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## **Part 2.**

# **Preparing the Development Plan**

## **The Role of Elected Members**

**Anne Marie O'Connor**  
*Deputy Planning Regulator*



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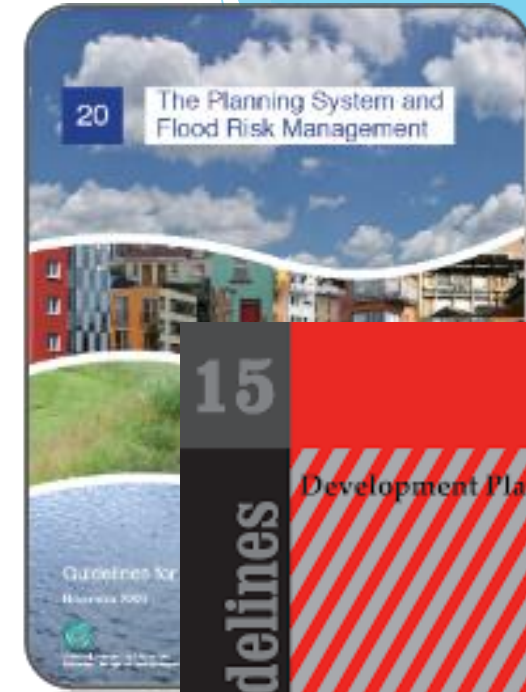
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*Number 30 of 2000*

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**PLANNING AND DEVELOPMENT ACT 2000  
REVISED  
Updated to 22 May 2020**

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## Part 2 Topics

- Context
- Legislative Requirements
- Environmental Requirements – SEA, AA, Flood Assessment
- Procedural Requirements - Development Plan process
- Final thoughts and advice

**“PLANS ARE  
NOTHING;  
PLANNING IS  
EVERYTHING.”**

**DWIGHT D. EISENHOWER**



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# Planning

What are we trying to do?

How do we get there?

# Planning – Economic Development



**Mullingar  
Chamber**  
*Advancing business together*

- ▶ Most efficient use of scarce resources
- ▶ We only have so much land, air, water, money
- ▶ How can we be smart about how we use these resources to maximise economic gain in both the long and the short term



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# Planning – Environmental Protection



Protecting scarce resources

- physical
- cultural



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# Planning - Community



Equity in the use of scarce resources



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Economic  
Development



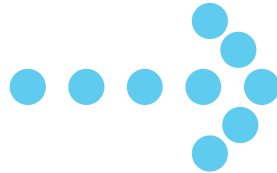
Environmental  
Protection



Community  
Interests



**County  
Development  
Plan**



**Maximise  
infrastructural  
investment**



**Revitalise  
rural towns  
and villages**



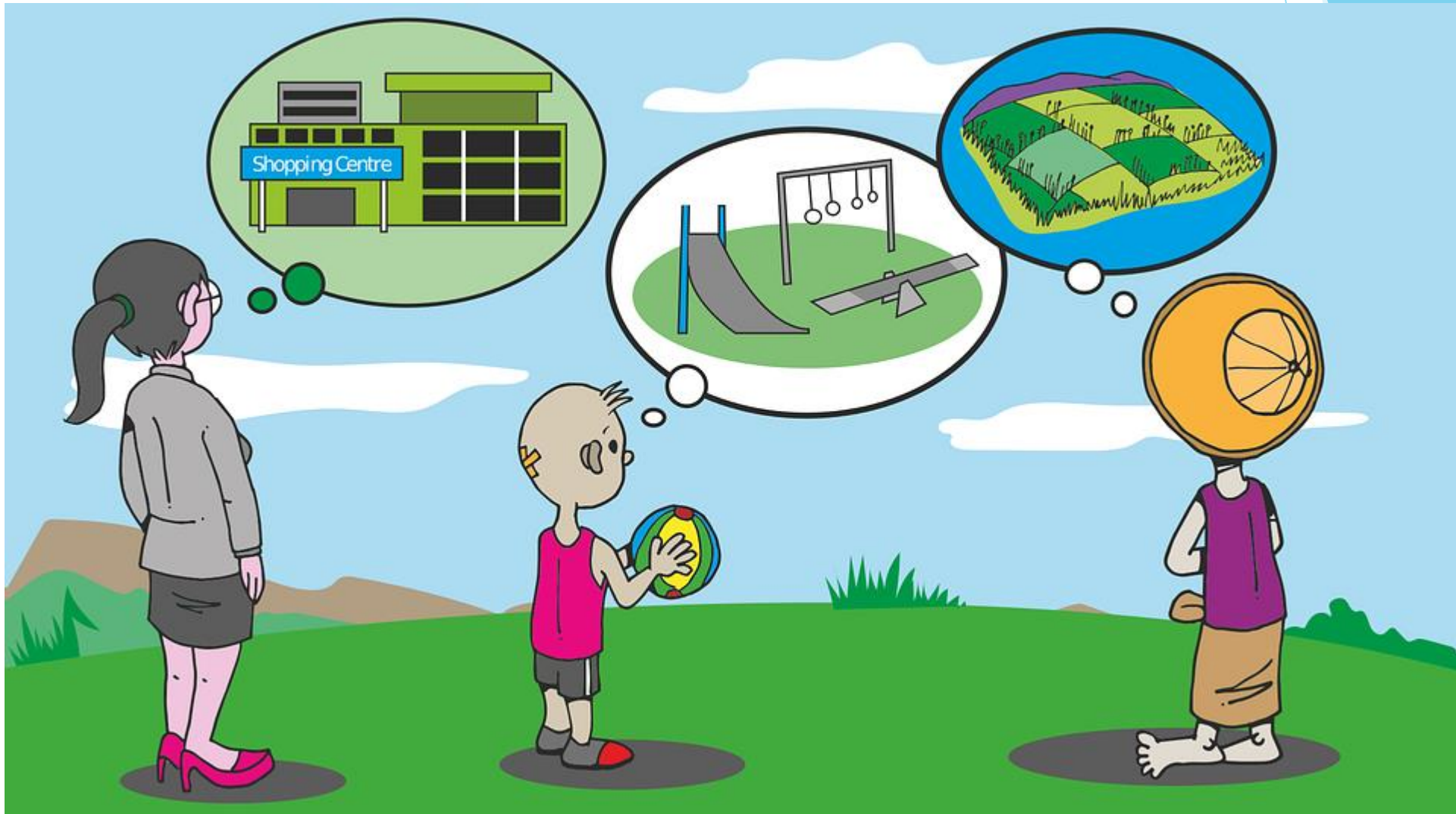
**Facilitate  
sustainable  
travel  
patterns**





