

# **Land Value Sharing and Urban Development Zones Bill**

## **General Scheme December 2022**

### **Explanatory Memorandum**

This Explanatory Memorandum sets out the background, policy context and current proposals relating to the development of legislation to introduce Land Value Sharing and Urban Development Zones. The Memorandum accompanies the publication of the updated General Scheme for the Land Value Sharing and Urban Development Zones Bill which was approved by Government in December 2022. Following publication, the proposals will undergo pre-legislative scrutiny by the Joint Oireachtas Committee on Housing, Local Government and Heritage. Having regard to any recommendations resulting from the pre-legislative scrutiny process and subject to Government approval, the final bill will be introduced into the Houses of the Oireachtas.

#### ***1. Background***

It is clear that public policy decisions to zone land and invest in services and infrastructure significantly add value to land. The extent of the uplift in land value resulting from zoning and designation varies depending on the location and the particular circumstances of the case, and due to the scarcity of recorded data on land values, it is difficult to deduce a specific level of uplift that is attributable. However, following an economic appraisal of the current proposals and taking into account data from a number of sources, it is evident that the benefit conferred by the zoning of land for residential development results in significant uplifts in land values. The value of land is further increased by the grant of permission for development on the land, at which point Section 48 and, in some cases, section 49 development contributions, in addition to Part V social and affordable housing obligations, apply.

While a landowner may, having regard to the zoning of the site, be facilitated to develop their land for a particular purpose, such development is generally dependent on the provision of the necessary supporting infrastructure, including facilities and services to make the development realizable and sustainable. The provision of infrastructure and facilities to a development site is generally the responsibility of the State and include basic services such the necessary means of access by road and footpath, water and wastewater capacity and public lighting. The State is also responsible for the provision of facilities to support those living and working in new development and the wider area, including community and recreational facilities and sites for educational facilities.

Under current legislative arrangements, the principal mechanisms for the State to secure a proportion of the benefit attributable to the decision to zone and permit development on land is via Part V social and affordable housing obligations and through Section 48 and 49 development contributions. These measures apply only at the point of grant of planning permission and therefore only materialise and become relevant only for the person who intends to develop the land.

The majority, if not all, of the zoning benefit generally accrues to the original landowner who owned the land at the point of zoning, or in some cases subsequent landowners who purchase the land and seek to maximise the return on their investment by gaining consent for development and/or selling the land onwards for an increased price over that paid on purchase. This leads to competition for land and ‘speculation’ in the market, which fuels land price inflation and results in higher costs for purchasers of housing built on the lands at the end of the development process, particularly where a viability challenges exist in relation to in relation to the development potential of the land, taking into account the price paid for the land applies.

Taking into account the Kenny Report (1973) and more recent publications by NESAC and others, it has long been apparent that the State needs an up-to-date mechanism that can be applied in a fair, equitable and proportionate manner to achieve national housing and urban development objectives. In line with best practice in other jurisdictions, this should be a more targeted mechanism of ‘locational value creation’. Rather than view this as ‘land value capture’, it is considered more appropriate to use the term ‘land value sharing’, in an acknowledgement of the need for public and private landowners and authorities to work together to bring land forward for housing development, thereby ‘sharing’ in the risks and the rewards.

In addition to the inability to secure a proportion of the increase in value resulting from a decision to zone or designate any given site for development, the existing planning system does not effectively facilitate **active land management in areas which are in need of development or regeneration**. As such, public authorities are reliant on landowners to bring forward land for development. This can result in piecemeal patterns of activity rather than a co-ordinated and effective ‘plan-led’ approach. This hampers the effective planning and delivery of infrastructure by public authorities. Accordingly, the ability to deliver the infrastructure necessary to support housing delivery in a timely manner is not optimised, in particular where focused, area-based planning for regeneration is required.

There are current provisions in the Planning and Development Act to allow for the designation of Strategic Development Zones (SDZs). It is of note that the most successful SDZs are urban brownfield sites, but it is also of note that much of the development potential of the six large-scale mainly privately-owned greenfield SDZs that have been designated for ten years or more, i.e. since between 2001 and 2010, remains unrealised. It is also evident that the SDZ process has not in every case facilitated the effective calculation of the costs and means of delivery of infrastructure requirements to support the development at the outset. This has given rise to difficulties in the practical delivery of schemes in some cases, particularly those in locations with tighter viability margins or extraordinary infrastructure investment requirements.

