An Roinn Tithíochta,
Rialtais Áitiúil agus Oidhreachta
Department of Housing,
Local Government and Heritage

Action Plan for An Bord Pleanála

Prepared by the Department of Housing, Local Government and Heritage

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1. Introduction

An Bord Pleanála is a critical organisation in the planning hierarchy within Ireland, standing at the apex of our planning system, it plays a crucial role as a final arbiter of many planning applications. It is quite unique in an international context, providing both independent appellate functions, and decision-making on projects of scale and strategic importance, with the opportunities for wide engagement in this process. It is vital that there is confidence in the integrity and impartiality of this process.

In his foreword to the 2016 Organisational Review, Mr Gregory Jones QC commented that that the way in which planning decisions are taken involves striking a balance between many factors. Some of these factors pull in different directions, so it can be a contested space, but importantly in this regard he said:

> *"We want planning decisions to be taken by people of integrity. We want decisions-takers to have fully considered the evidence and for their decisions to be soundly and carefully reasoned. We want everyone to have had a fair say. And we want the decision to be delivered without undue delay and too much cost! Such demands are common to all planning systems in modern democracies."*

These factors remain prevalent and trust and confidence are the cornerstone of delivering on this mission. An Bord Pleanála as part of its 2018-2022 strategy clearly articulates among its key values the importance of independence, impartiality, professionalism, integrity, participation and transparency. An Bord Pleanála is an organisation of almost 200 people committed to these values, working hard in often challenging conditions. However, there is no doubt that the recent allegations which have been investigated by Remy Farrell SC have had a serious negative impact on the reputation of An Bord Pleanála. Such are the nature of these allegations, that the Minister based on Attorney General advice, submitted the report to the Director of Public Prosecutions (DPP), the Garda Commissioner and the Standards in Public Office (SIPO) Commission.

In order to uphold trust in the planning system and maintain its on-going functionality, the Minister has concluded that a range of actions are now required. These will serve to underpin confidence in the capacity of An Bord Pleanála to make planning decisions in a fair manner, supporting the values of independence, impartiality and integrity as articulated in its statement of strategy.

This Action Plan also takes account of legislative actions planned particularly in relation to the wider Planning Legislative Review currently underway. This will improve the context in which An Bord Pleanála operates, including by ensuring that the consent process is streamlined and coherent. This will build on the increased role of local authorities through the Large-scale Residential Development (LRD) legislation, which has replaced the Strategic Housing Development (SHD) process. Proposed reforms under the planning legislative review, will place a greater focus on compliance with development plans which are aligned with the National Planning Framework as the current cycle of updating plans comes to fruition, bringing a greater coherence to planning decisions consistent with these plans which have had the opportunity of full public engagement.

2. OPR Review

The Office of the Planning Regulator (OPR) has a specific function to review the systems and procedures in place in planning authorities and make recommendations. This is a key role, and a critical independent role in ensuring public confidence in the planning system. In August 2022, the OPR outlined the terms of reference for a two-phased review of certain systems and procedures used by An Bord Pleanála pursuant to section 31AS of the Planning and Development Act 2000, as amended. A copy of these terms of reference are set out at Appendix 1.

In lines with the terms of reference, the OPR reported on phase 1 of this review on 3 October 2022. This Action Plan has been informed by this report. The reforms proposed by the OPR, and reflected in the Action Plan, are not to be viewed as criticisms of past procedures or performance, but are designed to provide a blueprint to deal with areas where the systems and procedures may be sub-optimal or in need of updating, building on the many strengths of An Bord Pleanála and its staff. The implementation of the Action plan will be further informed by the phase 2 work of the OPR review, and will be paralleled by actions being taken by An Bord Pleanála based on its own internal review.

The OPR, within its remit, will be monitoring the implementation of the recommendations of its reports on an ongoing basis.

3. Dealing with conflicts of interest

At the heart of much of the recent controversy around An Bord Pleanála has been how issues around conflict of interest are addressed. The legal obligations imposed by the Planning and Development Act 2000, ethics legislation and common law, as well as the Code of Practice for the Governance of State bodies provide a crucial legal and ethical framework that must be rigorously observed in order to ensure that the decisions of An Bord Pleanála whether they are welcome or not, at the very least enjoy a presumption of legitimacy and fairness amongst the general public.

