



Comhshaol, Pobal agus Rialtas Áitiúil
Environment, Community and Local Government

To: Directors of Planning Services, City and County Councils
CC: Chief Executives, City and County Councils
Senior Planners, City and County Councils
Directors of Regional Assemblies
An Bord Pleanála

Circular letter PL 7/ 2016

1 July 2016

Re: Implementation of the Vacant Site Levy as provided for in the Urban Regeneration and Housing Act 2015

I am directed by Mr. Simon Coveney, T.D., Minister for the Environment, Community and Local Government to refer to the Urban Regeneration and Housing Act 2015 (No. 33 of 2015) and the Department's previous Circular Letter PL6/2015 outlining the main provisions of the Act, which included an undertaking to communicate further with planning authorities in relation to the implementation of the vacant site levy provisions introduced under the Act.

1. Introduction

The previous Government's Construction 2020 Strategy, published in May 2014, was primarily focussed on facilitating increased activity in the construction sector, particularly in relation to housing construction, with a view to meeting housing demand and contributing to economic recovery. Action 23 of the Strategy envisaged that as a means of supporting economic development in urban areas, consideration should be given to examining the feasibility of enabling local/planning authorities to adopt measures to incentivise the use and development of vacant and underutilised sites in urban areas. This ultimately led to the development of proposals for the introduction of a vacant site levy which were approved by Government and incorporated in the Urban Regeneration and Housing Act 2015. The introduction of the levy is in line with the increasing use internationally of economic market-based instruments for the purpose of influencing the achievement of desired behavioural change and objectives, be they social, economic or environmental. The plastic bag levy introduced in Ireland in 2002 is a good example in this regard.

Sustainable urban development

Land is a finite resource and there is unquestionably a shared public interest in ensuring the most efficient use of land, especially in urban areas. Due to the increasing urbanisation of society, population increases, changing demographics and other associated challenges, sustainable urban development is becoming an increasingly important policy objective at international, national and local level. Against this background, it is important that appropriate mechanisms are put in place to ensure that land, particularly in urban areas, is

used in the most efficient and effective manner possible and is put into the most productive and appropriate use in the interests of the common good. In effect, it is important to ensure that urban space is used in a more sustainable way and that appropriate enabling tools and mechanisms are provided to facilitate local authorities in achieving compact settlements with associated open spaces, thereby helping to avoid unnecessary urban sprawl, in accordance with the principles of proper planning and sustainable urban development.

Local authorities are key actors in the planning, design, shaping and development of their functional areas. They know and can best manage their own local needs and potentials but they also need to be enabled and empowered to act on the principles of sustainable urban development and be facilitated as much as possible in the adoption of an appropriate medium to long-term strategic, integrated planning framework. In accordance with good governance, local authorities and their elected members should make appropriate use of all relevant tools to facilitate sustainable urban development in their functional areas.

The introduction of the innovative vacant site levy is one such enabling tool which is considered to have significant potential to assist local authorities in the achievement of the planning objectives in their development plans and local area plans, and to generally assist in the betterment and sustainable development of urban areas. Accordingly, while the levy provisions are more relevant to certain local authorities than others having regard to their own local circumstances, all planning authorities are encouraged to implement the levy provision for the purpose of promoting and implementing the concept of sustainable urban development in their areas. Local authorities will have a key central role in the successful implementation of the levy so it is important that they commence the process of implementing the levy provisions as early as possible.

Background to the Vacant Site Levy - incentivising development of vacant sites in urban areas

As outlined, land is a finite resource and should be used efficiently especially in urban areas. There are currently a considerable number of vacant sites in urban areas throughout the country which are lying dormant and undeveloped by their beneficial owners. Many of these sites are also unsightly, lower the tone of the local area creating a negative impression of it, while also often attracting anti-social behaviour. To put this in context, in Dublin City alone, it is estimated that there are presently over 280 reasonably-sized, vacant, undeveloped sites in the area between the two canals - involving approximately 60 hectares of land - many of which have the potential to be developed for residential and other purposes. As indicated, this similarly applies in other cities and towns throughout the country.

In the previous decade prior to the economic downturn, there was an excessive amount of land zoned for housing arising from poor planning practices. As a result of reforms introduced in relation to the preparation of local development plans in the Planning and Development (Amendment) Act 2010, the amount of land zoned for housing nationally is being gradually reduced on an on-going basis as new development plans are adopted in accordance with the mandatory statutory cyclical review process.

Notwithstanding the reduction in land zoned for housing, there can be situations where landowners with land zoned for development hold back the release of key sites to the detriment of the progression of wider development plan objectives, e.g. in relation to the timely supply of new housing in line with housing strategies or the delivery of new retail

space in line with retail strategies. Consideration was therefore given to development of possible new mechanisms that could be made available to planning authorities to address these issues.

To support the reforms commenced in the 2010 Act and facilitate proper planning and sustainable urban development, the Urban Regeneration and Housing Act 2015 introduced the vacant site levy as a site activation measure which can become an integral part of the development planning process, to ensure that vacant or underutilised land in urban areas is brought into beneficial use, while also ensuring a more efficient return on State investment in enabling infrastructure and helping to counter unsustainable urban sprawl.

