

Shovel Ready

The Planning and Development Bill 2023



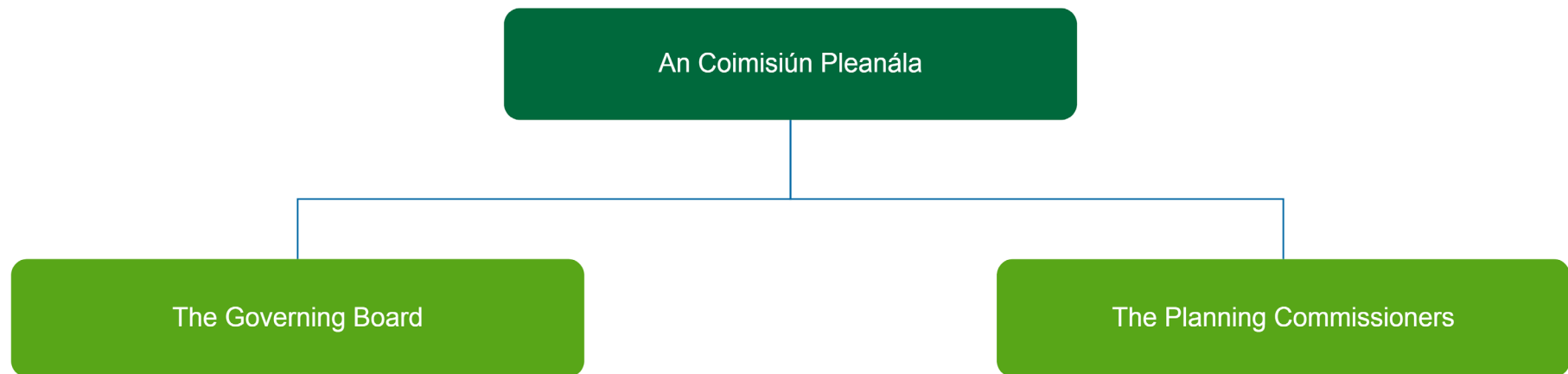
Introduction

The President of Ireland signed the Planning and Development Bill 2023 into law on 17 October 2024. This legislation is the third largest piece of legislation in the history of our State. First published in January 2023, it underwent widespread consultation and has been subject to more than 175 hours of debate across both Houses of the Oireachtas. It is important to note that while the Bill has been signed into law, the various provisions may not commence for a further period of time and the Planning and Development Act, as amended (the 2000 Act), will continue to apply in the meantime.

We set out some of the main changes below.

An Bord Pleanála to An Coimisiún Pleanála

An Bord Pleanála will be re-named An Coimisiún Pleanála (the Commission). The Commission will consist of:



These changes are being implemented to address conflicts of interest, procedures for recruitment to appointments, and the distinction between governance and planning decisions, strengthening corporate governance at senior management level and improved resourcing. Staff numbers at the Commission are also expected to increase.

Plans and Policies

Lifetime of a development plan

Under the 2000 Act, the lifetime of a development plan is six years. The Bill provides that a development plan will now have a lifetime of 10 years. This can be extended for another two years by the Minister who, on foot of a request from the Chief Executive of a planning authority, certifies in writing that exceptional circumstances exist warranting the extension. The planning authority must commence the development plan review process within eight years of making the current development plan.

National Planning Statements

Under the Bill, new national policy will be issued as “National Planning Statements” (NPS). Existing Section 28 ministerial guidelines and will remain in force until revoked by the Minister or replaced by an NPS. A local authority’s development plan must be materially consistent with the NPS. Where there is a planning decision that, in any material respect, is inconsistent with a provision of an NPS, the planning authority/ Commission shall:

- Identify that provision, and
- Provide the main reasons for the decision, explaining the inconsistency and the factors taken into account concerning it

Development Consents

Development Consents are contained under Part 4 of the Bill. This Part details four 'headline' consent procedures set out below which also integrates the consenting process introduced by the Maritime Area Planning Act 2021.

Chapter 3 – Standard Development

Consolidates and replaces procedures under Section 34 of the 2000 Act.

Applications for large scale residential developments are made under this Chapter.

Standard planning application with a right of appeal to the Commission.

The applicant can seek an opinion from the planning authority to allow for flexibility within a planning consent.

