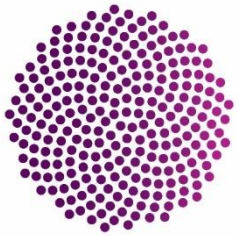

Property Industry Ireland

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# PII Policy Paper and Recommendations on Residential Zoned Land Tax

May 2023

# Contents

# 1. Introduction

The Residential Zoned Land Tax (RZLT) aims to encourage the development of housing and assist in meeting *Housing for All* targets. While welcoming this measure in its aims to bring down the cost of land and encourage the development of housing, certain operational aspects of RZLT, as it is currently structured, will pose challenges for many developments, thereby undermining the tax's policy objectives.

RZLT as currently constituted will result in the tax being applied in many areas where a developer is doing everything in their power, and is incurring significant expenditure, in bringing sites forward for housing development.

This is not the intent of the tax and is counterproductive, in that it adds to costs and risk to anyone investing or activating land for housing development.

The current planning system is hindering homebuilders from developing homes despite their best efforts. This also comes at a time when homebuilders are facing unprecedented commercial challenges when trying to bring forward new developments. Significant inflationary pressures in the construction sector impact both the affordability of housing and the viability of residential development. The introduction of a new Land Value Sharing regime creates additional uncertainty, and potential costs, for many sites based on the current heads of bill proposed. These factors combined create a perfect storm for homebuilders, with this adverse impact borne out by the following statistics:

- Our analysis suggests over 40% of all Strategic Housing Development planning permissions granted in 2021 and 2022 were subject to judicial review challenges, and of those challenges which have been subject to a Court judgment, over 90% of such permissions have been quashed.
- 10% of all applications with full planning permission (10,000 new homes) under the SHD (Strategic Housing Development) planning process for large residential developments, subsequently had that permission overturned by the Irish courts.
- An additional 17% of these planning applications (16,500 new homes) which have received planning permission but not yet commenced, are subject to pending judicial review proceedings.
- Of planning permissions under the SHD or LRD (Large-Scale Residential Development) regimes, excluding those which are subject to ongoing judicial review

proceedings, 45% of successful applications have not yet commenced (30,000 new homes), largely due to viability issues.

- 74 SHD planning applications (25,088 new homes and 1,469 bedspaces) are currently pending (end April 2023) with ABP (An Bord Pleanála) beyond their 16-week statutory determination period. The average delay is currently in the region of 30 weeks beyond this statutory deadline. There is uncertainty as to when these cases will be decided following indications from ABP that they may not be in a position to grant the majority of these applications, mainly for procedural reasons.
- Since January 2021, the CSO's Capital Goods Price Index, which measures the cost of building and construction materials and wages, has increased by 22%.
- In the same period, the SCSI's tender price index has increased by 18%.
- In March 2023, the 12 month rolling sum of commencements stood at 27,309 new homes. This compares to a figure of 34,846 new homes in March 2022, a recent peak.
- Based on current trends, various industry commentators are forecasting between c. 26,000 and 27,000 new homes will be delivered in 2023, down c. 10-13% on the 29,851 new homes delivered in 2022.

Unfortunately, the current design of the RZLT regime will only act to exacerbate the existing viability issues for homebuilders. However, we believe that this need not be the case, and with appropriate amendments would share the Department's ambition that the tax can act as an effective tool to help activate land, bring forward development, and tackle Ireland's housing crisis.

## 2. Proposals

In this regard, we believe that it is important to first recognise that certain operational aspects of RZLT do not take account of industry norms and the current planning system. The impetus for the design of the measure is clear and one with which we agree in the context of the current crisis – the tax should be designed to set an ambitious target for site owners to bring forward developments, delivering positive behavioural changes in the short- and medium-term.

However, the targeted timeline for bringing forward development implicit in the tax is simply unrealistic for the vast majority of developments at present, with this issue increasing in gravity in line with the scale of the development. As set out in our previous submission (September

2022), while a lead-in period of up to three years may appear generous, the allowed lead-in time can be closer to two years under the legislative provisions in certain circumstances, and practical experience would suggest that even a three-year lead-in time may not be sufficient in anything but the very best-case scenario. In addition, the present design of the tax does not effectively distinguish between site owners who elect not to bring forward land for development and bona fide homebuilders who, despite their best efforts, cannot bring forward land for development.

Appendix 1 sets out an illustrative timeline for a large-scale residential development of 500 units plus that is currently going through the planning system. While this is only one example, it is representative of what our members are experiencing in getting through the planning system. The majority of schemes have some form of appeal / delay / additional information request, and as a result, regardless of the scale of a development, the procedural and legal aspects of the planning system mean that the timelines allowed for under the current RZLT legislation are simply not long enough – charges to RZLT will arise, and in many cases more than one charge, even though developers are doing everything they can to get on site.

In this regard, we believe that a number of amendments to the current legislative framework are required in order for the tax to operate effectively and meet its potential as an important tool in delivering Irish homes. Set out below are seven proposals to tackle the challenges outlined above within the existing legislative architecture of RZLT. In order of priority, we would suggest that the changes include:

1. A deferral from the moment of bona fide entry into the planning system
2. A deferral from the date of grant of planning permission until development commences to account for normal pre-commencement timelines
3. Align lead-in time with industry norms
4. Allow a deferral in exceptional circumstances
5. Remove clawback on quashing of permission following judicial review
6. Place on obligation on local authorities to amend maps if a decision has been made by them to limit local development
7. Remove clawback on change of ownership during development

In addition, we believe that clarification needs to be forthcoming in relation to the operation of the tax to the phasing of very large developments – this certainty is critical to the developers of large-scale sites with many phases which will take multiple years to develop.

