



**Oifig an
Rialaitheora Pleanála**
Office of the
Planning Regulator

Report on the Second Phase of the Office of the Planning Regulator's Review of Certain Systems and Procedures used by An Bord Pleanála

**(pursuant to section 31AS of the Planning & Development
Act 2000, as amended)**

16th December 2022

Table of Contents

PART 1: Introduction	1
1.1: General Context.....	1
1.2: Engagement with An Bord Pleanála and stakeholders	3
1.3: Matters of Concern	4
PART 2: Summary of Recommendations	7
PART 3: Structures for Strategic Leadership	14
3.1: Strategic leadership and corporate governance of An Bord Pleanála.....	14
3.2: Roles and Responsibilities	18
PART 4: The Role and Practices of Board Members	27
4.1: Integrity of Quasi-Judicial Decision-Making.....	27
4.2: Composition of Boards and Prioritisation of Cases.....	28
4.3: Decisions of the Board and Departures from Inspector Recommendations.....	30
4.4: Case Allocations to Boards	33
4.5: Escalation Procedures	34
4.6: Board Members Declaration	37
4.7: Secretariat Support to Board Meetings	38
4.8: Record Keeping	40
4.9: Interim or Preliminary Matters	41
PART 5: Ensuring the Integrity of Inspectors' Reports	44
5.1: Exercising Independent Professional Judgement.....	44
5.2: Communications with External Parties in relation to Reports	47
PART 6: The Functioning of Planning Operations.....	49
6.1: Case Allocations	49
6.2: The Preparation of Conditions.....	50
6.3: Inspector Independence.....	50
6.4: Performance Management and Quality Assurance	51
6.5: Presentation of Casefiles to Board Members	54
6.6: Delegation of Decision-Making.....	60
PART 7: Engagement, Communication, and Implementation	62
7.1: Facilitating Workforce Engagement	62
7.2: Channels for Raising Workplace Concerns	63
7.3: Engagement with Stakeholders.....	64
7.4: Communications	65
7.5: Technology and Data Analytics.....	66
7.6: Implementation, Monitoring and Reporting.....	68

PART 1: Introduction

1.1: General Context

This report completes the second and final phase of the Office of the Planning Regulator (OPR) review of certain systems and procedures used by An Bord Pleanála in delivering its responsibilities under the terms of section 31A of the Planning & Development Act 2000, as amended ('the 2000 Act'). The terms of reference for the review are included as Appendix 1 of the first phase of the OPR report.

For this phase of the review, two external reviewers were designated as authorised persons, under the 2000 Act to support the review process. Paul Cackette is a former Solicitor to, and former Chief Reporter for, the Scottish Government and John McNairney, a former Chief Planner, also to the Scottish Government. Together, they have brought independent thinking and relevant understanding of systems and procedures to the work of the review, free from active associations or connection to planning in Ireland.

In their approach, they have been keen to avoid any assumption that procedures that might work in a different place would necessarily transfer to another administration. Nevertheless, their appreciation of related principles around decision-making practice has enabled them to have meaningful dialogue with staff across An Bord Pleanála, and with external stakeholders, which has both added rigour and a greater degree of independence to the work of this review.

This second phase of the OPR's review of An Bord Pleanála builds on the 11 recommendations of the report from the first phase published on 3rd October 2022¹. Each of those 11 recommendations, all of which were accepted by the Department of Housing, Local Government & Heritage (DHLGH) and An Bord Pleanála, are critical and necessary next steps to restore public confidence in its capacity and organisation.

The recommendations that we make in this report are conditional on the implementation of key recommendations made in our October report, specifically the appointment of temporary board members. This second phase of the review process explores the robustness and effectiveness of decision-making practices, organisation of work, governance arrangements and casefile handling.

This second phase of the review also explores some practical aspects of the implementation of certain recommendations contained in the first phase of the review while at the same time examining wider issues – within the terms of reference – with the benefit of extensive staff and stakeholder engagement to gain invaluable insights and perspectives in relation to the organisation.

¹ <https://www.opr.ie/office-of-the-planning-publishes-report-on-phase-one-of-review-of-an-bord-pleanala/>

Revelations concerning An Bord Pleanála have had a major adverse impact on public confidence in the organisation since the early part of April of this year. Media coverage has highlighted many aspects of concern in relation to appropriate operation of procedures within the organisation. Ongoing revelations, which prompted the conduct of a number of separate reviews or examinations, have informed widespread negative public and political commentary and have been followed by high-profile exits from the organisation.

This crisis of public and political confidence in An Bord Pleanála has also been accompanied by an operational crisis where the impact of a major reduction in its decision-making capacity is impacting all parts of the wider planning system. At the time of drafting this report An Bord Pleanála is without a chairperson (an Interim Chairperson has been identified), does not have a deputy chairperson and is carrying a number of other ordinary board member vacancies.

The need to make additional decision-makers available on a temporary appointment basis was highlighted in the first phase of the OPR's review, however the net effect of the circumstances above is that, with just four board members available to dispatch a burgeoning caseload, the situation is becoming critical in operational terms.

An Bord Pleanála currently has approximately 2,300 cases on hand – an amount comparable to the volume of actual planning decisions made by An Bord Pleanála in a given year. Of this overall caseload, approximately 600 have already been prepared for the board's attention, it is inevitable that the other 1,700 cases present a further backlog for board decision-making. The impact for ordinary citizens is obvious in terms of the increased processing times that will be faced.

Current composition of An Bord Pleanála

In terms of the recommendations, account has also been taken of the existing organisational structure of An Bord Pleanála, which consisted of over 200 staff and board members at the time this review process was being conducted. The Chairperson is the role at the apex of the organisation, being the head of the decision-making board of An Bord Pleanála but also the most senior individual in the organisation's management structure. At board level there is a Deputy Chairperson role, while in the executive structure a Director of Corporate Affairs and a Director of Planning Operations report to a Chief Officer.

The Director of Corporate Affairs is responsible for finance, human resources, ICT, communications, facilities and environmental management as well as drafting and legal functions (77 posts in total). The Director of Planning Operations heads the functions of administrative support for case processing (45 posts) together with the inspectorate function (73 posts). The inspectorate includes professionals at inspector, senior inspector and assistant director of planning grades and includes a specialist ecologist support for casework. The inspectorate is arranged over two main functions. The majority of the inspectorate (60 posts) are engaged in normal planning appeals, strategic infrastructure developments (SID) and Local Authority Projects (LAPS). A smaller team of 13 inspectors process Strategic Housing Development (SHDs) including an assistant director of planning.

Review of Documentation

A wide range of documentation was made available from An Bord Pleanála to facilitate this review on foot of a request for relevant information made by the OPR under section 31AV of the 2000 Act, with additional material and clarifications provided on foot of further informal requests. This includes An Bord Pleanála's internal report 'Examination of Certain Matters' and a focussed external review (prepared by Resolve Ireland).

This report's recommendations and findings are based solely upon our own engagement with An Bord Pleanála's staff and board members, as well as other stakeholders, and our own examination of procedures and systems and consideration of relevant documentation received from An Bord Pleanála.

1.2: Engagement with An Bord Pleanála and stakeholders

The urgent need to deliver recommendations at the first phase of the review meant that stakeholder engagement was not achievable within that phase. While the second phase of the review has been carried out within a challenging timeframe we have undertaken detailed engagement with An Bord Pleanála including almost 30 structured, hour long, individual interviews with the following range of staff roles:

- Chief Officer, Director of Corporate Affairs, Director of Planning Operations, and the former Chairperson;
- Inspectors, including assistant directors of planning, and administrative staff across the grades and across the organisation;
- existing and previous board members; and,
- Trade Union representatives (Fórsa) representing all staff grades in the organisation including 40 planning inspectors.

In addition, a stakeholder workshop was held on 14th October 2022, which included experts from the public, voluntary and private sectors, covering environmental, planning, legal and business interests. Both the Irish Planning Institute (IPI) and Royal Town Planning Institute (RTPI) participated in that event. A subsequent discussion was held with officials of the IPI.

The authorised persons also considered detailed correspondence received from staff members, including follow-up material from a number of those who had participated in the meetings as well as from other individuals. An anonymised staff survey also issued from the OPR to all regular staff (i.e. not including board members, directors, Chief Officer and Chairperson) working in An Bord Pleanála eliciting a significant 56% of all staff completing the survey.

In our structured interview process, tailored for different roles, those who agreed to speak with us were provided with guarantees of confidentiality. The authorised persons conducting the interviews confirmed that no comments would be attributed to individuals. The aim was to ways to improve systems and procedures in the future. We are greatly indebted to those who participated in the review and shared both their insights into how the organisation's systems and procedures operate and what their working experience has been.

Informative as the anonymised survey and confidential interviews were, they sit alongside the provision of a variety of factual and statistical data by An Bord Pleanála to the review team. We also recognise that such surveys and interviews have their limitations, not least in terms of coverage across the entire organisation, but they were useful in adding a further perspective.

Despite the background to the review process, the staff we engaged with generally demonstrated a very strong sense of public service. Most of those we spoke with talked of their shock and dismay of learning about allegations of inappropriate behaviour in the media and a lack of internal briefing on the issues being reported. In contrast to public perceptions of the organisation as a whole, we saw no evidence that the dedication of rank and file staff to their work and commitment to public service values is anything other than of a high standard.

Many were eager to highlight the importance of, and their strong commitment to, public service, and to high standards of independence, impartiality, professionalism, transparency and integrity. They made clear that these principles had underpinned the high standing with which An Bord Pleanála was held until recently and reflect the culture that they wish for the organisation they serve, some having done so for many years.

Working for An Bord Pleanála was regarded by many as contributing to public service at the pinnacle of Ireland's planning service. An inspectorate role, in particular, was considered a prized position within the planning system, reflecting a high degree of professional competence in a well-regarded organisation. Some described their frustration and anguish on witnessing the recent deterioration in the standing and reputation of An Bord Pleanála which they mostly attributed to a small number of select individuals.

1.3: Matters of Concern

The process of staff engagement, which was a primary feature of this second phase of the review, has revealed that An Bord Pleanála is also suffering an internal crisis, one which must be managed and overcome alongside the operational challenges and while trying to rebuild public confidence. The interviews and staff survey suggest a demoralised workforce – impacted not just by the public commentary regarding the organisation in recent months – but some staff interviewed also raised significant concerns about weaknesses in management systems and practices.

It is beyond the scope of this report, and indeed the legal mandate of the OPR, to investigate specific matters relating to particular cases. Instead, recommendations contained in this review address the root causes of any identified weaknesses in systems that create risks (or even the perception that such practices could even be possible) and suggest adoption of clear and transparent processes to address these. This includes the need to put in place processes to examine the basis for such concerns more deeply and through the proper communications, and investigative channels.

Roadmap to renewal

At present An Bord Pleanála's future is in a critical state. With a backlog of cases on hand, reduced staff morale, a necessity for governance reform and the challenges of restructuring ahead, strong leadership will be required to guide the organisation through this difficult period. Furthermore, it is clear from our engagement with board and staff members of An Bord Pleanála that there are internal relations matters that require a significant degree of consideration and attention.

It is therefore critically important that the current and newly appointed leaders of An Bord Pleanála apply themselves swiftly and thoroughly to this particular task to gain the goodwill and trust of all staff, so that the organisation can work together, and recover pre-existing collective harmony, to meet and overcome the significant challenges that face it. As urgent as it is that remedial action be taken, neither have we refrained from making longer-term recommendations. It must be recognised that it will take time to implement this report's recommendations and further time still to restore public confidence in An Bord Pleanála. The period ahead will not be easy, but we believe that the steps suggested are vital in the public interest.