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# Potential Conflicts



# How to navigate the way through conflicts

- ▶ Use the plan-making process to ensure:

- ▶ Strong plan that provides certainty to support sustainable economic development

- ▶ Key decisions are made at the plan stage and not left to development management process

- ▶ Comply with statutory requirements

- ▶ Legislative

- ▶ Environmental

- ▶ Procedural



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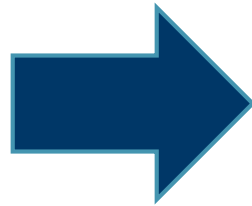
# Legislative Requirements



# Mandatory Legislative Requirements

## *Include.....*

- ❑ A written statement & maps
- ❑ A Core Strategy consistent with RSES and NPF
- ❑ A Housing Strategy consistent with Core Strategy...
- ❑ Mandatory objectives and may contain discretionary objectives...



**Demonstrate consistency with national plans, strategies, guidelines...**



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# Environmental Requirements

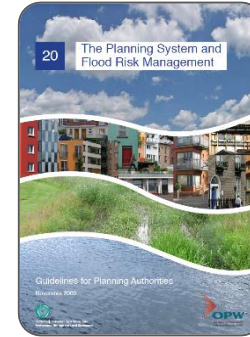




# Mandatory Environmental Requirements



- ▶ SEA Directive - Strategic Environmental Assessment (SEA)
- ▶ Habitats Directive - Appropriate Assessment (AA)



- ▶ Floods Directive - Section 28 Flood Risk Management Guidelines
- ▶ Ensure the plan is informed by a Strategic Flood Risk Assessment (SFRA)



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# Strategic Environmental Assessment

- ▶ Strategic Environmental Assessment (SEA) is the **process** by which environmental considerations are required to be fully integrated into the preparation of plans prior to their final adoption.
- ▶ The SEA process is iterative and must be considered at every stage of the plan making process
- ▶ Public consultation is of key importance
- ▶ Increasing importance of Climate in SEA



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# Strategic Environmental Assessment (2)

- ▶ The steps involved in SEA are:
  - ▶ **Screening** (determining whether or not SEA is required)
  - ▶ **Scoping** (determining the range of environmental issues to be covered by the SEA)
  - ▶ The preparation of an **Environmental Report**
  - ▶ The carrying out of **consultations**
  - ▶ The **integration of environmental considerations** into the Plan
  - ▶ The publication of information on the decision (**SEA Statement**)

<https://www.epa.ie/monitoringassessment/assessment/sea/process/>



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# Appropriate Assessment

- ▶ Assessment of the potential adverse effects of a plan on European Designated (Natura 2000) sites - Special Areas of Conservation (SAC) and Special Protection Areas (SPA).
- ▶ Most plans will required Stage 2 AA and the preparation of a Natural Impact Report (**NIR**)
- ▶ Elected members, in deciding to adopt the plan, must be satisfied that the plan would not **adversely affect the integrity of a European Site**



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# Strategic Flood Risk Assessment

- ▶ SFRA looks at the scale and nature of the flood risk issues relative to the zoning objectives
  - ▶ Development plans should include mapping of flood zones
- ▶ Integrated with SEA process - identification and assessment of flood risk should be aligned
- ▶ OPW observations on flood-related matters are important
- ▶ SFRA principles:
  - ▶ Sequential approach to zoning – avoid flood prone lands unless no other alternatives available
  - ▶ Justification test: if zoning on flood lands, need to demonstrate on a solid evidence base that the zoning will satisfy the Justification Test



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# OPR Role in Environmental Assessments

- ▶ OPR is **not** a decision making authority for SEA or AA
- ▶ Sole responsibility of elected members to carry out SEA and AA of draft plans – Possible Judicial Review
- ▶ BUT, we pay very close attention to SEA report and NIR
- ▶ SFRA does fall within OPR remit because of the S.28 Guidelines



