for the provision of social housing units (the "Social Housing Lease"). The intention is that the Social Housing Leases would be entered into between the investors who will develop out large portfolios of social housing (as landlord) and the relevant local authorities (as tenant); and
- the Social Housing Lease forms the investment basis/terms upon which international investors and their lenders are being asked to invest large amounts of capital. It is therefore a crucial document and it is critically important that this is drafted in a balanced manner, i.e. protecting the State's interests whilst at the same time not allowing it become an unnecessary impediment to attracting capital to Ireland - and to this key sector.

Our engagement with the Department of Housing and the Housing Agency

The Department of Housing, Planning and Local Government and the Housing Agency have been working on the template Social Housing Lease for some time. Unfortunately, this is based on a precedent document that was originally drafted just to deal with the letting of a single, standalone house / unit. Whilst the draft has evolved and been amended on a number of occasions (and by a range of different State-side external legal advisers), in our view it still contains some (unnecessarily) unhelpful terms that will dilute the State's ability to maximise this important potential opportunity. Our view is borne out by the reaction that we have subsequently seen from various potential investors and lenders. They have decided that they will simply not invest or lend on the terms that are being offered. It appears therefore that the form of Social Housing Lease is becoming somewhat of an impediment to attracting international capital to Ireland.

We have been engaging with the Department of Housing, Planning and Local Government and the Housing Agency. We believe there was general consensus between us about the potential of the Social Housing Lease to contribute towards achieving the ambitious national delivery targets for social housing. Much of this was reflected in the very helpful intentions/ explanatory memo that we received recently from the Housing Agency. This confirmed that the intention is to facilitate transactions that will protect the interests of the home occupiers and the State, whilst at the same time being fair to landlords/ investors and their lenders.

Recent developments

Updated template documents have now been circulated but unfortunately, these do not match up to the agreed consensus. There has been a reluctance to make (largely market-standard) amendments that we think would significantly improve the existing template documents, making them investable and bankable by a much wider pool of potential players – and without diluting the protection that the State gets.

In summary, after careful review of the updated form of Social House Lease, we consider :

- there is a material (and avoidable) risk that the current documents / terms will significantly limit the attractiveness of this initiative to international sources of capital and their lenders;¹
- this is particularly the case on larger developments / portfolios of social housing units, where investors and their lenders tend to do comprehensive diligence, risk and documentation reviews;
- this has been borne out by the responses we have seen from various interested parties. They have decided that they will simply not invest in Ireland on the basis of the Social Housing Lease; and
- if this is not addressed, it will make it very challenging for the State to attract the right type - and amount - of international capital to maximise the huge potential that the Social House Lease initiative presents.

Arthur Cox has previously submitted a suggested a set of minor adjustments to the proposed model documents to the Housing Agency which we would be delighted to share with you. To give you a couple of examples of the sort of points that we have raised:

- the current form of lease effectively operates to prevent investors/landlords from offering market-standard banking terms to their lenders, e.g. it does not allow a landlord's lenders to step in and cure any breach by their landlord borrower to ensure that the lease is performed/honoured (e.g. by putting a receiver in to perform the lease). Making receivership an automatic termination event under the lease entirely removes the lenders' security / collateral and income stream. This will obviously make the product extremely challenging (and most likely more expensive) to bank;
- currently there is a long list of grounds for a local authority lessee to withhold consent to a proposed transfer by a landlord/ investor with a catch all provision that gives a local authority discretion as to what constitutes an acceptable landlord; and

This gives the lessee a disproportionate right of veto in relation to ordinary course and commercially sensible potential future dealings with the property. Specific local authority / State concerns can be addressed regarding what is an acceptable landlord based on specified criteria.

In addition to the above, other areas that merit attention include:

- delays in securing commitments to leases is preventing more equity and debt capital entering the sector. It also prevents investors/AHB's from taking up some new opportunities because they do not get confirmation in time when units will come onto the market;
- leases can be committed to pre-construction. However, the process is cumbersome and can take up to six months. You generally need to have planning in place - which is fair - but you also need to have funding. However, accessing funding is dependent on having a lease in place. Changing that last requirement would significantly speed up the process;
- the speed at which Local Authorities provide nominations from their housing lists needs to be addressed to avoid extended vacancies;
- the lease approval process does not cater for any complexity in an investor's / developer's corporate structure, which is often the case in practice. That could be addressed by simply adapting the assessment structure to recognise this fact;
- at present, individual Local Authorities adjust the template leases on a case by case basis and so there is a lack of consistency in terms approach. However, investors look at Ireland as one potential investment pool; we should not have different key lease terms operating in different parts of the country. The lease terms, amended to address the points that have been highlighted to the Housing Agency and the Department of Housing, should be standardised and applied in a consistent manner by all Local Authorities; and
- the financing of the supply of social housing could also be greatly enhanced in general by having a more efficient end-to-end process, resulting in greater private participation and in turn, greater supply. This could be carried out through a short consultation process with the various stakeholders (Housing Finance Agency, Housing Agency, Local Authorities, AHBs, developers, investors and lenders). We would be happy to facilitate this out on a pro bono basis. Ultimately, housing and social housing is increasingly being viewed as a defensive asset class which is more aligned to and viewed as infrastructure in nature, rather than pure real estate.

Potential solutions / next steps

As noted above:

- whilst there is no doubt that some counterparties will sign up to the current terms that are on offer, it is not certain (i) how many will; (ii) what the cost levels will be on these transactions; and (iii) what potential concentration of risk (limited pool of players - equity and debt) this might result in;
- there will be extremely strong competition globally to attract international capital. As a result, Ireland Inc. needs to be smart / strategic how it goes about this;
- if structured properly on appropriate terms, this product should be of significant interest to international sources of capital; and

¹ This does not mean that no one will sign up to the document. Indeed, we are aware that some transactions have been signed using the current form of lease. Certain others will no doubt follow suit for various reasons - including due to some counterparties having quite high risk-appetite levels / thresholds. However, the larger, blue-chip, low-cost providers of capital do not operate on this basis.

- experience from the last financial crisis shows that if Ireland can secure first-mover advantage by getting investors focussed on the opportunities that the Social Housing Lease presents and getting investment in from the right types of international investor, word will travel fast. We will end up on the right people's radar at the right time. This will help Ireland to become a destination of choice for investment generally ahead of our international competition.

It would be a very simple matter to eliminate the issues/concerns that have been identified with the draft Social Housing Lease. It would only require some very straightforward and market-standard changes to be made to the draft. Importantly, these changes would not dilute the protection of the State's position / interests.

There is an opportunity to encourage a more active investment base in this segment which could reduce the additional unit costs to the Exchequer. Ultimately, whilst the State is backing these leases, it is not benefiting from the low yields it itself is able to access from sovereign debt issuance.

The resulting development of an active investment market in Ireland would also bring the added benefit of Irish yields converging downwards to our European peers (currently at a 1 – 1.25% premium). This could be a key lever in the overall reduction of nominal rental levels and in turn, lower the cost to the Exchequer of new lease commitments.

HOUSING UTILITY CONNECTIONS

A key constraint that we hear from the market is that housing developments are being held up awaiting utility connections – water connection being the most oft cited example. A secondary point noted is the cost of those water connections increasing and often proving almost prohibitive to the ability of investors to build schemes at a price point that customers can get mortgage approval for.

Some measures to address this include:

- require utility providers to publish statistics on connections for new residential schemes. Currently completions are being held up by delays in connections in certain parts of the country;
- to incentivise prompt connection have a tiered fee charging from the utility where the main infrastructure is in place and the scheme is subject to a connection only.

100%	2 weeks
75%	3 – 4 weeks
50%	5 – 6 weeks
0%	6 weeks plus
(10%)	where delays are holding up completions and the developer has provided the utility provider with suitable advance notice of connection requirement

REMOTE WORKING

The success of remote working forced upon the population by COVID-19 provides an opportunity to accelerate the objective of ‘Strengthened Rural Economies and Communities’ in the National Development Plan. Facilitating the creation of co-working spaces through the use of existing vacant premises in selected towns could be developed in a capital light model – these don't need to be premium We-Work type facilities. This could deliver both knock on multiplier benefits for the local economies whilst also taking pressures off existing facilities in certain Cities. Community Employment programmes could be used for refurbishment activities and on-going limited services provision / facilities management provided through the Local Authorities. A standardised scheme could be rolled out on a simple basis quickly and would tie in with suggestions of bringing forward development of the Broadband Community Point hubs under the National Broadband Plan.

PRIVATE SALE APARTMENTS

Private sale of apartments remains largely unviable yet they can contribute to compact growth.

A quick measure to facilitate change in this area would be to adjust development levies for private sale apartment schemes in central locations to encourage more of this stock into the market.