We have designed recommendations, further to the 11 set out in the report on the first phase of the review process, with the following key considerations in mind:

- Restoring An Bord Pleanála's capacity to deliver timely, robust, balanced and independent planning rulings in a quasi-judicial fashion, so as to uphold its standing as the independent arbiter of planning and sustainable development matters in Ireland.
- Addressing the breakdown of trust within key areas of the organisation. Aligned to this is the need to ensure a positive culture in leadership and management, one based on an open, transparent and procedurally fair system of checks and balances in the sign-off of complex technical assessments, while at the same time fostering continual professional development in a fast-moving policy and legal operating environment.
- How to quickly turn around a major and rapidly increasing overhang of caseload which must be delivered with improved arrangements for internal governance, procedure and transparency, designed to ensure high quality decision-making.

In a cumulative sense, addressing all of the above considerations points strongly to the conclusion that there is an urgent need for a complete reset of An Bord Pleanála.

This process of renewal is a matter first and foremost for the Minister and DHLGH to consider. In addition to considering the implementation of a new corporate and leadership structure, as covered below, and elsewhere in this report, consideration should also be given to the capacity of the current management roles to, integrate with, lead and deliver on the programme of reform that is signalled through this, and other, reviews. In this regard it is suggested that within the next twelve months an objective assessment of the capacity of all management roles should be conducted as part of the planned organisational capacity review.

The Government's 'Action Plan for An Bord Pleanála'² already points towards the strengthening of leadership and management structures within the organisation, while recognising that the ongoing Attorney General's Office review of planning legislation provides a ready vehicle for bolstering the existing arrangements. These matters are addressed in Part 3 of this report. Our conclusions are that there is a need to considerably re-shape and strengthen the corporate and management structure of An Bord Pleanála.

Acknowledging the scale and complexity of the organisation's work, that new marine functional responsibilities are imminent, and accepting that a reinforced culture of collective responsibility with regard to corporate governance and best practice in decision-making is required it seems clear that further consideration must be given by Government to a new leadership and management structure.

One option explored in Part 3 is that the Chief Executive would lead the strategic, governance and administrative functioning of An Bord Pleanála (including the intake of planning cases, their processing and professional and technical assessment) and a Planning Commission Chairperson would lead, manage and oversee the organisation's quasi-judicial planning decision-making function.

Given the current scale of work facing An Bord Pleanála, and being conscious of the imminent arrival of new functions, it is considered that enhancement of An Bord Pleanála's professional planning resource and its management is required to ensure efficient decision-making. This might encompass expanded professional planning directorates to manage the day-to-day assessment of normal planning appeals, strategic infrastructure, local authority cases and marine development by professional staff, and overseen by a new role of Chief Planning Officer who would be responsible for the overall leadership and continuous professional development of professional staff.

Government will want to give further consideration to all of the detailed aspects of such a structure and its leadership approach, including the role of accounting officer. As above, the approaching organisational capacity review could assist. Whatever option is selected, as An Bord Pleanála fundamentally exists to make high quality planning decisions, its leadership and management structure should be designed and scaled such that it is capable of sound, transparent and efficient planning decision-making.

The recommendations contained in this report seek to ensure such high quality planning decision-making at the heart of the work of An Bord Pleanála. It is also worth stating that while conducting this phase of the review, the aforementioned low staff morale does contrast with the sense of many that with a renewed sense of purpose and a change in organisational systems, procedures and culture, the transparent addressing of past concerns coupled to the provision of enabling resources, a brighter future for the organisation potentially awaits.

² <https://www.gov.ie/en/publication/cbdf3-action-plan-for-an-bord-pleanala/>

PART 2: Summary of Recommendations

This part of the report contains a brief overview and summary of the 23 recommendations made on foot of this phase of the review. These recommendations are outlined in further detail in subsequent parts of this report and cover broad areas of the systems and procedures of An Bord Pleanála as follows.

Overall Structure of An Bord Pleanála: Recommendation 1 flows from an overall finding of this review that the wider operational demands on An Bord Pleanála require a radically new organisational approach to enable effective operation of the systems and procedures of a national planning authority.

Board Procedures: Recommendations 2, 3 and 4 outline new procedures concerning documentation of the formation of compositions of the board to make planning decisions, the allocation of casefiles to board members and the escalation of the determination of cases to another composition of the board, including where the board intends to depart from an inspector's recommendation.

In addition, Recommendations 5, 6, 7 and 8 cover measures to strengthen the integrity and transparency of decision-making at board level including the taking of an oath by board members, the provision of administrative support and record-keeping by secretariats.

Preparation of Reports by Inspectors: Recommendations 9, 10, 11, 12, 13, 14 and 15 aim to further strengthen An Bord Pleanála's reputation for integrity in the exercise of professional planning judgement by planning inspectors. This includes identifying the prescribed circumstances where direct or indirect communications between board members and an inspector may occur when a report is being, or has been prepared, the setting out of board member's reasons for departing from inspectors' recommendations, the inclusion of relevant statements in reports, and improving systems for quality assurance in the production of inspectors' reports, so that the decision-making process can proceed on the basis of a high degree of confidence in the thoroughness of reports and planning assessments therein.

Presentation of Cases by Inspectors: Recommendation 16 further develops and expands upon the recommendation in the first part of this review, that inspectors factually present planning cases to board meetings based on the application of planning policies, while leaving the deliberations on those cases to board members who would also be responsible for familiarising themselves with the relevant particulars before board meetings, and comply with all conflict of interest requirements.

Delegation: Recommendation 17 concerns the potential freeing up of board member's time to devote to planning decision making by the consideration of legislation enabling delegation of certain decisions of a preliminary nature to inspectors.

Staff Engagement and Protection: Recommendations 18 and 19 address the requirement for regular confidential workforce surveys to ensure that broad trends in experiential behaviours are tracked and communications to staff in relation to the availability of new statutory protected disclosure routes in relation to any potential workplace wrongdoing.

Engagement and Implementation of Reform: Recommendations 20, 21, 22 and 23 concern (a) the re-establishment of regular engagement with stakeholders enabling dialogue on processes of continual performance improvement as well as enhancing understanding of the operational requirements of An Bord Pleanála, (b) the digital transformation and data monitoring agenda, and finally (c) the production of a follow-up implementation plan with the benefit of accurate timescales for the implementation of this report and other reports.

The recommendations are as set out below.

Recommendation 1

The Minister / Oireachtas should give appropriate consideration to delivering a new structural framework for the strategic leadership of An Bord Pleanála separating its quasi-judicial planning decision-making and wider corporate and supporting functions and that:

- a) Focuses the role of the Chairperson of the Planning Commissioners on ensuring the decisions of planning commissioners achieve relevant quality, robustness and timing considerations, set by the wider legislative, policy and professional standards;
- b) Establishes a new role of Chief Executive Officer who (above the current role of Chief Officer) would be responsible for the day to day management of the operations of An Bord Pleanála, from the point applications and appeals are received to the point recommendations are discharged to Planning Commissioners and for final issuing of decisions as well as wider corporate governance, ethical and financial matters;
- c) Establishes a new role of Chief Planning Officer to oversee and co-ordinate the work of a number of discrete planning directorates, be head of profession and ensure appropriate professional standards, including quality assurance and training; and,
- d) Provides for oversight by a Governing Body consisting of the Chairperson, Deputy Chairperson, Chief Executive Officer, Chief Planning Officer (as head of profession) and an appropriate number of non-executive directors.

Recommendation 2

An Bord Pleanála should put new procedures in place in relation to the process of formalising compositions of board members to discharge caseload, preliminary or other related matters, by a formal minute of appointment, signed and dated by a duly authorised person.

This will ensure transparency in the identity of decision-making board members. In tandem with Recommendation 11, such procedures must also include a resolution to the effect that:

- a) sets out the purpose of the board members as decision makers;
- b) the principle is accepted, both at first instance decision-making or on appeal, that decisions by those entrusted with those roles require to be made on planning grounds only and that the board will adopt and apply that principle;
- c) during deliberations on a case, all relevant board member inputs must be heard and the overall board must rationalise those and come to a reasoned and balanced conclusion;
- d) an indicative list of the basis for departing from recommendations is set out; and,
- e) statements of reasons for departing from recommendations should identify which of the bases in (d) above is being applied (or explain the basis of departure where otherwise based) and which policy or policies and which section or sections of the report the departure relates to.

Recommendation 3

To support the statutory function of the Chairperson in arranging for the appropriate scheduling of casework to board meetings, An Bord Pleanála should, as soon as legislative provisions allow, appoint an appropriately senior member of staff to allocate such casework to board members with statutory recognition and protection to that person that they must undertake that task following the principles of fairness, equality and impartiality. The appointed person should be guided by a protocol, to be developed by An Bord Pleanála, setting out the factors informing the application of those principles (including the desirability of rotational case allocation). The protocol should be published and provision made in arrangements under the new Compliance, Governance & Ethics Unit to provide protection for the independence of that role and an escalation model if challenged.

Recommendation 4

Decisions on planning cases require the finely balanced consideration of all the relevant matters. Where the facts of a case are clear-cut and the board members are making a unanimous decision, even where there may be a departure from what the reporting inspector recommended, there is no apparent need to escalate a case for further consideration. In light of the foregoing, we recommend as follows.

To reinforce a high degree of public confidence in the integrity of the decision-making process, An Bord Pleanála should prepare a transparent process for escalation of casefiles in circumstances where a departure from an inspector's recommendation is intended and such a departure is not supported by a minority of board members.

Recommendation 5

To reinforce a high degree of public confidence in the probity of An Bord Pleanála's decision-making in the manner of a court, on taking up office, all board members (or commissioners) should sign a declaration that they will fulfil their duties faithfully, honestly, impartially, without respect to person and to the best of their ability and understanding. The declaration should be based on wording to be determined by the Department of Housing, Local Government & Heritage. This formal obligation should equally apply to existing board members, those to be appointed on a temporary basis and all future appointments.

Recommendation 6

An Bord Pleanála should ensure that all board meetings are supported by such secretariat support and technical advice that would be required to assist in deliberations, manage the organisation of work and to ensure the accurate recording of business and decisions taken. Guidance setting out the terms of the specific supporting role of the administrative support should be developed by An Bord Pleanála to formalise the exercise of this internal arrangement. In addition, over time and as soon as technically practicable, the business of An Bord Pleanála in determining casework should be accessible to the general public online as a means to ensure greater transparency of proceedings.

Recommendation 7

An Bord Pleanála should enhance its record keeping of board meetings including decision-making outcomes. This should include the recording of any actual or potential conflicts of interest raised in relation to a casefile, whether or not it was determined by the chair of that meeting to constitute a conflict, and confirmation that the appropriate minimum quorum is in place for the casefile subject to decision. Meeting records should be quality checked on a regular basis by the appointed secretariat support to ensure that all details are noted.

Recommendation 8

An Bord Pleanála should develop formal arrangements, which will be reflected in a new protocol, to regulate the interim or preliminary matters that may need to be considered in advance of the discharge of inspectors' reports to meetings of the board. The protocol will confirm procedures, including the manner in which such determinations are documented and recorded on the planning file and range of reasons for which an inspector may seek a ruling from the board on such matters (e.g. in relation to scoping under European Directives or categorisation under strategic infrastructure provisions, etc.)

Recommendation 9

To reinforce a high degree of public confidence in the integrity of the decision-making process, An Bord Pleanála's updated Code of Conduct, and relevant staff / procedural manuals, must make explicitly clear the importance of clear and transparent lines of communication between board members and planning inspectors (including their managers) in relation to any planning cases that are live.

Recommendation 10

An Bord Pleanála should put administrative systems in place to the effect that all requests from board meetings seeking additional detail, explanation, further information or other consideration should be made by direction in a prescribed format to the inspector setting out the detail of the request and timescale for response. Any such direction, and its response, including an addendum or amended discharged report, should be recorded and be publically accessible on the casefile.

