

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