Common infrastructure requirements typically comprise at least 20-30% of the physical footprint of an urban area and may include schools, parks/public spaces and transport facilities and roads, as well as other services and amenities. There may also be a need to

relocate land uses and/or power lines. However, some of these areas face particular challenges which may not have been envisaged when the area was initially proposed for designation. In addition, a comprehensive approach to investment has, until relatively recently, been lacking, with the result that the potential of these areas has not been realised.

The challenge will be even greater going forward, given the focus, in order to deliver sustainable compact growth, on development of brownfield land in urban areas. These areas are often fragmented in terms of ownership and will not generally achieve the same level of consensus from landowners as greenfield sites, given the lack of incentive to relocate or abandon existing viable uses.

Where the State considers that certain locations offer significant potential for development worthy of designation for area-based masterplanning with incentives for landowners, a corresponding level of commitment to investment is required. However, there is a case to be made that the landowners who benefit from the increase in land values which has resulted from the certainty provided by designation and fast-track planning arrangements, should also contribute in return.

It is not possible to retrospectively impose such obligations on landowners in existing SDZs, however the experience of the SDZ concept serves to demonstrate the need for greater clarity around the infrastructure requirements at an early stage and a more comprehensive approach to area-based planning and regeneration, including investment.

## ***2. Policy Context - Programme for Government (2020) and Housing for All (2021)***

The Programme for Government 2020 includes a commitment to reviewing how community gain can be captured through a review of the development contribution process, re-zoning/designation systems, and planning permission conditions. Housing for All (September 2021) sets out the Government's commitment to develop proposals for Land Value Sharing (LVS) mechanisms to respond to the objective of the State receiving an appropriate proportion of the increase in land values that result from key public decisions around zoning/designation and investment. Housing for All sets out that this will involve a combination of measures, including mechanisms which are targeted at new zoning/designation for residential development land, existing zoned land, and those which are intended to operate in focused areas.

These measures are intended to be complemented by the Residential Zoned Land Tax, which was introduced in Finance Act 2021 in order to incentivise the activation of zoned and serviced residential development land further to HPO 15.2 of Housing for All. The tax will come into effect from February 2024 and be managed by the Revenue Commissioners, following a mapping exercise undertaken by local authorities to identify the land in scope, as specified within the Taxes and Consolidation Act 1997 (as amended by section of the Finance Act 2021).

An initial General Scheme for the Land Value Sharing and Urban Development Zones Bill was published in December 2021, setting out the Government's proposals to permit the State to secure a proportion of the uplift in value in land which occurs as a result of the State decision to zone or designate land for development, and to ensure that the community would benefit as a result. The main purpose of the proposals is to allow the State to more effectively provide the key infrastructure required to support development, including housing. The measure is therefore closely related to the existing development contributions scheme arrangements connected to the grant of planning permission for development.

In light of the need to consider the impact of the proposals, including the specification of an appropriate rate of LVS to be secured, it was agreed by Government at that time that a detailed economic appraisal of the proposed measures, involving an assessment of the potential impacts as well as implications in different locations and circumstances, would be undertaken to determine what uplift in value would be reasonable for the State to secure. In parallel with this appraisal, stakeholder engagement has been undertaken, including with representatives of Local Authorities and State agencies, to ensure a workable set of measures is progressed.

Following the publication of the General Scheme in 2021 therefore, an economic appraisal of the proposed measures was undertaken by Indecon International Research Economists, expert advice was sought on valuation aspects from the Valuation Office and local government valuation experts, and stakeholder engagement was undertaken. Significant engagement with the Office of the Attorney General was also undertaken, in light of the complexity of the measure and the impact on individual property rights.

This research, in conjunction with independent expert advice, advice from the Office of the Attorney General, and stakeholder engagement has provided significant learnings which inform the detail of the Bill as now proposed.

The proposals have been developed having regard to the need to secure increased revenue for the State to facilitate the provision of the necessary infrastructure to support housing development, acknowledging that currently the landowner reaps the benefit of the State's decision to zone land for development, whilst ensuring that any such measure does not disproportionately affect a landowner's constitutional rights.