Recommendation 11

Where a board meeting departs from an inspector's recommendation, An Bord Pleanála must ensure that a statement of reasons is recorded on the casefile setting out the reasons why the departure is being made with reference to specific policy or policies, and section or sections, of the discharged report they disagree with and the grounds for doing so.

This enhanced procedure should be included in a new protocol that An Bord Pleanála will develop in relation to statements of reasons to ensure a consistency of approach.

Recommendation 12

Given the risk that could be posed to the fairness of the planning process should communications occur with external parties (outside of the standard administrative or formal statutory channels), An Bord Pleanála should update its ethical framework, including the Code of Conduct, to make clear that any such communications would be unacceptable. With particular regard to any communication involving advance disclosure of any substantive part of a live planning case, including in advance of an inspector discharging their report, it should be made clear that such action is contrary to statutory provisions and would be a disciplinary matter and subject to significant sanctions.

Furthermore, to ensure that planning-decisions are at all times made with the benefit of having received full independent planning analysis, a procedure should be in place to ensure that inspectors are made aware of any further information received to assist the board's decision-making in the period after the discharge of a planning report. Inspectors should have the opportunity to provide analysis to the deciding board as necessary. This arrangement should be incorporated into the written decision-making procedure identified as necessary in Recommendation 7 of the OPR's Phase 1 Report.

Recommendation 13

To reinforce a high degree of public confidence in the probity of planning case assignment to inspectors, An Bord Pleanála should assign (or continue to assign) duties to employed members of staff as area co-ordinators to take on the duties of case allocation to inspectors on the application of principles of fairness, equality and impartiality. A protocol should also be developed to guide the assigned area co-ordinators in relation to the application of those principles (including the desirability of rotational case allocation). The protocol should be published and provision made in arrangements under the new Compliance, Governance & Ethics Unit to provide protection for the independence of that role and an escalation model if challenged.

Recommendation 14

To reinforce public confidence in the integrity of the decision-making process, it is recommended that when discharging their reports to board meetings, inspectors should include a statement confirming that the report reflects their professional judgement. The recommendation should be to the following effect:

"I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way"

Recommendation 15

An Bord Pleanála should urgently review performance management systems, with a renewed commitment to significantly improving and strengthening the performance management system across the Planning Operations Directorate in particular.

In tandem (but from a quality assurance, rather than performance management perspective) a formal procedure should be put in place in relation to the finalisation of inspectors' reports prior to their discharge to the board for decision-making.

Recommendation 16

(Further to Recommendation 8 of the OPR Phase 1 report) To ensure an effective system is put in place to provide for the presentation of cases by inspectors at board meetings, An Bord Pleanála should develop a protocol to establish the arrangements. Drawing on the guiding principles set out in this report, the protocol will reinforce the integrity of the decision-making process by setting thresholds for the categories of cases to be included and the precise arrangements to be followed. The protocol should be implemented following appropriate consultation and training.

Recommendation 17

To ensure efficient operational functioning and focusing of board meeting time on making planning case decisions, legislative consideration should be given to the delegation of certain decisions on technical matters (including whether an oral hearing should be held) to the planning inspectorate. The implementation of any such delegation system would be supported by published guidance on the approach to determining decisions.

Recommendation 18

To demonstrate commitment to a continuously monitored and benchmarked process of staff engagement, listening and measuring the overall morale and sense of the organisation's staff, An Bord Pleanála should initiate an annual people survey within the organisation. The survey should be developed in conjunction with staff and, applying best practice, should ensure that trends in experiential behaviours can be ascertained, analysed and responded to.

Recommendation 19

To ensure staff feel supported in their roles and in raising concerns related to possible wrongdoing in the workplace, An Bord Pleanála should ensure that an updated Protected Disclosures Policy is in place which incorporates the new legislative requirements (effective

from January 2023). This policy, which will describe the circumstances in which disclosures can be made and will identify the appropriate reporting channels, must be circulated to all staff. In tandem An Bord Pleanála should ensure its grievance procedures are up-to-date and will also advise staff how these procedures operate. Ongoing consideration should be given to how staff can be kept advised and supported in raising workplace concerns through updates to internal guidance documents.

Recommendation 20

To facilitate increased engagement with stakeholders, with consequent opportunities for information exchange and organisational learning, An Bord Pleanála should establish an External Stakeholder Group (consistent with recommendation 24 of the Government approved Action Plan). The Group should be convened on a regular basis to contribute towards development of best practice, to embed continuous improvement and to enhance the understanding in the planning sector of An Bord Pleanála's strategic responsibilities. The membership, remit, attendance arrangements, frequency of meetings and other matters of practical operation would be a matter for An Bord Pleanála to agree in conjunction with relevant parties.

Recommendation 21

In line with the targets of the National Digital Strategy, and with the objective of providing more efficient services to the public, An Bord Pleanála should support investment and skills development in embedding information technology throughout its business operations, including enhanced use of webcasting of oral hearings and board meeting presentations.

Recommendation 22

To facilitate governance and operational oversight, and thereby reinforce public confidence in the decision-making process, An Bord Pleanála must significantly improve the capability and quality of its data collation and monitoring processes. Regular quality checks of datasets are required to ensure that all details are inputted to the data management system correctly and to ensure the capability to identify any unusual patterns in decision-making. It is also important that regular reports are generated and communicated to senior management for consideration and action as required.

Recommendation 23

To ensure public and institutional confidence in the process of continuous improvement, An Bord Pleanála should enhance its reporting arrangements with regard to matters of public and political interest or concern. This should include the inclusion of additional detail in its annual report in relation to topical concerns as well as agreeing the publication of a comprehensive update with the DHLGH on the 2016 Organisational Review of An Bord Pleanála.

By the end of January 2023 an implementation plan on the implementation of this report's recommendations, including delivery schedule, will be prepared for the agreement of the OPR and the DHLGH. Quarterly progress reports will be submitted thereafter.

In addition An Bord Pleanála will engage with the Oireachtas to facilitate an appropriate platform to report on matters of national level concern.

PART 3: Structures for Strategic Leadership

As identified in Part 1 of this report, there is an urgent need for a ‘reset’ in the way An Bord Pleanála delivers its functions and in the first instance this requires consideration regarding the organisation’s structures for delivering strategic leadership.

3.1: Strategic leadership and corporate governance of An Bord Pleanála

Central to the effectiveness of every public body in the discharge of its functions is a set of strong governance arrangements, a clear strategic vision and firm and coherent constitutional arrangements designed to deliver those functions. Through that, the leaders in the organisation – whatever their role – are empowered to provide strategic leadership. We consider these to be the essential principles that should govern consideration by DHLGH in response to this part of our report.

Every public body is different and the strategic needs it has varies according to its functions, business requirements, and maturity as an organisation. The existing arrangements for strategic leadership in An Bord Pleanála are no different and reflect the circumstances of its creation and the role it serves. Under the 2000 Act, An Bord Pleanála comprises the ten board members appointable by the Minister of whom one is appointed as Chairperson and nine appointed as ordinary members, from whose number one is appointed as Deputy Chairperson. The term of office of the Chairperson is seven years and ordinary members five years, in each case renewable once.

In 2018, An Bord Pleanála adopted a Strategic Plan for the period to 2023. The successor plan for the period 2023 to 2028 is due to be adopted in August 2023. The four strategic objectives set out in the plan are (a) protecting and enhancing our reputation for independence, impartiality, trust, integrity and transparency (b) making robust, timely, transparent, high quality decisions which support proper planning and sustainable development (c) improving our service to meet changing customer expectations, and (d) fostering a motivated, resilient and responsive organisation.

The current An Bord Pleanála governance model for organisational leadership is set out in a Corporate Governance Framework adopted in July 2021:

“to provide a clear and comprehensive summary of the principal aspects of corporate governance to everyone in An Bord Pleanála. It sets out our standards of conduct, our values and governance system. Its purpose is to ensure the correct alignments of structures with business strategies and direction, increase accountability and mitigate risk, and provide assurance that the organisation is operating effectively and efficiently. These combined factors provide a framework of principles, structures and processes that governs and guides the way An Bord Pleanála conducts its business.

Everyone has a role to play in ensuring good governance, which means adherence to the Code of Practice for the Governance of State Bodies, and to An Bord Pleanála’s own

Code of Conduct in the performance of their duties, as well as to corporate policies, procedures and office notices/memos.

The board and senior management are accountable for the proper management of the organisation”.

Consistent with 2016 guidance on governance of State bodies³, we note and agree with the statement that *“Good governance in essence is about delivering priorities, achieving objectives, behaving with integrity and acting in the public interest and in ways that are consistent with legal, regulatory and Government policy obligations”.*

The Corporate Governance Framework reflects the independence of the role of An Bord Pleanála, their values, the importance of a Code of Conduct and of declarations and disclosures of interests, the importance of data protection and Freedom of Information (FOI) and Access to Information on the Environment (AIE) compliance, a recognition of the need to deal with the public in a fair, courteous and equitable basis, as set out in their Customer Charter and Customer Action Plan, and stresses the importance of information security.

The Chairperson is described as: *“the Chief Executive and most senior accountable member of the organisation. The Chairperson is responsible for ensuring the efficient discharge of board business and the distribution of work amongst its board members. The Chairperson also provides an annual statement covering the effectiveness of the board’s system of internal control”.*

The Deputy stands in for the Chairperson in performing the function of the Chairperson when absent. Ordinary board members, it is stated, do not have a management or leadership role but are appointed *“to determine planning and related cases which come before the board for decision spending the majority of their time engaged in preparation, presentation and decision-making on case work”.* The framework suggests that in addition they have *“responsibility for the oversight of the overall corporate governance of the organisation”*, an issue we return to below.

As described earlier, in terms of senior management the organisation is separated into two divisions, Planning Operations and Corporate Affairs led by two Directors and overseen by the Chief Officer. Reporting remains through to the Chairperson and the board.

Certain strategic, corporate and financial matters are reserved to the board for decision-making relating to the following key areas:

- Strategic corporate matters
- Financial
- Auditing and assurance
- Procurement
- Code of Practice / Conduct
- Staffing / resourcing

³ <https://www.gov.ie/en/publication/0918ef-code-of-practice-for-the-governance-of-state-bodies/>

- Other decisions on matters considered significant.

The appointed board members meet eight to ten times a year as a General Board to address “*various governance matters*”. Presumably this reflects the description of the role of board members beyond determining planning and related cases which come before the board for decision and fulfilling their “*responsibility for the oversight of the overall corporate governance of the organisation*”.

There is an Executive Management Team (EMT) which is “*a senior co-ordinating group consisting of the Chairperson, Deputy Chairperson, Chief Officer and Directors of Planning Operations and Corporate Affairs. Previously, the team met regularly, generally weekly, to discuss emerging issues and to monitor performance and compliance matters. The EMT also discusses the agenda for the monthly General Board Meeting in order to have relevant and timely preparation of associated management papers*”. However, it would appear that the EMT has not sat since June 2022.

There is also a management committee, chaired by the Chief Officer, made up of senior manager grades from planning operations, corporate affairs and internal audit/ procurement at director, assistant director and senior administrative officer level, with the Chairperson and Deputy Chairperson representing the board.

Standing items at meetings of that committee include:

- review of progress of key performance indicators set out in the Annual Delivery Plan;
- planning casework targets and operational challenges;
- updates on the progress in relation to strategic projects;
- HR updates including resourcing;
- financial management; and,
- risk management committee and other matters.

Bespoke committees address matters such as project steering, IT steering and workplace partnership. Arrangements are set out in respect of auditing responsibilities, procurement, financial management, budgets and budgetary control and risk management.

Application of Existing Arrangements in Practice

There would appear to be a limited level of engagement with the objectives of the Strategic Plan in the operation of An Bord Pleanála. For example, there would not appear to have been any reference to the Strategic Plan in the 2021 draft Annual Report, nor any reference to the four strategic objectives or progress towards them.

