



To: Directors of Planning in each local authority
CC: Chief Executives
Senior Planners
An Bord Pleanála
Office of the Planning Regulator
Directors of Regional Assemblies

Circular PL 13/2021

16 December 2021

**Re: (i) Planning and Development (Amendment) (Large-scale Residential Development) Act 2021 (No. 40 of 2021),
(ii) Planning and Development (Large-scale Residential Development) Regulations 2021 (SI 716 of 2021),
(iii) Planning and Development (Large-scale Residential Development Fees) Regulations 2021 (SI 720 of 2021), and
(iv) related Commencement Orders (SI 714 of 2021, SI 715 of 2021)**

I am directed by Mr Darragh O'Brien, T.D., Minister for Housing, Local Government and Heritage to advise of the commencement of the Large-scale Residential Development provisions in the Planning and Development (Amendment) (Large-scale Residential Development) Act 2021 (No. 40 of 2021), which was signed into law by the President on 14 December 2021.

The Planning and Development (Amendment) (Large-scale Residential Development) Act 2021 (Commencement) Order 2021 (SI 715 of 2021) has been signed with an effective date of **17 December 2021**. The associated and supporting Planning and Development (Large-scale Residential Development) Regulations 2021 (SI 716 of 2021), and Planning and Development (Large-scale Residential Development Fees) Regulations 2021 (SI 720 of 2021) have also been signed and come into operation on the same date. Furthermore, the Planning and Development (Amendment) Act 2018 (Commencement) Order 2021 (SI 714 of 2021) has been signed to bring section 23(4) of that Act into effect on the same date.

Copies of the Act, the Regulations and the Commencement Orders are enclosed for information.

Planning and Development (Amendment) (Large-scale Residential Development) Act 2021 (No. 40 of 2021)

The Programme for Government – Our Shared Future committed to not further extending the Strategic Housing Development (SHD) arrangements beyond their expiry date of 25 February 2022. Action 12.3 of Housing for All also commits to the introduction of a new planning process for Large-scale Residential Developments to replace the SHD process.



The main purpose of the Planning and Development (Amendment) (Large-scale Residential Development) Act 2021 is to restore the two-stage planning process, with decision making for Large-scale Residential Development (LRD) type applications returning to the local planning authority in the first instance, with the subsequent right of appeal to An Bord Pleanála (the Board), thereby delivering on the above commitments in the Programme for Government and in Housing for All.

The Act also provides two non- LRD specific provisions as follows:

- Section 6 amends section 50A of the Planning and Development Act 2000 to provide that any party to a judicial review challenge may apply to have a High Court Judgement referred directly to the Supreme Court, by-passing the Court of Appeal.
- Section 7 provides that the housing strategy prepared by a local authority shall take into account the need to ensure that home ownership as a tenure type is provided for and estimated in it's housing strategy.

See **Appendix 1** below for a summary of the new LRD planning arrangements.

See **Appendix 2** for a summary of the provisions of the Act.

Planning and Development (Amendment) (Large-scale Residential Development) Act 2021 (Commencement) Order 2021 (SI 715 of 2021)

As indicated above, this Commencement Order has now been signed by the Minister, with an effective date of 17 December 2021, and brings all sections of the Act, with the exception of section 17(6), into operation.

Planning and Development (Amendment) Act 2018 (Commencement) Order 2021 (SI 714 of 2021)

This commencement order brings section 23(4) of the Planning and Development (Amendment) Act 2018 into operation on 17 December 2021.

