GENERAL SCHEME

OF

PLANNING AND DEVELOPMENT (No. 1) BILL 2014

ARRANGEMENT OF HEADS

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PRELIMINARY AND GENERAL

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Part 1

Preliminary and General

This Part contains provisions normally included in legislation in relation to short title, collective citation, construction, interpretation, repeals and construction of enactments.

Head 1 **Short title, collective citation, construction and commencement**

Provide that:

(1) This Bill may be cited as the Planning and Development (No.1) Bill 2014.

(2) This Bill and the Planning and Development Acts 2000 to 2013 may be cited together as the Planning and Development Acts 2000 to 2014, and shall be read together as one.

(3) This Bill, [other than sections … i.e. where sections are required to commence on enactment], shall come into operation on such day or days as, by order or orders made by the Minister, may be fixed therefor either generally or with reference to any particular purpose or provision, and different days may be so fixed for different purposes and different provisions and for the repeal, revocation and amendment effected by different enactments or of different provisions of those enactments.

(4) Other collective citations as appropriate shall be included.

Explanatory note

This Head contains the standard provisions about short title and collective citation for a listing of acts included or previously included in the collective citation.

It also provides for the coming into operation of the provisions of the Act. It will allow different provisions and any consequential repeals to be brought into operation on different days.

<u>Head 2</u> **Interpretation**

Provide that:

In this Bill-

“functions” has the meaning assigned to it by the Interpretation Act 2005 (No. 23);

“Minister” means Minister for the Environment, Community and Local Government;

“planning authority” has the meaning assigned to it by the Local Government Reform Act 2014 (No. 1);

“local authority” has the meaning assigned to it by the Local Government Reform Act 2014 (No. 1);

“Principal Act” means the Planning and Development Act 2000 (No. 30);

"establishment day" means the day appointed by order to be the establishment day.

Head 3 Expenses

Provide that:

(1) The expenses incurred by the Minister in the administration of this Bill shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

Explanatory note

This Head provides for expenses of the Minister in the administration of the Bill to be paid out of moneys provided by the Oireachtas subject to the sanction of the Minister for Public Expenditure and Reform.

Part 2

Amendments to Planning and Development Act 2000 – 2013

Heads 4A, 4B, 4C & 4D - Amendments to Part V of the Planning Act

Head 4A Technical amendments required as a consequence of court judgements

Provide that:

In section 93(1), insert new definitions of the following terms for the purposes of Part V;

> "*Aggregate monetary value*" means the aggregate of the monetary value of property transferred in accordance with subsection 96(3)(b);
>
> "*Monetary value*" means the net value of the land, where the net value of the land is the open market value of the land less its existing use value; and
>
> *'Building and attributable development costs'*. means those costs which would be incurred by a planning authority had it retained an independent builder to undertake the work on its behalf, including normal construction costs and attributable costs, including common development works, determined as an average cost per unit.

Explanatory note

There have been a lot of difficulties with Part V agreements in the past due to the complexity of the legislation and this has been reflected in the judgements from a number of court actions. The proposed amendments to Part V is an opportunity to provide some clarity in the operation of the legislation and could ultimately save millions of euro by reducing time spent on negotiations, engagement of professionals such as Quantity Surveyors, engagement of legal advisors, court proceedings, etc.

In two Court judgements relating to the provisions Part V of the Planning and Development Act 2000, Justice Clarke, who presided in both cases, highlighted ambiguities and interpretive complexities which had given rise to uncertainties for local

authorities and developers in terms of the proper operation of Part V. The cases were (1) Cork County Council v Shackelton; and (2) Glenkerrin Homes v Dun Laoghaire / Rathdown County Council.

To avoid this in the future, it is suggested that the three definitions along the lines outlined above be inserted in section 93 for the purposes of Part V

In the *Shackleton* judgment, Judge Clarke provided clarification of the means of measuring building and attributable costs, he defined the rate of building and attributable development costs by reference to open market rate. In the *Shackleton* judgment Judge Clarke identified a problem in the application of section 96(6), whereby at the date of transfer, houses already have been built on the lands.

The above definition makes it clear that the planning authority pays for the houses rather than the alternative interpretation (rejected by Judge Clarke) that the planning authority pays nothing. Thus the above minor amendment while not adopting the precise formula for calculating the number of units determined by Clarke J makes a change which is consistent with the interpretation he adopted. The proposed amendment to define ‘building and attributable development costs', is in line with relevant court judgements and would provide the required legal clarity.

Head 4B Relating to Housing Strategies

Provide that:

For retention of the existing provisions of section 94 of the principal act, but with the following amendments

1. New paragraph to be inserted in section 94 to require planning authorities to consult with Approved Housing Bodies in the context of the preparation of their housing strategies, and in circumstances where the housing strategy is being revised.

2. Housing Strategies should be required to take account of Government strategies relating to marginalised sectors of our community including for example, homelessness strategy, housing strategy for disabilities, strategies connected for traveller accommodation and strategies for housing of older people.

3. Delete subparagraph 94(4)(a)(ii) (affordable housing).

4. Amend section 94(4)(c) to provide that, henceforth, as a general policy a specified percentage , not being greater than 10 per cent, shall be reserved under this Part for the provision of housing for the purposes of subparagraph 94 (4)(a)(i).

5. Consequent on subhead (3) and (4) above, amend section 94 (4)(d) so as not to prevent persons from using more than 10 per cent of land for the same purposes.

6. On-site provision of social housing should be the predominant default option for developers and local authorities under the new Part V arrangements with the alternative off-site option only being possible in specific exceptional circumstances.

7. Delete section 94(5) in relation to affordable housing (consequential on subhead (3) above).

8. Any new arrangements to include the power to amend Part V agreement for the greater public good and in the interests of enhancing the economy, locally and nationally.

9. Amend section 95 (housing strategies and development plans) to make clear that the task of identifying the level of land to be zoned for housing is to be determined within the Core Strategy provisions of the Act (section 10(1)).

Explanatory note

1. The Government's Housing Policy Statement 2011 places Approved Housing Bodies (AHBS) alongside Local Authorities at the core of the delivery of social housing in the years ahead. The intent of this provision is to ensure that that there is improved consultation and cooperation between Local Authorities and the AHB sector in the delivery of social housing.

2. The Government has in place a Homelessness Strategy and a Housing Strategy for People with Disabilities as well as strategies for traveller accommodation and housing of older people. Planning authorities should be required to take such strategies into account in developing their Housing Strategies.

3. In the light of current conditions and the substantial improvement in housing affordability in the last six years for persons in employment, there is no longer a justification for providing 10% affordable housing under Part V.

