



LAW SOCIETY  
OF IRELAND

## Submission on Land Value Sharing Contributions

Department of Housing, Local Government and Heritage  
Department of Finance

Department of the Environment, Climate and Communications

June 2023



# 1. Introduction and Executive Summary

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- 1.1 The updated **General Scheme of the Land Value Sharing and Urban Development Zones Bill 2022** (published by the Department of Housing, Local Government and Heritage on 13 April 2023) (the “**General Scheme**”) purports to introduce ‘rezoning land value sharing contributions’. These contributions are intended to be levied against any increase in the value of land attributable to the grant of development permission by a planning authority (the “**zoning value**”).
- 1.2 ‘Land value sharing contributions’ (the “**LV Contributions**”) are framed within the General Scheme as a levy to enable the State to share in the increase in land value which results from certain public zoning and designation decisions, through requiring a contribution by developers toward the public infrastructure and facilities required by the purported development, which are provided by the local authority within the area.
- 1.3 However, the LV Contributions are to be levied at the time of the grant of planning permission on lands that are within the scope of the new provisions of the General Scheme and, as such, apply to existing zoned land irrespective of whether it is held by an original landowner or a housebuilder who has acquired the land since zoning.

## Executive Summary

- The General Scheme aims to reflect the policy outlined in the *Programme for Government – A Shared Future* which confirms (at page 53) that Government would consider how community gain can be captured through a review of the development levy process, rezoning systems, and planning permission conditions.
- The General Scheme seeks to implement a levy based on 30% of the increase in value arising from the rezoning of land, payable on securing planning permission on the rezoned land (which is viewed as the optimum means of securing the community gain).
- While the General Scheme provides for certain transitional provisions, which seek to limit the impact of the new levy on supply of land for building, the measures are inadequate and will require change. Without such revisions, existing builders holding rezoned land will bear the full cost of sharing the community gain which, in turn, will impact supply for a number of reasons.
- This submission does not seek to undermine the principle of the sharing of the community gain. It proposes possible revisions to the transitional provisions aimed at ensuring that the new levy will not impact housing supply in relation to existing zoned land which is held by builders.

## 2. Purpose of new legislation

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- 2.1 The documentation published alongside the General Scheme confirms that it is intended to follow some of the principles underpinning the Report of the Committee on the Price of Building Land (1973) (the “**Kenny Report**”). That documentation also points to the fact that these measures were included in the 2020 Programme for Government.
- 2.2 The Kenny Report highlighted the disproportionate rise in the price of building land during the period 1963 to 1971 when compared with CPI increases and noted that the increase largely resulted from the installation of public infrastructure adjoining such land. This then provided a rationale for the sharing of the increase in value (or ‘betterment’) with the local community.
- 2.3 The Kenny Report recommended a ‘*reasonable compromise between the rights of the community and those of the landowners*’ through, for example, a proposal under which local authorities would have the right to acquire development land at a value of existing use value plus 25%.
- 2.4 The public policy decisions to zone land and invest in services and infrastructure has, in the context of the General Scheme, been pointed to as a reason for increases in land values. While the accompanying Explanatory Memorandum highlights a lack of firm evidence of this impact (through gaps in recorded data), it notes that - following an economic appraisal of the intended proposals in the General Scheme - the uplift is ‘significant’.
- 2.5 Further, the Explanatory Memorandum:
- a. Emphasises that the value of the land can be increased by the grant of planning permission;
  - b. Acknowledges that the ‘*majority, if not all, of the zoning benefit generally accrues to the original landowner who owned the land at the point of zoning*’, and also stipulates that some further value can arise on the securing of planning permission; and
  - c. Outlines that, in addition to the inability of the planning system to secure a proportion of the increase in value of the land which results from a decision to zone/designate a site for development, the current system does not facilitate active land management in areas which are in need of development or regeneration.
- 2.6 The aim of the General Scheme (re: the principle of Land Value Sharing (“**LVS**”)) is to introduce a mechanism to:
- a. Ensure that a proportion of the value uplift associated with the decision to zone land for development purposes is shared with the State, in the interests of the common good;
  - b. To ensure that the mechanism will facilitate an increase in the supply of housing by assisting the local authority with the funding of necessary social and physical infrastructure to support local development; and