It is important to note in this regard, that the first responsibility in terms of conflict of interest rest with the designated officer, whether a member of the Board of An Bord Pleanála or the staff of the organisation. That being said, measures are required to ensure that systems and procedures for raising conflicts of interest or perceptions of conflicts of interest are robust so to avoid any objective bias, or perception of objective bias, in decision making.

Steps have already been taken by the Chair of An Bord Pleanála to ensure that all Board members must now confirm in writing at each Board tribunal meeting that they have no knowledge of any conflicts of interest with the cases being discussed. Not only does this provide a clear reminder and action that each Board member must take in respect of each case being considered but the signed record of the meeting becomes a paper trail for future analysis and review.

A series of further immediate actions are set out overleaf.

:

Actions	
1	The Code of Conduct for An Bord Pleanála to be updated by mid-November to provide sufficient unambiguous guidance based on the guiding principles in the OPR Report of 3 October 2022 to allow all individuals consider any matters which would influence their impartiality, or the perception of their independence in respect of the duties they perform. (Recommendation 5(b) of the OPR Report).
2	An Bord Pleanála to put in place a system to ensure that all board members are informed of the key details of the cases in advance (Recommendation 6 of the OPR Report)
3	An Bord Pleanála to harness capacity of ICT systems to support the recording of conflicts of interests.
4	Ethics element of Planning legislation being reviewed for all planning authorities in the context of the Planning Legislative Review.
5	Following on from the publication of the OPR Report, the Minister will require reports under Section 109 of the Planning Act from the Board to the Minister on the implementation of strengthened corporate governance arrangements on a monthly basis up to the production of the next statutory annual report which will include new requirements, and subject to the recommendations of the OPR as part of phase 2 of its review.

Other measures which follow, in relation to the changes to aspects of the decision making process, refreshing the board and in particular the recruitment process for board members, strengthening the senior team and the OPR Review will all contribute to enhancing relevant regimes and guarding against conflicts of interest not being raised.

4. Changes to An Bord Pleanála decision making process

As set out in the 2016 Organisational Review, planning decisions in seeking to balance a range of difficult issues are often contested. In recent years, the role of the board in deciding strategic housing developments and its role in arbitrating between national policy and local development plans which are not aligned with the National Planning Framework (NPF), have made this environment difficult and more highly contested. The termination of the SHD process and introduction of the LRD process at local authority level will improve this general environment, as will the updating of development plans in the light of the NPF, with appropriate OPR oversight. In the light of this, a number of key proposals are being advanced in the context of the current review of the Planning and Development Act, 2000 as amended. This *Planning Legislative Review* is being led by the Attorney General and the Department is managing a range of stakeholder consultations to assist in its consideration of the relevant policy issues. This will set the scene for future An Bord Pleanála decisions, particularly in the housing context.

Actions	
6	Material Contravention of Development Plans: Section 37(2)(b) provides for the circumstances where An Bord Pleanála can make a decision which materially contravenes a local Development Plan. The Planning Legislative Review will reinforce the position that the Board will only be able to materially contravene a

Actions	
	development plan where the development plan is in conflict with: • Matters of strategic national or regional importance clearly set out in Government policy; • Regional Spatial and Economic Strategy (RSES), NPF or ministerial/government guidelines; or • where there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned It is anticipated that in combination with the greater reflection of the plan-led system in the legislation emanating from the Planning Legislative Review and the alignment of the current cycle of the plans with the NPF and RSES, operationally this will bring a greater alignment of plans and decisions. This also aligns with recommendation 11 of the OPR Report which recommends that the restatement of the decision-making context for An Bord Pleanála decisions should be founded on the basis, subject to exemptions along the lines articulated above, that the decisions should be generally consistent with the relevant development plan or local area plans.
7	Certainty of timelines: It is likely that the Planning Legislative Review will recommend a phased introduction of statutory timelines for classes of decisions, which will in turn have resourcing implications for the An Bord Pleanála.
8	A range of other measures to streamline the consent regime and bring greater clarity to the legislation, including judicial review provisions will also improve the context for An Bord Pleanála decision making. Recommendation 10 of the OPR Report is being taken into account in the context of Planning Legislative Review.
9	Implement the recommendations of the OPR in relation to the documentation of Board decision making procedures (Recommendation 7) and changes to the presentation of case files (Recommendation 8). These changes will be borne in mind for any required legislative underpinning in the context of the Planning Legislative Review.

