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Irish Planning Institute Submission on Planning and Development (Amendment) Bill, 2009

Section 3

No comment.

Section 4

This amendment is supported.

Section 5

The principle of this amendment is supported. However, it is felt that the words 'as far as practicable' (page 7, line 13) potentially dilute the principle of the amendment. These words should therefore be removed. Also, references to settlement hierarchy should include rural areas and specific references to current area designations or NSS phraseology (e.g. gateways and hubs) should be avoided in the legislation.

Page 8, line 19:

Replace "an urban settlement hierarchy" with "a settlement hierarchy".

Page 8, lines 21-24

Replace proposed text with the following text:

(i) "whether a city or town referred to in the hierarchy is consistent with the designation of such city or town within the national hierarchy set out in the NSS".

Page 8, line 25

Remove (ii) completely.

Page 8, line 33

Add the words at end of sentence: 'including rural areas'.

Page 8, lines 43-46:

Remove this subsection (viii). See inclusion of 'rural areas' in subsection (iv). The Institute consider that it is not appropriate to refer to guidelines in the legislation.



Page 9, line 10

Replace word 'centres' with 'areas'.

Page 9, lines 15-38

Remove section (2C) completely. There is no need for a definition of settlement hierarchy. This subsection is unnecessary and could lead to confusion with subsection (f)

Section 6

The Institute appreciates the logic for excluding submissions relating to the zoning of land from the pre-draft submissions stage of the development plan. However, the Institute is also concerned that this may have unintended effects that are detrimental to the democratic planning process. This would be the case particularly in combination with the introduction of the requirement of a two thirds qualified majority of the council (a requirement that the Institute supports).

Under the proposed Planning Bill, the only opportunity for landowners, developers, resident groups, amenity societies or other interests to have a meaningful say in the zoning objectives affecting their property or their local area is in the preparation of a new Draft Development Plan. In effect this change would disenfranchise all these interested parties from having a meaningful input to this key aspect of the Development Plan making process as it relates to the properties or their local area. It is acknowledged that submissions should clearly demonstrate how the proposal would comply with national and regional policies and how the proposal is considered to be in the interests of the 'common good'.

While the Institute therefore sees clear merit in the proposal to remove submissions relating to proposed zoning of land from the pre-draft stage of a development plan preparation, it also sees clear disadvantages in adopting this approach. For that reason, the Institute is of the view that this proposed amendment to the legislation needs careful further consideration.

Section 7

Page 12, lines 3 – 4.

Replace the text in the Bill with the following:

"where the amendment/modification involves any zoning of lands for any purpose, or any general objective having the same effect or purpose, paragraph (c) shall apply in relation to the making of the resolution"

While the Institute supports the general thrust of the Bill, in requiring a qualified majority for a resolution, it considers that this should only apply to resolutions for the zoning of lands, and not to general policy proposals in a Development Plan, which would not be so controversial.

The Institute fully supports the general thrust of the Bill, in requiring a qualified majority in this Section, and also in Sections 8 and 19, but considers that the qualified majority should be the same as is required to pass a resolution for a "material contravention". It is suggested that, if the Minister is of the view that the qualified majority should be "two-thirds" of the membership of the Council, then the equivalent qualified majority should be set for material contraventions (Section 34(6)(b) of the Planning and Development Act 2000 refers). (However, it is considered that, even if this is to be done, the three quarters majority should continue to apply in relation to resolutions under Section 140 of the Local Government Act 2001 (Section 34 (7) of the 2000 Act refers)).

Section 8

The Institute is of the view that the period of 12 weeks for the preparation of the manager's report on submissions is too short and should be extended to 18 weeks.

The comments in relation to the qualified majority, set out under Section 7, apply here also.

Section 9

No comment.

Section 10

The IPI supports the principle of the planning hierarchy and the use of the Local Area Plan as a plan level that is below the level of the City or County Development Plan. Widespread use of the Local Area Plan for smaller towns is desirable. However, the Institute questions the need *to raise the threshold for mandatory plans from 2000 to 5000 population. This seems to be large increase in population. The Institute supports the preparation of local area plans for smaller settlements, although not mandatory, also.*

Page 14, line 28:
Remove (i) completely.

Page 14, line 36:
Change to: "which has a population less than 2,000 persons, and"

Page 14, line 45:

Add to end of Section 19 (1)(a) the following additional subsection:

"(iii) but shall not be made for wider geographical areas which constitute electoral areas (or parts thereof) and shall not, cumulatively, encompass the overall functional area of the planning authority"

This addition is necessary to no longer allow the trend, which has taken place in certain planning authorities, whereby Local Area Plans are being adopted for wide geographical areas, in some cases electoral areas, and which cover the entire area of

the authority. The Institute considers that LAP's should be limited, as originally envisaged in the 2000 Act, to towns and other urban centres, or specific areas which are likely to be subject to large scale development relative to the existing scale of development in an area. To include large areas of a county, which consist of largely rural areas, and of areas where large scale development is unlikely to take place, is inappropriate and supplants the proper role of the county Development Plan, unless this is necessary for practical reasons in the case of large administrative areas with many small settlements.

