

## CBI NORTHERN IRELAND, CONSULTATION RESPONSE (APRIL 2021)

### INTRODUCTION AND BACKGROUND

As the UK's leading business organisation, the CBI speaks for some 190,000 businesses that together employ around a third of the private sector workforce, covering the full spectrum of business interests both by sector and by size.

The CBI in Northern Ireland (**CBI NI**) represents more than 75% of the largest employers. This includes companies headquartered in Northern Ireland, as well as those based in other parts of the UK that have operations and employ people in the region.

We welcome the opportunity to engage in this call for evidence and represent the views of our members on the planning system under the current Planning Act (Northern Ireland) 2011 (the **Planning Act**), with a particular interest in the performance of the planning process for both major and regionally significant planning applications (**RS applications**).

This statutory review creates a timely opportunity for the Department for Infrastructure (the **Department**) to play a critical role in tackling the twin challenges of economic recovery from COVID-19 and transitioning to a net zero economy. An improved planning system can be a key enabler of many of the economic, social and environmental outcomes envisaged by the Draft Framework of the Programme for Government<sup>1</sup>.

A reformed planning system is needed that enables, delivers and adapts:

1. **Enables** the timely delivery of relevant strategic outcomes envisaged by the Programme for Government and Executive policy on economic recovery;
2. **Delivers** the certainty, confidence and efficiency needed to attract investment; and
3. **Adapts**, remaining agile and flexible to challenges, such as the COVID-19 pandemic, as and when they arise.

Against that background, it is welcome that the consultation document refers to an openness “*to look at how the provisions of the Act are working in practice and whether there are any changes that could be implemented to further improve the system for all stakeholders.*”

If our planning system is to be the enabler that it needs to be, the Department must use its best endeavours to push the boundaries needed for change. The reality is that with timeframes for processing now more than double the target - the system is an impediment to progress, rather than a facilitator of it.

As the Department is aware, CBI NI in collaboration with the former Chief Planner in Scotland, Jim MacKinnon CBE published a report setting out several key proposals to tackle the inefficiency and underperformance of the planning system in the delivery of major developments and strategic infrastructure. Entitled, “*An opportunity to Level Up Planning*”<sup>2</sup> (the **CBI Report**), the CBI Report was driven by a deeply held view in the business community that Northern Ireland needs a

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<sup>1</sup> Programme for Government draft Outcomes Framework, <https://www.northernireland.gov.uk/programme-government-pfg#toc-2>

<sup>2</sup> CBI, An Opportunity to Level Up Planning, October 2020 <https://www.cbi.org.uk/articles/an-opportunity-to-level-up-planning-a-review-of-major-planning-processes-in-northern-ireland-1/>

reformed and more efficient planning system. The proposals also frame planning not as a matter to be taken in isolation, but to form a constituent part of a new overarching infrastructure delivery framework that enables the effective prioritisation and delivery of needs for the longer term (to 2050).

Largely re-iterating the substance of the CBI Report, in this response we will outline our proposals for reform in respect of:

- A. Local Development Plans
- B. Streamlining the Application Process; and
- C. Developing a Framework to 2050

and doing so we will respond to the call for evidence in a thematic way.

It is also the case that the Northern Ireland Audit Office (**NIAO**) will be publishing its review into the performance of the Northern Ireland Planning system in a matter of weeks. The findings of this NIAO report should be considered in full, and an assessment of those findings should be incorporated into this statutory review in order to maximise the opportunity for change, refinement and improvement.

This statutory review creates an opportunity to level up the system in Northern Ireland that should not be missed. There is scope to do it, but it will require firm, committed and sustained leadership from the Department and the Executive as a whole.

No less, for a reformed planning system to be successful, it is essential that skills and resourcing issues are addressed and suitably funded. Implementing reforms to the planning system without the necessary skills and resources in place will lead to suboptimal outcomes.

## LOCAL DEVELOPMENT PLANS<sup>3</sup>

Across the UK and Ireland, great confidence is placed in a plan-based system with decisions generally made in accordance with a local development plan. However, for this approach to be most effective, and to attract appropriate investment, **plans should be as up to date as is reasonably practicable.**

Yet in Northern Ireland, the aspirations for a plan led system remain well short of being met. In the six years since the Planning Act took effect, the indicative dates for adoption of Local Policy Plans across 11 council now ranges from 2023 in Belfast City Council out to 2028 in Ards and North Down. The slow pace of delivery stands in contrast to the system in the Republic of Ireland where there is a statutory duty to have development plans updated every 6 years. Indeed, the absence of an independent examination process in the system in the Republic of Ireland means that the process is much less bureaucratic, keeping plans relevant and up to date.

