GENERAL SCHEME
FOR
PLANNING AND DEVELOPMENT (AMENDMENT) (NUMBER 2) BILL 2021

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Head 1: Short title and collective citations

Provide that

(1) This Act may be cited as the Planning and Development (Amendment) (Number 2) Act 2021.

(2) The Planning and Development Acts 2000 to 2020 and the Planning and Development (Amendment) Act 2021 and this Act may be cited together as the Planning and Development Acts 2000 to 2021.

Explanatory Note:

Head 1 provides the short title and collective citation to the Bill.

Head 2: Definitions

Provide that

In this Act—

“Act of 2000” means the Planning and Development Act 2000;

Explanatory Note:

Head 2 provides a definition for “Act of 2000”, which means the Planning and Development Act 2000 in this Bill.

Head 3: Amendment of section 34 of the Act (Permission for Development)

Provide that

Section 34 of the Act is amended -

(1) by substituting the following for subsection (12):

"(12) A planning authority or the Board in respect of an application to retain unauthorised development of land, or the Board in respect of a determination of such an application on appeal under section 37, shall refuse to consider that application or appeal, as the case may be, where it decides that either or both of the following was or is required:

(a) an environmental impact assessment,

(b) an appropriate assessment,

(2) by inserting after subsection (12A) new subsection (12AA):

"(12AA) Where the Board refuse to consider an application on appeal under section 37 pursuant to subsection (12) of this section, that application to retain unauthorised development of land shall be deemed to be withdrawn."

(3) in subsection (12A) by the substitution of "subsection (12)(a)" for "subsection (12)(b)"

Explanatory Note:

Head 3 provides for amendments to Section 34(12) of the Act. Section 34(12) precludes planning authorities from considering an application for retention in respect of an existing unauthorised development where, had a planning application been made for that development before it commenced, a) an Environmental Impact Assessment (EIA), b) a determination as to whether for EIA is required, or c) an Appropriate Assessment (AA), would have been required to be carried out in respect of that application. The following amendments are proposed at subsection (12) to provide for:

- extending the prohibition on consideration of a retention application for unauthorised development required to be subject to an EIA/AA to include the Board in the case of an application made to it or an appeal of decision by a planning authority to a grant of retention.

- Consequent to the above, at new subsection (12AA) that where the Board refuses to consider an application on appeal under section 37 pursuant to subsection (12) due to EIA/AA being required, the application to retain unauthorised development shall be deemed to be withdrawn.

- where considering EIA/AA requirements of existing development seeking retention, planning authorities/the Board should consider whether EIA/AA was or is required in respect of the development. At present, planning authorities are only obliged to consider EIA/AA requirements that would have applied had a prior application been made before the development commenced. This amendment will require the planning authority/Board to consider both past and present EIA or AA requirements applicable to the development, extending the current obligation that only the EIA/AA position at the time the development took place (which may be disputed or unclear) must be considered.

- the deletion of Section 34(12)(b), which precludes the consideration of retention applications for developments that would have required a determination as to whether an EIA is required to be carried out (i.e. screening of sub-threshold EIA development). Section 34(12)(a) provides that planning authorities must not consider retention applications where that development would have required an EIA to be carried out. In accordance with Section 172(1)(a) of the Act, an EIA must be carried out for developments of a class specified in Part 1 and Part 2 of Schedule 5 to the Planning and Development Regulations 2001 where no threshold is specified or which equal or exceed the mandatory thresholds. In accordance with Section 172(1)(b) an EIA must also be carried out for development of a class specified in Part 2 of Schedule 5 to those Regulations which does not equal or exceed the relevant threshold but which the planning authority or the Board, as the case may be, has determined is likely to have a significant effect on the environment. Accordingly, the purpose of the amendments recasting Section 34(12)(a) and (b) is on the basis that paragraph (a) already requires the planning authority to consider both whether a mandatory above threshold EIA is required and to make a screening determination in the case of sub-threshold EIA development.

- Subsection (12A) is amended to reflect the recasting of paragraphs at subsection (12).

Head 4: Amendments of section 37L of the Act (Quarry substitute consent applications — Board's jurisdiction in relation to simultaneous applications for further development)

Provide that

Section 37L is amended to insert new provisions to that effect at subsection (1), (2) and (3) to the effect of–

(1) removing the existing restriction that limits the availability of simultaneous applications to only quarries directed to apply for substitute consent under Section 261A to widen the simultaneous application for future development process to all types of development for which substitute consent is being sought and
(2) provide that future development applications may be for a different type of development to that for which substitute consent is sought.

