Strategic Infrastructure Planning: Making it Better

A Chambers Ireland Research Paper

CHAMBERS IRELAND
IN BUSINESS FOR BUSINESS

Contents

Executive Summary

Despite the current downturn, Ireland's strategic infrastructure requirements are significant and in serious need of investment. Telecommunications, water, energy, transport and waste are areas of strategic importance to the economic future of this country and all require continued investment and modernisation.

The OECD has consistently pointed out that infrastructure systems play a vital role in economic and social development. Increasingly interdependent, they are a means towards ensuring the delivery of goods and services that promote economic prosperity and growth, and contribute to quality of life.[1]

While significant investments were made in Ireland's infrastructure over successive National Development Plans, we still face substantial qualitative deficits in many areas. Energy, in particular, is an area where substantive progress needs to be made in order to ensure the sustainability of future supplies. Ireland has an opportunity to capitalise on its significant renewable energy resources such as those deriving from wind and wave power. However this will require a predictable planning and pricing regime for capture and delivery of energy derived from wind including a timely and fair cost model for the granting of foreshore licenses which are a vital prerequisite enabling offshore wind producers and others to deliver energy into the National Electricity Grid and to export it to other electricity markets as needed. The current situation regarding the processing of fore shore licences could be characterised as lacking in a defined process, a lack of timelines for decisions, no formula for predicting the cost for gaining such a licence. This must improve if we are to secure additional investments in this area.[2]

The quality of our infrastructure directly impacts on costs and competitiveness and is therefore a major factor in strategic planning and decision making.

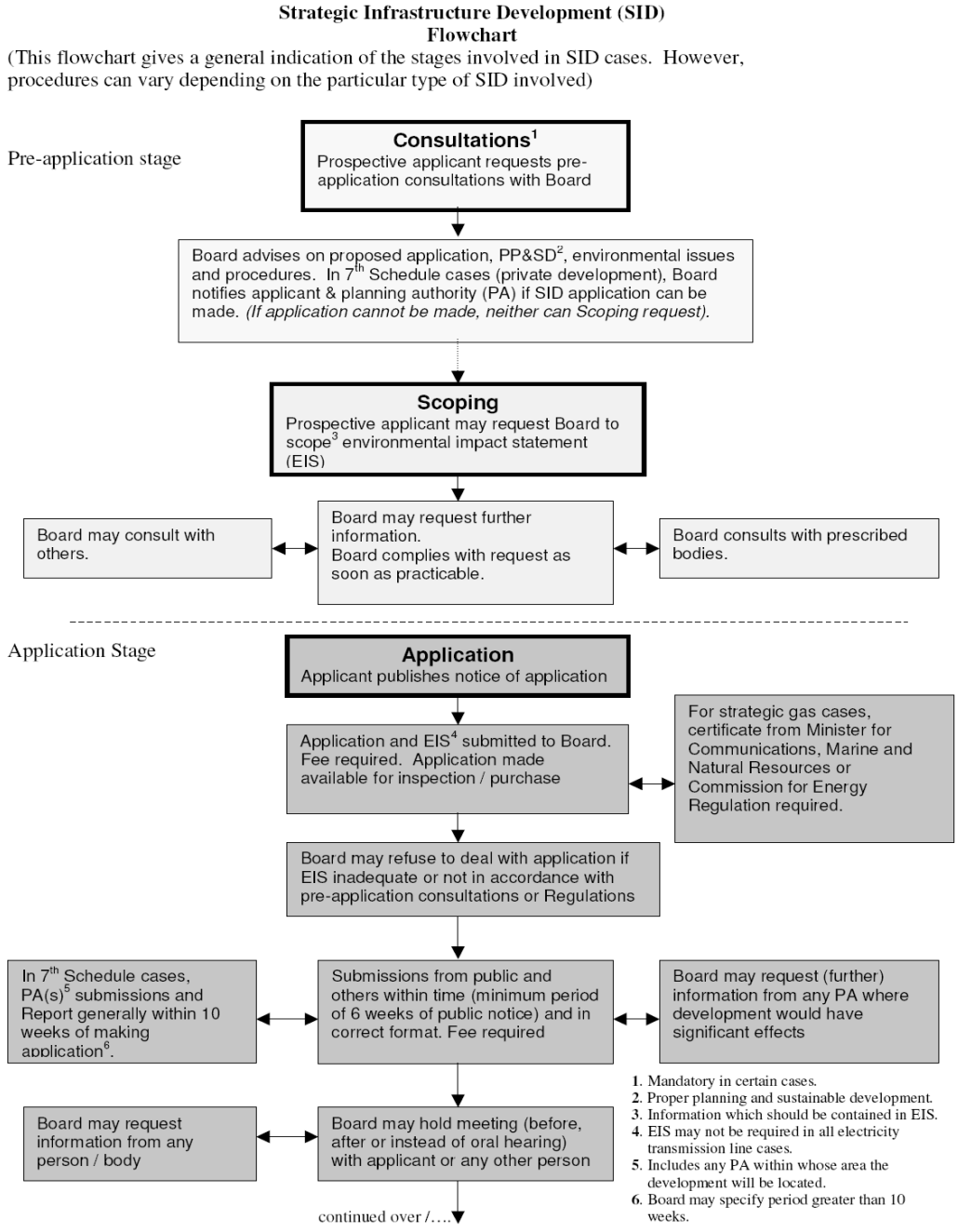
Finally, a planning regime that is supportive of strategic infrastructure investment and rollout can make Ireland a location of choice for significant investments with considerable local impact in terms of jobs and supply contracts. Given the downturn in construction witnessed since 2007 this would be very welcome in the areas affected.

[1] 'Infrastructure to 2030', *Policy Brief*, OECD: Paris,2008

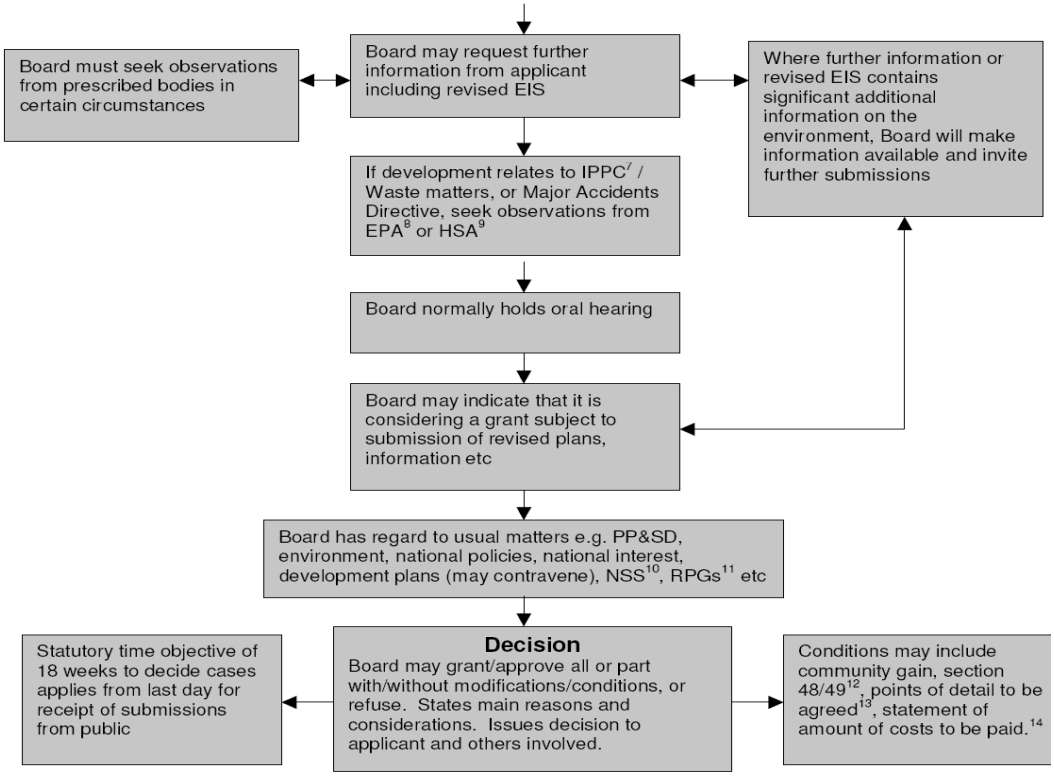
[2] A consistent challenge on the Foreshore licensing issue is that the process takes too long. See presentation by Michael Hannibal VP of Offshore Sales at Siemens at http://www.nowireland.ie/pdf/2010_michael_hannibal.pdf. A key inhibitor of wind energy is the long application process.' However we note that the new Programme for Government sets out a number of commitments relevant to the foreshores area, including the need for efficient foreshore licensing and leasing for marine energy. We understand that since the approval of the Programme, work has commenced in the Department of the Environment, Community and Local Government on drafting the General Scheme of a Bill to give effect to these commitments. It is intended that the Bill would, among other things integrate the foreshore consent processes for major infrastructure projects within the strategic consent process operated by An Bord Pleanála while the foreshore consent process for non strategic infrastructure projects would be integrated within the planning consent process operated by the local authorities.