4. At the moment, developers are required to ensure that 20% of land zoned for residential, and other uses, shall be reserved for social or affordable housing. With the massive fall off in private construction, very little social housing is being provided under Part V. With the fall in house prices, not matched by a similar fall in building costs, this provision as currently framed it is serving as a disincentive to increasing much-needed private, and as a consequence, social housing supply. Although the requirement for 10% affordable housing is not being retained, it is intended to retain the requirement for 10% social housing.

5. This is a consequent amendment to (3), ensuring that there is nothing to prevent in excess of 10 per cent being provided for social housing.

6. To ensure that the concept of integrated mixed-tenure housing is promoted and delivered as much as possible, on-site provision of social housing should be the predominant default potion for developers and local authorities under the new Part V arrangements. The alternative off-site option should only be possible in specific exceptional circumstances, for example where there is insufficient social housing demand at the location of the proposed development and where there is greater demand at another location.

7. This is a consequent amendment to (3).

8. There is evidence that many existing planning permissions are not being acted upon by developers because the previous “20% social and affordable” provisions of Part V placed too onerous a cost burden on developers. In the interest of the greater public good and the economy, the aim is to apply the new Part V provisions to existing planning permissions. The new Part V provisions significantly increase the economic viability of any proposed housing developments and should help kick-start such developments. The application of new Part V provisions/conditions to existing planning permission aims to introduce immediate benefits to the housing construction sector with the aim of quickly increasing housing supply in the interests of the greater public good and economy. A balanced housing supply and demand should give rise to sustainable house prices.The expectation is that halving the Part V obligation for developers to 10% would stimulate housing construction. Part V housing supply would increase in line with the general increase in housing supply and benefit those on the housing waiting lists. Matching housing supply with demand would help maintain sustainable house prices.

9. The Housing Strategy requirement pre-dated the Core Strategy and there is an overlap between the two which should be removed to ensure that it is clear that (a) the core strategy determines the overall quantum and location of land required for housing and (b) that it is then the function of the housing strategy to ensure sufficient housing for social housing purposes is provided on such lands.

Head 4C

In Section 96

Provide that

:the only alternative agreements other than as provided for in section 96(3)(a,)shall be:

- the taking of completed dwellings on the land which is subject to application for permission at a price based on construction costs and a nominal sum for land value,; or
- in exceptional circumstances the taking of completed dwellings on other land within the functional area of the planning authority at a price based on construction costs and a nominal sum for land value; or
- entering into a rental accommodation availability agreement or a lease agreement with the planning authority in respect of houses on the land which is subject to the application for permission of such number and description [and on such terms] [and at such cost] as may be specified in the agreement;

Provide also that existing options in the section for

- the provision of “sites”; and
- the monetary payment alternative provided under subsection (3)(vi);

be removed, and

In subsection (6)(b), insert text after “existing use” to clarify that “existing use” value is the value prior to the date of commencement of development and disregarding value of any buildings on the land.

Explanatory note

An agreement for the transfer of part of the land, which is the subject of the planning permission, for provision of social housing remains the primary option. The alternative options are reduced so that the core objectives of delivering social housing and achieving social integration are achieved. These alternative options are:

- The provision and acquisition of social housing in the development that is subject to the planning permission.
- In exceptional circumstances the provision and acquisition of social housing in another location or locations. These circumstances would include where a planning authority did not have a demand for social housing where the development is located.
- The long-term rental or leasing of housing by the planning authority or an approved housing body, at appropriate discounted levels. These agreements would be for a minimum of 20 years. However, the acquisition of social housing by the planning authority or an approved housing body would be preferable.

In the past, planning authorities had the option of accepting a monetary payment as an alternative to land or social housing units from developers, which mitigated against the social integration model which is the principle objective of this Head. In order to promote the provision of social housing through the mixed tenure model, it is proposed that monetary payment shall no longer be an alternative option to units or land.

Section 96 (6)(b) requires amendment to reflect issues which have arisen in Court judgements relating to the date on which the calculation of “existing use” value of land is based. It is also being amended to exclude the value of existing buildings that are to be demolished.

Head 4D

Developments to which Section 96 shall not apply

Provide that:

In Section 97 (3)(a), replace “4” with “9”, as follows:

(3) A person may, before applying for permission in respect of a development—

(a) consisting of the provision of 9 or fewer houses, or

(b) for housing on land of 0.1 hectares or less,

any new arrangements introduced in relation to Part V be applicable to existing planning permissions, including any transitional arrangements required. Any new arrangements to include the power to amend Part V agreement for the greater public good and in the interests of enhancing the economy, locally and nationally.

Explanatory note

The intention is to disapply section 96 to proposed developments consisting of the provision of 9 houses or fewer. Currently, housing developments consisting of the provision of 4 houses or fewer are outside of the scope of section 96.

The social housing obligation will be 10%: therefore, a housing development comprising 10 houses would give rise to 1 house for social housing (i.e.10% of 10 houses).

The cost and burden on developers would be reduced.

In the interest of the greater public good and the economy, the aim is to apply these new Part V provisions to existing planning permissions. The new Part V provisions significantly increase the economic viability of any proposed housing developments and should help kick-start such development. The application of new Part V

provisions/conditions to existing planning permission aims to introduce immediate benefits to the housing construction sector with the aim of quickly increasing housing supply in the interests of the greater public good and economy. A balanced housing supply and demand should give rise to sustainable house prices.

The expectation is that halving the Part V obligation itself for developers to 10% and limiting its application to developments with 10 or more houses would stimulate housing construction. Part V housing supply would increase in line with the general increase in housing supply and benefit those on the housing waiting lists. Matching housing supply with demand would help maintain sustainable house prices.

Head 5

Insertion of New Part XIVA – Vacant site levy

Head 5A – Interpretation

Provide that:

In this Part –

"certificate of discharge" has the meaning assigned to in Head 5J;

"certificate of exemption" has the meaning assigned to it in Head 5I;

"undue hardship" – definition to be developed during the drafting of the Bill for the purposes of clarifying the levy exemption provisions in Head 6G:

"liability date" means the date of service of the notification referred to in Head 5D;

"market valuation" means the value of the relevant vacant or underutilised site assessed in accordance with Head 5F;

"Property Registration Authority" means the Property Registration Authority as established by section 9 of the Registration of Title and Deeds Act, 2006;

"the Act of 2003" means the Capital Acquisitions Tax Consolidation Act 2003;

"the Tribunal" means the Valuation Tribunal established under section 2 of the Valuation Act, 1988;

"vacant or underutilised site" means vacant or underutilised land and/or buildings in private ownership in a city or town with a population of greater than 3,000 inhabitants as determined by the most recent census of population, in respect of which property or part

thereof, it is an objective of the relevant city or county development plan, strategic development zone or local area plan to secure redevelopment and/or reuse of such site;

Explanatory note

This is a standard provision to set out definitions for the terms used in the Act.

The need to include further definitions will be discussed, as appropriate, with the Attorney General's Office during the drafting of the Bill.