Explanatory Note:

Head 4 concerns simultaneous application for future development under Section 37L-Q which are currently limited to substitute consent applications for further quarrying directed to apply under Section 261A. It is proposed to extend the simultaneous application provisions and widen the availability of the future development consent assessed concurrently by the Board with any substitute consent application to all types of development (not just Section 261A quarries for future quarrying).

It is also proposed to provide that such the future development applications are not limited to the same as that for which substitute consent was sought. Currently Section 37L-Q permits applications to further develop that quarry i.e. for proposed future quarry development on a quarry site.

As is currently the case in Section 37L of the Act of 2000, these amendments will require that such applications for future development will not be decided until the substitute consent application (including consideration of exceptionality) has been decided, and the Board will be required to decide upon the application for future development at the same time or as soon as possible after a decision on the application for substitute consent.

Head 5: Amendment of section 177A of the Act (Interpretation)

Provide that

Section 177A of the Act is amended by the substitution of the definition of "exceptional circumstances" for the following definition-

> 'exceptional circumstances' shall, except in 177K(2A)(b), be construed in accordance with section 177K(1J);

Explanatory Note:

Head 5 concerns Section 177A of the Act which provides definitions applicable to Part XA of the Act (Substitute Consent) and defines "exceptional circumstances" as construed in accordance with section 177D(2). Section 177D(2) lists the criteria to which the Board must have regard to in considering whether exceptional circumstances exist. Currently, the consideration of exceptional circumstances occurs both at the leave to apply for substitute consent stage under Section 177D and at the substitute consent decision stage under Section 177K(1A) (as amended by the Planning and Development, and Residential Tenancies, Act 2020). The leave stage at Sections 177C and 177D are being repealed in their entirety while the exceptionality criteria at section 177D(2) being moved to new Section 177K(1J). Consequently, the definition is being amended to reflect the movement of the exceptionality criteria to the substantive application stage at Section 177D to new Section 177K(1J).

Furthermore, it has been noted that section 177K(2A)(b) includes a reference to "exceptional circumstances" in the context of the Board being required to making an EIA screening determination within 8 weeks except where it appears to the Board that it would not be possible or appropriate, because of the exceptional circumstances of the development (including in relation to the nature, complexity, location or size of such development) to do so. This provision arises from Article 4(6) of the amended EIA Directive which requires that competent authority makes EIA screening determinations as soon as possible and within 90 days from which the developer submits all the information required but allows, in exceptional cases, for instance relating to the nature, complexity, location or size of the project, that the competent authority may extend this time, and inform the application in writing justifying the extension and of the date when its determination is expected. The concept of "exceptional circumstances" at Section 177K(2A)(b) should be interpreted having regard to Article 4(6) of the EIA Directive and should not be construed in accordance to the exceptionality criteria for substitute consent under new Section 177K(1J) and accordingly, the definition of exceptional circumstances at Section 177A excludes Section 177K(2A)(b) to clarify this point.

Head 6

Provide for the Repeal of sections -

- 177B (Application to apply for substitute consent where notice served by planning authority),
- 177C (Application for leave to apply for substitute consent where notice not served by planning authority), and
- 177D (Decision of Board on whether to grant leave to apply for substitute consent)

Section 177B, 177C and 177D of the Act are repealed.

Explanatory Note:

Head 6 concerns Section 177B of the Act which provides that where a planning authority becomes aware of a development granted permission by the planning authority or the Board, for which EIA screening, or an EIA or AA was or is required and in respect of which a final judgment of an Irish court or European Court of Justice has been made that the permission was in breach of law, invalid or otherwise defective because of –

-matters omitted in the application, including the EIAR and/or NIS, or inadequacy of the EIAR and/or NIS, or

-any error of fact or law or procedural error.

that the planning authority must direct developer to apply to the Board for substitute consent.

Section 177C of the Act allows a developer to apply to the Board for leave to apply for substitute consent in respect of development carried out which EIA screening, EIA or AA was or is required and the developer considers either the criteria under section 177C(2)(a) that permission granted by the planning authority or the Board may be in breach of law or defective or under section 177C(2)(b) that exceptional circumstances exist meaning it may be appropriate to permit the regularisation of the development by permitting an application for substitute consent. Under Section 177D, the Board shall only grant leave to apply for substitute consent in respect of a developers application under Section 177C if it is satisfied that:

1) development carried out requires/required an EIA screening, EIA or AA, and

2) either a) the permission is defective or b) exceptional circumstances do exist, as the case may be.