The current approach and structure for strategic leadership and governance in An Bord Pleanála may have served it acceptably well for many years, but recent difficulties have brought these into sharp focus. We see clearly that it has not secured the achievement of strategic objectives with regard to enhancing the organisation’s reputation, making robust, transparent, timely decisions and fostering staff resilience. For the reasons set out in this report, simply retaining the arrangements in place, and as set out in the Corporate Governance Framework, is not sufficient.

That conclusion is consistent with the view reached by DHLGH in their Action Plan where a preferred way forward is indicated. This is considered more fully below as part of this phase of this review. Before doing so, we consider a number of overarching factors that should inform the design of a strategic leadership function that is fit for purpose of An Bord Pleanála.

Ordinary Board Member Attributes

That ordinary board members are not necessarily planners or other built and natural environment professionals (but sometimes are) has been a deliberate part of the system of scrutiny established as a tenet of the work of An Bord Pleanála.

Though of course they may have them, ordinary board members are not appointed because of their strategic leadership skills. They are appointed to make planning decisions. The position of the Chairperson (and Deputy Chairperson) is different. However, the historical structure of An Bord Pleanála has – de-facto – placed wider corporate duties on ordinary members.

There is a distinct role for ordinary members in sharing their skills and experience, in supporting each other to maintain continuity and develop cultural learning, in inducting new ordinary members, in ensuring that high quality and consistent decisions are made by them in the exercise of their duties, ensuring and encouraging compliance with responsibilities under sections 147 and 148 of the 2000 Act, and in developing best practice in doing so.

While guarding against ‘group-think’, a culture should be instilled within this group of collective responsibility for the integrity of the decision-making process and delivering high quality outcomes. Increasing the number of ordinary board members, with these essential principles in mind, will be crucial in strengthening the leadership of An Bord Pleanála and in a way that focuses their role in making planning decisions by relieving them of shouldering corporate or strategic roles in relation to the leadership of the wider organisation.

To successfully replace the existing model, we consider that a number of key areas of responsibility of employed staff could be re-shaped to take on strategic and governance leadership responsibilities. This is addressed in further detail in subsequent sections.

In the context of evolving reforms proposed to the board member recruitment process, a number of considerations need to be borne in mind, as much as at the operational and implementation levels and in the finalisation of the amending legislation, including:

- ensuring that the membership criteria should be changed to be less prescriptive and simply narrate the desirability of ensuring that the board, as it adapts over time, comprises 15 members representative of specified areas of expertise and relevance to the functions of a public body exercising these types of functions, and in addition that all will have a strong capacity to make robust decisions on matters before them;
- ensuring that such commissioners would include persons with knowledge of marine and climate change matters;
- ensuring that there is a power by regulations to add new qualities to the list to reflect changing circumstances;
- enabling flexibility in meeting the changing demands on An Bord Pleanála;

- ensuring a greater level of diversity in all its forms as well as gender balance;
- securing a balance of perspectives on urban and rural planning and development contexts and to ensure that neither urban nor rural interests are disproportionately represented on the board;
- ensuring that perspectives on how to address socio-economic factors and inequalities are represented; and,
- ensuring that the perspectives of the local authority sector are represented.

3.2: Roles and Responsibilities

Cohesion in the Leadership of An Bord Pleanála

The current placing of strategic leadership functions on ordinary board members (embedded in their being constitutionally “the Board” under the 2000 Act) creates a damaging lack of cohesion in An Bord Pleanála. The fault line becomes exposed specifically in two respects – (a) where there are a number of departures from recommendations which are not properly explained or reasoned in a way that inspectors can have confidence in⁴, and (b) where there is inadequate clarity about the role and purpose of the board members as decision makers. Ensuring unity of the mission, aims and values across this divide is, in some ways, the most difficult of the challenges facing An Bord Pleanála.

That lack of cohesion is exacerbated by the imbalance between the two arms of the organisation. The imbalance is in a sense inherent in and is unavoidable because, the inspectorate arm ‘reports’ to the decision-making arm. What is not necessarily unavoidable is the leadership model at the apex of the board. In the current model, An Bord Pleanála comprises in effect the board members acting together. Aside from the Chairperson and Deputy Chairperson, as recognised above, this involves a contradiction that ordinary members – appointed to the board but only to make planning decisions – are assigned responsibility of matters of corporate governance for which skills they were not appointed. In addition however, conflating their roles embeds the decision-making imbalance into giving ordinary board members a higher place in the organisational hierarchy than the inspectorate arm.

We consider that this should be removed. Such a change will assist in another respect relating to performance management. Decision-making board members may not be line managers of the inspectors, but in practice could potentially exercise – directly or otherwise – a level of direction or control that amounts to the same thing. For the purposes of this Part, we consider it to be unsatisfactory that this is built into the constitutional arrangements of the board. We touch on that issue in more detail in our recommendations about performance management and confidence to challenge, and the need for transparent separation of board members from inspectors while working on as yet uncompleted reports, to avoid perceptions of improper interference.

⁴ See Part 4

We recognise that, until recently, the current arrangements were not thought to be unsatisfactory. Similar views were expressed in the Organisational Review of An Bord Pleanála (2016) ('the 2016 Review')⁵, in particular at recommendation 3, but it does not go as far as we do. In our view however, the status quo in that regard cannot be allowed to continue. DHLGH take the same view, the Government approved Action Plan, which was published on 4 October 2022, indicates that the 2000 Act will be amended so that 'board members' will become 'commissioners', and that the core number of such commissioners shall be 15. The Action Plan also indicates a preferred direction of travel as to the strategic functional structure of An Bord Pleanála, asking us in our work to explore this issue further.

The suggestion by DHLGH of a smaller senior board team (for practical organisational reasons) makes sense. A board of 15 members dealing with corporate matters appears to us to be unwieldy. However, the proposal of rotating board members in that role does not address the key governance flaws in the existing arrangement, as described above. In our view, re-shaping the constitutional arrangements of An Bord Pleanála to remove such strategic leadership functions from ordinary board members (or commissioners) should be a priority.

Chairperson and a potential Chief Executive Officer Role

The Institute of Public Administration's (IPA) 'An Bord Pleanála Board Effectiveness Review Report' (2019) indicated that the *sui generis* nature of the organisation presents potential difficulties which would not ordinarily be faced by other organisations, be they public or private.

That report recognised that good corporate governance models usually demonstrate a separation of roles and responsibilities between a non-executive (or largely non-executive) board (led by a Chairperson) and an executive (led by a Chief Executive Officer), and that the leader of these separate branches would not be one and the same person. Although that report identified this issue, the IPA made no recommendations in this regard, the matter being beyond the remit of that report, which was focussed on board effectiveness within the current legislative regime.

Ordinarily with state bodies, the Chief Executive Officer (CEO) is the 'Accountable Officer', and that office-holder is held to account by both the board and Oireachtas. However, in An Bord Pleanála's case, the Chairperson is the 'Accountable Officer' and is responsible for ensuring "the efficient discharge of the business of the board". It is understood that the extent to which previous chairpersons have practically adopted the role of CEO has depended on individual preferences with some previous chairpersons allowing significant delegation to the Chief Officer in relation to operational responsibilities.

As such, we consider that the intended role of the Chief Officer could be more clearly set out. Those functions of the Chairperson also require to be clearly specified and understood. Equally, the Government's proposed governance body cannot have a role in questioning, second guessing or supervising the decision-making arm and the decisions of board members as led by the Chairperson.

⁵ <https://www.gov.ie/en/publication/a29d4-organisational-review-of-an-bord-pleanala/>

The Chairperson should remain a decision-making board member, as its head, which would have the benefits of enhancing the Chairperson's credibility with their peers in doing so and deepening the Chairperson's understanding of practical challenges of sitting on boards. The Chairperson may also need to form part of boards where pressure of business demands and in the situation (rare though it presumably would be) that a full panel of all board members is considered expedient in light of the significance of any one particular application or appeal.

Similar questions arise for the Deputy Chairperson, but the answers may be more nuanced. The holder of that post needs to be ready to deputise for the Chairperson in all the functions of Chairperson⁶.

An Bord Pleanála has encountered profound difficulties in its operations, the understanding of which has only deepened as this phase of the review has witnessed. An important reform agenda is required necessitating very significant internal structural and operational reforms. At the same time, there is a very significant backlog of cases, coupled to a burgeoning caseload, driven by an expansion of functions, and the management of the workload of an expanded body of board members / planning commissioners.

Taking all of the above together, it does not seem feasible that one post-holder can lead on all of these roles at the same time. There are risks in combining such roles in the one post-holder for such a pivotal public body. Therefore, there would appear to be strong merits in re-shaping and clarifying that role and revisiting the IPA's report on board effectiveness in relation to the application of more traditional corporate governance models to An Bord Pleanála in the form of distinct CEO and Chairperson roles.

In putting this proposition forward, this review acknowledges that this requires further consideration in the context of the Government's Action Plan for An Bord Pleanála.

Options for the Future

Next therefore, the merits of new structures for An Bord Pleanála are explored, with a distinction being made between (a) overall operations, and (b) An Bord Pleanála's decision-making function. We consider that the structure of the current governance arrangements neither work in theory nor in practice. It is hard to see how change in such a culture can be delivered without a strengthening of current arrangements.

The DHLGH Action Plan responds to our Phase 1 recommendations 1, 2 and 4 at Action Plan points 10, 11 and 14. We welcome this. The Plan, at action points 12, 13 and 15 to 19 sets out a series of intended changes to strengthen strategic leadership and An Bord Pleanála's capacity.

We address this in more detail here by drawing together six themes:

- whether one person in the role of Chairperson can successfully fulfil all necessary roles;

⁶ Relying only on the Chairperson as the leader of the organisation to exercise their functions creates an unacceptably high level of risk in the predictable situation of unavailability of the Chairperson for any reason.

- what the constitutional role of ordinary members should be;
- how the issues of absence of cohesion identified above can be addressed;
- whether a split by the creation of a CEO (and office of the CEO) might be an option;
- what a new Governing Body comprising the constitution of An Bord Pleanála would look like; and,
- how a new Governing Body could be supported by strong and enhanced support of senior officials reporting directly to it.

Setting aside everything else, a situation whether the extent to which the Chairperson carries out a strategic role (relying on the existence of a Chief Officer or otherwise) depends on individual preference seems entirely unacceptable and untenable. These functions are too important to be left to any kind of take-it-or-leave-it attitude by the Chairperson.

However, we are conscious too that the structure of An Bord Pleanála is a consequence of the nature of its functions. Great care is therefore needed before moving to a model simply because any such alternative is seen as more typical of public service norms, notwithstanding the general requirements of the Code of Practice for State Bodies. We agree though with the key conclusion of the IPA report that it is not feasible that one post-holder can lead on all of these roles at the same time.

We conclude above that, in order to enhance cohesion and allow ordinary board members – in future, commissioners – to focus on the roles for which they are appointed, the constitution of An Bord Pleanála should be changed in statute to remove these board members from so constituting An Bord Pleanála.

We agree with DHLGH that a Governance Body should be created as the constitution of An Bord Pleanála. We agree in principle that the model of the Governance Body on the functional basis set out in the Action Plan is the correct approach. This permits the creation of a robust leadership function. It differs from that in the current Corporate Governance Framework in certain ways. It should in effect become the board of An Bord Pleanála. The Governance Body requires to be of a size that strikes the right balance between effectiveness as a strategic and nimble decision-making body, while being adequately skilled to take on all necessary functions of giving strategic leadership to An Bord Pleanála. This option is in practice the simplest as an enhancement of the existing EMT, with a significantly strengthened new status.

We address leadership and planning professional services below but recognise that there would also be opportunity to more clearly align the role of the Chief Officer as a Chief Operations taking full responsibility for the day-to-day operations of An Bord Pleanála as distinct from the role of Chairperson.