Section 23(4) of the Planning and Development (Amendment) Act 2018 amends section 34 of the Planning and Development Act 2000 by substituting the following for subsection (5):

“(5) The conditions under subsection (1) may provide that points of detail relating to a grant of permission be agreed between the planning authority and the person carrying out the development and, accordingly—

(a) where for that purpose that person has submitted to the planning authority concerned such points of detail, then that authority shall, within 8 weeks of those points being so submitted, or such longer period as may be agreed between them in writing, either—

(i) reach agreement with that person on those points, or

(ii) where that authority and that person cannot so agree on those points, that authority may—

(I) advise that person accordingly in writing, or



(II) refer the matter to the Board for its determination,

and, where clause (I) applies, that person may, within 4 weeks of being so advised, refer the matter to the Board for its determination,

or

(b) where none of the events referred to in subparagraph (i) or in clause (I) or (II) of subparagraph (ii) occur within those 8 weeks or such longer period as may have been so agreed, then that authority shall be deemed to have agreed to the points of detail as so submitted.”.

Planning and Development (Large-scale Residential Development) Regulations 2021 (SI 716 of 2021)

The Regulations supplement the large-scale residential development provisions in the 2021 Act and prescribe the detailed procedural and administrative arrangements relating to proposed large-scale residential developments (LRDs). They set out requirements for prospective applicants, planning authorities and the Board and include the prescribed new forms for pre-application consultation stage and planning application stage. The Regulations come into operation on 17 December 2021.

See **Appendix 3** for a brief summary of the provisions in the Regulations.

Planning and Development (Large-scale Residential Development Fees) Regulations 2021 (SI 720 of 2021)

These Regulations introduce a separate fee structure for LRDs in the Planning and Development Regulations 2001, as amended, for the payment of LRD related fees to planning authorities.

They amend Section 2 of Schedule 9 of the Planning and Development Regulations 2001, as amended (the Principal Regulations) by inserting new fees payable to the Planning Authority with regard to LRD:

- Pre Application Consultations, and
- Planning applications,
 - outlining
 - Fee to be applied per residential unit
 - Fee to be applied per square metre of non-residential use
 - Submission of environment reports

They regulations amend Section 3 of Schedule 9 of the Principal 2001 Regulations to insert a maximum fee payable for LRD applications and to increase the maximum amount payable for an application listed in Article 161 of the Principal Regulations.

Any enquires in relation to this Circular can be emailed to planning@housing.gov.ie



A handwritten signature in black ink, which appears to read 'Terry Sheridan'.

Terry Sheridan

Principal

Planning Policy and Legislation

Enclosures:

1. Planning and Development (Amendment) (Large-scale Residential Development) Act 2021 (No. 40 of 2021)**
2. Planning and Development (Large-scale Residential Development) Regulations 2021 (SI 716 of 2021)
3. Planning and Development (Large-scale Residential Development Fees) Regulations 2021 (SI 720 of 2021)
4. Planning and Development (Amendment) (Large-scale Residential Development) Act 2021 (Commencement) Order 2021 (SI 715 of 2021)
5. Planning and Development (Amendment) Act 2018 (Commencement) Order 2021 (SI 714 of 2021)

** Please note that a final copy of the Bill as passed by both houses is attached. The final version of the Act (No. 40 of 2021) is still being prepared following the President's signature. The official version will be available on the Irish Statute Book (www.irishstatutebook.ie) in the coming days. The text of the Act will be the same.



Appendix 1- The LRD arrangements

The LRD arrangements can be summarised as follows:

- The definition of Large-scale Residential Development (LRD) is largely similar to Strategic Housing Development (SHD), i.e. developments of 100 housing units or more, or student accommodation developments comprising 200 bed spaces or more, or a combination of same. The two main changes under the new LRD arrangements will allow for:
 - Up to 30% of the gross floor space of the proposed development to be for other uses, instead of the 15% cap under the SHD arrangements.
 - Mixed developments combining housing and student accommodation to be classified as an LRD where the threshold is met for either element.
- The new LRD arrangements comprise three stages– pre-application consultation stage, planning application stage and appeal stage.
- In order to proceed to make an LRD planning application, an LRD opinion, issued within the last 6 months, is generally required further to the pre-application consultation stage.
- The pre-application consultation stage involves two steps in the majority of cases; firstly, the applicant will be required to seek standard pre-application consultation as currently mandated for developments of this scale under section 247 of the Planning Act.
- At that first stage of the process, the planning authority may, within 4 weeks of the receipt of the pre-application consultation request, either arrange the section 247 consultations or, for LRD proposals which propose to amend previously permitted LRDs or SHDs, the planning authority may make a determination under the new section 247(7) that, as the proposed development is substantially the same as the previously permitted development, further pre-application consultations are not required in respect of the development.
- In cases where the initial section 247 pre-application consultation meetings have been held, the second step in the pre-application consultation process involves an “LRD meeting” with the relevant planning authority for the purpose of receiving an “LRD opinion” as to whether the proposals constitute a reasonable basis for submitting an LRD planning application.
- Specified documentation is required to be submitted by the developer/ prospective applicant relating to the proposed development with their LRD meeting request, including a site location map, a draft layout of the proposed scheme, details of the proposed house types and design, the housing density, building heights, vehicular access, open space provision, integration with surrounding land uses etc.
- Streamlined timelines are provided as part of this new process with planning authorities required to complete the LRD meeting and LRD opinion process within 8 weeks of the request for such meeting from the developer i.e. 4 weeks to hold the LRD meeting with the developer followed by 4 weeks for the planning authority to issue an LRD opinion



on whether the proposals constitute a reasonable basis for submitting a planning application on the LRD proposals.

- The LRD opinion, or determination under section 247(7), will be valid for 6 months and allows the developer to progress to application stage i.e. a planning application must be submitted within 6 months of receipt of the LRD opinion. Otherwise, the developer must re-commence the pre-application consultation process again.
- It is intended that the detailed LRD pre-application consultation arrangements will minimize the need for “further information” requests at the subsequent planning application stage.
- Once an LRD planning application is submitted to the planning authority, members of the public, prescribed bodies and elected local authority members will be able to make submissions on a proposed development to the planning authority in the same manner as currently applies in respect of standard section 34 planning applications submitted to the planning authority.
- The Regulations provide that the developer must make the application documentation available for public viewing on a dedicated website set up for this purpose, this for the purpose of enhancing transparency and public participation in the LRD process.
- Planning authorities will generally be required to determine LRD planning applications within 8 weeks of receipt, except where “further information” is required.
- Requests for further information by local authorities on LRD planning applications may only be sought once and only in relation to in relation to matters of technical or environmental detail, or both, that were unforeseen at the time of the LRD opinion and the time of lodging the LRD application, or new matters raised during the LRD planning application public participation process.
- If an LRD decision is appealed to the Board, the Board will be required to determine the appeal within 16 weeks of receipt, again with similar limited scope for “further information” requests.
- A penalty, payable to the developer, will apply to both the planning authority (3.5 times the application fee paid or €10,000, whichever is the lesser) and the Board (€10,000) for late decisions on LRD planning applications or LRD appeals.
- The Act also includes a number of transitional arrangements in relation to the expiry of the SHD arrangements and their replacement by the new LRD arrangements. Under the Act:
 - SHD prospective applicants/ developers already in receipt of an SHD opinion under the SHD arrangements on the commencement of the Act (17 December 2021) will have 16 weeks to submit an SHD application to the Board from the 17 December 2021.
 - SHD prospective applicants/ developers who have formally commenced consultations with the Board and are awaiting an SHD opinion on the



commencement of the Act (17 December 2021) will have 16 weeks to submit an SHD application to the Board from the date of receipt of the SHD opinion.



Appendix 2- Planning and Development (Amendment) (Large-scale Residential Development) Act 2021 (No. 40 of 2021)

Section 1- Definitions

This section contains definitions of terms used in the Act.