The Supreme Court in its judgment in *An Taisce v An Bord Pleanála & Others* of 1 July 2020 opined that section 177C(2)(a) and its corresponding provision, section 177D(1)(a) (where the Board consider a defective planning permission as a basis for deciding whether to grant leave to apply for substitute consent) are inconsistent with the EIA Directive as interpreted by the Court of Justice, in that they fail to provide for an exceptionality test as demanded by that court.

As it is intended to replace the current two-stage substitute consent process with a single-stage process, the current requirement to obtain leave from the Board under Sections 177C and 177D or a direction from a planning authority under Section 177B to apply for substitute consent is being repealed and replaced with a provision whereby any person can apply for substitute consent directly to the Board. All matters (including the question of exceptional circumstances) will be considered as part of that single-stage application process and include opportunities for public participation, including in relation to exceptionality. A defect in a

planning permission, e.g. error of law will remain a consideration for the purposes of the assessment of exceptional circumstances under section 177K at the substantive substitute consent application stage.

Head 7: Section 177E of the Act (Application for substitute consent)

Provide that

Sections 177E of the Act is amended –

(1) by the substitution of the following for subsection (1A) –

> "The Board, at its own discretion and at the request of a person who intends to make an application for substitute consent to the Board, may enter into consultations with the person before that person makes an application for substitute consent.",

(2) by the insertion of the following subsections after subsection (1A) –

"(1B) A person who has carried out a development referred to in subsection (1C), or the owner or occupier of the land as appropriate, may apply to the Board for substitute consent in respect of that development.

(1C) A development in relation to an application referred to in subsection (1) may be made is a development which has been carried out where an environmental impact assessment or an appropriate assessment, was or is required, and in respect of which the applicant is of the opinion that exceptional circumstances exist"

(3) by the deletion of paragraphs (a),(c) and (g) in subsection (2),

(4) by the substitution of the following subsection for subsection (2A)-

"(2A)(a) Where an application for substitute consent is made in respect of a development for which planning permission has been granted, that application may, subject to paragraph (b), be made in relation to—

(i) that part of the development permitted under the permission granted in respect of that development that has been carried out at the time of the application, or

(ii) that part of the development permitted under the permission granted in respect of that development that has been carried out at the time of the application and all or part of the development permitted under the permission granted in respect of that development that has not been carried out at the time of the application.

Where an application for substitute consent made relates in part to development that has not been carried out at the time of the application, the applicant shall furnish with his or her application, or furnish to the Board where requested, as the case may be, in addition to the information referred to in subsection (2), in addition to-

(i) a remedial environmental impact assessment report, an environmental impact assessment report in accordance with the permission regulations in relation to that part of the development that has not been carried out at the time of the application;

(ii) a remedial Natura impact statement, a Natura impact statement in relation to that part of the development that has not been carried out at the time of the application."

(5) in subsection (3) by the deletion of "177B, 177D or"

(6) by the insertion of the following subsections after subsection (4A)-

"(4B) The Board shall consider whether an remedial Natura impact statement submitted under this section complies with section 177G and where the Board decides that a remedial Natura impact statement does not comply with section 177G the Board shall require the applicant to submit, within a specified period, such further information as may be necessary to comply with that section.

(4C) Where further information required by the Board under subsection (4A) or (4B) is not furnished by the applicant for substitute consent within the period specified, or any further period as may be specified by the Board, the application for substitute consent for the development shall be deemed to be withdrawn."

Explanatory Note:

Head 7 provides for amendments to Section 177E consequential to the repeal of sections 177B, 177C & 177D concerning the making of an application for substitute consent to the Board. The amendments provide –

- at subsection (1A) that any person who intends to make an application for substitute consent may enter into pre-application consultations with the Board (this consultation option will no longer be limited to those who have been given notice by a planning authority under section 177B or leave to apply under section 177D),

-new subsections (1B) and (1C) that any person who has carried out development, or the owner or occupier of the land, may apply to the Board for substitute consent (currently such applications are limited to those directed by a planning authority or granted leave by the Board). The condition on making an application for substitute consent is that the development must be development already carried out where an EIA or AA, or both, was or is required and in respect of which the applicant considers exceptional circumstances exist.

-the deletion at subsection (2) of-

-(a), the requirement that an application for substitute consent be made pursuant to a Sn 177B planning authority notice or Sn 177D grant of leave from the Board,

-(c) removing references to directions under section 177B regarding the requirement to submit and remedial EIAR and/or NIS by a planning authority

- (d) to remove references to directions regarding the requirement to submit and remedial EIAR and/or NIS by the Board at the leave stage

-(g) to remove the requirement that the application be received within periods specified planning authority notices or Board directions to apply for substitute consent.