For the reasons set out above, this would limit the role of ordinary board members (or commissioners), unless part of the Governance Body (for example the Deputy Chairperson). If our comments above are accepted on the better balancing of An Bord Pleanála, the interim solution proposed, in the Action Plan, of a rotational arrangement of commissioners sitting on the Governance Body falls.

If the Chairperson of An Bord Pleanála is to remain the most senior responsible officer of the organisation then the reduced role in in board meetings, including deciding individual cases, requires recognition and formalisation consistent with what we say below. Furthermore, unless a separate CEO model is adopted, then the most important executive post-holder is the Chief Officer or redefined as the Chief Operations Officer. As the most senior individual in the organisation who is not a board member, the role of the Chief Officer must be more clearly set out, and should not be a role with varying responsibility depending on the appetite of the Chairperson, from time to time, to be a strategic leader.

On the governance model set out in the Action Plan, the Chairperson as the head of the Governance Body has ultimate responsibility but needs support in delivering a range of roles crucial to the future successful operation of An Bord Pleanála.

As a development of the status quo and a variation of the suggestion in the Action Plan, we consider that the Governance Body should comprise the Chair, the Deputy Chairperson, the Chief Officer/Chief Operations Officer a new post of Chief Planning Officer, assuming strategic responsibility for oversight in a range of key areas. In turn supporting that Governance Body should be enhanced structures reporting to it, strengthening the professional planning leadership functions, as set out in more detail below. This in principle appears to be accepted as feasible in legal terms in terms of Appendix 2 of the Action Plan.

We agree with the suggestion to bring in to the Governance Body one or more appropriately skilled non-executive directors to support organisational improvement and provide a challenge function in relation both to the structure of the new body going forward, and the application and implementation of it. It is this, rather than use of ordinary board members, that can provide the best challenge function to the strategic effectiveness of An Bord Pleanála.

There are of course other options. One is the option of the Governance Body comprising seven or more members⁷. This would be an option, if our other comments on other support roles warrant representation on the Governance Body.

This restructuring to create such a Governance Body to include additional *ex officio* officials would of course mean that these roles would be new roles, required to be filled by fair and open competition.

In order to establish a system of governance providing long term stability, we accordingly consider that the constitutional construct of An Bord Pleanála should be re-shaped both (a) to remove the provision having the effect that the board, in the constitutional sense, comprises commissioners automatically when appointed to that role (aside from the Chairperson), and (b) to appoint the holders *ex officio* of certain posts in An Bord Pleanála to the board. As a result of all of the above, there would be no strategic management role for board members who are not on the Governance Body.

⁷Plus non-executive directors, but in that case no more than two.

We turn next to the question of whether, within such a structure, there is merit in the creation of a separate role of a Chief Executive Officer (and an office of the Chief Executive Officer). As recognised in the IPA Report, this model has merit. It provides clear leadership at a strategic level by placing the post-holder at the apex of the organisation.

Under this option, consideration would be given by DHLGH to creating an Office of the Chief Executive Officer (CEO), either in its own right or which could include the positions of Chief Executive Officer (currently performed by the Chairperson), the Chairperson of the planning commissioners the Chief Officer/Chief Operations Officer (representative of the corporate function of the organisation) and the Chief Planning Officer (representative of the inspectorate arm of the organisation).

A primary strength of this model is creating a bridge sitting above both sides of the organisation. It creates a greater organisational parity between its two sides with a better balance where the Chairperson of the planning commissioners and the Chief Planning Officer could enhance organisational cohesion and shared common purpose, increasing the confidence of the inspectorate arm in senior management. The Office of the CEO could hold responsibility for a list of strategic functions including key roles such as Directors of Compliance, Legal Services and Transformation, and represent those roles on a cross-organisation basis.

This might be a matter of especial importance where responsibilities straddle both corporate and planning decision-making arms such as in the case of the new Legal Services Unit and a need to manage any internal conflicts of interest where the Unit advises both the inspectorate arm in preparing and presenting reports, and board members, deciding the same case.

The precise inter-relationship between the Office of the CEO and the Governance Body (as the constitution of An Bord Pleanála) would require careful thought. The creation of an internal though separate office such as this gives an opportunity to provide strategic direction but requires at least one additional safeguard. This is that, with the replacement of the Chairperson as the most senior appointee, the need for the unambiguous independence of the decision-making arm of the board represented by the Chairperson becomes imperative. In our view, this requires to be stated statutorily. It is not the Chief Executive Officer but the Chairperson who has final say in any one decision entrusted to the board in the sense of being a decision-making panel. The Chief Executive Officer is the operational head of the organisation but not the chief decision maker in that sense.

For consideration under this model is the question of the size (and structure) of the Office of CEO, its inter-relationship with the Governance Body and the budgetary implications that come with that decision on size. We simply observe that the Office of the CEO requires a certain minimum size to be viable and will require to have at least one Deputy Chief Executive Officer, to cover for absences. This may be addressed if certain of the above office holders are in that Office but careful consideration remains necessary to the operational challenges (including budgetary) of creating an office of the right effective operational size.

As above, we are in no doubt that change in these arrangements is vital and, to assist DHLGH, summarise the pros and cons of these options as follows.

Chairperson as the most Senior Appointee

The advantages of this model are:

- it builds on existing arrangements and accordingly, it can be implemented relatively quickly and seamlessly;
- it creates minimal disruption of business continuity in times of change. Ongoing daily business in deciding appeals requires to continue as effectively as it can. This permits this;
- timings may work well as An Bord Pleanála works towards the adoption of a new Strategic Plan in 2023; and
- it retains representation on the EMT across both arms of An Bord Pleanála and would allow board members to focus on their decision-making functions.

The disadvantages of this model are:

- it may not be considered radical or robust enough to deliver the required changes in operational effectiveness, in leaving the Chairperson with too wide a set of responsibilities;
- it leaves the position where the Chairperson (representative of the appeal deciding side of the Board) is the senior officer overall, leaving an imbalance in representation across both sides of the functions of An Bord Pleanála; and
- accordingly, it would retain the organisational flaw in having the two most senior persons (the Chairperson and the Chief Officer) potentially unable to resolve conflict or differences between them.

CEO Model

The advantages of this model are:

- it supports long term strategic leadership by placing a stronger emphasis on permanent staff, rather than undue reliance on board members who are not employees and hold a fixed term appointment;
- it creates a better balance and greater organisational parity across both sides of the functions of An Bord Pleanála between the position where the Chairperson (representative of the appeal deciding side of the board) and the Chief Planning Officer (representative of the inspectorate arm of the board). This can enhance organisational cohesion and shared common purpose;
- it fits with a more conventional model of structures of public bodies with functions that are arms-length from direct Governmental control and comprising appointed boards, with a clear apex at the top of the organisation;
- having a post holder in that place addresses the risk that the two most senior persons (the Chairperson and the Chief Officer) are potentially unable to resolve conflict or differences between them; and
- key roles such Directors of Compliance, Legal Services, Transformation, etc. can report to the Office of the CEO.

The disadvantages of this model are:

- it requires legislation to fully establish these functional arrangements and will take time. Meantime, ongoing operational demands remain and need interim resolution to maintain confidence in the organisation;
- while bringing cohesion across both sets of board functions, it risks placing the Chief Executive Officer in conflict with the necessary separation of those functions;
- it requires consideration of the future of the Chief Officer / Chief Operations Officer in support of the CEO; and
- it has not insignificant budgetary implications. This applies firstly simply in the appointing of a suitably skilled Chief Executive Officer. However, such an appointment is not alone enough. For business continuity reasons, an Office of the CEO would be required, involving at least one deputy and adequate secretarial support. The size of the Office of CEO would require to be considered and costed, in balancing the pros and cons.

Leadership of Professional Planning Staff

Supporting the Governance Body in that new configuration would require new leadership arrangements of the professional planning staff of An Bord Pleanála.

The professional planning and other staff of An Bord Pleanála perform a vital function in undertaking detailed technical assessments of casefiles, visiting sites, conducting oral hearings and being the organisation's external presence. Investment in and support for this cohort of staff is as crucial as wider operations, the overall leadership and management structure, and an expanded college of planning commissioners as set out above.

An Bord Pleanála's inspectorate is grappling with not only a very significant and increasing caseload but will also need to be a key part of the overall renewal and reform agenda of the organisation that must come about as a result of this and other reviews.

Again, given the scale of work ahead, a strengthened leadership structure is also recommended in the area of professional staff, one that would see a new post of Chief Planning Officer created – at an appropriate management grade – with responsibility for overseeing the work of distinct planning directorates covering (1) normal planning appeals, (2) strategic infrastructure, local authority projects and strategic development zones, (3) marine development, and potentially (4) innovation, learning and digital transformation. The Chief Planning Officer would assume responsibility as head of profession within An Bord Pleanála.

An Bord Pleanála's Chief Planning Officer would report to the Chief Officer or Chief Executive Officer (depending on the model adopted), in terms of that role's function in managing the overall intake and processing of planning cases, before they are presented to the planning commissioners and its Chairperson for ultimate decision-making. In addition, the Chief Planning Officer would co-ordinate and balance the work of the newly created directorates (as above) and be responsible for quality assurance and system development through those directorates.

Future Leadership Tasks

Stepping back from specific matters giving rise to concern, it appears to us that it will be important for the strategic leadership of An Bord Pleanála to recognise that there are four separate tasks that form part of the necessary response to recently unfolding events:

- ensure that proper systems are in place and are applied in order to under-pin the work of An Bord Pleanála, supported both by formal adoption as board policy and an openness about what is proposed and how;
- project plan the implementation of any new or modified policies, both by announcing them in a publicly accessible way on their website and through properly worked through policy documents, application in a practical and user-friendly way for staff expected to apply them;
- put systems in place to monitor the effectiveness of new ways of working and proactively identifying any areas needing adjustment (and consult on their user friendliness); and,
- develop capacity to ensure innovation and continuous improvement is embedded in An Bord Pleanála at a senior level, to give confidence that any future changes beyond what we recommend are anticipated and planned for.

Recommendation 1

The Minister / Oireachtas should give appropriate consideration to delivering a new structural framework for the strategic leadership of An Bord Pleanála separating its quasi-judicial planning decision-making and wider corporate and supporting functions and that:

- a) Focuses the role of the Chairperson of the Planning Commissioners on ensuring the decisions of planning commissioners achieve relevant quality, robustness and timing considerations, set by the wider legislative, policy and professional standards;
- b) Establishes a new role of Chief Executive Officer who (above the current role of Chief Officer) would be responsible for the day to day management of the operations of An Bord Pleanála, from the point applications and appeals are received to the point recommendations are discharged to Planning Commissioners and for final issuing of decisions as well as wider corporate governance, ethical and financial matters;
- c) Establishes a new role of Chief Planning Officer to oversee and co-ordinate the work of a number of discrete planning directorates, be head of profession and ensure appropriate professional standards, including quality assurance and training; and,
- d) Provides for oversight by a Governing Body consisting of the Chairperson, Deputy Chairperson, Chief Executive Officer, Chief Planning Officer (as head of profession) and an appropriate number of non-executive directors.

PART 4: The Role and Practices of Board Members

Confidence in An Bord Pleanála's decision-making depends on the integrity of board practices including communications, compositions, consideration of inspectors' reports, escalation procedures, secretariat support and record-keeping. These and other matters are set out in this Part, including a number of key recommendations.

4.1: Integrity of Quasi-Judicial Decision-Making

Meetings of compositions⁸ of the board members of An Bord Pleanála to consider planning cases need to be within a space where open, confident and, if needs be, frank engagement on the relevant planning issues is not only possible but encouraged. This is so that balanced and robust decisions are arrived at, with demonstrable confidence that the decision has been arrived at with integrity and without any external influences.

