

Submission on Planning and Development (Strategic Infrastructure) Bill, 2006.

Introduction

The Irish Planning Institute supports the principle of faster and more effective planning decisions particularly with regard to key infrastructure where there is a general consensus that the development is needed and will benefit the common good. However, the Institute has given serious and lengthy consideration to the Bill now before the Oireachtas, and has concluded that, if passed into Law, the new proposals will undermine key principles of our planning system particularly with regard to the following issues:

- The absence of a clear linkage to the hierarchy of planning policy instruments (particularly development plans and local area plans) that are at the core of our planning system;
- The absence of rights of appeal on substantive planning issues for all parties, with recourse to the courts only on points of law, strikes at the principles of fairness that underpin our planning system; and
- The threat to the impartiality of An Bord Pleanála in the public's eye if they are required to facilitate consultation with the parties to a proposal.

As the professional institute representing the planners, both in the public sector and in the private sector, that currently work at the coalface of the planning system and have experience of its practical operation, and also that will be tasked with implementing the new statutory provisions, the Institute feels that it has a contribution to make to the debate, and offers these comments and suggestions.

General Comments

1. The Irish Planning Institute is of the view that the 'one stop shop' mechanism introduced by the Bill is *only* acceptable where a project has been identified in a plan that has gone through a public consultation process and where the merits of the project in terms of spatial planning have been considered in principle. Examples of such plans include the regional planning guidelines, the city or county development plan or a local area plan. This is for both reasons of democratic participation as well as the need for proper integration and holistic approach to infrastructure projects as elements in overall spatial strategies for counties and regions.
2. The lack of integrated consideration of a proposal with environmental implications involving the EPA, where a licence is also required, seems to reduce the 'one stop shop' nature of the procedure introduced by the Bill.
3. There is concern that the perception of An Bord Pleanála as an independent quasi-judicial body may suffer from the proposed introduction of special procedures of 'consultation with parties'.
4. The Institute considers that the loss of rights of appeal on substantive planning grounds and without recourse to the courts fundamentally undermines the principles of fairness that are the heart of our system. Not only is this a serious criticism of the loss of third party rights, but the parallel loss of first party appeal rights for the proponent of a project may not always be welcomed by proponents of such projects. Indeed the absence of such rights may serve to discourage investment (and in this

regard it is noted that Indaver Ireland stated on the day of introduction of the Bill that it would favour the traditional planning process for its waste incineration projects).

5. The Institute is concerned that there may be increased scope for judicial review procedures arising from 'closed door' proceedings and the lack of an appeal mechanism for decisions made by the Board, incl. conditions imposed.
6. The Institute is also concerned that the Bill may include projects that are primarily profit driven and not necessary genuinely in the public interest. The Bill should not be allowed to be used as a 'back door' for controversial private projects to avoid the normal planning process.¹
7. The Institute welcomes the fact that the Bill proposes to create a separate division of An Bord Pleanála instead of a separate body.

Specific Comments

However, it is recognised that, notwithstanding the Institute's concerns in principle with the proposed legislation, there appears to be broad consensus within the Oireachtas as to the purpose and principle of the Bill, and therefore that it is likely that it will be passed by the Oireachtas. Accordingly, the Institute sets out below some comments on specific sections of the Bill (as passed by the Seanad), and also includes a number of suggested amendments, so as to improve the Bill, and to mitigate some of the significant problems with the Bill, as now presented to the Dail for enactment. The Institute requests that these be considered by the Minister, and by the members of the Dail, during the forthcoming Committee stage of the Bill.

Section 3 of the Bill

Section 37A(1)

It is not clear from this subsection whether a person, who proposes to apply for permission for a development specified in the Seventh Schedule, must always follow the process of seeking a notice from the Board or whether it is open to the applicant to follow the traditional planning application route if that is the preferred choice by the proponent of the project. It is assumed that the former is intended. If so, this is considered to be inappropriate, and it is proposed that the choice should be for the proposer to use either the strategic infrastructure process or the normal planning application route (similar to the situation that currently applies to developments within the Dublin Docklands Authority Area, whereby a developer can opt for the 'Section 25' consent process, or can apply for planning permission in the normal way).