Page 15, line 8:

Replace "10 years" with "6 years"

The Institute is concerned about provisions for proposed changes in respect of the timescale for Local Area Plans in the Bill. It is suggested that Local Area Plans would have a lifetime of 10 years rather than 6 years. It is submitted that this is far too long a life span for such a plan. It is not appropriate to have a longer plan horizon period for a local area plan than for a city or county development plan. Generally, the principle is that plans at higher levels in the planning hierarchy should have longer plan horizons.

As with development Plans, Local Area Plans should be reviewed every 6 years. A review of a Local Area Plan does not require a fundamental redrafting of the Plan. This can be relatively simple to undertake in many cases and 6 years should be the maximum period allowed to planning authorities in this regard. This is particularly important having regard to increasing emphasis being placed on plans by An Bord Pleanála in its decision making process and having regard to proposed changes in the Bill.

Page 15, line 27:

Add the following words at end of sentence: ..."and in the interim the provision of the Local Area Plan shall apply."

Section 11

Page 15, line 44:

Remove words: ..."where it considers it appropriate"

The Institute considers that it is essential that, where a material modification of a local area plan is being considered, the copy of the proposed modification should be sent to the Minister, the Board and the prescribed authorities, so that they can make a meaningful response. It should not be at the discretion of the planning authority to decide whether or not this should be provided.

Page 15, line 45

In the light of the proposed amendment, which the Institute supports, it is no longer appropriate to have regard to draft Local Area Plans in dealing with planning applications or appeals. To solve this problem, Section 18 (3)(a) of the Act should be amended by the deletion of the following words: "and the authority or the Board

may also consider any relevant draft local plan which has been prepared but not yet made in accordance with Section 20"

Sections 12-14

These sections are generally supported. Amendment proposed in section 14, page 18, lines 16-19 is in particular strongly supported.

Section 15

This section requires a regional authority to make a submission on a draft development plan and as part of such a submission, to prepare a report addressing the consistency of the development plan with the relevant regional guidelines.

While the IPI supports the principle of this obligation on the regional authority to comment on the draft development plans in this regard, it would note that, by reason of the overall structure of regional authorities (where the members are not elected directly, but nominated by their constituent local authorities), and by reason of their general lack of staff/qualified planning staff working directly to them, the provisions of this Section may not be capable of implementation as proposed. The former might be resolved in the forthcoming Local Government Bill. The latter is a function of the allocation of staff, and financial resources to the regional authority tier.

Section 17

Page 20, lines 9 - 31

Delete subsection (1A) (b) and all of subsection (1B)

The Institute considers that it would be inappropriate, and contrary to the overall scheme set out in the Bill, that a planning authority would be entitled to include, in a development plan, objectives or policies which do not comply with national policy guidelines.

The provisions of these subsections would appear to be allowing such deviation from such national policy and so would, in the Institute's view, frustrate national policies.

Section 18

Page 21, lines 8 and 23

Add to end of subsection 3 (b) on line 8 the words:-

"or is not consistent with the provisions of the National Spatial Strategy, or the Regional Planning guidelines, as applicable.

Add to end of subsection 4 (b) on line 23 the words:-

"is consistent with the provisions of the National Spatial Strategy, or the Regional Planning guidelines, as applicable, and"

The Institute supports, in general, the enhanced powers of the Minister to direct planning authorities to amend their development plans or local area plans where they are not in compliance with national policy. However, there should be an explicit provision that the Minister may issue directions where the relevant plans are not consistent with the NSS or RPG's.

Page 21, line 9

Add new subsection, as follows:

(c) in the case of a local area plan or a variation of a local area plan, the plan is not consistent with the provisions of the development plan for the area"

and renumber (c) as (d) accordingly.

The Institute considers that there should be explicit provision that the Minister may issue directions where a local area plan is not consistent with the provisions of the development plan

Page 23 lines 2 - 5

Replace the text of the Bill on lines 2 -5 with the following:-

"he or she may, for stated reasons, refer the matter to An Bord Pleanála no later than 3 weeks after the date of receipt of the report under subsection (8)"

Page 23 lines 5 – 9

Replace subsection (12) with the following:

"(12) Where a matter has been referred to An Bord Pleanála by the Minister under subsection 11(b), the Board shall appoint an Inspector from among its employees to report on the matter to the Board, and the Board shall, having considered the report and recommendation of the Inspector, which shall be carried out pursuant to subsection (13), provide advice to the Minister."