- c. To provide greater certainty (with regard to zoning) around the obligations to be placed on landowners and developers to contribute towards the infrastructure required in order to exert downward pressure on the price of residential development land.
- 2.7 It is further outlined that a key challenge (in the LVS) is ensuring that the mechanism avoids disincentivising housing supply. This is stated as something that was highlighted in the Indecon economic report as a risk (i.e. that the LVS results in higher costs to housebuilders instead of lower land prices). The Explanatory Memorandum states that *'the design of transitional arrangements is also important to ensure there is a reasonable and proportionate impact on the market, and to incentivise a reduction in land prices to account for the obligation arising'*.

### **3. Purpose of this submission**

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- 3.1 Whilst we are generally supportive of the objective of the measures in the General Scheme as a means to share the uplift in value of, and possibly regulate the price of, zoned land in the medium-long term, the Society is of the view that the application of the measures to existing zoned land, and the limited transitional measures proposed, create a significant and real risk to the delivery of housing at a time when supply is of critical importance to the State and do nothing to incentivise a reduction in the value of such land prices.
- 3.2 In this submission, we summarise the application of the new legislation in levying LV Contributions, highlighting relevant aspects of the General Scheme. We then set out some fundamental areas of concern which undermine the objectives of sharing the uplift on rezoning and increasing housing, both of which are of primary importance to the General Scheme. These concerns result from the commercial inadequacy of the transitional measures which seek to ensure that the LV Contributions are not fixed on housebuilders who have already paid full value for the lands.
- 3.3 These issues are summarised in this submission and we will be glad to discuss any aspects in greater detail if that would be helpful.

### **4. Application of the contribution**

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#### ***Planning Permission***

- 4.1 It is proposed that LV Contributions would be payable on the zoning value of:
- (a) residential developments of more than four housing units; and
  - (b) commercial developments covering 500 square meters or more of gross floor space.
- 4.2 However, the LV Contributions will be triggered on - and by the grant of - planning permission, following a transitional period.
- 4.3 Notably, the LV Contributions can be triggered on the grant of planning permission irrespective of whether an earlier planning permission has been applied for/granted (before the expiry of the transitional period) and, in such case, the uplift in value (on

which the LV Contributions will be based) will not take into account any planning permission that is extant on the property.

- 4.4 For such developments, the grant of permission on application by a developer under s34 of the *Planning and Development Acts 2000 to 2001* would be conditional on the payment of the LV Contribution prior to the commencement of works, save where an alternate payment agreement is reached with the planning authority.
- 4.5 The '**zoning value**' of land is calculated by deducting its **existing use value** (i.e. the value of the land on the basis that no developments requiring planning permission were permissible on the land) from the **current market value** (i.e. the value attributed to the land **ignoring any extant** planning permission).
- 4.6 The General Scheme provides for self-assessment (by the owner) of the estimated market value and existing use value, with provision for the establishment of a land value sharing register, documenting these values/contributions paid for future reference.
- 4.7 The contribution rate proposed by the General Scheme is 30% of the zoning value. While this is the maximum rate at which the charge can be set, the General Scheme provides only a limited ability for the Minister to vary the rate. While it is recognised that the contribution rate may need to be adjusted to account for changes in the values of property, and the impact which the imposition of these contributions might have on development within the State, the Minister may set an LV Contribution levy of no less than 20% of zoning value.

