



Water Services

Guidelines for Planning Authorities

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Planning Guidelines



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MINISTER'S FOREWORD

I welcome the publishing of these Water Services Guidelines for Planning Authorities under Section 28 of the Planning and Development Act 2000 (as amended) which sets out a clear structure for actively managing the interface between spatial planning and development and water services planning, one of the most critical determinants of the development process.

It is important that planning authorities continue to deliver a framework for proper planning and sustainable development at city and county levels that is consistent with the national and regional spatial planning policy.

Set within this context, however, the quantum, location and distribution of planned development must have regard to the capacity of public water services and seek to make efficient use of, and maximise, the capacity of existing and planned water services infrastructure. This is at the core of what these Guidelines are intended to achieve.

These Guidelines are based on the legislative arrangements, systems and structures that are currently in place. I will give consideration to issuing updated guidance to take account of evolving policy.

While focusing on process rather than policy, these Guidelines provide best practice guidance in relation to the interface between the planning and development functions provided by planning authorities and the delivery of public water services by Irish Water.

As Ireland continues to advance economically and spatially, I am confident that these Guidelines will assist planning authorities in efficiently maximising the capacity of Ireland's water services infrastructure whilst also providing guidance on effective cooperation between planning authorities and Irish Water in the harmonisation of planning and development functions with the delivery of public water services and infrastructure.



Mr Damien English T.D.
Minister for Housing and Urban Development

Key Messages

These Guidelines are intended to provide best practice guidance in relation to the interface between the planning and development functions provided by planning authorities and the delivery of public water services by Irish Water. The Guidelines focus on process, not policy.

As one of the most critical determinants of the development process, it will be important to actively manage the interface between spatial planning and development and water services¹ planning.

Planning authorities must continue to deliver a framework for proper planning and sustainable development at city and county level that is consistent with the national and regional planning policy. Set within this context, the quantum, location and distribution of planned new development, must have regard to the capacity of public water services and seek to make efficient use of and maximise the capacity of existing and planned water services infrastructure.

Irish Water is a statutory consultee under the Planning and Development Act 2000 (as amended) and planning authorities are required to take account of the views of Irish Water in making decisions on statutory plans, planning applications and other planning consents. Decisions with a potential interface or impact on public water services should be informed by the views of Irish Water.

These Guidelines are based on the legislative arrangements, systems and structures that are currently in place. Updated guidance may be provided from time to time to take account of evolving policy

¹ Water supply and wastewater collection and associated treatment systems.





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1.0 INTRODUCTION

1.1 INTRODUCTION

The establishment of Irish Water as a national water services utility represents a new approach to the provision of water services in Ireland. Irish Water took responsibility for water services provision in January 2014 and brings together the water supply and wastewater services that were previously managed by 34 (now 31) local authorities. This will provide for a more strategic approach to water services planning and investment and support the delivery of secure and sustainable water services nationally, which is essential for our health, our communities, the economy and the environment.

As one of the most critical determinants of the development process, it will be important to actively manage the interface between spatial planning and development and water services planning. At a strategic level, the future development of cities, towns, villages and rural areas is contingent upon the delivery of the necessary water supply and waste water services. At a local level, water services will be a key requirement for individual projects.

1.2 ENGAGEMENT

Spatial planning and water services planning should be informed by each other through a structured environment that is underpinned by legislation and guidance¹. Collaborative engagement between Irish Water and the planning process is envisaged at all levels. At a local level, it is important that an operational framework is developed to support effective day to day working between planning authorities and Irish Water that ensures the timely exchange of information and promotes an ethos of collaborative working and problem solving. The dialogue must recognise the statutory role of planning authorities and the fundamental requirement for secure and sustainable water services to support existing and planned development. The dialogue must also recognise Irish Water's statutory functions and regulatory environment, including statutory obligations to meet economic efficiency and environmental compliance standards.

1.3 PREPARATION OF GUIDELINES

The Water Services Guidelines for Planning Authorities have been prepared by the Department of Housing, Planning and Local Government in consultation with Irish Water. The Department wishes to acknowledge the valuable input which was provided during the preparation of these Guidelines by the following members of a review group:

Kevin Lynch, Senior Planner, Cork City Council,
Brian McCarthy, Senior Planner, Clare County Council, and
Anne Marie O'Connor, Assistant Director of Planning, An Bord Pleanála.

¹ Under the Planning and Development Acts and the Water Services Acts.



2.0 STATUS AND PURPOSE OF THE GUIDELINES

2.1 STATUS OF THE GUIDELINES

These Guidelines are issued by the Minister for Housing, Planning and Local Government under Section 28 of the Planning and Development Act 2000 (as amended). Planning Authorities and, where applicable, An Bord Pleanála are required to have regard to the Guidelines in the performance of their functions under the Planning Act.

The Guidelines were prepared in consultation with Irish Water and it is envisaged that Irish Water in its role as a prescribed body under the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended) will be guided by the recommendations contained in these Guidelines. It is hoped that the Guidelines will also be of practical value to applicants, agents and the wider public who interact with the planning process.

2.2 PURPOSE OF THE GUIDELINES

These Guidelines are intended to provide best practice guidance in relation to the interface between the planning and development functions provided by planning authorities and the delivery of public water services by Irish Water.

The key aims of the Guidelines are to:

- Provide advice to planning authorities on the operational framework within which Irish Water must operate to deliver water services,
- Establish mechanisms for effective engagement between planning authorities and Irish Water across all the relevant functions of planning authorities, and
- Set out how the planning system, in setting out a spatial framework for growth and development, will relate to and inform the planning and delivery of water services by Irish Water at a national, regional and local level.

The Guidelines relate to public water and wastewater services that are managed by Irish Water and do not incorporate advice in relation to other private or communal water services systems such as Group Water Supply and Group Sewerage Schemes.

3.0 WATER SERVICES CONTEXT

3.1 INTRODUCTION

Irish Water was established in July 2013, under the Water Services Act 2013 as a subsidiary company of Ervia (formally Bord Gáis Éireann). Responsibility for all aspects of public water services planning, delivery and operation were transferred from local authorities to Irish Water by Ministerial Order on 1st January 2014. Currently, local authorities are agents for Irish Water and provide water services functions through service level agreements.

3.2 LEGISLATION

Water supply and sanitation services in Ireland are governed primarily by the Water Services Acts 2007 to 2017.

- The Water Services Act 2007 consolidates and updates previous water services legislation. The Act strengthens the supervisory regime for the provision of water services to ensure compliance with performance standards, and assigns responsibility for the environmental supervision of water services to the Environmental Protection Agency (EPA). The Act strengthens administrative arrangements for planning the delivery of water services at national and local level and includes a requirement for water services planning to be framed in the context of the National Spatial Strategy and relevant development plans, regional planning guidelines and spatial planning guidelines. The Act places a duty of care on users of water services in relation to water conservation, network protection and the prevention of risk to public health and the environment.
- The Water Services Act 2013 represents a fundamentally new approach to water services provision in Ireland. The Act makes provision for the establishment of Irish Water as a water services utility. Prior to the 2013 legislation, local authorities were the water services authorities and provided public water and wastewater services.
- The Water Services Act 2014 provides for revised policy on water charges, for greater public involvement in water services delivery through the establishment of a public water forum; for the provision of a water conservation grant; and a statutory dispute resolution system and other associated matters.
- The Water Services Act 2016 provides for the suspension of domestic water charges.
- The Planning and Development (Amendment) Bill 2016 proposes that any Water Services Strategic Plan (WSSP) shall have regard to the proper planning and sustainable development in line with any development plan in particular the core strategy.
- The Water Services Act 2017 provides for a new approach to the funding of domestic water services and new arrangements for improving accountability of Irish Water and engagement with stakeholders.

Irish Water, by virtue of the nature of its activities, must comply with other relevant EU and National legislation. Figure 3.1 sets out a list of relevant legislation.

