The Irish Planning Institute welcomes the opportunity to provide comments to the Department of the Environment, Community and Local Government on the preliminary public consultation on planning application process and procedure and the review of the 2007 Development Management Guidelines.

A review by the Department of the Environment, Community and Local Government of the 2007 Section 28 Development Management Guidelines is to be hugely welcomed at this time, particularly in light of Ireland’s obligations under numerous international conventions e.g. UNECE Aarhus Convention, EU Directives and Conventions e.g. EU Renewable Energy, EU INSPIRE, and the EU Habitats Directive; along with recent upheavals in the national economy, which have impacted on all sectors of Irish society. The review is also being carried out in a new era of public environmental awareness, in relation to land use planning and particularly, in relation to energy and climate change, and the need for positive public policy to deliver effective and efficient energy and climate change adaptation. The Department’s Planning Unit is to be congratulated, given severely limited resources, on its endeavours to update and evolve national planning policy in this regard.

1.0 General Issues on Planning Application Process and Procedure

1.1 Exempted Development
The Institute understands that the Department, as part of this consultation, is seeking views on the potential amendment of the categories of exempted development. Suggested amendments are set out below:
• **Exemptions / Fast-track planning system for minor changes to existing planning permissions:** Planning and development case law has for some time recognised that planning permissions must be interpreted flexibly so as to allow for “immaterial deviations” (e.g., see O’Connell v. Dungarvan Energy Ltd [Unreported, High Court, Finnegan J., February 27, 2001]). There may be some merit in allowing for some minor changes in exemptions where the development has not yet commenced (and there would be no adverse impact on adjacent/adjoining dwellings or historic areas), e.g., some changes to external finishes. In order to provide certainty in this regard, the Institute would support the creation of a streamlined application process whereby the applicant could submit revised drawings for very minor amendments to the planning authority for consideration and agreement.

• **Availability of exemptions during construction:** Exempted development provisions should be available during the construction period, subject to compliance with development plan policy and standards. Such a mechanism would allow for relatively minor amendments – that would otherwise be considered exempted development in a completed and occupied building (i.e. post-construction) to be made during construction. This could potentially streamline the planning application process and avoid untimely delays during construction.

• **Exemptions / Fast-track planning system for changes to house types or densities:** The Irish Planning Institute has grave concerns about proposals to extend exempted development and / or offer fast-track process for the amendment of planning permissions where it could result in changes to residential densities. A number of media commentators have suggested that proposed amendments to planning law would allow quicker changes to existing planning applications, without having to go back to the start of the process, as long as the changes do not fundamentally affect the infrastructure or visual impact of the development. These commentators have suggested that the objective would be to allow for more lower density development within higher density schemes to meet current market demand. The layout of and density at which a residential development is constructed is a core facet of the proper planning and sustainable development of an area – specifically, lower densities particularly in larger urban areas close to public transport links, are more wasteful of land and resources. Whereas flexibility on housing densities may be perceived as providing a quick fix, it can result in the long term unsustainable patterns of development that led to many of the problems associated with the recent property crash (e.g., unfinished housing estates). The Institute would have serious concerns about such an approach having regard to potential implications for core strategies (as set out in the relevant development plans); the rights of the public to participate in decision-making; transparency and accountability in the development management process; and the need to safeguard proper planning and sustainable development.

• **Changes to existing exemptions:** The Institute proposes the following amendments to existing classes of exempted development:
  - Removal of or restriction of size on exemption for change of use from sale/display or leasing of motor vehicles to a retail shop under Schedule 2 Part 1 Class 14 of the Planning and Development Regulations.
  - Removal or restriction for signage exemptions for illuminated / neon / LED sign in Schedule 2 Part 2 of the Planning and Development Regulations.
1.2 Government Policy on Planning

The review of the development management guidelines would benefit from a Government Policy statement on planning. The Government Policy statement would set out the overall aims and purpose of the planning system, which could then be applied to the development management process. The introduction of the OPR, like the publication of a planning policy statement, is a highly visible means of improving the credibility of the planning system as a whole and a clear indication of the government's commitment to enhancing the planning system and its confidence that planning can fulfil its role in creating sustainable communities and working for the betterment of society as a whole.

The Institute has taken the opportunity to identify some of the broad principles and overarching concepts, which we believe should be reflected in the policy statement. We would be delighted to engage further with the Department on this project and to have an opportunity to be consulted on any draft document that may be produced.

