



An opportunity to level up planning

A review of major planning applications in Northern Ireland

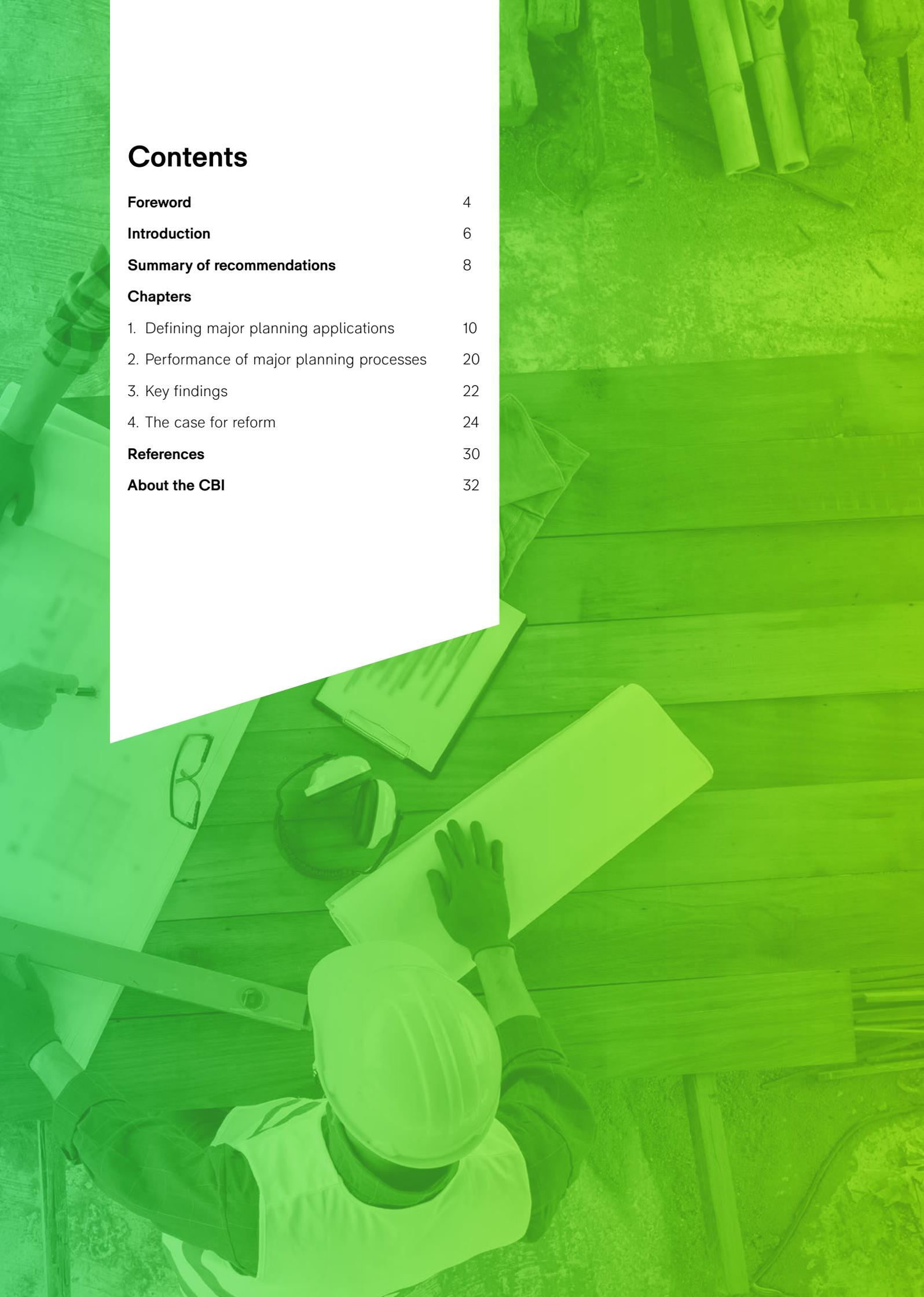
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Infrastructure and Energy



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Foreword

As Scotland's former Chief Planner, it was a privilege for me, personally and professionally, to be engaged by CBI Northern Ireland to work on this project.

Together, we examined how Northern Ireland fairs relative to neighbouring administrations in how it manages major planning applications, with a particular emphasis on the process for regionally significant developments.

I have been aware that there were long standing concerns about the quality and efficiency of the delivery of planning in Northern Ireland, and the anecdotes were borne out by the evidence.

Investment in new and improved infrastructure is widely regarded as vital; this has gained even greater importance as part of the measures to stimulate economic and employment growth in Northern Ireland. It is essential that the planning system deals effectively with emerging proposals, not least in securing investment. It is the grant of planning permission, not a promised or impending approval, that is key to triggering the release of funding.

This report includes recommendations on the strengthening of pre application discussions, requiring a timetable for handling major applications (possibly with fines for failure to adhere to the timetable), introducing a presumption against the use of the Notice of Opinion option (this is unique to Northern Ireland), transferring responsibility for managing the handling (including decisions) of regionally significant applications from the Department of Infrastructure to the Planning Appeals Commission and widening the definition of regionally significant applications to include major proposals for business and housing development.

Early action on these recommendations takes on added significance as Northern Ireland seeks to stimulate sustainable economic recovery and growth in the wake of the COVID pandemic and beyond.

James MacKinnon

Jim MacKinnon CBE





Introduction

In this report, CBI Northern Ireland worked with the Jim MacKinnon CBE to carry out a comparative analysis of major planning applications across the UK and Ireland to determine whether any workable reforms could be introduced to the process in Northern Ireland.