A revised General Scheme was approved by Government on 13 December 2022, which sets out in further detail the updated proposals, taking into account the economic appraisal and stakeholder engagement. This memorandum sets out the details of the updated General Scheme as approved.

### ***3. Key elements of the proposals***

Further to Housing Policy Objectives 12.1 and 12.2 of Housing for All (and subsequently HPOs 8.1 and 8.2 of the Housing for All Action Plan Update 2022), the General Scheme

of the Land Value Sharing and Urban Development Zones Bill was published in December 2021<sup>1</sup>, following approval by Government. This General Scheme outlined proposals which sought to ensure that the State retains a greater share of the increases in land value which arise from decisions made by the State to zone or designate land for development, and that communities benefit as a result. It also proposed to introduce a mechanism to designate under-utilised areas with significant potential for development as ‘Urban Development Zones’, with a plan-led approach to comprehensive development within these areas and priority afforded to the infrastructure provision required to ensure development is delivered in a timely manner.

Of key importance to the design of the LVS measure is to identify an appropriate proportion of the uplift in land value that results from the zoning or designation decision, at the appropriate stage in the development process, so that it can be factored into transactions and the proposals to develop land, rather than being an undue burden at the end of the development process, which could impact negatively on housing supply.

The aim of the **Land Value Sharing (LVS)** element of the legislation is to introduce a mechanism to ensure that a proportion of the value uplift associated with the decision to zone land for development purposes, is shared with the State in the interest of the common good; that this mechanism will facilitate an increase in the supply of housing by assisting the local authority with the funding of necessary social and physical infrastructure to support development in the area, and that greater certainty from the point of zoning around the obligations to be placed on landowners and developers to contribute towards the infrastructure required will exert downward pressure on the price of residential development land.

A key challenge in implementing LVS is ensuring that the mechanism captures fair value for the State but avoids disincentivising housing supply. As advised in the independent economic appraisal, this risk should not be underestimated particularly if the LVS results in higher costs to housebuilders, rather than reduced land prices. The design of transitional arrangements is also important to ensure there is a reasonable and proportionate impact on the market, and to incentivise a reduction in land prices to account for the obligation arising.

In developing these measures, the State is seeking to balance the rights of the individual to develop land, with the interests of social justice and the exigencies of the common good, in order to promote the supply of housing to meet demand, with the objective of maximising additional revenues to local authorities for the purposes of provision of the infrastructure, facilities and services necessary to support new residential development, and that communities benefit as a result.

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<sup>1</sup> <https://www.gov.ie/en/publication/3cb33-general-scheme-land-value-sharing-and-urban-development-zones-bill-2021/>

With regard to **Urban Development Zones (UDZs)**, it is intended to provide a plan-led process that includes a key decision making role for the local planning authority and provides up-front certainty for both communities and the development sector. *Housing for All* set out that UDZ arrangements would provide for post-designation fast-track planning in accordance with an approved scheme. It is intended that the UDZ designation will be applicable to large-scale areas in single or multiple land ownership that could include public and/or private lands and transport-led development areas. Measures to ensure that speculative or premature development does not take place prior to the adoption of the scheme are being considered in order to ensure that a comprehensive and plan-led approach can be taken, including the safeguarding of ‘critical land’ required to provide the necessary communal infrastructure to support the development.

It is proposed that designation of these areas will be subject to an appraisal, including an assessment of the scale of development proposed and the infrastructure and facilities required to support such development, with associated costs. These areas are intended to be a focus for State investment to ensure housing delivery at scale.

LVS is also intended to apply with UDZs, however, *Housing for All* also indicated that there would also be a need to provide arrangements to facilitate land readjustment/equalisation, taking into account the need to ensure that land which is critical for the provision of communal infrastructure can be assembled. Additional powers of land acquisition are also being considered to provide the opportunity for the local authority/development agency to take a more active role in land management within these key sites.

#### ***4. Detailed Proposals***

##### **A. Land Value Sharing**

###### ***Scope of application***

The General Scheme published in December 2021 referred specifically to ‘newly-zoned land’ and Urban Development Zones. However, it is acknowledged that providing a distinction between newly-zoned land and land which is currently zoned could create distortion in the development sector, resulting in certain areas being considered less favourably than others from a development perspective. This may also create a legal issue from the perspective of fairness for landowners.

