



THE INSTITUTION OF ENGINEERS OF IRELAND

**SUBMISSION TO GOVERNMENT**

**ON THE PROPOSED**

**CRITICAL INFRASTRUCTURE BILL**

**SEPTEMBER 2003**

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**SUMMARY OF RECOMMENDATIONS:**

- 3.1     ▪ In drafting the Critical Infrastructure Bill, take due account of the “common good” benefit of critical infrastructure and the rights and duties afforded the State in Article 43.2 of the Constitution.
  
- 3.2.1   ▪ Establish a “one stop shop” project approval body, whether separately or as a division of An Bord Pleanála, for the implementation of critical infrastructure, with legally binding timescales for decisions. Decisions of this body should not be overturned or revised, except by a court decision.
  
- 3.2.2   ▪ Implement a single transparent public consultative process with legally binding timescales.
  
- 3.2.3   ▪ Review legislation which transposes the EU Directive on Environmental Impact Assessment into Irish law with a view to achieving more timely and cost effective implementation of infrastructure projects.
  - Provide for a timely decision, on a case by case basis, on whether an Environmental Impact Assessment is required for individual critical infrastructure projects where the EU Directive does not make it mandatory.
  
- 3.2.4   ▪ Establish a specialist division of the High Court to deal with legal challenges to infrastructure projects. Set down mandatory timescales for decisions.
  
- 3.2.5   ▪ Ensure clarity in the role of the approval body dealing with critical infrastructure in implementing Government policy and balancing the common good with the rights of the individual.
  - Provide for the early clarification of queries from applicants relating to communications from the approval body.
  
- 3.2.6   ▪ Enable the approval body for critical infrastructure to permit modifications and improvements to approved critical infrastructure projects without submission of a ‘de novo’ application, where it deems this to be in the common good.

- 3.3     ▪   Ensure adequate technical and legal resources are made available to both the approval body and the judicial forum with responsibility for critical infrastructure.
- 3.4     Enable the State to:
- Acquire land or property for critical infrastructure development at a fair price related to its “current” market value.
  - Gain automatic access to land for the purposes of surveying and/or site investigation without payment of compensation, other than for loss of income or restoration.
  - Gain access to, and use of, land more than 10m below ground level without payment of compensation, other than for loss of income or restoration.
- 3.5     ▪   Allow the approval body dealing with critical infrastructure the right to deem appropriate modifications to existing critical infrastructure exempt from the need to apply for specific approval.

## 1. INTRODUCTION:

The Institution of Engineers of Ireland (IEI) is the largest professional body in Ireland with over 21,000 members encompassing all disciplines of engineering across both the public and private sectors. The Institution welcomes Government's proposal to publish a Critical Infrastructure Bill aimed at addressing many of the problems adversely affecting provision of the infrastructure required to progress national economic development, social progress and improvement in our environment.

## 2. THE IMPORTANCE OF INFRASTRUCTURE DEVELOPMENT:

Ireland's infrastructure forms the basis for national competitiveness, economic growth, balanced regional development and improvement in the quality of life for all citizens. The country's infrastructure comprises more than half its total wealth and accounts for the single largest area of national expenditure each year. This infrastructure includes transport, waste management, sewage treatment, potable water supply, energy generation and transmission, coastal protection and electronic communications.

It is accepted internationally and in Ireland that adequate infrastructure is an essential prerequisite for competitiveness. Based on the 2002 National Competitiveness Yearbook, it is clear that Ireland's competitive position continues to deteriorate with much of the cause being the inadequacies in our infrastructure, e.g. the May 2003 World Competitiveness Yearbook ranked Ireland 28<sup>th</sup> out of 29 countries for maintenance and development of infrastructure overall and last in the ranking for distribution infrastructure such as roads, trains, planes etc.

The importance of infrastructure development in improving the quality of life and in protecting our environment cannot be overstated. The need to reduce the traffic chaos on our roads, meet EU Directives in relation to the quality of our drinking water, appropriately manage our energy production and transmission and manage our waste in an environmentally acceptable manner are widely accepted across society.