We are conscious that this report is being published at a time when the Department of Infrastructure (DFI) has signalled its intention to commence the statutory review as required under the Northern Ireland Planning Act 2011. With that in mind, we have proposed a series of recommendations, some of which can be enacted now by the Minister for Infrastructure in the immediate response to COVID-19.

However, many of the processes under the current system that could be improved are prescribed in statute which can be time consuming to alter, particularly if changes to primary legislation are required. Nonetheless, in the appropriate circumstances accelerated procedures do exist to increase the pace at which new legislation can be introduced, as was demonstrated through the recent passing of the Executive Committee Functions Bill. Given the unprecedented challenges that lie ahead for the Northern Ireland economy, the accelerated passage of legislation to enable planning reforms should not be ruled out to facilitate investment in infrastructure.

Against that background, as the post COVID economic recovery gets underway, the importance of investment in strategic infrastructure is increasingly recognised across the globe. Indeed, in shaping our recovery there is a unique opportunity to invest in a low carbon future and to transition to a fairer, more regionally balanced, inclusive and sustainable economy. Investing now in infrastructure can create jobs and enable economic growth at a time of challenge. Evidence shows that when 1% of GDP is invested in infrastructure economic output increases by approximately 0.4% in the same year, followed by a 1.5% increase four years later.¹ CBI research also shows that for every £1 spent on construction activity, nearly £3 is created in wider value to the economy.²

But delivering on strategic infrastructure in the timely fashion required is challenging for a myriad of reasons, and the planning process has long been identified as a significant obstacle. It is also clear that we are behind each of our nearest neighbours. It is essential that the processes of consenting projects and proposals for regionally significant developments are not just robust, but also agile and efficient.

The legislative review and the work of the Ministerial Panel creates a timely opportunity to level up the system in Northern Ireland. There is scope to do it, but it will require firm, committed and sustained leadership from the Northern Ireland Executive as a whole.



“Early action on these recommendations takes on added significance as Northern Ireland seeks to stimulate sustainable economic recovery and growth in the wake of the COVID pandemic and beyond.”

Summary of recommendations

Having examined equivalent processes in Scotland, Wales and the Republic of Ireland, we have compiled a number of actions required to improve the process and structure for major planning applications in Northern Ireland.

Whilst several proposals will require certain necessary legislative amendments, many of the proposals can be delivered without statutory change.

Streamlining the Process

- **Pre-Application Clarity:** The pre-application discussion (PAD) process should be strengthened for regionally significant (RS) applications and major applications. For RS applications this should be delivered through a statutory pre-application process with the aim of securing a clear, comprehensive and co-ordinated view of the requirements for information and analysis, with additional or late requests only in exceptional circumstances.
- **Pre-Application Community Consultation (PACC):** The 12 week PACC process for major and RS applications should be reduced to 8 weeks where applicants have demonstrated to the relevant planning authority, within the Proposal of Application Notice (PAN) that “meaningful engagement” with the community can be delivered through digital engagement, alongside the existing statutory public event.
- **Processing Agreements:** A timetable for processing applications in the form of a processing agreement to which all relevant parties are co-signatories, should be agreed prior to an RS application being submitted. Fines could be introduced for failing to adhere to the timetable.
- **Statutory Timeframes:** Statutory timeframes for determining RS application and major applications should be introduced, with the potential of introducing fines payable to the applicant where mandatory periods are not met in reaching a determination. Consideration should also be given to introducing statutory timeframes for responses from departments and their agencies acting as planning consultees.
- **Notices of Opinion:** There should be a strong presumption against the using of Notices of Opinion, with all RS and called in applications sent directly to the Planning Appeals Commission (PAC) for independent examination.
- **Update the Definition of RS Applications:** The definition of RS applications should be updated and widened to include major applications for economic and housing development, including mixed use proposals and mineral extraction, to ensure the process is given a wider strategic remit.



A Framework for Delivery to 2050

- **An Independent Infrastructure Commission:** The CBI welcomed recent moves by the Minister for Infrastructure to establish an Infrastructure Panel with a view to examining the value in an Infrastructure Commission for Northern Ireland. It is our view, that given the statutory commitments to meet net zero carbon by 2050, amongst other things, the Northern Ireland Executive urgently needs to inject long term strategic planning into its decision making. Northern Ireland is the only administration in the UK and Ireland not to have long term infrastructure strategy or framework. Having an independent body that can develop an objective, expert led 30-year strategy with shorter term delivery plans is the overarching statutory framework needed to drive strategic infrastructure efficiently towards long term targets.
- **Streamlined Regionally Significant Approvals:** An Infrastructure Commission's primary responsibility should be to develop a 30 year vision for Northern Ireland, followed by a series of short term delivery plans (to achieve that 30 year target), to be scrutinised and approved by the Northern Ireland Executive.

For regionally significant developments that are specifically contained in such a delivery plan adopted by the Executive, or that specifically forms part of Executive policy (Executive Adopted Projects), a streamlined approval process should be applied to ensure the timely and efficient delivery of these strategic developments. We would propose the following are required:

- **Simultaneous Approvals:** RS applications are often needed in respect of complex developments that require several other consents and approvals. Where an RS application in respect an Executive Adopted Project is approved, all such other consents should be processed in tandem and delivered at the same time; and
- **Planning Appeals Commission:** The PAC (or other independent body) should assume responsibility for processing and final decision making on all RS applications for Executive Adopted Projects.

All developments that are not Executive Adopted Projects should remain the responsibility of the Minister for Infrastructure.

Defining major planning applications

The term “major” differs across the UK and Ireland, so this report attempts to define equivalent terms for each administration in Northern Ireland, Scotland, Wales and the Republic of Ireland. We have then summarised the relevant application processes for each jurisdiction.

Northern Ireland

Major applications in Northern Ireland include, “*Regionally Significant Planning Applications*” and “*Notified Applications*” (proposals notified under other legislation, for example Listed Building Consent, do not fall within the scope of this report).