The Current Challenge

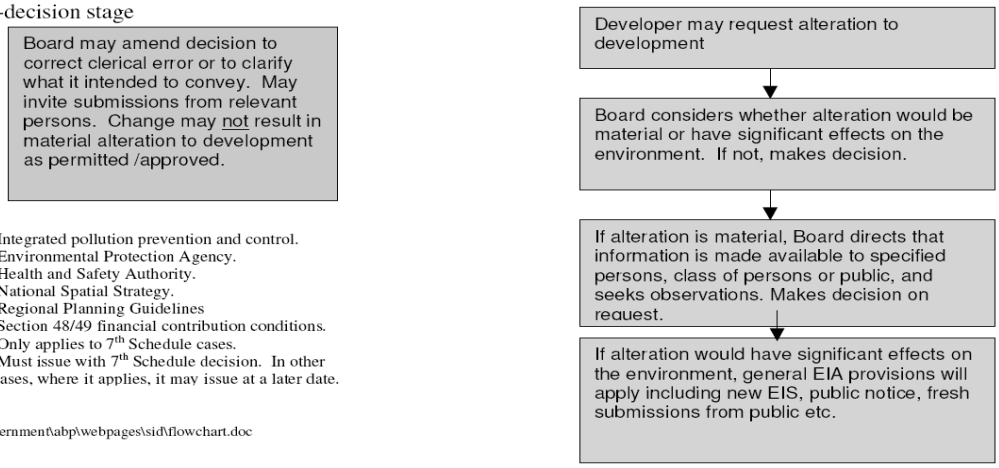
The diagram below[3] illustrates the challenge of navigating the ddecision-making process for strategic infrastructure projects in Ireland. In this document, Chambers Ireland makes a number of recommendations on how we can make the process easier, more predictable and cost effective.



[3] See: www.pleanala.ie/sid/sidflowchart.pdf



Post-decision stage



7. Integrated pollution prevention and control.
8. Environmental Protection Agency.
9. Health and Safety Authority.
10. National Spatial Strategy.
11. Regional Planning Guidelines
12. Section 48/49 financial contribution conditions.
13. Only applies to 7th Schedule cases.
14. Must issue with 7th Schedule decision. In other cases, where it applies, it may issue at a later date.

X:\government\abp\webpages\sid\flowchart.doc

Steps To a More Efficient and Transparent Planning System

Ireland's regulatory cost of capital is at present unpredictable, too high and needs to fall. Chambers Ireland makes these recommendations as part of our contribution on how we can achieve a judicious balance between community consent and the need for a cost effective and timely planning system that facilitates speedy decision making on critical infrastructure investments.

1. **Make An Bord Pleanála Fit for Purpose**
   An Bord Pleanála's core responsibility must be clarified to ensure that its role is completely focussed on adjudicating what is presented to it rather than offering an opportunity to redefine or redesign proposals. It should also offer greater transparency in providing feedback and direction on planning process decisions to all stakeholders.

2. **Implement Enforceable Timeframes for Decisions**
   We need greater consistency in the 18 week statutory guidelines target. There is simply not enough urgency when it comes to meeting this deadline and the negative cost effects of this on businesses are often disregarded. Recent figures indicate that the average time taken by An Bord Pleanála to process a major infrastructure appeal is 31 weeks.[4] [5]

3. **Use the Oral Hearing Process Sparingly and Standardise Procedures**
   While we welcome recent improvements of the Strategic Planning Act, the Oral Hearing process could be made more cost effective as an information gathering opportunity if it was used sparingly and as a complement to a written submission process.[6] In addition, the current rules for the conduct of Oral Hearings are not standardised and their conduct is at the discretion of the Inspector. The process, in terms of issues which can be raised, level of detail required, process of cross examination, third party and objector involvement etc. needs further clarity.

4. **Reduce the Costs of Planning Applications for Business**
   The €100,000 application fee for strategic infrastructure projects should be reduced.[7] Uncertainty and delays in the process acts as a disincentive to business and coupled with a relatively large application cost, potential investment can be lost. Given that An Bord Pleanála has the right to apply a condition of approval seeking costs from an applicant in respect of making a decision, a lower upfront fee would enable ABP to recoup its costs upon approval.[8]

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[4] The number of major infrastructure appeals received during 2008 alone was 123. The number disposed of was 47, of which 30% were disposed of within the statutory objective period. The average time taken to dispose of major infrastructure appeals was 31 weeks. *An Bord Pleanála Annual Report* 2008 (2009) p8.

[5] Applications under the Strategic Infrastructure process have unpredictable timeframes due to both the inability to time the length of the oral hearings process of consultation and the fact that ABP is the sole arbiter in the process. S37 appeals occur where a decision of a planning authority is being appealed. However the rate of compliance with the 18 week statutory guidelines target was 80% at the end of February 2011.

[6] We note that Section 43 of the Planning and Development (Amendment) Act 2010 which was enacted in July 2010 amends section 135 of the Principal Planning Act to restrict the agenda of issues which may be considered during oral hearings of all cases before the Board.

[7] http://www.rtpi.org.uk/download/7775/Public-Part-Planning-BH-Nov-2009.pdf, see slide 11

[8] Furthermore The Planning and Sustainable Development (Amendment) Act 2010 allows ABP to charge developers additional costs on top of the EUR100k

5. **Improve Coordination Between Government and Private Sector Infrastructure Providers in the Project Development and Scoping Stages**
   A fresh approach is needed to the way government does business with the private sector to meet the State's infrastructure requirements. There must be greater emphasis on the removal of barriers to private sector investment and the proper structuring of projects to ensure best practice outcomes for the State. Processes should aim to minimise transaction costs for the private sector, consistent with the need for attention to be given to requirements for competition, regulation or service standards.[9]

6. **Enable Longer Planning Permissions Periods**
   While, subject to certain conditions, sections 28 and 29 of the Planning and Development (Amendment) Act 2010 provide for the extension of permission (for a period of up to 5 years), this should be extended.[10]

7. **Review the Third Party Appeals System**
   Greater priority should be placed on third parties who can demonstrate that they may be potentially directly affected by a proposed development. If a party raises an issue that does not directly affect them, then it should not be considered by An Bord Pleanála. This would greatly reduce the number of 'principle' objections. We recognise that this change may give rise to constitutional issues which will need to be clarified.

8. **Develop a Strong Governance Process**
   Good governance leads to the development and management of consistent, cohesive policies and decisions regarding the infrastructure planning for the state.[11] The re-establishment of an Independent Advisory Body for Strategic Infrastructure Projects, similar to An Foras Forbatha which was wound up in 1998, could ensure more long-term thinking about Ireland's infrastructure needs, and in particular how it can best be translated into land use patterns – for example the creation and identification of spatial infrastructure corridors that can be incorporated into a Development Plan Review with appropriate policies for realisation of such corridors.[12] A Joint Oireachtas Committee for Strategic Infrastructure could also generate greater input from our elected officials.

   Similarly, the provision of a 'one stop shop' for permitting strategic infrastructure is required. Much of the current difficulty with the delivery of large strategic infrastructure projects relates to the multiplicity of state agencies involved and permits required. The permits often overlap in terms of items of responsibility, and confusion frequently arises over the role of An Bord Pleanála versus other agencies (commonly the EPA, DoEHLG, DCENR, Energy Regulator etc). The

[9] For a good example see http://www.infrastructure.sa.gov.au/strategic_infrastructure_plan/discussion_paper
[10] No time-limit applies for permissions granted for projects under the Strategic Infrastructure Act.
[11] See 'Integrated Infrastructure Planning - A New Way Forward', p3, Saha International, (2007), Sydney.
[12] The Irish Planning Institute has also called for the re-establishment of such an agency. See http://www.irishplanninginstitute.ie/images/uploads/planningcensus0706-issue.pdf p8.

Strategic Infrastructure Division of An Bord Pleanála was established to provide the “one stop shop” service referred to for all land use planning. Under the SI Act it assumed responsibility for consents previously authorised by the various planning authorities, and the Ministers for Transport, Communications, Energy & Natural Resources. Further rationalization of the development consent processes needs to take place in the context of the drafting of the new planned legislation that will seek to integrate the foreshore consent process within the wider planning system.

Finally, strategic Infrastructure legislation is only one component of the decision making system. It should also reinforce that decision making also requires a coherent set of policies in the relevant areas of infrastructure, environment and economic planning to act as a platform upon which reasonable and far sighted decisions can be made.

Introduction

"Efficient infrastructure is essential to driving sustainable economic development and growth, lifting levels of productivity and boosting employment. It provides the foundation for vital community services such as schools, hospitals and housing. It is how high standards of living can be achieved".[13]

Our planning system is central to delivering this in Ireland. Despite legislative changes in recent years, it is still characterised by uncertainty and protracted and costly delays. The knock-on effects of this in terms of Ireland's infrastructure deficit and the consequent impact on national economic development is significant.

Ireland still has a comparatively large infrastructural deficit. Every delayed decision costs the public and private sectors dearly, and with tight fiscal resources in both sectors, the negative consequences of planning delays are exacerbated.

Chambers Ireland acknowledges that there is no perfect or ideal planning system where satisfaction is the norm rather than the exception. Strategic infrastructure, by its very nature of being large, is always going to have its opponents. Our planning process, should seek to inculcate consistency and certainty into its core operations. Unfortunately, Ireland's planning system is a conflict-driven process. We need a system that is transparent and efficient while at the same time achieves a sustainable balance between the concerns of individuals/communities and the national greater good.

One of the main criticisms of planning systems is the lack of coordination in the delivery of necessary infrastructure to support proposed development.[14] This has been a notable feature of the Irish system. The enactment of the Planning and Development (Strategic Infrastructure) Act 2006 sought to remedy the outstanding issues pertaining to this particular area of planning, but more wide-scale reform is needed.