Consequent to the above, it will be open to any person to apply for substitute consent at any time, once they meet the criteria at new subsections (1B) and (1C) and either or both a remedial EIAR or remedial NIS must accompany an application for substitute consent.

- Subsection (2A) provides that where a development carried out is subject to a planning permission and part of the development has not yet been carried out, any remedial EIAR or NIS submitted must be accompanied by an EIAR and NIS for that un-commenced part of the development. The proposed amendments apply this provision to all applications for substitute

consent and allow for an EIAR or NIS to be submitted at a later stage where the development has been screened in for EIA or AA by the Board following the making of the application, to accompany a remedial EIAR or NIS where requested.

- new subsection (4B) to allow the Board to request further information in relation to the remedial NIS from the applicant (Section 177K(4A) and Section 172(1D) & (1E) allow for further information in respect of a remedial EIAR and EIAR respectively),

- new subsection (4C) that where further information for the purposes of the remedial EIAR or remedial NIS is not furnished within the specified period or any period agreed with the Board, the application for substitute consent is deemed withdrawn.

Head 8 - Section 177F of the Act (**Remedial environmental impact statement)**

Provide that

Sections 177F is amended –

(1) At subsection (2)(a)(i) by the substitution of “a person who intends to or is required to submit a remedial environmental impact assessment report to the Board, and” for “,before an applicant makes an application for substitute consent,”

(2) At subsection (2)(a)(ii) by the substitution of “person referred to in subparagraph (i)” for “applicant”,

(3) At subsection (2)(a)(iii) by the substitution of “person referred to in subparagraph (i)” for “applicant”, and

(4) At subsection (2)(b) of “A person” for “An applicant”.

Explanatory Note:

Head 8 concerns Section 177F at subsection (2) which allows an applicant before they make an application for substitute consent to request an EIA scoping opinion from the Board on the information that should be included in the remedial EIAR. The amendments clarify that <u>any person</u>, before they make an application or where they are subsequently required to submit a remedial EIAR (after the application has been made), can make such a scoping request to the Board.

Head 9: Section 177K (Decision of Board)

Provide that

Sections 177K is amended –

(1) by the insertion of the following subsection after subsection (1I);

"(1J) In considering whether exceptional circumstances exist the Board shall have regard to the following matters:

(a) whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;
(b) whether the applicant had or could reasonably have had a belief that the development was not unauthorised;
(c) whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired;
(d) the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development;
(e) the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated;
(f) whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development;
(g) such other matters as the Board considers relevant."

(2) in subsection (2) by the substitution of "the Board shall also consider" for "the Board shall consider"

Explanatory Note:

Head 9 provides for new subsection (1J) concerning the exceptionality criteria, which the Board must have regard to in being satisfied whether exceptional circumstances exist in order to justify a grant of substitute consent. The identical criteria are currently provided for at the leave stage at Section 177D. As section 177D is being repealed, these criteria are being restated in the substantive decision at Sn 177K(1J) for the purposes of the Board will be considering exceptionality in accordance with subsection (1A).

Subsection (2) of Section 177K provides that where the Board is making its decision on substitute consent, it shall consider the proper planning and sustainable development of the area, having regard to a number of specified matters. The amendment to subsection (2) would insert the word "also" to clarify that these considerations are in addition to the exceptionality considerations the Board must make.

Head 10 - Section 177K of the Act (Decision of Board)

Provide that

Sections 177K is amended –

(1) at subsection (2B) by the substitution of the following for paragraph (c)

"(c) the further relevant information, if any, referred to in article 227(2)(cb) or 228A(2) of the Planning and Development Regulations 2001 and the description, if any, referred to in article 227(2A) or 228A(3) of those Regulations,

(2) at subsection (2D) to delete ", under article 227(2A) of the Planning and Development Regulations 2001,"

Explanatory Note:

Head 10 concerns subsection (2B) which lists the matters the Board must have regard to in making an EIA screening determination for the purposes of section 177K.

The further information to which the Board must have regard to in making its screening determination, referred to in Section 177K(2B) at paragraph (c), means further relevant information that the developer must submit with Schedule 7A information accompanying the application in the case where a screening determination as to whether an EIA was or is required under article 227(2)(cb) of the Regulations. The description referred at paragraph (c) means a description of mitigation measures that the developer may opt to include along with Schedule 7A information under article 227(2)(2A). These requirements arise from Article 4(4) of the amended EIA Directive. Currently the Schedule 7A screening information is provided by the developer with the application.