The definition of the term "undue hardship" which is used in Head 5G will be important as it will outline the criteria for exemption from the vacant site levy by certain registered owners of vacant and underutilised sites. In this regard, consideration will be given to a range of issues in the drafting of the exemption provisions, such as retail and other commercial outlets in designated central urban areas which have ceased trading in the period since the commencement of the economic crisis in 2008; the financial circumstances of registered owners of vacant or underutilised sites or buildings who are in various financial circumstances such as being insolvent, in receivership, in NAMA, in negative equity or who may be unable to raise capital to carry out development works on such sites; the development of sites in specific locations being considered to be non-commercially viable at a particular point in time etc.
The precise exemptions will be clarified during the drafting of the Bill but the foregoing are merely indicative of the types of issues that need to be considered. The term is also used in Head 5B.

By virtue of the definition of the term "vacant or underutilised site", the levy will only apply to such sites in private ownership. It will not apply to property in the ownership of the State, state agencies, semi-state bodies or local authorities.

Head 5B – Enabling local authorities to incentivise development of vacant sites

Provide that:

(1) City and County Development Plans, Strategic Development Zone Planning Schemes and Local Area Plans may include objectives for securing the redevelopment and or reuse of vacant or underutilised sites, which in the opinion of the planning authority, are vacant or underutilised to the extent that such vacancy or underutilisation would militate against securing the objectives of the relevant core strategy, housing strategy or retail strategy of the relevant plan or scheme.

(2) Where the relevant plan and/or scheme indicates objectives for securing the redevelopment and or reuse of vacant or underutilised sites, the relevant development contribution schemes and/or any supplementary development contribution schemes may make provision for the payment of a reduced rate of contribution in respect of the redevelopment and/or material change of use of such site, where, in the opinion of the relevant planning authority, such site will avail of existing infrastructure and thereby encourage the redevelopment and/or reuse concerned.

(3) Where a vacant or underutilised site is the subject of an objective in the relevant development plan and/or scheme for redevelopment and/or re-use, and where:

(a) planning permission is granted by the relevant planning authority or An Bord Pleanála, as appropriate, for a development in line with the provisions of the relevant plan or scheme;

(b) the development the subject of the permission is not commenced within three years of the date of the decision to grant permission; and

(c) the relevant planning authority is satisfied that there were no reasons of an economic (including undue hardship), infrastructural, technical or other nature to prevent the commencement of the development;

or

(d) no planning application is submitted to the relevant planning authority within three years of the date of the making of the relevant development plan including the objective at subsection (2) above, which proposed development would secure the relevant development plan objective, and

(e) the planning authority is satisfied that there were no reasons of an economic (including undue hardship), infrastructural, technical or other nature preventing the lodgement of such an application;

the relevant planning authorities may charge, levy and make payable an annual levy (in this Act referred to as a “vacant site levy” and is in this Act referred to as the “levy”) in respect of vacant or underutilised sites.

Explanatory note

This Head provides enabling power for local authorities to apply a vacant site levy on vacant and under-utilised sites where, in the opinion of the local authority, such vacancy or under-utilisation would militate against securing the objectives of relevant core strategies, housing strategies or retail strategies in City and County Development Plans, Strategic Development Zone Planning Schemes and Local Area Plans. It is essentially a measure that can be applied to support the regeneration and economic development of vacant or under-utilised sites in central urban areas designated in such plans, schemes or strategies. In essence, it will not be a revenue generating measure. Its primary objective will be to act as a mechanism to incentivise the development of vacant and underutilised sites in such central urban areas, thereby facilitating the most efficient use of such land and sites and enabling them to be brought into beneficial use rather than allowing them to remain dormant and undeveloped.

In this regard, there can be situations where landowners with land zoned for development (commercial and residential) hold back the release of key sites to the detriment of the progression of wider development plan objectives – for example, in

relation to the timely supply of new housing in line with housing strategies or the delivery of new retail space in line with retail strategies.

In other areas of interaction between public policy making for the common public good and the property rights of individuals, the Courts have determined that the property rights of citizens may be balanced against the need to address matters of concern and the wider community good, provided that the measure proposed is proportionate and reasonable to the objectives sought to be attained. Examples of precedents in this regard include the Derelict Sites Act 1990 and the Part V provisions of the Planning and Development Act 2000.

As a supplement to the vacant site levy, the Head also allows for the application of reduced development contribution levies and/or supplementary development contribution levies in respect of the redevelopment or reuse of vacant or underutilised sites where, in the opinion of the relevant planning authority, the site will be in a position to avail of existing infrastructure. This is a further financial incentive that can be availed of by the registered owners of vacant or underutilised sites, or developers acting on their behalf, in order to facilitate the advancing of proposals for the development of such sites and help make such developments more economically viable than would otherwise be the case.

The Minister has issued guidelines to local authorities under section 28 of the Planning and Development Act in relation to the operation of development contribution schemes by local authorities. These guidelines contain criteria on exemptions, waivers and allowances to be applied by local authorities in their development contribution schemes. It is intended to address the issue of the criteria to be applied in relation to the application of reduced development contribution levies under this Head in an updated version of the guidelines post enactment of this General Scheme. It should also be noted that the levy will only be applied in cases where the incentive of reduced development contributions has also been made available.

The Head further provides that the levy can be applied by a planning authority where a vacant or underutilised site is the subject of an objective in the relevant development plan and/or scheme where –

- a planning permission is granted by the relevant planning authority or An Bord Pleanala for the development/ reuse of a vacant or underutilised site in line with the objectives of the relevant plan or scheme,
- the development, the subject of the permission, is not commenced within three years of the grant of permission, and
- the planning authority is satisfied that there were no reasons of an economic (including undue hardship), infrastructural, technical or other nature to prevent the commencement of the development,
- or
- no planning application is submitted within three years of the making of the relevant development plan including the objective to secure the redevelopment or reuse of vacant or underutilised sites, which proposed development would secure the relevant development plan objective, and
- the planning authority is satisfied that there were no reasons of an economic (including undue hardship), infrastructural, technical or other nature to prevent the commencement of the development.

In effect, a reasonable degree of latitude and period of time is allowed before the registered owner of a vacant or underutilised site can become liable to the levy. In this regard, the levy may only be activated in respect of vacant or underutilised sites where there is a failure to:

- commence development authorised by a planning permission for a vacant or underutilised site in a designated area covered by a relevant plan or scheme within 3 years of the grant of permission, or

- lodge a planning application in respect of a vacant or underutilised site in a designated area covered by a relevant plan or scheme within 3 years of the making of a development plan or scheme,

and where such plan or scheme includes the objective to secure the development or reuse of vacant or underutilised sites in designated areas covered by the relevant plan or scheme.