Government has long since recognised the importance of infrastructure development and the need to redress Ireland's infrastructure deficit. The 2003-2006 National Development Plan (NDP) has set ambitious targets for delivering significant improvements to our infrastructure. The National Spatial Strategy (NSS) provides the framework for the further investment in infrastructure, beyond the NDP, required to support balanced regional development.

### 3. THE NEED FOR ACTION:

The NDP and NSS are in place and Government is committing, and will continue to commit, significant funds to infrastructure development each year. Given its importance and the scale of public monies involved, it is essential that the planning and delivery of critical infrastructure is supported by legislation which not only ensures proper planning and sustained development but also facilitates its timely and cost effective delivery. IEI believes there have been significant problems in the delivery of infrastructure development:

- It takes too long for major projects to get to the construction stage
- The timescale and outcome of the planning process are unpredictable
- The process costs too much

We welcome the proposed Critical Infrastructure Bill as a means of addressing these problems and avoiding their recurrence in future. It is important that the Bill not alone adequately addresses the legislative and structural problems but also sets a policy framework supportive of development of critical infrastructure required in the common good. The following problems are highlighted and recommendations made on how they can be addressed.

#### 3.1 INSUFFICIENT ACCOUNT TAKEN OF “THE COMMON GOOD”:

Ireland’s constitution recognises the need to balance two very important concepts: -

Article 43.1 acknowledges the natural right to private ownership of external goods

Article 43.2 recognises that the exercise of the right to private ownership ought to be regulated by the principles of social justice and goes on to state “... The State, accordingly, may as occasion requires delimit by law the exercise of the said rights with a view to reconciling their exercise with the exigencies of the common good ....”.

The Institution of Engineers of Ireland believes that one of the major reasons for the poor record of delivery to date of major projects is because sufficient emphasis is not placed on Article 43.2 which makes reference to “the exigencies of the common good”. Public infrastructure delivers a benefit to every citizen, to industry, to the economy and to society as a whole. The Institution believes that, in progressing public infrastructure, more account should be taken of this fact and that the constitutional requirement relating to “exigencies of the common good” should be recognised in government policy, in statutory instruments and in planning and judicial decisions.

This is not to say that the rights of the individual and special interest groups should be ignored. Plans for infrastructure development should be made available for public scrutiny in a transparent and timely manner. Environmental impact assessments should be published and the advantages and disadvantages of development made known to the public. Citizens should have the right to submit their views on proposed development and to object to proposals as they see fit.

However, final decisions should be made in a timely manner and based on a proper balance between the rights of the individual and the needs of society as a whole – i.e. “exigencies of the common good”.

***Recommendation:***

*In drafting the Critical Infrastructure Bill, Government should take due account of the “common good” benefit of critical infrastructure and the rights and duties afforded the State in Article 43.2 of the Constitution to progress such infrastructure.*

## **3.2 UNSATISFACTORY APPROVAL PROCESS:**

The planning approval and planning appeals process has been a major constraint on the timely implementation of vital infrastructure development. Delays to projects significantly increase costs as well as postponing the social and economic benefits flowing from delivery. Understandably this has caused widespread concern and has been highlighted by many national bodies including Forfás, IDA, IBEC, Dublin Chamber of Commerce and ESRI. Speaking at a press conference in Greece in June 2003, An Taoiseach made it clear that he saw planning and environmental requirements to be met by major public infrastructure projects as too time consuming.

### **3.2.1 Duplication of Authority:**

All major infrastructure development projects are subject to significant approval processes and virtually all require an Environmental Impact Assessment in accordance with the Irish transposition of EU Directives.

Current legislation requires the consideration of certain projects by a number of different authorities e.g. one or more Local Authorities, EPA, HSA, one or more Government Departments and An Bord Pleanála. In addition, some approvals are required to commence construction and others relate to commencement of operation and they are invariably related. All of this leads to overlap and confusion, which results in the process being significantly slower than required and unduly open to legal challenge.

