An Roinn Tithíochta,
Pleanála agus Rialtais Áitiúil
Department of Housing,
Planning and Local Government

To: Directors of Planning Services, City and County Councils

CC: Chief Executives, City and County Councils
Senior Planners, City and County Councils
Directors of Regional Assemblies
An Bord Pleanála

Circular Letter: PL 04/2018

13th August 2018

Planning and Development (Amendment) Act, 2018

I am directed by Mr Eoghan Murphy T.D., Minister for Housing, Planning and Local Government, to advise that the Planning and Development (Amendment) Act 2018 was signed into law by the President on 19 July 2018. A copy of the Act, which significantly adds to and revises the Planning and Development Act 2000, as amended (the Principal Act), and comprises in total 76 sections and 4 Schedules, is attached for information.

Primary provisions in the Act

When originally being drafted, it was primarily intended that the Act would give legislative effect to the planning-related recommendations of the Mahon Tribunal Report (*Final Report of the Tribunal of Inquiry into Certain Planning Matters and Payments*), providing for –

- the establishment of a new independent Office of the Planning Regulator (provided for in Part 2 of the Act);
- the statutory underpinning for the recently adopted National Planning Framework as a successor to the 2002 National Spatial Strategy; and
- other updates to the Principal Act that are necessary to deliver greater transparency, efficiency and integrity to the planning system, including giving legislative effect to all further planning-related recommendations of the Mahon Tribunal Report.

However, during the course of the progression of the Act through the Oireachtas, which commenced in 2016, the scope of the Act was significantly expanded, with a considerable number of further amendments to the Principal Act being tabled to deal with arising issues, which are now incorporated in the final text (see the summary of the commenced provisions below and in Appendix 1, and the summary of the main un-commenced provisions requiring the signing of a Commencement Order by the Minister before they come into effect, as further outlined in the attached Appendix 2).

Office of the Planning Regulator

Following its establishment, the Office of the Planning Regulator (OPR) will have a wide range of functions, including the independent evaluation and assessment of all Regional Spatial and Economic Strategies, development plans and local area plans (including variations of same) for the purpose of ensuring compliance with proper planning and sustainable development and compliance with related national and regional policies and objectives. The OPR will be further empowered to review the organisation, systems and procedures used by any planning authority or An Bord Pleanála in the performance of any of their planning functions under the Planning and Development Acts, either on its own initiative or on foot of individual complaints from members of the public. Additionally, the OPR will be mandated to undertake research and conduct programmes of education and training – including for elected members and officials of planning authorities – to highlight the role and benefit of planning, underpinning the principles of proper planning and sustainable development. The OPR will be headed up by the Planning Regulator, who will be recruited in the near future through open competition. Following this recruitment process, commencement of the provisions of Part 2 of the Act will proceed, formally enabling the establishment and commencement of operations of the new Office.

Commencement of the provisions of the Act

While certain provisions of the new Act can come into operation at relatively short notice, other provisions, for example those requiring the development of supplementary regulations or appropriate guidance, etc., will require a longer lead-in time to ensure smooth transition. Accordingly the commencement of the various provisions of the Act will be staggered. The Department will notify planning authorities of the signing of each Commencement Order relating to specific provisions and their coming into effect.

Provisions of the Act which are now commenced

Notwithstanding the foregoing, certain sections of the Act were commenced upon enactment and planning authorities should now familiarise themselves with these provisions, as follows:

- **Section 2 – Interpretation**
  This is the standard interpretation section containing the definitions of terms occurring in more than one section in the Act.

- **Section 46 – Control of licensed premises**
  This section amends the First Schedule of the Principal Act to provide for the control of licensed premises among the objectives that may be indicated in a development plan, in line with the recommendations of the *Final Report of the Commission on Liquor Licensing*. Further guidance on this matter will issue in due course.

- **Sections 50, 51, 52, 53, 54 and 55 – Strategic housing developments**
  These sections are primarily technical or minor in nature, with the main change being to clarify that "strategic housing developments" may now also incorporate shared accommodation type developments above a specified threshold.