This would create a mix of apartment tenures and reward ultimate buyers for the efficiencies they bring regarding the usage of existing enabling infrastructure / transport links etc that are already in place in central locations as opposed to the enabling and consequential investment required for new infrastructure that is not city centre based.

Land Development Agency

We welcome the creation of the Land Development Agency (LDA) and the intent to expand its remit as outlined in the Programme for Government to cover development of affordable housing concepts etc. We look forward to the enactment of the relevant legislation as a priority for the new Government. The opportunities available through having a centralised State body for land ownership to drive social and affordable housing developments are extensive.

Arthur Cox and KPMG have both been working with the Land Development Agency looking at how to optimise its functionality and develop its strategy. Measures that could be implemented to enhance its speed of operation include:

- structures that will allow land transfer to be effected outside of public procurement rules (which can help expedite project delivery times and reduce the risk of challenge to developments);
- in respect of its enabling legislation to include an exemption or disapplication of Section 183 of the Local Government Act, 2001² in respect of land transfers from Local Authorities. In order to provide comfort to the Local Authorities regarding land transfers we propose that an option to have sites transferred back to the relevant Local Authority be included in the event that certain development targets are not met within specified time limits; and
- at present the LDA has to persuade other Government agencies to allow them to interact/ develop sites on their behalf. That does not necessarily allow them to develop a State wide property development strategy over sites owned by transport agencies, HSE and Defence for example. The enabling legislation could be adapted to address that.

Primary Care

The Primary Care Construction Programme has worked well in delivering a significant number of primary care centres. However roll out of the Programme has been slower than hoped.

There are three areas which we consider are responsible for the slower roll out: (1) delays in getting planning permission; (2) delays in getting GPs to commit to PCCs; (3) certain provisions of the HSE lease agreement which are problematic because they include termination or financial risk issues which investors are often unable to accept. To accelerate further PCC development we propose:

GPs

- centralise the development of a funding support packages for GPs buying or renting their units (GPs generally acquire their own interest in PCCs which can be time consuming and structurally problematic (means there are two rent revenue streams)). This could be either via direct Government support or a negotiated funding package from a third party eg SCBI, one of the banks, ISIF etc. That package could be negotiated centrally to get the benefits of scale and then offered on a standardised basis to GPs. An alternative would be for the HSE to rent the entire development;
- rates concessions for GPs (even on a short or medium term basis); and
- capped service charge obligations of GPs, or service charges underwritten by HSE.

LEASE AGREEMENT

- include a market standard direct agreement allowing lenders priority to the lease contract pre-termination to remedy the project and avoid termination;
- HSE right to terminate for breach of service delivery obligations should be limited to the first 5 years of the term (or services split into critical and non-critical groups, with rights of termination existing only for failure to deliver the former). This offers medium term revenue certainty to investors following the initial five year ramp up period;
- pre-conditions in the Agreements for Lease should be removed (or dealt with as pre-contract matters). This will reduce contract execution timeframes;
- greater flexibility allowed to the GP practice to temporarily not maintain the minimum GP number for circumstances of retirement, maternity leave etc.;
- currently the PCC landlord is obliged to deliver a certificate evidencing that it has delivered services to the PCC to trigger the service charge payment and this is causing significant cashflows issues as service charge payments are being withheld. This requirement should be by request rather than the default position.

² And from DPER Circular 11/2015 – Protocols for the Transfer/Sharing of State Property Assets; and DPER Circular 17/2016 – Policy for Property Acquisition and for Disposal of Surplus Property



Energy/Renewables

CORPORATE POWER PURCHASE AGREEMENTS

The Climate Action Plan includes a target for 15% of Ireland's electricity consumption to be met by Corporate Power Purchase Agreements ("CPPAs") by 2030. With growing forecast demand from data centres and other large energy users, meeting this target will require CPPA delivery of 35% of all new generation capacity – or around 6TWh – by 2030. This equates to around 2300MW of onshore wind capacity, equivalent to around five Poolbeg power plants.

There are several aspects of the regulatory framework which, in our view, significantly impede the development of the CPPA market in Ireland which as noted above is going to be critical in meeting our targets. Our recommendations to overcome this are set out below:

- competitiveness: key to incentivising CPPAs is to ensure that they are competitive with other forms of electricity supply – or at least not actively disadvantaged. Measures that could be considered include:
 - proportionate reduction of the 'double payment' requirement: in other words, to the extent that corporates are independently supporting renewable electricity developments, they should not have to pay a PSO Levy as part of their electricity bill;
 - proportionate reduction of the electricity tax for corporates to the extent that they meet their electricity requirements via CPPAs; and
 - expanding the 'Accelerated Capital Allowance for Energy Efficient Equipment' scheme to CPPAs.