### ***Transitional Provisions***

- 4.8 As currently proposed, the mechanism for levying LV Contributions comes into being on enactment of the primary legislation i.e. not by Ministerial Order.
- 4.9 Under current plans, contributions for lands falling into the following categories will be introduced first for lands coming within any of the following categories:
  1. lands zoned wholly for residential use;
  2. lands zoned partially for residential use;
  3. lands within an urban development zone; or
  4. lands within a strategic development zone.
- 4.10 Having regard to the significant level of the LV Contributions – 30% of the difference between the market value and the current use value of zoned lands – the General Scheme does (as would normally be the case) contain transitional measures/ grandfathering provisions to avoid an impact on zoned lands which are already owned by housebuilders (and where they take certain steps to avoid such impact).
- 4.11 In this regard however, the transitional window is unusually brief i.e. it proposes that, where relevant land was acquired by a housebuilder on/after 21 December 2021, the LV Contributions will not apply where the application for planning permission is filed prior to 1 December 2024. For lands acquired prior to 21 December 2021, the date is extended to 1 December 2025.
- 4.12 Application of the LV Contributions to qualifying commercial developments is not to apply to commercial property planning applications made prior to 1 December 2026.

- 4.13 Notably, having regard to the objectives of the measures, the transitional rules do not exclude the following from the obligation to discharge the LV Contributions:
- (a) Lands already zoned and/or owned by a housebuilder or developer where the transitional measures are not met;
  - (b) Lands already zoned and which have been the subject of a transaction between a landowner and a housebuilder under which the landowner has obtained full value for the land and where the transitional measures are not met;
  - (c) Lands which already have been the subject of planning permission for residential development before the expiry of the transitional dates, where a new application for a fresh or amended planning permission is filed after the transitional dates. In such cases, the market value for the purposes of the LV Contributions will be assessed as if no application was made prior to the expiry of the transitional period; and
  - (d) Lands which are currently zoned but have not been serviced by a public body such that a planning application will not be entertained by a local authority at the current time.
- 4.14 In summary, for an existing housebuilder holding land, the exclusion from the obligation to discharge LV Contributions on the obtaining of planning permission is tied solely to the date of the planning application being made and the price paid by that housebuilder for the land. The time of purchase is largely irrelevant to the imposition of the LV Contributions.
- 4.15 As explained further in the following sections, limited transitional rules will create significant and adverse impacts on housebuilders currently holding zoned lands where the LV Contributions apply. In turn, these will have a significant financial impact which will actually impede and slow supply of housing, which would seem contrary to the stated objectives of this legislative initiative.

## **5. Transitional Measures – Assessment of risks and impact**

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- 5.1 The principles underpinning the General Scheme – to share increases in land value derived from public investment in infrastructure and drive supply of building land (with local authority investment in further infrastructure) - are laudable and not before time.
- 5.2 It may well be the case, as is inferred from the draft measures, that the imposition of the LV Contributions on the rezoning of land is not feasible and that the application of these contributions by reference to securing of planning permission is perhaps more practical. This allows for the contribution to be levied at/close to the point when development will commence and liquidity (from sales of units) will be imminent.
- 5.3 The General Scheme's proposal that housebuilders acquiring zoned land from landowners will (for future purchases of land) be able to quantify the impact of the LV Contributions that may be levied on that land in making offers for the purchase of same may also be true. If so, this may well lead to reductions in land values which will only be possible to assess in future years.

- 5.4 However, for housebuilders with existing land, the uplift due to zoning has already been passed fully to the original landowner and there is no ability to 'share' the cost of the LV Contributions with the landowner.
- 5.5 The General Scheme's transitional provisions, where some relief for such owners would be contained, are commercially inadequate and are likely to have a detrimental impact on the supply of housing and on building land currently owned by housebuilders.
- 5.6 For housebuilders who own existing zoned land, the General Scheme creates the following issues:
- (a) The housebuilder is now the person who has the obligation to discharge the 'sharing' of the uplift in value from zoning when applying for planning permission (other than where possible under the transitional rules) although the housebuilder will have paid full value for the land. The original landowner, who has secured the full benefit of the uplift in value from rezoning through a higher sale price, is not impacted by the proposed legislation. The housebuilder has no ability to revisit the historic purchase transaction to mitigate this new additional cost and bears the exposure to the LV Contributions;
  - (b) Any zoned land without planning permission, or land which currently has inadequate permission/permission which is subject to appeal, may as a consequence be devalued by the introduction of the General Scheme as it carries a contingent risk that it will require an application for planning permission to be made beyond the transitional period ending. This devaluation of the land value is borne entirely by the housebuilder. This reduction in valuation is perhaps greater in relation to larger land holdings where the development will be staggered with replacement planning applications being made over the life of the development. The reduction may have the following consequences:
    - 1. Financial covenants in relation to existing bank debt may be impacted;
    - 2. Development finance will be more difficult to secure as the impact of the LV Contributions on securing planning permission will need to be factored into financial projections;
    - 3. The housebuilder, as the person bearing the full cost of the LV Contributions, will be forced to either pass on the cost to house purchasers to finance the development or, if the market does not permit this, they will be forced to postpone seeking planning permission until the market permits;
  - (c) Any larger zoned sites currently held with/without planning permission, and which generally require multiple planning applications to be made during the life of the development, are unlikely to be able to avoid the imposition of the LV Contributions. This creates an appalling outcome for a house builder who will now be exposed to the LV Contributions based on a value that requires the ignoring of any extant planning permissions on the property; and
  - (d) Any zoned lands held with planning permissions which are subject to appeal, and which determination may require subsequent applications to be made outside of the transitional period, will bear the risk of being caught by the LV Contributions.