- **Sections 58, 63, 64 and 65 – Vacant site levy**
  As signalled in Budget 2018, these sections provide for an increase in the rate of the vacant site levy from 3% to 7% of the market valuation of relevant sites with effect from January 2020, in respect of sites included on local authority vacant site registers in 2019. This change in the rate of levy is primarily intended to ensure that the measure has more meaningful impact in terms of incentivising the development of such sites and combatting land hoarding.

  Furthermore, these sections also clarify what constitutes "vacant and idle" lands for the purposes of the application of the levy on "residential land" in order to address the situation where – under the pre-existing provisions – developers, or land speculators, could potentially hoard residentially zoned land and avoid liability to the levy, by leasing it or putting it to use for a non-residential purpose, such as farming, and thereby claim that the land in question was not vacant or idle for the purposes of the levy.

  The new sections further clarify that residentially zoned land which was purchased prior to its designation as residential land, and which continues to be operated for farming purposes, shall be exempt from the levy. In addition, the pre-existing provisions providing for the application of reduced or zero rates of levy in specified circumstances – i.e. where there was a site loan or mortgage taken out on the land above specified thresholds of its valuation – have been removed.

- **Section 59 – Derelict sites levy**
  For the purpose of consistency with the increase in the vacant site levy, this section provides that the derelict sites levy will also increase from 3% to 7% of the market valuation of relevant sites with effect from January 2020 in respect of sites included on local authority derelict sites registers in 2019.

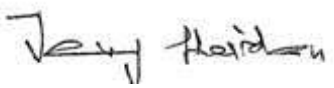
- **Section 61 – Special legal costs rules**
  This section amends section 4 of the Environment (Miscellaneous Provisions) Act 2011 to clarify that the special "not prohibitively expensive" legal costs rules arising under the requirements of the *UN Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (the Aarhus Convention) shall now also apply to challenges of decisions, actions or omissions made under statutory provisions giving effect to Article 6.3 and 6.4 of the 1992 EU Habitats Directive relating to Appropriate Assessment.

- **Section 62 – Water services strategic plan**
  This section provides that, when preparing a water services strategic plan / capital investment plan, Irish Water must have regard to proper planning and sustainable development in line with any development plans made under the Planning Act, in particular with the core strategies of such plans. This is primarily intended to ensure that water services infrastructure will be provided in a timely manner by Irish Water where it is most needed in accordance with the provisions of local development plans and core strategies.

Further elaboration on the above commenced provisions is set out in Appendix 1. As indicated, planning authorities will be notified of the signing of any subsequent Commencement Orders by the Minister giving effect to the commencement of not-yet commenced provisions of the Act

Any queries in relation to this Circular letter should be addressed to the Department's Planning Policy Section using the contact details indicated below.

Yours sincerely,



Terry Sheridan
Principal
Planning Policy

Enclosures:

- Appendix 1: detailed overview of the commenced provisions of the Planning and Development (Amendment) Act, 2018
- Appendix 2: Summary outline of the un-commenced provisions of the Planning and Development (Amendment) Act 2018
- Appendix 3: copy of Planning and Development (Amendment) Act, 2018

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Appendix 1

Further elaboration and background relating to the commenced provisions of the Planning and Development (Amendment) Act 2018

Section 2 – Interpretation

This is the standard interpretation section containing the definition of terms occurring in more than one section in the Act to avoid the need for repetition.

Section 46 – Amendment of First Schedule

This section specifically amends Schedule 1 of the Principal Act which provides for the purposes for which objectives may be indicated in development plans. Subsection (1) provides for the inclusion in Schedule 1 (under Part III - Community Facilities) for the control of licensed premises. Subsection (2) provides for when this takes effect (in new or varied development plans after the passing of this Act).

In its Final Report, the Commission on Liquor Licensing considered planning-related matters and stated that "*local authorities rather than the courts are the appropriate bodies to assess the suitability and location of premises for the sale of alcohol*". It recommended that any person wishing to sell alcohol should be required to obtain planning permission for premises not already licensed before applying to the court to do so and that the planning authority in arriving at its decision should take into account all relevant requirements. Supplementary to this, the Department of Justice and Equality, in response, is amending its Liquor Licensing legislation to oblige publicans to firstly get planning permission in place before applying for a liquor licence.