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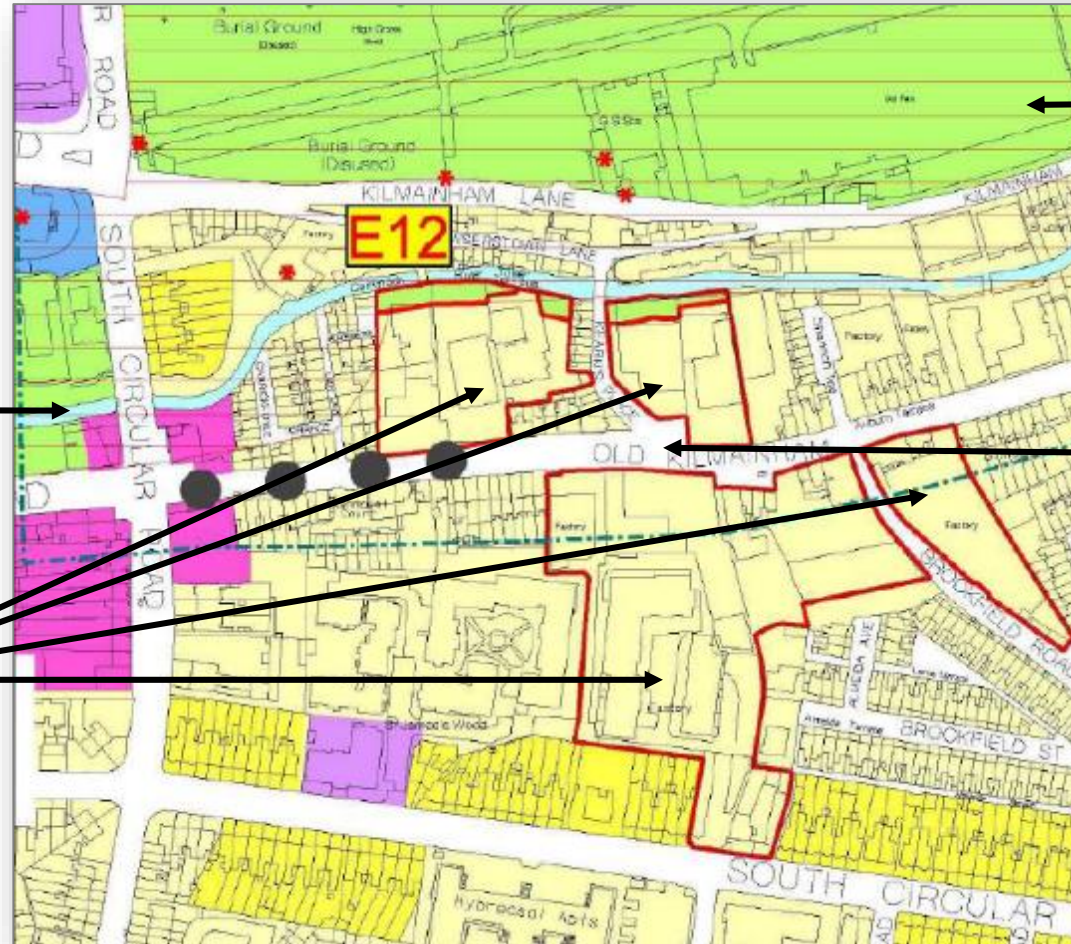
# *Case study*





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# Dublin City DP draft Variations 8-28



Camac River

Proposed residential rezonings

Royal Hospital Kilmainham

Old Kilmainham village





## **Recommendation 1:**

*Having regard to the above, your planning authority is requested to engage with the Office of Public Works in relation to Variation no.19 Old Kilmainham Road / South Circular Road, Z1 and in determining the appropriateness of the zoning objective proposed within Variation 19, taking into account the requirements of the document “The Planning System and Flood Risk Management Guidelines for Planning Authorities” (2009) issued by the Minister under Section 28 of the Act, and Circular PL 2/2014.*

*In particular, your authority is requested to confirm whether or not the variation above is consistent with the above guidelines, including the application of point 3 of the Justification Test.*

*Where such variation is not consistent with the guidelines above, Variation 19 should not be proceeded with.*

# Options available to OPR

- ▶ OPR decides if the adopted plan adequately addressed the Recommendation(s)
- ▶ If **yes**, responds to the planning authority to this effect
- ▶ If **no**, decision on whether the breach warrants an OPR recommendation to the Minister to issue a **draft Direction**
- ▶ If draft Direction issued by Minister, a consultation process must be carried out by CE
- ▶ CE submits report as to how the requirements of the draft direction will be implemented
- ▶ On this basis, OPR recommends to Minister whether Direction should be proceeded with
- ▶ **Minister decides whether to issue Direction**