Firstly, it is considered that the policy statement should set out the overall role and purpose of the planning system. The Irish Planning Institute believes that the planning system is concerned with ensuring a better quality of life for the citizens of this country by forecasting the future needs of communities in order that these needs will be met in a timely and integrated fashion. It should also be emphasised that good planning contributes to a stable economy, boosting enterprising opportunities in towns, villages and rural areas and providing many social benefits to all.

The planning policy statement should highlight that there are two key concepts in particular that underlie the operation of the planning system: that of the common good and sustainable development. Planning works on the principle of the supporting the common good with the aim of achieving sustainable development.

It needs to be emphasised that the common good refers to making decisions on the basis of what is right for society as a whole. In planning, this can refer to the local, regional or national level depending on the particulars of a given situation. The concept of a common good recognises that an individual decision may inconvenience or may not profit an individual but that if it is beneficial and desirable for society it is the correct decision.

There is presently no definition provided in the planning legislation of what sustainable development is. It is broadly understood as being development, which meets the needs of the current generation without hindering the ability of future generations to meet their needs. Our Sustainable Future: A Framework for Sustainable Development for Ireland states that sustainable development is “a continuous, guided process of economic, environmental and social change aimed at promoting wellbeing of citizens now and in the future.” These definitions link with one of the requirements of the planning system to take a long term view, examining both the long term and short term impacts of a proposal or plan. Sustainable development is often interpreted as comprising social, environment and economic considerations. These considerations can often conflict and it can be difficult to achieve a balance between them. However it is the job of the planning system to resolve situations such as these in a way that is in the interests of the
common good and will promote sustainable development as a whole. It would be helpful if the policy statement could expand on the foregoing, outlining at a high level what sustainable development constitutes, particularly in the context of the planning system, and how the planning system will facilitate it.

While these two concepts underlie the planning system, the Institute believes that it must also support the following principles, which should be reflected in the policy statement:

1. Transparency: The planning system must be transparent in how it operates and makes decisions. Transparency is fundamental to ensuring public confidence, credibility and legitimacy in the system.

2. Evidence based decision making: Transparency is facilitated and decision making is improved where there is a clear reasoning for decisions and where they are supported by up to date, relevant research and evidence.

3. Public engagement: The planning system seeks to improve the quality of life of citizens. To do this, it must engage with communities to ascertain their views and requirements and ensure that plans reflect the needs of the communities they are meant to support.

4. Plan led development: Planning should be on the basis of robust spatial plans, which are founded on up to date information and research.

5. Consistency and certainty: These two items are directly related as consistency in decision making will enhance certainty for participants in the planning system. Evidence based and plan led decision-making will facilitate consistency in decision-making.

6. High quality: This should be a hallmark of the operations of the planning system and visible in all of the outputs from planning including in the built environment and places that are created and standard of living that results, the plans that are produced and the decisions that are made.

In addition to these principles, there are a number of matters, which the Institute suggests that the policy statement should specifically address and highlight.

Planning is by nature a cross disciplinary activity and the planning policy statement should reflect the ability of the planning system to act as a co-ordinating agency across Government departments (at national, regional and local level) and sectoral interests. It is believed that the policy statement for planning should link with other relevant Government policies such as the Policy on Architecture 2009-2015. The need for communication, consultation and engagement with the public is vital in this regard. The planning system, with its experience of delivering projects and plans in tandem with communities, can have a lead role to play in this and the IPI would like to see this positive aspect of the planning system recognised in the planning policy statement.

Moreover, it should be supported by Government policy and agencies working in other areas in order to ensure that it is not compromised by decisions made in these other areas. Land is a
valuable resource and its exploitation comes at a cost. A strong policy statement could be used to direct investment and resources into appropriate areas ensuring an efficient return on public funds.

The statement should emphasise how planning can link with other instruments, particularly in the area of local income generation and taxation to achieve economic and planning goals, for example utilising development contributions schemes to support the objectives of core strategies as outlined in the recently published Development Contributions Draft Guidelines for Planning Authorities. There is clear potential for the proposed property tax to operate in a similar fashion.