However, we recognise that the above measures would shift costs to ordinary electricity consumers. As such, more affordable options to incentivise the delivery of CPPAs should be considered in the near term, including innovative auction design (e.g. with lessons learnt from the Netherlands around floor or tail auctions), more transparent reporting of guarantees of origin, and reviewing proposed mandatory placing requirements on large energy users (particularly in the public sector) to undertake CPPAs.

- connections: grid capacity is one of the scarcest commodities required to develop a generation project in Ireland and we discuss this further below. Certainty around timing and cost of delivery of grid is critical to concluding a CPPA. Enhancing certainty and prioritising grid connections for projects which do not require State support, thereby minimising the requirement for State Aid, would significantly facilitate CPPAs;
- carbon price: Competitiveness of renewables, and hence attractiveness of CPPAs, would be greatly enhanced by ensuring that the full cost of carbon is reflected in electricity prices. One way of achieving this could be through a carbon floor price as recommended by the Joint Oireachtas Committee on Climate Action;
- removal of any unnecessary legislative barriers: Point 22 of the Climate Action Plan is to "further consider facilitation of private networks / direct lines". There is currently a statutory prohibition on anyone other than ESB or EirGrid owning or operating transmission or distribution. Changing this prohibition could significantly facilitate development

Nursing Care

When asking clients about key challenges resulting in delays in new nursing care developments coming on stream, there are two issues which repeatedly come up. These could be addressed relatively easily to kick start new developments:

- institutional investors have significant capital available to commit to State backed infrastructure, particularly where that is a medium to long term stable and consistent receivable. Currently under the Nursing Home Support Scheme the rates set for each nursing home are set too frequently (e.g. on an annual basis) by the NTPF and are identified as maximum amounts; and
- amounts payable under the Nursing Home Support Scheme reflect a payment to nursing care providers in respect of operating a nursing care facility. It does not make allowance for the differing complexities of care associated with residents, differentials in standard of facilities (eg aged facility v's new build) or differing costs of capital.

To address these we propose:

- the price review for residents payable under the Nursing Home Support Scheme is either (1) extended to a medium term period of five years (where the price is either fixed or subject to an agreed index) and/or (2) is subject to a floor or minimum amount (rather than a maximum). Either will provide revenue certainty to investors; and
- nursing care providers should be entitled to apply for an adjustment to the Nursing Home Support Scheme rates to allow them to use that, in part, to fund new developments where they can demonstrate they have committed to undertake new development. Conditions for the adjustment could include:

Planning permission in place
Heads of terms for an appointed contractor
Evidence of demand for additional capacity (e.g. consistently high occupancy rates)

The adjusted amount would then be payable over an agreed tenor (and would not be subject to the general rate review for the relevant facility), again with a view to providing certainty in relation to spreading the cost of new build/cost of capital over the medium to long term.

of new renewable generation “behind the meter” that does not burden the grid. An exception to the prohibition on distribution and transmission is supply within a “single premises”. A “single premises” is “one or more buildings or structures, occupied and used by a person, where each building or structure is adjacent to, or contiguous with, the other building or structure”. Therefore, transporting electricity to a single premises is distribution, but transporting electricity within a “single premises” is not. The key is whether each building or structure is adjacent to or contiguous with the other building or structure. This has traditionally been interpreted very narrowly, but is capable of a broader and, in our view more correct interpretation that would significantly facilitate development of onsite renewables.

GRID CONNECTION

We note the recent progress in the grid connection policy ([ECP-2 Final Decision](#) and [Consultation to Inform a Grid Development Policy for Offshore Wind in Ireland](#)). It greatly assists project development if developers know:

- that there will be a planned, regular, series of opportunities to apply for connection to the grid (as envisaged by ECP);
- that, once a connection offer is given to the project, there is certainty around timeframe for the work that needs to be done by EirGrid / ESB and the developer to determine the location and cost of the connection (as set envisaged by ECP-2);
- that work will be carried out to the grid to enable them to get firm (as opposed to non-firm connections). ECP-2 envisages that the Transmission System Operator will develop a new methodology to schedule Firm Access Quantities for contracted projects based on network development plans. However, in the meantime, offers will continue to be issues on a non-firm basis. It is important to ensure that this work is progressed; and
- that work will continue to increase grid System Non-Synchronous Penetration (“SNSP”) to enable more renewable electricity to be transported on the grid. In the meantime, curtailment payments to generators should be restored (an option in the current SEM Committee [consultation on implementation of Regulation 2019/943 on the internal market in electricity](#)) consistent with Article 13 of [Regulation \(EU\) 2019/943 on the internal market for electricity](#).