3.3 REGULATORY ENVIRONMENT

Figure 3.1

EU:	Urban Waste Water Treatment Directive, Drinking Water Directive, Water Framework Directive, Birds Directive, Habitats Directive, Strategic Environmental Assessment Directive, and obligations under the Aarhus Convention.
Nationally:	Water Supplies Act 1942, Planning and Development Act 2000 (as amended), European Union (Drinking Water) Regulations 2014, and Wastewater Discharge (Authorisation) Regulations 2007.

The Government established Irish Water as an independent State-owned utility that is subject to water services legislation and policy set by Government. Irish Water is subject to independent regulatory oversight by the Commission for Regulation of Utilities (CRU), formerly the Commission for Energy Regulation, as its economic regulator and the Environmental Protection Agency (EPA) as its environmental regulator.

Irish Water is required to submit an annual report on the performance of its functions each year to the Minister for Housing, Planning and Local Government and to the Minister for Communications, Climate Action and Environment.

The CRU is the independent economic regulator for public water and waste water services in Ireland. It is responsible for protecting the interests of Irish Water's customers, ensuring that water services are delivered in a safe, secure and sustainable manner and that Irish Water operates in an economic and efficient manner. The CRU approves codes of practice, revenue allowances and tariffs and the terms and conditions of service, including Investment Plans and Connection Agreement policy and pricing.

The EPA is responsible for regulating the impact of Irish Water's activities on the environment to ensure compliance with environmental legislation such as the European Water Framework Directive, Urban Waste Water Treatment Directive and Drinking Water Directive.

At an operational level, Irish Water is required by Water Services legislation to prepare a Water Services Strategic Plan (WSSP). The WSSP must set out the objectives of Irish Water in relation to the provision of water services over a 25 year period and is subject to approval by the Minister for Housing, Planning and Local Government. The WSSP sets a context for lower tier investment and implementation plans for key water services areas. Under the Water Services Act 2017, Irish Water has a new requirement to prepare a multi annual strategic funding plan outlining the arrangements for the implementation of the WSSP.

3.4 WATER SERVICES NETWORK

Irish Water supplies public water services to approximately 3.3 million people. Water supply services are provided through approximately 900 water treatment plants and 60,000 kilometers of water main; and wastewater services are provided through collection pipes and treatment facilities from over 1,000 separate wastewater collection areas or agglomerations (urban settlements).

Irish Water is responsible for the abstraction of raw water from wells, rivers, lakes and reservoirs for public water supply, treatment of raw water to drinking water standard and the storage and onward delivery of potable drinking water to homes and business premises.

Wastewater management responsibilities include the collection of wastewater from homes and businesses and transfer to wastewater treatment plants, its treatment to an acceptable environmental standard, as well as the discharge of treated wastewater to a suitable receiving environment.

Irish Water is also responsible for the treatment and disposal of sludge that is generated from both its water and wastewater treatment processes.

Irish Water is not responsible for the management of surface water, private group water supply or sewerage schemes, private water supplies or wastewater schemes serving individual developments and privately owned wells or septic tanks. Surface water drainage and flood prevention are the responsibility of the relevant local authority and / or the Office of Public Works (OPW).

Strategic infrastructure which supports Irish Water's functions for water supply include infrastructure such as raw water intake systems, raw water reservoirs and aqueducts, water treatment works, service reservoirs, pumping stations, strategic trunk mains and their accessories. Strategic infrastructure for wastewater includes assets such as trunk sewers, combined sewer overflows, pumping stations, treatment works and treated effluent outfalls and their accessories.



3.5 WATER SERVICES STRATEGIC PLAN (WSSP)

Irish Water is required, under the Water Services (No.2) Act 2013, to prepare a Water Services Strategic Plan (WSSP) and Investment Plans. These plans provide a key link between water services planning and investment and the spatial planning system. The WSSP sets out overarching objectives in relation to the provision of services for a 25 year period. The WSSP must be, as far as is practicable, consistent with, inter alia, the National Spatial Strategy, Regional Planning Guidelines and subsequent National Planning Framework and Regional Spatial and Economic Strategies once finalised, and any river basin management plans that are in force, and it should have regard to proper planning and sustainable development, housing strategies, special amenity area orders, strategic development zones, water quality management plans, waste management plans and such other matters as the Minister may direct.

The WSSP is reviewed on at least a five yearly basis to ensure that it continues to be up to date with current and future needs.

The Minister approved the Water Services Strategic Plan on 28th October 2015. It sets out strategic objectives for the delivery of water services up to 2040. The WSSP sets out objectives to support social and economic growth in a manner that is consistent, as far as practicable, with national & regional spatial planning policy. Key challenges identified in the WSSP include uncertainty in relation to future growth and water services demand, security of water supply, operational efficiency, lead in times for developing new capacity, funding, climate change, socio-economic factors and environmental compliance.

An interim review of the current WSSP is planned ahead of the 5 year time limit, to ensure alignment with the National Planning Framework, Regional Spatial and Economic Strategies and River Basin Management Plans that are currently being developed.

Investment Plans will flow from the WSSP and are developed in consultation with regional assemblies and local authorities in their proper planning and sustainable development roles and the EPA in its environmental protection role. Irish Water also consults with other relevant agencies and stakeholders in a wider public consultation process. The Investment Plan must be submitted to the CRU (economic regulator) as part of the price control process for approval.

With finite resources and an emphasis on environmental compliance and network upgrades, future investment in water services to accommodate growth will need to be focused. In this context balanced growth that supports the efficient and effective use of existing infrastructure will be a key consideration in ensuring the sustainable social and economic growth of Ireland into the future.

3.6 WATER FRAMEWORK DIRECTIVE

The Water Framework Directive (WFD) is European Legislation aimed at improving water quality throughout the EU. It applies to rivers, lakes, groundwater and coastal waters. The Directive requires an integrated catchment management approach with the aim of maintaining and improving water quality.

The Directive requires the preparation of River Basin Management Plans (RBMPs) that include a programme of measures to improve water quality across river basins. River Basin Management Plans are to be prepared and renewed in six year cycles.

In Ireland, the first round of River Basin Management Plans was concluded in 2010 and covers the period to 2015. Planning is underway for the next cycle of RBMPs, with a Draft plan published in early 2017. Irish Water is a significant stakeholder in the preparation and implementation of the RBMPs. The activities of Irish Water have the potential to impact significantly on water quality and also contribute to the achievement of the objectives set out in the river basin management plans and the next round of RBMPs for the 2017-2021 period will require significant capital investment by Irish Water to ensure Ireland complies with the Directive.

3.7 URBAN WASTE WATER TREATMENT DIRECTIVE

The Urban Wastewater Treatment Directive (UWWTD) is European Legislation aimed at protecting the environment from the adverse effects of urban waste water discharges and discharges from certain industrial sectors. The Urban Wastewater Treatment Regulations 2001 and the Waste Water Discharge (Authorisation) Regulations 2007 transpose the Urban Waste Water Treatment Directive into Irish Law.

Irish Water is responsible for the collection, treatment and discharge of urban waste water in Ireland. The EPA, in its role as Environmental Regulator, is responsible for licensing discharges from wastewater collection systems and treatment plants and for setting the allowable emission limit values, based on the status of the receiving water body. Many urban areas in Ireland do not yet meet requirements under the UWWTD in relation to treatment, effluent quality or monitoring standards. Irish Water's investment priorities for the 2014-2016 and 2017-2021 periods include achieving compliance with the requirements of the Urban Waste Water Treatment Directive.





4.0 NATIONAL, REGIONAL AND LOCAL PLANNING

4.1 INTRODUCTION

The National Spatial Strategy (NSS) 2002 and Regional Planning Guidelines (RPGs) 2010 and their successors, the National Planning Framework Ireland 2040: Our Plan (NPF) and Regional Spatial and Economic Strategies (RSES), establish the national framework for planning and delivering water services by Irish Water, as supplemented and followed through at local level through the local authority development plans and local plans.