Under the proposed single stage substitute consent process, an application for substitute consent must always be accompanied by at least either or both a remedial EIAR or a remedial NIS. Where only an NIS is submitted by the applicant (who does not submit Schedule 7A information to the Board as part of his or her application), the Board must still have the power to request Schedule 7A information and have regard to such information where requested for the purposes of screening. Accordingly, the amended references at subsection (2A) are to reflect the relevant provisions to be included in Part 19 of Planning and Development Regulations 2001 providing for EIA screening where a substitute consent application for development is not accompanied by a remedial EIAR and relates to development of a class specified in Part 2 of Schedule 5 to the Planning and Development Regulations 2001 but does not equal or exceed the threshold (i.e. subthreshold development). The Board shall require the applicant to submit to the Board the information specified in Schedule 7A to the Regulations for the purposes of a screening determination unless the applicant has already provided such information with their application. Consequently, subsection (2B)(c) is being amended so that the Board can have regard to information and descriptions accompanying Schedule 7A information submitted on request under the proposed new powers of the Board in the regulations (new articles 228A(2) and 228A(3). Subsection (2D) is being amended to allow for the proposed scenario that the developer may provide a description of mitigations measures with the application upon request by the Board (under new Article 228A(3)).

Head 11 - Section 177K of the Act (Decision of Board)

Provide that

Sections 177K is amended by the insertion of new subsection (2F) after subsection (2E)

> "(2F) Notwithstanding section 172(1), where the Board receives an application for substitute consent under section 177E which is accompanied by a remedial Environmental Impact Assessment Report, the Board shall carry out an Environmental Impact Assessment in accordance with Part X"

Explanatory Note:

Head 11 provides for new Subsection (2F) that, for the avoidance of doubt, that where an application for substitute consent is accompanied by a remedial EIAR, the Board shall carry out an Environmental Impact Assessment in accordance with Part X, thereby removing the requirement to screen for EIA where an EIAR report is submitted.

Head 12: Section 177K of the Act (Decision by Board)

Provide that

Sections 177K is amended –

(1) at subsection (4)(aa) to insert “Where an environmental impact assessment was carried out,” before “the reasoned conclusion”,
(2) at subsection (4A)(b) to insert “and where an environmental impact assessment has been carried out by the Board was carried out,” after “without conditions, substitute consent,”
(3) at subsection (4A)(c) to substitute “Where an environmental impact assessment was carried out, the Board” for “The Board”

Explanatory Note:

Head 12 concerns Section 177K(4), which requires that the Board send notification of its decision to the applicant, which must include (a) the main reasons and consideration on which the decision is made, (b) the reasoned conclusion on the environmental effects, and (c) where conditions are imposed in respect of a grant, the main reasons for the imposition of those conditions.

Section 177K(4A)(b) requires that a decision to grant substitute consent shall be accompanied by a statement that the Board is satisfied the reasoned conclusion on significant effects of the environment was up to date at the time of taking the decision.

Section 177K(4A)(c) requires a decision to grant or refuse substitute consent to include s summary of consultations that have taken place in the course of the EIA, and where appropriate, transboundary consultation, and how these have been incorporated into the decision or otherwise addressed.

The requirement that a decision for development consent must include a “reasoned conclusion on the significant effects of the project on the environment” derives from Article 1(2)(iv) and Article 8a(1)(a) of the amended EIA Directive, requiring that a development consent shall incorporated the “reasoned conclusion”. However, this requirement follows on from the EIA process (for example, the reasoned conclusion must take account of the examination of the EIAR and information received as part of consultations”) and is required in decisions where an EIA was carried out. Section 177K(4)(aa) currently suggest that all decisions on applications for development consent, including those where only an appropriate assessment was carried out, must incorporated the reasoned conclusion notwithstanding that it is an EIA requirement.

The proposed amendments at subsection (4) and (4A) clarifies that the obligations in respect of stating the reasoned conclusion, ensuring that conclusion is up to date and incorporating a summary of consultations gathered in the course of an EIA and transboundary consultations, apply only where an EIA was carried out as part of the application for substitute consent.