Regionally Significant Planning Applications

The Strategic Planning Division within the Department for Infrastructure (the DFI) is responsible for the processing of regionally significant planning applications submitted under Section 26 of the Planning (NI) Act 2011. Regionally significant developments are proposals which have the potential to make a significant contribution to the economic and social success of Northern Ireland. They may also include developments which potentially have significant effects beyond Northern Ireland or involve a substantial departure from a Local Development Plan. The Schedule to The Planning (Development Management) Regulations (Northern Ireland) 2015 (as amended) sets out thresholds for proposals to be considered as regionally significant applications. Examples include major proposals for energy, transport and waste infrastructure.

In the first instance prospective applicants must consult with the DFI. Where the DFI considers that the proposal would be dealt with as a regionally significant development, the planning application must be made to the DFI, not the local authority.

All regionally significant planning applications are subject to mandatory pre-application community consultation (PACC). PACC is the responsibility of the applicant prior to the submission of a planning application. Representations made to the applicant during the PACC period are not considered as representations on the planning application itself.

Regionally significant planning applications are subject to normal planning procedures up to the point where a recommendation is made to the Minister for Infrastructure. The Minister can then either issue a Notice of Opinion to approve or refuse planning permission or a Public Local Inquiry can be called before the PAC, or another person so appointed. The Notice of Opinion is issued to both the applicant and the relevant council(s) who have not less than 28 days to request a hearing before the PAC, or other person so appointed, into DFI's decision. If no hearing is requested, the final decision will issue.

In the event of a hearing or a Public Inquiry, the PAC or other person so appointed, prepares a report with recommendations. This is considered by the DFI who then advise the Minister who can accept/accept with modifications/reject the recommendations of the PAC. In most cases the DFI and the Minister will accept the recommendations of the PAC.

Notified Planning Applications

Although the DFI has general powers to call in planning applications, Directions in 2015 and 2017 set out the types of application or circumstances in which an application should be notified to it. These include applications which a local authority wishes to grant even though it would prejudice the objectives and policies of its local development plan; significant objections by a government department; development in the vicinity of a major hazard; and cases where a local authority has a financial or other interest.

It does not follow that the DFI will call in a notified application for decision. A decision on whether to call in is generally made within 28 days of the application being notified although this period can be extended. Where an application is returned to the local authority they can then finalise and issue planning permission. Except in controversial cases the decision to return an application to the local authority is taken by civil servants in the DFI.

Where the DFI is of the view that an application should be called in, it seeks the approval of the Minister to do so. Should the Minister agree to call in, the procedural routes that apply to RS applications set out above apply prior to the Minister coming to a decision.

Long Term Planning

There is no independent statutory body in Northern Ireland to provide advice to the Executive on prioritisation and strategy for long term infrastructure planning, nor is there a long-term vision for infrastructure. However, the Minister for Infrastructure established a "Ministerial Infrastructure Panel" of experts in August 2020, with a view to assessing the merits of setting up an independent infrastructure commission for Northern Ireland. The panel has been tasked with considering the value of an independent expert led body to deliver long term strategic thinking for a cleaner, greener and sustainable and inclusive infrastructure.



Scotland

Like Northern Ireland, major developments in Scotland are defined in secondary legislation. This definition includes a wider range of developments than is the focus of this report. For the purposes of this report, major planning applications in Scotland are defined as National Developments, planning applications which are notified to the Scottish Government and Applications for Energy Consent onshore above 50 megawatts. It does not include other Notified Applications, for example listed building and scheduled monument consents.

At the pre-application stage, the Scottish Government encourages the use of processing agreements in the case of major and national developments. These are frameworks agreed with planning authorities and statutory consultees for processing a planning application or related group of applications.

National Developments

The Planning etc. (Scotland) Act 2006 (as amended) makes provision for the preparation of a National Planning Framework (NPF). The NPF must contain a strategy for Scotland's spatial development and a statement of what the Scottish Ministers consider to be priorities for that development. The NPF is subject to widespread consultation and the document is subject to up to 120 days of parliamentary scrutiny.

The NPF may, amongst other things, describe a development and designate it or a class of development and designate each development within that class a "national development". NPF 3 identifies 14 National Developments. These range from specific locations such as the site of the former Ravenscraig Steelworks, Dundee Waterfront and the Grangemouth Investment Zone; carbon capture and storage network; high voltage electricity transmission; airport enhancement; a green network for Central Scotland; and long distance walking and cycling routes. There is a technical description of each National Development and a statement of need. The objective is to ensure that any planning application or related consent can proceed on the basis that a need, endorsed by Parliamentary scrutiny, has been established and consideration can then focus on site specific matters, not issues of principle.

Notified Planning Applications

Any planning application can be called in for decision by the Scottish Government. In practice the terms of Scottish Government's involvement in development management are set out in circulars and accompanying directions which identify categories of application which should be notified to the Scottish Government.

All decisions on whether to call in an application are made by the Planning Minister and should be made within 28 days of the application being notified, although this period can be extended. Where an application is returned to the local authority they can then finalise and issue planning permission.

Where the Planning Division is of the view that an application should be called in, it seeks the approval of the Planning Minister to do so. Once it has been decided the application should be called in for decision by the Scottish Government it is then passed to the Planning and Environmental Appeals Division. A Reporter is then appointed to consider the case and submit a report; there is no requirement to hold some form of oral hearing although in most cases one is held. A report is then submitted to the Planning Division who then advises Ministers on whether to accept the Reporter's recommendation, accept with modifications or reject. The Reporter's recommendation is normally accepted, and a decision is issued.