5. Refresh the Board

The Planning and Development Act, 2000, as amended, currently provides for the Board of An Bord Pleanála to consist of a Chairperson appointed by the Government and nine ordinary members appointed by the Minister. There is also provision to increase this number in the light of workload.

There are currently four vacancies on the Board as members have come to the end of the term, and a vacancy arises from the resignation of the Deputy Chairperson. A further three vacancies will rise by July 2023.

Actions	
10	Move to new regime of recruitment for the Board appointments– with legislation in the Autumn to provide for a panel of experts established by Minister representing broad interests and which can supported by the Public Appointments Service, replacing the current nomination process. The panel arrangement will address recommendation 2 of the OPR Report, and it would also be intended to include the analysis of impending vacancies and appointment requirements as part of the annual Performance Delivery Agreement as recommended by the OPR Report.
11	As an interim measure, the Minister will advance the recruitment of a Board member with environmental expertise, particularly in relation to marine matters, under Section 106(1)(e) of the Act, in a manner similar to the proposed new arrangements set out in action 10. In addition, a number of temporary appointments will be made in line with provisions of the current Act, until the new board members are recruited under the new arrangements. This responds within the legislative framework available to recommendation 1 of the OPR Report.
12	As part of the Planning Legislative Review, we intend to legislate to bring greater clarity to the distinct roles of the Board in terms of (a) governance of the organisation and (b) planning decisions. It was suggested by the OPR Phase 1 Review that consideration be given to this matter. As part of this process it is envisaged that Board members to become "Planning Commissioners" focussed entirely on planning cases with an executive board to focus on overall governance and strategic direction of the Board of An Bord Pleanála. This Board would then comprise the Chair, Deputy Chair, three Planning commissioners (selected on a seniority/rotating basis), the Chief Officer and three/four external representatives. Similar to other bodies, this board would provide the necessary appropriate strategic input and oversight for the organisation, and could avail of a range of expertise on part time basis for non-executive roles, whereas currently fulltime board members are expected to cover both roles. A fuller outline of this approach to be reflected in the Planning Legislative Review is set out at appendix 2.
13	The Board should be increased up to 15 members as part of new more immediate legislation to allow for new functions and sufficient rotation of members across different classes of files.
14	The Board to operate with a minimum quorum set at three. The Board has recently formally rescinded the resolution to allow two person boards, following on the temporary suspension of these boards by the Chair. These should no longer be a feature of the decision making processand the statutory provision enabling the smaller board will be removed. We will also provide as part of the Planning Legislative Review for the further limits on quorums for specific decision types in line with recommendation 4 of the OPR Report taking into the account the proposed increase in numbers in Action 13.
15	An Bord Pleanála to be supported by stronger corporate governance at senior management level. As an initial measure, An Bord Pleanála has sought new external corporate governance short-term support and this should be supplemented by the strengthening of the senior management structure (see Action 18 below). This aligns with Recommendation 5(a) of the OPR Report.

6. Strengthen the Senior Management Structure

The Executive Management Team (EMT) within the Board currently consists of the Chief Officer, a Director of Planning and a Director of Corporate Affairs. Given the scale of operation, the transformation agenda and emerging functions in relation to the marine and climate action this team needs to be strengthened. The overall structure should comprise a number of additional posts, specifically to provide for lead roles on legal services, ethics and corporate governance and transformation, as well as an additional Director of Planning to head up the Marine and Climate Unit.

Actions	
16	New post of Director of Planning for Marine & Climate: To ensure that adequate strategic oversight of new marine functions and increasing level of climate related infrastructure under the National Development Plan
17	New post of Director of Legal Affairs: In acknowledgement of the increasing impact of the legal cases on the board, a more senior role is required within the organisation to both manage cases and take a strategic view on cases and advise the board and senior management team accordingly. This post would be the senior role leading the Legal Services Support Unit recommended by the OPR Report.
18	New lead role within the Corporate area to be to support the Board in its corporate governance role, with a reporting function to the Chair. This post would be responsible for a new Governance, Ethics & Compliance Unit to develop and oversee the ethical framework in line with Recommendation 5(a) of the OPR Report.
19	New Director of Transformation – to lead on the ICT agenda, the series of reforms emanating from the OPR Review, the proposed review of skills and capacity to determine further resourcing needs (see Action 21) taking account of the potential for ICT and business process re-engineering efficiencies.