Ireland's evolving demographic profile will also put increasing strain on our strategic infrastructure and further urbanisation will require more investment. Globalisation and the emergence of new markets and new players are lengthening supply chains and consequently exacerbating congestion around key ports, airports and transit corridors.[15]

A more composite approach from all of the relevant authorities than is presently the case is urgently needed. The sooner this is achieved, the greater the speed with which Ireland's infrastructural capital will improve.

[13] See: Statement by Sir Rod Eddington, Chair of Infrastructure Australia
http://www.infrastructureaustralia.gov.au/files/A_Report_to_the_Council_of_Australian_Governments.pdf
[14] See: Baker, M. & S. Hincks, (2009), 'Infrastructure Delivery and Spatial Planning: The Case of English Local Development Frameworks', *Town Planning Review*, 80(2), 176.
[15] OECD, (2008), 'Infrastructure to 2030', *Policy Brief*, OECD: Paris.

The Role of Strategic Infrastructure in Economic Recovery

The importance of having a modern infrastructure for both economic recovery and to facilitate ongoing sustainable development cannot be overstated. It is accepted internationally and in Ireland that adequate infrastructure is an essential prerequisite for competitiveness. Forfás have outlined that the coming decades are likely to see an emphasis placed on the importance of infrastructure development.[16] Pointing to research already carried out by the OECD in this area,[17] Forfás notes that infrastructure development will provide a vital tool in resolving some of the major challenges faced by societies, including supporting economic growth, meeting basic needs and facilitating mobility and social interaction.

In Ireland, infrastructure accounts for around 4-5% of the economy-wide value-added.[18] It has a real impact upon business competitiveness and efficiencies. Energy, transportation and waste costs are dependent upon a decent infrastructure system.

However, to achieve infrastructural quality comparable with the best in the developed OECD countries and to support Ireland's growing population, it is imperative that medium to long-term infrastructural planning takes place.[19] The importance of this is underscored by the fact that infrastructure in Ireland is well below other comparable EU nations such as Finland and Belgium even though Ireland is not far behind in the per capita income comparisons table.[20]

While an economic recovery might happen regardless of planning decisions, the chances of long-term, sustainable success are greatly increased through a strategically aware and robust planning system. Planning needs to be seen and positioned at the forefront of providing long-term strategic, holistic and sustainable solutions to our present economic predicament, in the interests of the common good. It has to become a central plank of any strategy for recovery, not a reactive obstacle which simply becomes a distraction or a hindrance. For the island of Ireland this means, in particular, reform of the planning system and delivering on the National Spatial Strategy (NSS) in particular.[21]

Ireland's attractiveness as a destination for foreign direct investment is dependent upon on a modern infrastructure. This is borne out in the World Economic Forum's Global Competitiveness Report 2009/2010 which, although based on perceptions rather than hard data, gives a good indication of how Ireland is perceived by leading business figures.

The Report states that Ireland's competitiveness globally has declined over the course of the last year, slipping three places from 22nd to 25th in the rankings. Over 10% of respondents, when asked what the

[16] Forfás, (2009), *Sharing Our Future: Ireland 2025: Strategic Policy Requirements for Enterprise Development*, available at www.forfas.ie

[17] OECD, (2007), *Infrastructure to 2030 (Volume 2): Mapping Policy for Electricity, Water and Transport,* OECD: Paris; OECD, (2006), *Infrastructure to 2030 (Volume 1): Telecom, Land Transport, Water and Electricity,* OECD: Paris

[18] Sutherland, D., Araújo, S., Balázs, É. & Kozluk, T., (2009), Infrastructure Investment: Links to Growth and the Role of Public Policies, OECD Economic Department Working Paper, No. 686, OECD: Paris, 6

[19] Irish Academy of Engineering and Engineers Ireland, (2010), *Infrastructure for an Island Population of 8 Million*, 2010

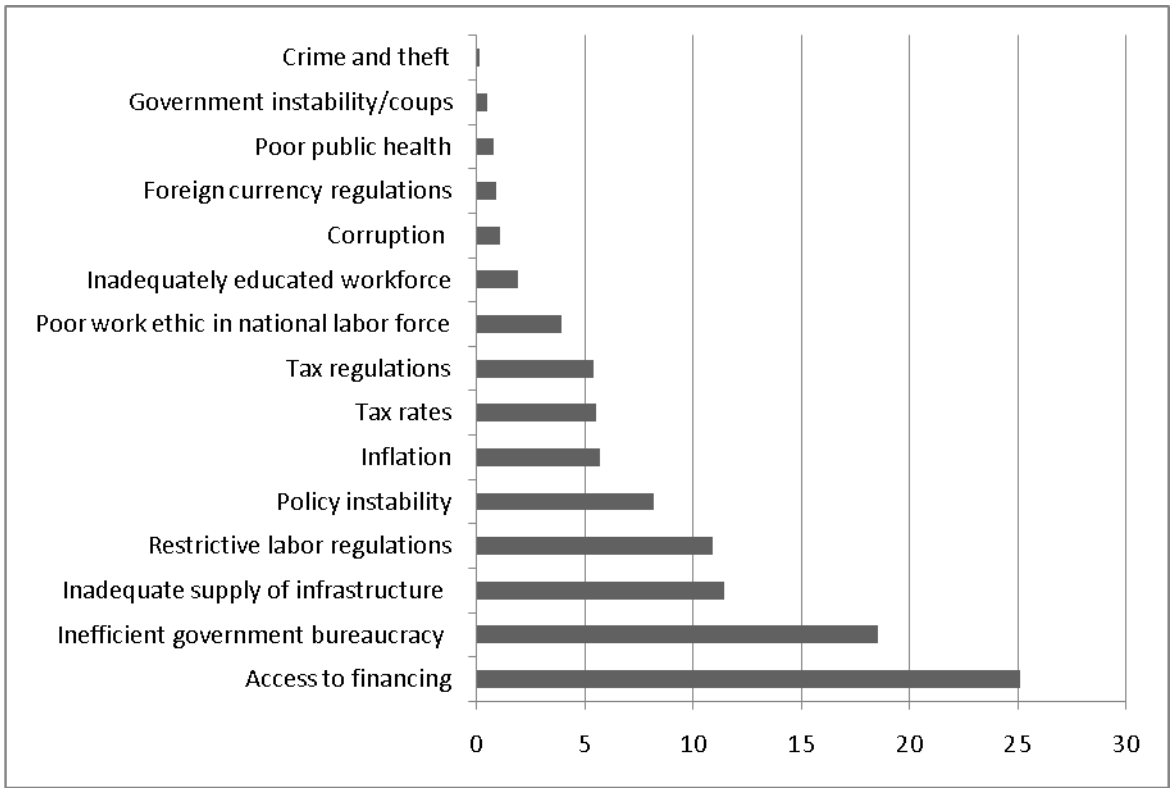
[20] Davy, (2010), *Research Report: Irish Economy*, February 2010

[21] Kitchin, B. & A. Adair, (2009), 'Good Planning Key to Future Success', ICLRD Briefing Paper Series, 1 p6.

most problematic factors for doing business were in Ireland, listed an inadequate supply of infrastructure. Apart from problems relating to accessing finance and bureaucratic inefficiencies, the issue of infrastructure was foremost on the minds of those doing business in Ireland.[22]

The Report concluded that the relatively poor quality of Ireland's roads, rail, seaport, air and electricity supply are leaving businesses at a distinct competitive disadvantage. Indeed, only Ireland's macroeconomic stability fared worse in terms of ranking.

Figure 1: The Most Problematic Factors for Doing Business



Source: World Economic Forum (2009), *Global Competitiveness Report*, Geneva

Best Practice Infrastructure Policies

Understanding why, when and how governments and the private sector can participate effectively in infrastructure provision is essential to delivering an efficient policy environment and maximising the benefits for all. Given that most infrastructure sectors exhibit special characteristics, government infrastructure policy needs to:

- Understand the monopoly nature of much infrastructure;

[22] World Economic Forum, (2009), *Global Competitiveness Report 2009-2010*, Geneva, 174

- Prevent exploitation of monopoly power by, wherever possible, introducing competition in and for infrastructure service markets, or, if competition is not possible, appropriately regulating these markets; and

- Recognise and allow for public good characteristics and externalities of some infrastructure services.[23]

A policy framework that promotes investment is conducive to growth and ensures the appropriate use of infrastructure should have at its core:

1. A robust decision making process; and

2. Commitment to improving the selection of investment projects.

Infrastructure can have additional effects through a number of different channels, such as by facilitating the division of labour, competition in markets, the diffusion of technology and the adoption of new organisational practices or through providing access to larger markets, new resources and intermediate products.[24]

Finance and Investment

Infrastructure spending is being maintained at high levels relative to national income. Budget 2010 included a commitment of Exchequer capital investment of over €39 billion for the period 2010-2016. The 2010 allocation of €6.4 billion is proportionally very high in comparison to levels of capital investment across the EU. Non-Exchequer capital investment for 2010 will be €3.4 billion, supporting a further 30,000 jobs approximately.[25]

The OECD has argued that despite countries being confronted with an enormous need for investment in public infrastructures, a sound infrastructure policy must not limit itself to the funding of projects. It should stress competition among investments, the viability of non-structural alternatives, cost sharing among users and between all levels of government, a strong role for the private sector and the use of new technology.[26]

Large scale strategic infrastructure projects were traditionally the responsibility of Government. However, Public Private Partnerships (PPPs) are increasingly the means by which the financial burden upon central government is mitigated. There is a widening gap between the infrastructure investments required for the future and the capacity of the public sector to meet those requirements from traditional sources.[27]

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[23] http://www.treasury.gov.au/documents/1221/PDF/02_NRA.pdf, accessed 15/04/2010

[24] Sutherland, D., Araújo, S., Balázs, É. & Kozluk, T., (2009), Infrastructure Investment: Links to Growth and the Role of Public Policies, OECD Economic Department Working Paper, No. 686, OECD: Paris, 6

[25] Department of Enterprise, Trade and Employment, (2010), *Jobs and Growth*, March, Dublin: Government Publications Office, 28-32

[26] OECD, (2008), 'Financing Infrastructure', OECD Forum on Climate Change, Growth and Security, Paris 3-4 June

[27] OECD, (2008), 'Infrastructure to 2030', *Policy Brief*, OECD: Paris,

Funding future strategic infrastructure projects will increasingly involve PPPs or sole private sector investment. The NDP 2007-2013 notes that 'PPPs will have an important role to play in the delivery of the next NDP.' In line with this, the Plan provides for some €13.35 billion in PPP funded capital investment of which €11.2 billion is in respect of PPPs funded by annual payments to the PPP provider. [28] This remains the case three years into the life of the NDP.