CURTAILMENT

One of the most significant barriers to Ireland achieving its renewable aspirations is the risk of increasing levels of curtailment of wind generation.

Under Article 13(7) of Regulation (EU) 2019/943, Member States are required to ensure that generators are compensated for curtailment. Eliminating the risk of curtailment for generators, as required by EU law, will greatly facilitate the achievement of Ireland’s renewable energy targets by reallocating a risk away from generators who have no way of managing it. The SEM Committee has published a consultation pursuant to which they have interpreted Article 13(7) in a way that they believe allows them to avoid compensating generators. This will have a significant adverse impact on Ireland’s ability to achieve its renewable targets.

We suggest that the SEM Committee need to review its interpretation and consider the related impact on Ireland meeting its targets if their interpretation holds. The SEM Committee did previously allow a temporary regime of compensation for curtailment (which has now finished). They may need to reopen this decision in light of the requirement to compensate for non-market based redispatch.

OFFSHORE

In order to mobilise the offshore wind industry and for projects to meet the timing of the first RESS auction allowing offshore wind to compete as a ring-fenced technology, the Climate Action Delivery Board should establish a sub committee tasked with prioritising the deliberate coordination of various key workstreams such as:

- enactment of MPDM and finalisation of National Marine Planning Framework (“NMPP”);
- delivery of development consents under MPDM;
- finalisation of the charging regime for Marine Area Consents; and
- issuing of grid connection offers.

Each of these are important to confirm overall project design and costs in the context of competitive auctions.

The other area on offshore wind which is important is that we do not currently have adequate sea ports with the appropriate infrastructure to facilitate offshore wind development and any major vessels will likely be based out of Belfast. We appreciate there is no quick fix for this issue but consider it is important to highlight now, when the State embarks on its offshore wind journey.

RATES

There has been a long awaiting pending decision on the revaluation of rates for windfarms by the Valuation Office. There have been market expectations that they could as much as triple (and precedent examples in some areas of the country). Certainty on the timeline for decision in relation to rates would be welcome.

Domestic tourism and travel

Remove the public service obligation (PSO) for a temporary period on internal flights to encourage increased domestic air travel amongst Ireland's existing airports. This would facilitate greater short term domestic tourism also whilst we await a return of international tourism. These regional airports are often under-utilised and hence there is a near term opportunity to encourage domestic travel around the island while we wait for overseas travellers to come back.

Planning

Any proposals which seek to accelerate the National Development Plan which do not tackle some of the fundamental issues around our planning system will fail. Changes to our planning system must be made if Ireland is to have any realistic prospect of delivering substantial aspects of the National Development Plan in any event and certainly if we wish to accelerate its implementation.

A lot of the solutions to this are relatively easy to implement. We welcome the initiatives in the Programme for Government in respect of developing a Planning and Environmental Law Court, expanding exemptions relating to solar projects and fast tracking the Marine Planning and Development Management Bill. In addition to those measures we propose the following solutions for addressing some of the bottlenecks in the planning system. We appreciate these will require implementing legislation but the need for a comprehensive, solutions focused, enactment of legislation in this area is absolutely critical and should be a key part of any NDP acceleration process:

- the right to judicially review environmental authorisations should be limited to established environmental NGOs (not pop up NGOs i.e. must be established for 3 years) and persons who have a personal interest or proprietary interest in the matter or neighbours who will be affected by it (not serial objectors). This is provided for in the Planning and Development Bill 2019. Ireland has a chronic need for regulation in this area. We are currently an outlier in European terms regarding the ability of persons to object to developments (notwithstanding that most of the objections raised derive from European legislation);
- holding of ransom strips should be outlawed. At common law, landowners usually own up to the middle of roads adjoining



their lands. This is inhibiting the provision of infrastructure in or along public roads because providers of infrastructure have to buy out individual landowners rights. For all "private" developers who need to lay utility connections - water, electrical, gas, telecommunications - in or at the side of the public road, legislate to provide that consent of the common law owner is not required where any statutory consent has been obtained and provide that the value of the land under public roads shall be deemed to be NIL unless the adjoining landowner can prove that they have an independent economic use. This is already provided for in section 41 of the Water Services Act 2007. There is considerable uncertainty in the law on this point creating a culture of expectation among "grass verge" owners that they can hold any type of development to ransom;