According to Turley's in July 2019, the estimated time for delivery of Local Development Plans had doubled from 4.5 years to 9 years<sup>4</sup>, citing the following reasons for delay:

- **Uncertainty** around the new process and **understanding of the level of evidence** required to support the adoption of the local development plan; and
- **Errors in the process**, particularly relating to consultation and public advertisements.

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<sup>3</sup> Part 2, Planning Act 2011

<sup>4</sup> Turley, Local Development Plans Update, July 2019 <https://www.turley.co.uk/comment/local-development-plans-update>

What is more, the complex and lengthy process in generating local development plans provides greater scope for interpretation and legal challenge. **There is clearly an underlying problem with the complexity of the legislation and guidance**, which requires a rethink.

## Simplifying the LDP Preparation and Adoption Procedure

While the current procedures for preparing and adopting local development plans are underway, we would propose that an **independent working group** should be established with the task of **improving (1) the form and content of development plans, and (2) the processes by which they are drawn up**. This process would enable a more streamlined approach to preparation and adoption for the second round of plans introduced under the Planning Act.

The objectives of the working group would be:

1. **to develop a simplified process, comparing the processes for the development of plans across other administrations in the UK and Ireland**, with the aim of resulting in more succinct plans,
2. **to ensure that the documents are accessible and easier to update**; and
3. **to mitigate the risk of error and legal challenge, by reducing the complexity** in the current guidance and legislation

The working group should also consider the necessity and efficiency of:

1. Independent Examination (IE) process<sup>5</sup> - **In particular, due consideration should be given as to whether the draft development plan documents should go straight to the Planning Appeals Commission** for independent examination rather than to the Department in the first instance, in what would seem to be a duplication of process.
2. The two-stage adoption process – The two-stage adoption process is unique to Northern Ireland. **A simultaneous process for both the LPP (Local Policies Plan) and the DPS (Draft Plan Strategy) should be given due consideration.**

## Taking Account of Current Realities

In terms of substantive changes that can be made now, the **process for developing plan strategies** as prescribed by the Planning Act needs to be revised **to take account of current economic and environmental realities**.

Currently, section 5 of the Planning Act reads,

*(5) In preparing a plan strategy, the council must take account of—*

*(a) the regional development strategy;*

*[F1(aa) the council's current community plan;]*

*(b) any policy or advice contained in guidance issued by the Department;*

*(c) such other matters as the Department may prescribe or, in a particular case, direct.*

The current obligation to “take account” of is not sufficient as it does not on its face prevent a council from taking actions in contradiction of any of the matters listed or directed by the Department under section 5. This for example, could have prevented the scenario whereby Mid and East Antrim Borough Council draft Plan Strategy included a number of new restrictions on development including through the creation of Areas of Constraint on High Structures, with specific references made to energy generation and infrastructure.

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<sup>5</sup> Section 10, Planning Act (Northern Ireland) 2011

Along with other proposed and current designations the area available for wind farm development is reduced to 0.6% of the total land area of the council. In effect this creates a presumption against development over 99% of the council land area which contradicts the presumption in favour of renewable development. **If followed, this could facilitate councils could creating what would be an effective presumption against renewable development in Northern Ireland.**

Section 5 should therefore be **amended to avoid ambiguity and deliver consistency** by requiring that plan strategies do not conflict with the matters listed or directed by the Department in section 5.

However, **section 5(c) is sufficiently broad to accommodate** priorities that may change over time. Pursuant to this particular sub-section, **by way of Ministerial Direction**, councils should be obliged to take account of and not conflict with the following as and when agreed by the Executive:

- the Environment Strategy;
- the Investment Strategy;
- the Economic Strategy; and
- the Energy Strategy.