Energy Consents

Under the Electricity Act 1989, Scottish Ministers are responsible for determining applications to build, operate or modify onshore electricity generating stations with capacities exceeding 50 megawatts, as well as all applications to install overhead power lines, large oil and gas pipelines, and associated infrastructure. They must consult with the relevant planning authority (who receives part of the application fee) for their opinion. Where a planning authority objects to a proposal, a public inquiry/hearing is normally held.

The process for decisions on these applications is similar to decisions on notified applications in that, following an inquiry or hearing, the Reporter submits a report for consideration by the Division responsible for Energy Consents who then advise the Minister responsible for Energy policy. Consent under the Electricity Act 1989 carries with it deemed planning permission.

Applications concerning onshore electricity generating stations with a capacity of 50 megawatts or less are determined by the planning authority. Where the application is greater than 20 megawatts but less than 50 megawatts there is a mandatory 12-week pre-application consultation period. Applications determined by planning authorities could be notified to Scottish Government if, for example they are subject of objections by a government agency or adjoining local authority.



Long Term Planning

The Infrastructure Commission for Scotland was established in 2019 for a limited period to independently advise Scottish Government on its infrastructure needs and requirements. In January it issued its interim report – A Blueprint for Scotland³ which outlined the necessary measures for securing ambitions of addressing climate change and ensuring inclusive economic growth. In its subsequent Delivery Report it recommended that by 2021, *“to enable prioritisation of an inclusive net zero carbon economy in infrastructure planning over a 30-year period, an independent, specialist body should be given the following responsibilities by the Scottish Government:*

- *Develop a 30-year infrastructure needs assessment and strategy, refreshed every 5-years for all public and private infrastructure.*
- *Undertake regular strategic public engagement to inform the long-term strategy.*
- *Provide strategic challenge to the Government of the day; and*
- *Undertake one-off strategic reviews and research.”⁴*

Wales

Major applications in Wales include Developments of National Significance (DNS) and Notified Applications, including requests to the Welsh Assembly Government (WAG) to call in applications.

Developments of National Significance

The Planning Act 2015 (Wales) introduced Developments of National Significance which are defined in secondary legislation. The purpose of the DNS process is to ensure timely decisions are made on those planning applications that are of the greatest significance to Wales, because of their potential benefits and impacts. In the main these comprise major energy developments from 10 megawatt up to 350-megawatt capacity, high voltage transmission lines and other physical infrastructure that would be considered for consent by the Secretary of State in England as Nationally Significant Projects. DNS applications are made directly to the Planning Inspectorate of Wales.

Pre-application advice (chargeable) is available from the Welsh Inspectorate on the form/content of a DNS application and the process to be followed.

Notified Planning Applications

As in other parts of the UK, WAG has unrestricted powers to call in any planning application for determination. In practice, in line with other parts of the UK, WAG has issued directions specifying which developments or classes of development should be notified prior to a planning authority issuing a decision. These include development on flood plains, waste development, minerals, aggregate extraction in National Parks and Areas of Outstanding Natural Beauty, fracking and major housing development contrary to a development plan. In addition, a request can be made to WAG to call in an application; Planning Policy Wales emphasises that the call-in power is used selectively and generally only where a proposal raises an issue of more than local importance.

The process that follows notification is essentially similar across the UK. An application can be returned to the local authority for decision or called in for determination by the WAG. If called in, the application is passed to the Inspectorate who examine the proposals before submitting a report with recommendations to the Planning Division of WAG. In turn WAG Planning Minister is advised on whether to accept/accept with modifications/reject the Inspectorate's recommendation and a decision is issued.

Long Term Planning

The National Infrastructure Commission for Wales (NICfW) was established in 2018 as a non-statutory body to advise and make recommendations to Welsh Ministers on Wales' economic and environmental infrastructure needs over the next five to thirty years.

By November 2021 the NICfW will set out a plan for Wales' infrastructure, which will enable the Welsh Government to develop an affordable strategy for its infrastructure needs.



Ireland

For comparative purposes, major planning applications in Ireland are defined as applications for strategic infrastructure and strategic housing development. These are made directly to An Bord Pleanála, the Irish Planning Appeals Board (ABP), not the local planning authority. In Ireland, unlike the 4 UK administrations, decisions on these planning applications do not fall to government ministers or departments, although there may be other consents such as foreshore, mineral extraction licenses or forestry permits that require ministerial approval. Instead decisions are made by ABP following consideration of a report from the Inspectorate.

Strategic Infrastructure Developments (SID)

The Irish Planning and Development (Strategic Infrastructure) Act 2006 made significant changes to the way strategic infrastructure developments are determined in Ireland. SID can generally be described as development which is of strategic national or regional economic or social importance. It also includes development which will contribute significantly to the fulfilment of any of the objectives of the National Planning Framework, Ireland's overarching 20-year planning strategy published in 2018, or any regional spatial and economic strategy for one of Ireland's three regional entities, or which would have significant effects across more than one planning authority's jurisdiction.

Planning applications for certain large-scale private development are made directly to ABP, with the different types of proposals and relevant thresholds listed in Schedule 7 of the 2000 Planning Act; in most cases, these SID applications are generally proposals which require environmental impact assessment (EIA) and which ABP certifies as meeting the qualifying criteria outlined above. Applications for approval of gas and electricity infrastructure and railways are also made to ABP generally by the relevant utility providers.

In addition to Schedule 7 developments, a number of publicly-driven projects are treated in the same manner as strategic infrastructure development, including: proposed large-scale development by local authorities in their own area which requires EIA; certain EIA developments by the State; major gas pipelines and their associated terminals, buildings and installations; high voltage (110kv or more) electricity transmission lines and interconnectors; motorways and other major roads; development by or on behalf of a local authority on the foreshore; railway works including light rail and metro systems and certain associated commercial development on adjacent land; and compulsory acquisition of land associated with certain of the above development.