By excluding external influence we mean both (a) external to An Bord Pleanála and (b) the strict prohibition of any influence or intervention by any person including any member of staff of An Bord Pleanála (other than through the inspector appointed to report). Just as it is crucial that independence of the planning judgement exercised by inspectors is protected, it also is vital that the integrity of board meetings is maintained untrammelled by outside influences. To protect that space (notwithstanding the collegiate nature of An Bord Pleanála in overall terms):

1. board members (subject to escalation procedures involving the Chairperson) assigned to a particular composition of the board should not discuss cases with other board members and vice-versa;
 2. communications between board members (even if written) prior to the conclusion of a decision are appropriately protected;
 3. subject to 4.7 (*Secretariat Support to Boards*) and bullet 5 below, the composition should entirely exclude any other person including employees of An Bord Pleanála from engaging in, influencing or intervening in their deliberations;
 4. as set out elsewhere in this report, presenting inspectors must leave board meetings after completing their presenting function(s);
 5. protocols should be put in place around provision of legal advice (provided by the newly established Legal Services Unit or otherwise) designed to maintain the integrity of board meetings, avoiding for example the same individual lawyers in the Unit providing advice to both an appointed inspector and board members;
 6. unless otherwise considered appropriate, a board member who previously determined a preliminary matter should not be appointed to a board that is making a final decision;
- and,

⁸ We note that varying terminology is used to describe subgroup meetings of the board of An Bord Pleanála (e.g. divisions, panels, quorums). In this report, we use the term 'composition' to refer to a grouping of board members with delegated decision-making functions in respect of individual cases.

7. no communications are made in respect of any matter on, or relating to, an individual case by any board member with any external party to An Bord Pleanála (whether appellant, applicant, local authority or third party) before, during or after consideration by the relevant board.

4.2: Composition of Boards and Prioritisation of Cases

The first phase of this review process recommended that board meetings of at least five members⁹ should be convened in relation to certain prescribed categories of decision-making. Having given the matter further consideration under this phase of the review process, in our minds, the merits of this recommendation are reinforced.

We conclude that the number of members present for these categories should be at least five, though potentially more if circumstances permit. Whether and when a higher number is appropriate may be a matter best left to the discretion of the Chairperson, based on the circumstances in play. A larger number can be any number in excess of five (though with best practice pointing to an odd number).

While we heard through our engagements that some board members remain of the view that that two-person compositions of board members are acceptable, the decision has been made to cease the practice (which will be embedded by statutory change). The limited argument that can be made in relation to board meetings of smaller compositions is overwhelmed by the compelling case for An Bord Pleanála to deliver best practice in decision-making. In this regard larger compositions are always preferential, especially in relation to cases that are not minor in nature, allowing a greater balance of expertise / experience and without undue reliance on specific individuals.

As part of this review, the OPR has been advised that a system exists in An Bord Pleanála for identifying a range of possible priority cases. Such prioritisations are always matters to be progressed with cautiously. We note the comments and suggestions in the 2016 Review in this regard (leading to recommendations 33 and 34), though we have not seen a policy document explaining the basis for, and applicable criteria for determining priority.

However, we understand that such cases are of genuine national significance. Broadly consistent with paragraph 4.16 of the 2016 Review, they include large-scale commercial, housing, educational and healthcare developments, as well as significant infrastructural or other projects prioritised in line with government policy at any particular time. Appeals relating to strategic development zones are also included in this category. However, we do consider that the system for prioritising cases should be formalised as part of An Bord Pleanála's internal systems and procedures to ensure the process is applied consistently and transparently.

⁹ Acknowledging the requirement that appointments to the board must first be made by the Department

These matters signal the following issues for consideration in developing procedures for board operations for cases that should be considered by board meetings of five or more members (including case types outside of those categories identified in the list associated with Recommendation 4 of the Phase 1 Report):

- whether all cases involving an Environmental Impact Assessment Report (EIAR), and / or a Natura Impact Statement (NIS) could be included in the arrangements, given the volume of such cases that may arise;
- provisions (for boards of five or more) that there should be a minimum of one board member with knowledge or experience of planning assigned¹⁰;
- designing a protocol, to be strictly applied, that would enable a limited degree of flexibility in relation to the above where for example there are unusual levels of business pressures;
- the process to apply when deciding whether in excess of five members are required to make certain decisions and, if not the Chairperson, who should make that decision; and,
- the steps necessary if, through absence of one member, a board intended to have five members, only has an even number of members available to it.

This phase of the review has also carefully listened to various views on the recommendation concerning the presentation of cases by inspectors, particularly the argument concerning the desirability of detailed knowledge and understanding of a casefile by at least one board member in order to properly test and understand the circumstances and inspector's recommendation (based on the application of planning policies).

Nothing proposed in this review is intended to inhibit board members from thoroughly testing the facts and circumstances in the diligent exercise of their functions. However, a requirement, where possible, to have such a minimum number on the board with knowledge or experience of planning would meet that ground of concern¹¹.

It would appear that there is no formal point at which the composition of identified board members and size is constituted. As we set out below, constitution of a board by a formal minute of appointment puts the legal basis for a composition onto a firmer footing.

The practice of mixing the composition of deciding boards and rotating board members should be reaffirmed, whilst appreciating that there may be some limitations in the discharge of certain types of cases, for example SID cases. The board member assignment policy should also address the issue of the timing of the composition of boards, which should be after the inspectors report is discharged and the making available of information regarding the composition of boards as soon as possible after they are appointed.

¹⁰ We recognise that flexibility may be needed even for larger compositions. We considered recommending this even for compositions less than five but concluded that prescriptively so suggesting would risk inhibiting proper flexibility. The reasoning for doing so though has equal applicability.

¹¹ In due course, similar considerations might point to compositions dealing with marine cases having a person with marine knowledge or experience but this is premature to explore in detail at this stage, for a range of reasons.

4.3: Decisions of the Board and Departures from Inspector Recommendations

The first phase of this review touched on the historical reasons for the establishment of An Bord Pleanála and it is not our intention to review or re-visit these matters. However, in order to support an increase of public confidence in the operation of An Bord Pleanála as a decision-making body, we touch on what can be done to clarify the decision-making *raison d'être* of the board in that role. This can assist in understanding the other reforms we suggest in this report and improve levels of public confidence.

The reasons for doing so are a recognition (a) that the board members, as decision makers, are unelected (in contrast to Ministers who are in comparable systems such as Scotland), (b) that – in the words of the 2016 Review – board members are “educated lay-persons”¹² (advised on planning matters through reports provided by inspectors), and (c) board meetings do not address the matters before them afresh (as inspectors do), but decide them as informed by reports from inspectors.

To ensure that the decision-making role and the purpose of board is one that demands confidence, the following four considerations are intended to address this issue.

(a) *Grounding departures from recommendations on planning matters*

Recommendation 11 from the Phase 1 Report highlighted a problem in the decision-making processes of the board whereby the risk exists of a differential approach to consideration of development plans in light of national strategic policies. We recommend consideration of statutory reform to reconcile the approaches of the board and local planning authorities.

That recommendation draws out the important point that, ultimately decisions in planning matters (whether at first instance or on appeal) are decided by persons who are not doing so as professional planners. This is entirely proper and is a system shared with other jurisdictions.

However, the common theme on decision-making is that decisions by those entrusted with those roles are still required to be made on planning grounds only. This is after all part of the planning appeal system. The 2016 Review at paragraph 3.30 described the board members role as a decision maker: *“informed by the technical planning expertise and judgements provided by the inspectorate. Their decisions should be taken in accordance with the law and should take into account the same factors as those considered by the inspectors”*.

While this may be thought obvious, we consider that this needs to be clearly stated by An Bord Pleanála in its public facing documentation. It is clear and entirely proper that board decisions can, in appropriate circumstances and as evidenced and adequately recorded in proper systems, depart from the recommendations of an inspector’s report. The system is not and cannot be seen to be a rubber-stamping exercise. Proper examination, scrutiny and review is the whole point of the system of board decisions.

¹² Though we prefer the term well-informed lay-person. We broadly agree with paragraph 3.23 of the 2016 Report in saying “Whilst the ordinary members will inevitably require a relatively high level of education and technical ability, the task of the ordinary members is not that of an expert”. The 2016 Report at paragraph 3.24 noted what board members are not, but there may be merit in being clearer to the public what they are.

All reports from inspectors are different according to circumstances in hand. In some cases the balance of competing factors of facts, local policies, strategic policies and planning judgement can be finely balanced. Although we recognise in the first phase of our review that departures would not be expected to be frequent, it is entirely proper and open to a meeting of board members to reach a different view from the recommendation in exercising and making a different judgement.

We considered whether – mindful of the non-planning qualifications of many board members and the description in the 2016 Review – to recommend that a presumption be applied that the recommendations of the inspector be followed unless there were material considerations and reasons not to.

This however involves a fine planning policy judgement for DHLGH of the balance between the different roles within An Bord Pleanála, which is a matter beyond our remit and which would require a considerably wider degree of consultation and consideration than we have been able to carry out. DHLGH may consider whether further and deeper consideration is given to this potential reform.

(b) Making the circumstances of departures fully understood and transparent

In addition to the above recognition of the decisions of the board being rooted in planning, it struck us that there may be limited understanding – both within the board and more widely - of what grounds there might be to depart from recommendations. There is a clear need to strike a balance in being more prescriptive about grounds to depart with respecting the wide discretion (subject to the above and proper constraints of law) in decision-making and the unpredictability of circumstances.

Nevertheless, we consider that, over and above statutory duties to give reasons, there would be merit in An Bord Pleanála publicly indicating as an indicative and non-exhaustive list the sorts of circumstances where a departure might potentially arise. The grounds in our view for departing from inspector recommendations would normally be limited to:

- a) inconsistency with national planning policies or local development plan policies of local planning authorities;
- b) failure to consider or properly apply international obligations under EU law or the Aarhus Convention;
- c) failure to consider matters submitted by all parties to the planning case;
- d) failure to comply with procedural requirements of fair process (such as conflict of interest of an inspector or failure to hold a hearing where required);
- e) inconsistency with other analogous decisions (unless objectively justified and explained);
- f) obvious omissions or errors of fact or policy;
- g) other manifest error;
- h) where, as recognised above, the inspector reports on a balanced or finely balanced nature setting out pros and cons for due consideration by the composition;
- i) where the board has and exercises scope involving a different planning judgement; or,
- j) failure to have proper and due regard to the jurisprudence of the Courts (in terms of advice provided by the newly established Legal Services Unit).

The statements of reasons for departing from recommendations should identify which of those bases is being applied (or explain the basis of departure where otherwise based).

(c) Weight of views of different board members

The question arises of the relative weight to be given to the views of different composition members, in decision-making. Differences in opinion and of views of the appropriate decision is a normal part of collegiate decision-making. Consensus is not required but equally dissenting decisions are not part of the system. Where matters go to a vote, the majority view will prevail. It is partly for this reason that it is desirable that board meetings sit in compositions comprising odd numbers, limiting the possibility of a tied decision.

We recognise that various board members will have different levels, ranges and types of skills and experience, this has been an expected feature of the appointments system to date. Notwithstanding that we consider that it is important that An Bord Pleanála proactively recognise that in its deliberations, the relevant views of each and every board member are heard in arriving at the final collective decision. During deliberations on a case, all relevant board member inputs must be heard and the overall board must rationalise those and come to a reasoned and balanced conclusion.

(d) Formal 'constitution' of a composition

As a pre-requisite of decision-making we consider it necessary for there to be a formal 'constitution' of a composition of a number of the board members to perform the decision-making function of the overall board.

It was surprising that there is no formal point at which the composition of identified board members and size is constituted. It could have been expected that this would be by formal minute of appointment, signed and dated by a duly authorised person. Various explanations were offered as to why this is not done, ranging from the need to make interim or preliminary determinations (as might arise early in the process), the potential need to later substitute members if needs required, the fact that all board members were engaged anyway (and so the precise composition at any one time was not important) or that compositions such as SHD's exist de facto anyway (as created in statute).