7. Organisational Resourcing

In addition to the new roles in the EMT, significant additional resourcing is required in the Board across a number of functions. This will include both additional posts, to be introduced on a phased basis, new skills and a programme of transformation to ensure that the most efficient methods are in place in An Bord Pleanála.

Actions	
20	In addition to the increase in the EMT, funding is being provided in Budget 2023 for the phased recruitment of c.30 staff for • Strategic Housing Developments; • Strategic Infrastructure Development; • Marine planning functions; and • Certain supporting corporate functions.

Actions	
	Financial provision will be made in 2023 for the recruitment of c. 30 staff to deal with these priority areas of recruitment, in line with the 2022-2023 workforce plan, with recruitment to commence in Autumn 2022. This will be funded through an increase in the Exchequer provision for An Bord Pleanála, and the Department of the Environment, Climate and Communications will provide support for the establishment of the dedicated Marine and Climate functions.
21	Undertake a discrete and focused external organisational capacity review of processes. The purpose of this review would be to ensure that the full range of options have been explored in identifying the response to the increasing workload, examining the scope for organisational business process re-engineering to identify further productivity opportunities through digitalisation and other change management initiatives.
22	Participate in new Learning and Development strategy being developed for planning staff under the auspices of the OPR.

8. Customer Service and Stakeholder engagement

An Bord Pleanála places a high degree of focus on excellent customer services and innovation in their statement of strategy and this needs to be continually delivered through the transformation and ICT programme. In addition, there is merit in the role which the OPR has in investigating customer complaints in relation to systemic issues, also applying to An Bord Pleanála and legislation will be amended to facilitate such a change.

In addition, since 2021 a Planning Advisory Forum has been established with a wide range of stakeholders. This would be an appropriate forum for An Bord Pleanála to outline, on an annual basis, its strategic plans and key metrics and allow stakeholders to provide feedback on its operations, from a strategic perspective.

Actions	
23	OPR to be empowered to consider customer complaints in relation to systemic issues relating to An Bord Pleanála, with legislative provision to be made in legislation emanating from the Planning Legislative Review.
24	Planning Advisory Forum to provide mechanism for strategic engagement by stakeholders on An Bord Pleanála's performance and emerging issues on an annual basis.

Appendix 1 – Terms of Reference for the Review by the Office of the Planning Regulator of certain systems and procedures used by An Bord Pleanála

Consequent upon the provisions of section 31AS of the Planning & Development Act 2000, as amended ('the 2000 Act'), the Office of the Planning Regulator ('OPR') considers that it is necessary and appropriate to conduct a review of certain systems and procedures used by An Bord Pleanála in relation to the performance of its functions under the 2000 Act as follows:

1. The review will examine the robustness and effectiveness of decision-making practices, organisation of work, governance arrangements, including in relation to planning case-file handling, within the Board of An Bord Pleanála ('the Board') in the discharge of its statutory functions in compliance with the 2000 Act including:

    (i) the decision-making practices of the Board having regard to its functions pursuant to the 2000 Act from a governance, procedural and legal perspective including *inter alia*:

        (a) the process of issuing reports with recommendations and subsequent directions and decisions;

        (b) procedures for governance, identification, recording and monitoring of potential conflicts of interest in the course of the Board's decision-making;

    (ii) the organisation of the work of An Bord Pleanála, including *inter alia*:

        (a) the allocation and assignment of case-files:

            – the processes for allocation of case-files to individual Board members for the purposes of presentation for decision at Board meetings, including measures to ensure balance of representation across members in decision-making and consistency in decision-making. This part of the review may include an examination of recommended procedures in relation to whether allocations should be made on the basis of a randomised rotation or otherwise;

            – the management of the process of assignment of case-files to inspectors for the purposes of preparing and conveyancing of planning reports and assessments for consideration by Board members in their decision-making functions, including appropriate procedures for raising queries or addressing errata by either or both management or the Board that may arise in relation to such reports or any amendments of reports in this context;

        (b) the performance of the divisional work of the Board:

            – the performance of the Board's functions in divisions and quorums, pursuant to section 112 of the 2000 Act, and arrangements for convening meetings with varying quorums of Board members, including the appropriate procedure for the chairing such meetings;

    (iii) any other systems in place to appraise the effectiveness of performance at Board level, compliance with codes of conduct and measures to uphold public confidence in the Board's transparency, impartiality and fairness;

    (iv) any further matters which the OPR considers relevant in the context of strengthening procedures in relation to codes of practice, avoidance of any perception of conflicts of interests, systems to uphold public confidence and the efficient discharge of An Bord Pleanála's statutory planning functions.