Please note that the issues and proposals in this paper do not capture all PII member concerns in relation to the tax. We have identified here only the key challenges to the operation of the tax requiring urgent change. However, other significant concerns have been raised with us and other unintended consequences continue to come to light. Some of these will make it particularly challenging to meet Government's housing policies, including in relation to compact urban growth and the scale delivery of housing. We would welcome an ongoing dialogue with all Government Departments involved to ensure that the tax achieves its aims and does not become a barrier to a sustainable housing system or an excessive additional cost to the final homeowner.

## 3. Overlap in outcome

We would note that, given the nature of the challenges that our proposals aim to resolve, there is a degree of overlap between some of the below proposals. We would highlight that, in particular, to the extent Proposal 1 below can be comprehensively and effectively implemented, the need for Proposal 2, 3 and 5 should diminish.

## 4. Suggested solutions

### Proposal 1: Allow for a deferral from the moment of bona fide entry into the planning system

As outlined above, delays associated with the planning process are one of the key impediments to bringing forward residential development. Many projects require multiple planning applications and face long delays before residential development can commence (see Appendix 1 as an illustrative example). The length of time that might be spent in the planning process for any development is not a reflection on the quality or importance of the development proposed. Indeed, periods spent actively engaging in the planning process are likely to increase in line with the scale and strategic importance of the development. The inconsistency of various local authorities in implementing national planning policy, through their own specific county development plans and procedures, leads to different timeframes for

achieving planning permission across every local authority during the statutory planning process.

Currently, there is no RZLT deferral while a project is going through the planning process. While a deferral may be available during the course of a third-party appeal or judicial review against a grant of planning permission, this may be of very limited benefit to homebuilders seeking to bring forward residential development for a number of reasons:

- To the extent that the grant of planning permission is ultimately overturned, the full amount of tax deferred becomes due for payment, plus 8% interest thereon. As noted above, many successful grants of planning permission will be overturned through no fault of the homebuilder, often occurring after substantial pre-planning consultation and engagement with local authorities or An Bord Pleanála under the SHD process. We have many members who have had successful SHD grants quashed through judicial review proceedings on foot of planning authority administrative errors. Such outcomes appear to be at odds with the objective of the tax in circumstances whereby full planning permission has effectively been granted in advance of court rulings.
- The deferral does not apply in cases where the homebuilder themselves appeals against the planning permission granted. This frequently arises in practice, as homebuilders may appeal against conditions attached to the original planning grant that make the development unviable. Local authorities, all of which have a different approach, often include a large number of onerous planning conditions that delay commencement and are therefore worthy of challenge by the developer. (We note for completeness that ABP have a more concise approach to conditioning planning permissions.) The deferral also does not apply if the permission is refused by the local authority, even if that refusal is overturned on an appeal by the developer.
- As advised above, there are currently 74 SHD planning applications (25,088 new homes and 1,469 bedspaces) pending with An Bord Pleanála beyond their 16 week statutory determination period (end April 2023). The average delay is currently in the region of 30 weeks beyond this statutory deadline. A full schedule of these applications is included in Appendix 2.
- As the availability of the deferral is determined by a point-in-time test at the liability date, it is possible that an appeal/judicial review could eat into the developer's 2-3 year lead-in time by delaying commencement on site without the benefit of the deferral becoming available. This would arise in a scenario, for example, where an appeal against a grant of

planning permission takes 10 months to be determined, or longer for a judicial review, with the determination being delivered in the weeks preceding the liability date.

Given the scale of SHD and LRD planning applications, they are very complex, expensive and management intensive processes. We estimate that the average pre-planning cost for such an application is in excess of €1 million (including planning costs, external design costs e.g. architects, civil and structural engineers etc). These are not planning applications which are taken lightly by the industry. This excludes any fees associated with an appeal to ABP, either by the landowner or defending a third-party challenge, including a more onerous legal defence through judicial review proceedings.

### Proposed solution

To avoid penalising those landowners who are genuinely engaging with the planning system and seeking to bring forward a site for development, as evidenced by the cost of the process above, a deferral should be available from the moment of entry into the planning system. This relief could then be tapered or removed, if necessary, where commencement of the development does not occur within a certain agreed time period after a successful grant of planning permission.

This could be achieved by inserting a new section into Part 22A TCA 1997 to provide for this deferral. The new section would apply where a landowner makes a planning application to build residential units on a relevant site.

We propose that the deferral should have the following features:

*A: When should it apply?*

- It should apply with respect to applications for residential development and mixed developments.

*B: When should the deferral commence from?*

- The deferral should commence from the earlier of:

    a) The submission of a request for an “LRD Opinion” under Section 32B of the Planning and Development (Amendment) (Large-scale Residential Development) Act 2021 - This should apply to large residential developments under the LRD regime (typically 100+ units) and would only be possible after a

substantial amount of engagement by the developer with the planning authority as part of the LRD process. Under the planning rules, the prospective applicant must formally submit a request for an LRD Opinion on the proposed development from the planning authority under Section 32B of the Planning and Development Act as amended, and must receive the LRD Opinion prior to making the planning application. This request for an LRD Opinion must be accompanied by scaled drawings of the proposal and an extensive range of documentation, which amounts in effect to a draft planning application. As a result, to get to the stage of requesting an LRD Opinion requires significant meaningful engagement by the developer, and so we believe it is an appropriate milestone for larger developments;

b) The lodgement of a planning application for a development with a planning authority - This should be relevant for smaller residential developments, or non-residential schemes on 'mixed use' zoned land.;

c) In the case of a large mixed use scheme, a scheme for a commercial development (such as offices), or other non residential scheme or an SDZ scheme (i.e. one that is not governed by the LRD Opinion process outlined in a) above), the occurrence of a pre-application meeting with the local authority under section 247 of the Planning and Development act 2000 as amended ( a "247 Meeting"), where documents discussed at the 247 Meeting are similar to the ones required to be submitted with a request for an LRD Opinion – This is intended to cover large mixed use developments / schemes which do not fall under the LRD process, where the developer has undertaken significant meaningful engagement in getting to that stage. Consideration could also be given to having a local authority certification that the documents produced/discussed at the 247 Meeting are equivalent to those under the LRD Opinion process.