In essence, this Head allows for the introduction of both incentives (in the form of non-liability for the levy and reduced development contributions) and penalties (liability for the levy) aimed at encouraging the development of vacant and underutilised sites in designated central urban areas, thereby bringing such sites back into beneficial use and facilitating urban regeneration in such central urban areas. A further over-riding benefit of the measures proposed is that they would help promote compact and high-quality development in central urban areas, thereby helping to counter one of the drivers of unsustainable urban sprawl i.e. the relative ease in developing greenfield sites as opposed to the many challenges in developing more centrally located brownfield sites. It would also help to improve the vibrancy of central urban areas and to overcome the problems arising from the existence of vacant rundown sites and properties, including social problems arising from anti-social behaviour that often takes place on such sites.

Head 5C - Levy on vacant sites

Provide that:

(1) The registered owner of a vacant or underutilised site which has been deemed appropriate for redevelopment and/or reuse under Head 5B in accordance with the objectives of a relevant plan and/or scheme and which has been listed on the register of vacant or underutilised sites by a local authority in accordance with Head 5E, shall, subject to this Act, pay to the local authority in whose functional area the said site is situated, or to another local authority or other contracted agency acting on its behalf, the levy specified in accordance with this section.

(2) The amount of the levy shall, in respect of the first year, be three per cent of the market valuation of the vacant or underutilised site concerned as determined in accordance with Head 5F, and shall increase incrementally by one per cent each year in subsequent years, subject to the application of a maximum levy of six per cent of the market valuation of the site concerned in any individual year.

(3) A local authority may provide for the payment of the levy by instalments.

(4) The levy shall be payable on a demand being made by the local authority or other local authority or other contracted agency in that behalf, and in default of being paid within two months after becoming payable, shall be recoverable as a simple contract debt in any court of competent jurisdiction.

(5) A person who contravenes subhead (1) shall be guilty of an offence and shall be liable on summary conviction to a class A fine.

(6) Where a site ceases to be a vacant or underutilised site at any time during a given year by virtue of the commencement of development works on the site, the amount of the levy referred to in subsection (2) shall be based on the number of days the urban land was vacant or underutilised as a proportion of the number of days in the year concerned and adjustment by way of refund or set-off, as may be appropriate, shall be

made accordingly in relation to any amounts paid in respect of the levy or any amounts due or owing in respect of such levy in relation to that year.

(7) Where an amount of levy is due and unpaid for a period beginning on two months after the date on which it is demanded, or an instalment of levy is due and unpaid for a period beginning on two months after the date on which payment was due, the person liable to pay the amount due shall pay to the local authority concerned, or to another local authority or other contracted agency acting on its behalf, simple interest, without deduction of income tax, on the amount calculated at the rate of 1 per cent for each month or part of a month of the period and such interest shall be due and payable two weeks after the date on which the local authority concerned, or another local authority or other contracted agency acting on its behalf, by notice served on the person concerned.

(8) Where the market valuation of a vacant or underutilised site is altered by a determination of the Tribunal or a decision of the High Court in relation to an appeal under Head 6F, and where in consequence, having regard to subsection 1(c) of Head 6E, the appropriate entry in the register is amended, the amount of the levy shall in respect of that vacant site be determined by reference to the market valuation as so altered, and in case another amount in respect of the levy has already been paid, the local authority concerned, or another local authority or other contracted agency acting on its behalf, shall, if the market valuation is decreased, repay any amount paid in excess of the sum which would have been payable if the market valuation had originally stood as altered on appeal, and if the market value is increased, the local authority concerned, or another local authority or other contracted agency acting on its behalf, may demand the levy on the amount of the increase.

(9) A local authority, or another local authority or other contracted agency acting on its behalf, may charge and levy the levy in respect of a vacant or underutilised site notwithstanding that an appeal to the Tribunal is pending in relation to the market valuation of that property.

(10) Where a vacant or underutilised site is registered to two or more persons, those persons shall be jointly and severally liable to pay the levy in respect of that property to the relevant local authority or contracted agency acting on its behalf.

(11) The liability date for payment of the levy in any calendar year shall be the 15th day of January.

Explanatory note

This Head provides that the levy may be applied on the registered owners of vacant or underutilised sites which have been deemed appropriate for redevelopment/ reuse in accordance with the objectives of the local development plan or scheme and which have been listed on the vacant and underutilised site register, and such levy shall be payable to the relevant local authority, or to another local authority or other contracted agency acting on its behalf. The liability date for payment of the levy in any calendar year shall be 15 January.

The amount of levy payable each year shall be three per cent of the market valuation of the vacant or underutilised site concerned in the first year, increasing incrementally by one per cent per year in subsequent years up to a maximum of six per cent of the market valuation of the vacant or underutilised site concerned in any individual year, which may be paid in instalments. The initial rate of three per cent is in line with the levy already applying to derelict sites under the Derelict Sites Act 1990 and is therefore considered proportionate and reasonable in the circumstances. Given the precedent of the derelict sites levy, introduced in 1990 and which is levied at the rate of three per cent, it is considered that pitching the vacant levy at a lower rate than three per cent would likely diminish the effectiveness of the measure, while pitching it at a higher rate – at least in the first year – could be seen to be in excess of what might be considered proportionate.

The subsequent yearly increase of one per cent up to a maximum rate of six per cent in any one year is proposed in order to incentivise the earlier bringing forward of development proposals for such vacant and underutilised sites, and to act as a disincentive to the delaying of the bringing forward of relevant development proposals. Avoidance of exposure to the subsequent incrementally higher rates will be in the hands of the registered owners of vacant and underutilised sites as they will be aware of the steps to be taken in order to avoid liability to the higher rates of levy.

If payment is not made or commenced within two months of becoming payable, it shall be recoverable as a simple contract debt in any court. Late payment of the levy shall result in the application of simple interest on the amount due at a rate of one per cent per month. Non-payment of the levy shall be an offence resulting on summary conviction in a class A fine.

Liability to the levy in any given year shall cease where the site ceases to be a vacant or underutilised site by virtue of the commencement of development work on the site, but liability in respect of such year shall be proportionate to the number of days the site was a vacant or underutilised site proportionate to the number of days in the year concerned.

Where the market valuation of a vacant or underutilised site is altered by a determination of the Tribunal or a High Court decision on appeal, the amount of levy due shall be in respect of the altered market valuation and if the market valuation is reduced, the local authority shall repay any amount already paid in excess of the revised levy due arising from the revised market valuation. A local authority, or another local authority or contracted agency acting on its behalf, may charge the levy notwithstanding that an appeal may have been lodged in relation to the assessed market valuation of the vacant or underutilised site.