The private sector should be facilitated as much as possible in the planning process as long as the public interest and long-term sustainability is assured. This is especially pertinent at a time of government stringency and capital cutbacks. An increased emphasis should be placed on removing barriers to private sector investment and the proper structuring of projects to ensure best practice outcomes for the state. Procurement processes should preserve high levels of probity but allow the state to capture the benefits of innovation by the private sector.

A study published by the Council for Science and Technology in the UK anticipates that 65% of UK infrastructure funding will come from the private sector; 6% from PPPs and the balance of 29% from public funds.[29] Harnessing private investment will, therefore, require a much more business-friendly planning process for dealing with strategic infrastructure projects than is currently the case.

The Irish Academy of Engineers has estimated that the tender process for major capital projects has fallen by at least 15-20%.[30] Value for money for capital projects financed by public funds is achievable. Weak demand in the construction sector due to an over-capacity in residential housing is likely to see a much more competitive tendering in the medium term.

Boosting the Construction Industry

The need for labour intensive capital projects is further enhanced by the high numbers of unemployed construction workers available at present. The Department of Enterprise, Jobs and Innovation has pointed out that public capital investment programmes for 2010 are expected to support approximately 70,000 jobs in the economy.[31]

At a conference organised by the International Centre for Local and Regional Development, it was argued that there were two core roles of infrastructure in economic recovery. Firstly, infrastructure acts as an economic stimulus dealing with the problems of unemployment and generating economic activity in the locality where the infrastructure is being constructed. Secondly, infrastructure acts as a platform for long-term prosperity by providing the kind of roads, railways, airports, seaports, water and energy systems, broadband connectivity that attract the kind of FDI that is so vital for this country's future.[32]

[28] www.ndp.ie/documents/NDP2007-2013/NDP_Main_Ch01.pdf, accessed 15 April 2010

[29] Irish Academy of Engineering and Engineers Ireland, (2010), *Infrastructure for an Island Population of 8 Million*, February, 22

[30] IAE, 9

[31] Department of Enterprise, Jobs and Employment (2010), *Jobs and Growth*, March, Dublin: Government Publications Office, 28-32

[32] See: Spollen, M., (2010), The Role of Infrastructure in Economic Recovery, Investment Strategy Northern Ireland, 5th Annual ICLRD Conference, January.

The role of the planning system, in terms of facilitating economic growth, were recently pointed to by John Martin, a principal planning adviser in at the Department of Environment, Community and Local Government. He outlined at the National Planning Conference in 2009 the ways in which planning could be used to respond to the economic crisis:

1. Promote development which sustains or creates jobs, particularly the knowledge economy in Gateways and Hubs; [33]

2. Ensure that development plans and Local Area Plans (LAPs) are in place to underpin recovery in the housing market whenever that happens; and

3. Adopt a pro-active approach in pre-application consultations, as advocated in the Department Management guidelines.

The pro-active, strategic, and forward-thinking role of the national planning system to deal with strategic infrastructure is often at significant odds with the traditional reactive approach which is endemic in local planning, where the control rather than management of development continues to be practiced, and where the provision of national infrastructure is generally only considered in terms of often inevitable local consequences.

Infrastructure for a Growing Population

The CSO has predicted that Ireland's population could reach eight million by approximately 2030.[34] The recession seems likely to postpone, but not eliminate, the achievement of the eight million estimates by a number of years. It is still important, nonetheless, to identify and put in place in an integrated manner the infrastructure required for an economy with an increased population of eight million given the long-term nature of this activity.[35]

We need to continue to improve our connectivity with further investment in roads, particularly a focus on inter-regional road schemes and routes linking our urban hubs. Investment in network infrastructure – the energy, water, transport and telecommunications networks – which performs a vital role for the functioning of the economy, can contribute to raising growth and social welfare. These sectors rely on fixed networks to deliver their services, with significant investment requirements.

Energy

Planning for and enabling greater use of renewable and low carbon sources of electricity can help Ireland to both meet our ambitious emissions targets and provide energy security in a context of rising demand and increased dependence on energy imports. An efficient planning system is important for the

[33] Martin, J., (2009), 'Recent DEHLG National Planning Policy and Legislative Developments', presentation given at the National Planning Conference,

[34] Central Statistics Office, Regional Population Statistics, 2011-2026 (December 2008); Northern Ireland Statistics and Research Agency, 2008-based Population Projections (October 2009)

[35] Irish Academy of Engineering and Engineers Ireland, (2010), Infrastructure for an Island Population of 8 Million, February

delivery of a new generation of green infrastructure sources to meet Ireland's ambitious low-carbon goals. This is especially important given our need to reduce our dependence on imported fossil fuels.[36]

Current Renewable Capacity

There are currently four major dam-based hydro stations in Ireland (Ardnacrusha, Erne, Lee and Liffey) with a total generating capacity of 222MW. Ireland has only one pumped storage station; the 292MW Turlough Hill. Pumped storage continues to attract developer interest, with some considering development of large storage schemes. One such proposal is to develop sea water based pumped storage schemes in the U-shaped valleys on the west coast to create relatively large amounts of storage capacity and then be run to offset the intermittency of wind and marine generation. Plans include up to 2GW of generating capacity with up to 200GWh of storage, enough to run the plant at full load for 100 hours. This compared to the 1.8GWh (6 hours) available at Turlough Hill. Using the sea as the lower reservoir could help lower costs. The picture below shows an 85MW seawater scheme with an artificial upper reservoir has been operating at Okinawa, Japan for over 10 years. Inevitably there is a conflict with other land uses in developing large scale hydro schemes and the mountainous terrain required to give the water enough height drops is often in environmentally sensitive areas.[37]

[36] Ireland is also a country that is 'among the most vulnerable to peak oil. See Forfás, (2006), Submission on the Energy Green Paper

[37] Pöyry Energy Consulting, Low Carbon Generation Options for The All-Island Market: A Report to EirGrid, March 2010, P16-18

Figure 2: 85MW Seawater Scheme with an Artificial Upper Reservoir has been Operating at Okinawa, Japan

Wind Energy

Ireland has opportunities in offshore wind, wave and tidal energy resources, yet others are moving faster to exploit these openings. The UK has already introduced a Marine Bill, which among other things, is fast-tracking the process of offshore energy generation. Unless we offer offshore energy developers similar certainty and transparency, investment may well go elsewhere.[38]

With 16pc of the EU's Coast line, there is clear potential for Ireland to become a very significant net provider of power. Wind energy requires the construction of a sufficient number of large wind terminals to harness the energy potential. However, the current planning laws make it very difficult to build wind farms.

The Irish Wind Energy Association (IWEA) says that Ireland is at serious risk of missing key EU renewable energy targets. Despite Ireland reaching its 2010 target of 15% for electricity that comes from renewable energy, red tape and other administrative barriers are presenting critical difficulties that will lead to future cost burdens. The IWEA Chief Executive, Dr. Michael Walsh, has said that it is common for

[38] See Statement by Seán Barrett TD on Houses of the Oireachtas, (2009), 'New bill to streamline planning process for offshore wind farms and energy projects', Press Release, http://193.178.1.235/viewpda.asp?fn=/documents/press/document292.htm,

investors to find that consent from one agency has expired by the time approval from another is granted.[39]

Renewable energies have accounted for the majority of new investments with some €16 billion in potential investments in renewable and other energy generating projects awaiting approval from the Commission for Energy Regulation.[40]

The IWEA argue that the vast opportunity for Ireland from wind energy is being seriously threatened by an over-complicated and unstable policy framework. Speaking in March 2010, IWEA Chief Executive Michael Walsh noted that while "The Department of Communications, Energy and Natural Resources is leading the development of Ireland's National Renewable Energy Action Plan to implement the green economy other relevant departments and agencies need to be fully aligned with this effort and equipped to deliver on the key actions required."[41] The opportunities arising from such a development could be significant. An IWEA commissioned study in 2009 predicted that up to €14.7 billion may be invested in the wind energy sector through to 2020, creating more than 10,000 plus jobs.[42] However, in our view, this potential will remain unlocked unless the approvals processes are compatible with each other and that our market rules are stable and predictable. The study also warned that this investment will be lost unless stable policy framework is established.