The Institute considers that the policy statement on planning should strongly support the carrying out and dissemination of research in the area of planning. This is fundamental to ensuring that planning decisions are evidence based. Since An Foras Forbartha was disbanded, there is no agency responsible for conducting planning related research, although, as discussed below, it is hoped that the Office of the Planning Regulator will take over this role. There is valuable research being carried out in the Universities and Institutes of Technology. However, greater efforts are needed to bring the findings of this research into mainstream planning forums and integrate them into planning practice. It is also vital that these organisations continue to be supported.

The planning policy statement could take the opportunity for Government to outline broad, strategic policies on issues such as place making and design, heritage, economic development and retailing, landscape, transport, urban and rural development, housing, renewable energy, flooding, waste management and communications infrastructure. These could then filter down into the individual topical guidelines and circulars issued by the Department.

The statement should also strongly support and encourage public participation at all stages of the planning process. This is critical for the achievement of accountability and transparency.

Finally, the Institute believes that the policy statement should include a commitment to review and update, if necessary, the statement after a defined period. This would illustrate a commitment to reviewing new research and data and incorporating evidence based decision making at the highest level in the planning system.

The Irish Planning Institutes believes that the preparation of a policy statement for planning provides a great opportunity to set out a clear vision and objectives for the planning system, which will benefit those who interact with the system and who experience the outputs of the system on a daily basis as experienced in their community.

1.3 Office of the Planning Regulator

The Development Management Guidelines would benefit from inclusion of sections outlining the role of other bodies and organisations with major roles in the development management process, e.g. the Environmental Protection Agency, the Office of the Ombudsman and the soon-to-be established Office of the Planning Regulator.

The Institute welcomes the decision of the Government to implement 20 of the 22 recommendations of the final report of the Tribunal of Inquiry into Certain Planning Matters and
Payments (the Mahon Report), including Recommendation 10, which states as follows:

The Minister for the Environment’s enforcement powers should be transferred to an Independent Planning Regulator who should be charged with carrying out investigations into systemic problems in the planning system as well as educational and research functions.

The Mahon Report does not provide a descriptor of the likely powers or structure of the Office of the Planning Regulator so inspiration must be drawn from existing exemplars within Ireland, such as the Commission for Communications Regulation and the Commission for Aviation Regulation. These bodies regulate certain aspects of their respective fields under the auspices of a relevant government department. Each of these bodies was established by legislation, which stated that ‘the Commission shall be independent in the exercise of its functions’. These bodies are answerable directly to the Oireachtas.

Given the above and having regard to the national and international meanings usually given to the term ‘regulator’, there is likely to be a clear expectation on the part of the public that the Office of the Planning Regulator will exercise some regulatory function autonomous of the Minister or the Department of the Environment, Community and Local Government. While it is unlikely that there would be public expectation that the OPR would assume any of the development management functions currently exercised by consent authorities, such a body might investigate complaints from the public on maladministration and/or corruption in consent authorities. Given the obvious potential for overlap with the role of the Office of the Ombudsman, it is likely to cause confusion if all such powers in relation to investigation of complaints relating to planning are not transferred to the Independent Office of the Planning Regulator.

It is understood that the primary function of the OPR will be to assume the development plan review function of the Planning Section of the Department of the Environment, Community and Local Government and to provide recommendations to the Minister. If it is intended that the OPR should perform only a review or investigatory function, it is considered inappropriate and misleading that the new office be referred to as a regulatory body and it is suggested, in that event, that the office be renamed to the ‘Development Plan Review Board’. The Institute does not advocate such a limited role.

The 2014 Edelman Trust Barometer Global Results indicate that, of the countries surveyed, Ireland is the third least trusting country, scoring higher than only Poland and Russia. Trust in government, at 21%, dropped by almost one third between 2013 and 2014 alone. The Third European Quality of Life Survey also identified a decline of trust in government, noting that trust in public institutions in studied countries decreased even more than trust in people between 2007 and 2011.

In order for the establishment of the Office of the Planning Regulator to result in meaningful change in public confidence in the planning system, it must be clear that the OPR is independent and the OPR must be afforded some genuine power to “regulate” specified elements of the planning system. In order to inform the process of defining that role and remit, the Institute submits that the below powers could feasibly be ascribed to the new Office of the Planning Regulator:
(1) The power to investigate instances where there appears to be systemic problems in the planning system, including possible corruption.