For example, the Department of Economy Consultation on an Energy Strategy for Northern Ireland has launched in recent weeks. Planning risk has been identified by CBI members as a significant concern on the road to net zero, and the more immediate challenge of getting to 70% electricity from renewable sources by 2030, less than 9 years away. **The planning system, not least local development plans, needs to enable the delivery of the outcomes in the strategy within the timeframes envisaged.**

## **STREAMLINING THE PROCESS**

Now more than ever, we need a planning process that is fit for purpose. At present it is neither delivering as intended or as required. There has been a significant upward trend in processing delays for major applications over the course of the last 3 years (Figure 1), and it is persistently in excess of the relatively conservative 30-week target. Indeed, COVID-19 has **exacerbated a pre-existing problem** with processing times now more than double the target.<sup>6</sup>

The time for processing regionally significant applications is even more alarming, with timeframes **in some cases exceeding 300 weeks**. Whilst it is accepted that certain of these projects might be considered “controversial”, that should have no material bearing on the efficiency of the process. The lack of certainty, and inefficiency in the process is not in the interests of investment or any stakeholder.

As well as tackling the issue of exceeding existing targets, **we need to have a system that embeds more ambitious targets that are comparable to other parts of the UK**. In relative terms the targets themselves are not ambitious enough, and do not present Northern Ireland as an attractive a proposition for investment in the green recovery relative to other parts of the UK. **For example, the target timeframe for processing equivalent major applications in Scotland is 4 months<sup>7</sup>, and in England it is just 13 weeks<sup>8</sup>.**

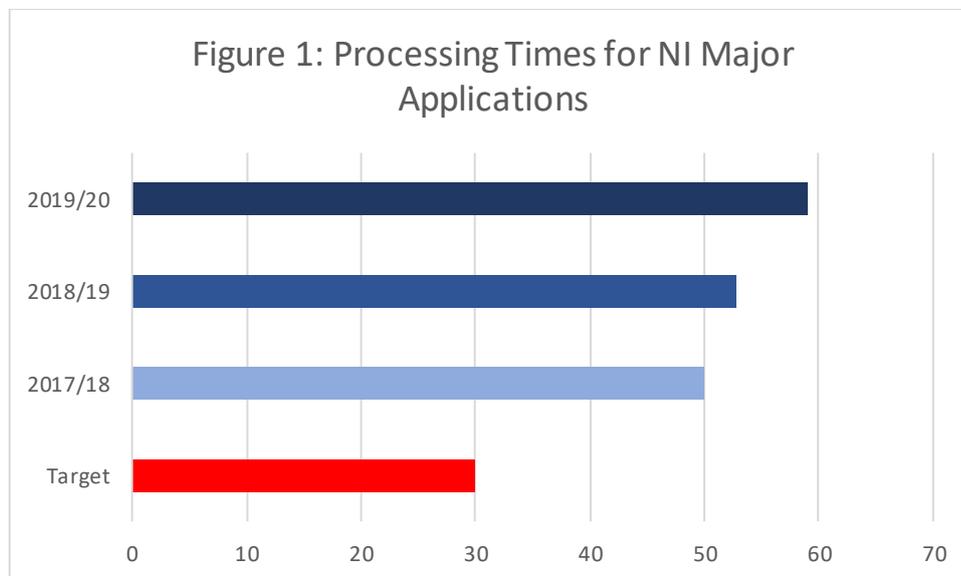
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<sup>6</sup> Department for Infrastructure, NI Planning Statistics, Third Quarter 2020/21 Statistical Bulletin <https://www.infrastructure-ni.gov.uk/system/files/publications/infrastructure/planning-statistics-q3-2020-21-bulletin.pdf>

<sup>7</sup> Scottish Government, Getting Planning Permission, <https://www.mygov.scot/planning-permission/what-happens-next/>

<sup>8</sup> Determining a Planning Application, <https://www.gov.uk/guidance/determining-a-planning-application#what-are-the-time-periods-for-determining-a-planning-application>

The performance against those targets is also impressive by comparison. Within a 24-month period to the end of June 2020, 88% of major applications at district level and 91% of major applications at County level were decided on time in England<sup>9</sup>. In Scotland, decisions on major planning applications on average were made within 33 weeks in 2019-2020<sup>10</sup>. **Clearly there is room for improvement across the UK, but the most acute need for reform is in Northern Ireland.**



Following the findings of our report, and a comparative analysis with other administrations in the UK and Ireland, the CBI has concluded that there are five key areas where changes could be made to drive efficiency into the system for major and regionally significant applications. In some cases, this will require statutory change.