Head 5D – Service of notices

Provide that:

(1) Any notice required to be given or served on a person under this Part shall be addressed to the person concerned and shall be given or served on such person in one of the following ways:

(a) where it is addressed to such person by name, by delivering it to such person;

(b) by leaving it at the address at which such person ordinarily resides, or in the case in which an address for service has been furnished, at that address;

(c) by sending it by post in a prepaid registered letter, addressed to such person at the address such person ordinarily resides or, in a case in which an address for service has been furnished, at that address.

(2) For the purposes of this Head, a company within the meaning of the Companies Act, 1963 shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

Explanatory note

This Head provides for the ways by which any notice to a person or company in connection with a levy may be served.

Head 5E – Register of vacant or underutilised sites and appeals

Provide that:

(1) A local authority wishing to avail of the provisions of this Part shall establish and thereafter maintain a register to be known as the "vacant or underutilised sites register" and which is referred to in this Part as "the register" and shall enter on the register –

(a) the address, and the property ownership folio reference number attaching to such address, of any land in their functional area as ascertained from the Property Registration Authority which, in their opinion, is a vacant or underutilised site,

(b) particulars of any action taken by the local authority under this Part or any other enactment in relation to the site,

(c) particulars of the market valuation of the vacant or underutilised site as determined by a local authority, or by the Tribunal on appeal, in accordance with the provisions of Head 6F, and

(d) such other particulars as it considers appropriate or as may be prescribed.

(2) Before making any entry on the register in relation to any site, the local authority shall give to any registered owner, where they can be ascertained by reasonable enquiry, six months' notice of their intention to make such entry and shall consider any representations any owner may make in writing as may be specified in the notice, which shall be received no later than three months after the date of the serving of the notice, and may either make the entry or not as they think proper having regard to such representations.

(3) A registered owner of a vacant and underutilised site which a local authority has included in its register may appeal the decision of the local authority to the Board within two months of the date of the decision of the local authority.

(4) The Board shall make a decision on an appeal received by it under subsection (3) within two months of the date of receipt of the appeal.

(5) A local authority may remove an entry from the register where they consider that the entry is no longer appropriate.

(6) A local authority shall remove an entry from the register where the Board has decided on appeal that the entry is not appropriate.

(7) The register shall be kept at the offices of the local authority and shall be available for inspection at the offices of the local authority during office hours.

(8) A copy of the register or an entry on the register shall be sent to the Minister on request.

(9) Notice of an entry in the register shall be served by the local authority on the registered owner of a site in respect of which an entry has been made in the register where such persons can be ascertained by reasonable enquiry.

(10) Every document purporting to be a copy of an entry in the register and purporting to be certified by an office of a local authority to be a true copy of the entry shall, without proof of the signature of the person purporting so to certify that such person was such officer, be received in evidence in any legal proceedings and shall, until the contrary is proved, be deemed to be a true copy of the entry and be evidence of the terms of the entry.

(11) Evidence of an entry on the register may be given by production of a copy thereof certified pursuant to this Head and it shall not be necessary to produce the register itself.

Explanatory note

This Head provides that any local authority wishing to apply the levy shall establish and maintain a vacant or underutilised sites register which shall outline –

- the address, and the property ownership folio reference number attaching to such address, of any land in their functional area as ascertained from the Property Registration Authority which, in their opinion, is a vacant or underutilised site,
- particulars of any actions taken by the local authority under this Part or any other enactment in relation to the site,
- particulars of the market valuation of the site, and
- any other relevant particulars.

The Head further provides that the local authority shall give the registered owners of relevant sites six months' notice of their intention to place sites on the register with the owners being given three months from the date of serving of the notice to respond or make representations to the notice. A local authority may remove any site from the register which it deems appropriate.

A registered owner of a vacant or underutilised site which a local authority has included in its register may appeal the decision of the local authority to the Board within two months of the date of the decision of the local authority. The Board shall make a decision on an appeal received by it within two months of the date of receipt of the appeal. A local authority shall remove an entry from the register where the Board has decided on appeal that the entry is not appropriate.

The vacant or underutilised sites register shall be kept at the offices of the local authority and may be inspected during normal office hours. Evidence of an entry on the register may be given by production of a certified copy of the register and it shall not be necessary for a local authority to produce the register itself.

Head 5F - Market valuation of vacant or underutilised site

Provide that:

(1) A local authority shall determine, as soon as may be after it is entered on the register, and at least every five years thereafter, the market valuation of a vacant or underutilised site which shall be based on the mean market valuation of the property if it was sold on the open market on the valuation date in such manner and in such conditions as might reasonably be calculated to obtain for the vendor the best market price for the property, as estimated by a minimum of two accredited members of the Institute of Professional Auctioneers and Valuers, whose place of business is located in the area of the property concerned.

(2) The registered owner or a person having possession or custody of a vacant or underutilised site shall permit the persons nominated to provide an estimate of the market valuation of the site to inspect the property at such reasonable times as the local authority consider necessary.

(3) Where a person nominated to provide an estimate of the market valuation of a property is refused access to inspect a property for the purposes of valuation, such person shall make an estimate of the valuation of the property based on their knowledge of the property and the prevailing local market conditions.

(4) Where the market valuation of a vacant or underutilised site has been determined, a local authority shall enter particulars of the determination in the register (together with the date of entry in the register), and serve a notice on the registered owner of the said property of the valuation or the revised valuation, as the case may be, which has been placed on the said property which said notice shall inform the registered owner that an appeal may be lodged to the Tribunal against the determination made within twenty-eight days from the day on which the said notice is received by him.

(5) A registered owner of a vacant or underutilised site may appeal to the Tribunal against a determination made by a local authority under subsection (1).

(6) The Tribunal shall hear and determine appeals under subsection (3).

(7) Subject to a right of appeal to the High Court on a question of law, the determination of the Tribunal shall be final.

(8) An appeal to the Tribunal shall contain a statement of the specific grounds for the appeal.

(9) The Tribunal shall transmit a copy of every appeal received by it to the local authority by whom the market valuation of the property was determined (who shall be the respondent in, and be entitled to be heard and adduce evidence at the hearing of, the appeal concerned) and to any other person appearing to the Tribunal to be affected directly by the determination and any such person shall be entitled to be heard and to adduce evidence at the hearing of the appeal.

(10) The Tribunal shall, where any amendment falls to be made to the market valuation of a relevant vacant or underutilised site pursuant to a determination of the Tribunal or a decision of the High Court in relation to an appeal under this section, give notification of the amendment in writing to the local authority concerned, and shall inform the registered owner of the property of the said amendment and shall cause the appropriate entry in the registry to be amended with effect from the date of entry referred to in subsection (3).

(11) Sections 5 and 7 of the Valuation Act 1988 shall apply to the determination of an appeal under this section as they apply to appeals under that Act.