As such it is now proposed that LVS will apply to all lands that are zoned for the purposes of residential use or mixed-use including residential (where residential is permitted in principle). It should also be noted that *Housing for All* sets out the intention to extend LVS to all residentially zoned land over time<sup>2</sup>, through the introduction of complementary measures.

In addition, it is proposed to apply LVS to commercial and industrial development zonings over time, as owners of these lands also benefit from uplift in values as a result of the zoning decision.

The LVS obligation will act as a statutory charge on zoned development land.

### ***Baseline and Target for Uplift to be Secured***

The purpose of the proposals is to secure a reasonable proportion of the uplift in land value from the point of zoning or designation.

The initial General Scheme sought to ‘capture’ the LVS obligation at the end of the development process in connection with the grant of permission, and to replace existing development contributions, in order to reflect the total uplift in value resulting from the initial decision to zone the land together with the further value uplift arising from grant of planning permission. This methodology required valuation at this latter stage of the development process in order to establish the market value of the land with the benefit of planning permission (with a valuation also being undertaken at the zoning stage to establish the existing use value of the land at the point of zoning).

In order to provide greater certainty as to the quantum of the obligation being secured as early in the planning and development process as possible, and given that one of the key objectives of the measure is to influence land prices and reduce speculation, Indecon advised that it is necessary to relate the LVS obligation as much as possible to the initial decision to zone the land, rather than the final value which accrues with the grant of planning permission.

While this would not account for the ultimate maximum value uplift that results from the grant of permission for development on the land, it would be more likely to be borne by the initial landowner or subsequent purchasers, rather than directly influencing the cost of building the housing subject of the permission at the end of the process. As such, there would be less of a risk of impacting on housing supply and purchase prices.

The current proposals therefore involve a ‘zoning uplift only’ obligation in order to provide clarity and certainty for both the landowner and the local authority as to the amount of the contribution arising as early as possible in the development process, from the point of zoning.

The calculation of the obligation will be based on the uplift between the existing use value (EUV) of the land at the point of zoning, and the market value (MV) of the land with the benefit of zoning for such purposes, but without any further benefit associated with any particular grant of permission extant at the time of the valuation.

Whereas the original proposal published in the General Scheme (2021) sought to replace section 48 development contributions with a single ‘final’ uplift levy, the revised approach retains section 48 development contributions (separately linked to the grant of permission and in particular the quantum of development permitted) in addition to the LVS obligation, which reflects only the ‘betterment’ associated with the initial decision to zone the land.

The requirement to pay an LVS contribution will be a statutory charge on the land until it is paid, and measures are included to ensure that charges are recoverable by the planning authority. For development below the threshold for LVS liability, a mechanism is included to ensure that landowners do not seek to avoid liability.

### ***Identifying the land in scope and the obligations on landowners to submit valuations***

Planning authorities will be required to publish a map showing the lands in scope for LVS (being all lands zoned for residential and mixed-use including residential) in March 2024. Owners of ‘substantially undeveloped’ land (lands identified on final Residential Zoned Land Tax maps published in December 2023) falling into scope for LVS, with the exception of owners of residential properties within those lands, will be required to submit self-assessments of the EUV and MV calculations with respect of lands within their ownership by 01 July 2024, for entry by the planning authority onto a Land Value Sharing Register.

Owners of other lands in scope may also submit self-assessed valuations to the planning authority for entry onto the register, and they may make an early payment of the LVS contribution in order to discharge their obligation at any stage.

However, the measure has been designed in the interests of prioritising the lands that are most likely to come forward for development within the lifetime of the development plan, rather than require all landowners within residential and mixed use zoned lands to submit valuations where they may not come forward for development.

The process is based on a self-assessment methodology, with landowners required to submit valuations to the planning authority. The planning authority may however undertake an assessment of the submitted self-assessed valuations at any time, and may amend the valuation accordingly. Where this occurs, the landowner may appeal the valuation of the planning authority to the Valuation Tribunal. Any decision made by the Valuation Tribunal will be binding on both parties.