Under the provisions of the Urban Regeneration and Housing Act 2015, local authorities will be enabled to provide as a specific objective in their development plans for the development, redevelopment and reuse of vacant urban sites in specific locations within urban areas where they consider it to be beneficial towards securing the objectives of the relevant core strategy, housing strategy and retail strategy for the areas, thereby helping to project a more modern, positive and vibrant image of the area. Local planning authorities may, if they so wish, be able to supplement this by the application of reduced development contributions on such sites when granting planning permission where the supporting enabling infrastructure is already in place; ultimately backed up by the vacant site levy which can be imposed by planning authorities under certain conditions in designated areas i.e. where sites remain vacant and site owners/ developers fail to bring forward reasonable proposals, without good reason, for the development/reuse of such property in line with the provisions of the relevant local area or development plan. However in deciding on the application of the levy in their areas, local authorities should also take account of the viability of developing vacant sites in specific locations.

The levy shall be applied annually by a local authority at a rate of 3% of the market valuation of the vacant sites, exceeding 0.05 hectares in area, with reduced and zero rates applying in certain circumstances (0.05 hectares roughly equates to one-eighth of an acre or 500m²). The market valuation shall be determined by the local authority by authorising a suitably qualified person to estimate the price which the unencumbered fee simple of the site would fetch if sold on the open market. The levy shall be payable by the registered owner(s) of the site. Non-payment of the levy due will remain a charge on the land concerned.

This Circular letter highlights a number of key matters relating to the vacant site levy provisions which local authorities should give attention to at an early date. The Appendices to the Circular provides further detailed information on the key definitions and underlying criteria relating to the levy, a summary of the main provisions, as well as guidance on a number of matters – including implementation related timeframes - to assist in its practical implementation.

2. Implementation of the vacant site levy provisions

In the first instance, planning authorities should as soon as possible undertake a preliminary assessment and quantification of the number and location of potential vacant sites in their functional areas. This will provide an initial indication of the extent of vacant sites in their areas and will assist in the identification of potential designated areas within which to apply the levy.

This information should then be presented to the elected members for information, together with a report by the Chief Executive recommending designated areas in the development plan in which the levy could be applied, so as to help make an informed decision in relation to the application of the levy in the local authority area concerned. Such decision should be taken by the elected members in the context of the adoption or variation of development plans and local area plans, in accordance with the normal procedures regarding the adoption or variations of such plans.

It should also be noted that all planning authorities, beginning on 1 January 2017, are required to establish and maintain a vacant site register. Details of identified vacant sites can be entered on the register when they have been vacant for a minimum duration of 12 months.

The information contained in this Circular and in the attached Appendices are aimed at assisting in reaching this decision.

Levy as part of development planning process

As outlined, the levy is intended to act as a site activation and release mechanism, as an integral part of the development planning process, to incentivise the development of vacant or idle sites in urban areas identified by planning authorities as “regeneration land” or “residential land”, with a view to bringing such sites into beneficial use. The areas designated in a development plan or local area plan for the purposes of the levy can be indicated by the clear delineation of the identified areas in the maps in question.

As part of the Urban Regeneration and Housing Act 2015, section 10(2)(h) of the Planning and Development Act 2000, as amended, has been further expanded – see Appendix 1 for further elaboration. This section of the Planning Act requires a mandatory objective to be included in a development plan to support urban regeneration. In light of this revision, planning authorities are required to examine their current development plans with a view to ensuring that the revised requirements of section 10(2)(h) have been integrated into their development plans.

In this regard and as part of this examination, planning authorities should in the first instance provide for the development of vacant sites in designated areas (“residential land” and/ or “regeneration land”) as an explicit objective in their development plans or local area plans, supporting their core strategies in their development plans. This is to give a clear foundation to the fair and equitable application of the levy in their respective functional areas.

The areas designated in a development plan or, where appropriate, a local area plan for the purposes of the levy can be indicated by –

- (i) designating specific “residential land(s)” in areas zoned primarily as residential or specific “regeneration land(s)” in areas zoned primarily for regeneration as areas in which the levy can be applied on vacant sites in those areas, or
- (ii) designating all lands in an area which are zoned for residential or regeneration uses as areas in which the levy can be applied on vacant sites.

With regard to mixed use zonings, these are mainly applied in urban centre areas. These can be included under point (i) above as part of areas in need of regeneration.

In the case of point (i) above, the target areas designated “residential land” or “regeneration land” in a development plan or local area plan for the purposes of the levy can be indicated by the clear delineation of the identified areas in the maps in question.

In respect of those areas that are primarily zoned residential, the planning authority, as part of the identification of appropriate target lands for inclusion in a development plan objective supporting the application of the vacant site levy, shall satisfy itself that –

- the area is one in which there is a need for housing, and
- the vacant sites in the area are suitable for the provision of housing.