- the same uncertainty exists where landowner consent is required to make planning applications for these side of the road utility connections. Common law landowner consent should not be required to get planning permission to put utility connections in or in the side of the public road;
- public authorities are the guardians of the environment. There should be no direct enforcement by individuals of planning law unless they are directly affected by the breach. Individuals seeking enforcement should require their public authority to take enforcement action and only where the public authority refuse, should an individual be permitted to seek a Circuit Court or High Court order compelling enforcement;
- we propose an additional step is inserted into the planning process so that An Bord Pleanála and the applicants can have a final collaborative interaction to discuss concerns with a design prior to outright refusal. Refusals lead to a huge amount of cost and time wasted (9-12 months) even where necessary changes are relatively minor;

- the SID threshold for different types of healthcare infrastructure should be broadened particularly in a post COVID-19 environment. Currently 100 beds minimum need to be proposed to make an SID application to an Bord Pleanála. A 25/ 50 bed threshold is more appropriate;
- primary care centres, nursing home beds, residential care beds and acute care beds should also be classified as SID;
- if the locations for schools, nursing homes etc. are identified and assessed in development plans or local area plans, planning permission should not be required for them when they are provided, especially where a community has been consulted by the Department of Housing, Planning and Local Government and has confirmed they want / need the relevant infrastructure;
- certain types of infrastructure is “deemed” to be Strategic Infrastructure Development (“SID”) without An Bord Pleanála assessing whether it is or is not SID. This should be expanded for public and social infrastructure without An Bord Pleanála having to assess whether in its opinion it is, e.g. healthcare / social infrastructure specifically nursing homes, community care beds, acute care beds and hospitals, electricity transmission lines etc.;
- where “bundles” of schools, third level facilities, courts or nursing homes are applying for planning permission in several different counties, the risk of appeal, judicial review, delay and costs are multiplied across each application. There should be a mechanism to submit a ‘global’ planning application directly to An Bord Pleanála for the strategic national roll out of public infrastructure in individual counties or regions. For example, gas networks have to make the exact same type of application to a number of different planning authorities for the same type of development;
- where part of a project is SID, the whole project should be considered SID so that two separate planning applications are not required. For example for large solar farms requiring a 110kV substation, make the solar farm itself a SID, so 2 separate planning applications do not need to be made to the Local Authority and An Bord Pleanála;
- expand the planning exemptions for solar power, they are currently arbitrarily construed (it should not matter how much of an agricultural shed roof is covered with solar panel for example);
- for data centres, commence the provision making the entire data centre a SID. Currently only the 110kV transmission infrastructure is “deemed” SID and 2 separate planning applications need to be made to the Local Authority and An Bord Pleanála;
- provide additional resources to An Bord Pleanála. It has demonstrated it can comply with mandatory decision making timelines for Strategic Housing Developments and this has provided certainty and faster timelines for decisions, but timelines for other decisions have suffered as a consequence. Additional resources will deliver faster decisions at a critical point in infrastructure development;
- for future of onshore wind energy development to happen, noise limits must be workable for the industry. IWEA has proposed that the same noise standards that apply in Northern Ireland should apply here. This will reduce unnecessary wind turbine curtailment which in turn avoids additional costs being passed to electricity consumers. Current noise limits are the strictest in Europe and the draft WEGs propose stricter noise limits;
- for future development of onshore wind energy to happen, set back distances should not be excessive. The draft WEGs propose an increase in setback distance from ‘at least 500 metres’ to ‘500 metres or four-times tip-height, whichever is greater’. IWEA advises that this proposed new set back distance will reduce the land available for onshore wind in Ireland by 40%. IWEA advises that set back distances must be calculated as being from the relevant building (not curtilage) to ensure clarity;
- allow the parallel consenting of shallow grid connections for individual wind farms by facilitating grid installations along public roads and early engagement with the system operators on connection methods to allow for quicker delivery of projects and connection to the grid; and
- there should be a statutory mandatory timeframe for An Bord Pleanála to confirm that renewable energy projects are SID. The SID pre-application discussions for renewable energy projects should go into a similar level of detail as the pre-application discussions for SHD.