As the extent of the obligation will be clarified following the EUV and MV valuations undertaken after the zoning decision, landowners will be able to make an early payment of the obligation, acting as a ‘credit’ against the land. If the original landowner or any subsequent purchaser exercises the option to pay some or all of the obligation in advance of an application for permission, this would discharge the obligation (in part or in full as applicable).



Where an application for permission is submitted in respect of land which is zoned for residential development or for mixed use including residential, or within a Candidate UDZ, UDZ or SDZ but a self-assessment of EUV and MV has not been submitted in advance, the land will be treated as being land in scope for LVS from the date of the application. The planning authority may either require the submission of the valuations in connection with the application (by the landowner) or it may undertake the assessment and enter the valuations on the register.

### ***Exemptions***

Whilst all land in scope for LVS will be subject of valuation, certain exclusions from the measure will apply.

Where permission is granted for social and/or affordable housing development, including development by or on behalf of a local authority, such development will not attract an LVS obligation. The provision of social and affordable housing is a key priority for Government and the exemption of these tenures from liability will facilitate local authorities and Affordable Housing Bodies to engage more effectively in the land market and will avoid the need for the State to pay obligations into one funding stream only to require payment from another funding stream.

In addition, applications involving the following will not attract a condition requiring payment of an LVS contribution:

- the conversion of an existing building or the reconstruction of a building to create one or more dwellings, provided that 50 per cent or more of the existing external fabric of the building is retained;
- applications relating to the provision of infrastructure, facilities or enabling works; and
- applications for liable development where a land value sharing credit has been lodged on the land value register against the relevant land prior to the submission of the application for permission and the credit lodged meets the land value sharing obligation in full.

In order to facilitate small-scale development on land and to ensure that the obligations are proportionate and reasonable for landowners, certain other exclusions will apply to: (a) consisting of the provision of 4 or fewer houses, (b) for housing on land of 0.1 hectares or less, and (c) consisting of the provision of commercial or industrial development where the net additional floor space is 500sqm or less. These exemptions are similar to existing arrangements in Part V of the Act in respect of social and affordable housing, with arrangements in place within the draft legislation to ensure that landowners cannot avoid LVS liability.

### ***Rate of LVS***

The economic appraisal undertaken by Indecon has been helpful in developing the design of the measure, including the potential the rate of LVS, with the intention that the total contributions secured by the State, when combined, should not generally exceed 50% of the total value uplift.

It is important to note that the analysis undertaken by Indecon is based on assumptions and an incomplete data set given the lack of recorded data on land values.

Indecon have advised that the measure will result in significant increased revenues for local authorities. They have also advised that there is the potential for any new LVS to lead to local authorities capturing a significant portion of the total combined uplift from zoning and planning permission, when Part V social and affordable housing obligations and development contributions are applied in respect of the latter, and in certain circumstances, this could be in excess of 50% subject to site-specific factors.

Acknowledging the data gaps and the lack of certainty in respect of the amount of the overall uplift which is linked to the original zoning decision, it is however noted that LVS will be based on valuations relating to the existing and market value of the land, as opposed to either asking or sales prices, as relied upon by Indecon for the evidence base.

The actual uplift in value that results from a decision to zone land and the subsequent decision to grant permission for the development of that land will vary from one site to another, dependent on the particular site-specific factors. As such, it is not possible to draw a definitive conclusion as to the extent of uplift in land values which results from zoning and that which results from the subsequent grant of permission.

However, having regard to the data which was gathered by Indecon, including evidence regarding the amount of the overall uplift potentially attributable to the zoning decision, and the policy objective of seeking to maximise the ability for the State to secure a reasonable proportion of the uplift, in the exigencies of the common good, the rate of LVS is proposed to be up to 30% based on valuations relating to the existing and market value of the land.

The proposals also include a mechanism whereby the Minister may, with the approval of the Houses of the Oireachtas, amend the rate having regard to a range of rates being not lower than 20% and not higher than 30% of the difference between EUV and MV.

### ***Securing the obligation***

As outlined above, a landowner may discharge the obligation at any point after the valuations have been submitted to the planning authority, acting as a credit against the land. Where a landowner does not make an early payment, the obligation must be discharged in connection with the grant of permission for development on the land, having regard to the exemptions outlined above.