The CBI proposals include:

1. **Clarity in Pre-Application Engagement and Timetabling;**
2. **Streamlining the pre-application community consultation (PACC);**
3. **Introducing statutory timeframes for decision-making.**
4. **Streamlining the procedure for regionally significant developments; and**
5. **Expanding the scope of regionally significant developments.**

## Pre-Application Engagement and Timetabling<sup>11</sup>

The role of statutory consultees has been subject to detailed scrutiny through the Irvine report (2019)<sup>12</sup> and the ongoing work of the Department's Planning Forum. Concerns are often cited that statutory consultees do not engage sufficiently with the pre application discussion (**PAD**) and wider engagement process. For example, it has been stated that they do not always make their requirements for supporting information and analysis sufficiently clear, which results in requests for material later in the process. This stop start approach has the effect of adding significantly to costs

<sup>9</sup> Ministry of Housing, Communities and Local Government, District and 'county matters' planning authorities' performance - speed of major development decisions. <https://www.gov.uk/government/statistical-data-sets/live-tables-on-planning-application-statistics>

<sup>10</sup> Scottish Government, Planning performance statistics 2019/2020 <https://www.gov.scot/publications/planning-performance-statistics-2019-20-annual/pages/1/>

<sup>11</sup> Part 3, Planning Act 2011

<sup>12</sup> John Irvine, Examining the Role of Statutory Consultees in the Northern Ireland Planning System (2019)

and delays, and uncertainty as to the level of resource required in the process. A robust approach to drive and assure the timely and meaningful engagement of statutory consultees is required.

What is more, where a statutory consultee has a significant objection to a major development, the corresponding obligation on local councils to notify the Department is superfluous and should be removed, as it has never result in an application being called in but has led to unnecessary delays in the approval process. For example, it added 4 months of a delay for the Tribeca development application in Belfast.<sup>13</sup>

It is our view that the most efficient way of driving meaningful support and engagement from statutory consultees is best achieved through **the introduction of a statutory pre-application process with clear and appropriate time limits. Any additional or late requests should, as a matter of process, only be permitted in limited circumstances.**

Whilst planning regulations provide that planning authorities may not determine an application within 21 or 28 days of the date on which statutory consultees are notified, this is not enforced. Nor is it clear whether a planning authority can proceed in absence of a response within the timeframe. A clear and unambiguous right for planning authorities to proceed in such circumstances is needed to both mitigate legal risk, and to encourage statutory consultees to respond within the prescribed time period.

**To further develop and shape a meaningful pre-application process, the role of non-statutory “processing agreements” in Scotland should be considered.** These agreements do not guarantee planning approval but are an important means by which the decision-making process can be more effectively managed. In Scotland, the scope for using a processing agreement is considered during pre-application discussions. It is also intended to be a “live” document which can be reviewed and, if necessary, adjusted should circumstances dictate.

Some of the benefits of processing agreements include more effective engagement with stakeholders, greater clarity on information requirements, clearer lines of communication between the relevant parties and greater transparency on the nature and timing of the decision-making process. **Processing agreements are a useful project management tool which can improve response times and provide much needed clarity and transparency.** However, early engagement and an effective pre-application process is seen as a key ingredient to their success. Recent statistics show that in a majority of cases, where processing agreements are used in Scotland, decisions are reached within agreed timescales.<sup>14</sup>

## **Pre-Application Community Consultation<sup>15</sup> (PACC)**

During the Covid-19 crisis the requirement for PACC was relaxed, waiving the obligation to hold a public event, in favour of guidance encouraging other forms of digital and remote engagement.

It is hoped that much can be learned from this to improve the process. For example, where it is demonstrated that applicants for RS and major applications can widen participation with communities through alternative digital and remote methods, it should be considered whether the planning authority can reduce the minimum period between the submission of a Proposal of Application Notice (PAN) and submission of an application.

**More specifically, the 12-week PACC process for major and RS applications should be reduced to 8 weeks where applicants have demonstrated to the relevant planning authority, within the Proposal of Application Notice (PAN) that “meaningful engagement” with the**

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<sup>13</sup> LA04/2017/2341/O

<sup>14</sup> Scottish Government, Planning performance statistics 2019/2020

<https://www.gov.scot/publications/planning-performance-statistics-2019-20-annual/pages/1/>

<sup>15</sup> Sections 27-28, Planning Act 2011

**community can be delivered through digital engagement, alongside the existing requirement to hold a public event.**

Businesses also recognise that the drive towards a digital and technology-led planning system will be an enabler of reduced complexity and faster decision making. Too often, decisions are hindered by laborious processes and under-resourced planning teams working with them. The goal of bringing the planning system into the 21st century, with a digital-first approach to plan-making, the application process and community engagement, is therefore a worthy one.