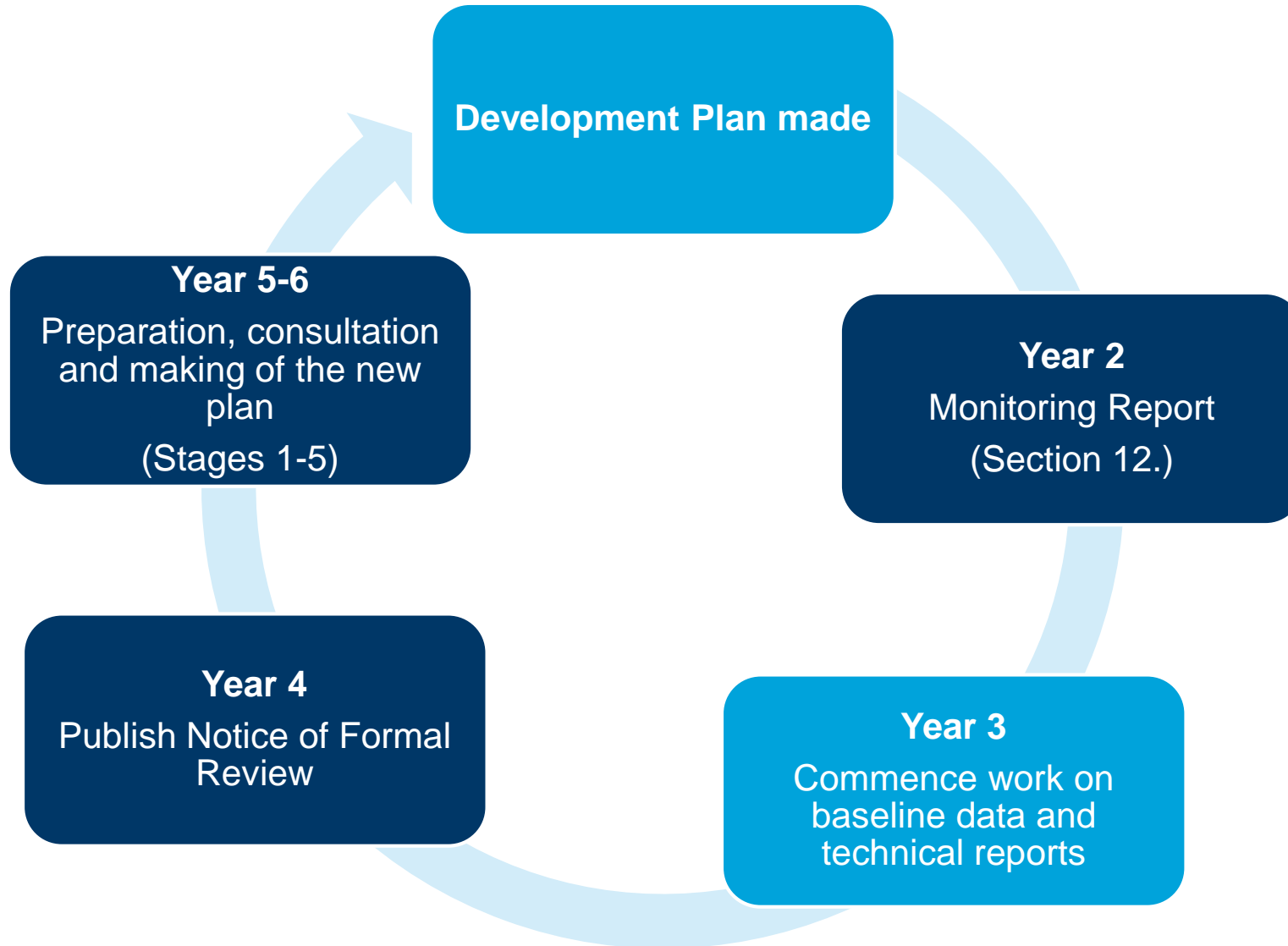


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# Procedural Requirements



# The Development Plan Cycle.....



# Development Plan Process

5 stages in reviewing and making a development plan

At least 1 one year before commencing pre-draft

## STAGE 1: PRELIMINARY

1

- Preparation of:
  - Technical working papers
  - Baseline report
  - Cross sectoral engagement
  - Issues and options paper
  - Preliminary scoping for SEA

1-46 weeks

## STAGE 2: PRE-DRAFT

2

- Publish notice: Not later than 4 years from the making of the existing development plan (official commencement of Development Plan review process i.e. Day 1 of the process)
- Week 1
- Public consultation: Invite submissions and observations to the elected members (CE) report. To be prepared and submitted within a specified period (not less than 8 weeks)
- Week 8
- Chief Executives (CE) report: To be prepared and submitted to the elected members within 16 weeks from the date of the public notice. Week 16
- Within a specified period (not less than 8 weeks) Draft development plan is prepared
- Week 26
- Directions: Elected members must issue directions within 12 weeks of receiving the CE's report. Week 38
- Draft submitted to the elected members. Within 8 weeks of receiving the members' directions. Week 38
- Consideration of draft plan: Within 8 weeks of the CE submitting the draft development plan to members, amendments can be made and the draft plan is finalised. Week 46

47-82 weeks

## STAGE 3: DRAFT

3

- Publish notice: Within 2 weeks of the draft plan being made by the elected members, a notice is published. Week 48
- Public consultation: The draft plan is placed on public display. Submissions and observations are invited for a period of not less than 10 weeks. Week 58
- CE's report: Within 22 weeks from the date of publishing the notice, the CE prepares and submits a report to the elected members on the submissions and observations received. Week 70
- Consideration by members: Within 12 weeks of receiving the CE's report, the elected members consider the draft plan and pass a resolution to accept or amend the draft plan. Week 82

83-99 weeks

## STAGE 4: MATERIAL AMENDMENTS

4

- Publish notice: Within 3 weeks of passing a resolution to amend the draft plan, a notice of material amendments is published. (Whether there is a requirement to do so is determined by the CE in consultation with the CE's report.)
- Week 88
- Public consultation: The material amendments are placed on public display. Submissions and observations are invited for a period of not less than 4 weeks. Week 92
- CE's report: Within 8 weeks of the date of the publication of the notice, the CE prepares and submits a report to the elected members on the submissions and observations received in respect of the material amendments. Week 93
- Consideration by members: The elected members have a maximum of 6 weeks to consider the CE's report in respect of the material amendments. Week 99

Week 99+

## STAGE 5: MAKING OF PLAN

5

- Making the plan: The elected members must pass a resolution to make the plan. Week 99
- Publish notice: A notice is published confirming that the development plan is made and is available for inspection.
- Plan operational: The plan becomes effective 8 weeks following the passing of the resolution by the elected members. Week 105

Available on our website....