Chapter 4 – Planning Applications Directly to the Commission

This Chapter applies to:

- Strategic infrastructure development
- Electricity transmission infrastructure development
- Strategic gas infrastructure development
- Chapter 4 maritime development
- Chapter 4 local authority development
- Chapter 4 State authority development
- Development for which retrospective consent, formerly substitute consent, is required

Mandatory pre-application consultation save for Chapter 4 State authority emergency development.

Chapter 4 pre-application consultation (PAC) notification must issue before an application can be made to the Commission, similar to SID notification under the 2000 Act.

Where this Chapter applies to only part of a development, an application for permission for the entire development shall be made to the Commission. For example, where a development requires electricity transmission infrastructure.

Applications for solar development in the "maritime area" are required to be made to the Commission. Land based solar development generally comes under Chapter 3.

The applicant can seek an opinion from the Commission to allow for flexibility within a planning consent.

No right of appeal. Any decision can only be challenged by way of judicial review.

Chapter 5 – Applications for Alterations, Extensions and Revocations of Permission

A request may be made for an alteration or extension to a planning consent and the deciding authority will consider whether it is material or not. Applies to both Chapter 3 and Chapter 4 development.

An alteration or extension is considered material where it is subject to an environmental impact assessment (EIA) or appropriate assessment (AA) or both are required or, where the deciding authority is of the opinion that the alteration or extension is material.

Where the alteration or extension is non-material, the deciding authority is obliged to grant the alteration or extension.

A material alteration may be subject to public consultation in certain circumstances.

There also does not appear to be a requirement to have substantial works carried out to avail of an extension which is currently required under the 2000 Act. Rather, all that is required is that the development is commenced and that the request is made prior to the date of expiration of the permission.

Planning permission may be extended where an EIA/AA is required, which is not currently permitted under the 2000 Act.

Permission cannot be extended more than once and the period of the extension shall be less than or equal to the duration of the permission being extended. For example, if the original planning consent is five years, the maximum extension that can be sought is five years.

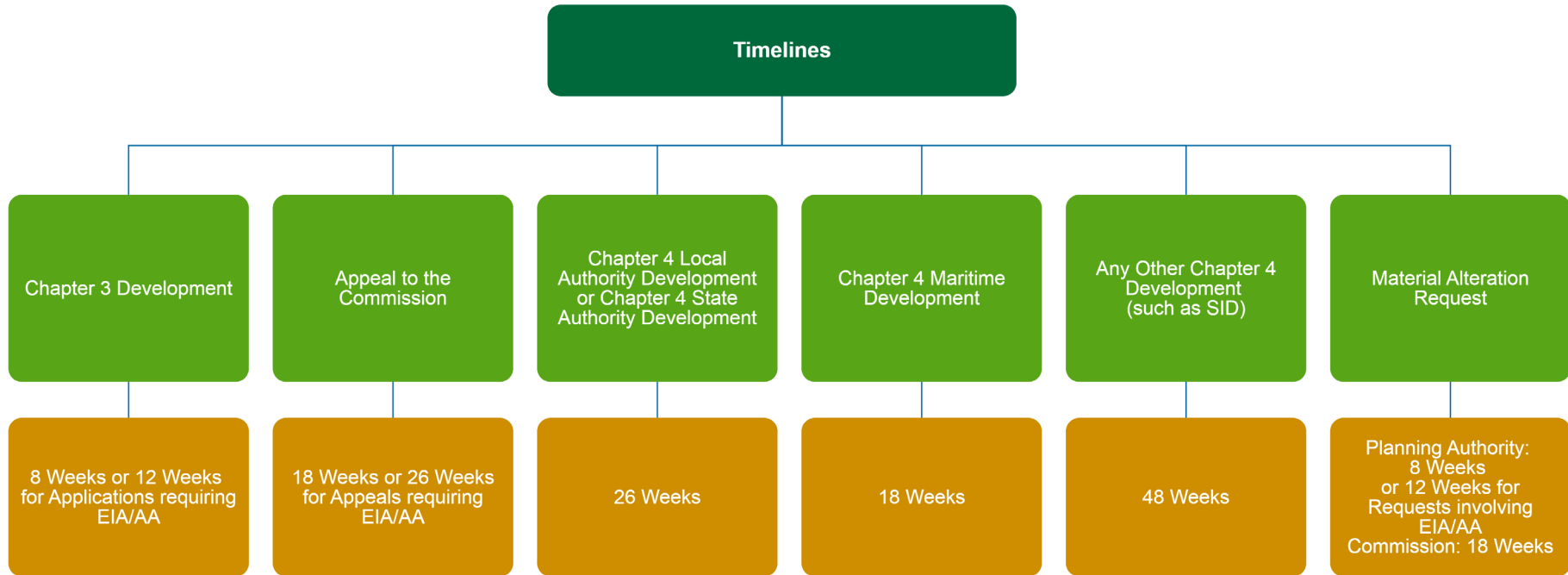
Chapter 6 - Local Authority Development and State Authority Development