Explanatory note

This Head provides that a local authority shall determine, as soon as possible after entry on the register and every five years thereafter, the market valuation of each vacant or underutilised site, which shall be based on the mean market valuation of the site as estimated by two accredited members of the Institute of Professional Auctioneers and Valuers whose place of business is located in the area of the property concerned. The person having possession or custody of the vacant or underutilised site

shall permit the persons nominated to provide an estimate of the market valuation of the site to inspect the property at such reasonable times as are considered necessary by the relevant local authority. Where a person nominated to provide a market valuation of a vacant or underutilised site is not permitted access to such site, that person shall make an estimate of the market valuation of the vacant or underutilised site based on their knowledge of the property and the prevailing local market conditions. The determined market valuation of a vacant or underutilised site shall be entered on the vacant or underutilised sites register by the relevant local authority.

A registered owner of a vacant or underutilised site may appeal against the determined market valuation of their site to the Valuation Tribunal, whose decision, subject to the right of appeal to the High Court on a question of law, shall be final. The Tribunal shall transmit a copy of every appeal it receives to the relevant local authorities by whom the relevant market valuations were determined, and to any other persons appearing to be affected directly by such determinations, and any such local authorities and persons shall be entitled to be heard and to adduce evidence at the hearing of the appeal.

Any amendment to a market valuation of a vacant or underutilised site by the Tribunal, or by the High Court in relation to an appeal under this section, shall be notified in writing by the Tribunal to the relevant local authority and to the registered owner of the vacant or underutilised site. Such amended market valuation shall be entered on the vacant or underutilised sites register by the relevant local authority.

Head 5G - Exemptions from levy

Provide that:

(1) A person who, on a liability date, is the registered owner of a vacant or underutilised site shall not, in respect of that vacant or underutilised site, be liable to pay the levy for the year in which that liability date falls if, in the opinion of the local authority, it would cause undue hardship to the person concerned on foot of which the local authority may, by notice in writing sent by post or given to the person, suspend action under this Part to secure payment of the levy for such period as may be specified in the notice.

(2) Where a person who is the sole registered owner of a vacant or underutilised site dies, the personal representative of the deceased person shall not, in respect of that vacant or underutilised site, be liable to pay the levy relating to a year in which the liability falls due after the death of the deceased person and before the date of issue of a grant of representation to the estate of the deceased person.

(3) The personal representative of a deceased person shall, as soon as a grant of representation to the estate of the deceased person issues to him or her, be liable to pay to the relevant local authority the full amount due and owing by the deceased, at the date of his or her death, in respect of the levy and related late payment interest, which said full amount is, in this section, referred to as the “full amount”.

(4) If the said full amount is paid by the said personal representative within 3 months of the date of issue of a grant of representation to the estate of the deceased person, he or she shall have no further liability in respect of the said levy and late payment interest due and owing at the date of his or her death.

(5) If the said full amount is not paid by the personal representative within 3 months of the date of issue of a grant of representation to the estate of the deceased person, he or she shall be liable to pay to the relevant local authority, in addition to the said full amount, late payment interest in respect of each month or part of a month in which any part of such amount remains unpaid from the date of such issue.

(6) In this section, a reference to “grant of representation” is, where 2 or more such grants are issued to the estate of a deceased person, a reference to the first grants to issue.

Explanatory note

This Head provides for specified exemptions from liability to the levy i.e. where in the opinion of a local authority payment of the levy would cause “undue hardship” to the registered owner of a vacant site. The precise types of registered owners of vacant and underutilised sites which may be exempted from liability to the levy under the term “undue hardship” will be clarified during the drafting of the Bill. This Head also provides for the arrangements to be applied in relation to payment of any levy liability where a person who is the sole registered owner of a vacant or underutilised site dies.

Head 5H – Unpaid amount to be a charge on property

Provide that:

(1) A levy or late payment interest due and unpaid by a registered owner of a vacant or underutilised site shall, subject to subsection (2), be and remain a charge on the property to which it relates.

(2) A vacant or underutilised site shall not, as against a bona fide purchaser for full consideration in money or money's worth or a mortgagee, remain charged with or be liable to the payment of a levy or late payment interest referred to in subsection (1) after the expiration of twelve years from the date upon which the amount concerned fell due.

Explanatory note

This Head provides that all levies or late payment interest due and unpaid by the registered owner of a vacant or underutilised site shall remain a charge on the property concerned for a period of twelve years from the date upon which the amount concerned fell due.

Head 5I – Application for certificates of exemption

Provide that:

(1) The registered owner of a vacant or underutilised site may apply to the relevant local authority for a certificate of exemption in respect of such liability date or liability dates as are specified in the certificate, stating that, by virtue of subsection (2) of Head 6G, no levy was payable in respect of the vacant or underutilised site, and specifying the reasons why no such charge was payable.

(2) An applicant for a certificate of exemption shall provide the relevant local authority with all such information as it may reasonably require for the purpose of its making a decision in relation to the application.

(3) Where a relevant local authority receives from the applicant for a certificate of exemption all such information as it may reasonably require for the purpose of its making a decision in relation to the application, the relevant local authority shall within fourteen days –

(a) if it is satisfied that in respect of any particular liability date or liability dates a levy was not payable in respect of the vacant or underutilised site concerned, issue a certificate of exemption to the applicant in respect of the vacant or underutilised site and the date or dates concerned, or

(b)if it is not so satisfied, refuse the application, give the applicant a statement in writing of the reason for the refusal and inform the applicant in writing of his or her entitlement to appeal the refusal to the Circuit Court in accordance with this Head.

(4) Where a relevant local authority refuses an application under this Head, the applicant for the certificate may appeal the refusal to the Circuit Court.

(5) On the hearing of an appeal under this Head, the Circuit Court may –

(a) allow the appeal and direct the relevant local authority to issue a certificate of exemption to the appellant in such terms as the Court shall specify, or

(b) affirm the refusal of the application.

(6) An appeal against a refusal of a certificate of exemption shall be made to a judge of the Circuit Court for the time being assigned to the Circuit Court district in which the vacant or underutilised site concerned is situated.

Explanatory note

This Head provides that the registered owner of vacant or underutilised site may apply to the relevant local authority for a certificate of exemption in respect of levy liability due, specifying the reasons therefor and a local authority shall make a determination on such application within fourteen days. Where a local authority refuses an application for a certificate of exemption, such decision may be appealed to the Circuit Court which shall allow the appeal and direct the local authority to issue a certificate of exemption, or uphold the decision of the relevant local authority to refuse the application.

Head 5J – Receipts, certificates and requirements on sale of vacant or underutilised site

Provide that:

(1) Where a person pays a levy, an instalment of a levy or late payment interest to a local authority in respect of a vacant or underutilised site, that local authority shall give the person a receipt in writing in the respect of the payment.

(2) Where a relevant local authority receives payment in full of a levy and late payment interest in respect of a vacant or underutilised site, it shall, on application to it in writing by or on behalf of the owner of the vacant or underutilised site, within twenty-one days, give that owner a certificate of discharge confirming that the levy in respect of the year concerned has been paid and that no late payment interest is due or owing in respect of the property for that year.