4.2 NATIONAL PLANNING FRAMEWORK AND REGIONAL SPATIAL AND ECONOMIC STRATEGIES

The Government is at an advanced stage of replacing the NSS with the National Planning Framework, entitled “Ireland 2040 Our Plan”, which will provide a strategic context for national spatial planning over a 20 year horizon out to 2040. The NPF identifies national priorities for future growth and development in Ireland and provides a context for investment in critical national infrastructure, including water services infrastructure.

Arising from the NPF, new Regional Spatial and Economic Strategies (RSES) will be prepared by the three Regional Assemblies to replace the current set of Regional Planning Guidelines. These new RSESs will have a 12 year lifespan.

The purpose of both the NPF and RSESs is to set long-term national and regional development frameworks within which Government Departments and Agencies, the Regional Assemblies and local authorities, as well as wider private sector and community interests will work together to ensure proper planning and sustainable development and the optimal development of the country as a whole.

The maintenance, upgrade and expansion of water services infrastructure is a critical part of securing the country’s future. The RSESs, based on the broader national framework provided by the NPF, will identify the key strategic investments that are required to allow future growth to happen in a sustainable and integrated manner. Investment needs will be directly linked to the growth areas that are identified in the settlement and economic strategy. Investment requirements set out in the NPF or RSESs must be reflected in any succeeding Water Services Strategic Plan, as far as is practicable and in Irish Water’s Investment Plans.

The NPF and RSESs will be implemented at City and County level through Development Plans and Local Area Plans, creating a clear and consistent hierarchy of plans from national to local level (see Figure 4.1).

Figure 4.1 Ireland's Planning Policy Hierarchy 2016+



4.3 DEVELOPMENT PLANS, LOCAL AREA PLANS AND NON-STATUTORY MASTERPLANS AND FRAMEWORK PLANS


4.3.1 One of the initial tasks when preparing a plan should be to ascertain the current situation with regard to water services provision. Engagement between Irish Water and planning authorities throughout the process of preparing development plans, local area plans and non-statutory masterplans or framework plans is important. Plans set the context for local planning decisions, the phasing of development and the servicing needs of an area and as such, should be informed by up to date information and the views of Irish Water.

Available data sources such as Irish Water's Investment Plans should be referenced. In time, Irish Water will provide a Geographical Information Systems (GIS) based capacity register for strategic water services assets. Following preliminary investigations, the plan team should consult directly with Irish Water. Consultation requests should be submitted to Irish Water's spatial planning team by email to spatialplanning@water.ie.

Following preliminary consultation with Irish Water, the quantum, location and distribution of planned development within a plan area shall:

- Have regard to the capacity of all aspects of the water services network (including water and wastewater treatment systems and water supply distribution or wastewater collection networks);
- Make efficient use of and optimise the capacity of existing or planned water services infrastructure; and
- Phase development in order to consolidate development, sequentially develop and avoid "leapfrogging" of serviced lands, as per the requirements of the Department's Development Plan Guidelines 2007.

Planning authorities must continue to deliver a framework for proper planning and sustainable development at city and county level that is consistent with the national and regional spatial planning policy. Set within this context, the quantum, location and distribution of planned development must have regard to



the capacity of public water services and make efficient use of and maximise the capacity of existing and planned water services infrastructure.

An iterative consultation process between planning authorities and Irish Water is envisaged. Practically, this process should focus on the steps necessary for water services to support development that is consistent with national and regional spatial development objectives as expressed through the core strategy of the development plan. Arising from this process, a common understanding should emerge in relation to any water services capacity constraints and associated environmental constraints that may impact on the implementation of a plan or scheme and the options to address or remove the constraints, as appropriate.

Where the provision or upgrade of water services infrastructure is a critical determinant for development in a plan area, the planning authority should seek to establish, in consultation with Irish Water, the key delivery requirements and whether the capacity constraints are likely to be addressed within the life time of the plan. In the case of larger strategic sites, landowners and / or developers may need to work together with the support of the local authority and Irish Water to secure the delivery of water services infrastructure in line with Irish Water's Connection Policy.

It is recommended that, in preparing plans, Planning Authorities clearly identify the phasing of development to the provision of appropriate water services infrastructure.


- 4.3.2 Irish Water is a statutory consultee for Development Plans and Local Area Plans under the Planning and Development Act 2000 (as amended) and must be formally notified at prescribed stages in plan making, review or variation processes.

A written submission made by Irish Water, in its capacity as a statutory consultee under the Act, should set out an overview of the relevant water services considerations and in doing so be consistent, as far as practicable, with national and regional spatial planning policy; set out the capacity of Irish Water's assets to accommodate proposed development in the development plan that is compliant with national and regional spatial planning objectives; set out details of any potential threats to the water services network; and include recommendations.

The Chief Executive's report on submissions or observations received during each consultation phase should summarise issues raised and the recommendations made by Irish Water in its written submission and outline the recommendations of the Chief Executive in relation to the manner in which those issues and recommendations should be addressed in the plan. The recommendations of the Chief Executive in respect of water services should be consistent with national and regional spatial planning policy² and where the recommendation deviates from the recommendations made by Irish Water in its written submission, the reason(s) for deviation should be set out in the report.

The members of a planning authority are required to have regard to the relevant

² Set out in the NSS and RPGs and in the planned successors the NPF and RSEs.



views contained in Irish Water's written submission. Where the members decide by resolution to deviate from the recommendations made by Irish Water in its written submission, the reason(s) for deviation should be clearly set out.

4.4 STRATEGIC DEVELOPMENT ZONE (SDZ) PLANNING SCHEMES

Where in the opinion of the Government, specified development is of economic or social importance to the State, the Government may by order, designate one or more sites for the establishment of a Strategic Development Zone (SDZ) to facilitate such development.

Given the importance of infrastructure provision in supporting the delivery of a strategic development zone and the possibility of national and regional infrastructure being part of the consideration for the development of a site, the funding and delivery of infrastructure will be a key consideration in the making of an SDZ order.

Proposers should consult with Irish Water prior to seeking SDZ designation to establish the current situation with regard to water services provision and to ascertain the views of Irish Water in relation to constraints that may impact on the implementation of a planning scheme. Where the provision or upgrade of water services infrastructure is a critical determinant for the development of the SDZ, the proposer should address this aspect of the development at proposal stage.

Not later than 2 years after the making of the order designating the site as a Strategic Development Zone, a draft planning scheme must be prepared by the development agency and submitted to the planning authority for consideration. The development agency should engage with representatives of Irish Water during the preparation of the draft planning scheme to ensure that the plan is informed by up to date information and the views of Irish Water in relation to water services provision. The quantum, location, distribution and phasing of planned development within the SDZ should have regard to the availability and capacity of water and wastewater infrastructure and should seek to make efficient use of existing infrastructure.

The planning authority for the area of the scheme is required to notify Irish Water of the publication of a draft planning scheme; of the making of the planning scheme and it should take on board the relevant views contained in any submission or observation received from Irish Water.

The decision of the planning authority to make a planning scheme can be appealed to An Bord Pleanála and the board may approve the making of the planning scheme with or without any modifications or it may refuse to approve it. An Bord Pleanála is required to take on board the relevant views contained in any submission or observations received from Irish Water as a prescribed body and where an issue that is related to the remit or function of Irish Water is relevant at appeal stage, An Bord Pleanála can require Irish Water to participate in the appeal.

4.5 NETWORK EXTENSIONS

The Department, in conjunction with local authorities and Irish Water, have established a methodology for considering appropriate network extensions of water services to support housing in key strategic areas. It may be updated and revised from time to time, reflecting evolution of approach in the future.

4.6 ENVIRONMENTAL ASSESSMENT

In meeting obligations under the EU Strategic Environmental Assessment (SEA) Directive and the EU Habitats Directive and EU Birds Directive there is a requirement to assess the likely significant effects on the environment of implementing a plan (SEA) and to assess the impacts of the policies and objectives of plans on sites that are designated for the protection of nature under EU legislation (AA). SEA and AA assessments carried out in respect of a plan should address the consequences of water demand and wastewater discharge arising from the implementation of a plan.