Head 13: Section 177K of the Act (Decision by Board)

Provide that

Sections 177K is amended at subsection (6)(a) to delete "(a) a decision by the Board under section 177D to refuse to grant leave to apply for substitute consent;"

Explanatory Note:

Head 13 concerns Section 177K(6) which provides, for the avoidance of doubt, there is no right to compensation in respect of a decision to refuse leave to apply for substitute consent under section 177D, a direction to cease activity under section 177J, a decision to refuse substitute consent or grant substitute consent subject to conditions, or a direction to cease operations or take remedial measures under section 177L.

With the repeal of section 177D, it is proposed to delete reference to that process under subsection (6)(a) in the context of compensation.

Head 14: Section 177L of the Act (Direction by Board to cease activity or operations or take remedial measures)

Provide that

Sections 177L is amended to delete “refuses an application for leave to apply for substitute consent, under section 177D, or”

Explanatory Note:

Head 14 concerns Section 177L which gives the Board discretion, where it refuses leave to apply for substitute consent or refuses an application for substitute consent under 177D, to give a draft direction to the applicant that they must cease activity or operations at the site concerned if in the opinion of the Board those operations are likely to causes significant adverse effects on the environment or adverse effects on a European Site as well as directing them to take remedial measures to restore the site and to avoid deterioration of habitats in a European Site.

It is proposed to amend Section 177L(1) to remove references to a refusal of leave to apply for substitute consent by the Board. Any person can apply to the Board for substitute consent, and where that application is refused the provisions of Section 177L may be applied.

Head 15: Section 177M of the Act (Fees and costs arising on an application for substitute consent.)

Provide that

Sections 177M(2) is amended-

(1) at subsection (2) to delete “in a case where it granted leave to apply for substitute consent on the grounds that exceptional circumstances exist, or”, and
(2) At subsection (4) to delete “at the same time as notifying the applicant of its decision under section 177D(6)”

Explanatory Note:

Head 15 concerns Section 177M(2) regarding fees payable to the Board in respect of its determination of an application for substitute consent. References to the leave stage under section 177D are being deleted consequent to the repeal of that provision.

Head 16: Section 177N of the Act (Regulations)

Provide that

Section 177N is amended –

(1) At subsection (a) to delete “leave to apply for substitute consent or for”,

(2) At subsection (d) to delete “leave to apply for substitute consent or” and

(3) At subsection (k) to delete “applications for leave to apply for substitute consent or”.

Explanatory Note:

Head 16 concerns Section 177N which allows the Minister to make regulations making provision for such matters of procedure and administration as appear to the Minister to be necessary or expedient in respect of Part XA (Substitute Consent). Without prejudice to the generality of this regulation making power, subsection (2) allows that such regulations may provide for matters (a) regarding the making of an application for leave to apply for substitute consent, (c) requiring an applicant for leave to apply for substitute consent to submit further information, and (k) requiring the Board to furnish to the Minister any specified information with respect to applications for leave to apply for substitute consent.

It is proposed to delete references to the regulatory making power concerning the leave stage under section 177D consequent to the repeal of that provision.

Head 17: Section 177O of the Act (Enforcement)

Provide that

Sections 177O is amended at subsection (3) by deleting “section 177B or”

Explanatory Note:

Head 17 concerns Section 177O(3) which provides that where a person directed by a planning authority under section 177B or 261A fails to make an application for substitute consent or furnished additional information, the Board shall inform the planning authority and the development shall, notwithstanding any other provision of the Act, be unauthorised development. With the repeal of section 177B allowing a planning authority to direct a person to apply for substitute consent due to a defective planning permission, the reference to section 177B at this provision is being deleted accordingly.

Head 18: Consequential amendments to amendments to Part XA

Provide that

(1) Section 7 (Planning register) at subsection (2)(a) to delete “including for leave to apply for substitute consent”

(2) Section 144 (Fees payable to Board) is amended at subsection (1A) by the deletion at paragraph (f) of “an application for leave to apply for substitute consent or”.

Explanatory Note:

Head 18 contains consequential amendments to the repeal of sections 177C and 177D regarding applications for leave to apply for substitute consent to the Board.

-Section 7(2) concerns the planning authority planning register and requires that particulars of applications for leave to apply for substitute consent be entered onto the register. This is no longer required with repeal of the leave stage.

-Section 144(1) empowers the Board to set fees for matters specified in subsection (1A). Subsection (1A)(f) includes “an application for leave to apply for substitute consent or an application for substitute consent under Part XA;”. It is proposed to delete this fee setting provision of the Board in respect of applications for leave to apply for substitute consent which is not required with the repeal of the leave stages of for applications for substitute consent under section 177C and 177D.