This situation is not helped by the fact that the role of Competent Authority in assessing the environmental impact of a project may be shared between two or more authorities. In addition, the fact that EPA's consideration of the EIS may occur more than a year after that of other bodies, as part of an integrated pollution control licence approval system, further complicates matters.

In Denmark the system requires the developer to include the draft IPC Licence in the EIS, which is approved by a single Competent Authority. This approach is feasible because the Danish equivalent of the EPA requires far less information to be supplied in submissions for an IPC licence than is required in Ireland. The level of information required in an application for an IPC licence in this country is generally not available at the planning application stage of a project.

IEI believes the current approach is untenable. The Critical Infrastructure Bill should aim to combine as many as possible approval processes (preferably all) in one Authority and ensure the roles and relationships between the approving authority and other authorities is clear, manageable and understood by all.

***Recommendation:***

*A specialist "one stop shop" project approval body should be established either separately or as a division of An Bord Pleanála with responsibility for assessing applications for approval to implement infrastructure projects which are in the national interest. Legally binding timescales should be set for decisions by this body. In addition, decisions of the planning body should not be overturned or subject to subsequent review except by a decision of the courts.*

### **3.2.2 Convoluted Public Consultation Process:**

The public consultation process for large infrastructure projects has become so convoluted and complex that neither project promoters, objectors to projects or the general public have confidence in the process or certainty as to when it should commence and when it should end. The following five consultation stages, which can take place prior to the construction of a major infrastructure project such as a motorway, highlight the problems.

#### **Stage 1**

Many infrastructure projects are outlined as objectives in the Development Plans of Local Authorities, which are the subject of extensive statutory consultations. These consultations involve advertising, submissions from the public and public representatives and indeed several consultative processes before finalisation of the Plan.

**Stage 2**

In theory the public consultation on the route selection of a highway project by a public authority could be deemed to have taken place during the Development Plan process. However, because the route selection process is carried out by local authorities, elected members generally require that their deliberations should be informed by a process of non-statutory public consultation. Similarly, a site selection study for a major project, such as a sewage treatment plant or a waste facility, may have a non-statutory public consultation stage at which site options are presented and a preferred site indicated.

**Stage 3 - EIS**

There is a view that a decision on a project should be informed by an assessment as detailed as an EIS on each of the options considered. Those who hold this view effectively see the EIS preparation as a public consultation in itself. The correct view, as expressed in the EIA Directive, is that the EIS is prepared for the chosen option with outline comment on the alternatives that were considered.

Consultation with the general public during the preparation of an EIS is not mandatory under the EIA regulations. However it has become the norm in major projects to engage in extensive public consultation.

**Stage 4 – The Statutory Consultation**

The process of the formal development approval is prescribed in great detail by legislation and regulation. It has become a complex exercise to comply with the legal requirements. Documents for public consultation must be lodged at specific locations and notices to this effect published. For many major projects public information days and information sessions are organised even though these are not specifically required by legislation. Public hearings, often of extensive duration, are held in which the public is intimately involved.

Most critical infrastructure projects are also subject to an oral hearing. More often than not this functions as a further public consultation process. It is frequently the case that a number of issues, which are common to infrastructure projects, are raised, clarified and resolved repeatedly at successive oral hearings in different parts of the country. This rarely informs but rather delays the decision on whether or not to proceed and adds significantly to the costs. An oral hearing for a major project could cost an applicant between €200,000 and €1,000,000 and utilise a significant amount of the Board's time, without any significant gain to the wider public or the environment.

### Stage 5 – Pre Construction

The delay between statutory approval and start of construction can often be extended by the demand for public information sessions before construction starts. While these can be useful consultation sessions, if used to accommodate those directly affected by the construction, they should not delay the project.

The overall timetable of project consultation may take years if full weight is given to each of the five stages set out above. One of the biggest difficulties arises when some aspect of a project, described in an earlier consultation, is changed in subsequent stages as the project design develops. This highlights the requirement to retain flexibility and to ensure that each stage presents the appropriate level of detail.