*C: When should the deferral continue until?*

- In principle, the deferral should continue to apply throughout the period that the homebuilder continues bona fide engagement with the planning system. Therefore, we propose that amounts deferred should not fall due and payable until the <u>earlier of</u>:
    I. A period of 12 months after the latest of:

i. The grant of planning permission with respect to the development.
(As outlined above, we would note that the industry standard timeline for commencement on site from the date of grant of planning permission for all SHD planning grants is 48 weeks for large scale developments.)

ii. The delivery of a determination of:
    a. An appeal or judicial review brought with respect to the planning application, or
    b. Where applicable, an appeal or judicial review with respect to such a determination referred to in point a. above.

    (We would note that this should not be limited to just 3rd party appeals, and should include appeals by the homebuilder, as homebuilders may in many cases appeal particular conditions of a grant of planning permission in order to ensure the commercial viability of a project, or appeal against a refusal to grant planning permission.)

II. The application for planning permission is refused.

III. The planning application is withdrawn.

IV. The application for planning permission falls not to be considered further by the planning authority due to a lack of engagement by the applicant. (For example, under the LRD process, "Further Information" responses are required within 12 weeks, unless otherwise agreed with the local authority. So if the applicant doesn't respond within the required/ agreed extended timelines then they would be deemed to have ceased "bona fide" engagement.)

*D: When does the deferral become permanent i.e. the tax is no longer due?*

- If a commencement notice is lodged with respect to the development prior to the occurrence of an event described in C.I. above (i.e. before the end of the allowed 12 month period post grant of planning), amounts deferred could be added to the amounts deferred under Section 653AH TCA 1997 and subject to the clawback mechanism outlined in that section.
- This would ensure that the incentive to bring forward residential development in a timely fashion is maintained, and would maintain the position that if the development is completed within the planning permission validity period, the RZLT should not fall due.

*E: Interaction with Appeals and submission of new planning application following refusal*

- With respect to the scenario outlined at C.II. above i.e. where a planning application is refused, to the extent that an appeal against the decision to refuse planning permission with respect to a development has been lodged within the time limits as prescribed in planning law, then the provisions of C.II. above should not apply and the deferral should continue to apply, with amounts deferred carried over. A similar provision should apply with respect to determinations under C.I.ii. where the determination results in the grant of planning permission being overturned or a refusal to amend the conditions of the grant of planning permission where the appeal is brought by the liable person.
- This should similarly apply to appeals against or requests for judicial review of a determination made in respect of such appeals.
- In addition, the provisions of C.I.ii (to the extent the determination results in the overturning of a grant of planning permission or a refusal to amend conditions of the grant of planning permission where the appeal is brought by the homebuilder), C.II. and C.III. above should not apply where a new planning application is lodged with respect to the site within 12 months of the date of the determination refusing the grant of planning permission / date of withdrawal of the application. Amounts deferred would be carried over. However, in order to prevent avoidance of RZLT through the submission of many new planning applications, this provision would only apply with respect to the first refusal/withdrawal of a planning application and not any subsequent refusals/withdrawals.

*F: Other matters to link into the existing legislation*

- The deferral should only be available to the extent that a return claiming the deferral is filed.
- Any deferred amounts that ultimately fall due and payable should attract interest thereon.

We appreciate that the above proposal is a departure from the current regime, and requires a significant amount of legislative drafting. However, we believe it is in keeping with the objective of the tax, essentially to not penalise those who are genuinely engaging with the planning system, and who commence on site within 12 months of receiving a grant of planning. Once we have discussed the above with you we would be happy to share a proposed draft of the legislation.

### Proposal 2: Allow for a deferral from the date of grant of planning permission until development commences to account for the normal pre-commencement timeline for homebuilders

As outlined above, the effect of RZLT may adversely impact the ability of homebuilders to deliver housing where the tax's design is not aligned with the practical timelines faced today by residential developers.

A key component of this timeline is the time required for pre-commencement activities after the grant of planning permission before the developer can start on site. This may be a period of between six and twelve months, depending on the scale and complexity of the development. Unfortunately, the current design of RZLT fails to directly take into account this necessary delay between the grant of planning permission and commencement on site, with the result that even if a homebuilder is able to get unchallenged planning permission within the allowed two- to three-year lead-in period currently allowed for under the legislation, they may still be subject to one or more RZLT charges as they complete their pre-commencement functions. As outlined above, statistics from the SHD process suggest that the average lead time between planning grant and site commencement on the 137 granted applications which have commenced to date is 50 weeks (as at May 2023).

For example, land first satisfies the relevant criteria on 30 October 2023. A homebuilder acquires a site on 1 January 2024 with the intention of developing residential housing. The homebuilder engages with the planning authorities, undertakes the necessary consultations and submits a planning application in December 2024. The relevant local authority and ABP grant planning permission in June 2026, 18 months after the planning application was made.