Guidance on SEA can be found in the DHPLG publication, Implementation of SEA Directive (2001/42/EC) Assessment of the Effects of Certain Plans and Programmes on the Environment, Guidelines for Regional Authorities and Planning Authorities, 2004.





5.0 DEVELOPMENT MANAGEMENT AND TAKING IN CHARGE

5.1 INTRODUCTION

Effective engagement mechanisms and referral protocols will need to be in place to support the development management process and ensure the timely exchange of information between planning authorities and Irish Water.

5.2 PRE PLANNING CONSULTATION

Prior to engaging in pre-planning consultation under Section 247 of the Planning and Development Act 2000 (as amended) a planning authority and An Bord Pleanála, in the case of Strategic Housing Development (SHD) applications, should establish whether the proposed development would have a potential impact on public water services. In time, Irish Water will provide a GIS based capacity register for strategic water services assets and this information will be available to planning authorities to facilitate preliminary screening of development proposals.

In the case of minor or straightforward proposals, the need to notify Irish Water of pre-planning consultation should only arise where a constraint or complexity is identified. Otherwise, the prospective applicant can be advised to consult with Irish Water directly through its Pre-Connection Enquiry process (see 5.4).


For developments that would have a significant water demand or wastewater discharge (quantity or quality of discharge) or where potential impacts or complexities are identified, (Refer to Section 5.2.2 and Appendix A) Irish Water should be advised of the request for pre-planning consultation. Irish Water can then nominate a representative to attend the pre-planning meeting(s) or comment in advance. Notifications should be issued by email to planning@water.ie. Alternatively, and at Irish Water's discretion, the prospective applicant should be advised to consult with Irish Water separately through the Pre-Connection Enquiry Process.

Engagement with Irish Water through the Pre-Connection Enquiry process will facilitate Irish Water's assessment of planning applications and therefore may reduce requests for Further Information.

5.3 ASSESSMENT OF APPLICATIONS FOR PERMISSION, APPROVAL OR CONSENT

- 5.3.1 It is the policy of Irish Water to facilitate connections to existing infrastructure, where capacity exists, in order to maximise the use of existing infrastructure and reduce additional investment costs. There is a general presumption that development will be focused into areas that are serviced by public water supply and wastewater collection networks³. Alternative solutions such as private wells

³ This supersedes Departmental Circular L5/99 (23 February 1999) relating to the provision of serviced land - interim and temporary facilities.



or waste water treatment plants⁴ should not generally be considered by planning authorities. Irish Water will not retrospectively take over responsibility for developer provided treatment facilities or associated networks, unless agreed in advance.

Applications should indicate if it is intended to connect to Irish Water's water supply and / or wastewater networks, whether a pre-connection enquiry has been made to Irish Water and where available a copy of the Confirmation of Feasibility (see 5.4) issued by Irish Water should be included with the application.

It is a requirement for Strategic Housing Development applications to contain evidence that Irish Water has confirmed that it is feasible to provide the appropriate service or services and that the relevant water network or networks have the capacity to service the development.

Irish Water is a statutory consultee for applications for permission, approval or consent under the Planning and Development Act 2000 (as amended). Where an application has the potential to impact on public water services, planning authorities are required to give notice of the application to Irish Water (Refer to Section 5.2.2 and Appendix A). Prescribed notices should be issued to Irish Water by email to planning@water.ie⁵ and the relevant plans and particulars should be issued to the nominated representative of Irish Water.

5.3.2 Potential impacts may arise where:


- A new connection to the water supply or wastewater collection network is proposed;
- An application proposes to alter the use of land or property which would result in a greater demand for water or a material change in either the quantity or quality of the discharge of waste water; or
- Development is proposed in the vicinity of water assets and has the potential to interfere with the provision of water services or to cause damage or pollution to assets (e.g. distribution systems, treatment works, reservoirs, surface water abstraction sources or zones of influence of borehole abstractions).

Without prejudice to the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended), Appendix A sets out guidance from Irish Water on situations where referrals should issue. The need for referral on minor or straight forward proposals will need to be determined by the planning authority, taking account of the specifics of the case.

The planning authority or An Bord Pleanála (in the case of a SHD application) must take account of any submission made by Irish Water in making its decision on a planning application. In the case of a non-SHD application guidance is available separately from An Bord Pleanála's website. If a submission is not made by Irish Water to the planning authority within five weeks of the date of receipt of the planning application, the planning authority may determine the application without further notice to Irish Water.


⁴ With the exception of domestic systems for single dwellings.

⁵ Note this email address is for the use of planning authorities only. Queries by developers in relation the feasibility of servicing a development should be addressed to Irish Water's Connections and Developer Services

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- 5.3.3 A written submission made by Irish Water, in its capacity as a statutory consultee under the Act, should set out an overview of relevant water services considerations, set out details of the capacity of Irish Water's assets to accommodate the development, set out details of any potential threat (s) to the water services network and indicate whether the development is acceptable or otherwise from a water services perspective. This will include advice about the implications of any programmed investment.
- (i) Where Irish Water confirms the feasibility of a connection and that it has no objection in principle to the development, the planning authority should be satisfied that the development⁶ is acceptable from a water services perspective.
 - (ii) Where Irish Water indicates that it requires further information in relation to a proposed development, the planning authority should issue a request for further information pursuant to Article 33 of the Planning and Development Regulations 2001 (as amended) on the basis that, for example, further information is required to determine whether the development, as proposed, can be satisfactorily serviced; to determine whether it would present a risk to the provision of water and/or wastewater services; be prejudicial to public health or cause environmental pollution. This facility does not apply in the case of a SHD application. Careful consideration needs to be given as to whether the matter referred to can be dealt with by way of planning condition.
 - (iii) In the event that Irish Water advises of existing deficiencies in the provision of water supply and / or wastewater collection and disposal facilities that need to be addressed, Irish Water should indicate (a) the nature of the deficiencies; (b) whether Irish Water would regard those deficiencies as being capable of being addressed within the life of a potential permission, through its Investment Programme or alternative funding sources; or (c) whether the deficiencies are longer term in nature and would prevent a connection agreement for the foreseeable future.
 - (iv) Having regard to the views of Irish Water and having satisfied itself that there is a reasonable prospect of the constraint(s) being addressed within the lifetime of the permission, a planning authority or An Bord Pleanála (in the case of a SHD application) may approve, inter alia, this aspect of the development⁷, subject to a condition that requires the applicant to enter into a connection agreement (s) with Irish Water to provide for a service connection to the public water supply and / or wastewater collection networks, as appropriate.
 - (v) On the other hand, where the planning authority or An Bord Pleanála (in the case of a SHD application) has been advised that there are no planned upgrades in the short to medium term and the capacity constraints are such that the development is unlikely to be satisfactory serviced within the lifetime of the permission by strategic water services infrastructure, it should take the view based on the information that is available at the time of decision making that the development is premature, pending the required upgrades and refuse permission.

⁶ Without prejudice to Irish Waters connections policy, as this is independent of the planning process and with consideration being given to any risk to the provision of water services; the development being prejudicial to public health or causing environmental pollution.

⁷ Without prejudice to Irish Waters connections policy, as this is independent of the planning process.

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- (vi) Irish Water may object to a development proposal in certain circumstances. Such circumstances might include proposals which could interfere with the operation of Irish Water's assets, pose a risk to a water source, or otherwise undermine water services. Where the issues raised by Irish Water cannot be satisfactorily resolved and for example a potential threat to water services, the environment or public health cannot be satisfactorily ruled out, the planning authority should strongly consider refusing permission for the development.

The planning authority or An Bord Pleanála (in the case of a SHD application) should satisfy itself that a proposal would not have an adverse impact on water quality, the environment or public health.

- (vii) Where a large-scale development, which is not anticipated in the Development Plan, would be likely to take up water supply or wastewater collection capacity that is required for existing development or other sites allocated in the development plan, the planning authority must give careful consideration, in consultation with Irish Water, to the implications of this development on the delivery of water services in general and for the achievement of the Development Plan Core Strategy.