The earlier consultation sessions are often inundated by objections that the promoters are not offering a specific enough scheme. Later consultations give rise to objections that all the principles were established at the early stages and that what is being presented is a “fait accompli”, or alternatively, that the scheme has changed and is no longer the one proposed originally so the process must recommence.

Objectors to projects and protest groups, even those who do not live in the vicinity of the project and have no material interest in the project, can use all of the numerous consultation events to seek endless further information, query all of the expert witnesses ad-nauseam and generally stretch out consultation as long as possible. The effect of this is to cause confusion and uncertainty among those with genuine concerns and cause both time delays and cost price escalation.

This is not to say that the rights of the individual and special interest groups should be ignored. Public consultation is an inherent part of the democratic process and citizens already have the right to submit their views on proposed developments and to object to proposals as they see fit and these rights should remain.

However, IEI believes that in the interests of the general public, of the project promoters and of those with a genuine concern about a project, the current public consultation process for large infrastructure projects should be rationalised, made more formal and have legally binding timescales for decisions.

**Recommendation:**

*For critical infrastructure projects deemed to be for the common good, the “one stop shop” approval body proposed above should implement a single transparent public consultative process. Both the general public and the promoter of the project should have access to the process, which should have legally binding timescales.*

**3.2.3 Over elaborate Environmental Impact Assessment Requirement:**

Virtually all major infrastructure development projects require an Environmental Impact Assessment in accordance with Ireland’s transposition of EU Directives into Irish law and regulation.

The EU Directive on EIA (97/11/EC) separates projects into two separate annexes. Annex I projects require preparation of an EIS in all cases while Annex II projects allow discretion. This discretion may be exercised by:

- nominating thresholds above which an EIS is required,
- consideration, on a case by case basis, of whether a project is likely to have significant environmental effects, or
- a combination of both.

Ireland has nominated fixed thresholds for most Annex II projects. For the remaining Annex II projects an EIS is mandatory, with no threshold. This means that large projects in all categories require an EIS, even if there are no potential significant environmental impacts, as provision has not been made for consideration on a case-by-case basis.

In addition where the Competent Authority considers that a significant environmental impact may arise it can require an EIS for sub-threshold projects. In many cases there may be only one or two issues which have the potential for an environmental impact. In this case an Environmental Report to deal only with the relevant issues would suffice and the EPA guidelines on the preparation of an EIS recommend this approach. This would reduce approval time, costs and the risk of court challenges. Unfortunately, if there is any doubt the practice in Ireland is to look for a full EIS. This is not the experience in other countries.

There is a mechanism under article 172 of the Planning and Development Act 2000 whereby a developer can apply to An Bord Pleanála for an exemption from the requirement to prepare an EIS. However the timescale of 18 weeks to obtain the decision from the Board makes this mechanism entirely impracticable.

The EIA Directive outlines the information to be provided in an EIS. This in turn is transposed into Irish Law. Both the EPA guidelines

on the preparation of an EIS and the EU Directive state that only topics which have the potential for significant environmental impacts, should be addressed in detail in an EIS. In many instances the competent authorities and prescribed bodies insist that all topics listed in the Directive are addressed 'for completeness'. This results in lengthy EIS documents containing excessive detail on both relevant and irrelevant topics. This clearly is inappropriate, costly and time consuming as well as creating a very legalistic framework for a process whose main intent is to communicate with, and inform, the public on relevant aspects of a project.

The latest EIA Directive (97/11/EC) introduced a provision whereby the scope of an EIS can be discussed formally, in advance, with the Competent Authority. While this is a welcome move, designed to reduce uncertainty in assessing the adequacy of an EIS, there is little evidence to date of it proving effective in Ireland.

Notwithstanding Ireland's strict interpretation of the Directives, the most frequent objection lodged by those seeking to prevent a project from proceeding is to assert that the EIS is 'fundamentally flawed'. The very restrictive transposition and interpretation of the EIA Directive in Ireland has helped to facilitate such objections.