The IWEA has also noted that Wind Energy Industry representatives currently interact with over 60 state and semi-state stakeholder bodies and that a critical lack of joined up thinking among these is presenting huge difficulties and costs for investors in the renewable energy sector. This represents a significant threat to Ireland achieving the 2020 targets of 40% of electricity being sourced from renewable resources.

[39] http://www.rte.ie/news/2010/0325/energy.html,
[40] Houses of the Oireachtas, (2009), 'New bill to streamline planning process for offshore wind farms and energy projects', Press Release, http://193.178.1.235/viewpda.asp?fn=/documents/press/document292.htm,
[41] Statement by Dr Michael Walsh IWEA, issued 22 March 2010 (See http://www.iwea.com/index.cfm/page/pressreleases)
[42] Jobs and Investment in Irish Wind Energy, IWEA June 2009.

Case Studies of Planning Challenges

Lagan Group Planning: A Case Study of Ireland's Protestor Culture

In 1998, the Belfast-based Lagan Group sought planning permission from Meath and Westmeath County Councils for a new cement manufacturing plant at Killaskillen, south Meath (near Kinnegad). The investment amount was IR£50 million with a projected 200 plus construction jobs being created over the two years of construction.[43]

A vociferous and well-resourced local opposition group protested against the planning with vigorous media campaigns, local public meetings and placards mounted in the neighbourhood. The protest featured a litany of the evils of the development if it was to get planning approval. These included:

- Toxic emissions – especially dangerous to people with cardiac or respiratory problems;
- Warnings of a 32% increase in childhood cancers in the vicinity of cement factories;
- Threats to the fish population of the Kinnegad River; and
- The local roads network being "devastated" by the resultant traffic.

Eventually, both Meath and Westmeath County Councils and An Bord Pleanála, on appeal, gave approval by April 2000. Subsequently, EPA also granted an operating licence subject to strict environmental conditions. However even after overcoming these planning hurdles, the project had to deal with a series of High Court, and then Supreme Court challenges. Finally in July 2002, Lagan was awarded its costs against the objectors, and related legal actions were also discontinued.

After much delay and appeals, the factory finally commenced production in September 2002, and continues to operate very successfully to this date. At peak production, the factory employs over 100 people.

New 110kV Line Connecting Binbane 110kV Station to Letterkenny 110 kV Station in County Donegal

This joint application was lodged by ESB Networks and Eirgrid in December 2008. The application proposed a new 110kV line connecting Binbane 110kV station to Letterkenny 110 kV station, new switching station on proposed Binbane-Letterkenny line and new 110kv line from proposed switching station to new 110kv. It was finally approved with conditions in October 2009. The time period involved for this important piece of infrastructure strengthening was 10.5 months.

Corrib Gas Project— Delays Impact on the Taxpayer

The Irish Academy of Engineers (IAE) have highlighted that there are major problems for all energy industry investors in Ireland in relation to obtaining planning permission for both physical plant and transmission works required to connect such plant to energy networks and that this is not simply

[43] Sourced from Presentation by Stephen O'Byrnes of MKC Communications at PRII Annual Conference, Dublin

confined to the electricity industry. The Corrib Gas Field being the most notable example of this type of delay.

The Academy has raised concerns regarding the risks being taken on natural gas supply security in Ireland. Natural gas fired generation is the backbone of Irish electricity generation and plays an increasingly important role in our heating market. At present 98% of Ireland's gas supplies is delivered through a single pipeline in Scotland. The immediate priority is to complete the Corrib project. While the proposed Liquefied Natural Gas (LNG) project on the Shannon estuary will also increase security, it is imperative that Ireland moves quickly to increase gas storage from the current very low level of storage.

The November 2009 request for further information by An Bord Pleanála which suggested that a significant portion of the Corrib onshore pipeline be re-routed resulted in further delays to the project. It also appears to have ignored internationally accepted safety standards. Some would argue that An Bord Pleanála strayed considerably from its remit regarding matters of proper planning and sustainable development, to deal with matters of technical safety, which are the responsibility of the DCENR. This is an example of a lack of clarity on roles and responsibilities between statutory bodies and Government Departments. Having such issues between competent authorities creates a perception of unpredictable and capricious decision making which, in turn, increases political/regulatory risk and is damaging to Ireland's investment prospects. It is worth noting that it took from November 2000, when the then developers of the Corrib Gas Field, Enterprise Energy Ireland, first applied for planning permission for a gas processing plant at Bellanaboy, to January 2011 when An Bord Pleanála granted approval for a third pipeline route along with related compulsory acquisition orders. Even after this period the developers still required additional Foreshore Licence and Gas Act (section 40) approvals from different Government departments.[44] We look forward to new legislation, promised in the recently agreed Programme of Government, that that will integrate this requirement with existing strategic infrastructure legislation, being enacted as soon as possible.

Many observers have called for a review and reform of our permitting process which will deliver certainty in decision making within a reasonable period of time. While recent Strategic Infrastructure legislation dealing with the permitting of critical infrastructure did not resolve the problem. This remains a critically important issue for which we need resolution as soon as possible.[45]

It has been widely reported in the media that while the originally budgeted cost of the Corrib gas field development project was approximately €700 million, the final cost may total more than €2.5 billion. This extra cost required to develop the Corrib gas field represents a huge loss to the tax payer because

[44] These two consents were granted by Minister Pat Carey T.D. on 25th February 2011 and Minister Phil Hogan T.D. on 25th March 2011.

[45] Irish Academy of Engineers, Presentation to the Oireachtas on Climate Change and Energy Security, Committee, Page 11 3rd March 2010

as with every other company operating in Ireland, the Corrib Gas Partners must pay off their capital investment prior to paying the 25% tax rate that is levied on oil and gas exploration companies.[46]

The N26 Ballina-Bohola Road – An Example of Ambiguity in Granting Permission to Construct

While phase one of this road has been completed up to Mount Falcon, phase two was rejected by An Bord Pleanála. The argument that there is insufficient traffic to warrant completion of the second phase seems to nullify the original argument for the first phase. This is not to mention the fact that if Ballina, as the third-largest town in Connacht, does not warrant road upgrades then it calls into question other projects west of the Shannon. The €5 million spent by two state bodies on the preparatory stage of the second phase of the road is demonstrable of the cost inefficiencies resulting from a lack of coordination in the process.

This road is in urgent need of upgrade. Business and industry in the area are dependent upon a decent road network for timely delivery of goods and services. At present it appears that the local Council can either appeal to the Courts (via judicial review) or they can revise the proposed route. Having spent €5 million in preparation for the phase two application, this is not particularly appetising to Councils which themselves face significant cash short falls.[47]

[46] See coverage of Shell E&P Ireland Annual Accounts Return in Irish Examiner 6th November 2010.
[47] See: Business community vows to fight for N26; Western People 17th March 2010

Strategic Infrastructure Planning: International Comparisons

Huge investment is being pumped into the infrastructure systems of all OECD countries. However, it is those countries most able to rectify environmental versus economic concerns most efficiently that will see the quickest returns on investment.

The Netherlands

Planning in the Netherlands takes place in a decentralised way. The Netherlands National Spatial Strategy (NSS) includes an implementing agenda, a new instrument to link the objectives contained in the NSS to current and planned implementation tracks. The matters addressed in the agenda include central government's investment priorities, the effects of policy on local planning and zoning schemes and the use of implementing instruments. The agenda is an overarching way of giving integral form and substance to the implementation of plans. More than ever before, this kind of approach is essential because of the growing importance of and need for co-operation between different stakeholders in addressing spatial issues. A central theme is the integral development of supra-local areas. Areas must be developed through 'development planning'.

The steering philosophy of the Netherlands NSS is that national policy will be further elaborated at the regional and local levels through the participation of a range of actors: the public sector, private firms and the community of voluntary and non-governmental organisations. Central government will determine the direction to be taken on matters involving the national interest, but where regional interests are paramount, then planning could be more effectively overseen by regional planning authorities. However this would require more powers being granted to them in this regard.

That is why central government will allow different regional and local approaches and policy interpretations. In fact, we think that the Netherlands will become more attractive as a result; at least, as long as the basic standards are adhered to and vulnerable areas are guaranteed protection. These basic requirements apply in the first place to nature, landscape, cultural heritage and water management.

Public Consent - In essence, the Government wants to place the responsibility for decisions that affect the use of space closer to those most directly affected. It wants to transform spatial *planning* into spatial *development* and thus become a partner for change instead of simply a regulatory body that obstructs development.

This NSS, therefore, is an explicit invitation to everyone - to all tiers of government, civil society, private parties and citizens - to contribute to regional development visions that command widespread support and to take an active part in implementing them. But this must not be at the expense of the things we all value. The Government's ambition is to improve the spatial quality of the Netherlands, and that means giving proper consideration to the functional value, amenity value and future value of new development.

A flourishing economy goes hand in hand with dynamic national city networks. Cities provide the economic base required to support an extensive range of facilities for everyone, as well as agglomeration advantages arising from the concentration of people and businesses, and the opportunity to make optimal use of the infrastructure and investments made in them by central government. Consequently, the Government welcomes cooperation between cities and the formation of city networks.

UK

The UK had similar problems regarding the length and uncertainty of their planning process which had led to confused signals being sent to the market. A 'stop-start' culture had formed which constrained organizations' ability to develop and maintain special skills.