In this regard, the suitability of lands for housing will be determined by reference to –

- the core strategy – has the area been identified as a development area, with particular reference to the settlement hierarchy,
- is the area serviced by public infrastructure and facilities (within the meaning of section 48 of the Planning Act 2000) necessary to enable housing to be provided and serviced, and
- whether there is anything affecting the physical condition of the area which might affect the provision of housing.

As stated above, a planning authority may choose the most appropriate plan for identifying areas to which the vacant site levy will apply - County/City Plan or Local Area Plan. However, the County/City Plan must clearly articulate policy relating to the revised section 10(2)(h).

Where a planning authority decides that Local Area Plans are the most appropriate means for articulating areas to which the vacant site levy will be applied, there must be clear linkage to the appropriate County/City Development Plan. This may be simply done by referencing that Local Area Plans will be the means for identifying areas that the vacant site levy will be applied in the relevant supporting policy section in the County/City Development Plan.

Such objective(s) and associated identified applicable land use zonings should be incorporated in a new development plan or local area plan presently being prepared by a planning authority as part of the cyclical plan review process or, if such review is not imminent, by means of variation of an existing plan.

Identification of vacant sites

As indicated, a particular early focus of planning authorities in the implementation of the levy provisions should be on vacant sites in designated areas which meet the criteria set out in the Act (see Appendix 1 for further elaboration) and which in their opinion are capable of being developed, as well as on groups of sites in rundown areas which have been vacant for some time and where it is envisaged that the regeneration of such sites and areas can provide wider societal benefits. Having regard to the housing supply shortage issues currently being experienced, identifying vacant sites which are capable of providing housing should be a particular focus. In this connection, it should be noted that the levy provisions can be applied for regeneration and residential development purposes to both vacant sites in designated areas in central urban areas (largely “brownfield sites”) identified in development plans or local area plans, as well as to vacant sites in designated areas which are in outer urban areas (largely “green field sites”) and which have the potential to provide housing to meet local housing need and demand. In the case of the latter, it should be noted that the levy can

potentially be applied to land designated as “residential land” for the purposes of the levy and in respect of which there is a current planning permission or planning permission was previously granted but which has not yet activated.

It should also be noted that the scope of the levy provisions applies to vacant sites in “regeneration land” or “residential land” (see definitions in Appendix 1) in designated areas irrespective of the ownership status of the sites i.e. be they in public or private ownership. In all cases, a vacant site must be land exceeding an area of 0.05 hectares, not including a person’s home, and must have been vacant for a minimum of 12 months prior to the entry of the site on the vacant site register. Under the provisions of the Act and subject to all the necessary preparatory steps being taken, the earliest date that the registered owners of vacant sites can become liable to the levy is 1 January 2019. The levy can potentially be equally applied in cities and towns – it is a matter for individual planning authorities to decide on which areas to designate and target for the purposes of the levy.

It should be further noted that the Department will be monitoring the implementation of the levy provisions in the course of its evaluations of development plans and local area plans. Where (i) the survey of vacant sites by a planning authority indicates a significant number of vacant sites in the functional area, (ii) there is a need for housing in the area, and (iii) the levy provisions are not being utilised for the purpose of activating such sites, the likelihood is that the Department will seek explanations from planning authorities in this regard. Where deemed appropriate, the Department may give consideration to the utilisation of the Ministerial direction powers available under section 31 of the Act.

Steps by Step Approach to be taken for implementation of the levy

The following is a short summary of the initial main steps that need to be taken by planning authorities for the purposes of applying the levy in their functional areas in accordance with the timelines set out in the Act:

- (i) undertake a preliminary assessment and quantification of the number and location of potential vacant sites in their functional areas;
- (ii) submission of report by the Chief Executive to the elected members of the local authority on the application of the levy provisions in their functional areas;
- (iii) inclusion of an explicit objective in the development plan or local area plan (by way of new plan or variation of an existing plan) for the development and renewal of identified “residential land” and/ or “regeneration land” for the purposes of the levy;
- (iv) incorporation of designated areas in which the levy can be applied in the development plan or local area plan;
- (v) identification of individual vacant sites in the relevant designated areas which in the planning authority’s opinion were vacant during the previous year;
- (vi) establishment and maintenance of a register of vacant sites (entitled the vacant sites register) in the identified areas (under the Act, this can be done from 1 January 2017 onwards);

- (vii) once satisfied that relevant sites have been vacant for a minimum of 12 months, including such sites in the vacant sites register and noting the details of the registered owner etc.;
- (viii) issuing notices to the registered owners of vacant sites included in the vacant sites register prior to 1 June each year indicating that such site owners shall be charged levy in respect of the current year in the following January (under the terms of the Act, if planning authorities have taken all the necessary preparatory steps and are in a position to apply the levy from 1 January 2019, such notice must issue to the registered owner prior to 1 June 2018);
- (ix) charging in respect of the previous year a levy on the registered owner of each vacant site which remains included in the vacant site register (under the terms of the Act, if planning authorities have taken all the necessary and preparatory steps in accordance with the timelines outlined above, the first levy shall be payable on 1 January 2019);
- (x) continuing, in each subsequent year, to charge levy on the registered owner of each vacant site which remains included on the vacant site register.