Our view is that the membership and timing of when a composition of the board is constituted is important. Amendment of a formally constituted composition is not difficult if circumstances change. SHD compositions will, or will soon be, no longer created, as An Bord Pleanála's function in deciding SHD cases at first instance has now ended. Perhaps most importantly the constitution of a composition of a board by formal minute of appointment puts the legal basis for a composition onto a firmer footing.

Amongst other things, formal constitution would ensure transparency with regard to the identity of which members played any decision-making role at any time in every case. In addition, formal designation will facilitate the appointed composition members by providing the opportunity to programme the cases that will be coming before them, therefore allowing them to take the recommended preparatory steps towards reading into the case (as discussed in the Phase 1

Report). It will create clarity where interim or preliminary matters have had to be dealt with, as below.

Recommendation 2

An Bord Pleanála should put new procedures in place in relation to the process of formalising compositions of board members to discharge caseload, preliminary or other related matters, by a formal minute of appointment, signed and dated by a duly authorised person.

This will ensure transparency in the identity of decision-making board members. In tandem with Recommendation 11, such procedures must also include a resolution to the effect that:

- a) sets out the purpose of the board members as decision makers;
- b) the principle is accepted, both at first instance decision-making or on appeal, that decisions by those entrusted with those roles require to be made on planning grounds only and that the board will adopt and apply that principle;
- c) every board member's view has the same weight and importance as every other member;
- d) an indicative list of the basis for departing from recommendations is set out; and,
- e) statements of reasons for departing from recommendations should identify which of the bases in (d) above is being applied (or explain the basis of departure where otherwise based) and which policy or policies and which section or sections of the report the departure relates to.

4.4: Case Allocations to Boards

Ensuring case allocations to compositions of board members in a way that is fair, balanced and transparent goes to the heart of rebuilding trust in An Bord Pleanála. The intended creation of additional board member roles, as well as fulfilling the recommendation from the Phase 1 Report in relation to five person meetings, will also allow for greater rotation of board members through different compositions of the board. Avoiding the regular grouping of the same board members will also assist in bolstering confidence in the decision-making process.

While this review process has advised that allocations should be random, which should be the predominant method, there will be instances where the specific expertise of certain board members will mean that it makes practical sense to allocate particular cases to a composition on which they participate. However, it is not advocated that all cases of particular types should always go to the same composition of board members. Doing so runs the risk of complacency or over-familiarity with the same players operating in the same field of activity in a small jurisdiction, running the risk of group think unduly informed by past cases and lack of objectivity in coming to a new case. Furthermore, this would operate against the ability of other board members to acquire a broader and deeper knowledge and understanding of a wider range of cases. Rather, with regard to specialised such case types, it would be preferable to see case allocation on a rotational rather than randomised basis.

Some changes to current arrangements are advisable as follows:

- the formal position is that allocations are made by the Chairperson but can be delegated. We understand that they usually are, which makes sense as the concept that the most senior appointee would personally sit down and allocate cases appears to us to be inefficient micro-management;
- in addition, case allocation by the most senior member of the decision-making part of An Bord Pleanála to other board members (including potentially themselves) seems a flawed principle;
- instead, An Bord Pleanála should appoint an employed member of staff, delegated to such duties, to undertake case allocation in respect of board members, with statutory protection requiring that task to be undertaken independently, on the application of principles of fairness, equality and impartiality;
- that person should be responsible through an appropriate reporting channel (other than and no longer through the Chairperson) to the Governing Body and guided by a protocol to be developed by An Bord Pleanála, setting out the factors informing the application of those principles (including the desirability of rotational case allocation); and,
- the protocol shall be published and provision made in arrangements under the new Compliance, Governance & Ethics Unit to provide protection for the independence of that role.

Implementation of these recommendations would require a mix of administrative steps and legislative change. Until the latter can be effected, current arrangements of the delegation from the Chairperson should continue.

Recommendation 3

To support the statutory function of the Chairperson in arranging for the appropriate scheduling of casework to board meetings, An Bord Pleanála should, as soon as legislative provisions allow, appoint an appropriately senior member of staff to allocate such casework to board members with statutory recognition and protection to that person that they must undertake that task following the principles of fairness, equality and impartiality. The appointed person should be guided by a protocol, to be developed by An Bord Pleanála, setting out the factors informing the application of those principles (including the desirability of rotational case allocation). The protocol should be published and provision made in arrangements under the new Compliance, Governance & Ethics Unit to provide protection for the independence of that role and an escalation model if challenged.

4.5: Escalation Procedures

In this section, we consider whether and to what extent there ought to be systems operating which allows for the airing of appropriate differences of view within such systems or processes and ultimately achieve internal resolution of such matters so that the most robust of decisions are ultimately arrived at. These are described as escalations - processes whereby matters can be referred to a higher level, including in the case of a three-person board finding it difficult to come to a clear decision and seeking the consideration of the matter by a larger board.

Not for the first time in our work, we have found it challenging to consider potential improvements because of the informality and lack of clarity of existing arrangements. We have been told in the course of this phase of the review that the ability to so escalate is already provided for in the existing statutory scheme, and that where a member of a board is concerned about any aspect of the case they are considering, the matter can be escalated for consideration by the full board (or as many of them as in practice can be convened). However, we were also told that in practice reconsideration by larger panels is not a feature in the work of board members.

We consider that it is good administrative practice in any organisation for systems to be in place for escalation of disputes to a more senior level. In the context of the purpose of An Bord Pleanála, this is especially important in relation to the planning decisions it makes. This must recognise the quasi-judicial nature of these decisions. Administrative systems are run by humans and inevitably mistakes can be made. Such systems should be designed both to minimise the extent of mistakes and, in appropriate and transparent ways, to rectify them if possible before decisions are issued.

The volume of work within An Bord Pleanála makes delegation of commissioner decision-making inevitable. It makes reliance for example on the professionalism of inspectors in their work unavoidable. As far as the final decisions in planning matters of An Bord Pleanála are concerned, though so delegated, the ultimate responsibility for these decisions lies with the Chairperson. In order to allow for clear-eyed responsibility to be exercised by that person, we consider that the Chairperson would not normally sit on day-to-day board meetings.

We are in no doubt that the Chairperson ought to have the skills and willingness to do so. The Chairperson should remain a board member, as its head. The post-holder has enhanced credibility with their peers in doing so and being willing to do so; benefits from a deeper understanding of the practical challenges of sitting on compositions, by doing so in practice from time to time; may need to sit where pressure of business demands it; and, might be required to in the situation (rare though it presumably would be), that a full panel of all board members is considered expedient in light of the significance of any one particular appeal.

However, pre-supposing a full complement of board members, the question for consideration is what should be the more typical norm. At one level, as *primus inter pares*, the post-holder should regularly so sit (though perhaps not with the same frequency as other board members), in order to permit time for the other leadership roles incumbent on the post-holder.

This however in our view is not the right approach. In addition to what we set out above, this is for two reasons:

- regardless of the strategic model preferred (as above), the primary role of the Chairperson should expressly be recognised whether as the head of An Bord Pleanála or chair of the commissioners and it should be recognised that the primary role and focus of the Chairperson should be the duties in that role as senior responsible or senior accountable officer; and

- if sitting on a composition of the board, it is possible that the Chairperson will have (or may be perceived by virtue of that role as having), undue or disproportionate influence on the decision-making process, inconsistent with the parity of weight to be afforded to the views of each member of the composition.

We recognise that an amendment to section 111(4) of the 2000 may be needed in consequence.

The existing escalation procedures and those possible areas of strengthening that we propose below can only be fully effective if the Chairperson has the role of resolving matters necessitating escalation. That resolution role is compromised if the Chairperson is also sitting on a composition of the board. Escalation downwards will not work. Other than where (in rare cases as above) the Chairperson is a member of a composition, escalation only works if there is a channel to more senior officials for that purpose. If the most senior person makes first instance internal decisions, it is harder to operate a system of checking quality and other relevant matters in that person's cases.

Any escalation system must be capable of being triggered in any case. However, it must also be proportionate. In light of the burden of cases on An Bord Pleanála at any one time and the fact that the vast majority are of high quality and are beyond reproach, escalation should be used sparingly. We do not anticipate it would ever arise (or at least extremely rarely), where a composition agrees the recommendation of the inspector. In any event, the system proposed is one of regularised referrals back to inspectors by board direction rather than any escalation system.

In the time we have had to consider issues, consult and reflect on best practice, we do not make a precise recommendation as to the content of a system of escalation, beyond concluding that – in some form – one is needed. In our work, we explored two sets of questions – when could it be triggered (at least as guiding sets of circumstances) and what could it comprise. We consider it is helpful to set out sets of circumstances on triggering escalation both as illustrations of the reasons to have one and to encourage detailed consideration by An Bord Pleanála as to what it would do. The potential need for escalation would arise most commonly in circumstances where:

- a departure from an inspector's recommendation is intended; and
- such a departure is not supported by a minority of board members¹³.

Whether (in a five person composition) the majority in favour of a departure is 3:2 or 4:1 that still represents a minority with sufficiently different opinions as to suggest that the circumstances are not clear cut. Therefore, an escalation may be appropriate where – without going to a vote – a member of the board considers that the case warrants referral to a wider composition of board members for their consideration. We recognise that there can be nuances in the available options.

¹³ It seems less likely that escalation would be needed if a departure is supported unanimously by the composition as that is a clear indicator that departure from the recommendation is necessary and justified.

Some doubts were raised with us about the practicality and operational effectiveness of convening a larger panel (or including the Chairperson), especially if involving in effect re-starting from scratch. We do not consider these to be insurmountable and in any event at odds with what we were told happens already.

We accept that care is needed in determining what escalation would look like. We would not be in favour of reconvening a larger composition as a generality. Simply doing so by adding the Chairperson both adds a risk of imbalance (given the rank of the post holder) and has the consequence that the number of composition members would no longer be an odd one.

A faster and more efficient model would simply be referral to the Chairperson (or deputy in case of absence) for consideration and approval, if so minded. It surprises us anyway – even without a formal role of endorsing departures – that there would be no internal process alerting the Chairperson of intended departures by compositions. If there is, it is a relatively small additional safeguard that the Chairperson (who in that role holds ultimate organisational responsibility for decisions made) is required to add that post-holder's endorsement.

To conclude, decisions on planning cases require the finely balanced consideration of all the relevant matters. Where the facts of a case are clear-cut and the board members are making a unanimous decision, even where there may be a departure from what the reporting inspector recommended, there is no apparent need to escalate a case for further consideration. In light of the foregoing, we recommend as follows.

Recommendation 4

To reinforce a high degree of public confidence in the integrity of the decision-making process, An Bord Pleanála should prepare a transparent process for escalation of casefiles in circumstances where a departure from an inspector's recommendation is intended and such a departure is not supported by a minority of board members.

4.6: Board Members Declaration

To complement their other duties, a measure that should be considered to restore public confidence in the integrity of processes at An Bord Pleanála is that, on taking up office, all permanent or temporary board members/commissioners would be formally required to sign a declaration that they will undertake their duties faithfully, honestly, impartially without respect to person, and to the best of their ability and understanding.

The precise wording of the declaration is not offered at this point, but the foregoing indicative sense of the obligation and seriousness of the role undertaken, to which the declaration relates, should be clear.

Recommendation 5

To reinforce a high degree of public confidence in the probity of An Bord Pleanála's decision-making in the manner of a court, on taking up office, all board members (or commissioners) should sign a declaration that they will fulfil their duties faithfully, honestly, impartially, without respect to person and to the best of their ability and understanding. The declaration should be based on wording to be determined by the Department of Housing, Local Government & Heritage. This formal obligation should equally apply to existing board members, those to be appointed on a temporary basis and all future appointments.