Where an application for permission is submitted in respect of land which is zoned for residential development or for mixed use including residential, or within a Candidate UDZ, UDZ or SDZ but a self-assessment of EUV and MV has not been submitted in advance, the land will be treated as being land in scope for LVS from the date of the application. The planning authority may either require the submission of the valuations in connection with the application (by the landowner), or it may undertake the assessment and enter the valuations on the register.

The LVS obligation will be captured by way of a condition attached to any relevant grant of planning permission, unless it has been paid in advance, which shall state that it must be paid prior to commencement of development, unless otherwise agreed by the relevant planning authority. The planning authority may also agree to accept land or the undertaking of works to offset the financial obligation.

Where a valuation appeal is outstanding on the date of grant of a relevant permission, the condition attached to the permission will reflect the valuation entered onto the Register at that point in time, subject to a lesser or greater amount being payable pursuant to the decision of the Tribunal.

### ***Lead-in to operation of the measure and transitional arrangements***

The measure will come into effect in respect of applications lodged from December 2024. However, an additional 1 year lead-in is proposed in respect of lands which transacted prior to 21 December 2021 (when the General Scheme was published), with applications lodged in respect of these lands after December 2025 being liable.

Commercial and industrial zonings will fall into scope from March 2026 and applications lodged from December 2026 will be required to make LVS contributions.

The timelines for implementation will facilitate a balanced and proportionate approach, which allows landowners to bring land forward for development in advance of the dates so as to avoid liability, whilst ensuring that the measure is generally applicable over time to all landowners benefitting from the uplift in land values arising from the zoning of their land for development.

### ***Conclusion***

The increased revenue to local authorities will be available to provide infrastructure to support housing and other development. This will result in improved delivery of infrastructure and land to support housing and other development as a result of increased revenue to the local authority, and could increase housing supply as a result. Local authorities will record the valuations and contributions on the LVS register and will be required to report on how contributions are spent in connection with the provision of public

infrastructure, services and facilities. The Minister will also monitor the effectiveness of the measure and report on it within 5 years of enactment.

The measure has been designed to ensure that, in so far as is possible, the valuation process is streamlined, it does not place an undue administrative burden on local authorities, and it does not impact on decision-making timelines within the planning process which would otherwise prevent the approval and commencement of development.

In light of the impact of the measure on individual property rights, a careful balance is required between constitutionally-protected property rights and the exigencies of the common good. Notwithstanding the significance of the impacts, it is considered that the objectives of the measure are clearly in the interest of the common good and the impact of the measure on individual property owners is equitable, reasonable and proportionate.

Overall, it is considered that the measure is necessary, proportionate, fair/consistent, effective, and will operate with transparency and accountability.

### **B. Urban Development Zones**

The designated areas are envisaged to be well-located and under-utilised urban areas, where development or redevelopment will ensure the efficient and sustainable use of land to create well-functioning and sustainable communities which integrate with their surroundings. Given the significant scale of development proposed and the need to prioritise these areas for development, they are intended to be a focus for State investment, in particular in terms of infrastructure investment.

#### ***Summary of the 2021 proposals***

The concept of UDZs as contained in the 2021 General Scheme was based on the existing provisions which relate to Strategic Development Zones (SDZs). The key differences relate to a specific focus for UDZs on areas which are under-utilised and are within or in close proximity to established settlements, in order to ensure that development responds to the compact growth objectives set out within the National Planning Framework; and the need to ensure that the key infrastructure requirements to support such developments underpin the designation and delivery of the proposals for the areas in question.

It was intended in the 2021 General Scheme that designation of these areas would be first proposed by the relevant planning authority or a development agency such as the Land Development Agency (LDA) with the agreement of the planning authority, to the Minister for Housing, Local Government and Heritage. There was then to be an initial assessment of the potential scale and quantum of development, including the infrastructure and facilities required to support such development, and an outline of associated cost of infrastructure provision, prior to Government designation. A process of public consultation

and environmental assessment was also required prior to the making of the Government Order.

Once designated, the relevant development agency was to be responsible for preparing a 'planning and delivery scheme' to set out the masterplan for the area and identify the infrastructural requirements in more detail, including any 'critical land' required for infrastructure.