5.4 PLANNING CONDITIONS

To ensure the satisfactory completion of development, any permission, approval or consent granted pursuant to the Planning and Development Act 2000 (as amended) that requires a new connection(s) to water services infrastructure should include a condition that requires the applicant or developer to enter into a connection agreement(s) with Irish Water prior to the commencement of development. Where phased or multiple connections are proposed or connection is to either the water supply or wastewater collection network, the condition should be adapted as appropriate. The granting of a water supply or wastewater connection agreement is a matter solely for Irish Water and is independent of the planning process.

5.4.1 STANDARD SAMPLE CONDITION


Prior to the commencement of development the developer shall enter into a Connection Agreement(s) with Irish Water to provide for a service connection(s) to the public water supply and / or wastewater collection network.

Reason: In the interest of public health and to ensure adequate water / waste water facilities.

5.4.2 SAMPLE CONDITION RETENTION

In the case of retention permission that requires a new connection(s) to the water services network and where Irish Water has confirmed that the development is acceptable from a water services perspective, the following condition should be included.

The developer shall ensure that the development is served by adequate water supply and / or wastewater facilities and shall enter into a Connection Agreement(s) with Irish Water to provide for a service connection(s) to the public water supply and / or wastewater collection network within xx months of this grant of permission.



Reason: In the interest of public health and to ensure adequate water/wastewater facilities.

5.5 CONNECTION AGREEMENTS

Any person seeking a water supply or wastewater connection must make an application directly to Irish Water. A connection to a public water service network is subject to the securing of a Connection Agreement with Irish Water. The granting of a water supply or wastewater connection is a matter solely for Irish Water and is independent of the planning process.

Prior to applying for planning permission and/or submitting a connection application, it is encouraged that developers submit a Pre-Connection Enquiry Form to Irish Water in order to ascertain the capacity of water services to facilitate the proposed development. Irish Water has set up an on-line process to facilitate developers' enquiry submissions being made directly to Connections and Developer Services through the Irish Water website.

Following receipt of a Pre-connection Enquiry Form (and associated fee, if applicable), Irish Water will provide a Confirmation of Feasibility that outlines whether the proposed connection is technically feasible or not and details of works that would be needed to facilitate the connection. The Confirmation of Feasibility does not limit Irish Water making observations as a prescribed body to the Development Management Process in relation to current capacity, risk to Irish Water assets or protection of the environmental.

Potential applicants need to be made aware that there is no guarantee that capacity identified at Pre-connection Enquiry stage or planning application stage will remain available until such time as a developer is ready to connect to the public network as Irish Water may have made other connections to its network in the interim.

Irish Water will seek to manage capacity based on emerging demand and in line with growth projections and will seek to minimise opportunities for any third party to unduly limit available capacity.

Irish Water is developing a Connection Charging Policy for water and wastewater networks (including the conditions and charges to be applied to connections) for approval by the CRU (economic regulator). Local authorities no longer apply development contributions for water supply and wastewater infrastructure to a grant of planning permission. Irish Water currently charges an equivalent of the Development Contribution for water services infrastructure applicable to the relevant Local Authority on December 31st 2013. Connection charges will be in line with any CRU approved Water Charges Plan

It is envisaged that the Irish Water Connection Agreement will include for the vesting of developer provided water and wastewater infrastructure to Irish Water, together with wayleaves to provide access to vested assets and future connection rights to these assets.

5.6 PLANNING APPEALS

- 5.6.1 An Bord Pleanála is required to take on board the relevant views contained in any submission or observations received from Irish Water, in its role as a statutory consultee, and where an issue that is related to the remit or function of Irish Water is relevant at appeal stage the Board can require Irish Water to participate in the appeal.
- 5.6.2 Irish Water can appeal a decision of a planning authority to An Bord Pleanála, where it is the applicant (1st party appeal) or has made a submission or observation to the planning authority in respect of an application (3rd party appeal). In the event that Irish Water did not make a submission or observation to the planning authority, it can seek leave to appeal the decision where it is of the view that, as a statutory consultee, it was not notified and should have been or where it has an interest in land adjoining the application site. Alternatively, Irish Water can make a submission or observation on an appeal under Section 129 of the Planning and Development Act 2000 (as amended).

5.7 COMPLIANCE

It may be the case that a condition attached to a grant of permission, approval or consent seeks to address issues raised by Irish Water and that the planning authority took the view that the matter is minor in nature and that such matters can be addressed by way of a condition to a grant of permission. Submissions made on foot of such conditions may need to be referred to Irish Water for comment prior to the issue of a notification of compliance.

5.8 PLANNING SECURITIES / BONDS

Since 1st January 2014, planning authorities no longer apply bonds and / or cash securities to a grant of planning permission in respect of water and waste water services. Irish Water's Connection Agreements include a 'warranty or guarantee' provision.

Bonds and / or cash securities applied to planning permissions that were granted prior to 1st January 2014 are held by the relevant planning authority. Where issues arise in relation to water services infrastructure constructed on foot of permission granted prior to January 2014, it may be necessary to apply a proportion of the bond or cash security to rectify deficits. Key personnel from the local authority and Irish Water shall work together to identify and resolve any issues. An equitable approach must be applied in relation to the allocation of funding from bonds and planning securities across all infrastructure categories (roads, public lighting, open spaces, water services etc.) to ensure the integrity of water services assets when the development is taken in charge. The Department's Circular Letters PL21/13 and PL5/14 address the issues of bonds and cash securities applied to permissions granted before January 2014.

5.9 ENFORCEMENT

Irish Water is subject to the enforcement procedures set out under Part VIII of the Planning and Development Act 2000 (as amended) and can make a complaint to the relevant planning authority in respect of the activities of a third party. Irish Water has powers under Section 160 of the Planning and Development Act 2000 (as amended) to initiate enforcement proceedings in its own right.

5.10 LEGACY ISSUES - TAKING IN CHARGE OF WATER SERVICES INFRASTRUCTURE

Where water services infrastructure is vested in the ownership of Irish Water through a Connection Agreement, there is no requirement for a Planning Authority to take such infrastructure in charge. The following applies to infrastructure that has not been vested in Irish Water.

Section 180 of the Planning and Development Acts places legal obligations on planning authorities in relation to the taking in charge of residential developments. Irish Water is not a planning authority and the obligation to take in charge water and wastewater infrastructure remains with planning authorities for developments where such infrastructure has not already been vested in Irish Water through a Connection Agreement.

The planning authority when taking an estate in charge under S.180 of the Act and making an order under section 11 of the Roads Act, shall take in charge *“any sewers, water mains or service connections within the attendant grounds of the development”*. The reference to “water services authorities” in section 180 refers to a County Council or a City Council as defined in the Local Government Act 2001⁸.

When water services infrastructure that is connected to the public network is taken in charge by a planning authority, Section 12 of the Water Services (No. 2) Act 2013 provides that it will subsequently be transferred to Irish Water by Ministerial Order. The Minister will, as soon as practicable after being informed by the planning authority that the estate has been taken in charge, make an order transferring the water services infrastructure to Irish Water under Section 12 of the Water Services (No.2) Act.

Planning authorities, in consultation with Irish Water, should seek to expedite the taking in charge of developments that are completed to a satisfactory standard and in accordance with the planning permission. Planning authorities when initiating the taking in charge process, shall do so in consultation with Irish Water, with the key personnel working together to identify and resolve any issues that might arise in ensuring that the water services assets to be taken in charge by the planning authority are fit for purpose.

Circular Letter PL5/2014 Re: Matters Related to the Taking in Charge of Residential Developments addresses the procedures for the taking in charge of housing estates granted prior to 1st January 2014, and sets out particular guidance in relation to circumstances where water services infrastructure is deemed to be incomplete or deficient. This circular is included in Appendix B of the Guidelines for information.

⁸ While the powers and functions relating to the provision of water services (with certain limited exceptions) have transferred to Irish Water from local authorities in accordance with Section 7 of the Water Services (No.2) Act 2013, it is important to note that the Act did not change the definition of a water services authority in the Water Services Act 2007 and accordingly, local authorities remain as water service authorities (with certain water services functions). Therefore, planning authorities which were water services authorities before the establishment of Irish Water remain water services authorities.