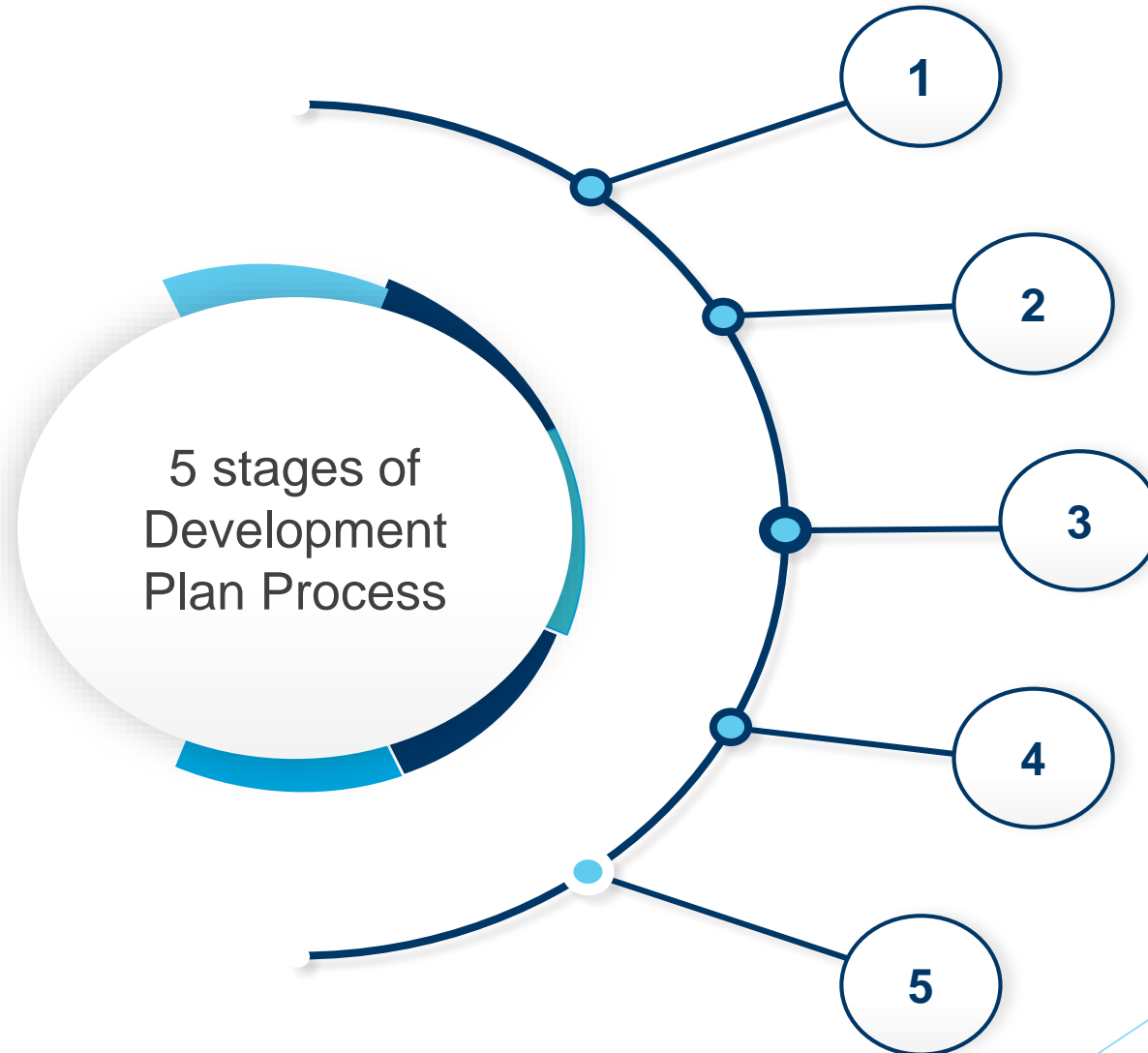
<https://www.opr.ie/wp-content/uploads/2020/06/Development-Plan-Process-Infographic.pdf>