Section 37A(2)

The three circumstances in which a development would be categorised as strategic infrastructure are, in the opinion of the Institute, too wide, and the terminology used is too vague. In practice, this could lead to controversial private-sector projects that could not reasonably be considered to be of strategic national or regional importance being permitted to by-pass the normal planning process.

Subsection (b) would permit a development, which is not identified as an objective or project in the National Spatial Strategy, the National Development Plan or a regional planning guideline, to be accepted as strategic infrastructure, merely on the basis that it 'would contribute significantly to the fulfilment of an objective'. This formulation, it is suggested, is too wide and vague. Both the NSS and in particular the regional planning guidelines, set out a large number of generalised objectives, a large number of which are not site-specific. If a project were to be proposed, which was not previously identified as being planned for a particular area, and in relation to which the residents of that area had no input (as for example in a Development Plan), and if such a project were to be approved as strategic infrastructure

¹ Examples of such projects are: the Kilcock Incinerator and the proposed National Distribution Park at Clondalkin. Both projects would potentially qualify under the categories listed in the Seventh Schedule. Both projects were commercial in nature and proposed by private companies.

on the basis that it would contribute significantly to the fulfilment of such a vague objective, then there would be very legitimate public concerns.

The Institute suggests that subsection (b) be re-worded as follows:-

“the development would constitute an infrastructural project of national or regional significance, and the location and nature of which is identified in the National Development Plan, the National Spatial Strategy or in any regional planning guidelines in force in respect of the area or areas in which it would be situated.”

Most significantly, subsection (c) is extremely vague and far-reaching, and could give rise to serious problems of interpretation. It is difficult to see how developments that merely have significant effects on more than one planning authority would necessarily constitute “strategic infrastructure”, meriting a by-passing of the normal planning process. One could envisage, for example, a small gas storage facility, of 250 tonnes, located at the edge of a city or town/borough boundary, which would have significant effects on the adjoining county. Such a project should be processed through the normal planning process, with right of objection, and appeal, by the adjoining local authority, and by persons living within such area.

The Institute suggests that subsection (c) be deleted.

Section 37B (6)

This subsection provides that where the Board concludes that a project should not follow the strategic infrastructure route and be considered under a normal planning application procedure, it should serve a copy of the notice to the applicant and on the planning authority. Should the Board not also serve a copy of a notice under subsection (4)(a) on the appropriate planning authority, i.e. where it is considered that the project should follow the strategic infrastructure process? This would give the planning authority advance warning of the likelihood of such a proposal being referred to it in the future by the Board for comments, and hence ensure that its subsequent response would be more comprehensive. The appropriate change would be amending Section 37B(6) to read: *“The Board shall serve a copy of a notice under subsections 4 (a) and 4 (b) on the appropriate planning authority”*.

Section 37B (6)

It is noted that the third category for an application to be considered as strategic infrastructure is that the development would have a significant effect on the area of more than one planning authority. If the deletion of this subsection, as recommended above, is not accepted, then it is suggested that the provision requires improvement on its own account. The current text of the Bill makes no reference to the other local authority that would be significantly affected by the development, other than the one in whose jurisdiction the development would take place. Section 37B(6) should therefore be amended by the addition of the following at the end of subsection 6: *“and in the case of paragraph (c) of Section 37A (2), on all planning authorities the areas of which would be significantly affected by the proposed development”*.

Section 37C (1)

Having regard to the status of the Board as a ‘quasi-judicial appeals body’, it is considered inappropriate that a person can *enter into consultations* with the Board. It is noted that such consultations would not be in public and this would be the first time that developers would have access to members of the Board, or its inspectors, outside a public forum.