- A further six months are needed to complete compliance preparation and approval, along with finalising the design and tendering processes. At the earliest, construction will begin on site in December 2026. The first RZLT liability date will be 1 February 2026. In such a scenario, in spite of best efforts and a successful outcome to the planning process an RZLT charge will arise on the property.
- If the period needed to complete compliance preparation and approval, tendering etc was 50 weeks in line with the statistics from the current SHD process, then construction on site would not begin until May 2027, and so two RZLT liability dates would arise being 1 February 2026 and 1 February 2027. In such a scenario, in spite of best efforts and a successful outcome to the planning process, two RZLT charges will arise on the property.

In addition to the above, given the length of time it takes to obtain a valid planning permission that has been through all phases of appeal etc, in the majority of cases, construction funding can only be sourced once a successful planning permission has been obtained. This feeds into the timing of being able to start on site.

### Proposed solution

We propose introducing a deferral where work is commenced on a site within a reasonable timeframe after the date of grant of planning permission.

A new section would defer RZLT from the point at which planning permission is granted (or the date of issuance of the final determination upholding that grant of planning permission) to the point at which it could reasonably be expected that a homebuilder could commence works. We recommend this time period is 12 months. The reasonable period of time would be reflective of standard industry timelines that would allow homebuilders a reasonable period to complete the necessary steps to be completed before building can begin, and as referenced above, obtain the necessary financing to start the construction works on-site.

Essentially we recommend a new section “Section 653AHA” is inserted after 653AH TCA 1997. Section 653AH will apply where a commencement notice is not obtained within 12 months of a grant of planning, and Section 653AHA will apply where a commencement notice is obtained within 12 months of a grant of planning. The provisions of the new Section 653AHA mirror those of the existing Section 653AH as much as possible.
Proposed legislation to implement the above is set out in Appendix 3.

### Proposal 3: Align the RZLT “lead-in” period with industry norms

At present, homebuilders will have approximately two to three years from the date that the relevant criteria are met to commence development of a site before the first charge to RZLT arises. The intention would appear to be to offer site owners a reasonable period of time to bring forward development of the site before the charge would first apply, while maintaining an immediate incentive for site owners to start the process of bringing their land forward for development or securing the sale of the land to a purchaser who can do likewise.

However, as outlined above, the current lead-in period of two to three years is simply not reflective of the industry timeline for bringing forward residential development of scale. Indeed, the time afforded to homebuilders under the current legislation is likely insufficient to bring forward SHD and/or LRD applications in even the most optimistic of developer timelines, who

would expect a period of between three to four years, at a minimum, from the date of zoning of land to when it would be possible to start on site. It is also important to take account of specific adherence to planning conditions and the impact which they can have on new site commencements. Additionally, the majority of homebuilders cannot source funding for a new residential development until they are in receipt of full planning permission. This is an additional process which can take time and add to the lead time between planning grant and site commencement. Statistics from the SHD process suggest that the average lead time between planning grant and site commencement on the 137 granted applications which have commenced to date is 50 weeks (as at May 2023).

As a result, homebuilders will face RZLT charges despite efforts to develop sites in line with the policy objectives. There is a real concern that the tight lead-in times will disincentivise homebuilders from taking on many projects where there is even a moderate risk of delay in the planning process, due to the substantial latent RZLT risk associated with site ownership under the current rules.

### Proposed solution

In light of expected industry timelines from acquisition to starting development, we propose increasing the lead-in time before RZLT will first apply to three to four years. Specifically, section 653Q Taxes Consolidation Act 1997 (TCA 1997) should be amended as follows:

- For sites satisfying the criteria on 1 January 2022 adjust s653Q(1)(a) to:

  *"in respect of a relevant site which constitutes land satisfying the relevant criteria on 1 January 2022, for each year commencing with the year ~~2024~~* ***2025****"*

- For sites satisfying the criteria after 1 January 2022 adjust s653Q(1)(b) to:

  *"in respect of a relevant site which constitutes land first satisfying the relevant criteria after 1 January 2022, for each year commencing with the ~~third year~~* ***fourth year*** *following the year in which the land satisfies the relevant criteria."*

The mapping process for 2023 and 2024 would remain unchanged in the context of the above amendment, allowing sufficient time for appeals, amendments, etc. The revised final map relevant to the first year of the charge would then be published in January 2025, as currently provided.

### Proposal 4: Allow for a deferral in exceptional circumstances

Homebuilders have over the last number of years faced rapid labour and material cost inflation, which is adversely impacting the viability of projects. As noted above, development has yet to commence on a significant proportion of SHDs/LRDs in respect of which planning permission has been granted for reasons other than judicial review. Rather, in many cases it is simply not viable to undertake the development in the current environment. As currently drafted, RZLT would continue to apply to sites where residential development is commercially unviable, thereby acting to further increase developer costs and developer risk while adversely impacting the affordability of housing.

### Proposed solution

To resolve this issue, we propose that a mechanism should be introduced that would allow site owners to request relief on a case-by-case basis, operating as follows:

- A landowner may apply for a deferral where it is not economically viable to develop the land. Such submissions would be made to the relevant planning authority in whose region the site is located.
- This submission would then be reviewed by the local authority or other appropriate body / independent adjudicator, who would issue a determination to the liable person.
- This determination could be appealed by the liable person to An Bord Pleanála (ABP) or other appropriate body. Both local authorities and ABP (or the relevant appropriate body) would have the authority to refer the submission for consideration by one or more independent experts, the cost of which would be borne by the liable person. By way of example, experts to whom the submission could be referred could include quantity surveyors, corporate finance experts or any other necessary professionals. The panel would assess the objective economic viability of developing the site in question and submit a report of its findings to the relevant local authority.
- The local authority, after reviewing the report, can decide to grant a deferral of RZLT for an agreed period. We recommend that this agreed period could be 2 years.