6.0 DEVELOPMENT BY A LOCAL AUTHORITY

Section 179 of the Planning and Development Act 2000 (as amended) prescribes classes of local authority development which, by reason of their size, nature or effect on the surrounding area, are subject to approval by the planning authority, following a prescribed procedure of public notice and consultation. The classes of development and statutory consultees are set out in Part 8 of the Planning and Development Regulations 2001 (as amended). Irish Water is a statutory consultee under Part 8 of the Regulations and should be consulted at the earliest possible stage in relation to proposals that have the potential to impact on public water services. The Chief Executive's report on submissions or observations received during the consultation phase should summarise the issues raised and the recommendations made by Irish Water and outline the recommendations of the Chief Executive to the members of the authority in relation to the manner in which those issues and recommendations should be addressed, prior to making a resolution under Section 179 (4) to accept, vary or modify the proposed development.

The provisions of Section 179 and Part 8 do not, however, apply to local authority development which requires environmental impact assessment and / or appropriate assessment. In these circumstances, proposed development must be submitted to An Bord Pleanála for approval under Section 175 and / or 177AE of the Act. Irish Water is a statutory consultee under the Regulations and should be consulted at the earliest possible stage in relation to proposals that have the potential to impact on public water services.




7.0 DEVELOPMENT BY IRISH WATER

7.1.1 The establishment of Irish Water created a new water services utility that is responsible for advancing a national programme with regard to planning for and investing in water services across the country. This includes provision of new assets, the upgrade and replacement of strategic infrastructure assets to ensure operational efficiencies and environmental compliance, while also catering for growth. It also includes routine works to ensure that the networks are maintained and can continue to provide water services.

Since the mid 1990s, various forms of public private partnership have been used to deliver water and wastewater infrastructure and other infrastructure in Ireland. The use of design and build (DB) and design, build and operate (DBO) approaches have become common place. Under these approaches the infrastructure developer gains planning authorization based on a “design envelope” and environmental constraints that set out the overall parameters of the proposed facility. The successful bidder is allowed the flexibility to complete the detailed design and to construct the facility in the optimum fashion staying within the design envelope authorized. This approach has been used successfully for numerous facilities approved and constructed across Ireland, including smaller-scale facilities approved under Part VIII by local authorities and larger facilities for which An Bord Pleanála completed an environmental impact assessment prior to approval.

7.1.2 The planning status of works proposed by Irish Water fall into three broad categories:

- (a) Local Authorities are continuing to do works that started out as their own programmes initially and would have been regarded as Local Authority/exempted development works but are now being increasingly delivered on foot of the service level agreement for Irish Water. Recognising the role and function of Irish Water now, it is intended to finalise exempted developments for the new utility in respect of new works initiated by it. Irish Water developments that falls outside exempted regulations require planning consent under the relevant provisions of the Planning and Development Act 2000 (as amended). Additionally Section 4 (4) of the Planning and Development Act provides that development shall not be exempted development if an Environmental Impact Assessment (EIA) or an Appropriate Assessment (AA) of the development is required. In this context the whole project needs to be considered and exemptions may not apply where infrastructure is considered to be part of a broader project that requires EIA (e.g. connecting infrastructure). If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of the Act, Irish Water and any person can seek a declaration, pursuant to Section 5 of the Planning and Development Act.
- (b) The majority of developments or works that require planning consent will fall under Section 34 of the Planning and Development Act 2000 (as amended). In considering proposals for development, it is important to focus on matters that fall within the remit of the Planning and Development Act 2000 (as amended). A decision of a planning authority made under Section 34 of the Act, can be appealed to An Bord Pleanála by Irish Water as the first party or by a third party.

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- (c) Large-scale developments that are considered by An Bord Pleanála to fall within the definition of Strategic Infrastructure Development (SID) under the Planning and Development Act 2000 (as amended) must be considered by An Bord Pleanála in accordance with the provisions of sections 37A to 37J of the Act. A person who proposes to apply for permission for any development specified in the Seventh Schedule of the Act must consult with An Bord Pleanála and the Board will determine whether the development is or is not a Strategic Infrastructure Development, based on the criteria set out in Section 37A (2) of the Act. Infrastructure listed in the Seventh Schedule includes, inter alia, groundwater abstraction or recharge schemes, works for the transfer of water between river basins, waste water treatment plants and sludge deposition sites.
- (d) In principle the use of the design and build approach should continue to be allowed by planning authorities when assessing proposals made by Irish Water. In making planning applications Irish Water will typically expected to provide a description of the development to include, for example:
- The physical size of various components – such as the maximum height and volume of tanks, buildings etc. (often this will include the maximum or “worst case” dimensions) and the likely building materials and finishes;
 - The approach to construction, including the likely method of work, hours of operation etc.;
 - How matters such as access, landscaping, lighting, fencing and signage will be addressed; and
 - Environmental parameters - capacity, phasing, and depending on the scale of the facility, likely maximum levels of emissions to air, noise, odour etc. and discharges to water.

Any design approach to development permitted shall be materially compliant with the planning permission. In this regard active engagement is recommended between the planning authority and Irish Water, where appropriate.

- 7.1.3 In the making of Development Contributions Schemes under Section 48 and Section 49 of the Act, planning authorities should consider including a special provision in respect of water sector developments to limit the extent of the contribution. In this regard, contributions could be applied based on the area of administrative buildings and excluding site or plant areas, as such areas can be very extensive and may give rise to contributions that outweigh the impact of the development on local infrastructure and amenities.

8.0 STRATEGIC INFRASTRUCTURE DEVELOPMENTS (SIDs)

Certain large-scale developments that are deemed to be of strategic economic or social importance to the State or a region are determined by An Bord Pleanála. The classes of development which can constitute strategic infrastructure are listed in Section 2 of the Planning Act and includes the Seventh Schedule of the Planning and Development Act 2000 (as amended) (referred to as Seventh Schedule development). There is a mandatory requirement on a prospective applicant for an infrastructure development listed under the Seventh Schedule of the Act to enter into pre-application consultation with An Bord Pleanála. An Bord Pleanála must determine whether a prospective application constitutes a Strategic Infrastructure Development based on the criteria set out in Section 37A of the Act.

An Bord Pleanála can give advice at pre-application consultation stage in relation to the particular prescribed bodies which should be notified of a SID application. Irish Water is a statutory consultee in relation to SID and, where it appears that a proposal has the potential to impact on public water services, Irish Water should be consulted at the earliest possible stage by the prospective applicant.

The prospective applicant is required to send notification and copies of the application and any Environmental Impact Statement (EIS) to the relevant prescribed bodies, based on the advice of An Bord Pleanála. The notice should invite the making of submissions and observations in respect of the development. Before determining any application for approval, An Bord Pleanála can request further submissions or observations from any person who made a submission or observation or any person who may, in the opinion of the Board, have information which is relevant to the determination of the application. In this regard, there are opportunities for An Bord Pleanála to consult further with Irish Water where it appears to the Board to be necessary or expedient for the purpose of resolving any issue.



9.0 LOCAL ECONOMIC AND COMMUNITY PLAN

The purpose of the Local Economic and Community Plan (LECP), as provided for in the Local Government Reform Act 2014, is to set out for a six year period, the objectives and actions needed to promote and support the economic development and local and community development of the local authority area, both by itself directly and in partnership with other economic and community development stakeholders. The LECP must be consistent with the statutory Development Plan for the area and in effect should align with the Core Strategy and spatial planning framework of that plan and any policies and objectives in relation to the provision of water services infrastructure.



10.0 ENVIRONMENTAL ASSESSMENTS

In meeting obligations under the EU Environmental Impact Assessment (EIA) Directive and the EU Habitats Directive, a planning authority, as the competent authority, must assess the direct and indirect impacts of a proposed development on the environment (EIA) and also establish whether a project, alone and in combination with other plans or projects, could have significant effects on a Natura 2000 site (AA).