In order to facilitate the successful implementation of the vacant site levy provisions in their functional areas in accordance with the timelines in the Act or as soon as possible thereafter, planning authorities should put in train the necessary preparations and assign the necessary staff at the earliest possible date. A more detailed outline and explanation of the steps to be taken by planning authorities for the purpose of implementation of the levy is provided in Appendix 2.

This guidance follows on from the information seminar held in Athlone on 25 May last on the practical implementation of the levy provisions.

Additional guidance and information

Additional guidance and information in relation to the implementation of the vacant site levy is set out in the attached:

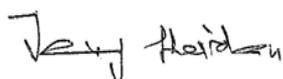
Appendix 1 - Key definitions and supporting criteria

Appendix 2 - Summary of Vacant Site Levy Provisions

Appendix 3 - Practical Matters, including implementation timescales

Please note that this guidance Circular should be read in conjunction with the Urban Regeneration and Housing Act 2015, a copy of which is attached again for ease of reference.

Any enquiries in relation to this Circular and the implementation of the vacant site levy should be addressed to Niamh Drew at 01 888 2370 or Colin Ryan at 01 888 2810 or by email to: planning@environ.ie.



Terry Sheridan
Principal
Planning Policy

Appendix 1 – Key definitions and supporting criteria

This Appendix highlights and summarises key definitions of the vacant site levy provisions as set out in the legislation, along with supporting and/or related criteria, which are necessary for the implementation of the site levy. Section references below, if not otherwise stated, relate to the relevant section of the Urban Regeneration and Housing Act 2015.

Application of levy provisions (section 4)

Section 4 of the 2015 Act provides that the land to which the levy provisions may apply shall be either “residential land” or “regeneration land”. It should be noted that the scope of the application of the levy is not restricted by ownership. It applies to land in both public and private ownership.

Residential land (section 3)

“Residential land” means land included by a planning authority in its development plan or local area plan in accordance with section 10(2)(a) of the Act of 2000 with the objective of zoning for use solely or primarily for residential purposes, and includes any structures on such land.

Regeneration land (section 3)

“Regeneration land” means land identified by a planning authority in its development plan or local area plan, after the coming into operation of section 28, in accordance with section 10(2)(h) of the Act of 2000 with the objective of development and renewal of areas in need of regeneration, and includes any structures on such land.

Revision of “regeneration” objective in section 10(2)(h) of the Act of 2000 (section 28)

Section 10(2)(h) of the Planning and Development Act 2000 (the 2000 Act) previously provided that a development plan shall set out a range of objectives for the area in question, including objective (h) – “*the development and renewal of areas in need of regeneration*”. However, for purposes of supplementing the provisions relating to the vacant site levy and elaborating on the principles and policies relating to these provisions, section 10(2)(h) has now been amended by section 28 of the Urban Regeneration and Housing Act 2015 to provide that objective (h) in a development plan shall in future be for “*the development and renewal of areas in need of regeneration ... in order to prevent –*

- (i) *adverse effects on existing amenities in such areas, in particular as a result of the ruinous or neglected condition of any land,*
- (ii) *urban blight and decay,*
- (iii) *anti-social behaviour or*
- (iv) *a shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses”.*

Information on the criteria to be used to identify vacant sites on either regeneration or residential land is set out in the vacant site definition that follows.

Vacant site (sections 5 and 6)

For the purpose of the application of the vacant site levy, a site means “*any area of land exceeding 0.05 hectares identified by a planning authority in its functional area but does not include any structure that is a person’s home.*”

It should be noted in this context that the term “home”, in relation to a person, means “*a dwelling in which the person ordinarily resides (notwithstanding any periods during which the dwelling is vacant) and includes any garden or portion of ground attached to and usually occupied with the dwelling or otherwise required for the amenity or convenience of the dwelling*”. In effect, a vacant site for the purposes of the levy cannot include a person’s home and garden. This applies whether the property is owner occupied or rented i.e. tenure neutral.

The criteria by which a site shall be considered as vacant depends on whether it relates to residential land or regeneration land.

Vacant site on “residential land”

In the case of “residential land”, section 5(1)(a) provides that a site shall be considered a vacant site if it satisfies the following criteria:

- (i) *the site is situated in an area in which there is a need for housing,*
- (ii) *the site is suitable for the provision of housing, and*
- (iii) *the site, or the majority of the site, is vacant or idle.*

The need for housing in an area shall be determined by the planning authority by reference to the following factors (section 6(4)):

- (a) *the housing strategy and the core strategy of the planning authority,*
- (b) *house prices and the cost of renting houses in the area,*
- (c) *the number of households qualified for social housing support in accordance with section 20 of the Housing (Miscellaneous Provisions) Act 2009 that have specified the area as an area of choice for the receipt of such support and any changes to that number since the adoption of the planning authority’s development plan, and*
- (d) *whether the number of habitable houses available for purchase or rent was less than 5 per cent of the total number of houses in the area.”*