**Recommendations:**

- *The legislation which transposes the EU Directive on Environmental Impact Assessment into Irish law should be reviewed to achieve more timely and cost effective implementation of infrastructure projects, while complying with all obligations under the Directive.*
- *For infrastructure projects falling within the scope of the Critical Infrastructure Bill, the "one stop shop" approval body proposed in 3.2.1 above should have the power to decide on a case by case basis whether a project requires an EIS or not and the nature of the EIS requirement. There should be a strict and short timetable for the planning body to give its decision. There should be provision made in the Bill to allow for formal discussion between the promoter of the project, experts acting on behalf of objectors and the approval body, to ensure clarity of understanding of the EIS requirements by all concerned.*

**3.2.4 Legal Challenges cause unwarranted delays and cost escalation:**

If major projects are referred to the courts it generally leads to long delays, as there is no requirement to prioritise Critical Infrastructure Projects. It now seems that objectors and protest groups can take even the most spurious objection to the highest level knowing that costs will be awarded to them "in the public interest".

While applications for Judicial Reviews should be made within specified time scales, the High Court has discretion to accept late

applications. The Glen of the Downs road project is a case in point. At least a year after the EIS and the Road Scheme had been approved by the Minister for the Environment, a number of protestors occupied part of the site and sought leave to seek a judicial review. Despite being well outside the specified two month period and despite the applicants not having been previously involved in the process, the High Court used its discretion under the Roads Act and allowed a judicial review. This delayed the project considerably and added significantly to the cost. Although the objectors lost their case they had their costs paid by the State.

The resources available to the Courts to handle Critical Infrastructure Projects need to be examined, together with the procedures, if any, for prioritising such projects. While Government cannot, and should not, interfere with the adjudication process, it can surely improve the timelines by providing the required resources and appropriate direction on prioritisation.

While recognising the absolute right of individuals and organisations to object to proposed projects, the system must ensure that spurious objections, objections motivated by narrow self interest i.e. ‘not in my back yard’, and objections guided by misinformed minority groups do not delay vitally needed infrastructure.

***Recommendation:***

*A specialist division of the High Court should be formally established and fully resourced to deal with legal challenges to the approval and implementation of critical infrastructure projects. Mandatory timescales for decisions should be laid down and this Division should prioritise hearings to ensure critical infrastructure is not delayed. Under no circumstances should application for a judicial review be allowed after a specified deadline of say one month has elapsed.*

**3.2.5 Uncertainty in An Bord Pleanála’s Role and Implementation of Government Policy:**

Where critical infrastructure is required in the common good, it is not clear how An Bord Pleanála interprets Government policy in carrying out its function, how Government policy is communicated and whether prioritisation of critical infrastructure projects is formally or informally implemented. In this context it is unclear to whom the Bord is accountable, how it is supervised and what processes are in place to ensure it discharges its brief properly.

Problems also exist in the operation of the Bord in relation to consistency of approach:

- As currently constituted, the Board is unable to respond to queries from project promoters. This can lead to situations where several experts and lawyers speculate on the meaning of a communication from the Board, when a simple telephone call or short meeting could potentially resolve the situation, removing uncertainty and saving considerable time and cost.
- There is some inconsistency in relation to oral hearings. In some cases, strict adherence to the subject matter is observed and well regulated cross examination is undertaken, giving great confidence to all parties involved. In other cases however, the same disciplined approach is not adopted, causing considerable confusion, uncertainty and delay. In particular, this becomes a problem with developments which require approval from more than one authority. Clearer guidance is required for planning inspectors especially when dealing with complex infrastructure projects.

**Recommendation:**

*The Critical Infrastructure Bill, in establishing the “one stop shop” project approval body proposed in 3.2.1 above, should clarify this body’s role in progressing the planning approval of critical infrastructure in accordance with Government policy and in the common good, while taking due account of the rights of the individual. The Bill should state to whom the approval body is accountable and how it will report and be supervised. The Bill should also provide guidance to the approval body, aimed at facilitating speedy implementation of infrastructure projects, on communication with project promoters and on the holding of oral hearings.*

### **3.2.6 Lack of Flexibility:**

In Ireland, the Client’s and Contractor’s right to deviate from the approved alignment of a road, tunnel, railway, water or wastewater pipe etc. is unrealistically restrictive. Similarly there is no latitude for modification of a project once planning permission has been obtained. If physical difficulties are encountered, or more economical and environmentally acceptable alternatives emerge, it is rarely possible to alter the alignment.