This Chapter consolidates and modifies the provisions contained in the Act of 2000 that relate to development by a local authority or a State authority.

It provides for a streamlined public notification procedure for local and State authority development that does not require planning permission.

This mirrors the 2000 Act in providing that certain housing developments being constructed by local authorities on designated State lands shall be temporarily exempted from the normal Part 8 local authority own-development approval process. However, this exemption is being extended to 31 December 2025.

Timelines



The time periods generally start from the date by which all submissions are required to have been submitted. For example, where public submissions are invited concerning EIA or AA developments. For Chapter 3 development where no EIA or AA is required, the time period starts once the application has been submitted.

For appeals to the Commission, the time period starts from the date of the expiration of the period within which a person is required to bring an appeal or by the date by which all submissions are required to have submitted, whichever occurs later.

Further periods may be prescribed where further information is requested, or an oral hearing is required.

Where the relevant consenting authority fails to meet the prescribed timelines, certain measures and penalties may be imposed such as publishing the reasons for failing to meet the prescribed timelines on the relevant public website and repaying to the applicant fees paid and additional sums in certain instances.

Judicial Review

- *Judicial review period:* As under the 2000 Act, a judicial review must be commenced within 8 weeks from date of decision. However, where the 8-week period expires on Saturday, Sunday or public holiday, the 8-week judicial review period will be deemed to expire on next working day
- *Leave:* Removes the requirement to apply for leave for judicial review proceedings
- *Commence proceedings:* Proceedings will be commenced when a notice of the motion has issued from the Central Office of the High Court and there is a requirement that other parties to the proceedings should be notified of the proceedings on the same day
- *Appeals:* Removes any right of appeal to the Court of Appeal and there will only be a constitutional right of appeal to the Supreme Court
- *Stay proceedings:* The Court may, instead of quashing a planning decision, direct that the relevant body amends a decision or document, where appropriate, and place a stay on the judicial review proceedings until this has been carried out
- *Further standing and sufficient interest:*

Environmental Organisations	Unincorporated Body of Persons (eg Residents' Association)
<ul style="list-style-type: none"> • Must be in existence for one year prior to proceedings • Must have at least 10 members • Must have a constitution for promoting environmental protection • Board of directors must pass resolution in accordance with constitution to bring proceedings 	<ul style="list-style-type: none"> • Must be either partnership or a limited partnership • Must be able to sue in own name • Must have a constitution • Must hold a vote among members with 2/3 majority to issue proceedings

Environmental Costs

The Bill introduces a new environmental legal cost financial assistance mechanism (ELCFAM). This is a means-tested legal aid scheme for applicants in judicial review and other Aarhus Convention matters, where parties will be required to bear their own costs.

The ELCFAM provides for a fixed scale for legal costs subject to means testing. If an applicant is successful in the legal proceedings, it will be able to recover costs in line with the scale. If an applicant is unsuccessful, it may receive a contribution to its costs from the ELCFAM proportionate to the applicant's means assessment.

Transitional Rules

- Where an application or appeal has been made but not decided or finalised before the repeal of the 2000 Act, certain provisions regarding determining the application or appeal under the 2000 Act will continue to apply
- If a person is served with an SID determination notice under the 2000 Act and does not make the application prior to the repeal of the relevant sections of the 2000 Act, this will be deemed to be a Chapter 4 PAC notification which will permit an application to be made to the Commission
- A permission granted under the Act of 2000 shall, on and after the repeal of that Section be deemed to be a permission granted under the new Act and the new Act shall not affect the validity of anything done under the 2000 Act
- Any warning letter or enforcement notice issued under 2000 Act shall continue to apply and have effect
- The judicial review provisions of the 2000 Act will continue to apply for the time being until the main judicial review provisions under the Bill are commenced

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