More detailed guidance on the operation of this mechanism should be provided by the Department of Housing. For example, applications for this regard should be accompanied by some or all of the following:

- A business plan, including appropriate development stack;
- An Investment Committee report (or equivalent);

- A report supporting the underlying cost information from a certified quantity surveyor;
- A market valuation of the site (present and upon development) from qualified valuer.

### Proposal 5: Remove the clawback where a grant of planning permission is quashed on judicial review as long as reengage with the planning process

Judicial review proceedings may be brought by those seeking to challenge the legal validity of a planning authority's decision with respect to a grant of planning permission. Therefore, judicial review proceedings are brought to examine the legal validity of a decision undertaken by a State body and does not directly relate to the planning application in respect of which permission has been provided.

As the legislation currently operates, where a judicial review overturns a grant of planning permission, all of the deferred RZLT will become due plus interest. As a result, a homebuilder, who has engaged fully and invested heavily in the judicial review process, will be heavily penalised, in the vast majority of cases through no fault of their own – the overturn arises as a result of an error of the ABP/local authority, not the homebuilder.

Following the overturning of a planning permission on judicial review, it normally takes up to six months to reapply for planning permission for smaller developments. For larger developments it is expected to take up to 12 months to reapply for planning permission and for very large and complex schemes, it can take up to 18 months. RZLT will apply during this period adding to the burden on homebuilders, increasing development risk and cost, exacerbating existing viability challenges and possibly adversely impacting the affordability of housing for purchasers. In this regard, we propose that a charge should be deferred as long as a new application is made within 12 months, unless otherwise agreed.

### Proposed solution

We propose that RZLT should not be charged in respect of sites where a judicial review has been initiated, irrespective of the outcome, so long as either the grant of planning permission subject to the judicial review is upheld or a new planning application is submitted within a reasonable period from the date of determination of the judicial review.

This should be achieved as follows:

- Section 653AF(4)(b) could be amended to provide that its provisions are subject to subsection (5).
- A new subsection (5) would be inserted to provide that the provisions of paragraph (b) should not apply on the overturning of the grant of planning permission where the relevant legal challenge or appeal is of a type referred to in paragraphs (b) or (c) of subsection (1) (i.e. an application for judicial review of a decision of a local authority or ABP, or an appeal of such a determination).
- A new subsection (6) could provide that subsection (5) should not apply unless a new application for planning permission is submitted within a reasonable period of time from the date on which the relevant legal challenge or appeal in question is determined.
- Finally, a new subsection (7) could be inserted to provide that for the purposes of subsection (6) above, "a reasonable period of time" would be determined as 12 months unless otherwise agreed.
- Revenue could then issue guidance outlining when they would be willing to extend the 12 month period in certain cases where the developer is actively engaging with the planning process e.g. in the case of large residential developments, this would be demonstrated where a submission of a request for an LRD Opinion under Section 32B of the Planning and Development (Amendment) (Large-scale Residential Development) Act 2021 had been made within the 12 month period.

It is proposed that in this scenario that, where the above conditions are met (i.e., a new planning application is lodged in a reasonable time after the date of determination of the relevant appeal), the amounts previously deferred during the judicial review process would no longer fall due and payable. From a policy perspective, we believe this to be wholly reasonable on the basis that, as noted above, in the vast majority of cases this occurs through no fault of the homebuilder. Rather, the overturn arises as a result of an error of the ABP/local authority.

See Appendix 4 for the proposed changes to s653AF TCA 1997 in this regard.

### Proposal 6: Change the map where there is a limit on residential development by local authorities

With increasing frequency, local authorities are placing limits on the number of residential units for which planning permission will be granted in any given period in order to limit the

amount of new residential development occurring at the same time within the area. As a result, homebuilders are ever more encountering circumstances where planning is not granted and/or planning permission of a suitable scale to the make the development viable is not provided. It is worth highlighting that in such circumstances, a grant of planning permission may be denied despite the lands being appropriately zoned and there being sufficient capacity in the infrastructure and facilities needed to deliver residential development. As a result of these planning policies owners will be unable to obtain planning permission and develop appropriately zoned land, while RZLT continues to arise thereon.

### Proposed solution

Land is excluded from the scope of RZLT where there is a lack of capacity in a particular service (e.g. water), because the site cannot be developed for residential purposes. We propose that a similar approach would apply in circumstances where local authorities identify that no further residential development will occur in an area in a given period. The effect of this would be to ensure that once the relevant local authority has made this determination, all remaining sites within the affected area would be excluded from RZLT.

We believe this may not need a legislation change as the local authority has sufficient discretion under the existing legislation to amend the relevant map to exclude those sites where they have formed such a view.

However, we suggest that at a minimum the guidance to the local authorities issued by Department of Housing relating to RZLT (current version Residential Zoned Land Tax – Guidelines for Planning Authorities June 2022) should be updated to instruct local authorities that, where they deny or restrict a planning permission by placing limits on the number of residential units for which planning permission will be granted in any given period in order to limit the amount of new residential development occurring because the number of planning permissions granted have already reached the target of the Development Plan's Core Strategy, then the local authority need to remove affected sites from the map in the next mapping cycle.

## Proposal 7: Remove clawback of deferral where ownership changes during the course of residential development

It is unclear from a policy perspective why a deferral of tax should cease to apply simply because there is a change of ownership of a site prior to the completion of a residential

development. The impact of the current legislation is to create a permanent cost on the existing landowner, that would otherwise have been cancelled upon completion of the development.