(2) The power to issue directions to local and regional planning authorities to ensure compliance with the planning hierarchy, along with the overall responsibility for ensuring that development plans take account of the proper planning and sustainable development of the relevant area. Review of development plans in this context should go beyond mere oversight and seek to ensure thorough review of development plans with a view to ensuring a high standard of local forward planning across the country. The development plan seeks to balance the best use of resources with protecting our environment and providing for sustainable development, while taking into account the constitutional property rights of all citizens in a just and equitable manner. The development plan is an environmental contract between a local authority and the community and is the keystone in the relationship between the public and the planning system. Development plans are for the public and it is imperative that we ensure that they are legible and accessible to everyone. In this regard, it is critical that the OPR be adequately staffed and resourced.

(3) Provisions currently requiring regional authorities and planning authorities to notify and consult with the Minister regarding RPGs and Development Plans should be extended to include a requirement to notify and consult with the Office of the Planning Regulator.

(4) The power to conduct reviews (including spot-checks) of any aspect of the work practices and/or procedures of planning authorities, including those relating to applications for, refusals of, and grants of planning permissions, and to do so without advance notice to a planning authority, or any other party.

(5) Ensure continual professional development and training to the elected members, stakeholders, professionals, interested parties and the community as well as on-going guidance and education as to what constitutes proper planning and development together with providing updates on all matters to which decision makers are obliged to have regard.

(6) Ensure relevant research into best practice in the area of planning and development and the dissemination of that research. This could include monitoring of elements of the development management process outside of issues recorded in local government performance indicators and other data collected by the Local Government Management Agency. There is an opportunity for the Office of the Planning Regulator to undertake a research function similar to that previously undertaken by An Foras Forbatha. The Institute has called for many years for the reinstatement of a body similar to An Foras Forbatha.

(7) The duty to report incidents of corruption automatically to the Standards in Public Office Commission and/or the Director of Public Prosecutions.

2.0 Development Management Guidelines 2007
It is now 7 years since the Development Management Guidelines were made, during which time considerable changes have been made to the Planning and Development Acts, Planning and Development Regulations, to supporting and related legislation (including on EIA and AA
legislation and draft legislation relating to the Foreshore and the Maritime Area), to statutory and non-statutory guidance and in terms of international conventions (e.g., the European Landscape Convention and the UNECE Aarhus Convention). As a result of these changes in the statutory and policy context, changes will need to occur throughout the Guidelines. Other general comments on the Guidelines are as follows:

- The aims and objectives of the Guidelines should be clearly stated at the outset of the document, e.g. to build public trust and transparency in public policy and a world-renowned planning ‘system’, to encourage sustainability, and to ensure the delivery of planning gain for the common good. While there are many ‘customers’ involved in development management, the Guidelines presently appear to place the greater emphasis on the applicant as the customer. The Guidelines should not underemphasise the importance of viewing the general public, who must live the output from the development management process, as customers. While it is important that applicants can avail of a quality service from planning authorities and An Bord Pleanála, it cannot be forgotten that the impact of the proposal on the proper planning and sustainable development of the area is a crucial consideration and the primary focus of the development management system should be on achieving proper planning and sustainable development. A higher rate of grants or lower rate of invalidations should not be considered to be the only benchmarks for a good development management system.

- The concept of ‘planning gain’ should be a fundamental principle underpinning the guidelines – planning gain needs to be clearly defined in Irish planning Legislation (including Strategic Infrastructure legislation) and public policy along with the various instruments to bring about planning gain through the planning system.

- The Development Management Guidelines should take full cognisance of the UNECE Aarhus Convention and the three pillars contained within the Convention.

- The Guidelines must be kept clear and concise and easily understandable for the lay reader. The Guidelines and the overall development management system should be explained by illustrated by easily understood diagrams and flow charts – a focus should be made on highlighting that this is a public policy ‘system’ involving various processes such as planning applications, appeals, and enforcement, which is linked to the development plan system and should highlight where public participation is encouraged, particularly in relation to pre-lodgement consultation. It would also be useful to have a glossary of terms at the back and to give reference to other useful more recent guidance documents.

- The Guidelines must set out the role of the Environmental Protection Agency and the soon to be established Office of the Planning Regulator in the development management process. While the existing Guidelines make some reference to the role of Elected Members, this could be very considerably expanded.

The sections below raise more detailed issues set out in individual sections of the Guidelines.