The Institute submits that this provision has a significant potential for judicial challenge, on the lack of “fair procedures”, in that persons who might have a legitimate interest in this decision (as for example local residents who might wish the opportunity to make representations to the Board before it made its decision on whether a proposed development would qualify under one or more of the circumstances in Section 37A(2)), would be excluded from the process.

The Institute suggests that, if the Oireachtas is not prepared to remove the provision for consultations enshrined in this subsection, then provision should be made that all such consultations be carried out in public, and advertised (by public notice, insertion on the

Board's website, and any other means prescribed by Regulation) so that those who may be interested may be given an opportunity to attend and make submissions to the Board.

Section 37C(1)

As proposed, the Bill gives no timescale for the submission of the information to the Board by the prospective applicant. If such consultation is to be meaningful², then the Board must be given adequate time to consider the proposal. It is suggested that the following sentence be added to the end of subsection (1):-

"This information shall be provided, in writing, not less than three weeks prior to the date of any such consultation, in such manner as may be prescribed in regulations.

Section 37D

There is no provision, as the Bill is currently written, for the keeping of a record of the request on the information to be contained in the EIS, nor for the Board's reply (similar to the provision in Section 37C(3)). The Institute suggests the following amendment:-

"The Board shall keep a record in writing of any request by the prospective applicant under Section 37C, and of the Board's opinion in response to such request, and a copy of such request and opinion shall be placed and kept with the documents to which any planning application in respect of the proposed development relates"

Section 37E

It should be noted that there is a drafting error, on the face of the Bill, in that Section 37F(7) implies that the Board may make its decision any time after the expiration of the period specified in the notice under Section 37E(a) for making submissions. As the Bill is written, this could be six weeks, yet the planning authority, including its elected members, has 10 weeks to submit its/their report/recommendations.

Section 37E(6)

The provision, that elected members may 'attach' recommendations to a Manager's report, is likely to 'blur' the clear distinction between reserved and executive powers in relation to planning functions as identified in the Principal Act. This can lead to situations that are unclear and ambiguous, e.g. where the Manager reports in favour of the project and the elected members recommend against, or vice versa. This is particularly undesirable as the projects are likely to be controversial in the local area. It is suggested that the subsection be re-worded as follows:-

"(6) The members of the planning authority may decide to submit, together with the manager's report under subsection (4), recommendations in relation to the proposed development, and the Manager shall submit these recommendations in addition to those in his report"

The Institute would further question whether a "minority" view, of not less than one third of the members of a planning authority, might also be submitted, since it might be that there would be differing views of a proposed development on the part of elected members, and the requirement for a resolution would imply that only the views of the majority of the authority would be communicated to the Board. In the interests of fairness and openness, and also in order to allow the Board to be aware of all significant opinions of the members, it would seem appropriate to permit the expression of such a minority view. Hence, it is suggested that the term "by resolution" be deleted from the subsection, and that an additional sentence be added, as follows:

"Where there are recommendations proposed by not less than one third of the membership of the planning authority, such recommendations shall be submitted, in addition to the recommendations of the majority of the members of the planning authority."

² Practice in planning authorities of the pre-application consultation process amply demonstrates that prospective applicants can often provide little advance notice of their proposals, and yet expect comprehensive responses from planning authority staff.

Section 37E(7)

It is noted that the Board may, where the development would have a significant effect and where it considers it necessary to do so, require adjacent planning authorities to furnish information in relation to the effects of the proposed development on their area. It is considered that where the development would have a significant effect (as is stated in the subsection), such a request for information should always be issued, and not be at the discretion of the Board. Hence the term “may” should be altered to “shall”.