While there are some variations in procedures between the different types of cases, in general a 3-step process applies in relation to SID:

1. **Pre-application consultations:** where a prospective applicant for permission, approval or other consent requests, a pre-application consultation with ABP is the first step to clarify that the project qualifies as SID and to discuss key considerations and issues with the proposal. ABP board members are not involved in the process. There is no statutory requirement for government departments and agencies to participate at this stage, but some applicants do seek their views. If the project does meet the thresholds for SID, the Inspector can recommend bodies who should be consulted to help resolve issues in advance of an application being submitted. There are no limits to the number of pre-application meetings and there have been cases where 10 or more have taken place if the application raises complex issues.
2. **Scoping:** where a prospective applicant requests ABP to clearly define the 'scope' for the environmental impact assessment report for the project, and
3. **Application:** where the applicant applies for planning permission, approval or other consent(s) to ABP. At this stage the public get involved and the Inspector will also engage with government departments and other key interests.

There are differences in terminology, for example between applications and approvals, depending on which legislative provision the application is being made, but in practice there is no significant difference. The examination is normally carried out by a single Inspector but, for particularly complex projects ABP can assign an additional Inspector and the advice of specialists can be sought on complex, highly technical matters if ABP feels that it lacks the necessary expertise. Given the potential complexities of applications for strategic infrastructure, which can often involve requests for further information, circulation of documentation and responses of parties involved and the holding of oral hearings, there is no mandatory timetable for decisions on SID cases, but the target is to have such cases decided within 26 weeks. A report and recommendations from the Inspectorate are considered by the Strategic Infrastructure Developments Board. This comprises 5 members with a quorum of 3 needed to make a decision.

Strategic Housing Development (SHD)

In 2017, new primary legislative provisions required planning applications for large scale housing developments and student accommodation to be made directly to ABP. This new process was introduced as part of Rebuilding Ireland, the Government's Action Plan for Housing and Homeless in 2016 to prioritise the delivery of 50,000 new homes by 2021, with the specific aim to speed up the planning application process and accelerate delivery of larger housing and student accommodation proposals.

SHD applications mostly comprise: (a) the development of 100 or more houses on land zoned for residential use or for a mixture of residential and other uses, (b) the development of student accommodation units which, when combined, contain 200 or more bed spaces, on land the zoning of which facilitates the provision of student accommodation or a mixture of student accommodation and other uses, (c) development that includes developments comprising a mix of houses and student accommodation on suitably zoned land.

The application process consists of two principal stages:

1. **Stage 1:** a mandatory pre-application consultation with ABP prior to making an application for SHD – this is scheduled to take 9 weeks from the initial request to ABP for a meeting. There is normally just one pre-application meeting, again with a different Inspector who will examine the application and Board members are not involved. While prospective applicants may consult first with the relevant planning authority, the Inspectorate organise tripartite consultations involving both the applicant and the planning authority to get a full picture of how the proposal fits with both local and national policy, and its wider context, particularly around water services, traffic, natural and built heritage. The Inspector will issue an opinion as to whether the application and supporting material constitute a reasonable basis for an application or whether further information/analysis is required.
2. **Stage 2:** SHD applications must be decided within a statutorily mandated 16-week period which includes a period for public consultation and submission of a report by the planning authority's Chief Executive. If a decision within the mandatory period is not made, then ABP faces a financial penalty (€10,000 paid to the applicant). To date, all decisions have been made within the mandatory period.

There is no appeal mechanism for decisions on SID and SHD applications outside of Judicial Review in the Courts.

Long Term Planning

In 2018, the Irish government published "Project 2040". It consists of two plans, on a statutory footing, for long term infrastructure planning. The National Planning Framework (NPF) will decide how to achieve balanced regional development. It will prioritise growth in the major cities of Dublin, Cork, Galway, Limerick and Waterford, although the capital is forecast to grow at a slower rate under this plan. The second strand is the National Development Plan (NDP), a 10-year, €115 billion programme to upgrade State infrastructure in anticipation of the population increase.



Performance of major planning processes

The data provided to us by the relevant administrations revealed the following:

Northern Ireland

The information supplied by the DFI on RS applications identifies 10 cases since 2015. Notably, in a few cases it took 2 to 3 years between validation of an application and issuing a Notice of Opinion. Where the DFI issues a Notice of Opinion and no request for an inquiry or hearing is submitted then a decision issued in several months. However, where an inquiry was involved, a minimum period of 12 months between the referral to the PAC and its report is likely and a lengthy period for the DFI and Ministerial consideration follows.

In the same period, there have been 9 called-in applications, including one with a related Listed Building Consent application which has been in the system for over 10 years. Most of these applications, including applications that have been determined, are legacy cases which have been with the DFI's predecessor before the transfer of planning powers in 2015. From August 2018 11 applications for major developments have been notified to the DFI, 7 were cleared back to the planning authority, one awaits determination following call in, while 3 more recent applications are under consideration as to whether they should be determined by the DFI.

Scotland

No planning applications which could be classed as National Developments have been determined by the Scottish Government in the past 5 years.

Over 110 applications were notified to the Scottish Government since 2015. Over 80% were cleared back to the respective planning authorities whilst just less than 10% of cases (all recent) still await a decision. The remainder have been determined following call in and a report with recommendations from the the Planning and Environmental Appeals Division of the Scottish Government (DPEA). An inquiry was held in 2 cases and a further 3 involved a hearing; most cases were determined following consideration of written submissions. In one case involving an inquiry there was a period of 18 months between passing the application to the DPEA and the submission of a report to Ministers; and in the other case the process took almost 4 years. Decisions on cases involving written submissions take on average 9 months, with some as little as 4 to 5 months. The final decisions on cases generally take 1 to 2 months from receipt of a report from the DPEA.