CHAPTER 1: Introduction

- **Achieving quality in the environment (Section 1.3):** This section should refer to the Design Manual for Urban Roads and Streets in the context of planning for design for urban roads and streets.

- **Customer focus (Section 1.5.3):** A greater emphasis must be placed on the importance of public consultation/participation taking into account the UNECE Aarhus Convention.
Role of Information and Communication Technologies (ICTs) in delivery of improved development management (Section 1.6):

This section should be updated in light of the developing role of ICT as an aid to the processing of applications, including the importance of safeguards regarding privacy and data protection. There are also significant opportunities for using Information and Communication Technologies in order to improve development management, including the establishment of an Annual Enforcement E-Forum, Local Authority Enforcement Helplines and an online National Enforcement Portal.

The role of ICT and GIS should continuously evolve in partnership with third level organisations and the Science and Technology Sector – national database systems should be linked – e.g. the Heritage Council’s Heritage Maps is an extremely worthwhile and useful portal for environmental information.

A National EIA/EIS Portal should be established in order to share information, surveys and data in relation to environmental matters. There is also scope to develop and manage a national database on Section 5 and Section 57 Declarations as part of MyPlan.

CHAPTER 2: Pre-Application Consultation

This chapter should be updated to describe the role of An Bord Pleanála in SIDS/LAPS cases for the guidance of applicants for larger applications.

Pre-application consultation: general (Section 2.3):

Whilst the current guidelines recommend that representatives from all relevant local authority sections should attend in cases of large scale projects, this is rarely the case. Such collaboration is extremely important as the detailed requirements of one department may have consequences on another department.

The importance of this aspect of pre-planning should be reinforced in the Guidelines. Consideration should be given to making pre-application consultation a mandatory part of all applications over set thresholds. For large scale projects, the ability to have a single point of contact (ideally the planner) within the local authority would be beneficial.

The Guidelines must emphasise that details of pre-planning meetings should be attached to the public file and be available for the public to inspect. Similarly, records of representations from elected members should be kept and made available. These measures improve transparency and are necessary for the credibility of the system. There could be a role for the Office of the Planning Regulator in monitoring performance in this manner.

Section 247 consultations (Section 2.5):

In the interests of transparency and certainty, the details of section 247 consultations should be made available on the public planning file after a valid planning application has been received.

It is suggested that the Guidelines express that, having regard to the Code of Conduct for Councillors, 2004, Elected Members should not attend Section 247 Consultations.

Part V consultations (Section 2.10):

If Part V is to continue, the role of pre-application discussions in negotiating agreements for Part V needs to be promoted in an efficient manner and needs to be integrated into the formal pre-planning meeting. This is particularly important as an agreement in principle for Part V needs to be reached before a planning application can be made.

http://www.heritagecouncil.ie/heritage-maps/heritage-maps/
CHAPTER 3: Lodgement and Validation of a Planning Application

- **Purpose of the public notices (Section 3.4):** It should be emphasised that there is an onus on the applicant to provide an accurate description of the development and site location (e.g., townland etc) in the public notices and that the description should be consistent on both notices.

- **Public notices (Section 3.4):** Provisions set out at Section 3.5 of the Guidelines cautioning against excessive detail and seeking brevity should be strengthened. A number of planning authorities continue to invalidate applications due to the omission from notices of minor and non-material details, such as balconies.

  The Department may wish to require that a public notices include the Register Reference Number of the Application (to be obtained prior to official lodgement), as is the practice in England, as this would provide greater clarity for third parties. All planning authorities now have excellent web-based systems and could be instructed to publish and maintain their weekly planning lists up-to-date online.

  Consideration might also be given to eliminating the slight difference in the formal text between newspaper and site notices.

  It is recommended that public notices should include information on whether the site is located within a designated Architectural Conservation Area (ACA) in order to ensure that important environmental information is conveyed to the local community.

- **Site notice (Section 3.6):** This section should state that the site notice should be easily legible from the public realm and be in situ for the specified period. Confirmation could also be provided on the colour of the site notice to be used in cases where a third application (or subsequent) is lodged within 6 months of an initial application, and also address the issue when two applications are submitted concurrently.

- **Application documentation (Section 3.8):** It needs to be specified by the planning authority how many hard and soft copies of the planning application/documentation should be submitted having regard to the minimum requirements and also to the scale and nature of the development and the number of bodies to be consulted.