For major infrastructure projects this may mean that the opportunity for improved timescale or reduced cost cannot be taken. The only options available are to stick with the status quo or stop the project and go through a further lengthy approval process. Carrickmines Castle on the M50 Extension is an example of where this excessive constraint has been of disservice to the State and the public.

In addition, restrictive conditions are frequently imposed on contractors' working arrangements, which compare unfavourably with those in other countries. These can include daylight working hours only, unreasonably reduced working hours to minimise noise impact, restrictions on construction vehicle size or type or on construction traffic flows etc. Such restrictions, which achieve marginal amenity gains, can add significantly to both the cost and time to complete projects.

**Recommendations:**

- *The Critical Infrastructure Bill should give the “one stop shop” approval body proposed in 3.2.1 the right to approve modifications and improvements to approved critical infrastructure projects where it believes this to be in the common good and required for valid reasons, without the submission of a ‘de novo’ application for approval.*
- *The Bill should also require the approval body to properly balance the requirement to complete critical infrastructure in a timely and cost effective manner with any potential impact the construction process may have on public amenity (e.g. noise, traffic flow etc.) when it is imposing conditions.*

### **3.3 DELAYS CAUSED BY INADEQUATE RESOURCES IN THE PLANNING AND LEGAL SYSTEMS:**

Critical Infrastructure Projects of their nature tend to be complex and multidisciplinary, requiring both a spread and depth of expertise. The adequacy of technical resources available to the approval body dealing with applications to construct critical infrastructure needs to be examined thoroughly to ensure that it can meet, in a timely manner, the technical demands made of it. A statutory objective currently exists in relation to the timescale in which An Bord Pleanála must determine the outcome of an application or an appeal. This has not been met on many occasions, with decisions on a number of major projects being delayed well beyond the time aspired to in the legislation. As a result, Ireland is considered internationally to have a “lengthy permit process for new build” when being considered for certain foreign direct investment projects. This was highlighted in the March 28<sup>th</sup> issue of Platts EU Energy bulletin, which compared projects relevant to the Electricity Directive for all 15 EU countries.

It is also essential that the required legal resources be made available to the specialist division of the High Court proposed in 3.2.4 above. It will be pointless having a streamlined and quick planning approval process in place for critical infrastructure if legal challenges take months or indeed years to be resolved through the courts.

**Recommendations:**

- *Ensure adequate technical and legal resources are made available to both the “one stop shop” approval body and the specialist division of the High Court proposed in this submission.*
- *Mandatory timetables for decisions should be laid down in the Critical Infrastructure Bill both in relation to approval decisions and the hearing of legal challenges to those decisions.*

**3.4 COSTLY AND TIME CONSUMING PROPERTY ACQUISITION:**

When private land or other property is acquired by a public body for infrastructure development the owner is entitled to fair compensation. However in recent years, there has been the perception by some property owners that the public purse is limitless. Exorbitant prices have been demanded and, in some instances, have been paid for property.

As noted above, the rights to private property are not unlimited under the Constitution. The Constitution in Article 43.2 allows the State as may be required to “ ....delimit by law the exercise of the said rights with a view to reconciling their exercise with the exigencies of the common good”. Property owners must not be allowed to hold up essential infrastructure development indefinitely or blackmail the public body involved into paying exorbitant prices. The compulsory purchase mechanism must also not cause undue delay.

The decisions by public bodies to rezone land or to route a road, railway, water supply etc. along a given alignment can significantly increase the market value of property. Such decisions should not subsequently be detrimental to the common good by increasing the price to be paid by public bodies for such property. A fair price should be paid, related to the value of the property prior to decisions being made on rezoning or routing of infrastructure.