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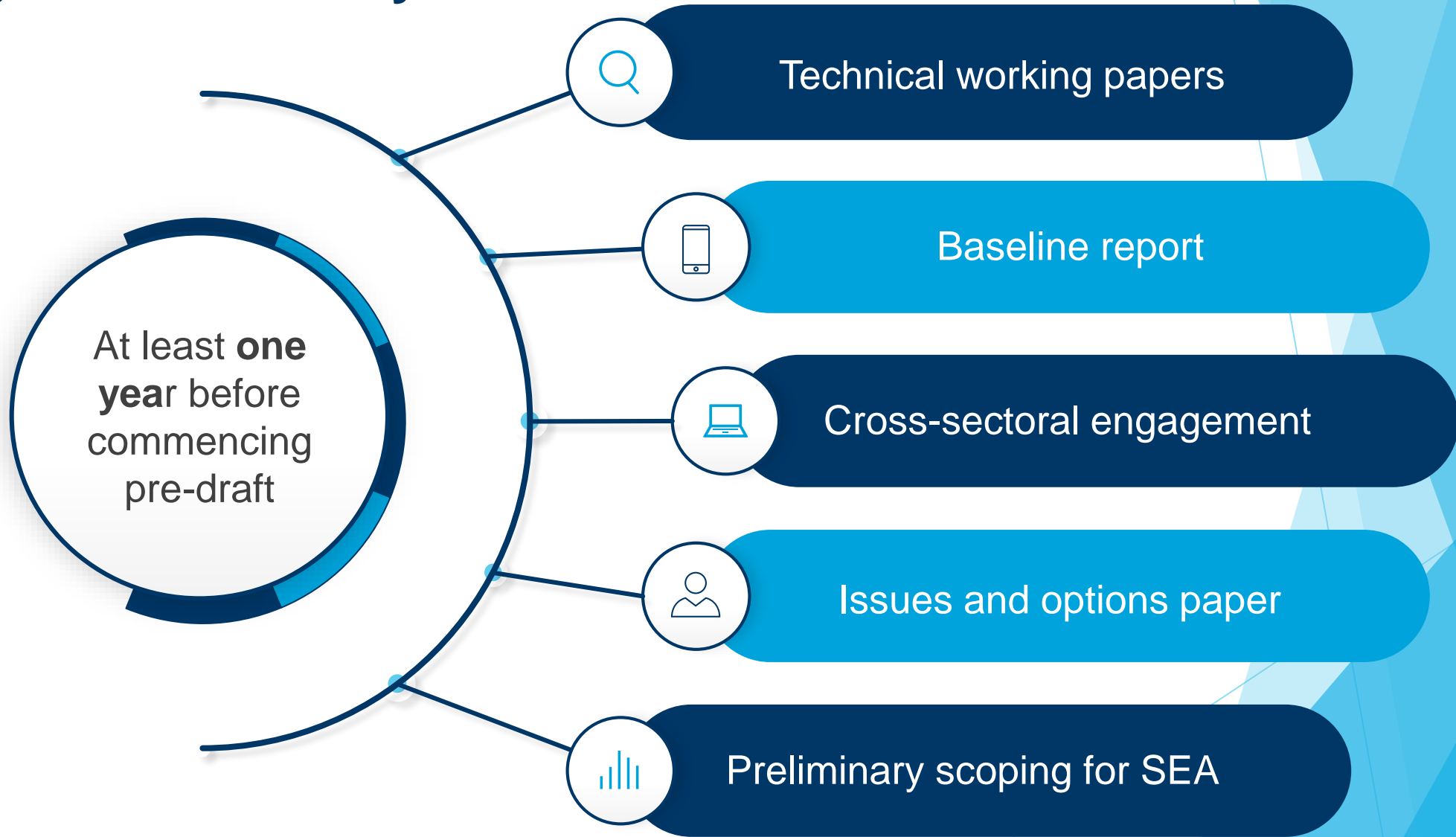
# Development Plan Process