In a water supply or wastewater context, a planning authority will need to consider factors such as:

- the nature and scale of water demand and wastewater discharge that would arise from the proposed development,
- the operating capacity of the water supply and wastewater collection networks and whether the proposed development would have a significant impact on the network (e.g. abstractions or discharges) or necessitate an upgrade or expansion of the network,
- the sensitivity of the receiving environment, and
- whether there is a risk of significant effects on habitats, species and sites that are protected under the Habitats Directive e.g. site that are proximate or downstream of the development or where cumulative impacts could arise.

Guidance in relation to EIA can be found in the Department Guidelines, Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environment Impact Assessment, 2013. Guidance in relation to Appropriate Assessment can be found in the National Parks and Wildlife Services publication, Appropriate Assessment of Plans and Projects in Ireland, Guidelines for Planning Authorities, 2009 and updated 2010.



11.0 CONCLUSIONS

Taking account of the mechanism for planning authorities to influence Irish Water's Water Services Strategic Plan and Investment Plans, and Irish Water's role as an important statutory consultee on national, regional and local spatial planning documents, an iterative linkage between infrastructure and spatial planning has been established for the water services sector. It is envisaged that this approach, when taken with the relationship between local authorities and Irish Water on development management, should deliver certainty, consistency and efficiency in the alignment between development planning policy and management and water services provision.

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Appendix A:

Guidance on Referrals to Irish Water

Referrals should include but may not be limited to the following:

1. All applications within the following categories should be referred to Irish Water:
 - All applications that propose a connection or have an existing connection to the public water supply or wastewater collection network;
 - All applications to alter the use of land or property that would result in a greater demand for water or a material change to the discharge of waste water (e.g. extension to a manufacturing facility).
 - Applications for developments that would have a physical impact on IW assets i.e., building over or adjacent to IW assets
 - Abattoirs or any meat / food processing unit;
 - Mining or quarrying activity;
 - Landfill activity;
 - Aquaculture activity;
 - Any manufacturing industry, involving IE/ IPC licences;
 - Any activity where large volumes of a petrochemical are stored on site including petrol stations and facilities with fuel depots;
 - Domestic applications for multiple units (10 or more) with own WWTP;
 - Any activity involving hydro power generation;
 - Any activity involving dredging / arterial drainage works / flood protection works;
2. All applications within 2km radius of a river abstraction (all surface water source location).
3. All applications within a 2km buffer of a borehole with a yield in excess of 250,000 gallons / day in recognition of the potential for a larger zone of influence.
4. All applications within a 300m buffer of a borehole with a yield below 250,000 gallons / day in recognition of the potential for a larger zone of influence.
5. Applications in areas of extreme / high ground water vulnerability as identified on GSI Ground Water Projection Scheme Maps.

Without prejudice to the requirements of Article 28 of the Planning and Development Regulations, applications that fall outside the above buffers and are not seeking a connection to the water or waste water network may not need to be referred to Irish Water at registration stage, unless particular impacts are identified, as in general terms they would be unlikely to impact on Irish Water's assets. Notwithstanding this all applications should be screened for referral to Irish Water. There may be cases where an official (e.g. area planner or area engineer) determines, based on the details of the application or local knowledge, that a minor or straight forward application should be referred to Irish Water.

Appendix B:

Circular PL 5/14: Matters Related to the Taking in Charge of Residential Developments



Comhshaol, Pobal agus Rialtas Áitiúil
Environment, Community and Local Government



To: Directors of Planning Services, City and County Councils

CC: Chief Executives, City and County Councils,
An Bord Pleanála.

5 November, 2014

Circular Letter PL 5/2014

Re: Matters related to the Taking in Charge of Residential Developments

A Chara,

I am directed by Mr. Alan Kelly, T.D., Minister for the Environment, Community and Local Government to refer to section 180 of the Planning and Development Act 2000 which places certain legal obligations on planning authorities in relation to the taking in charge of residential developments.

Purpose of this Circular

This circular letter clarifies the position as regards local authority procedures concerning the taking in charge of existing residential estates that are connected to public water supply and/or wastewater collection systems followed by the transfer of water services infrastructural assets in agreement with Irish Water.

It adds to the previous policy guidance issued by the Department under Circular Letter PD 1/08 in relation to taking in charge policy and which was incorporated into the guidelines for planning authorities on sustainable urban development issued by the Minister in May 2009. **Circular Letter PL 21/2013**, Transfer of water service functions to Irish Water: planning issues, also refers.

It should also be noted that procedures for the transfer from local authorities to Irish Water of water and waste-water infrastructure located in residential estates which have been taken in charge by planning authorities is set out in the Water Services (No. 2) Act 2013, and work is underway to advance the transfer of such infrastructure by Ministerial Orders commencing later this year. This matter was the subject of a separate communication from the Department to local authorities recently.

Circular PD 1/08

The following summarises the most relevant provisions of this circular:

- In relation to those requests for taking in charge estates currently on hand where the planning permission has expired, planning authorities should as soon as possible, if they have not already done so, assess the condition of such estates.

- New requests for the taking in charge of estates must be promptly assessed and then dealt with in accordance with the following:
 - *Estates satisfactorily completed:* Where an estate is completed in accordance with the terms and conditions of the planning permission, it should be taken in charge without delay on foot of a request to do so, but not later than 6 months from the date of the request.
 - *Priority list for estates not completed satisfactorily:* A priority list should be drawn up of requests from residents for the taking in charge of uncompleted estates, taking into account such factors as the date of application, the condition of the estate and the length of time it has been left unfinished.
- New requests for the taking in charge of unfinished estates should be added to the priority list, as appropriate.

In relation to unfinished estates, Circular PD1/08 highlighted that all unfinished estates which are the subject of a request to be taken in charge should be kept on the priority list referred to above, including estates where it may be possible to have the estate completed at the expense of the developer, through enforcement action or calling in the development bond so that these estates remain on the priority list for remedial works by the planning authority in the event that enforcement action or calling in the bond fails. When the estate is brought to a standard which is satisfactory to the planning authority and is in accordance with the permission granted, it should be taken in charge promptly.

Circular PD1/08 also highlighted that in accordance with section 180(2) of the Planning and Development Act 2000 as amended, unfinished estates should be taken in charge where the majority of residents so request and that where enforcement action or calling in the bond is not possible, or has been unsuccessful, strategies should be put in place to get the estate up to an appropriate standard.

As stated above, a priority list should be maintained of all such estates and remedial works carried out in accordance with that order of priority. Where Irish Water becomes responsible for water infrastructure in estates that have been taken in charge and Irish Water is of the view that there is a service critical issue which may impact upon public health, it will prioritise such estates for remediation works.

In **Circular Letter PL 21/13** planning authorities were advised that pending further legislation and guidelines, they should in the first instance consult with Irish Water on any proposal to take in charge water services infrastructure which would ultimately be transferred to Irish Water under section 12 of the Water Services (No. 2) Act 2013.

Position regarding taking in charge of water services infrastructure

Section 180(4)(c) of the Planning and Development Act provides that -

"A planning authority that is not a water services authority within the meaning of section 2 of the Act of 2007 shall not take in charge any sewers, watermains or service connections under paragraph (a)(i) or (b)(i), but shall request the relevant water services authority to do so."

The reference to “water services authorities” in section 180(4)(c) should not be read as a reference to Irish Water. Water services authorities are defined in the Water Services Act 2007 as a County Council or a City Council as defined in the Local Government Act 2001.

While the powers and functions relating to the provision of water services (with certain limited exceptions) have transferred to Irish Water from local authorities in accordance with Section 7 of the Water Services (No.2) Act 2013, it is important to note that the Act did not change the definition of a water services authority in the Water Services Act 2007 and accordingly, local authorities remain as water service authorities (with certain water services functions). Therefore, planning authorities which were water services authorities before the establishment of Irish Water remain water services authorities.

In this regard, it should be noted that the text in section 180(4)(c) of the Planning and Development Act was primarily intended to clarify that Town Councils (which were planning authorities but not water services authorities) were not mandated to take in charge water services infrastructure, but should instead request City/ County Councils to do so.