2. The review shall be in two parts. The review shall be carried out by the OPR as follows:

   (a) **Part 1** will, under Director of Planning Reviews of the OPR Gary Ryan, be led by Conleth Bradley SC with Paul Cackette former head of the Scottish Government's Legal Directorate and Chief Reporter of the Directorate of Planning & Environmental Appeals and John McNairney former Chief Planner to the Scottish Government;

   (b) Paul Cackette, John McNairney, Gary Ryan and Conleth Bradley SC shall be appointed as authorised persons by the OPR pursuant to section 31AS(2) and section 31AW of the 2000 Act;

   (c) **Part 1** of the review shall be completed on or before **the 3rd October 2022**;

   (d) **Part 2** of the review will, under Director of Planning Reviews of the OPR Gary Ryan, be undertaken by Paul Cackette former head of the Scottish Government's Legal Directorate and Chief Reporter of the Directorate of Planning and Environmental Appeals and John McNairney former Chief Planner to the Scottish Government. The review under Part 2 shall include the further and ongoing regulatory supervision by the OPR of An Bord Pleanála pursuant to the provisions of section 31AS of the 2000 Act in reviewing generally the systems and procedures used at organisational level within An Bord Pleanála and also the future work programme of the OPR;

   (e) **Part 2** of the review shall be completed by the **30th November 2022**.

3. In the carrying out of **Part 1** of the review and in making recommendations on the matters set out at paragraphs 1(i), 1(ii), 1(iii) and 1(iv) consideration will also be had in particular to the following:

   (a) the need to progress measures aimed at restoring public confidence in An Bord Pleanála without delay;

   (b) the further and ongoing regulatory supervision by the OPR of An Bord Pleanála in reviewing generally the systems and procedures used at organisational level within An Bord Pleanála and the future work programme of the OPR pursuant to the provisions of section 31AS of the 2000 Act which comprise **Part 2** of the review and whether any (or some) of the matters at paragraphs 1(i), 1(ii), 1(iii) and 1(iv) should be reported on under **Part 2** of the review;

   (c) the report in relation to Part 1 will contain a summary of the reasons why it has been decided that paragraphs 3(b) apply to any (or some) of the matters set out in paragraphs 1(i), 1(ii), 1(iii) and 1(iv) and are addressed in **Part 2** of the review.

4. Having regard to (a) the statutory powers of the OPR and authorised persons to access information, records or documents relating to the performance by An Bord Pleanála of its functions (b) the requirement of An Bord Pleanála to co-operate and comply with any request by or on behalf of the OPR in relation to all or any of the matters which are the subject of the review or examination, and (c) the time frames for this review and reports, the Chairperson of An Bord Pleanála will immediately appoint such person or persons at senior management level to arrange for the communication of information, records or documents as requested within the time frame set out by the OPR, the Director of Planning Reviews or authorised persons.

5. Further and in accordance with section 31AW of the 2000 Act, the authorised persons may also engage directly with An Bord Pleanála employees and Board members, or through any other channels or any other individual deemed appropriate as determined by the Director of Planning Reviews of the OPR.

6. The OPR shall send a draft of the report of **Part 1** of the review, together with any recommendations it makes, to the Minister for Housing, Local Government & Heritage and to An Bord Pleanála by the **19th September 2022**. Having regard to the urgency associated with the finalisation of these matters, the Minister for Housing, Local Government & Heritage and An Bord Pleanála may make submissions or observations to the OPR on the draft report by the **26th September, 2022**. The OPR shall review any submissions or observations received before finalising the report and any proposed recommendations therein, and shall by, or before the **3rd October 2022** (a) send a copy of the report to the Minister for