Section 37F

The Institute is concerned about the introduction of meetings between the Board and an applicant, after the application has been submitted, that are not open to the public. This introduces a fundamental change in the operation of the Board, in that it will meet parties behind closed doors, and this process could well engender a public misapprehension of perceived bias on the part of the Board, since there is no requirement that these meetings be in public, or be attended by those who had made submissions and observations. This is considered inappropriate given the quasi-judicial nature of the Board as an appeals body, and marks a fundamental shift from the inclusive nature of oral hearings, for example.

It is suggested that the provision for meetings, as set out in subsection (e), be deleted. However, if this is not acceptable to the Oireachtas, it is considered that, at the very least, any meetings held with an applicant should be open to attendance by all parties who have made submissions or observations, particularly under subsection (e)(i), since the result of any such meeting would be seen as assisting the Board in determining the application (and in the interests of fair procedures). The Institute suggests an amendment to subsection (e), by the addition of a further paragraph, as follows:-

“all such meetings shall be open for attendance by all persons who have made submissions or observations in writing during the period specified in Section 37E, in accordance with procedures to be provided in Regulations. All such persons shall have the right to make such further submissions or observations arising from the meetings held, within such further time period as may be specified by the Board, in accordance with such Regulations.”

Section 37F(2)

The time period for making submissions on a revised EIS or further information should be specified so as to ensure consistency between each application and to ensure that no confusion occurs. It is considered that an 8-week period (as set out with normal planning applications with EIS's) is appropriate.

Section 37F(5)

The provision that the Board may request the EPA to make observations where the development requires a licence from the EPA, seems to reduce the ‘one stop shop’ nature of the procedure introduced by the Bill. It is suggested that in order to achieve a fast tracking of strategic infrastructure projects, an integrated consideration of the principle of the development in spatial planning terms and the environmental considerations of the project, should be considered. This could be done by facilitating a process where the planning application and the licence are considered in parallel.

Section 37G(2)

This section sets out the considerations that the Board may include in making its decisions on strategic infrastructure projects. There is no particular problem with most of these, which are similar to those used for normal planning applications. However, a new consideration is provided in paragraph (g) – the “national interest”.

The Institute is very concerned about this inclusion, since the Bill does not define the term “the national interest”, and since such any decision of the Board on a strategic infrastructure project that used such a term might be open to judicial challenge on grounds of uncertainty.

In addition, it is noted that the Bill seeks to require that the Board shall “consider” these matters. In the existing Act, it has to “have regard to” such matters, while “considering” the proper planning and sustainable development of the area. This is a fundamental change in legal terms, and would appear to be much more restrictive on the Board in coming to its decision.

The Institute suggests that either the term ‘national interest’ be defined in the Bill, or else that paragraph (g) be removed. A definition that reflected the original text of Section 37A(2)(a) and (b) might be appropriate.

The Institute also suggests that Section 37G(2) should state:-

*“Without prejudice to the generality of subsection (1), the Board shall have regard to –
...”*

[The same problem arises with Section 23 of the Bill, where it seeks to amend Section 143 of the Act, only in that case the term ‘national interest’ is being added as a matter to which the Board is to have regard not only for strategic infrastructure projects, but also for normal planning applications. It is suggested that the term be defined, or that the proposed 143(1)(b) be amended by the deletion of “the national interest”. It is noted that, in contrast to the proposed Section 37G, in the proposed Section 143(1), the Board merely has to “have regard to”. Is this deliberate, or a drafting error?]

Section 37G(7)

This requirement introduces the ability of the Board to attach conditions. It is noted that a developer will not have an opportunity to appeal any of these conditions. This is considered a deficiency in the special procedures introduced by the Bill, and underlines the need for the strategic infrastructure process to be optional (as for example the Section 25 process for the Dublin Docklands), and not mandatory.