- **Fees (Section 3.9):** Clarification could be provided as to the fee payable for incidental aspects of a proposed development (e.g., confirmation that fees are not payable for basement parking, which exclusively serves residential units).

  Consideration might also be given to reducing fees for certain kinds of development. For example, the appeal fee for retention of a commercial development (€4500) is excessive for some very minor development (e.g., signage).

- **Validation (Section 3.10 and 3.11):** It would be helpful if the Guidelines could clarify whether planning applications, which seek to modify/amend an existing permission are valid. Presently, while some planning authorities will accept applications, at least one planning authority will not accept any application where the notices describe the development as “development which seeks to modify an existing permission”. Such an approach leads to confusion for applicants and inconsistency between planning authorities.

  The quantum of invalidation must be addressed. The Department's recent Planning Statistics identify that, in 2013, some 3592 applications were invalidated, with a further 21,288 received. Therefore, 14.4% of all applications were invalidated. Clearly, greater guidance is required.

- **Managing the validation process (Section 3.12):** The validation process should be updated and made more user-friendly, with consideration given to preparing a standard
validation process or validation guidelines. Particular emphasis needs to be placed on performance in managing the validation process and adequate provision of staffing levels and training.

- **Applications involving protected structures or proposed protected structures (Section 3.13):** This section regarding planning procedures for proposed works to Protected Structures needs to be updated and expanded. Reference should also be made as to guidance on what comprises the “curtilage” and “attendant grounds” of the dwelling. Clarity should be provided on how applications relating to monuments, heritage buildings (not listed in the Record of Protected Structures but which may be listed in the National Inventory of Architectural Heritage) and buildings in Architectural Conservation Areas should be handled (e.g., Should 10 copies of the application documents be requested? Should an Architectural Heritage Impact Assessment always be included? What role does the Conservation Officer or Heritage Officer have? etc.)

CHAPTER 4: Environmental Impact Assessment

- This chapter needs to be updated to include reference to the changes to the Planning Legislation and Guidelines that have occurred since 2007 regarding the consideration of EIA and AA and the issue of Substitute Consent (S177A-Q). Guidance should be given in concerning applications with issues arising under Parts XA (substitute consent) and XAB (Appropriate Assessment) of the Planning and Development Acts 2000-2013, e.g. sections 177AE and 261A. The importance of the consideration of these issues relative to the provision of sustainable development and the protection of the environment needs to be emphasised. The assessment of the adequacy of the EIS and the NIS needs to be referred to. This can be brief and refer to the more detailed guidance given elsewhere.

- **Scoping (Section 4.5):** In order to ensure consistency and certainty, consideration should be given to setting a specified timescale within which scoping requests to planning authorities relating to the EIA process should be returned to the (prospective) applicant. It is recommended that this timescale should be a period of 6 weeks from the date of submission.

CHAPTER 5: Processing a Planning Application

- **Notification of prescribed bodies (Section 5.2).** The Institute considers that the importance of the planning authority indicating the specific reason why the case is being referred to the prescribed body should be emphasised. In addition, some of the prescribed bodies send back very general responses not relating (or relevant) to the specific development – this is often not helpful and should be discouraged. Time periods for response from the prescribed bodies should be clarified.

- **Making the planning application available to the public (Section 5.3):** It should be mandatory for all files to be made available to the public online. Having regard to Ireland’s obligations under the UNECE Aarhus Convention, it is suggested that all application files should be scanned by the planning authority and made electronically available within one week of receipt. Similarly, all planning authorities should maintain hard copy application files in an orderly manner for inspection by members of the public. This section should, however, be updated to reflect the need to ensure privacy and data protection (i.e., as set out in section 38 of the principal Act).

- **Dealing with prescribed body and third party submissions (Section 5.5):** The Guidelines should clarify whether prescribed bodies can submit formal observations on
planning applications after the statutory five-week consultation period. At the moment, this varies from local authority to local authority (i.e., some local authorities accept observations up to the 5 week period, but not beyond (only) whilst others accept submissions after the 5 week period).

Having regard to Ireland’s obligations under the Aarhus Convention, it is considered that fees to planning authorities for making submissions / observations represent an unnecessary obstacle to public participation and should be removed.

- **Requests for further information (Article 33) (Section 5.7):** The Guidelines should stress that further information requests should only be issued when absolutely necessary. They should not be the norm and planning authorities should seek ways to condition certain elements (where the issues concerned are minor and would not affect third party rights) rather than delaying the process and seeking further information.