This plan-led process will include a key decision making role for the planning authority and provides up-front certainty for both communities and the development sector, with post-designation fast-track planning arrangements where development proposals are submitted in accordance with an approved scheme.

Measures to ensure that speculative or premature development does not take place prior to the adoption of the scheme were also proposed and involved the imposition of restrictions on development pending the making of the planning and delivery scheme.

With regard to Land Value Sharing measures, the same principles as set out in respect of newly-zoned lands were proposed to apply to UDZs, in addition to the use of land equalisation measures and Compulsory Purchase Orders where required, in particular in connection with the acquisition of 'critical land', which have been identified as being required to facilitate development of critical infrastructure to support the overall development of the UDZ.

In terms of impacts, the 2021 proposals would result in duplication of public consultation and environmental assessment due to the requirement to undertake these processes at the initial stage prior to UDZ designation by Government, and subsequently in connection with the planning and delivery scheme. Between the designation of the area by Government Order and the adoption of the planning and delivery scheme, significant restrictions on development within the area would be in place in order to prevent premature development. The proposals included the ability for the planning authority to refuse development on the basis of prematurity; to refuse permission for the extension of duration of permissions within the area; and to reduce the period within which a planning permission could be implemented. While these measures were considered necessary to ensure that such development would not frustrate the comprehensive plan-led development of the area, they would impose a significant burden on landowners.

As the December 2021 proposals were largely based on existing SDZ arrangements, they did not include a role for the Office of the Planning Regulator (OPR) to ensure that the objectives of the planning and delivery scheme for the area were consistent with national policy. The option also did not provide the opportunity for potentially suitable sites to be identified and prioritised, with the result that there may be a delay in progressing proposals for these areas and an inability on the behalf of the Government to identify the scale of funding required.

### ***Current proposals***

Since the publication of the General Scheme in December 2021, engagement was undertaken with key stakeholders including other State agencies and the local government sector, to ensure that a robust and deliverable set of measures is developed.

Given the need to prioritise the planning and delivery of development within these areas, the main changes to the scheme since the 2021 General Scheme relate to identifying potentially suitable sites for priority, streamlining designation and plan-making processes, and facilitating early delivery of development.

In this regard, it is proposed that the Minister will, in connection with the publication of guidance issued following enactment of the UDZ legislation, request planning authorities and regional assemblies to identify potential Candidate UDZ sites. The submission of the initial proposals will involve information regarding the location of the site and indicative quantum of development and indicative infrastructure requirements. A recommendation from the Minister will be issued in respect of the proposals that are considered to be potentially suitable for Candidate UDZ designation.

The next stage involves the designation by the relevant planning authority of the land as a Candidate UDZ with a candidate UDZ planning framework as part of the adopted development plan, before approval may be sought for a Government Order to designate the area as a formal UDZ. In this regard, the proposals are a significant departure from existing Strategic Development Zones provisions, which start with the making of a Government Order, followed by the preparation of a planning scheme, which then forms part of the adopted development plan.

The planning framework will establish the key principles for development including zoning, objectives for the overall area and sub-areas, indicative quantum of development, key infrastructure requirements, critical land required for infrastructure, including that land which may be subject to Compulsory Purchase Order (CPO) if it cannot be acquired by agreement, likely infrastructure funding and delivery plan, and a phasing plan.

This approach will allow up-front consideration of the likely scale of development and associated infrastructure requirements, including costs, before the Government Order is made. It will also ensure that the appropriate level of public engagement and consultation is undertaken with landowners and other stakeholders at an early stage in the process, and that a plan-led approach is followed by incorporating the proposals into the development plan through adoption by elected members, supported by the necessary statutory assessments, facilitating certainty for an overall approach to development of the area and with oversight by the Office of the Planning Regulator.

The adoption of the Candidate UDZ framework within the development plan will also facilitate planning applications being made and assessed immediately thereafter, taking into

account the detailed objectives for the area set out within the plan, rather than being required to wait until a planning scheme has been prepared and adopted under the current SDZ arrangements. In order to prevent premature development taking place that may compromise the planned development of the area, the planning authority may refuse applications that it considers are premature, thereby frustrating the comprehensive planning of the area, or would impact on delivery of critical infrastructure. However, the other restrictions on development set out in the December 2021 General Scheme are no longer required, as the development plan as varied will facilitate applications being made and as such the impact on landowners interested in developing their land is significantly less.