It should be noted that facilitating the sale of a partially developed site to a new owner may in fact allow completion of the development in circumstances in which this would not otherwise occur – we do not believe that the RZLT regime should disincentivise such transfers. Change of ownership can facilitate the delivery of housing which might otherwise not occur and therefore should not be penalised.

### Proposed solution

We propose a legislative change would be implemented such that the purchaser can effectively step into the shoes of the vendor with respect to the deferral available under section 653AH TCA 1997. Under the proposal, no clawback of the deferral would arise in the hands of the vendor and the full amount of the deferred RZLT would become recoverable from the purchaser on the earlier (i) of development not being completed prior to expiry of planning permission or (ii) development permanently ceasing on the site. This would be subject to the tiered relief for partial completion under section 653AH(7)(b) TCA 1997.

Such an approach would have a number of benefits, including:

- Ensuring that the requisite amount of RZLT will be recovered in the event that the residential development permanently ceases prior to completion or work is not completed before the planning permission expires,
- Removing needless financial obstacles for vendors seeking to sell a partially completed site to a person capable of completing the residential development, and
- Ensuring that the incentive to complete residential development in a timely manner remains, though now carried by the purchaser of the site.

For clarity, we would highlight that this proposed treatment should not be limited to third-party sales, but should also be available with respect to connected party disposals prior to completion. This is on the basis that any deferred RZLT should remain fully recoverable regardless, albeit from the purchaser. In addition, intra-group/connected party transfers of site prior to completion are regularly undertaken for bona fide commercial reasons (e.g., as a requirement for external financing for security reasons).

Please see a proposed draft for discussion of the legislation to implement this new mechanism in Appendix 5.

# 4. Important Clarification needed

### Clarify that RZLT is deferred where development is on a phased basis

Large residential developments are typically completed on a phased basis, with planning permission being granted in respect of the entire site and separate commencement notices being lodged on a phase-by-phase basis. This practice is often necessitated by a condition of the planning permission granted. In addition, such an approach is often essential from a working capital, personnel, and cash flow management perspective.

We understand that it is not the intended policy of the RZLT regime to penalise large residential developments that are carried out on a phased basis. In this regard, we note that section 653AH provides for a deferral from RZLT at the point at which a commencement notice is lodged with respect to a development. As the legislation is currently drafted, there is an uncertainty as to whether this deferral should apply with respect to the entire site in respect of which planning permission has been granted from the date that the first commencement notice is lodged, or just to the phase to which the commencement notice relates.

### Proposed solution

Clarification on this matter would be very welcome.

To the extent that a legislative change is required to achieve the understood policy objective, the proposed legislative changes in this regard are set out in Appendix 6. Alternatively, if the Department is satisfied that existing legislation achieves the understood policy objective, it would be helpful for this to be clarified in guidance.

# 5. Next Steps

RZLT as currently constituted will result in the tax being applied in many areas where a developer is doing everything in their power, and is incurring significant expenditure, in bringing sites forward for housing development.

We believe RZLT should not arise where developers are actively engaged with the current planning system, and operating in line with industry norms, and so the changes suggested above are reasonable and should still achieve the policy objective.

We would welcome the opportunity to meet with you to discuss the above proposals.

# Appendix 1 – Typical example of a large-scale development site

| Illustrative timeline for large residential development | Timeline (mths) | Cumulative Timeline (mths) |
|---|---|---|
| **1.** Acquisition of Zoned Site | - | T0 |
| **2.** DCC Pre-App Meeting(s) – min 3 meetings needed – 7 held in this case | 11 – 18 | T + 11 – 18 |
| **3.** SHD Pre-App Meeting | 8.5 | T + 19.5 – 26.5 |
| **4.** SHD Opinion | 0.5 | T + 20 – 27 |
| **5.** SHD Lodgement | 7 | T + 27 – 34 |
| **6.** SHD Determination | 3.5 | T + 30.5 – 37.5 |
| **7.** JR Challenge Commenced by 3rd Party | 0.5 | T + 31 – 38 |
| **8.** Decision Quashed/Conceded | 6 | T + 37 – 44 |
| **9.** DCC Pre-App Meeting(s) – min 1 meeting needed– 3 held in this case | 2 – 7 | T + 39 – 51 |
| **10.** LRD Pre-App Meeting | 5.5 | T + 44.5 – 56.5 |
| **11.** LRD Opinion | 1 | T + 45.5 – 57.5 |
| **12.** LRD Lodgement | 6 | T + 51.5 – 63.5 |
| **13.** LRD Decision | 1.5 | T + 53 – 65 |
| **14.** Appeal(s) Lodged | 1 | T + 54 – 66 |
| **15.** Appeal(s) Due Date | 4 | T + 58 – 70 |
| **16.** Appeal(s) Determined | unknown | unknown |

# Appendix 2 – List of SHDs pending with An Bord Pleanála and related delays

*(Please see separate file)*

# Appendix 3 – Legislative text for Proposal 2

Insert a new section "Section 653AHA" after 653AH TCA 1997. Essentially Section 653AH will apply where a commencement notice is not obtained within 12 months of a grant of planning, and Section 653AHA will apply where a commencement notice is obtained within 12 months of a grant of planning:

**"Section 653 AHB: Deferral of tax during pre-commencement phase**

*(1) Subject to subsection (2), this section applies where —*

*(a) a planning permission has been granted in respect of development on a relevant site,*

*(b) all or part of the development consists of residential development (and such portion of the development as consists of residential development on the relevant site shall be referred to in this section as 'relevant residential development'), and*

