



Participation in the Public Consultation on a holistic planning reform

August 2025


OMBUDSMAN
COMMISSIONER FOR ENVIRONMENT AND PLANNING

GENERAL PROPOSALS

SUSPENSION OF DEVELOPMENT PERMISSIONS PENDING APPEALS

In October 2023, following the publication of a discussion paper, the Commissioner issued proposals concerning the suspension of the executability of development permissions.

These included:

- The establishment of a new Tribunal panel to specifically handle third-party appeals without impacting the timeframe of other appeals;
- Granting third parties the right to appeal other authorisations, including regularisations;
- Introducing a reward mechanism for successful third-party appellants.

Despite these recommendations, and although the Commissioner was neither involved in the drafting process nor consulted, the proposed legislative bills failed to incorporate them. Instead, the bills include several inequitable and potentially oppressive measures, including:

- 1. Unequal Appeal Periods:** The introduction of differing timeframes for various types of appeals, with third-party appeals subject to significantly shorter periods, risks creating an uneven playing field.
- 2. Unrealistic Deadlines for Appeal Decisions:** Imposing strict deadlines on the Tribunal for deciding appeals

is presumptuous, especially given that the Planning Authority often exceeds its 100-day decision limit by more than 180 days at first instance.

3. Inconsistent Appeal Procedures:

Appeals against enforcement notices should also be determined within fixed timeframes. It is unacceptable that direct enforcement is often delayed, sometimes for years, because hearings are deferred, often due to pending sanctioning applications or applicants' failure to comply with document requests.

Additionally, the bills do not address an existing anomaly: permits revoked by the courts are sometimes reissued simply because an appellant failed to submit a new representation. All appellants to the original development should be considered interested third parties in any subsequent application.

POLICY HIERARCHY AND APPLICATION

Policy hierarchy should be based on substantive importance, not chronological order. Therefore:

- Policies and guidelines should follow Local Plans and Spatial Strategies regardless of publication dates.
- Failure to regularly update these instruments should not justify their disregard.
- Departures from plans, strategies, and policies—especially those based on technical assessments and subject to public consultation—should not be allowed arbitrarily.

The proposed bill is also inconsistent with Article 84 of the Development Planning Act in this regard.

REGULARISATION OF ODZ DEVELOPMENTS

Allowing ODZ developments to be regularised in exchange for payment of high fines is unjust and unsustainable. Unlike developments within development zones, ODZ applications involve more rigorous processing and inter-agency consultation.

Regularisation should never replace proper enforcement, particularly when a formal sanctioning process is already in place and enforcement efforts are being delayed as a result. While short-term concessions may offer temporary relief, the Commissioner strongly advocates for strengthening enforcement measures including raising the maximum fine, currently set at €50,000, to more appropriately reflect the seriousness of infringements within Outside Development Zones. Additionally, the Commissioner recommends that revenue generated from such concessions be allocated to clearly defined public benefit projects.

This approach would not only reinforce the rule of law but also contribute to shifting public attitudes away from the normalisation of irregular development.

VALIDITY OF DEVELOPMENT PERMISSIONS

The Commissioner proposes that:

- The validity and executability of development permissions should fall under the sole remit of the Building and Construction Authority (BCA).
- The gradual introduction of specific construction timeframes should be established per area to reduce the burden on affected residents.
- The assumption that a Planning Authority permit automatically grants the right to immediately commence construction should be revoked.

Prolonged construction projects are causing significant nuisance to residents. A more rational validity structure should be introduced—e.g., applying different validity periods for minor structures (like washrooms) and large-scale developments (like multi-apartment blocks).

These reforms would help address problems such as stalled appeals, overdevelopment, and neighbourhood disturbance.

SPECIFIC PROPOSALS

Amendments to the Development Planning Act

Article 2 – Shift the Commencement Notice responsibility to the Building and Construction Authority, which will confirm with the Planning Authority whether reassessment is required closer to the construction window.

Article 33(2) – Access to information should be broadened to ensure transparency and fairness, particularly regarding documents such as engineers' reports that form part of the approved plans.

Articles 38(1) / 54(1) – Introduction of alignment schemes by the Executive Council must follow standard procedures, including publication, public consultation, and review access.

Article 52 – Reinforce the principle that policy hierarchy is determined by importance, not timing.

Article 70(2) – Exclusions to the definition of development for dismantlable structures should include a proviso that these do not exceed height limitations and are not visible within 100 meters of any road.

Article 71(6) – Strict limits on representations may backfire, encouraging objectors to raise broad and excessive grounds. The bill should also allow objectors to address new issues raised by the Planning Board or Commission.

Article 72(2) – Legal commitments should be assessed based on objective, not subjective, spatial or architectural factors.

Article 72(4) – Permit validity and executability should be under the BCA, as proposed earlier.

Article 76(2) – The reconsideration period should be 20 days from publication, instead of 15 days from notification, to enhance clarity and consistency.

Article 80 – The 100-day recommendation preparation period must include clear protocols for non-compliance. The one-year expiry should commence from the publication date of the permit, not its issuance.

Article 97(11) – Stay of enforcement notices pending appeal must be time-limited, as discussed earlier.

Article 99(2) – Issues of disrepair and structural danger should fall solely under the remit of the BCA.

Article 100(4) – The total maximum fine (€50,000) should be raised—not just the daily cap.



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SPECIFIC PROPOSALS

Regularisation of Existing Development Within the Development Zone

Article 6 – Include provisions for publication, public consultation, and access to appeal the Planning Authority's decision.

Article 7 – The current minimum roofed area for residential use is 50m² according to DC2015, yet approvals have been granted for the regularisation of areas as little as 30m². Given current trends in single-occupancy living, the minimum could be reconsidered.

Article 12 – A one-year term should be imposed given that the regularisation concerns already-existing structures.

Regularisation of Development Outside the Development Zone

- Only concessions should be permitted, as proposed earlier.

Concession Regulations for Existing Illegal Development

Article 6 – Require publication, public consultation, and access to review mechanisms.

Article 7 – Approvals should mandate visual alterations (e.g., cladding, window replacement) prior to authorisation.

Article 13 – A one-year term should be imposed given that the concessions concern already-existing structures.

- Revenue from ODZ concessions should fund public benefit projects.

SPECIFIC PROPOSALS

Environment and Planning Review Tribunal Bill

Article 5(5) – The proposed 10-year term is excessive. A five-year term, renewable once, is more appropriate.

Article 6(3) – The Chairperson shall not have the power to appoint himself or any Member of the Tribunal as an appointed officer in order to avoid conflicts.

Article 21 – Decisions declaring appeals frivolous or vexatious must be open to review.

Article 29(3) – Appeal period under Part IX should be extended from 15 to 20 days for consistency.

Article 29(7) – Clarify that if a deadline falls on a weekend or public holiday, it moves to the next working day, not the next week.

Article 31 – The 5+1 month timeframe for third-party appeals is inconsistent with the 12+6 month period allowed for applicants. A balanced timeframe should be adopted.

Article 47 – The 2+1 month limit for inferior court decisions is unreasonably strict.



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