A site being deemed to be suitable for the provision of housing shall be determined by the planning authority by reference to (section 6(5)):

- (a) *the core strategy,*
- (b) *whether the site was served by the public infrastructure and facilities (within the meaning of section 48 of the Act of 2000) necessary to enable housing to be provided and serviced, and*
- (c) *whether there was anything affecting the physical condition of the land comprising the site which might affect the provision of housing.*

Vacant site on “regeneration land”

In the case of regeneration land, section 5(1)(b) provides that a site shall be considered a vacant site if it satisfies the following criteria:

- (i) *the site, or the majority of the site, is vacant or idle, and*
- (ii) *the site being vacant or idle has adverse effects on existing amenities or reduces the amenity provided by existing public infrastructure and facilities (within the meaning of*

section 48 of the Act of 2000) in the area in which the site is situated or has adverse effects on the character of the area.”.

A site being deemed to have adverse effects on amenities or reducing the amenity or character of the area shall be determined by reference to (section 6(6)):

- (a) land or structures in the area were, or are, in a ruinous or neglected condition,*
- (b) anti-social behaviour was or is taking place in the area, or*
- (c) there has been a reduction in the number of habitable houses, or the number of people living, in the area,*

and whether or not these matters were affected by the existence of such vacant or idle land.

In effect, a vacant site on residential land or regeneration land should meet all of the initial relevant criteria in section 5, further supported by the criteria for determination of certain factors set out in section 6. These focused and detailed definitions and supporting criteria provide a clear evidence basis for identifying vacant sites which strengthens the legislative provisions and clarifies the justification for the application of the levy for such sites.

Once a vacant site has been identified, it must be vacant or idle for a period of 12 months prior to being placed on the register. However, in considering that point, a planning authority shall not take account of any unauthorised development or unauthorised use of the site during that vacancy period i.e. such unauthorised development or use would not negate the application of the levy.

Owner (section 3)

“Owner” means –

- (a) in relation to land that is registered land within the meaning of the Registration of Title Act 1964, the registered owner, and*
- (b) in relation to all other land, a person, other than a mortgagee not in possession, who, whether in his or her own right or as trustee or agent for any other person, is entitled to receive the rack rent of the land or, where the land is not let at a rack rent, would be so entitled if it were so let.”.*

In the majority of cases, it is expected that the owner will be identifiable as the registered owner by means of the land registry property ownership folio reference. The owner may be an individual or a company. The owners of vacant sites on whom it is being contemplated to apply the levy should be identified as soon as possible for the purposes of being entered on the vacant site register; to ensure early notification to them that their site is being placed on the register; and to facilitate the subsequent application of the levy on the relevant site owner.

Transfer of Ownership (section 17)

Section 17 provides that any year there is a change in ownership of a vacant site, including the transfer of ownership due to death, then the levy will be charged at zero for that and the preceding year. However, this provision does not apply in certain circumstances such as where -

- (a) ownership of the site transfers from one company to an associated company,*

(b) the owner of the site transfers it to a connected person (other than where ownership of the site devolves on the death of the owner), or
(c) ownership of the site changes, in the opinion of the planning authority in whose functional area the site is located, for the sole or principal purpose of avoiding the obligation to pay vacant site levy.

In this context, “*associated company*”, in relation to another company, means —

(a) a holding company or a subsidiary (both within the meaning of the Companies Act 2014) of that other company, or
(b) a body corporate that is a subsidiary of the same company of which the other company is a subsidiary.

and, a person is a “*connected person*” or connected with the owner of a vacant site if they are —

(a) that owner’s spouse, civil partner, parent, brother, sister, child, step-child or lawfully adopted child,
(b) a person acting in his or her capacity as the trustee of any trust, the principal beneficiaries of which are the owner of the vacant site, the owner’s spouse or any of the owner’s children or any body corporate which the owner controls, or
(c) a partner of that director.

See section 17 of the Act for further detailed definitions.

Vacant site levy (section 15)

“Vacant site levy” means a levy charged on each vacant site which has been entered on the vacant site register for which a market value has been determined. It shall be payable in arrears and can be applied, at the earliest, commencing in January 2019 in respect of 2018.

The levy is payable on a demand by the planning authority within 2 months, though arrangements may be made or facilitated by the planning authority for the payment of the levy by the owner of the site by instalments. If not paid, the levy shall be recoverable as a simple contract debt through the Courts.

The levy is not payable on any land which is already subject to a levy under the Derelict Sites Act 1990. This is mirrored by a related amendment to the Derelict Sites Act 1990, to the effect that the derelict sites levy shall not be payable in respect of land on which the vacant site levy is payable (section 27). This is to ensure that no double levy situation arises in the case of any individual site.

It should also be noted that a demand for payment of the levy may not be made in a situation where the owner of a site appeals to the Valuation Tribunal against the market valuation of the site as determined by the planning authority. Once the appeal is determined, and the market valuation is determined, the demand for the levy may then be calculated as appropriate and applied (section 13).