*(c) it is intended that a commencement notice (hereafter referred to as "the relevant commencement notice"), in respect of the development and to which the grant of planning permission referred to in subparagraph (a) relates, will be lodged with the local authority in whose functional area the relevant site is situated within the 12-month period following the date of grant of planning permission referred to in paragraph (a).*

*(2) To the extent that the relevant commencement notice is not lodged within a 12-month period from the date of grant of planning permission noted in paragraph (a) of subsection (1), this section should not apply and the liable person shall amend each return in which a claim under subsection (9) was made, and pay any tax and interest due accordingly.*

*(3) Subject to subsections (5) and (7), where this section applies, so much of any residential zoned land tax arising in respect of a liability date in relation to a relevant site after the date of grant of planning permission referred to in subsection (1)(a) which relates to relevant residential development shall,*

*notwithstanding* section 653Q(2)*, not be due and payable until the earliest to occur of—*

> *(a)the date on which the works (within the meaning of the Act of 2000) on the relevant site permanently cease where, on that date, certificates of compliance on completion in respect of all of the relevant residential development have not been lodged with the local authority concerned,*
>
> *(b)the date on which there is a change in the ownership of the relevant site, where such a change occurs prior to certificates of compliance on completion having been lodged with the local authority concerned in respect of all of the relevant residential development, and*
>
> *(c)the date of expiry of the planning permission period for the planning permission, where, on that date, certificates of compliance on completion in respect of all of the relevant residential development to which the planning permission relates have not been lodged with the local authority concerned.*

*(4) Residential zoned land tax which is not due and payable by virtue of subsection (3) shall, in relation to the relevant site, be referred to in this section as 'pre-commencement deferred residential zoned land tax'.*

*(5) The amount of residential zoned land tax which—*

> *(a) arises in respect of a liability date that falls after the date of grant of planning permission referred to in subsection (1)(a) and up to the earliest to occur of the events referred to in paragraphs (a), (b) and (c) of subsection (3), and*
>
> *(b) relates to a relevant residential development,*

*shall be—*

> *(i) where the development referred to in subsection (1)(a) consists of residential development only, the amount of all residential zoned land tax arising in respect of the relevant site, or*

*(ii)where the development referred to in subsection (1)(a) consists of residential development and development other than residential development, the amount represented by A in the formula—*

*A = B × C*

*where—*

*B is, on the valuation date applicable to the liability date, the market value of that part of the relevant site which, having regard to the planning permission referred to in subsection (1), is being used for residential development (referred to in this section as the 'qualifying part of the relevant site') and subsection (6)(a) shall apply for the purpose of determining the market value of the qualifying part of the relevant site on the first liability date after the date of grant of the planning permission referred to in subsection (1)(a), and*

*C is the rate of 3 per cent.*

*(6) Where subsection (5)(ii) applies—*

*(a) the market value of the qualifying part of the relevant site on the first liability date after the date of grant of the planning permission referred to in subsection (1)(a), (represented by 'B' in the formula contained in subsection (5)(ii)), shall be computed in the same manner as the market value of the 'liable part of the relevant site' (within the meaning of section 653AG) is computed under section 653AG(4), with A in the formula in that subsection instead referring to the market value of the relevant site on the date on which the planning permission referred to in subsection (1)(a) was granted, and*

*(b) for the purposes of section 653R, so much of the relevant site to which residential zoned land tax continues to apply shall be treated as having a valuation date falling on the same day as the first liability date after the date of grant of the planning permission referred to in subsection (1)(a).*

*(7) Notwithstanding subsection (3), where, in relation to a relevant site referred to in subsection (1)—*

*(a)one or more certificates of compliance on completion are lodged with a local authority in respect of all of the relevant residential development in advance of the expiry of the planning permission period relating to that site, then, on the making of a claim by the liable person, the amount of the pre-commencement deferred residential zoned land tax shall no longer be due and payable, or*

*(b)on the expiry of the planning permission period, one or more certificates of compliance on completion are lodged with a local authority in respect of part only of the relevant residential development and the percentage of completion, calculated in accordance with subsection (8), is within any of the percentages specified in column (1) of the Table to this section, then, on the making of a claim by the liable person, the percentage of the pre-commencement deferred residential zoned land tax relating to the relevant site which is due and payable shall be the percentage, set out in column (2) of that Table, opposite the relevant percentage of completion in column (1).*

*(8)For the purposes of subsection (7)(b) and column (1) of the Table to this section, the percentage of completion of relevant residential development on a relevant site at the expiry of a planning permission period shall be the amount, expressed as a percentage, represented by A in the formula—*

$$A = (B/C) \times 100$$

*where—*

*B is the total gross floor space of the relevant residential development which is completed at the expiry of the planning permission period, and*

*C is, in accordance with the planning permission, the total gross floor space of the relevant residential development.*

*(9) A claim referred to in subsection (7) shall be made in such form and contain such particulars as the Revenue Commissioners may prescribe.*

*(10)This section only applies if a return referred to in* section 653T *is delivered to the Revenue Commissioners in respect of each liability date to which this section refers notwithstanding the application of subsection (2).*

*Table*

*[Table is the same as in Section 653AH]*

# Appendix 4 – Legislative text for Proposal 5

Amend Section 653AF(4) TCA 1997 to:

*"At a return date after the date on which a relevant appeal was made but before the relevant appeal has been determined, a liable person may make a claim to defer payment of the residential zoned land tax in respect of the site to which the planning permission relates until such time as the relevant appeal is determined, and—*