In the UK, strategic infrastructure is guided by a series of National Policy Statements (NPSs) in conjunction with an independent body which gives to developers of new large infrastructure projects. The Infrastructure Planning Commission (IPC) examine and decide applications for new infrastructure development, using criteria on national need, benefits and impacts set out in the NPSs, and consideration of evidence put forward on potential local effects.[48]

The planning regime seeks to enable the authorities to make decisions about nationally significant infrastructure in a way that is fairer and faster. The UK is particularly concerned about their need to replace around one third of their existing electricity generation capacity over the next two decades.

The IPC operates a one-stop development consent process for strategic infrastructure projects. IT decides whether to grant consent on the basis of the policies set out in the NPSs, taking into account domestic and European law, reports from affected local authorities and evidence put forward by local communities and other interested parties during examination. When making decisions, the IPC weigh up the benefits and adverse impacts of the application. The IPC have to give detailed reasons for their decisions that can be challenged in the courts if people think it has acted unreasonably.

Public Consent – The UK planning process enables the public and local communities to get involved from an early stage in decisions that will affect them. There are three opportunities for individuals and groups to have their say:

- During the public consultations on the draft NPSs – this provides an opportunity for debate on the national need for the various types of infrastructure – rather than repeating this when each large infrastructure application is considered by the IPC;
- When applications are being prepared for submission to the IPC – at this stage developers are required to consult with local communities about what they plan to do; and

[48] See: http://infrastructure.independent.gov.uk/wp-content/uploads/2009/09/Implementation-Route-Map-July-2009.pdf

- During the IPC's examination of applications – when individuals and groups can submit evidence in writing as well as in person at open-floor hearings held by the IPC.

Policy Clarity – The UK issues National Policy Statements under energy, transport and water and waste. These NPSs establish the national need and set out policy for infrastructure; explain how they take account of the Government's relevant social economic and environmental policies; and show how they contribute to tackling climate change. Each draft NPS is subject to an appraisal of its sustainability has opportunities for members of the public to have their say and comes under Parliament scrutiny.

Eight former planning systems were replaced by a single process, cutting the time taken to make decisions from up to seven years to under a year and saving the country up to £300m a year.

This system allows for opinions to be heard at every stage and the IPC insist on the highest standards of applications from promoters, with evidence that communities have been consulted effectively about proposed projects.

According to the IPC, it will take into account the long term needs of the country, making sure we have the right infrastructure vital to our economic, environmental and social wellbeing. It will also address the challenge of climate change, strengthen the voice of communities and aim to create the conditions for future economic success.

Public Consent -The planning system in the UK espouses to take the interests of the public first and provide for greater opportunities to be heard at more stages in the process. Businesses receive guidance from the IPC on what their applications should include and how to consult with the public before they are submitted.

The IPC acts as an independent advisory body, cutting red tape for nationally significant infrastructure projects and operating a one stop development consent process.

Under the new system, the IPC examines and decides applications against a series of new National Policy Statements (NPCs), being produced across Government. Once these are in place, the IPC will grant consent for new development to improve energy generation, railways, ports, roads, airports and water and waste facilities, based on long term national need, benefits and environmental impact

Planning Delay - Heathrow Terminal 5, the Belvedere combined heat and waste plant in Bexley and the Thameslink project. Each were affected by very high costs, excessive amounts of time and delay to investment. Although some change is mooted following the recent change of government in the UK, the IPC will have a target of nine months from receiving an application to making a decision on a project.

British businesses want to see major infrastructure planning decisions taken out of the hands of national politicians to make the system faster and more effective, according to the British Chambers of Commerce (BCC). The group said it reflected strong support for the Infrastructure Planning Commission established to make decisions on large infrastructure schemes to speed the planning process up. The survey found that businesses believed poor infrastructure was hampering their growth. A majority of 91pc said they believed that major transport, energy and digital communication infrastructure schemes

took too many years to materialise, and 80pc said they had been affected by a lack of capacity in the UK's transport networks, through a loss of man hours and increased operating costs.[49]

There has been concern that the land use planning for MIPs takes too long. While the vast majority of planning inquiries last less than 30 weeks, occasionally, some cases arise that take considerably longer - a now classic example is the Heathrow Terminal 5 inquiry which sat for a record 524 days. [50] In this context an appropriately constructed system of written submissions could enable much speedier and cost effective processing of submissions.

The UK has been proactive in this regard, establishing an independent commission that will help deliver a new generation of renewable energy infrastructure sources such as wind power to reduce fossil fuel reliance and meet ambitious zero carbon goal.

Australia

Australia's federal system means that each state has jurisdiction over its planning regime for major infrastructure projects. There is no overarching national policy which governs the environmental planning approval of major infrastructure projects and therefore complexities exist for multi-jurisdictional major infrastructure projects.

Australia has attempted to simplify the approvals process for multijurisdictional projects and increase resources for regulatory authorities to alleviate delays and poor decisions. Similar to both the Irish and UK planning systems, there was a lack of consistency in decision making between the regulatory authorities with the added problem of differing timeframes between each state/territory.

Funding Infrastructure - Australian governments' infrastructure policy has shifted systematically from directly providing virtually all infrastructures to creating competitive markets where competing public and private suppliers can provide infrastructure efficiently. Wide ranging competition and structural reforms, particularly under National Competition Policy, have underpinned this policy shift. The Productivity Commission (2005) estimated these reforms added about 2.5 per cent to GDP or about $7,000 to household income each year.[51]

The State of South Australia has formulated a Strategic Infrastructure Plan which is the first major step in developing a more coordinated long-term approach to infrastructure provision throughout the state. It provides an overarching state framework for the planning and delivery of infrastructure by all government and private sector infrastructure providers. Strategic priorities for the period between 2005-06 to 2014-15 are identified for 14 infrastructure sectors.

[49] See: http://www.britishchambers.org.uk/zones/policy/press-releases_1/decisions-on-key-infrastructure-projects-must-be-removed-from-politicians-says-bcc.html

[50] See: Appraising Major Infrastructure Projects; http://www.parliament.uk/post/pn173.pdf p1

[51] See: Australia's infrastructure policy and the COAG National Reform Agenda http://www.treasury.gov.au/documents/1221/PDF/02_NRA.pdf

The plan also presents opportunities for the improved management and use of the state's existing infrastructure assets as well as options for managing demand better so as to defer costly capital expenditure.

The Regional Overview of the plan presents infrastructure priorities located throughout the state. The state government has consulted closely with Regional Development Boards and Local Government Associations to present an assessment of infrastructure issues in seven state regions.

Implementation of the plan will proceed through the adoption of a five-step approach to developing and assessing infrastructure proposals as a strategic basis for funding decisions. It will also involve a fresh approach to the way in which the government deals with the private sector to meet the state's infrastructure requirements.

The regional section of the plan provides a framework to assist local communities to become more involved in deciding on infrastructure priorities for their region and in planning for and managing their infrastructure assets.

The plan does not imply any delivery commitment from either government or the private sector, or any funding obligations, for any specific project. Decisions on matters such as priority, funding and delivery mechanisms will be decided by the state government and/or other appropriate authorities when projects have been properly defined and substantiated.[52]

The State of South Australia's Strategic Infrastructure Plan calls for a coordinated, efficient, sustainable and innovative approach to infrastructure provision. The Plan calls for a synergised approach to funding and cooperation. It advocates a fresh approach to the way government does business with the private sector to meet the state's infrastructure requirements. An emphasis is to be placed on removing barriers to private sector investment and the proper structuring of projects to ensure best practice outcomes for the state.

[52] For example, see http://www.infrastructure.sa.gov.au/strategic_infrastructure_plan

The Planning and Development (Strategic Infrastructure) Act 2006

The 2006 Planning and Development (Strategic Infrastructure) Bill was published in February 2006. It was long recognised that legislation dealing with Ireland's strategic infrastructure requirements was needed to give a statutory basis to planning procedures. An early indication had been given in June 2003 that the government wanted to introduce a 'streamlined process for infrastructure projects of national significance'.[53] It represented a more significant change to Irish planning law than that introduced in 2000 with the Planning and Development Act 2000.

The original objective of the proposed legislation was to create a process to prioritise certain categories of planning applications made under Section 34 of the Planning and Development Act 2000. It sought to introduce a more efficient consent procedure for strategic infrastructure by a newly established infrastructure division within An Bord Pleanála. Concerns about a number of factors such as delays in getting projects to commencement, consequent cost increases, and the way projects were planned and amended and compliance with European environmental obligations led to the 2006 Act, which brought about major changes in the consent procedure for large infrastructural projects.[54]

Under the Act, applications regarding strategic infrastructure are made directly to the Board. The Act also aimed to bring about a closer alignment between the national spatial strategy, regional planning guidelines, development plans and local area plans in addition to introducing a requirement for an evidence-based core strategy in development plans.

The main frustrations with the process were:

- Timeframes for making decisions on permit applications were too long;
- There were too many permit requirements;
- Many permit applications were poorly prepared; and
- Inconsistencies in decision making between local authorities, and the Board.

The objective of the Act, in general terms, was to bring about a single stage consent procedure for major infrastructure projects operated by one authority that would result in:

1. A better overall quality of decision making;
2. Shorter timeframes for approval;
3. Greater consistency in decision-making in line with national policies;
4. Decisions made by an independent tribunal on the basis of standard criteria for approval; and

[53] Noel Ahern TD, Minister for the Marine and Natural Resources, Statement issued on June 27, 2003 on the occasion of a visit to the Dooish exploration site off Co. Donegal.