Section 37G(7)(d)

While the proposal for the imposition of conditions requiring community gain is to be welcomed, it is suggested that the subsection requires a slight amendment, to permit also a combination of the construction and the financing of a facility or a service. For example, it might be contemplated by the Board that a developer should build a community centre, and provide financing for its operation. On the current wording, only one of these would be permissible. The following addition is therefore proposed to subsections (d)(i) and (d)(ii):-

“or a combination of both”

[A similar change is also necessary in the corresponding other sections – 182B(6)(a) and (b), in 182C(6)(a) and (b), and in 175 (9)(h)(i) and (ii)]

Section 37I(1)

The Institute supports the proposal whereby the Minister may make regulations only of a procedural and administrative nature. It is important that, in particular, the content of the Seventh Schedule should not be amenable to alteration by Regulation, since this would permit the considerable alteration of the entire basis of the Bill, by including other types of development within the strategic infrastructure process. It is noted that, during the Seanad debate, there were a number of suggestions that private sector projects, such as golf course and leisure developments, should be included within the scope of the Bill. This type of private sector development should not, it is submitted, be allowed to by-pass the normal planning process. Since the Minister was categorical, in his Seanad Second Stage speech, that this was not his intention, it is suggested that the matter be copperfastened by the addition of the following phrase at the end of subsection (1)(b):-

“but not any amendment to the Seventh Schedule of this Act”

This amendment would ensure that any alteration to the Seventh Schedule would have to be initiated by way of an amending Bill, and hence be fully debated by the Oireachtas.

Section 371(2)

The Institute strongly feels that there should be no provision for the payment of fees by planning authorities, prescribed bodies and by persons making submissions and observations on strategic infrastructure projects. As all such projects involve, by definition, an environmental impact assessment, the imposition of fees is inappropriate and would conflict with European law. In order to ensure that such fees would not apply (and in the light of the fact that subsection (2) states that “without prejudice to the generality of sub-section (1)), it is suggested that the following be added to the end of subsection (2) (b):-

“but not for the payment of any fees by planning authorities, prescribed bodies nor by any other person making submissions of observations on applications.”

[It should be noted that Section 10 of the Bill, which would amend Section 3(4) of the Act, seeks to exempt from fees only certain environmental NGO’s. It is strongly argued by the Institute that everyone should be entitled, as citizens, not to have to pay fees for making observations and submissions on planning applications which affect them. Since applicants, including applicants for strategic infrastructure projects, pay fees, such fees can cover the small administrative cost of processing these submissions and observations, as it is the applicants who stand to gain from the granting of a planning permission. This is analogous to any service provider paying fees for the processing of their service (e.g. Telecoms operators pay fees to the Commission, etc).]

Seventh Schedule

The Institute generally accepts that the listing of the types of projects that might be categorised as strategic infrastructure is appropriate, and would generally tend to be major projects. However two anomalies are evident, which would permit the inclusion of more minor developments that would be better considered using the normal planning process. These are:-

Transport Infrastructure – Part 2, third paragraph.

Here it is suggested that all car parks “related to” an airport of more than 2 million passengers would be considered as strategic infrastructure. Current practice is that private developers have been constructing car parks in the general vicinity of airports, which are purely profit driven, and which are in competition with the airport authority’s own car parks. If it is felt that it would be inappropriate to limit car parks to those “provided for or on behalf of the airport authority” instead of “related to” such an airport, then the Institute would suggest that a size threshold for such car parks be included. The EIS threshold for a car park is 500 spaces, and it would seem appropriate that the Schedule be amended thus ; “...*pier, car park (consisting of not less than 500 spaces), ...*”

Transport Infrastructure – Part 2, fourth paragraph

Here it is suggested that a harbour or port installation, which would involve the reclamation of 5 hectares or more of land, would be considered as strategic infrastructure. While a commercial harbour or port involving the trans-shipment of goods might be allowable, it is considered that a leisure type development, such as a private marina, irrespective of the amount of land to be reclaimed, should not be allowed to by-pass the normal planning process, as that type of development is generally profit-driven, is rarely in the general public interest and is not strategic in nature. It is suggested that an addition be made to this sub-paragraph, as follows:-

“A harbour or port installation (other than such an installation used solely for the purpose of mooring leisure craft)... “-

PART 3

The Institute notes that, in addition to providing for the setting up of the strategic infrastructure process, the Bill seeks to make significant changes to the 2000 Act, which will affect all planning applications/appeals. While some of the changes are welcome, a number of these changes seem, in the opinion of the Institute, to be neither justified nor in the interests of fair procedures/the common good, and would make fundamental and unacceptable changes to the fair and open operation of the planning appeals process, on which public confidence in the process relies.