This notwithstanding, there is merit in adopting the current fast-track arrangements which apply to SDZs, whereby a detailed ‘development scheme’ is prepared for some or all of the land subject of the designation. This permits the detailed masterplanning of the parts of the area that are envisaged for development and clarity around the detailed block plan layouts, building heights and design quality approach that is to be expected; and where adopted, this can provide the basis for the fast-track consenting of applications that are consistent with the scheme thereafter.

Currently for SDZs, this detailed scheme is prepared as part of the overall planning scheme prepared after the Government Order is made. However, the evidence from designated SDZs is that there has been a significant delay between the making of the Government Order and the preparation of the planning scheme, after which point there may be further delays associated with infrastructure planning and delivery. By this stage, it is often the case that changes to the adopted scheme are required and this results in further delay.

Taking the above experience of SDZs into account, and having regard in particular to the potential additional challenges for UDZs located in brownfield land where there may be a multitude of landowners and competing interests, it is proposed to provide a flexible approach to the adoption of the detailed ‘scheme’. Where a planning authority considers it appropriate, a detailed UDZ scheme for all or part(s) of the Candidate UDZ area may be prepared at the same time that the Candidate UDZ framework is incorporated into the development plan, in order to provide the more granular level of detail that is currently provided within a planning scheme for an SDZ.

Alternatively, the planning authority may decide that it is more appropriate, depending on the nature of the location, the scale of development and the likely phasing of development, to prepare the detailed UDZ scheme or schemes after the making of the Government Order. In particular, in large designated areas, the preparation of the scheme to the required level of detail at the candidate UDZ framework stage may have the potential to result in a significant delay to the preparation of the framework for adoption in the development plan, and therefore would delay the approval of planning applications within the area.

This flexible approach also allows for the iterative development of detailed schemes for parts of the UDZ area over time, rather than requiring all of the ‘schemes’ to be prepared

concurrently. This allows the planning authority to prioritise the parts of the UDZ that are of critical importance or most likely to come forward for development in the short to medium term, and to subsequently prepare detailed schemes for further areas following the phasing plan for delivery of the wider area.

Undertaking a detailed UDZ scheme to masterplan all or part of the land, whether undertaken before or after the Government Order, will facilitate fast-track consenting of compliant planning applications. This will involve public consultation, environmental assessment and the approval of the detailed scheme by elected members, with a right of appeal of the scheme to An Bord Pleanála, where the Board will consider the detail of the scheme in the context of the planning framework for the Candidate UDZ which has already been incorporated into the development plan with OPR oversight.

The approach as set out allows for an appropriate extent of consultation and recourse to appeal, without the potential for appeal of each individual development within the area of the scheme. Any delay in or legal challenge to the decision of the Board to approve the detailed scheme would not affect the potential to determine planning applications, as the planning framework embedded within the development plan will permit the vast majority of applications to be determined.

Following the designation of the Candidate UDZ in the development plan, the planning authority may request the Minister to seek Government approval to designate the site as a formal UDZ. The making of the Government Order designates the land as a UDZ and prioritises the land for funding of required infrastructure.

Land Value Sharing (LVS) will apply within Candidate UDZs as included within the adopted development plan (either by review or variation). The effect of the designation will be reflected in the market value assessment undertaken by the landowner and submitted to the planning authority for entry onto the LVS Register.

In order to ensure that the objectives of the UDZ and in particular the critical land required for infrastructure, as identified within the candidate UDZ framework incorporated into the development plan, are secured, it is envisaged that compulsory purchase of land may be required where land is not sold voluntarily by landowners for this purpose. Identification of the lands in question within the proposed review or variation of the development plan, with public consultation, will provide an early opportunity for landowners to engage with the local authority in this regard.

A provision is also included to permit the State to compulsorily acquire land where a landowner has failed to develop land, indicating that there is a market failure to develop the land notwithstanding the housing need in the area. The State may, relying on existing compulsory acquisition powers, acquire the land for housing purposes, to be developed in accordance with the core strategy in force for the area, in these circumstances.



## ***Conclusion***

Overall, it is considered that the measure is necessary, proportionate, fair/consistent, effective, and will operate with transparency and accountability.