Section 2- Amendment of section 2 of Principal Act

Section 2 inserts new definitions into the Planning and Development Act 2000 (Principal Act) including—

‘large-scale residential development’, which is defined to mean a development that includes—

- (a) the development of 100 or more houses,
 - (b) the development of student accommodation that includes 200 or more bed spaces,
 - (c) both the development of 100 or more houses and of student accommodation, or
 - (d) both the development of student accommodation that includes 200 or more bed spaces and of houses,
- where the LRD floor space of—

- (i) in the case of paragraph (a), the buildings comprising the houses,
- (ii) in the case of paragraph (b), the student accommodation,
- (iii) in the case of paragraphs (c) and (d) the buildings comprising the houses and the student accommodation,

is not less than 70 per cent, or such other percentage as may be prescribed, of the LRD floor space of the buildings comprising the development, and

‘LRD floor space’, which is defined to mean, in relation to a building or part of a building, the area ascertained by the internal measurement of the floor space on each floor of a building or part of a building (including internal walls and partitions), disregarding any floor space provided for—

- (a) the parking of vehicles by persons—
 - (i) occupying or using the building or the part of the building,
 - (ii) for a purpose incidental to the primary purpose of the building or part of the building, and
- (b) ancillary residential services, including gyms and child-care facilities.

Section 3- Insertion of sections 32A to 32G into Principal Act

Section 3 inserts new sections 32A to 32G into the Principal Act to set out the process regarding the mandatory two-step pre-application consultation arrangements for large-scale residential developments and provides that:

- Section 32A - A person who intends to submit an LRD planning application on land that is not located in a strategic development zone and the zoning of which facilitates its use,



must be in receipt of an LRD opinion or a section 247(7) determination (see section 14 of the Act), issued by the planning authority not more than 6 months prior to submitting the application and the planning authority shall refuse to consider such an application that fails to comply with this criteria.

- Section 32B – Following the initial mandatory consultations under section 247 of the Principal Act, a prospective LRD applicant can proceed to request a meeting with the planning authority in whose area the proposed development would be situated and this meeting is referred to as an LRD meeting. This section also sets out the detailed documentation required to be submitted in respect of such a meeting request, as well as the type of information that may be prescribed by the Minister in this regard.
- Section 32C - The planning authority must hold an LRD meeting within 4 weeks of receipt of the request made to it. The meeting should be attended by planning authority officials with a sufficient level of relevant knowledge and expertise in the matter concerned as well as the prospective LRD applicant and/ or their representative. The planning authority must keep a written record of the meeting, which shall only be made publically available when an LRD planning application in respect of that development is subsequently made.
- Section 32D - The planning authority must issue an LRD opinion within 4 weeks of the LRD meeting taking place and in doing so, specify whether or not the documents submitted for the purposes of the LRD meeting constitute a reasonable basis on which to make an application. Where necessary, the LRD opinion must outline the issues with the documentation submitted and the issues that, if addressed, could result in the documents constituting a reasonable basis on which to make an LRD application.
- Sections 32E - The undertaking by a planning authority of actions under the LRD procedures shall be without prejudice to the performance by the planning authority of other functions under the Act and cannot be relied upon in the formal planning process or in legal proceedings.
- Section 32F - A person shall not question the steps taken by a planning authority under the LRD procedures by reason only that they were not completed on time.
- Section 32G - It shall be an offence for a planning authority official to seek benefit in relation to the provision of an LRD opinion.

Section 3 also contains regulation-making powers for the Minister in respect of the LRD meeting and the LRD opinion.

Section 4- Amendment of section 33 of Principal Act

This section provides a regulation making power for the Minister in relation to planning authority “further information” requests.

Section 5- Amendment of section 34 of Principal Act

This section amends section 34 of the Principal Act to provide that:

- The planning authority shall notify the elected members of the receipt of an LRD planning application.



- When considering applications for amendments to previously approved SHDs or LRDs, the planning authority shall be limited to solely considering the proposed modifications to the previously permitted development and not to reconsidering the original application again in combination with the proposed new modifications.