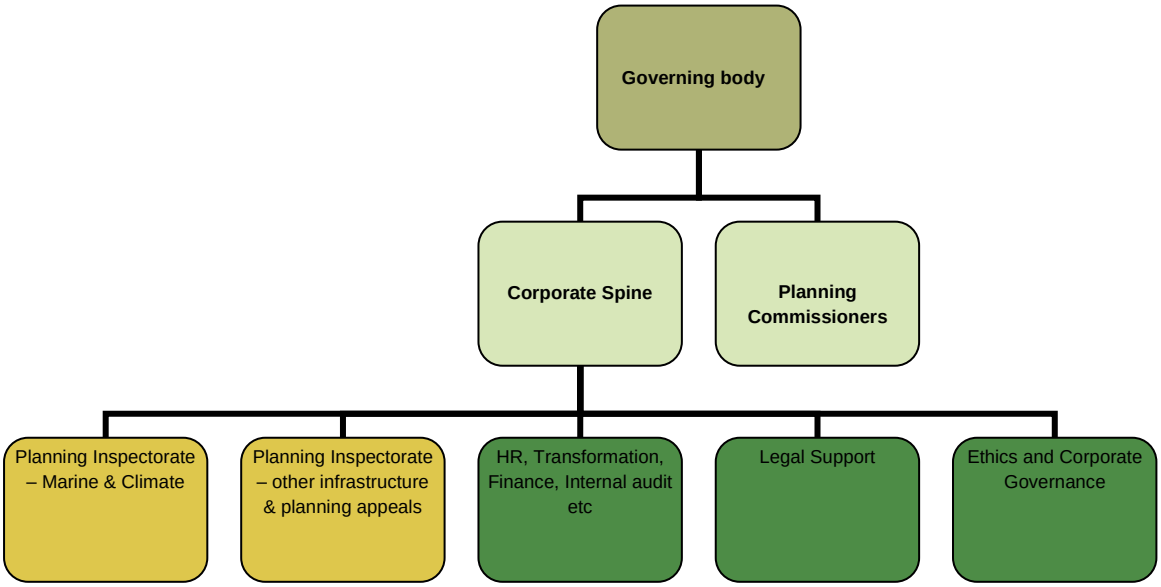
Housing, Local Government & Heritage and to An Bord Pleanála (b) publish, or cause to be published, the report on the website of the OPR and (c) may send a copy of the report to such other persons as it considers appropriate in the circumstances.

7. The OPR shall send a draft of the report of **Part 2** of the review, together with any recommendations it makes to the Minister for Housing, Local Government & Heritage and to An Bord Pleanála by the **14th November 2022**. Having regard to the urgency associated with the finalisation of these matters, the Minister for Housing, Local Government & Heritage and An Bord Pleanála may make submissions or observations to the OPR on the draft report by the **21st November, 2022**. The OPR shall review any submissions or observations received before finalising the report and any proposed recommendations therein, and shall by, or before the **30th November 2022** (a) send a copy of the report to the Minister for Housing, Local Government & Heritage and to An Bord Pleanála (b) publish, or cause to be published, the report on the website of the OPR and (c) may send a copy of the report to such other persons as it considers appropriate in the circumstances.

Dated 24th August 2022

Appendix 2 – New Structure for An Bord Pleanála

As part of the Planning Legislative Review, we intend to legislate to bring greater clarity to the distinct roles of the Board of An Bord Pleanála in terms of (a) governance of the organisation and (b) planning decisions. It was suggested by the OPR Report that consideration be given to this matter. Broadly, it is envisaged that this would involve a new structure for the organisation as illustrated below.



It is proposed that An Bord Pleanála will have a governing body consisting of

- the Chairperson, Deputy Chairperson, Chief Officer as ex-officio members;
- three members of the Planning Commissioners who will rotate based on seniority; and
- three/four non-executive governors.

The role of the governing body will be to provide the strategic direction to the board, to have oversight of corporate governance and financial matters of the board, and ensure the efficient and effective operation of the board, aligned with the normal functions of directors of a State board. The governing body will not make planning decisions on individual applications, but rather have responsibility for ensuring the robustness of the decision making process.

There will be a cohort of up to fifteen planning commissioners (replacing the current ordinary board members) who will form the collective decision making body for An Bord Pleanála on individual applications in line with the consent arrangements under the Planning and Development Act. They will be chosen for their range of skills and operate in sub-groups with statutory quorums set to ensure a good mix of skills brought to the decision making process.

The planning commissioners will be supported by the planning inspectorate, who will have the range of skills to examine the applications and bring the case to the commissioners' meetings, having considered all the dimensions and engaged in public consultation as required.

The organisation will be supported by an overall strengthened corporate spine with robust corporate governance to support all of the functions.

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