Section 8 – Amendment to Section 34(4)

The Institute supports the inclusion of the concept of planning gain in general planning applications as well as in strategic infrastructure projects, but considers that the wording used in paragraph (a)(ii) is open to conflicting interpretations, and may be legally suspect. The term “burden unduly” is not defined. It is suggested that the last section of this subsection be amended to the same wording as is used in Section 37G(8), as follows:-

“...section of the public (and the effect of the imposition of conditions for that purpose would not require such an amount of financial resources to be committed as would substantially deprive the person in whose favour the permission operates of the benefits likely to accrue from the grant of permission.)”

Section 10 – Amendment to Section 37(4)

This section seeks to define the criteria by which environmental and heritage NGO’s are entitled to take part, as of right, in the planning process. While it is accepted that there should be some clear criteria, to prevent “single-issue” groups being established on a “nuisance” type basis, it is considered that the criteria set out in subsection (d)(i) and (ii) are sufficient to achieve this end.

The Institute considers it to be entirely inappropriate that the Minister of the day should be entitled to set further criteria, as suggested in (iii) and subsection (c). This is particularly so because subsection (c) also operates to limit the right to seek Judicial Review. Such a potential interference with the judicial process by a member of the Executive is, it is argued, unconstitutional. In addition, it seems to the Institute that such a provision in the Act would be certain to lead to legal proceedings (and potentially the striking-down of the Act, or parts of it). The resulting legal uncertainty would not be in tune with the overall intention of the Bill, which is to speed up decision-making on planning proposals.

The Institute therefore strongly urges the deletion of subsection (b) (iii) and subsection (c), and also the deletion of reference to subsection (c) later in the Bill, in its amendments to Section 50 of the Principal Act.

Section 15 – Amendment to Section 106

The revised groupings of nominating bodies could result in a Board with two representatives of the development industry under (1)(b) and a further person with pro-development credentials under (1)(d)(iii) and no representative of conservation interests. This would result in a lack of balance and would be a deterioration on the present position.

The Institute suggests that, at the very least, sub-paragraph (d)(iii) be relocated to subsection (b). In addition, subsection (d)(ii) is extremely vague, and could well include all types of bodies and companies with no real involvement in the planning process. It is suggested that subsection (ii) be deleted, or be amended, in order to promote clarity, to include the phrase “the aims or objectives of which relate to the promotion of environmental protection and the natural and built heritage”.

Section 21 – Amendment to Section 134

Having regard to the extent of pre-application discussions under Section 37B, third parties will have good grounds for forming the opinion that there is a presumption that permission will be granted. In these circumstances, the obligation, instead of discretion to the Board, to have an oral hearing would help to give confidence in the new procedure by rebalancing the access for promoters and objectors to decision-makers.

It is strongly recommended that the Board's discretion to hold an oral hearing, in relation to strategic infrastructure projects (i.e. applications under section 37E) should be mandatory, not discretionary, given the complexity and admitted strategic importance of such projects, and given the fact that the former local authority stage of the process is being removed. The following amendment is therefore suggested:-

Add to end of 134(1):

“but shall hold such an oral hearing where any person making submissions or observations under section 37E, the planning authority in whose functional area the proposed development would take place, or the applicant under this section, requests such an oral hearing.”