Any levy due will remain to be a charge on the land until paid (section 19).

Market value (section 12)

The “market value” in relation to a site shall be determined by the planning authority by estimating or causing to be estimated the price which the unencumbered fee simple of such site would fetch if it was sold on the open market on the date of the determination in such manner and in such conditions as might reasonably be calculated to obtain for the vendor the best market price for the site.

The market value should be determined by a suitably qualified person, authorised by the planning authority, following a site inspection as permitted by the site owner. In a case where an inspection of the property is not permitted, the authorised person shall make an estimate of market value based on their knowledge of the site and property and the prevailing local market conditions.

Appendix 2 - Summary of the Vacant Site Levy Provisions

The vacant site levy can be charged by a planning authority in line with the following steps:

1. a planning authority shall include objectives in its development plan for the development and renewal of identified areas in need of regeneration or residential development. It will be a matter for the elected members to identify and incorporate those areas in their development plan or local area plan. Only vacant sites and structures located in those areas, as incorporated in the development plan, can be placed on the vacant site register and be liable for the levy;
2. beginning on 1 January 2017, a planning authority can establish and maintain a register of sites (entitled the vacant sites register) in those identified areas which in the planning authority's opinion were vacant sites during the preceding year;
3. before entering a site on the register, the planning authority shall notify the site owner in writing of its proposed entry of a site on its vacant site register, offering the owner 28 days to make a submission regarding the proposed entry on the register;
4. where a planning authority forms the opinion that a site was a vacant site for the duration of the twelve months concerned and continues to be vacant, it shall include the site on the vacant sites register and give written notice to that effect to the site owner;
5. the information to be included in the register in relation to specific sites shall include the relevant property ownership folio reference attaching to the land, the name and address of the site owner, particulars of the market value of the site as determined by the planning authority or the Valuation Tribunal on appeal, and any other matters prescribed by the Minister for the purposes of the implementation of the Act;
6. an owner of a site entered on the vacant sites register may appeal against such entry to An Bord Pleanála within 28 days of being notified of the inclusion of the site on the register. The burden of showing that a site or a majority of a site was not vacant or idle shall rest with the owner of the site. Where An Bord Pleanála determines that a site was not vacant or idle in the preceding year, it shall notify the planning authority concerned who shall remove the relevant entry from the register;
7. before 1 June 2018 (if all the necessary preparatory steps have been taken), a planning authority shall issue a notice to the owner of a vacant site included in their respective vacant sites registers indicating that such site owners shall be charged levy in respect of 2018 in January 2019 - and every year thereafter until the site is no longer vacant - and offering them a further opportunity to make submissions regarding the entry of their sites on the register. Where the planning authority is satisfied on foot of such submissions that a site is no longer a vacant site (i.e. that development has commenced on it or it is being put to beneficial use), it shall cancel the entry of that site on the register;
8. a planning authority shall, as soon as possible after the entry of a site on the vacant sites register and at least every 3 years thereafter, determine the market value of a vacant site and serve notice on the owner of the site of the valuation – or revised valuation – of the site in question;
9. the owner of a vacant site may appeal the market value arrived at by the planning authority to the Valuation Tribunal who shall make its determination on the market value in line with the provisions of the Valuation Act 2001 which may include convening a hearing of the appeal;

10. a planning authority, or the Tribunal under appeal, may where it considers it appropriate deem that a vacant site has a zero market value where – (i) no market exists for the site, or (ii) the site is on contaminated land and the estimated necessary remediation costs in order to use or develop the site exceed the market value of the site itself;
11. with effect from 1 January 2019 (if all the necessary preparatory steps have been taken) and every year thereafter, a planning authority shall – in respect of the preceding year - charge a vacant site levy of 3% of the market value of a site on the owner of each site included in its vacant site register, which shall be payable on demand or by instalments if agreed by the planning authority;
12. to help alleviate the financial burden faced by owners of vacant sites which are subject to a site loan, a zero rate of levy shall apply if the outstanding amount of the site loan is greater than the market value of the vacant site on the date of its determination (negative equity situation). Where the outstanding amount of the site loan is between 75% and 100% of the market value of the vacant site on the date of its determination, a reduced rate of 0.75% levy shall apply. Where the outstanding amount of the site loan is between 50% and 75% of the market value of the vacant site on the date of its determination, a 1.5% rate of levy shall apply;
13. the owner of a site who receives demand for payment of the levy may appeal against such demand to An Bord Pleanála within 28 days of the date of the demand. In such instance, any such demand shall not take effect until the appeal is finally determined or withdrawn. Where An Bord Pleanála determines that a site is no longer a vacant site, it shall notify the planning authority who shall remove the site from the register and cancel the payment demand;
14. the levy shall continue to be payable annually until the site is developed or brought into use at which time the site will be removed from the vacant site register;
15. where vacant site levy remains owing to a planning authority, it shall remain a charge on the relevant land until it is paid;
16. where there is a change in ownership of a vacant site, or the owner of a site dies, the amount of levy chargeable on such site in respect of that year or the previous year shall be zero. This shall not apply where ownership of the vacant site transfers – (i) from one company to an associated company, (ii) to another member of the family, other than on the death of the owner, or (iii) for the principal purpose of avoiding the obligations to pay the vacant site levy;
17. a planning authority shall issue a receipt, and on request a certificate of discharge, in respect of levies paid;
18. the vendor of a site on the register shall before the completion of a sale on the site, pay to the relevant planning authority any vacant site levy due in respect of that site, and give to the purchaser a certificate of discharge for each year in respect of which the site was a vacant site. It shall be an offence to forge or provide a forged certificate or other document in respect of payment of the vacant site levy;
19. any monies received by a planning authority in respect of vacant site levy shall be spent by it – (a) where the vacant site comprises residential land, on the provision of housing, or the provision of infrastructure, services or other matters relating to the provision of such housing on residential land in the vicinity of the site, and (b) where the site comprises regeneration land, on the development and renewal of regeneration land in the vicinity of the site;