Page 23, lines 10 and 11

Replace the first two lines of Section (13) with the following:

"The Board, and the Inspector appointed by it under subsection (11)(b), having regard to the stated reasons for the referral by the Minister-"

Page 23, lines 19 - 21

Replace subsection (c) with the following:-

(c) shall not later than 18 weeks after the matter was referred to the Board by the Minister furnish a report containing advice on the matter to the Minister.

Page 23, line 22

Replace “of the report of the Inspector” with “the report of the Board”

The Institute considers that it would be more appropriate that the Minister should be advised on this type of issue by the independent existing statutory body dealing with planning appeals – An Bord Pleanala – rather than by one of the Minister’s own Inspectors or by a person appointed by the Minister as an inspector on a once-off basis. The Institute considers that, in order to obviate the appearance of any potential bias or conflict of interest, it is appropriate to use the objective skills contained within An Bord Pleanala in this context.

Additional Submission in relation to Section 31 of the Act

The Institute is strongly of the view that, notwithstanding the proposals contained in the Bill, problems will remain in relation to development plans not being fully consistent with the provisions of the National Spatial Strategy and the Regional Planning Guidelines. The existing system, whereby the submissions on a draft Plan are considered by the same people who prepared the Plan is one of the major problems with the system, since there is at the very least the perception on the part of the interested public that their concerns are not being properly considered.

The Institute feels, therefore, that there should be a limited right of appeal, in relation to the adopted development plan, variation of a plan or local area plan, within a specified time period after the making of such plan, variation or local area plan, in terms of their consistency with the NSS, RPG’s or Development Plans, as applicable, and that it would be appropriate that an independent body, such as An Bord Pleanala, would have a role in advising the Minister of this matter, while leaving the final decision to the Minister. While the scheme in the Bill provides for general Ministerial intervention under Section 31, this is solely at the Minister’s initiative, and there is no role for the public in this process. It is suggested that the need for such intervention would be lessened, and the credibility of the entire plan making process would be enhanced, by independent scrutiny of such Plans.

The Institute therefore suggests that further subsections be inserted at the end of Section 31, as follows:-

(21) Where any question is raised by any person in writing to the Minister within a period of 4 weeks from the date of making of a development plan, a variation of a development plan or a local area plan, as to whether or not any specified objective or policy of such plan is consistent with the National Spatial Strategy, Regional Planning Guidelines or Development Plan, as applicable, such matter shall be referred to An Bord Pleanala.

(22) Where such question is referred by the Minister to An Bord Pleanala under subsection (22), the Board shall determine whether or not the specified objective or policy is or is not so consistent, and shall report to the Minister on this matter within a period of 18 weeks from the date of referral.

(23) Where, following receipt of the report of the Board under subsection (21), the Minister is of the opinion that the development plan, variation or local area plan, as the case may be, ought to be modified, the Minister may issue a direction under subsection (1) of this Section.

Section 19

The comments in relation to the qualified majority, set out under Section 7, apply here also.

Section 20

The IPI welcomes the strengthening of the provisions in relation to past failures to comply with specific regard to the carrying out of unauthorised development and those convicted of an offence under this Act.

(It is noted that the Explanatory Memorandum refers to refusal of planning permission subject to 'conditions'. Presumably this should read: 'refusal reasons'.)

Sections 21, 22

No comment.

Section 23

The principle of the five year duration of a planning permission is a long established principle tied in with the plan horizon period of a development plan. The principle is that after a period of five years, planning policy for an area may change substantially and any decision made on a planning application which has not yet been implemented must be reviewed in the context of the new policy framework. For that reason, it seems wrong to introduce a facility in the legislation whereby an existing permission can be extended because of economic circumstances.

The procedure set out in the Bill would also appear to be rather cumbersome and bureaucratic to operate, in practice.

However, the current difficulties are recognised. As an alternative it is proposed that there would be blanket once off facility that all planning permissions granted within a specified time period, have an extended period of three years.

Sections 24, 25

This amendment is supported.

Sections 26, 27

No comment.

Section 28

It is considered inappropriate to reduce the minimum size of the Board from three to two members. The role of the Board is to reach a decision based on a detailed and comprehensive report from its inspectorate. The need to reach a balanced decision far outweighs the efficiency gain obtained by reducing the number of members from three to two. If there is a bottleneck in decision making by the Board the appropriate response would be for the Minister to appoint additional members to the Board. The Minister has already powers to do this.

Sections 29, 30, 31, 32, 33, 34, 35, 36

No comment.