From a planning point of view –

- Section 9 of the Principal Act requires planning authorities to draw up development plans for their areas;
- Section 10(2) sets out a number of objectives which shall be included in a development plan;
- Section 10(3) provides that a development plan may indicate objectives for any of the purposes referred to in the First Schedule to the Act;
- This amendment to the Principal Act includes the regulating, restricting or controlling of development of licensed premises in the First Schedule as referred to above.

The inclusion of a new objective in the First Schedule will provide local residents with an opportunity to make their views on the location of such premises in their local areas during the consultation phase of the development plan process.

Section 50 – Amendment of section 3 of Act of 2016; Section 51 – Amendment of section 5 of Act of 2016; Section 52 – Amendment of section 6 of Act of 2016; Section 53 – Amendment of section 8 of Act of 2016; Section 54 – Amendment of section 10 of Act of 2016; Section 55 – Amendment of section 12 of Act of 2016 (relating to "strategic housing developments")

These sections make a number of amendments to the "strategic housing development" (SHD) provisions in the *Planning and Development (Housing) and Residential Tenancies Act 2016*.

The main amendment relates to providing that SHDs shall now include shared accommodation, which gives rise to a number of consequential amendments. In this regard, shared accommodation is a form of residential accommodation that involves the provision of a managed and serviced rental accommodation solution that, in addition to living accommodation, provides shared facilities and amenities such as catering areas, workstations, communal areas and facilities that residents can book and use, either for personal or social purposes. It is increasingly common in other countries but is relatively new in Ireland and will be further enabled by the publication of updated statutory planning guidelines on apartments entitled *Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities 2018*. In light of the foregoing, the definition of strategic housing development has now been widened to include shared accommodation type development which can now benefit from the fast-track planning arrangements under which planning applications for such development types can be made directly to An Bord Pleanála.

Separately, there are also a number of other amendments as well as minor or technical amendments to the strategic housing development provisions generally, as outlined below.

Definition – "Shared Accommodation"

Section 50(1)(b) and (c) of the Act of 2018 amend section 3 of the Act of 2016 which provides definitions relating to the SHD provisions. Paragraph (b) inserts a definition for 'shared accommodation' and paragraph (c) amends the current definition of 'strategic housing development' to include 'shared accommodation' consisting of 200 or more bed spaces on land the zoning of which facilities the provision of shared accommodation or a mixture of shared accommodation and other uses, as well as making other consequential amendments in the definition.

This further requires consequential amendments to section 5, section 8 and section 13 of the Act of 2016 to incorporate 'shared accommodation' within the existing SHD provisions. These consequential amendments can be found in section 51(b)(i), section 53(1)(a)(i) and section 56 (not yet commenced) of the Act of 2018.

A technical consequential amendment arises in section 50(1)(d) of the Act of 2018 with the relocation of the definition of "student accommodation" from section 13 to section 3 in the Act of 2016.

Definition – "Gross Floor Space"

Section 50(1)(a) of the Act of 2018 also amends section 3 of the Act of 2016 by inserting a new definition of "gross floor space". This requires consequential amendments to the definition of 'strategic housing development' in section 3 and section 5 of the Act of 2016. The purpose of the amendment is to ensure consistency in the use of the term 'gross floor space' in the existing strategic housing development provisions and for consistency with existing provisions in the *Planning and Development Regulations 2001*. These consequential amendments can be found in section 50(1)(e) and section 51(1)(b)(ii) of the Act of 2018.

Pre-Application Consultations

Section 52(1)(b) of the Act of 2018 amends section 6(5)(a) of the Act of 2016 relating to the Board's consideration of a consultation request for proposed SHD. The amendment requires that the Board shall hold a consultation meeting, as part of the pre-application consultation process, within four weeks of the date of the notification by the Board that it will accept the request to enter into consultations, as opposed to within four weeks of the date that the request was received by the Board, as was previously provided for.

The ultimate effect of the amendment is to provide for an additional two week period, within the overall SHD pre-application consultation period. It was originally intended that this period would be a total period of nine weeks. However, the Act of 2016 as originally enacted only technically provided for a total period of seven weeks. This amendment readjusts the period to reflect what was originally intended. The insertion of the additional two week period will facilitate the Board in considering the information provided by the relevant planning authority, as required under section 6(4)(b) in relation to the proposed development, to include confirmation that section 247 consultations have taken place with the relevant planning authority and receipt of a written opinion of the authority on the proposed development, prior to the consultation meeting under section 6(5).