(3) The vendor of a vacant or underutilised site shall, before the completion of the sale of the property, pay to the relevant local authority all levies and late payment interest due and owing to the relevant local authority in the respect of that vacant or underutilised site.

(4) On or before the completion of the sale of the vacant or underutilised site, the vendor of that vacant or underutilised site shall, in respect of that site, give to the purchaser –

(a) a certificate of discharge, or
(b) a certificate of exemption,

as may be appropriate, in respect of each year in which a liability date fell due since the date of the last sale of the property.

(5) As against a bona fide purchaser or mortgagee of such vacant or underutilised site for full consideration in money or money's worth without notice, or a person deriving title from or under such a purchaser or mortgagee, a certificate of discharge or a certificate of exemption shall discharge the vacant site concerned from any levy and related late

payment interest due by the registered owner of that vacant site for each year in which the liability date or dates to which the certificate relates fell.

(6) A person who contravenes subsection (3) shall be guilty of an offence and shall be liable on summary conviction to a class A fine.

(7) A relevant local authority –

(a) shall not charge a fee in respect of the issue by it of a receipt, a certificate of discharge or a certificate of exemption, and

(b) may charge a fee in respect of the issue by it of a duplicate of such receipt or certificate not exceeding the reasonable cost of issuing the duplicate.

(8) In this section –

“purchaser” includes in relation to a vacant site, a transferee under a transfer referred to in the definition of “sale” in this subsection;

“sale” includes, in relation to a vacant site, the transfer of the vacant or underutilised site by the registered owner to another person –

(a) in consequence of –

(i) the exercise of a power under any enactment to compulsorily acquire land, or

(ii) the giving of notice of intention to exercise such power,

or

(b) for no consideration or consideration that is significantly less than the estimated market valuation of the vacant or underutilised site concerned at the time of its transfer;

“vendor” includes, in relation to a vacant or underutilised site –

(a) a person who transfers the vacant or underutilised site to another person –

(i) in consequence of –
(I) the exercise of a power under any enactment to compulsorily acquire land, or

(II) the giving of notice of intention to exercise such power,

or

(ii) for no consideration or consideration that is significantly less than the estimated market valuation of the vacant or underutilised site concerned at the time of its transfer,

and

(b) an agent of the registered owner of the vacant or underutilised site who –

(i) receives the proceeds of the sale of the property or part thereof on behalf of the owner, or

(ii) provides legal advice to the owner in connection with a transfer referred to in subparagraph (ii) of paragraph (a) of the vacant or underutilised site by the registered owner.

Explanatory note

This Head requires local authorities to issue receipts to persons who pay a levy, an instalment of levy or late payment interest in respect of a vacant or underutilised site. It also provides that local authorities shall, within 21 days of receipt of a request, issue a certificate of discharge to a registered owner where all levy payments in respect of a particular year have been received and in that certificate confirm that all levy due for the year concerned has been received and that no late payment interest is due or owing on the property for that year. Such receipts and certificates shall be issued free of charge by local authorities

The Head further provides that the vendor of a vacant or underutilised site shall, before the sale of the property, pay all levies and late payment interest due and owing to the relevant local authority in respect of the vacant or underutilised site. The vendor of a vacant or underutilised site shall also be required, on or before the completion of the sale of such site, to provide the purchaser with a certificate of discharge or certificate of exemption, as appropriate, in respect of each year for which liability was due since the last sale of the property.

Head 5K – Forged and altered documents

Provide that:

(1) It shall be an offence for a person to forge or utter knowing it to be forged a certificate or other document purporting to be issued under this Part (in this Head referred to as “a forged document”).

(2) It shall be an offence for a person to alter with intent to defraud or deceive, or to utter knowing it to be so altered, a certificate or other document issued under this Act (in this Head referred to as “an altered document”).

(3) It shall be an offence for a person to have, without lawful authority, in his or her possession a forged document or an altered document.

(4) It shall be an offence for a person to aid or abet the commission of an offence under this Head.

(5) A person guilty of an offence under this Head shall be liable –

(a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding six months or both, or

(b) on conviction on indictment, to a fine not exceeding €100,000 or to imprisonment for a term not exceeding two years or both.

Explanatory note

This Head provides that it shall be an offence to forge, or to alter with intent to defraud, any certificate or document issued under this Part, to have possession of a forged or altered document, or to aid or abet the commission of an offence under this Head. A person found guilty of an offence under this Head shall on summary conviction, be liable to a class A fine or to imprisonment for up to six months, or both, or on conviction on

indictment to a fine not exceeding €100,000 or to imprisonment for up to two years, or both.

Head 5L – Care and management of levy

Provide that:

(1) All levies and late interest payments payable to a local authority pursuant to this Part are placed under the care and management of the local authority concerned.

(2) It is a function of relevant local authorities to collect levies and late interest payments due to it under this Part and to deal with matters associated with such collection.

(3) A local authority may recover from a registered owner of a vacant or underutilised site, as a simple contract debt in any court of competent jurisdiction, any levies and late interest payments due and owing in respect of that property.

Explanatory note

This Head provides that all levies and late payments payable to a local authority shall be placed under the care and management of the local authority concerned, that local authorities shall collect all levies and late payments due to it, and that local authorities may recover from a registered owner of a vacant or underutilised site – as a simple contract debt in any court of competent jurisdiction – any levies and late interest payments due and owing in respect of such property.

Head 5M – Offences

Provide that:

(1) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this Part may be instituted not later than 2 years from the date on which the relevant local authority, or another local authority or contracted agency acting on its behalf, forms the opinion that there exists sufficient evidence to justify the institution of proceedings for the offence concerned, but in no case shall such proceedings be instituted after 6 years from the date of the alleged commission of the offence.

(2) Where an offence under this Part is committed by a body corporate and is proved to have been committed with the consent or connivance of any person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in such capacity, that person, as well as the body corporate, shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(3) Summary proceedings for an offence under this Part may be brought and prosecuted by the relevant local authority, or another local authority or contracted agency acting on its behalf.

(4) Where a person is convicted of an offence under this Part, the court shall order the person to pay to the relevant local authority, or to another local authority or contracted agency acting on its behalf, the costs and expenses, measured by the court, incurred by the relevant local authority, or by another local authority or contracted agency acting on its behalf, in relation to the investigation, detection and prosecution of the offence, unless the court is satisfied that there are special and substantial reasons for not so doing.

(5) Where a person is convicted of an offence under subsection (5) of Head 6C, the court may in determining the amount of the fine to impose on the person in respect of

that offence, take account of any late interest payment paid by the person in connection with the failure to pay the levy to which the offence relates.