## **Determinations: Statutory Timeframes**

**The lack of any statutory provision for determination timeframes leaves applications within the NI system exposed to periods of uncertainty.** This can be contrasted with the system in the Republic of Ireland, where statutory timeframes have proved to be an effective mechanism for efficient processing. Under the Strategic Housing Development (SHD) process<sup>16</sup>, fines may fall due to the applicant if a decision is not processed within the required timeframe. **This has generated a positive outcome whereby all decisions are made within the mandatory period of just 16 weeks from the date of submission.**

The SHD process was introduced as part of Rebuilding Ireland, the Government's Action Plan for Housing and Homeless in 2016 to prioritise the delivery of 50,000 new homes by 2021, with the specific aim to speed up the planning application process and accelerate delivery of larger housing and student accommodation proposals. The need for an accelerated planning process was underpinned by the recognition that Ireland had a housing crisis, indeed the Irish government are very clear that the intention of the underlying legislation for the SHD process was to provide certainty in terms of timeframes for decisions.

The performance of the system is worth noting. It provided for a clear pre-application consultation process, followed by a clear timeframe for decision making. **Prior to 2016, the average time spent from pre-application to a decision was 82 weeks, from its inception through to September 2019, the SHD process had reduced this entire timeframe to just 32 weeks.**<sup>17</sup>

Since its commencement in 2017, the SHD process has delivered planning approval for an impressive 65,000 units,<sup>18</sup>. However, in 2020 it should be noted that there was a considerable spike in judicial reviews of decisions made under the process.

**Much is to be learned from this approach, given the scale of the economic and environmental challenges we now face.** Taking into account both the benefits of, and risks with the SHD process, it is important to underline that what is needed is a system that facilitates not just prompt and efficient decision making, but decision making that is also sound and robust.

On balance, as a means of driving much needed performance improvement and securing much needed delivery, reasonable **statutory timeframes for the determination of RS applications and major applications should be introduced following this review.** Fines should also be payable to the applicant where mandatory periods are not met, save in exceptional circumstances.

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<sup>16</sup> Pursuant to the Planning and Development (Housing) and Residential Tenancies Act 2016 (Ireland)

<sup>17</sup> Operation of the Strategic Housing Development process 2017-2019: Report of the Review Group (September 2019)

<sup>18</sup> Mitchell McDermott, Strategic Housing Development InfoCard (January 2021)

<https://mitchellmcdermott.com/wp-content/uploads/2021/02/Strategic-Housing-Development-InfoCard-Jan-2021-WEB.pdf>

## Notice of Opinion<sup>19</sup>

**It should be acknowledged that the notice of opinion process for RS applications is unique to Northern Ireland.** In effect it places within the discretion of the Minister for Infrastructure both the determination of the route of process, and the making of the final decision.

**In the rest of the UK, a Minister is only involved in the decision making, following an independent examination. It is our view that this process could be streamlined with a strong presumption against the using of Notices of Opinion, with RS applications sent directly to the Planning Appeals Commission (PAC) or other independent body for independent examination.** The PAC (or other independent body) would then decide on the process(es) to be followed in reaching a recommendation on the application to the Minister.

## Definition of Regionally Significant<sup>20</sup>

**If a streamlined, more efficient process can be delivered, consideration should be given to expanding the definition of RS applications to include a broader remit of strategic infrastructure developments to facilitate more efficient and timely delivery of developments carrying regional significance.**

The definition of regionally significant applications should be updated and widened to include major applications for economic and housing development, including mixed use proposals and mineral extraction, to ensure widen the process is given a wider strategic remit, fit for purpose today.

This however would be strictly contingent on delivery of an effective, streamlined procedure. If a streamlined framework with an increased role for the PAC or other independent body was developed, it must be appropriately resourced to discharge any such new or additional functions.

## A FRAMEWORK FOR DELIVERY TO 2050

### An Independent Infrastructure Commission

**When it comes to delivery of infrastructure, the planning process cannot be considered in isolation.** Whilst it arguably falls outside of the scope of the statutory review, there is a need to consider what role a planning system can play in the context of a developed framework for infrastructure development for the longer term.