Publication of Decisions by the Board

Section 54 of the Act of 2018 amends section 10(2) of the Act of 2016. Section 10 previously required the Board to inform the public of its decision on an application for permission in respect of a SHD by way of a notice in one or more newspapers circulating in the area concerned. This amendment now requires the Board to instead publish its decision on its website.

In addition, under section 10(1), which remains unchanged, the Board is also required to send a copy of its decision to the applicant, the relevant planning authority(s) and any person who made a submission or an observation on the application.

Section 58 – Definition; Section 63 – Amendment of section 5 of Act of 2015; Section 64 – Vacant site levy; Section 65 – Miscellaneous amendments of Act of 2015

These sections make a number of amendments to the vacant site levy provisions in the *Urban Regeneration and Housing Act 2015*.

Standard Definition

Section 58 of the Act of 2018 contains a standard definition provision. It provides that a reference to the "Act of 2015" in Part 4 of the 2018 Act is a reference to the *Urban Regeneration and Housing Act 2015*.

Vacant Site Definition

Section 63 of the Act of 2018 amends section 5 of the Act of 2015 relating to the definition of a vacant site. It further clarifies what constitutes "vacant and idle" lands for the purposes of the application of a vacant site levy on residential land by substituting a new subparagraph (iii) in section 5(1)(a). In this connection, subparagraph (iii) now states that "the site, or the majority of the site, is—

(I) vacant or idle, or

(II) being used for a purpose that does not consist solely or primarily of the provision of housing or the development of the site for the purpose of such provision, provided that the most recent purchase of the site occurred—

(A) after it became residential land, and

(B) before, on or after the commencement of section 63 of the Planning and Development (Amendment) Act 2018."

Therefore, a site on residentially zoned land, provided it meets the other criteria in section 5(1)(a), shall be regarded as a vacant site for the purposes of the levy if it is "vacant or idle" or if it is not being used primarily for the purpose for which it has been zoned (i.e. for the provision of housing) where the most recent purchase of the land occurred after it was zoned residential, irrespective of when it was purchased.

This provision differentiates between lands purchased following a zoning change to residential and lands held in ownership regardless of zoning, such as those long held and operated as farms. Therefore, its aim is to focus on developers or speculators who have purchased residentially zoned and serviced lands but are not bringing those lands forward for development for that purpose. However, it confirms that lands owned and in use prior to being rezoned to residential (i.e. for agricultural purposes), and which continue in such use shall not be regarded as "vacant or idle" for the purposes of the levy and are therefore not liable to the levy.

Vacant Site Levy

Section 64 of the Act of 2018 amends section 16 of the Act of 2015 by substituting a new section 16 relating to the rate of the levy to be applied, incorporating three key changes:

- Increase in rate of levy:
  As signalled in Budget 2018, the new section 16 provides that the rate of levy is increased from 3% to 7% of the market valuation of relevant sites with effect from January 2020, in respect of sites included on the local authority vacant site registers in 2019. The 3% rate of the levy shall continue to apply to sites on the vacant site register in 2018. The 7% rate will apply to any site on the local authority registers in 2019 and subsequent years (unless otherwise revised).

- Removal of reduced rates of levy:
  Under the 2015 Act, when first enacted, section 16 provided for a levy rate of 3% of the market valuation of a vacant site entered on the vacant site register with reduced (1.5% or 0.75%) or zero rates of the levy applying in specified circumstances where a vacant site was subject to a site loan i.e. where there was a site loan or mortgage taken out on the land above specified thresholds of its valuation. The new section 16 removes the provision for the application of the reduced or zero levy rate in this regard providing that the levy rate shall be a flat rate of 3% in respect of 2018 increasing to 7% in respect of 2019, subject to other provisions in the 2015 Act that remain unchanged such as section 14 (zero market value) and section 17 (death or change of ownership).
- Power to vary the levy:
  The new section 16 further provides that the Minister may by regulations vary the levy rate, by a reduction or an increase in the rate, subject to the levy rate not exceeding the maximum 7% rate set out in the Act. Any proposed change to the levy rate by way of regulations shall be informed by and reflective of increases or decreases in property prices and other relevant property related information as published by the Central Statistics Office. Regulations under section 16 will require a positive resolution of both Houses of the Oireachtas before being made by the Minister and coming into effect. Where it is proposed to increase the levy above the 7% rate, primary legislation will be required.