20. a planning authority may spend no more than 10% of the total levy monies received in respect of any collection costs incurred by it. In the case of regeneration land, levy proceeds may be spent on -
- the preservation/protection of structures of special architectural, historical, cultural interest etc.,
 - the provision or improvement of services or facilities for the local community i.e. education, training, recreational, cultural facilities,
 - the preservation, improvement and extension of amenities, including recreational amenities, on the land,
 - civic improvements, and
 - projects/works for the benefit of urban streets in the area including the improvement of streets/ footpaths in local shopping streets and business areas and the removal of graffiti.

Appendix 3 - Practical Matters to Note

Timescales

Subject to the necessary preparatory steps being taken, the Act outlines the initial timeframes for key actions by planning authorities in the implementation of the levy as follows:

- **January 2017** - Establish a vacant site register and notify relevant site owners of the proposed inclusion of their sites on the register.
- **June 2018** – Issue notifications to the owners of vacant sites that levy will be charged on their sites, as entered on the register, in respect of 2018 in January 2019.
- **January 2019** – Apply levy to sites on the vacant site register in respect of 2018 and every year thereafter until the site is no longer vacant.

Identifying Vacant Sites

- Prior to being placed on the register of vacant sites, a site must be vacant for the previous 12 month period. The Act provides for appeal by the owner against the entry of their site on the register i.e. on grounds that it was not vacant. Local authorities are advised they should maintain appropriate records, including photographic evidence, as necessary, to support their finding that a site was vacant for the necessary period.
- When considering whether a site has been vacant or idle for the previous 12 month period, planning authorities should disregard any unauthorised development or unauthorised use on the site.
- In certain circumstances a site that is vacant may be used on a temporary short term or periodic ad hoc basis. For example, a site may be used to host a monthly event such as a farmers market etc. A site that is vacant and used for such temporary purposes would not be considered as being in full and active use. Therefore the levy can be applied.
- Sites may be in areas where the land is zoned for a particular purpose, e.g. residential. However, pending development appropriate to its zoning, the land may currently or on an interim basis have an agricultural use. Given the purpose of the levy, particularly in the context of the provision of housing, in such cases the levy may be applied, as the site concerned is not being used for the purpose for which it was zoned.
- Where a vacant site has an extant planning permission associated with it, this should not be a consideration in determining whether to apply the levy. If such a site meets the criteria for a vacant site in respect of either residential or regeneration land, then the levy may be applied.
- It should be noted that local authority owned sites which have been identified for the provision of education facilities by both the Department of Education and Skills and the local authority, or identified by the local authority as reservations for capital works (such as for the provision of roads) should not be subject to the levy. In such cases, the provision of reservations for capital works in a local authority functional area must be reflected in the development plan objectives.

- In addition, local authorities should also give consideration to local community initiatives already in existence on certain sites which are supporting the regeneration and improvement of an area, such as community gardens and therefore the levy should not be applied on such sites.
- A situation may also arise where a potential vacant site straddles the functional boundaries of two planning authorities. In such situations, the two planning authorities should consult with one another to determine if they each have identified the two site parts in question as a vacant site and if they each intend to place the sites on their respective vacant site registers.

Identification of vacant site owner

- Once a vacant site has been identified, the owner of that site should be identified as soon as possible i.e. the registered owner under the Registration of Title Act 1964 etc. The information is needed for entry on the register and the owner must be given written notice accordingly. The levy can only be charged to the registered owner of the site.
- Where the local authority is the owner of a vacant site which is entered on the register, the notification should issue to both the Chief Executive and the relevant department of the local authority.

Market Valuation

- Local authorities must determine the market value of the site by estimating the price that the site would fetch if it was sold on the open market. This should be reviewed every 3 years. Local authorities should authorise a qualified person to undertake the market valuation of identified sites. Shared service options or arrangements should be explored with other local authorities in this regard.
- In estimating the market valuation of a vacant site, due consideration should be given to the purpose of the levy i.e. as a mechanism to incentivise the use and development of underused or vacant sites, not to raise revenue.