Section 6- Amendment of section 50A of Principal Act

Section 6 amends section 50A of the Principal Act to provide that any party to a judicial review challenge in the High Court may apply to appeal the High Court judgement and have the appeal referred directly to the Supreme Court, bypassing the Court of Appeal.

Section 7- Amendment of Part V of Principal Act

Section 7 provides that the housing strategy prepared by a local authority, shall take into account the need to ensure that home ownership as a tenure type is provided for and estimated in its housing strategy.

Section 8- Insertion of sections 126A and 126B into Principal Act

This section inserts new sections 126A and 126B into the Principal 2000 Act to provide mandatory timeframes for the Board to decide LRD appeals and provides:

- Section 126A - Where no oral hearing is required on an LRD appeal, such appeal should be decided in 16 weeks or, where an oral hearing is deemed to be required, within such period as may be prescribed by the Minister in regulations. It also sets out the timeframes for deciding LRD appeals when further information (FI) is requested. These provisions are based on the pre-existing timeframes for planning authorities when dealing with FI requests i.e. the appeal shall be generally be determined within 4 weeks of receipt of the requested FI or within 8 weeks of the requested FI where it relates to an environmental impact assessment report or a Natura impact statement.
- Section 126B- The Board shall continue to determine LRD appeals notwithstanding that the LRD appeal timeframe has expired. In such circumstances, the Board should notify the parties to the appeal, why it is not possible to determine the appeal on time and when the appeal will be determined. A €10,000 penalty shall be payable to the applicant for permission (i.e. the developer) where the Board fails to meet the LRD appeal timeframes in 126A.

Section 9- Amendments consequential to section 8

Section 9 provides amendments consequential to section 8 regarding timeframes for the Board's decision throughout the Principal Act.

Section 10- Amendment of sections 131 and 132 of Principal Act

This section amends sections 131 and 132 of the Principal Act to provide that the Board, when determining an LRD appeal, shall not use the provisions set out in these sections for seeking additional information from the applicant for permission.



Section 11- Amendment of section 142 of Principal Act

This section provides a regulation making power for the Minister in relation to the Board's further information requests in respect of LRD appeals.

Section 12- Amendment of section 146B of Principal Act

Section 12 amends section 146B of the Principal Act to provide that proposals for alterations to SHD planning permissions shall no longer be submitted to the Board under section 146B and shall instead be submitted to the relevant local planning authority for determination.

Section 13- Amendment of section 156 of Principal Act

Section 13 amends section 156 of the Principal Act to add the offence created in 32G of the Bill (i.e. planning authority official seeking benefit in respect of the provision of an LRD opinion) to the penalty provisions in section 156 of the Principal Act.

Section 14- Amendment of section 246(1)(d) of Principal Act

This section provides the power to prescribe fees in relation to the provision of an LRD opinion by way of regulations. Under section 262(4) of the Principal Act, such regulations (which will also address LRD pre-application consultation and planning application fees) require the approval of both Houses of the Oireachtas before they can be signed into law by the Minister.

Section 15- Amendments to section 247 of Principal Act

Section 15 amends section 247 of the Principal Act to extend the mandatory consultation requirement for all developments of 10 houses or more under section 247(1A) to the development of student accommodation complexes that include 200 or more bed spaces. This section also provides that the written record of a meeting under section 247 shall only be made publically available if an LRD planning application in respect of the proposed development is subsequently made.

This section provides for the insertion of a new subsection 247(7) into the Principal Act. Section 247(7) provides that for an application that proposes to amend an already approved SHD or LRD scheme, the planning authority may determine that pre- application consultations under section 247 and the LRD opinion of the planning authority are not required in cases where the proposed development is substantially the same as the previously permitted development.