Further Amendments to the Vacant Site Levy Provisions

Section 65 of the Act of 2018 contains five minor, consequential or miscellaneous amendments to the vacant site levy provisions in Act of 2015, as follows:

- paragraph (a) of section 65 makes a consequential amendment to section 3 of the Act of 2015, as required by the amendment to section 25 relating to the Minister's regulation making powers (see bullet 5 below),
- paragraph (b) of section 65 makes a consequential amendment to section 8 of the Act of 2015, also required by the amendment to section 25 (see bullet 5 below),
- paragraph (c) of section 65 corrects two references to "vacant or idle" in section 9(2) and (3) of the Act of 2015 to read "vacant site", to ensure the consistent use of language and the criteria to apply throughout the Act,
- paragraph (d) of section 65 makes a minor technical amendment to section 18(2) by changing an "and" to an "or", and
- paragraph (e) of section 65 substitutes a new section 25 in the Act of 2015 to strengthen and extend the Minister's general regulation making powers relating to the vacant site levy provisions.

Section 59 – Amendment of section 23 of Derelict Sites Act 1990

This amendment provides for an increase in the levy that can be applied by local authorities on the owners of sites included in authorities' derelict sites registers. The amendment provides for the substitution of subsection (3) of Section 23 of the *Derelict Sites Act 1990* - the 1990 Act - with a revised subsection incorporating the proposed increased rate of levy.

Under section 23 of the 1990 Act, local authorities may apply a derelict sites levy in respect of urban land for which a market value has been determined and stands entered on the register on 1 January of the financial year in question. The levy has remained at a flat rate of 3% of the market value of a derelict site since the enactment of the 1990 Act.

Following the introduction of the vacant site levy, under the *Urban Regeneration and Housing Act 2015*, the 1990 Act was amended by the 2015 Act to provide that the derelict site levy shall not be payable in respect of any land on which the vacant site levy is payable – this to avoid any double levy liability on any individual site. Accordingly, in order to ensure consistency of approach, in the context of the vacant site levy being increased from 3% to 7%, and in order to strengthen the powers of local authorities in tackling dereliction, vacancy and facilitating urban regeneration, the levy under the Derelict Sites Act has also been increased.

The derelict sites levy will be increased to 7% of the market valuation of relevant sites with effect from January 2020 in respect of sites on derelict sites registers in 2019. Furthermore, and similar to the vacant site levy provisions, the rate of levy may be varied in subsequent years by way of Regulation having regard to changes in relation to house and property price inflation, subject to the rate of levy not exceeding the 7% rate now being set from January 2020 and the draft Regulation proposing any such variation being laid before both Houses of the Oireachtas and receiving a positive resolution by both Houses approving the proposed levy variation. Similar to the vacant site levy provisions, any increase in the derelict site levy above the rate of 7% will require primary legislation,

Section 61 – Amendment of section 4 of Environment (Miscellaneous Provisions) Act 2011

In light of recent European Court of Justice (ECJ) rulings, AA (appropriate assessment) screening under the EU Habitats Directive 92/43/EC has now been added to the types of court proceedings seeking compliance with, or challenging breaches of, specified licences, permits or other consents as listed in section 4(4) of the Environmental (Miscellaneous Provisions) Act 2011 to which the special legal cost rules arising under the UN Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention) apply. Under these special legal cost rules, a person taking such proceedings will generally not be liable for costs if s/he loses and may be entitled to costs from the losing party if s/he wins. A person may also be awarded his/her costs by the Court in cases of exceptional importance and where it is in the interests of justice. This section 61 provision in the new Act amending section 4 of the Environmental (Miscellaneous Provisions) Act 2001 has been commenced.