Vacant Site Register

The information to be entered on the Vacant Site Register for each vacant site should include:

- a description of the site, including a map,
- the property ownership folio reference attached to the site,
- the name and address of the owner of the site, and
- the particulars of the most recent market valuation of the site.

Levy Rates & Application

- The levy shall be applied annually by a local authority at a rate of 3% of the market valuation of the vacant sites. However, reduced and zero levy rates may be applied in certain circumstances as set out below:

| Rate | Application |
|-------------|---------------------------------|
| 3% (full) | To all sites except those below |

| | |
|-----------------|---|
| 1.5% (reduced) | Sites subject to loans between 75% and 100% of the site value |
| 0.75% (reduced) | Sites subject to loans between 50% and 100% of the site value |
| 0% (zero) | Sites subject to loans greater than the site value No market exists for the sites Sites on contaminated land and where the estimated remediation costs would exceed the site value Death of owner or change of ownership of site |

Site Loans

- It should be noted that the definition of “site loan” (section 16(3)) in this context is –

“an agreement for the provision of credit to a person on the security of a mortgage of a freehold or leasehold estate or interest in land for the purpose of enabling the person to purchase the land”.

The term “mortgage” has the meaning given to it by the Land and Conveyancing Law Reform Act 2009.

- Therefore, the reduced or zero levy rates shall only apply where the site loan was for the purpose of purchasing the land or site in question. These rates would not apply if there were loans or mortgages attached to the site as a result of using the site as collateral for another purchase or venture.
- It is a matter for the owner of a vacant site, which is the subject of a site loan, to provide any necessary certification or documentary evidence regarding the site loan to facilitate the planning authority in applying the vacant site levy at the appropriate percentage rate.

Death or Change of owner

- The application of the levy at a zero rate in the case of death of the site owner or the change of owner of a vacant site is provided for in section 17 of the 2015 Act which provides that where the owner dies or the ownership of a vacant site changes, no levy is payable for both the year before and after the death or sale. The purpose of this provision is to provide time for owners and potential purchasers of vacant sites, where the ownership of a vacant site changes for the purpose of the development of the site to bring it into use. In addition, if the change in ownership of the land is brought about through death of the owner, it removes the financial burden on the new owner and provides a time period within which they may put the site to productive use, prior to the levy being applied.
- However, the zero rate of levy does not apply if the ownership of the site changes for the sole or principal purpose of avoiding the obligations to pay the levy.
- In this context, section 17 indicates that where the ownership of a site transfers from one company to an “associated company” or from one person to a “connected person”, other than on the death of the owner, then the levy will still apply in those circumstances. The definitions for “associated company” and “connected person” are set out in Appendix 1.

Levy Receipts

- Levy receipts shall be spent on the provision of housing and development and renewal of land. A limit of up to 10% of levy receipts may be used for the administration of the levy.
- As with other finances, appropriate financial records, including the establishment of a dedicated account, should be maintained to record levy receipts and expenditure and should also appear in the Annual Financial Statements.
- In the case that the local authority is itself the owner of a vacant site, then the levy should be applied accordingly. In the interests of proper accounting and transparency, local authorities should ensure that financial records reflect the internal transfers of funds demonstrating the application of the levy in those cases.

Derelict Sites

- Derelict site levy shall not be payable in respect of any land on which vacant site levy is payable, and vice versa. This is to ensure that no double levy situation arises in the case of any individual site.

Appeal Process

- Measures such as the vacant site levy must be introduced in line with the principles of fair procedures and administration. It is important that clear appeal mechanisms are in place. Therefore at various stages in the implementation of the vacant site levy, there are provisions for an appeals process, as follows:

Appeal Entry on Register

- An owner may appeal the entry of their site on the register by the planning authority to An Bord Pleanála on the grounds that the site was not vacant for 12 months. The burden of proof is on the owner. (Section 9)

Appeal Continued Entry on Register

- By June 2018, vacant site owners are notified the levy will be charged for 2018 in 2019. This provides a further opportunity for an owner to make a submission on the matter in relation to whether the site is still vacant. Following consideration of the submission, if the planning authority decides that the site should remain on the register, the owner may appeal this decision to An Bord Pleanála. The burden of proof is on the owner. (Section 11)

Appeal of Market Value

- A vacant site owner may appeal the market value arrived at by the planning authority to the Valuation Tribunal. Subject to the right of appeal to the Courts on a point of law, the decision of the Valuation Tribunal is final. (Section 13)

Appeal Demand for Payment

- A vacant site owner may also appeal a demand for payment of the levy by the planning authority on the grounds that the site was no longer vacant in the year concerned or that the levy amount was incorrectly calculated. The appeal is made to An Bord Pleanála and again the burden of proof lies with the owner. (Section 18)

- As set out above, the Act provides for a number of limited opportunities for a site owner to appeal in relation to the vacant site levy provisions – when a vacant site is entered on the vacant site register, when a market valuation of a site has been determined, when formally notified that a vacant site has been entered on the register and that the levy will be applied on the site etc. Subsequent to these opportunities, the owner has an opportunity to appeal each year when the demand for levy payment is made.