Although the use of CPOs has grown dramatically in the last number of years and has been particularly highlighted for projects such as LUAS and the Dublin Port Tunnel, the assessment of compensation under the CPO legislation is still governed by an archaic set of rules set out in the Acquisition of Land (Assessment of Compensation) Act, 1919. In the absence of agreement between the landowner and the acquiring Authority, the assessment of compensation is referred to one of the officially appointed property arbitrators. Section 2 of the 1919 Act sets out six rules in accordance with which the property arbitrator must act in assessing compensation. Ten more rules were added by Section 69 of the Land Government (Planning and Development) Act, 1963.

The difficulty with the 1919 Rules is that they can often result in an artificial situation because the property arbitrator must have regard to certain things and disregard others. For example, under rule 11, the

property arbitrator must disregard the fact that the land being acquired is reserved for a particular purpose in a development plan or is included in a special amenity area order. Therefore if the land being acquired had a reservation for a proposed roadway or was located within a special amenity area, and would be unlikely to get planning permission for any form of development, this must be ignored by the property arbitrator when assessing the compensation. This is not in the common good. The proposed new Bill should ensure that as far as critical infrastructure is concerned, appropriate CPO and arbitration rules are put in place which protect the common good.

There has also been significant difficulty in project promoters gaining access to lands for surveying, site investigation etc. prior to route selection for infrastructure. This issue should be legislated for in the new Bill.

The Critical Infrastructure Bill should also facilitate the State in gaining automatic access to, and use of, all land under property below a certain depth – say below 10m. The use of land below this depth would normally not be of value to the property owner and compensation should not be payable. This would greatly assist the speedy and cost effective implementation of tunnelling projects for transportation purposes or the installation of major services.

***Recommendations:***

*Ensure the Critical Infrastructure Bill allows the State, in the interest of the common good, to: -*

- (i) Acquire land or property for critical infrastructure development in a timely and cost effective manner, while paying a fair price related to the “current” value of the land or property.*
- (ii) Gain automatic access to land for the purposes of surveying and/or site investigation without the payment of compensation, other than for loss of income or restoration.*
- (iii) Gain automatic access to, and use of, land more than 10m below ground level, whether there is property on the land or not, for the installation of critical infrastructure, without the payment of compensation, other than for loss of income or restoration.*

### **3.5 MODIFICATION TO EXISTING INFRASTRUCTURE SUBJECT TO UNWARRANTED PLANNING REQUIREMENTS:**

In addition to the need for a fast-track process for developments classed as Critical Infrastructure, there is also a need to broaden the scope and clarify the definition of infrastructure development which can be undertaken by a Statutory Undertaking without the need for specific approval. The integration of communications infrastructure with other elements of existing infrastructure requires particular consideration. At present there is

considerable uncertainty and confusion as to what incidental development may or may not be undertaken without further approval.

Existing infrastructure will have been subject to the full requirements of the statutory planning approvals process involving significant time and cost on the part of both the State and the public. Unless there is a very material change being proposed, likely to adversely impact the public or the environment, modifications to existing critical infrastructure should not require further specific approval.

***Recommendation:***

*The Critical Infrastructure Bill should afford the “one stop shop” project approval body proposed in 3.2.1 above the legal right to exempt modifications to existing critical infrastructure from the need to apply for approval. In so doing, the approval body should balance the likely impact of the modifications on the public and the environment against the common good achieved.*

#### **4. DEFINITION OF CRITICAL INFRASTRUCTURE:**

Appendix A contains a list of critical infrastructure/infrastructure projects proposed for consideration as Critical Infrastructure.

Council Directive 85/337/EEC (as amended by Council Directive 97/11/EC) on the assessment of the effects of certain public and private projects on the environment, lists the infrastructure projects which require an EIS. The Planning and Development Regulations SI 600 of 2001, and other acts and regulations, such as Section 50 of the Roads Act 1993 and the Roads Regulations, SI 119 of 1994, transpose the requirements of the Directive into Irish Law.

The infrastructure/projects listed in Appendix A as requiring an EIS are proposed as a guide for the types of project to be regarded as critical infrastructure. Modifications are suggested in Appendix A to the existing thresholds for some infrastructure.