  Further information requests should be drafted by the planner and should be informed by other departmental reports. The planner should evaluate these reports prior to drafting the further information request to ascertain what is critical and necessary to the development and relevant to planning legislation.

  Further information reports are presently removed from the planning file pending the making of a decision on an application. These reports should be made available on the planning file for review to inform making a response to the planning authority.

  Clarification is required as to whether third parties may make submissions / observations on further information submitted to the planning authority in circumstances where the further information does not contain “significant additional data” and was not re-advertised.

- **Unsolicited further information (Section 5.10):** The practice of receiving unsolicited further information from applicants is accepted by some authorities and not by others. In the interests of clarity and consistency for both applicants and third parties, the practice should either be adopted by all or else abolished altogether. In circumstances where the submission of unsolicited further information is accepted, having regard to Ireland’s obligations under the UNECE Aarhus Convention, third parties should be permitted the right to comment on all further information submissions and should be permitted a minimum of two weeks in which to do so.

- **Time extensions (Section 5.11):** It should be emphasised that numerous time extensions should not be sought or permitted. Also, the section should advise in what circumstances permissions not yet enacted can be extended.

- **Material contravention applications (Section 5.12):** There may be merit in affording An Bord Pleanála sole power to grant planning permission in material contravene of the development plan as An Bord Pleanála has a national overview and is independent. However, there may be a role for the Office of the Planning Regular here also. The Institute requires time to consider this matter further and will revert at a future stage.

**CHAPTER 6: Making Recommendations on a Planning Application**

- **Introduction (Section 6.1):** This Section of the Guidelines notes the contents of Section 34 of the Planning and Development Acts 2000-2013, which states that planning applications are to be determined on the basis of the proper planning and sustainable development. However, there is no expanded definition given for this in the Act or within the Guidelines themselves. “Sustainable development” is generally interpreted as achieving a balance between environmental, social and economic concerns. However, it would be helpful for this
to be clarified in the context of the development management process, in light of how these factors frequently appear to be opposing factors in an application. In particular, the balance between economic concerns in a time of challenging economic context, often leads to an increased focus on this aspect to the detriment of the others.

- **Structure and content of planning reports (Section 6.3):** The planner's report should provide an explanation or reasons in cases where the recommendation of a planner departs from the advice given by a prescribed body or an internal report (e.g. from the water services or roads department) of a planning authority. This is considered to be best practice and would also be in the interests of transparency in order that third parties, applicants, prescribed bodies and other interested parties can fully understand the reasons behind a recommendation/decision. Ensuring that the planner’s report is legible and accessible to the public should be a primary consideration. Planning reports should be made readily available when the decision on the file has been made.

- **Decisions that differ from the recommendations in the planning report (Section 6.9):** Consideration should be given to a requirement to state reasons in the planner’s report where the decision of the case file planner is not accepted by a more senior planner counter signing the report. This is considered best practice and necessary to provide transparency to all aspects of the decision making process. It would also be considered best practice to provide details of this to applicants and those who made submissions when issuing the planning authority decision.

- **Notification of planning decisions (Section 6.10):** Where planning applications are made for minor development or for development that is neither controversial nor complex, there should be an objective to issue a decision on these applications as soon as possible after the 5 week observation period has expired.

**CHAPTER 7: Drafting Planning Conditions/Reasons for Refusal of Permission**

- **Introduction: planning conditions (Section 7.1):** In the interests of certainty and clarity, the Guidelines should stress that number of planning conditions should be kept to a minimum. It is not appropriate for planning conditions to deal with matters provided for under separate (non-planning) legislation.

- **Conditions relating to accessibility for all (Section 7.8.2):** This section needs to be updated to reflect current guidelines. Periods for compliance with conditions should be given.

- **Dealing with compliance submissions (Section 7.10.1):** As there is no statutory timeframe governing when the planning authority must respond to the compliance submission – where such a response issues - it regularly takes months to receive a response from the planning authority and sometimes no response is received at all. It is strongly recommended that statutory provisions should be put in place requiring planning authorities to resolve compliance submissions within a specific time frame (e.g., four weeks).

