

# **2009**

# **Planning and Development Bill**

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# Background

- Broad legislation dealing with a wide range of planning issues
- Interactions with NAMA and other issues are stimulating a significant discussion
- Includes provisions to deal with planning extensions
- Industry concerns over several provisions
- Timely enactment of bill essential
- May be supporting guidelines introduced

# Timeline of bill

- First draft was published in June 2009
- Three committee debates throughout Autumn
- Bill debated in the Seanad yesterday
- Revised draft of legislation will be published before second stage committee date
- Substantial number of amendments expected at committee stage following review by AG
- Committee second stage amendments debate early December
  - Likely to continue into January
- Bill originally scheduled for enactment by year end
- Expect enactment in February 2010

# Issues for Wind Industry

1. Planning Extensions
2. Greater use of Strategic Infrastructure Act
3. Tree Felling Licenses
4. Regional Planning Guidelines

# Planning Extensions

- Currently developer must demonstrate the completion of “substantial works”
- New bill allows an extension where the authority is satisfied that there are....

*“considerations of a commercial, economic or technical nature beyond the control of the applicant which substantially mitigated against either the commencement of development or the carrying out of substantial works”*

# Substantial Works?



# Industry Concerns

- What will it take in practise to ensure the “Authority is satisfied”?
- No definition of the “*Considerations*”
- Draft Bill would remove the current obligation on the authority to decide on an extension within 8 weeks
- Bill only allows for a single extension

# Suggested Amendments

- Allow for multiple extensions subject to a total cumulative maximum timescale
- Ensure that projects previously granted extensions are not prohibited from future ones
- Include a specific reference to 10 year permissions for wind farms
- Allow appeal process for extension decisions

# Suggested Technical Guidance

- Areas constituting “*considerations of a commercial, economic or technical nature*” should include
  - Where the grid connection has not been finalised with the relevant grid operator;
  - Where such licences as are required have not been issued;
  - Where the relevant government backed price support mechanism and/or power purchase agreement has not been finalised;
  - Availability issues with respect to specialist equipment/facilities; or
  - Availability issues with respect to suitable financing structures

# Expanded Scope of SIA

- Currently wind farms over 100MW or 50 turbines are deemed strategic
- Projects involving any 110kV line works also considered strategic
- DOE consider reducing this to 50MW/25 turbines
  - Little appetite among industry
- Concerns over cost of applications

# License to fell?



# Tree Felling Licenses

- Currently no requirement for planning permission to fell trees but a license is required
- License may include a replanting obligation
- Forestry Service have introduced more onerous requirements
- Recommend that requirements for a license be removed

# Regional Planning Guidelines

- Planning bill will strengthen the regional planning guidelines
- All 7 authorities issued pre issue papers this year
- Draft guidelines for all regions will be published in next two months
- Aim to have guidelines finalised by June 2010
- All county development plans must be updated within one year

# NPWS

- Pearce-Higgins paper published in Journal of Applied ecology raises issues around birds interaction with wind farms
- NPWS is obliged to apply a “pre cautionary principle” under habitats directive
- Some discussions with industry happening “without prejudice”