It may be further noted that Section 7 of the Water Services (No.2) Act 2013 provides that:-

“References to a water services authority or relevant water services authority in—

(a) the Act of 2007 or in any instrument made under that Act, or

(b) any other enactment (other than the Act of 2013) or instrument under any other enactment,

in so far as they relate to any function transferred by this Act, shall on and after the transfer day, be construed as references to Irish Water.”

This does not change the position in respect of a Planning Authority’s taking in charge functions.

The obligations on planning authorities to initiate taking in charge procedures under section 180(1) and (2) remain, and subsection (4) also remains which provides that when an order is made under section 11 of the Roads Act in compliance with subsection (1) or (2), the planning authority, when taking an estate in charge pursuant to S.180(1) and 180(2), shall take in charge “any sewers, water mains or service connections within the attendant grounds of the development”.

When water services infrastructure is taken in charge by a planning authority pursuant to section 180 of the Planning and Development Act 2000, the water services legislation provides that it will be subsequently transferred to Irish Water by Ministerial Order.

Co-operation Between Local/ Planning Authorities and Irish Water

There is presently a considerable backlog of residential estates to be taken in charge and this will take time to be implemented.

In drawing up the priority list of estates to be taken in charge, the planning authority should consult with Irish Water with a view to accelerating the taking in charge process for estates that are in a reasonably good condition.

Thereafter, the planning authority should focus on agreeing arrangements for the taking in charge of developments that have more significant difficulties with water services infrastructure subject to the

provisions below, with the planning authority and Irish Water agreeing how basic interventions might be carried out to provide minimum service levels.

After the taking in charge process has been completed and the water services infrastructure has been transferred to Irish Water, deficiencies not materially affecting service levels/improving service levels will be carried out by Irish Water in the normal way for the benefit of its customers.

With regard to water services infrastructure and the inter-related roles of local/ planning authorities and Irish Water, it is therefore very important, as Circular Letter PL 21/13 provided, that planning authorities initiating the taking in charge process, do so in consultation with Irish Water, with the key personnel working together to identify and resolve any issues that might arise in ensuring that the water services assets to be taken in charge by the planning authority are fit for purpose.

For example, enforcement action by the planning authority, coupled with the application of resources from planning securities such as bonds and cash deposits, could result in the preparation of a site resolution plan by the developer and/or a receiver. In such scenario, the site resolution plan could include proposals for rectifying defects in water services network type infrastructure such as watermains and sewers in order to get the water services assets into a condition that, when implemented, would be regarded by the planning authority as being satisfactory with regard to compliance with the terms of the relevant planning permission, and ultimately with a view to enabling the taking in charge and subsequent onward transfer of its water services assets to Irish Water.

Where such site resolution plans above include water services elements, it is important that there is (a) a written agreement between the planning authority and Irish Water on the plan, and that within that written agreement there is (b) an equitable approach in relation to funding from sources such as the planning security and developer/receiver, for remedial works to water services to ensure integrity of assets and acceptable service levels to future Irish Water customers when the estate is taken in charge.

If no resources from planning securities such as bonds or cash deposits are available and enforcement action has failed or would be highly unlikely to secure the actions necessary to rectify defects, the planning authority and Irish Water should consult one another on the best course of action to adopt, including the sharing of remediation costs between Irish Water and the planning authority with regard to their respective liabilities.

For the avoidance of doubt, the above means that remediation costs in relation to water services will be addressed by Irish Water and remediation costs for roads, footpaths, public lighting and open space will be addressed by the relevant local/ planning authority.

Planning authorities should therefore continue to use the statutory powers available to them to take residential estates, including water services infrastructure, in charge in the usual way, working in concert with Irish Water, **except in relation to those particular estates containing “developer provided water services infrastructure”**, which are dealt with separately below.

Accordingly -

- where an estate (not containing developer provided water services infrastructure) is completed to the satisfaction of the planning authority in accordance with the planning permission, planning authorities should, on request, proceed to take the estate in charge including the relevant water services infrastructure;

- where an estate (not containing developer provided water services infrastructure) is not completed to the satisfaction of the planning authority in accordance with the planning permission, but where enforcement action is no longer possible, or has failed in securing the proper completion of the estate by the developer, the planning authority should, when requested to do so by the majority of the owners, also proceed to take the estate in charge including the relevant water services infrastructure, working with Irish Water on the best course of action to adopt, including the sharing of remediation costs as outlined above;
- pursuant to section 180(2A) and (4)(b), planning authorities should continue to take in charge, at their discretion, some or all of the facilities in an estate.

In these cases the Minister will, as soon as practicable after being informed by the planning authority that the estate has been taken in charge, make an order transferring the water services infrastructure to Irish Water under Section 12 of the Water Services (No.2) Act.

Planning authorities and Irish Water should continue to work closely together, in particular expediting the taking in charge of developments containing water and or waste water assets which have been completed in accordance with the permission and which are directly connected to the existing public system.

Planning authorities must take any actions necessary, where developments containing water and or waste water assets which have not been completed in accordance with the permission, to enable funds from planning securities such as bonds and cash deposits to be accessed for remediation works to be carried out.

Local/ planning authorities and Irish Water will together and under the overall guidance of the Department, develop technical standards and co-ordination mechanisms to assist in enhancing the clarity, efficacy and smoothness of the overall taking in charge process of existing estates, which may be issued as a supplement to this circular or as memoranda of understanding from time to time.

Developer Provided Water Services Infrastructure

Irish Water recently wrote to local authorities in relation to the taking in charge of a particular category of residential estates, specifically estates that are served by infrastructure such as wells, water treatment plants and wastewater treatment plants and associated pumping stations that were provided by developers as part of housing developments. Such infrastructure is stand alone and is not connected to public water and sewerage networks for which Irish Water is now responsible.

For convenience, such infrastructure is described as developer provided water services infrastructure.

The Department recognises that the taking in charge of estates containing developer provided water services infrastructure will need to be considered separately, as in many cases the infrastructure serving the estates may require upgrading and remediation. Work is underway to put in place a strategy, including funding options, for addressing deficiencies on these estates.

In 2013 the Department, in conjunction with the Water Services Transition Office, sought information from each local authority on the number of such residential developments that are located within their functional area and this has given a better understanding of the extent of these developments nationally.

The Department is now proposing to have a more detailed technical examination of a representative sample of these developments carried out in a number of these local authorities to get a clearer view on:

- the types of infrastructure that are in place;
- the condition of such infrastructure; and
- the scale of works and investment costs that might be required for remediation of any defects or problems, including prospects for successful enforcement action.

This exercise will have a number of objectives including identifying alternative optimal solutions for problems and also developing indicative cost estimates for any works that might be required. This will allow the development of a national strategy to address problems in residential estates with developer-provided infrastructure to be put in place.

A separate communication has issued from Water Services Policy Section of this Department to relevant local authorities on this matter.

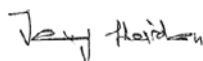
Further amendments to section 180 of the Planning and Development Act 2000

A new Planning and Development Bill is currently in preparation, in which section 180 will be updated to improve and streamline the taking in charge process.

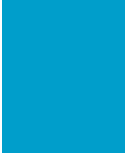
The Department is engaging with the City and County Managers Association (Planning and Land Use Committee), Irish Water and other relevant stakeholders in the context of preparing for this new legislation, which it is intended will update the taking in charge process to both address legacy issues and take account of the proposed connections policy driven approach of Irish Water.

In the meantime, as the taking in charge of residential developments by planning authorities has stagnated for a while, the Minister is anxious that renewed efforts are made in this regard generally and that the revised arrangements outlined in this circular are implemented by planning authorities as quickly as possible.

The co-operation of local/ planning authorities in implementing this circular letter is therefore requested. If there are any queries in relation to the content of the circular letter, they may be addressed to the undersigned or to Mr Niall Cussen, Principal Adviser (Planning).



Terry Sheridan,
Principal Officer,
Planning Section.



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