## Appendix A – Proposed Critical Infrastructure / Infrastructure Projects:

### A.1 Transport:

#### Roads

- All motorway projects
- All 4 lane roads projects
- All road upgrading projects with an estimated total cost in excess of €40m

#### Rail

- All mainline rail networks
- The substantial upgrading, with an estimated total cost in excess of €20m, of the capacity of existing rail networks
- The removal of bottlenecks from the existing rail infrastructure, with an estimated total cost in excess of €5m
- New public transport infrastructure such as metro or light rail for urban conurbations with a population in excess of 50,000

#### Ports

- New or extended harbours and port installations, including fishing harbours, where the area, or additional area, of water enclosed would be 20 hectares or more, or which would involve the reclamation of 5 hectares or more of land, or which would involve the construction of additional quays exceeding 100 metres in length

#### Airports

- Construction of runways and associated facilities with an estimated cost in excess of €20m
- Construction of terminal or maintenance facilities with a floor area in excess of 20,000m<sup>2</sup>
- Construction of all air navigation/safety facilities

### A.2 Energy:

#### Oil and Gas Extraction

- Facilities for the extraction and processing of petroleum and natural gas for commercial purposes where the amount extracted would exceed 500 tonnes/day in the case of petroleum and 500,000Nm<sup>3</sup>/day in the case of gas.

**Oil and Gas Pipelines:**

- Oil pipelines exceeding 5km in length
- Gas pipelines exceeding 40km in length

**Oil and Gas Storage:**

- Fossil fuel storage facilities where the storage capacity would exceed 100,000 tonnes oil equivalent.

**Oil Refining:**

- The provision or expansion of oil refining facilities where the estimated total cost is in excess of €20m

**Natural Gas Compression:**

- Natural gas compression facilities where the installed compression capacity exceeds 25 MW

**LNG Facilities:**

- Facilities for the reception, storage and gasification of liquid natural gas where the LNG storage capacity exceeds 25,000m<sup>3</sup>

**Thermal Power Generation:**

- Thermal power stations or other combustion installation with an overall combined heat input of 250MW or more

**Wind Power Generation:**

- Wind power installations with a total combined rated output greater than 25MW, including associated roads and cables, either onshore or offshore, and associated substations

**Electrical Transmission:**

- Construction of all overhead electrical power lines with a voltage of 220kV or more or 110kV lines with a length greater than 15km

**Electricity Substations:**

- Construction of electrical substations with a voltage of 110kV or more

### **A.3 Water Supply:**

- Dams and other installations designed for holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres
- Ground water abstraction or artificial ground water recharge schemes where the annual volume of water abstracted or recharged exceeds 5 million cubic metres
- Works for the transfer of water resources between river basins, where this transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 5 million cubic metres/year
- Construction of water pipelines with a capacity exceeding 5 million cubic metres/year

### **A.4 Wastewater Treatment:**

- Construction of wastewater treatment plants with a capacity exceeding 100,000 population equivalent.

### **A.5 Waste Disposal:**

- Construction of landfill facilities for municipal and industrial wastes with a capacity of in excess of 1 million cubic metres
- Construction of integrated municipal and industrial waste management facilities with a processing capacity in excess of 250,000 tonnes per annum
- Construction of biological municipal waste treatment facilities with a capacity in excess of 100,000 tonnes per annum
- Construction of waste facilities installations for the incineration or chemical treatment of non hazardous waste with a capacity in excess of 400 tonnes per day or a thermal capacity of 30MW or more.
- Construction of waste facilities for the incineration or chemical treatment of hazardous waste with a capacity in excess of 100 tonnes per day or a thermal capacity of 20MW or more.
- Construction of construction and demolition waste recovery facilities with a capacity in excess of 500,000 tonnes per annum

## A.6 Communications:

- New communications systems with an estimated cost in excess of €10m
- Additions to existing communications systems providing a service to over an additional 50,000 subscribers
- Modifications to existing communications systems which provide an enhanced service to over 50,000 subscribers