Section 22 – Amendment to Section 135 of the Act

The new subsection 2A seeks to enable the Board to direct the person conducting an oral hearing (i.e. the Board's inspector) to require persons intending to appear at the hearing to submit in writing and in advance of the hearing the points or a summary of the arguments that he/she proposes to make at the hearing. Later, in subsection (2B)(d) (i), this enables the inspector to refuse to permit any points made by that person that do not comply with the prior written summary.

The Institute strongly feels that this provision is unacceptable in principle, since it is contrary to the constitutional rights to fair procedures, and also that the provision would be unworkable / counter productive in practice, as it would make it extremely difficult for an Inspector to run an oral hearing, as currently is the practice, without undue formality and in an orderly fashion. In constitutional terms, it would place burdens on one side – an objector, for example – without a similar burden being placed on the other side – a developer for example. This, it is suggested, would not survive a legal challenge on constitutional or equality grounds. (It should be noted that, as proposed in the Bill, this provision would apply not just to strategic infrastructure projects but to all planning appeals that go to oral hearing.)

In terms of practicality, it is likely that this provision would be the subject of legal challenge, including requests for adjournments at oral hearings to enable such challenges to be taken, in the event of a refusal to hear points. If adjournments were not given, the orderly running of the hearing would be affected, to no great advantage in terms of timeliness. In many cases, complaints about non-admissibility of arguments at oral hearings would cause them to be unnecessarily delayed. If challenged successfully, the oral hearing would have to be re-opened. The potential gain, in time, by this provision would be miniscule by comparison.

The Institute strongly urges that subsections (2A) and (2B)(d)(i) be deleted from the Bill.

Section 32 – Amendment to Section 281 of the Act

This change seeks to remove the requirement of the Board to hold a mandatory oral hearing/public inquiry or local inquiry for the compulsory acquisition of land, and to enable it to hold one only at its discretion. This change had been proposed initially in the 1999 Bill but taken out during the Oireachtas Debates. It has again re-appeared.

It was suggested by the Department recently, in a public forum, that the mandatory oral hearing is 'historical' and that a number of the cases dealt with by the Board "could have been dealt with by exchange of papers". This suggestion is less than convincing. The Institute strongly feels that, where compulsory purchase of land is involved, there is good reason,

based on the constitutional right to private property, for the person affected to be given the opportunity to question why his/her land has been selected for acquisition. This can most fairly – and indeed efficiently – be done through an oral hearing, rather than through written communication. In particular, having regard to the increasing use of CPO to assemble sites for commercial development by private individuals, it is essential that the landowner affected should be given the opportunity to question the proposer, since property rights under the constitution can only be delimited in the interests of the common good.

The Institute therefore suggests that this proposed amendment be omitted, and that the only amendment to Section 218 of the Act be the substitution, in both subsections (1) and (4) of “sections 214, 215 and 215A” for “sections 214 and 215”.

PART 4

The same issue in relation to the need to retain mandatory oral hearings where the compulsory acquisition of land is involved applies to the proposal in Section 38 of the Bill, to amend the Railway Safety Act 2005. The following change to the Bill is suggested by the Institute, for the same reasons as set out above in the preceding section.

Amend the proposed Section 42(1) so that it reads as follows:-

“(1) The Board may, at its absolute discretion, hold an oral hearing into an application for a railway order, but shall hold such an oral hearing where the order involves or includes the compulsory acquisition of land, and the owner of such land requests that an oral hearing be held.”

In each case, an oral hearing would only be required where the persons whose lands are proposed to be acquired request such a hearing. The current situation is that oral hearing must be held where there are objections. In many cases, objections to CPO's are merely formal, with the real objection being left to the arbitration stage, and in such cases, the landowner may not consider it necessary to request an oral hearing. In many other cases, formal objections are withdrawn prior to the hearing. Accordingly, the Institute's suggestion would have the effect of reducing the current number of such hearings, but not prejudice the constitutionality of the process, and hence its certainty and timeliness.