Seven applications submitted for energy consent were determined by the Scottish Ministers over the past 5 years. Most decisions were reached within 2 to 3 years of the application being validated; in each case the decision involved a combination of oral hearing and inquiry. The time taken to issue a Ministerial decision from receipt of the DPEA's report and recommendations varied from 1 month to 9 months.

Wales

Figures from WAG indicate that 6 DNS applications have been submitted in the past 5 years with one decision still outstanding. Three of the applications, including the undecided case, were dealt with by written submissions. The remaining 3 were determined following an inquiry. The length of time between the submission of the application and the decision varied between 6 and 18 months.

Over the same period 20 applications were notified to WAG and 6 were called in, all of which took between 8 and 12 months to determine following transfer to PINS. Around 100 requests for call in were received; yet none were called in because of the requests.

Republic of Ireland

The numbers and handling times for major applications can be summarised as follows:

Strategic Investment Developments

- Over 90 cases were received in the past 5 years, with a third awaiting a decision, some of which involved an oral hearing
- Just over 25% of cases were decided following an oral hearing, a number were related to Compulsory Purchase Orders
- Almost 40% were decided without an oral hearing
- Average time to reach a decision just under 40 weeks
- Without an oral hearing many cases were decided in 20 to 30 weeks
- With an oral hearing most cases took more than 30 weeks to decide, with a number taking more than 40 weeks

Strategic Housing Developments

- ABP received its first case in October 2017
- Excluding invalid cases around 170 cases have been decided, only 2 involved an Oral Hearing
- Average time to reach a decision was under 14 weeks

Key findings

- 3 of the 4 UK administrations, and Ireland have provisions for dealing with applications of national/regional significance where the procedures that apply differ from those applied to other planning applications
- In Northern Ireland applications for developments of regional significance are made to the DFI who may decide to forward the case to the PAC for examination
- In England and Wales, the processing and examination of nationally significant applications are handled by the respective Planning Inspectorates (the equivalent of the PAC)
- In Ireland applications for Strategic Infrastructure Developments (and Strategic Housing Developments) are also dealt with by the PAC equivalent, An Bord Pleanála
- In Scotland it does not follow that a National Development as defined in the National Planning Framework will be routinely processed by the Scottish Government
- The Notice of Opinion procedure on regionally significant (and notified applications) is however unique to Northern Ireland
- Applications of national or regional significance are, by their nature, invariably complex (often because of the interface with European environmental legislation) and controversial (as individuals and communities fear an unacceptable impact on their quality of life) as a result the process takes longer, normally involving an inquiry or hearing with the Commissioner or equivalent having to absorb large volumes of highly technical, complex submissions
- A lengthy and cautious approach, with a focus on avoiding any minor procedural flaw is also the norm because of the endemic concerns over judicial review
- The general approach of the UK administrations to notified applications is to use these powers sparingly and only to call in where there are significant concerns expressed by a government department, government agency or statutory consultee. This also applies to controversial applications notified to the UK and Welsh Governments (there is no equivalent in Northern Ireland and Scotland)
- Applications called in for determination by each of the other UK administrations are generally handled efficiently, particularly where no oral hearing or inquiry is involved. In Ireland there is provision for Strategic Housing Applications to be made to the equivalent of the PAC Strategic Housing Applications are subject to a timetable for determination with ABP liable for fines for failing to adhere to the timetable
- Except for Ireland, decisions on major applications (as defined in the Review) are made by government ministers



The case for reform

Against the background of recovery from COVID-19, achieving net zero carbon commitments and the upcoming statutory review of the Northern Ireland planning system,⁵ now is an opportune time to consider both sweeping root and branch reforms but also much more targeted changes that can enhance Northern Ireland's planning system for major applications, and RS applications in particular.

There are significant learnings from the other jurisdictions which could bring much needed benefits to the system in Northern Ireland.

A. Streamlining the Process

1. Pre-Application Engagement and Timetabling

Concerns have been cited over statutory consultees not engaging sufficiently with the pre application discussion (PAD) and wider engagement process, by for example, not making their requirements for supporting information and analysis sufficiently clear resulting in requests for such material later in the process, potentially adding significantly to costs and delays.

However, the system can deliver more timely decisions where pre application engagement is provided and utilised effectively by applicants. But it also requires meaningful support from the various statutory consultees to support the system. In that regard we are of the view that a statutory pre-application process should be incorporated into the system.

What is more the role of "processing agreements" in Scotland is notable. These agreements do not guarantee planning approval but are an important means by which the decision-making process can be more effectively managed. In Scotland the scope for using a processing agreement is considered during pre-application discussions. It is also intended to be a "live" document which can be reviewed and, if necessary, adjusted should circumstances dictate. Some of the benefits of processing agreements include:

- More effective engagement of stakeholders
- Greater clarity on information requirements
- Establishing clear lines of communication
- Greater transparency of how/when a decision will be reached
- Providing greater certainty on the timing a decision

Research by the Scottish Government⁶ suggests processing agreements are a useful project management tool which can improve response times and provide much needed clarity and transparency on process. However, early engagement and an effective pre-application process is seen as a key ingredient to their success.

In addition, the lack of any statutory provision for determination timeframes leaves applications within the NI system exposed to periods of undetermined longevity. This can be contrasted with the system in Ireland, where statutory timeframes have proved to be an effective mechanism under the SHD application process with the risk of financial penalties being paid to the applicant for any breaches. To date, all decisions have been made within the mandatory period.