5 stages in reviewing and making a development plan



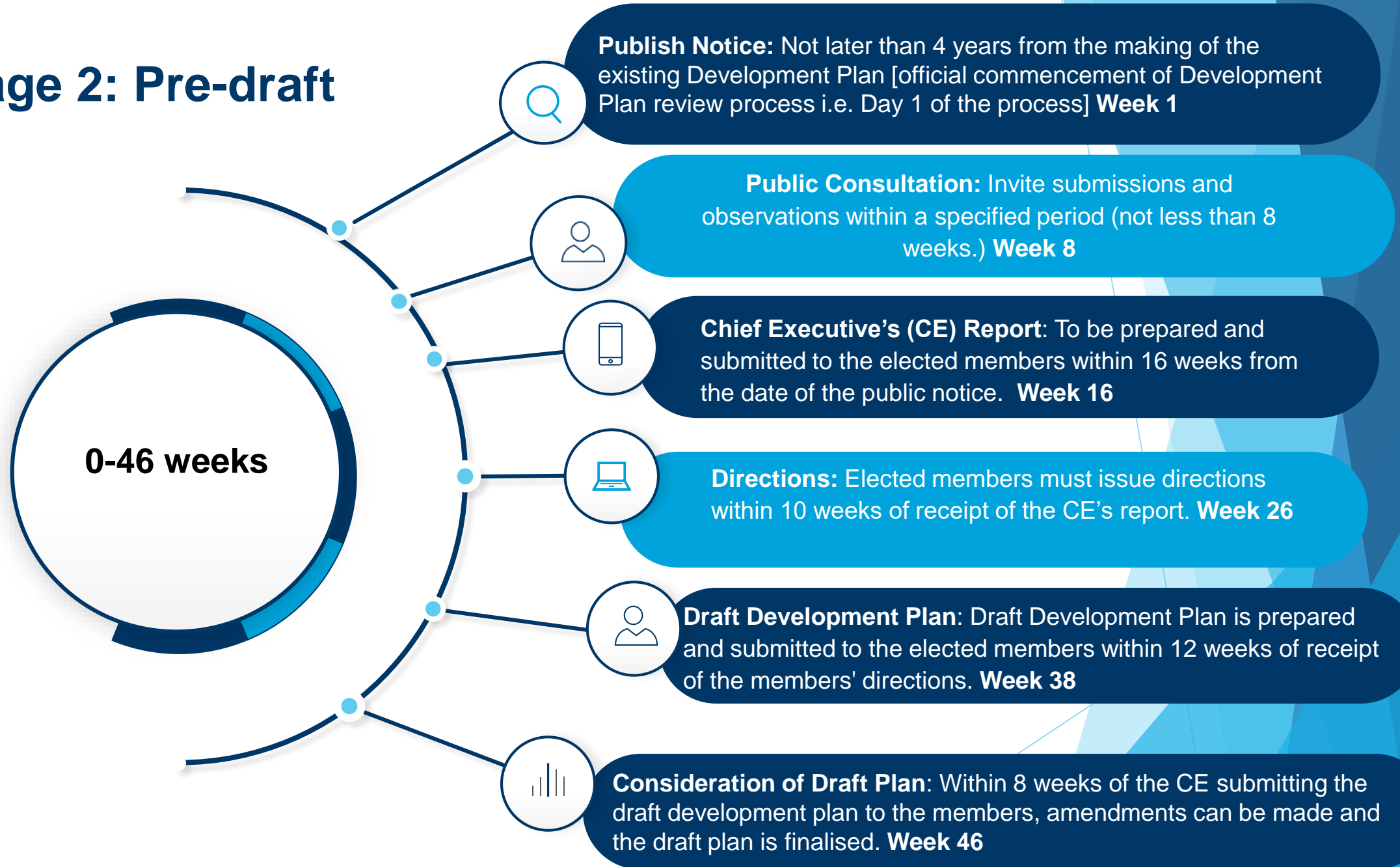
# Stage 1: Preliminary

## Preparation of

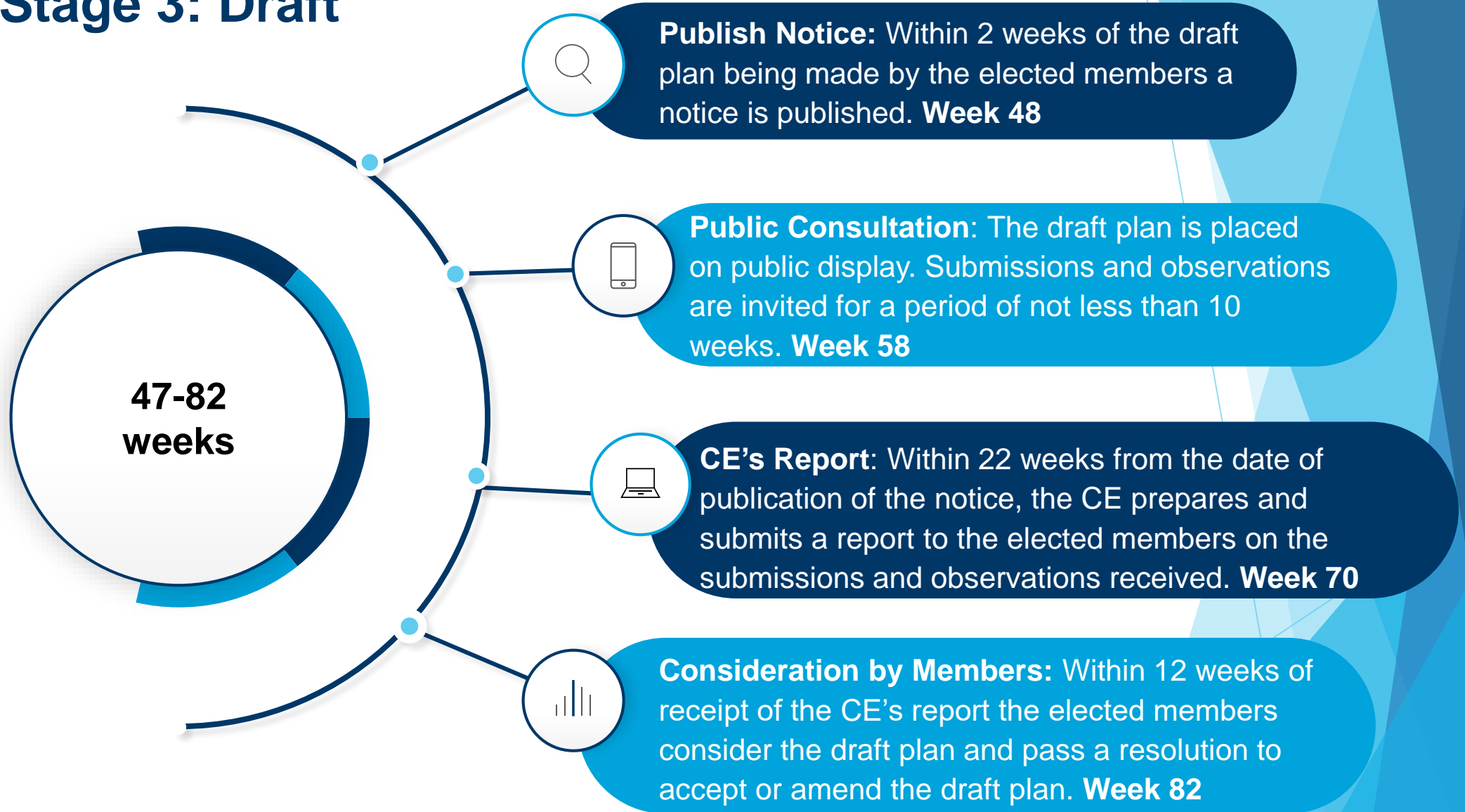




## Stage 2: Pre-draft



## Stage 3: Draft



# Stage 4: Material Amendments



**Publish Notice:** Within 3 weeks of the passing of a resolution to amend the draft plan, a notice of material amendments is published. [Within this 3 week period it must be determined by the CE whether there is a requirement to carry out SEA and/or AA on the material amendments. Within 2 weeks of the determination the CE specifies the period required to facilitate the assessment(s)] **Week 85**