Section 16- Construction of the Fourth Schedule (reasons for the refusal of permission which exclude compensation) to Act of 2000

Section 16 amends the SHD Act of 2016 to provide for the temporary compensation exclusion for SHD applications in the Fourth Schedule of the Principal Act to be maintained so that it applies to all pending SHD decisions, including those to be decided in accordance with the transitional provisions of the Bill.

Section 17- Repeal and transitional measures



This section provides the necessary repeal and transitional arrangements in respect of the winding-up of the SHD arrangements and provides as follows:

- Section 4(1) of the 2016 Act (relating to the submission of SHD planning applications to the Board) is repealed subject to some exclusions.
- The exclusions to the above repeal provision allow for proposed SHD developments which are already in the SHD system (i.e. have requested an opinion or have already received an opinion but not submitted an SHD planning application) on commencement of the Act to continue as though the section had not been repealed, subject to the below timelines.
 - Proposed SHD developments which have already been the subject of an SHD opinion from the Board on the commencement of the Act will have 16 weeks to submit an SHD application from the date of commencement of the Act.
 - Proposed SHD developments in respect of which an SHD opinion is awaited from the Board on the commencement of the Act will have 16 weeks to submit an SHD application from the date of receipt of the opinion.

Section 18- Short title, construction, collective citation and commencement

This section contains standard provisions dealing with the short title, construction, collective citation and commencement of the Bill.



Appendix 3- Main provisions of the Planning and Development (Large-scale Residential Development) Regulations 2021 (SI 716 of 2021)

Article No.	Title	Main Provisions
1	Citation	
2	Commencement	17 December 2021
3	Interpretation	
4	Pre-Application consultations for LRD	Inserts a new Article 16A into the Principal Regulations to prescribe the form for request for pre-application consultation (s. 247 and s .32B consultations), including the detailed documentation/ information to be submitted with the form
5	Notice in Newspaper	Amends Article 18 of the Principal Regulations to provide that a newspaper notice must indicate if the application relates to a LRD and include the web address referred to in article 20A
6	Additional requirements for an LRD application	Inserts a new Article 20A which provides that the applicant must put details of an LRD planning application, etc., up on a dedicated website for viewing by the public.
7	Content of planning applications generally	Amends Article 22 of the Principal Regulations to provide that an LRD application must in addition to Form No. 2 include Form No. 19 also.
8	Procedures on receipt of a planning application	Amends Article 26 of the principal Regulations to provide that the planning authority shall make all planning applications available for inspection at its offices.
9	Weekly list of planning applications.	Amends Article 27 of the Principal Regulations to provide that the weekly lists should indicate if an application relates to an LRD
10	Weekly list of LRD pre-application consultations and LRD meetings	Inserts a new Article 27A in the Principal Regulations to provide for the inclusion in planning authority weekly lists of the receipt of LRD meeting requests and the issuing of LRD opinions.
11	Further Information	Amends Article 33 of the Principal Regulations to outline the arrangements and procedures in relation to the seeking of further information by planning authorities in respect of LRD planning applications



12	Board's weekly list	Amends Article 72 of the Principal Regulations to provide that the Boards weekly lists should indicate if an appeal relates to an LRD
13	LRD Appeal- Further Information	Inserts a new Article 73A to the Principal Regulations to outline the arrangements and procedures in relation to the seeking of further information by the Board in respect of LRD appeals.
14	Oral Hearing of the Board	24 weeks is prescribed for a decision on an LRD appeal from the date of receipt of an appeal if an Oral Hearing is held.
15	Additional Forms	Inserts new LRD related forms into the Principal Regulations
Schedule to the Regulations		
Schedule	<p><u>Form No. 18:</u> Form of request to a Planning Authority to enter into consultations in relation to a proposed large scale residential development</p> <p><u>Form No. 19:</u> Form to be included with an application for permission for a Large-scale Residential Development</p>	<p>Application for section 247 pre-application consultation or LRD meeting</p> <p>Supplementary information to be included with Form no. 2 when applying for LRD</p>