[54] See: O'Connor, J., (2009), 'Strategic Infrastructure: The Operation of the New Procedures', *Irish Planning and Environmental Law Journal*, 16(1),

5. Decisions that would be less susceptible to legal challenges. [55]

The emphasis was much wider than just speed of decision making and, consequently, it would be insufficient to describe the new system merely as a "fast track" process.[56]

What is Strategic Infrastructure?

'*Strategic infrastructure development can generally be described as development which is of strategic economic or social importance to the State or a region. It also includes development which will contribute significantly to the fulfilment of any of the objectives of the National Spatial Strategy or any regional planning Guidelines for an area, or which would have a significant effects on the area of more than one planning authority.*'[57]

Section 37A of the 2006 Act specifies that an application for permission for any development specified in the Seventh Schedule is to be made to the Board under the new procedures provided the development in question would satisfy one of the following conditions if carried out:

1. Be of strategic economic or social importance to the State or the region in which it would be located;

2. Contribute substantially to the fulfillment of any of the objectives of the National Spatial Strategy or in any regional planning guidelines in force in respect of the area or areas in which it would be located; or

3. Have a significant effect on the area of more than one planning authority.[58]

Under the Seventh Schedule in the 2006 Act, An Bord Pleanála is the consent authority for the following specified categories of project:

- Major energy, transport & environmental projects that are of national or regional importance;
- Major roads projects;
- Major local authority projects, e.g. water services, waste etc.;
- Electricity interconnectors & high voltage electricity transmission systems;
- Gas infrastructure – pipelines, plant, etc. ;
- Railways – metro, light & heavy;
- Certain large State projects requiring environmental impact assessment; and

[55] For more detail, see O'Connor, J., (2009), 'Strategic Infrastructure: The Operation of the New Procedures', *Irish Planning and Environmental Law Journal*, 16(1),
[56] ibid
[57] http://www.pleanala.ie/sid/sidpp.htm.
[58] See also: Flynn, T., (2006), 'The Planning and Development (Strategic Infrastructure) Bill, 2006 – A Critical Analysis of its Implications for Environmental Law', Fourth Law and the Environment Conference

- Compulsory purchase orders associated with the above.

Institutional Set-Up

Institutionally, An Bord Pleanála and the Department of Environment, Heritage and Local Government (DoEHLG) have responsibility for planning with the Environmental Protection Agency (EPA) having a restrictive role in terms of land-use functions. As the main overseer of the planning system in Ireland, the DoEHLG is responsible for the framing of planning legislation as well as the preparation and issue of policy guidance. The DoEHLG is, therefore, responsible for devising a national planning framework and for the issuing, as required, of guidance documents in respect of national planning issues such as rural housing, wind energy, retailing, etc.

However, with the enactment of the 2006 Strategic Infrastructure Act, An Bord Pleanála went from being a decision maker in respect of proposed developments, to being a facilitator of strategic infrastructural development.[59]

Performance To-Date

The first decisions on applications for major infrastructural projects under the new provisions for the Planning and Development (Strategic Infrastructure) Act 2006, took place in 2008. An Bord Pleanála's annual report (2008) states that of the nine formal decisions made under the new system, seven were made within the statutory objective period of 18 weeks following 'full and rigorous' assessment including the holding of oral hearings. In 2009 of the eight formal decisions made under the new system, only four were made within the statutory objective period of 18 weeks.[60]

Since 2007, An Bord Pleanála has entered into 123 pre-application consultations with prospective applicants, 88 of which have concluded – 183 pre-application consultation meetings have been held in this period and a total of 28 formal applications have been received. In the same period, they also received a total of 66 local authority strategic infrastructure project applications, including major road projects. Normal planning appeals can also involve proposed development which would be deemed major infrastructure and these appeals continue to be prioritised by the Board. In 2008, An Bord Pleanála received 123 and disposed of 47 such appeals 30% of which were disposed of within 18 weeks.

The Board has acknowledged that economic imperatives necessitate an increased emphasis on seeking to process cases relating to major infrastructural projects and those with significant job-creation potential without any avoidable delays. [61] However the rate of compliance with the 18 week statutory guidelines target improved to approximately 80% at the end of February 2011[62]

Of the 35 strategic infrastructure development applications received on 2007, only 6 were concluded in that year. The Board has received 17 formal applications for strategic infrastructure developments in the first five months of 2008.

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[59] See also Grist, B., (2008), 'The 2006 Planning and Development (Strategic Infrastructure) Act – One Year On', *Irish Planning and Environmental Law Journal*, 15(1),

[60] An Bord Pleanála, (2009), *Annual Report*, Dublin

[61] An Bord Pleanála, (2009), *Annual Report*, Dublin,

[62] Sourced from the Department of Environment, Heritage and Local Government

As such, it is feared that without changes to the structures in place, the Board lacks the capacity to operate the system efficiently. At present there is no penalty or sanction on the Board for failing to meet its objective for reaching a decision. The Board has little hope of achieving its stated aims; it simply does not have the capacity to deal with its current case load. For the 40% of applications deemed not to be Strategic Infrastructure, the applicants may recommence their applications in the normal channels, having waited up to 23 weeks on a decision by the Board. The Metro North project, a vital piece of strategic infrastructure first mooted in 2002 has been in the initial pre-application stage with An Bord Pleanála for over a year prior to progressing to application stage.[63]

According to An Bord Pleanála, in September 2009, 36% of cases were determined within the 18 week statutory objective and the average time taken across all cases decided was 20.6 weeks. To the end of September 2008, the Board had received 98 requests for pre-application consultations. In 68 cases, the consultations had concluded as follows: 23 were strategic infrastructure; 35 were not; 10 were withdrawn.[64]

[63] Dublin Chamber of Commerce, (2009), *Improving the Planning Process: Recommendations for Change*, Dublin p11.

[64] http://www.seai.ie/Renewables/REIO/SEAI_REIO_2009_Events/Planning_for_New_Renewables/Strategic_Infrastructure_Decision_at_a_Local_Level_An_Bord_Pleanala.pdf,

Achieving Consistency and Joined-Up Thinking

The ultimate objective of the Irish planning system regarding strategic infrastructure projects should be to deliver innovative, future-proof and sustainable solutions for Ireland's infrastructure needs. This objective needs as its foundation an efficient and well-resourced planning authority coupled with a drastic reduction in the amount of bureaucratic crossover.

Planning and approving strategic infrastructure projects requires careful consideration but despite legislative changes, the process is still more lengthy and complex than it needs to be. The NDP 2007-2013 acknowledges the ongoing concern regarding delays in bringing strategic infrastructure projects for initial approval to completion.[65]

There is a lack of joined-up thinking among the various authorities involved in the planning process. Forfás have pointed to the need for stronger national, regional and local planning framework 'providing a clear strategic direction for development from national to regional and local levels'.[66] Achieving consistency and certainty in our planning system for strategic infrastructure projects requires further reform to the way infrastructure is currently planned and delivered.

While the system is more flexible, this has led to uncertainty in the way strategic infrastructure projects are dealt with. Businesses continue to face challenges when interacting with the land use planning system. The current system is simply not delivering the level of efficiency and consistency in the bureaucratic process.

- Engineers Ireland note that despite substantial investment in the NDP 2007-2013, Ireland's planning system remains an impediment to the efficient roll-out of infrastructure projects. [67] They also note that 1) it takes too long for infrastructure projects to get to construction stage, 2) the timescale and outcome of the planning process is too long, 3) the process costs too much.

- More transparency is required when decisions are made regarding a strategic infrastructure project

An integrated planning approach should be applied to all projects with bespoke teams of planners from across all the traditional planning disciplines; policy, town planners, master-planners, environment and transport, working closely together. A similar responsibility falls on developers to provide an appropriate and workable proposal that is properly planned and combined with significant resources allocated to stakeholder and community engagement.

Inconsistencies in the time a project is submitted to An Bord Pleanála and a subsequent decision, is the most significant problem and leads to much uncertainty. The Board aims to make a decision in 18 weeks but this target is rarely met. In 2006, this objective was met in only 52% of cases.[68] Indeed, many

[65] www.ndp.ie/documents/NDP2007-2013/NDP_Main_Ch01.pdf,
[66] Forfás, (2009), Sharing Our Future: Ireland 2025: Strategic Policy Requirements for Enterprise Development, available at www.forfas.ie, accessed 25/07/2009.
[67] Engineers Ireland, (2007), OECD Review of the Public Sector – Submission by Engineers Ireland,
[68] An Bord Pleanála, (2006), *Annual Report*, p6.

decisions have taken up to a year and over to be made. Subjective interpretation of many policies leads to a lack of clarity for development control planners, a perceived lack of consistency in decisions and a consequent lack of esteem for decisions made.[69] One conclusion that arises is that strategic infrastructure objectives should be articulated in both regional and local plans.

Dublin Chamber has recently argued for 'new mechanisms for the expeditious determination' of applications for large infrastructure projects by allowing direct application to the board. Under this legislation, the Board must first determine whether a project comes within the remit of "strategic infrastructure". There is no time limit on the Board to make this determination, something which both Chambers Ireland and Dublin Chamber recommend changing, during which time the potential developer may not apply to the Local Authority for planning permission, adding an extra level of delay to unsuccessful applicants. [70]

When making a decision to grant, refuse or grant with modification, the Board must consider the material submitted, the EIS, observations made, relevant development plans, special amenity orders, the national interest, the national special strategy, regional planning guidelines and government policies. The Board has a duty to make a decision expeditiously and consistent with proper planning and sustainable development. If a decision cannot be made within the 18 week timeframe the applicants must be notified with reasons why and with a new date specified.[71] Furthermore, the lack of clarity in terms of EIS requirements is also a major difficulty. The necessity to consider all 'likely significant impacts' is entirely open ended, and the EIS is now often the 'first point of attack' for objectors.