During the Covid-19 crisis the requirement for pre-application community consultation (PACC) has been relaxed, waiving the obligation to hold a public event, in favour of guidance encouraging other forms of digital and remote engagement. An assessment should be undertaken by the DFI of the effectiveness of such alternative forms of community consultation during this exemption period in “meaningfully engaging” communities affected by projects.

Where it is demonstrated that applicants for RS and major applications can, in addition to meeting existing requirements for a public notice and public event, widen participation with communities through alternative digital and remote methods, then consideration should be given by the planning authority to reduce the minimum period between the submission of a Proposal of Application Notice (PAN) and submission of an application.

Recommendations

- **Pre-Application Clarity:** The pre-application discussion (PAD) process should be strengthened for regionally significant (RS) applications and major applications. For RS applications this is best achieved through the introduction of a statutory pre-application process with the aim of securing a clear, comprehensive and co-ordinated view of the requirements for information and analysis, with additional or late requests only in exceptional circumstances.
- **Pre-Application Community Consultation:** The 12 week PACC process for major and RS applications should be reduced to 8 weeks where applicants have demonstrated to the relevant planning authority, within the Proposal of Application Notice (PAN) that “meaningful engagement” with the community can be delivered through digital engagement, alongside the existing statutory public event.
- **Processing Agreements:** A timetable for processing applications/processing agreement, to which all relevant parties are co-signatories, should be agreed at the pre-application stage.
- **Statutory Timeframes:** Overall statutory timeframes for the determination of RS applications and major applications should be introduced, with the potential of introducing fines payable to the applicant where mandatory periods are not met. Consideration should also be given to introducing statutory timeframes for responses from Departments and their Agencies acting as planning consultees.

2. Notices of Opinion

The notice of opinion process is unique to Northern Ireland. In effect it places within the discretion of the Minister for Infrastructure both the determination of the route of process, and the making the final decision. In the rest of the UK, a Minister is only involved in the decision making, following an independent examination.

It is our view that this process could be streamlined with RS applications being sent directly to the Planning Appeals Commission for independent examination the PAC would then decide on the process(es) to be followed in reaching a recommendation on the application to the Minister.

The inclusion of independent examination would mean the process route is more certain. A guaranteed independent review as part of the regionally significant process may also carry public support as it gives stakeholders the comfort of knowing that they will not be excluded from the decision-making process.

Recommendation

- Notices of Opinion: There should be a strong presumption against the using of Notices of Opinion, with all RS and called in applications sent directly to the Planning Appeals Commission (or other independent body) for independent examination in the first instance.

3. Definition of Regionally Significant Applications

In the context of a streamlined process, consideration should be given to expanding the definition of RS applications to include a broader remit of strategic infrastructure developments to facilitate more efficient and timely delivery of developments carrying regional significance.

Recommendation

- Update the Definition of RS Applications: The definition of regionally significant applications should be updated and widened to include major applications for economic and housing development, including mixed use proposals and mineral extraction, to ensure widen the process is given a wider strategic remit.



B. A Framework for Delivery to 2050

1. An Independent Infrastructure Commission

In recent years each of England, Scotland and Wales have all moved to establish their own “Infrastructure Commission” as a means of providing a framework for long term strategy and prioritisation for strategic infrastructure. In the Republic of Ireland, “Vision Ireland 2040” was developed with corresponding plans for similar purposes.

However, Northern Ireland does not currently have an agreed, long term strategic infrastructure vision (for the next 30 years) and therefore prioritisation does not occur based on long term, objective advice. Rather the Executive is beset with short termism (driven by the pressures of annual budgets), and the limitations of operating within a mandatory coalition.

CBI Northern Ireland has however welcomed recent moves by the Minister for Infrastructure to establish an Infrastructure Panel with a view to examining whether Northern Ireland needs an independent Infrastructure Commission.

It is our view that having an infrastructure commission that can develop an objective, expert led 30-year strategy with shorter term delivery plans is the overarching statutory framework is needed to drive delivery efficiently and coherently towards long term targets. That long term planning should target a greener, more inclusive, more regionally balanced infrastructure but to do so it must cover a wide envelope of infrastructure including hard infrastructure (such as waste, water, roads and rail), energy infrastructure, housing infrastructure, and digital infrastructure as all are interconnected.

For such a body to be effective, it must be sufficiently independent with appropriate statutory powers and functions to hold the Northern Ireland Executive to account on the adoption and delivery of its recommendations.

Recommendation

- Establish an Independent Body: Establish an independent statutory body for long term vision setting and prioritisation of strategic infrastructure over the next 30 years.