**Public Consultation:** The material amendments are placed on public display. Submissions and observations are invited for a period of not less than 4 weeks. **Week 89**

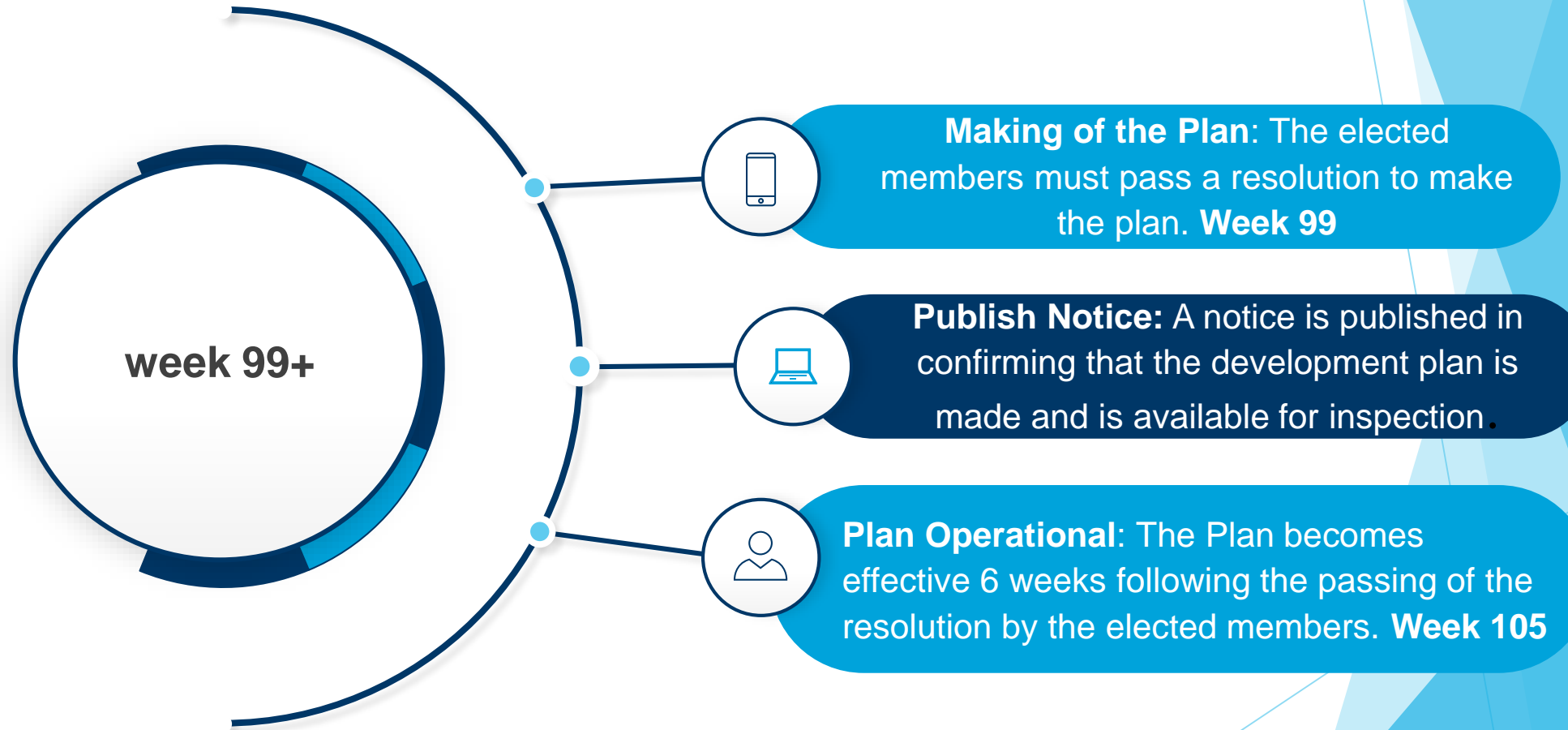


**CE Report:** Within 8 weeks of the date of the publication of the notice, the CE prepares and submits a report to the elected members on the submissions and observations received in respect of the material amendments. **Week 93**



**Consideration by Members:** : The elected members have a maximum of 6 weeks to consider the CE's report in respect of the material amendments. **Week 99**

## Stage 5: Making of Plan



# Inside the Council Chamber

- ▶ Preparation for meetings on the plan – complex legal and policy environment
- ▶ Reflect carefully on advice from Executive: they are there to guide you...
- ▶ **Motions:** Essential that motions are not *ultra vires*/ out of order
  - ▶ Legal principles of proportionality & fairness
  - ▶ Cannot relate to different legal code (e.g. building standards)
  - ▶ Must be received in time and relate to submission received within consultation process
- ▶ **Warning:** Failure to adhere strictly to procedural matters and environmental reports will lead to plans being legally vulnerable



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# Requirement to give reasons

- ▶ You must give reasons if elected members adopt a resolution with which the CE does not agree (either in the resolution, or in the documentation and materials referenced)
- ▶ Planning authority, through the CE report, must specifically address any recommendations in OPR submissions and must give reasons for not adopting our recommendation(s).



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# Final thoughts and advice



# Final thoughts

- ▶ Plan-making must be carried out within the legislative and policy context
- ▶ Step outside that and the plan is vulnerable – Ministerial Directions, legal challenge & planning appeals
- ▶ Above all else, your central duty is to consider overall proper planning and sustainable development, not just local interests...

*OPR is there to guide and assist, and will work with the AILG to do so*



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*Thank you*