In recent years each of England, Scotland and Wales have all moved to establish their own “Infrastructure Commission” as a means of providing a framework for long term strategy and prioritisation for strategic infrastructure.

However, **Northern Ireland does not currently have an agreed, long term strategic infrastructure vision (for the next 30 years) and therefore prioritisation does not occur based on long term, objective advice.** Rather the Executive is beset with short termism (driven by the pressures of annual budgets), and the limitations of operating within a mandatory coalition.

CBI Northern Ireland has welcomed the findings of the independent Ministerial Advisory Panel on Infrastructure in October 2020 which recommended unequivocally **“that an Infrastructure Commission, with a clear remit and the support of the entire Northern Ireland Executive, should be established as soon as practical. The Infrastructure Commission should set a**

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<sup>19</sup> Section 26, Planning Act (Northern Ireland) 2011

<sup>20</sup> Planning (Development Management) Regulations (Northern Ireland) 2015

*longer-term vision for 30+ years, aimed at improving societal wellbeing, environmental performance, and economic growth. It should be a key driver in building a better future for everyone in NI.*<sup>21</sup>

**It is our view that such an infrastructure commission is the overarching statutory framework that is needed to drive delivery efficiently and coherently towards long term targets.**

That long term planning should target a greener, de-carbonised, more inclusive and more regionally balanced strategic infrastructure but to do so it must cover a wide scope of infrastructure including hard infrastructure (such as waste, water, roads and rail), energy, housing, and digital, as all are interconnected.

**For such a body to be effective, it must be sufficiently independent with appropriate statutory powers and functions to hold the Northern Ireland Executive to account on the adoption and delivery of its recommendations.**

## **Streamlined Regionally Significant Approvals**

An Infrastructure Commission's primary responsibility should be to develop a 30- year vision for Northern Ireland, followed by a series of short-term delivery plans (to achieve that 30-year target). Each delivery plan would then be subject to the scrutiny and approval of the Northern Ireland Executive.

But the planning system can and must work in lockstep with the execution of those delivery plans.

For that reason, it is our view that for regionally significant developments that are (i) specifically contained in such a delivery plan adopted by the Executive; (ii) that specifically forms part of Executive policy or that feature in a NI Executive Programme for Government, or (iii) other Departmental policy document approved by an Executive Minister (together **Executive Adopted Projects**), a streamlined planning approval process should be adopted to enable timely and efficient delivery of all relevant Executive Adopted Projects.

Such a streamlined process should comprise two key elements:

1. **Simultaneous Approvals:** RS applications are often needed in respect of complex developments that require several other consents and approvals. **Where an RS application is an Executive Adopted Project, all such other consents should be processed in tandem and delivered at the same time;** and
2. **Planning Appeals Commission:** The PAC (or other independent body) should **assume responsibility for processing and final decision making on all RS applications for Executive Adopted Projects.** All developments that are not Executive Adopted Projects would then remain the responsibility of the Minister for Infrastructure to determine via the existing process under section 26 of the Planning Act.

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<sup>21</sup> Ministerial Advisory Panel on Infrastructure (MAPI) – Report (October 2020) <https://www.infrastructure-ni.gov.uk/publications/ministerial-advisory-panel-infrastructure-mapi-report>

# ADDITIONAL COMMENTS ON PRE-DETERMINATION HEARINGS AND ENFORCEMENT

## Pre-Determination Hearings

The requirement for pre-determination hearings should be repealed from the relevant regulations<sup>22</sup> as it creates an unnecessary and superfluous step in the process leading to inevitable delay and increased risk. All interested parties have the opportunity to be heard at the planning committee stage, and the pre-determination hearing creates unnecessary repetition of that process.

## Enforcement

Under Part 5 of the Planning Act, it is not clear who is responsible for enforcement proceedings relating to Regionally Significant developments. This is a gap, and a critical one in the current legislation. This needs to be clarified with the Department given the clear and unambiguous power of enforcement, as they are both the determining authority and do not run the risk of a conflict as a council may have, if in fact that council has registered an objection to the planning application for the development.

**ENDS**

For further information:

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<sup>22</sup> Section 7 of the Development Management Regulations sets out that where the Department determines that it is not necessary for them to determine an application under Section 29 of the Planning Act that a pre-determination hearing is required.