2. Streamlined Regionally Significant Approvals

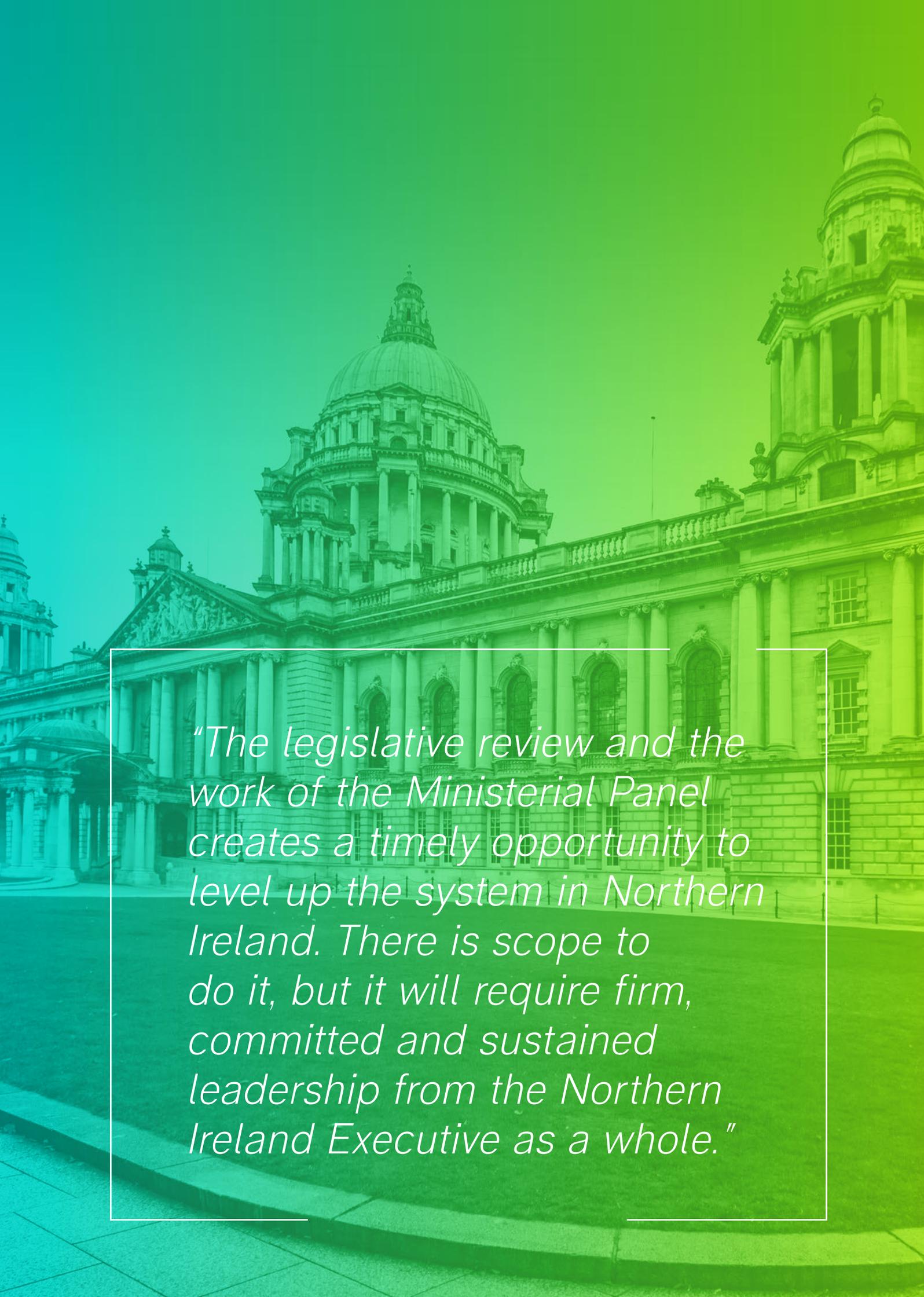
An Infrastructure Commission's primary responsibility should be to develop a 30-year vision for Northern Ireland, followed by a series of short-term delivery plans (to achieve that 30-year target), to be scrutinised and approved by the Northern Ireland Executive.

For regionally significant developments that are specifically contained in such a delivery plan adopted by the Executive or that specifically forms part of Executive policy (**Executive Adopted Projects**) such as those recommended to and approved by the Executive by an independent Infrastructure Commission, or that feature in a NI Executive Programme for Government, or other Departmental policy document approved by an Executive Minister, a streamlined approval process should be adopted to ensure the timely and efficient delivery.

Recommendations

- Simultaneous Approvals: RS applications are often needed in respect of complex developments that require several other consents and approvals. Where an RS application is an Executive Adopted Project, all such other consents should be processed in tandem and delivered at the same time; and
- Planning Appeals Commission: The PAC (or other independent body) should assume responsibility for processing and final decision making on all RS applications for Executive Adopted Projects.

All developments that are not Executive Adopted Projects would then remain the responsibility of the Minister for Infrastructure to determine via the existing process.



“The legislative review and the work of the Ministerial Panel creates a timely opportunity to level up the system in Northern Ireland. There is scope to do it, but it will require firm, committed and sustained leadership from the Northern Ireland Executive as a whole.”

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About the CBI

Founded by Royal Charter in 1965, the CBI is a non-profit business organisation that speaks on behalf of 190,000 UK businesses of all sizes and from across all sectors, employing nearly 7 million people between them. That's about one third of the private workforce. This number is made up of both direct members and our trade association members. We do this because we are a confederation and both classes of membership are equally important to us.

The CBI's mission is to promote the conditions in which businesses of all sizes and sectors in the UK can compete and prosper for the benefit of all. With offices around the UK (including in Scotland, Wales and Northern Ireland) and representation in Brussels, Washington, Beijing and Delhi, the CBI communicates the British business voice around the world.

Our mandate comes from our members who have a direct say in what we do and how we do it

The CBI receives its formal mandate from 9 Regional Councils, 3 National Councils from Scotland, Wales and Northern Ireland plus 16 sector based Standing Committees. These bodies are made up of members in that region, nation or sector who serve a term of office. The chair of each Standing Committee and Regional and National Council sit on the CBI's Chairs' Committee which is ultimately responsible for setting and steering CBI policy positions.

Each quarter this formal engagement process across the CBI Council reaches over 1,000 senior business leaders across 700 of our members who have a direct say in what the CBI do and how they do it, from refreshing their workplan to discussing the key business issues of the day and re-calibrating its influence. Over 80% of the businesses represented on the CBI Council are outside of the FTSE350 as the CBI represents a wide range of sizes and sectors from the UK business community. This formal governance process is supported by a wide range of working groups, roundtables, member meeting and events that makes the CBI unparalleled at listening to and representing British business.

CBI Council in numbers



1000+

Committee and Council representatives



28+

Regional and National Council and sector based
Standing Committees



50%

Representatives of the CBI Council at C-Suite level



80%

Of the CBI Council from non-FTSE 350 businesses

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