Explanatory note

This Head provides that summary proceedings for any offence relating to the levy may be instituted no later than 2 years after the relevant local authority, or another local authority or contracted agency acting on its behalf, forms an opinion that there exists sufficient evidence to justify institution of proceedings for the offence concerned, but in no case shall proceedings be instituted after 6 years from the date of the alleged offence. It further provides that where an offence is committed by a body corporate and is proved to have been committed with the consent of a director, manager, secretary etc of the body corporate, that person as well as the body corporate shall be liable to be prosecuted for the offence.

Furthermore, where a person is convicted of an offence under this Part, the court shall, unless it is satisfied that there are reasons for not so doing, order the person to pay to the relevant local authority, or to another local authority or contracted agency acting on its behalf, the costs and expenses, as measured by the court, incurred by the relevant local authority, or by another local authority or contracted agency acting on its behalf, in relation to the investigation, detection and prosecution of the offence. The Head further provides that where a person is convicted for not paying levy due, the court may in determining the fine to be imposed take account of any late interest payment paid by the person concerned.

Head 6A

Reduced development contributions for planning permissions yet to be activated

Amend section 48 of the Act to provide that:

(1) Where –

(a) a planning permission has been granted under section 34,

(b) work on the development, or part of the development, the subject of the planning permission has not commenced or in the case of a residential housing development, housing units are not yet sold where a development has commenced or is already complete,

(c) a new development contribution scheme has been made by the relevant planning authority subsequent to the date of the grant of the planning permission, and

(d) such new development contribution scheme provides for a lower development contribution than that which applied under the development contribution scheme in operation at the time of the grant of the planning permission in respect of the class of development which is the subject of the planning permission under paragraph (a),

a planning authority shall apply the revised lower development contribution to the development, or to part of the development, which is the subject of the planning permission under paragraph (a).

(2) Where the revised lower development contribution under subhead (1) is applied to part of a development, the development contribution applied shall be based on that portion of the un-commenced development or unsold housing units as a proportion of the overall development.

(3) Where the planning authority has already specified the development contribution level in a planning permission granted under section 34, its Executive will be authorised to amend the planning permission to reflect the contribution level in the new development contribution scheme.

Explanatory note

This Head provides that where a new development contribution scheme is adopted by a planning authority to provide for reduced development contributions than those which were provided for under the previous scheme, the reduced development contributions under the new scheme shall have retrospective effect in respect of planning permissions granted prior to the date of the adoption of the revised scheme, subject to the development, or part of that development, not having commenced prior to the date of the adoption of the revised scheme. Where these arrangements are applied in respect of a part of a development, the reduced development contribution applied shall be based on that portion of the un-commenced development as a proportion of the overall development.

In the case of residential housing developments where work has already commenced or is already complete, the reduced development contribution scheme will only apply to those housing units that have not been sold. The Executive of the relevant planning authority will be empowered to amend planning permissions and apply the reduced development contributions where the older higher development contributions are specified in the planning permission.

Head 6B

Reduced supplementary development contributions for planning permissions yet to be activated

Amend section 49 of the Act to provide:

(1) Where –

(a) a planning permission has been granted under section 34,

(b) work on the development, or part of the development, the subject of the planning permission has not commenced or in the case of a residential housing development, housing units are not yet sold, where a development has commenced or is already complete,

(c) a new supplementary development contribution scheme has been made by a planning authority subsequent to the date of the grant of the planning permission, and

(d) such new supplementary development contribution scheme provides for a lower supplementary development contribution than that which applied under the supplementary development contribution scheme in operation at the time of the grant of the planning permission in respect of the class of development which is the subject of the planning permission under paragraph (a),

a planning authority shall apply the revised lower supplementary development contribution to the development, or to part of the development, which is the subject of the planning permission under paragraph (a).

(2) Where the revised lower supplementary development contribution under subhead (1) is applied to part of a development, the supplementary development contribution applied shall be based on that portion of the un-commenced development or unsold housing units as a proportion of the overall development.

(3) Where the planning authority has already specified the development contribution level in a planning permission granted under section 34, its Executive will be authorised to amend the planning permission to reflect the contribution level in the new development contribution scheme.

Explanatory note

This Head provides that where a new supplementary development contribution scheme is adopted by a planning authority to provide for reduced supplementary development contributions than those which were provided for under the previous scheme, the reduced supplementary development contributions under the new scheme shall have retrospective effect in respect of planning permissions granted prior to the date of the adoption of the revised scheme, subject to the development, or part of that development, not having commenced prior to the date of the adoption of the revised scheme. Where these arrangements are applied in respect of a part of a development, the reduced supplementary development contribution applied shall be based on that portion of the un-commenced development as a proportion of the overall development.

In the case of residential housing developments where work has already commenced or is already complete, the reduced development contribution scheme will only apply to those housing units that have not been sold. The Executive of the relevant planning authority will be empowered to amend planning permissions and apply the reduced development contributions where the older higher development contributions are specified in the planning permission.

Head 7

Modification of duration of planning permissions in certain circumstances

To be inserted in Section 44 of the Act

Provide that:

(1) in this Head –

“development of scale” means housing developments comprising 10 houses or more in respect of which planning permission has been granted.

(2) A planning authority may reduce the appropriate period of a planning permission relating to a development of scale where:

a. the development concerned has not commenced, without reasonable justification, in line with the development schedule indicated by the developer in an application for planning permission; and

b. the development of such lands is of strategic importance to securing the objectives of the said plan in relation to its core strategy and housing strategy.

(3) A reduction in the appropriate period of a planning permission by a planning authority shall be for a period decided by the planning authority but such period shall not exceed 2 years.

(4) For the purposes of subhead (2), where a holder of a planning permission relating to a development of scale satisfies a planning authority that there were commercial, infrastructural, technical or other considerations beyond the control of the holder which substantially militated against the commencement of the development in line with the indicated development schedule, a reduction in the appropriate period shall not be applied.

(5) Where a decision to reduce is made under subhead (2), section 40 shall, in relation to the permission to which the decision relates, be construed and have effect, subject to, and in accordance with, the terms of the decision.

Explanatory note

This Head provides for the application of a “use it or lose it” approach in respect of future planning permissions whereby planning authorities shall be enabled to reduce the duration of planning permissions in respect of developments of scale (housing projects of 10 houses or more) by a period not exceeding 2 years where a development has not commenced in line with the development schedule indicated as part of an application for planning permission. However, where a developer satisfies a planning authority that there were commercial, infrastructural, technical or other considerations justifying the non-commencement of a development in line with the development schedule indicated in a planning application, a planning authority shall not reduce the duration of the permission.

This Head will be supplemented by an amendment to the Planning and Development Regulations providing for the inclusion of a specific question in the planning application form (Schedule 3, Form 2) seeking details of the proposed development schedule of developments of scale.