With regard to a related provision, it should be noted that section 29 of the new Act amends section 50B of the Planning and Development Act 2000, as amended, to also apply the Aarhus Convention special legal cost rules to judicial reviews of decisions, actions or omissions made under national law implementing the AA provisions of the Habitats Directive. This supplements the pre-existing section 50B provisions applying the special legal cost rules to judicial reviews of decisions, actions or omissions made under national law implementing the EU Strategic Environmental Assessment (SEA) Directive and those elements of the EU Environmental Impact Assessment (EIA) Directive and the EU Integrated Pollution Protection and Control (IPPC) Directive providing for the challenging of decisions, acts or omissions subject to public participation. Section 29 of the new Act has not yet been commenced but it is anticipated that a Commencement Order bringing it into effect will be signed in the coming months on foot of which planning authorities will be duly notified.

Section 62 – Amendment of section 33 of Water Services (No. 2) Act 2013

This section amends section 33 of the *Water Services (No. 2) Act 2013* to require Irish Water, when preparing a water services strategic plan/ capital investment plan, to have regard to proper planning and sustainable development in line with the requirements of local authority development plans, including the core strategy of such plans made under Section 10 of the Planning and Development Act 2000 (as amended). This is primarily intended to ensure that water services infrastructure will be provided in a timely manner by Irish Water where it is most needed in accordance with the provisions of local development plans and core strategies and so that there is a joined-up approach in relation to the provision of such water-related capital infrastructure.

Appendix 2

Summary outline (non-exhaustive) of the un-commenced provisions of the Planning and Development (Amendment) Act 2018

The not-yet commenced provisions of the 2018 Act include provision for the following:

- planning exemptions for forest entrances on public roads [section 8];
- elected members being enabled to request the manager by resolution of at least three-quarters of the members of the authority to prepare a report on a proposal by them to initiate the process to consider the variation of a development plan [section 16];
- enhanced transparency in the planning process requiring the publication of submissions on development plans and local area plans, as well as the chief Executive's report on such submissions, on the website of the relevant planning authority (Mahon recommendation) [section 19];
- the undertaking of a strategic environmental assessment or an appropriate assessment as the case may require in relation to any proposed planning guidelines for issue by the Minister [section 20];
- legislative underpinning to facilitate the introduction of ePlanning (electronic planning) in relation to the online submission of planning applications and appeals [section 22];
- elected members being enabled to pay a reduced or zero fee in relation to the submission of observations on certain planning applications or planning appeals [section 22];
- the forwarding of any proposed grants of planning permission which would contravene materially a development plan or local area plan to the relevant regional assembly for observations (Mahon recommendation) [section 23];
- planning authorities being required, when considering applications for planning permission in respect of residential developments of 10 units or more, to have regard to previous developments by a developer which have not been satisfactorily completed and any previous convictions for non-compliance with the Planning Act, the Building and Control Act 2007 or the Fire Services Act 1981, while also enabling planning authorities to refuse planning applications taking account of such past failures [section 23];
- planning authorities being required to process developer proposals in respect of compliance conditions relating to planning permissions within a specified timeframe of 8 weeks [section 23];
- planning authorities being enabled to refuse planning applications where persons have previously operated under a particular company name and left estates unfinished and where they apply for planning permission for a new development under a different company name[section 24];

- further measures to assist in combatting land hoarding, including giving planning authorities the possibility of applying a lesser period than the existing 5 year default period when granting planning permissions or extensions of planning permissions [section 26];
- the revocation or modification of planning permission for certain reasons [section 27];
- the streamlining and tightening up of the procedures relating to the taking in charge of housing estates by local authorities [section 37];
- developers being required to undertake mandatory pre-application consultations with the local planning authority in respect of residential or commercial developments above specified thresholds before being allowed to submit a planning application, and the charging of fees by planning authorities for such consultations [sections 41 and 43];
- the attaching of conditions for the giving and maintaining of adequate financial security by a developer for the satisfactory completion of a proposed development [section 48];
- the inclusion of data centres above a specified threshold as "strategic infrastructure developments" in the Seventh Schedule to the Act thereby allowing direct application to An Bord Pleanála [section 49]; and
- legislative underpinning for the adoption of Marine Spatial Plan, as a parallel to the National Planning Framework, further to the EU Marine Spatial Planning Directive 2014/89/EC [sections 66 to 76].