18 Week Statutory Guideline from Application to Decision by ABP Must Become a Statutory Deadline

An Bord Pleanála note that despite their best efforts, the 18 week period has proved to be impossible to attain in some of the larger projects where they have had to seek further information from the applicants.

Chambers Ireland agrees with Dublin Chamber's recommendation that a statutory deadline, rather than a statutory objective, must be set for appeals to An Bord Pleanála to ensure timely delivery of decisions.[72] One solution, within the current framework is for an earlier confirmation of a project as strategic infrastructure and a virtual agreement of the scope and content of the application prior to submission to avoid the need for subsequent additional information (such as the approach by the Department of Environment in Northern Ireland). A final means of enhancing throughput of applications would be banning a reiteration in Oral Hearings of information previously submitted in writing.

Greater Interface Needed Between Relevant Authorities

An Bord Pleanála acknowledge that the interface between themselves and the EPA in the case of projects requiring an IPPC or waste license as well as planning permission has been an area of particular difficulty and frequent legal challenges. As noted earlier, a 'one stop shop' approach for permitting

[69] Lloyd, G., (2010), Spatial planning on the Island of Ireland, ICLRD Fifth Annual Conference
[70] Dublin Chamber of Commerce, (2009), *Improving the Planning Process: Recommendations for Change,*
[71] ibid
[72] ibid

strategic infrastructure would greatly help in overcoming these challenges across a range of other agencies, including the EPA, DoEHLG, DCENR, the Commission for Energy Regulation and so forth.

Finally, strategic Infrastructure legislation is only one component of the decision making system. It should also reinforce that decision making also requires a coherent set of policies in the relevant areas of infrastructure, environment and economic planning to act as a platform upon which reasonable and far sighted decisions can be made

Human Resources

Those Departments that are responsible for policy formulation regarding strategic infrastructure (DoEHLG, DCENR and DoT) should have adequate numbers of staff with planning expertise. To achieve the balance between competing and sometimes conflicting considerations in order to arrive at policies and decisions that are in the interest of the common good, it is essential that the relevant authorities are properly resources. This is especially significant considering the increasing complexity of planning applications.

The Irish Planning Institute argues that there is a need to ensure that planners are employed where necessary in all semi-state bodies.

Forward Planning

Cost overruns, over-capacity, under- capacity and environmental impact are variables that are hard to predict. This is especially the case for large infrastructure projects. In terms of forward planning, this does not appear to have the same emphasis as development control in that the resources assigned to it are the first to be drawn on at a time of staffing difficulties.[73]

Forecasts are generally inaccurate when it comes to traffic volumes and passenger use. Alleviating this problem demands a much more rigorous approach to forward planning.

The national roads network is an example of a productive infrastructure. The increased productivity will create sufficient national income to eventually repay any borrowings used to fund the projects.

National Spatial Strategy

The 2006 Act provides that the Board will be required to have regard to the NSS and any regional planning guidelines in force in the area. The NSS in any revised form, and the regional plans, need to be far more definite in terms of infrastructure needs with respect to locations, corridors, priorities etc. These must in turn be accompanied by the requirement for the objectives of these strategic documents to be translated rather than interpreted into local plans – both in the form of maps and policies/objectives.

[73] ibid 'In 2007, of 576 planners (full time equivalent) employed in Local Authority planning departments nationally, 65% are engaged in a planning control role, with 28% of staff engaged in forward planning and 7% engaged in enforcement.'

Whilst the alignment of spatial policy and investment policy is perhaps now being addressed in Ireland, there is still often a time delay between the agreement of a particular spatial strategy and the provision of infrastructure to deliver that strategy. This is evident, for example, in the Cork Area Strategic Plan (CASP) which many view as an exemplar for the joint planning of spatial development and transport infrastructure. However, despite an agreement to invest in public sector infrastructure, including a new commuter rail service, residential development proceeded apace during the boom years; sometimes in advance of infrastructure being constructed. Eight years after the strategy was agreed, for example, a new commuter rail service is due to begin operation but there are questions as to whether it will have the desired effect of reducing car travel into Cork.[74]

ABP has previously noted that developers, their consultants and even Local Authorities are still not sufficiently cognizant of the demanding nature of the planning process and the need for detailed information in support of development proposals.[75]

Public Involvement

In Ireland, the issue of third-party rights of appeal, whereby a person in Donegal can object to a planning issue in Kerry – has been disproportionately weighted in favour of the individual as opposed to proper planning and development concerns. We are hopeful that Section 43 of the Planning and Development (Amendment) Act 2010 which amended section 135 of the Principal Planning Act to restrict the agenda of issues which may be considered during oral hearings of all cases before the Board may resolve this issue.

An integrated planning led approach to development which safeguards against potential abuse would be of great benefit. In such a system, a high-level plan would be drawn up that sets out our infrastructural requirements with fixed projects. Everything at local and regional level would have to conform with the national objectives. The NSS and NDP try to achieve this.[76]

In this context, any opportunities for mediation or conciliation enabling discussion in a less adversarial manner should be encouraged. We also recognize that there is an obligation on developers to inform and work with stakeholders to minimise delays in the processing of the application.

Need for a Cost-Effective Means of Resolving Legal/Procedural Errors

The lack of a mechanism to correct legal/procedural errors is also a growing problem. The entire planning consent process has become much more legally intrusive over the past decade. Applications are now subject to intense legal scrutiny by lawyers for the objectors in an attempt to halt a development. Often, such errors are of a trivial nature involving minor technical matters but can nevertheless be seized upon by objectors and judicial reviews sought. Accordingly, we need a change in

[74] Counsell, D. & G. Lloyd, (2009), 'Linking Spatial Planning with Public Investment: Perspectives from the Island of Ireland', ICLRD Briefing Paper Series, No. 2

[75] An Bord Pleanála, (2008), *Annual Report*,

[76] Fearghal O'Connor, (2008), 'Irish Planning - Organised Chaos', *Business and Finance,* 29 February

legislation to allow such matters as defective public notices to be readvertised without the entire process being undermined.

Constitutional Challenges

Under the Constitution, individuals and bodies have a right to take judicial action against a particular project. There have been concerns about the extent to which the instituting of judicial review proceedings can serve to delay work on major infrastructural projects, with consequent financial and economic implications. Arrangements have been put in place in the High Court during 2006 for the case management of judicial review applications relating to such projects. These arrangements have resulted in the expeditious dispatch of a number of such cases. The Superior Courts Rules Committee has drawn up a set of Rules of Court designed to formalise these arrangements, and at the time of going to press, it was expected that those Rules would shortly come into effect. In addition, the Government decided in December 2006 to increase the number of judges on the High Court bench by two, with a view (among other things) to fast-tracking judicial review cases, particularly review cases arising from major infrastructural projects, thus curbing the growth of judicial review as a delaying tactic.

A particular feature has been the use of the judicial review procedure in this regard. There are a number of problems with public input into the planning process. Firstly, they require, but often do not have, specialist knowledge of inquiry procedures. Secondly, many individuals or small groups find it difficult to access the system and thirdly, they have insufficient resources to be effective. An Bord Pleanála should seek to provide:

- Reasonable timeframes for participation;
- Adopt appropriate methods of participation; and
- Take due account of participation in decision-making.[77]

However, while public input is a cornerstone of our democratic planning system, it needs to be considered in the context in which it occurs – generally as a local objection to a project, based on parochial rather than strategic priorities, and a lack of understanding of the strategic importance of a project. Moreover, the advent of the Information Age – whereby information in respect of technical matters affecting daily living, such as health, is freely available, has meant that the public have become significantly more informed regarding matters associated with a project; however, this can also lead to misinformation, misunderstanding of the specific facts of a proposal, and resulting local fear and objection. This is difficult to overcome, even with the best orchestrated communications strategy.

[77] See: the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Aarhus (1998)

Conclusion

Ireland's permitting system for large infrastructure investment is not fit for purpose. While recent legislation dealing with strategic infrastructure has certainly improved this situation we have not fully dealt with all of the issues involved. The system needs to be re-examined with a view to a improving it further.[78] Any overhaul must seek to place strategic infrastructure as a National and Regional certainty, that is subsequently provided for in local planning processes, in the context of proper and sustainable management of such development.

Effective planning has the potential to generate economic growth. Whether that be a major road that links up urban areas or a power station that fuels demand, major pieces of strategic infrastructure can make a lasting difference. Conversely, delays in planning processing and ambiguity in decision making has the potential to delay investment; limit the stimulating effect of infrastructure spending and divert scarce investment resources elsewhere.

Chambers Ireland supports legislation which further streamlines the development approval process in order to afford greater certainty and to permit projects to be fairly evaluated in a reasonable time.

The current planning system takes too long to reach decisions for strategic infrastructure developments. A new approach is required in how the authorities deal with applications from businesses applying to construct strategic infrastructure. Without significant progress on this agenda we will jeopardize new potential investments and divert attention to more development friendly countries and regions with internationally recognized competitive advantages in terms of the regulatory costs of capital infrastructure investment when compared with Ireland. We cannot afford to alienate or miss out on investments which will underpin activity and drive the velocity of money in an economy which greatly needs these investments at this time.

[78] Irish Academy of Engineers, Presentation to the Oireachtas on Climate Change and Energy Security, Committee, p 14, 3rd March 2010