## 6. Transitional Measures – Recommended amendments

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6.1 We believe that, in order to give proper effect to the objectives of the General Scheme, the transitional measures are required to exclude the impact outlined above in respect of housebuilders holding existing zoned land.

6.2 In this regard, and in order to address the hazards of the proposed measures, we consider that the following options should be considered for inclusion as 'grandfathering' provisions:

- (a) **The LV Contributions should not apply to zoned lands acquired for market value consideration by a housebuilder/developer prior to the date of publication of the General Scheme and provided that the zoning of the lands did not occur during the ownership of the housebuilder.**

This merely recognises that the housebuilder/developer will already have discharged a full market value consideration which took no account of the LV Contributions being applicable to the land.

This does not undermine the objectives of the General Scheme in that:

- (i) whilst the zoning uplift in value has not been shared with the community, the exclusion of the zoned land from the measures merely recognises that the uplift has already been taken (by the landowner in full) prior to publication of the General Scheme;
- (ii) the exclusion of the zoned land from the LV Contributions does not devalue the land holding and permits the housebuilder to develop the lands based on pre-existing value. The RZLT, which will apply to this land in any event, will provide sufficient incentive to develop the properties.

- (b) **The LV Contributions should not apply in relation to zoned lands (held by a house builder prior to publication of the General Scheme) where any planning permission has been applied for in relation to those lands prior to the transition period expiry regardless of any subsequent planning applications being made after such date.**

This amendment would merely ensure that, once a planning application is made, any subsequent applications that might be made for good estate development purposes will not trigger the requirement for LV Contributions, where the subsequent applications are made following the expiry of the transition period.

- (c) **The LV Contributions should not apply in relation to zoned lands whenever acquired in respect of which any planning permission was applied for prior to the expiry of the transition period.**

This is to effectively provide for grandfathering of the value of the zoned land on the basis of planning applications having been made before the end of the transition period.



This will provide certainty and allow changes to be made in planning approvals on the site which will be of particular importance for larger development sites. While similar to (b) above, this provides a full grandfathering exclusion.

- (d) **The LV Contributions should not apply in relation to zoned lands (held by a house builder prior to publication of the General Scheme) where it can reasonably be shown by a housebuilder/developer that it has been informed by the local authority that any application will not be successful due to infrastructure deficits, or for any other reason.**

This is to exclude zoned lands where an application for planning permission, which will be costly to prepare, is futile on the basis of communications from the planning authority that the application is premature.

This is a common position where infrastructure deficits exist or public transport routes are not finalised.

- 6.3 It is submitted that the inclusion of grandfathering amendments of the type above will not undermine the achievement of the objectives of the General Scheme.
- 6.4 The principle of a transition period has already been recognised in the General Scheme and the above recommendations are made to ensure that the transitional provisions are workable and will not result in the incentivisation of supply being impacted by the measures.

## 7. Conclusion

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We appreciate the opportunity to provide observations and recommendations in respect of the General Scheme and will be glad to engage further if that would be helpful.

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