*(a)where the relevant appeal is determined such that the grant of planning permission is upheld, the tax so deferred shall no longer be due and payable,*

*(b) subject to subsection (5), where the relevant appeal is determined such that the grant of planning permission is overturned, the liable person shall amend each return in which such a claim was made, and pay any tax and interest due accordingly, or*

*(c)where the owner sells the property before the relevant appeal is determined, the liable person shall amend each return in which such claim was made, and pay any tax and interest due accordingly."*

Add new subsections (5)-(7) into Section 653AF:

"*…(5) Where the relevant appeal referred to in subsection (4)(b) is an appeal to which paragraph (b) or (c) of subsection (1) refers, subsection (4)(b) should not apply and the tax deferred under subsection (4) shall no longer be due and payable.*

*(6) Subsection (5) shall not apply unless a new application for planning permission with respect to the site is submitted to the local authority or An Bord Pleanála within a reasonable period of time from the date of the determination referred to in subsection (4)(b).*

*(7) For the purposes of subsection (6), a new planning application shall be considered to have been made within a reasonable period of time where the new application is made within 12 months from the date of the determination referred to in subsection (4)(b), or such other time period as approved by Revenue."*

# Appendix 5 – Legislative text for Proposal 7

Amend section 653AH(3) TCA 1997 to:

> *"Subject to subsections (3A), (5) and (7), where this section applies, so much of any residential zoned land tax arising in respect of a liability date in relation to a relevant site after the submission of the commencement notice referred to in subsection (1)(c) which relates to relevant residential development shall, notwithstanding section 653Q(2), not be due and payable until the earliest to occur of—*
>
> > *(a)the date on which the works (within the meaning of the Act of 2000) on the relevant site permanently cease where, on that date, certificates of compliance on completion in respect of all of the relevant residential development have not been lodged with the local authority concerned,*
> >
> > *(b)the date on which there is a change in the ownership of the relevant site, where such a change occurs prior to certificates of compliance on completion having been lodged with the local authority concerned in respect of all of the relevant residential development, and*
> >
> > *(c) the date of expiry of the planning permission period for the planning permission, where, on that date, certificates of compliance on completion in respect of all of the relevant residential development to which the planning permission relates have not been lodged with the local authority concerned."*

Insert a new subsection (3A) & (3B) following the above:

> *"…(3A) Where there is a change in the ownership of the relevant site after the submission of the commencement notice referred to in subsection (1)(c), and the liable person (in this subsection referred to as "the vendor") and the purchaser of the relevant site by notice in writing to the inspector so elect, the following provisions shall apply:*
>
> > *(a) A change of ownership from the vendor to the purchaser of the relevant site should not be deemed to arise for the purposes of subsection (3),*
> > *(b) So much of any residential zoned land tax arising in respect of a liability date in relation to a relevant site after the submission of the commencement notice referred to in subsection (1)(c) which relates to relevant residential development arising in respect of the period during which the vendor was the liable person with respect to the site shall be payable by the purchaser on*

*the earliest to occur of the events referred to in paragraphs (a), (b) and (c) of subsection (3), and*

*(c) Any amounts falling due and payable under paragraph (b) shall be payable in addition to so much of any residential zoned land tax arising in respect of a liability date in relation to a relevant site after the submission of the commencement notice referred to in subsection (1)(c) which relates to relevant residential development arising in respect of the period during which the purchaser is the liable person with respect to the relevant site.*

*(3B) The election referred to in subsection (3A) shall be in such form and contain such particulars as the Revenue Commissioners may prescribe."*

Amend section 653AH(4) TCA 1997 to:

*"Residential zoned land tax which, (i) by virtue of subsection (3), is not due and payable until the earliest to occur of the events referred to in paragraphs (a), (b) and (c) of that subsection, or (ii) by virtue of subsection (3A) becomes a payable by the purchaser, shall, in relation to the relevant site, be referred to in this section as 'deferred residential zoned land tax'."*

# Appendix 6 – Legislative text for clarification required in relation to phased developments

Amend section 653AH(1) TCA 1997 to:

*(1) This section applies where—*

*(a) a planning permission has been granted in respect of development on a relevant site,*

*(b) all or part of the development consists of residential development (and such portion of the development as consists of residential development on the relevant site shall be referred to in this section as 'relevant residential development'), and*

*(c) a commencement notice, in respect of the development or any part thereof, has been lodged with the local authority in whose functional area the relevant site is situated.*

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# About Property Industry Ireland

Property Industry Ireland (PII) is the trade association within Ibec which represents the property and construction sector, including contractors, developers and builders; property professional service providers including, architects, surveyors, engineers and planners; as well as banks, financial institutions, asset and property managers.

**Our vision:**

A sustainable Irish Property Industry which is creative, responsive, competitive and well integrated in meeting the socio-economic needs of all the stakeholders in the built environment

**Our mission:**

To be the trusted partner and provider of “evidence based” information, policies and strategies for the property industry at National level, to the Oireachtas, Government, Local Authorities and Agencies, and for the benefit of the people of Ireland.

**Our objectives are to:**

1. Be the Leadership Forum in the Industry for the discussion on National Property Issues
2. Develop, propose and support a National Property Strategy, policies and solutions to issues for the benefit of the nation as a whole
3. Be a research led organisation, which collates and commissions relevant and innovative research on Ireland's construction sector in order to promote & sustain a competitive economy
4. Be the go-to organisation for Government and the Oireachtas on all aspects of property
5. Work with all stakeholders in the industry to restore it to a sustainable position in the economy
6. Increase membership through demonstrating the achievements and outcomes in relation to national strategy and policy


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