- **Conditions requiring development contributions (sections 48 and 49 of the Planning Act) (Section 7.12):** This section should be updated in light of the Development Contributions: Guidelines for Planning Authorities (January 2013) and should emphasise the need to have regard to and comply with the criteria of the Local Authority’s Development Contributions Scheme.

- **Reasons for refusal of planning permission (Section 7.14):** This section should emphasise the need for consistency in decision-making. Applications for similar developments in comparable locations subject to the same designations and statutory
contexts should receive similar decisions. Moreover, decisions on applications for permission on the same site should be consistent: where an applicant is refused permission and makes a new application addressing those concerns, refusing permission a second time on the grounds of a reason applicable to (but not stated in) the first refusal can have long term implications for investment and economic development. Conversely, granting permission for development refused on multiple occasions in the past where the reasons for refusal have not been addressed harms public trust in the planning system.

CHAPTER 8: Planning Appeals

- Consideration should be given to addressing the issue of An Bord Pleanála’s time frames. If the Board’s annual statistics demonstrate that the Board cannot keep to an 18-week statutory objective time frame, the legislation should be amended to give a more realistic expectation. In any case, An Bord Pleanála should be encouraged to declare a decision date, in all cases, on its website, particularly where it has been unable to make a decision within 18 weeks.
- **Appeals Procedure (Section 8.4):** The Institute suggests that “in the case of an appeal by a person who made submissions or observations, … the planning authority’s acknowledgement of such submissions or observations” be removed from the list of requirements for an appeal. Having regard to Ireland’s obligations under the UNECE Aarhus Convention, the potential for a member of the public’s appeal to be invalidated for failure to include the acknowledgement is disproportionately punitive when compared to the administrative efficiency of the current system. It is submitted that whether an appellant made a valid submission / observation to the planning authority on the application can easily be established by the local authority when it is notified of the appeal by An Bord Pleanála.

CHAPTER 9: Declarations and Referrals

- The Institute requires time to consider proposals that An Bord Pleanála would have sole jurisdiction to consider applications for declarations under Section 5 of the Principal Act and will revert at a future stage.
- **Information to be provided with a request for a declaration (Section 9.2):** Consideration should be given to requiring the submission of more information in relation to the location and context of the site – often the information submitted with referral files is very limited and can hamper efficient decision-making.
- **Time period for making declarations (Section 9.3):** Given that many enforcement proceedings must be put on hold pending the outcome of a Section 5 referral to An Bord Pleanála, it is proposed that time frames for decisions referrals be considerably reduced.
- **Availability of relevant documents (Section 9.5):** There is a clear need for a database to be kept in relation to declarations and referrals. This will aid decision-makers in ensuring consistency and will ensure certainty and transparency for developers and members of the public.

CHAPTER 10: Enforcement of Planning Control

- In light of the recent decision of Mr. Justice Hogan in *The County Council of the County of Wicklow v. Katie (otherwise Katherine) Fortune (no. 3)* unreported, High Court, 5th September 2013, some clarification is required regarding how planning authorities should proceed in enforcing against unauthorised dwelling houses. Advice also needs to be included on the operation of the changes to Part VIII of the Principal Act.
While the Guidelines are clear that failure to carry out best practice in enforcing unauthorised development results in “erosion of public confidence and support”, it should be emphasised that, notwithstanding the limited resources available to the planning authority, it is never appropriate to seek dismiss complainants in genuine cases of unauthorised development by suggesting it is open to them to bring their own proceedings under section 160 of the Principal Act.

This Chapter could also provide some guidance on the procedures surrounding and the intersection between enforcement provisions and notices requiring works to be carried out in relation to the endangerment of protected structures (under section 59 of the Principal Act).

- **Statutory Obligations (Section 10.2):** This section should emphasise the importance of not only initiating enforcement proceedings in a timely fashion, but also to keeping to the statutory time limits. This is critical to ensuring public confidence in the system, particularly where complainants are concerned. Prompt enforcement during construction of unauthorised development will also limit the need for costly remedial works on the part of the developer.

### 3.0 Conclusion

The Irish Planning Institute appreciates the opportunity to give its views on the preliminary public consultation on Planning Application Process and Procedure and the review of the *Development Management Guidelines 2007* and welcomes the opportunity to meet and discuss the opportunities outlined above. If the Institute can be of any further assistance to this important initiative, please do not hesitate to contact us and we look forward to having an opportunity to comment on the amended draft.

Yours faithfully,

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