4.7: Secretariat Support to Board Meetings

In An Bord Pleanála, the Board Secretariat sits within the Corporate Affairs Directorate, which is overseen by the Director of Corporate Affairs. The Board Secretary role is filled by a Senior Administrative Officer (SAO) and, together with the legal / data protection team, the legal / secretariat unit is supported by administrative staff.

As part of our engagements with An Bord Pleanála staff during this review, we sought to gain a better understanding of the functioning of the Board Secretariat, its role within the organisation and the extent to which it offers secretariat support to the board. During our engagements, we were advised that the Board Secretariat follows a legal secretariat-type model, whereby the secretary manages An Bord Pleanála's legal services.

The Board Secretary also provides guidance in relation to ethics obligations and is responsible for managing the annual declarations submitted by relevant staff, including board members. Further, the Board Secretary is generally responsible for media engagements including responding to media queries, though this has changed in recent times due to increased media attention.

The Secretariat provides a 'drafting' service to the board. This service is delivered by a subset of the Board Secretariat, a drafting section, which is managed by a Senior Executive Officer (SEO). The drafting section is a management device created to make efficiencies. The drafting section assists the board in preparing board directions and board orders by checking them for language.

It is important to note that the drafting section, and the board secretariat more generally, do not play a role in questioning the judgement / decisions of the board or in quality checking the conditions imposed or the decisions to grant / refuse made by the board. Neither does the drafting section play a role in monitoring trends in the decision-making of the board. The Board Secretary does not sit in on 'decision-making' board meetings, i.e. where casefiles are being decided by the board, whether compositions of the board or a full board meeting. Neither does the Secretary attend or minute 'general' board meetings, i.e. governance meetings.

This is partly due to the fact that there are generally multiple decision-making board meetings occurring at the one time, leaving it impossible for the Secretary to attend all meetings. Also, during the course of this review we have been advised that the board secretary model followed by An Bord Pleanála is a 'legal' model whereby the secretary deals primarily with legal aspects of business, rather than providing full secretariat support through attendance at meetings, etc.

Furthermore, the Board Secretary does not play a role in the co-ordination of decision-making, including allocation of casefiles to board members. The organisation of work / case allocation is generally delegated to the Deputy Chairperson. Usually, the Deputy Chairperson will meet with the SEO responsible for the drafting section once per month to decide on weighting of casefiles, allocation to board members, etc.

In our engagements with board members, it was clear that the work of the drafting section is highly valued among board members. However, we are of the view that the board would benefit from increased secretariat support including attendance by a member of the secretariat team as at board meetings, enhanced record keeping services, and improved data collation. Improvement to administrative support and fuller minuting of board business (though not necessarily extending to the creation of a verbatim record) is an important step.

Provision of such support and advice was mentioned in the first phase of this review. Secretariat support to board meetings would be bound by the same requirements of confidentiality as board members as well as procedures to avoid conflicts between such role and other roles that person may play in the wider organisation. Guidance on the supporting role of the secretariat should be provided including recording of minutes and decisions made.

Although – as above – recognising at the very least the value in ensuring that this is put in place once the number of commissioners becomes 15, earlier implementation is highly desirable. It is recognised that such procedural improvement will require the reallocation of appropriate resources. Given the importance of these duties, there should be no reason in principle why secretariat support services should not be prioritised to have in place in early course¹⁴. Though involving a resource commitment, this should be balanced against the fact that it would free up board members' time to allow them more capacity to dedicate to their decision-making role to the benefit of An Bord Pleanála's overall efficiency.

Recommendation 6

An Bord Pleanála should ensure that all board meetings are supported by such secretariat support and technical advice that would be required to assist in deliberations, manage the organisation of work and to ensure the accurate recording of business and decisions taken. Guidance setting out the terms of the specific supporting role of the administrative support should be developed by An Bord Pleanála to formalise the exercise of this internal arrangement.

¹⁴ Though potentially phased to first cover the categories of cases where the minimum composition is to be five.

4.8: Record Keeping

Robust record keeping procedures are crucial to ensuring that decisions discharged by An Bord Pleanála are accurately recorded, which in turn facilitates robust data collation and monitoring discussed above and elsewhere in this report.

When a casefile is presented at a board meeting, an allocated board member is tasked with completing a meeting record which includes details such as other board members in attendance, the decision of the board, whether any actual or potential conflicts of interest were identified and whether the inspector's recommendation was generally accepted or not accepted by the board.

In respect of information noted on the meeting record, certain additional details should be included in the interests of transparency and to further inform the monitoring of decision-making activity and internal briefings.

In relation to conflicts of interest, currently the meeting records and data collation system do not provide data in respect of whether a potential conflict was raised at a board meeting and escalated to the Chairperson, and subsequently was determined not to pertain a conflict by the Chairperson. This information is pertinent to transparent decision-making of the board. Therefore, the recording of such information as part of the meeting record and on the Plean-IT system is essential.

Additionally, our review identified that currently, when a board member recuses themselves from deciding on a case due to a self-identified conflict of interest, there is no system for recording such refusal. It is our view that in the interests of public confidence and transparency, and of course to monitor the allocation of casefiles to identify any lapses in procedure where a file has been allocated to a board member where a known conflict of interest exists, all recusals should be formally recorded, collated as part of a dataset, and reported on as part of the regular reporting to senior management.

Further, we recommend that each meeting record includes confirmation that the appropriate number of board members were in attendance at the meeting to make a decision. This relates to recommendation 4 of the OPR's report on the first phase of this review, which requires that a minimum quorum of five board members would be required to make decisions on the following categories of planning cases: (i) Strategic Housing Development; (ii) Strategic Infrastructure Development; (iii) Large Scale Residential Development; and, (iv) any appeals concerning the making of or amendments to Strategic Development Zones.

Currently, details of meetings of the board, including decisions made, are inputted into An Bord Pleanála's bespoke case management system, Plean-IT. The Plean-IT system has been in operation since October 2017.

As part of this review, we examined datasets provided to us by An Bord Pleanála and found certain instances where data gaps have arisen. We were advised that such gaps can arise whereby the meeting record has not been completed in full, e.g. where a particular section of the record has been overlooked by the board member at the time of the meeting and compiling of the record. As such, key information such as lead inspectors, decisions and board members is not all fully recorded in An Bord Pleanála datasets, and a 'null' reference is used wherever information has not been inputted. This has an impact on An Bord Pleanála's ability to accurately and effectively monitor its activity, in that it limits the accuracy of data on its decision-making.

We are of the view that the responsibility for the compiling of meeting records would be better delegated to a member of the secretariat team, overseen by the Board Secretary, whereby certain secretariat staff would attend board meetings and record the outcomes in the form of the meeting record and such meeting records are quality checked at regular intervals at an appropriate management level within the board secretariat team.

Recommendation 7

An Bord Pleanála should enhance its record keeping of board meetings including decision-making outcomes. This should include the recording of any actual or potential conflicts of interest raised in relation to a casefile, whether or not it was determined by the chair of that meeting to constitute a conflict, and confirmation that the appropriate minimum quorum is in place for the casefile subject to decision. Meeting records should be quality checked on a regular basis by the appointed secretariat support to ensure that all details are noted.

4.9: Interim or Preliminary Matters

Recommendation 10, below, requires recognition that, for a range of reasons, an inspector may wish or require to seek a ruling from the board on interim or preliminary matters. We do not attempt to be entirely prescriptive about when this would occur and were advised in our evidence gathering that, no doubt amongst other circumstances, this could happen in a range of readily recognised circumstances¹⁵, such as:

- where a scoping opinion issue arises as to whether an EIAR is required or where NIS arises. This would impact on the processes and procedures adopted in the preparation of a report and so will be essential to be determined before report completion;
- where a doubt may occur (or, in the view of some we spoke to, in all cases) regarding the need for a determination as to whether an infrastructure case coming to an inspector falls within the categorisation of SID; and,
- where the inspector wishes a view from the board as to whether an appropriate way of proceeding in a case is by oral or written procedure.

¹⁵ We assume here that there will be no more assessments at an early stage required for SHD cases under the Planning and Development (Housing) and Residential Tenancies Act 2016.

As a side observation (though maybe one of some importance to ensure that issues relating to preliminary or interim issues are not taken as being out of proportion), we have reservations about the reference to the board in all three of these identified circumstances. We entirely see the benefit in seeking a steer in order to avoid nugatory work. Though we doubt whether the board is better placed to decide scoping questions on EIAR's or NIS's than the inspector, making an error on whether an EIAR or NIS is needed (or not) at any early stage and erroneously following through the consequences until the error is pointed out later (after incurring significant cost and wasting significant amounts of time) is not good practice.

We firstly deal with the explanation given to us of the current system and for such referrals. The explanation given was that these matters are relatively infrequent, normally straightforward and can easily be accommodated in regular board meetings involving the full available complement of board members. We do not agree that this way of working is satisfactory. We agree that only essential matters should be referred for board approval (in some form or other) but – where it is essential – a more methodical system is needed than the above.

Paradoxically, these normally straightforward matters under the current system are decided (albeit, from what we were told, cursorily) by the full available board while substantive decisions previously could be made by panels of as few as two. That is now a thing of the past but once we move to 15 commissioners, full board consideration of preliminary matters that in due course would go to a composition of five to consider the substantive merits simply makes no sense. This is all the more the case in light of our recommendation that the substantive composition cannot be established until the inspector's report is completed.

New arrangements are inescapable. The answer in our view is that a formal appointment of a preliminary board should be undertaken where so required. Safeguards in doing so require to be built in. The size of such a preliminary board need not necessarily be as large as that constituted in due course under normal provisions. Depending on the nature of the issue, we see no reason why even one board member should not suffice. The current practice, as explained to us, involves a decision in a meeting of a full board (as above, often apparently with little substantive consideration). Neither the use of a full board whether 10 or 15 (compared to a smaller board on the later but more substantive issues) nor cursory consideration appears to us to be correct.

Although it does not appear correct to us to be prescriptive or unduly inflexible (where the circumstances may vary according to whether the question falls within one of the above-mentioned circumstances, or for any other reason), we consider that An Bord Pleanála should consider whether best practice would be to require a subsequent board meeting (on the later but more substantive issues) to comprise different board members than the preliminary meeting did. This will become increasingly feasible once the overall board becomes 15 members. Such an approach would be consistent with the maintaining of the integrity of the appointed composition to decide the case in due course.

It should go without saying that full and transparent records of interim or preliminary matters and outcomes should be published on the casefile as part of the decision-making audit trail. The precise arrangements for these matters will require to be worked up over time by An Bord Pleanála. That includes whether, once established, it remains in place to deal with any later preliminary issues in the same case. We suggest that An Bord Pleanála be required to develop a protocol setting out these successor arrangements within three months of the date of this report, including, as needs be, transitional arrangements to cover the period up until implementation in conjunction with the start date of full operation of compositions with a minimum of five members (and the necessary temporary board appointments in the process of being made at the moment). Further modification may be needed once the full number of commissioners becomes 15. Although suboptimal, we see no alternative to continuing current arrangements until that protocol is developed, provided that board members operate them diligently and thoroughly under current arrangements.

Recommendation 8

An Bord Pleanála should develop formal arrangements, which will be reflected in a new protocol, to regulate the interim or preliminary matters that may need to be considered in advance of the discharge of inspectors' reports to meetings of the board. The protocol will confirm procedures, including the manner in which such determinations are documented and recorded on the planning file and range of reasons for which an inspector may seek a ruling from the board on such matters (e.g. in relation to scoping under European Directives or categorisation under strategic infrastructure provisions, etc.)

PART 5: Ensuring the Integrity of Inspectors' Reports

The interviews conducted across the organisation indicated widespread acceptance of the need to ensure the integrity of inspectors' reports and recommendations. A number of individuals, including inspectors, administrative grades, managers and board members specifically referred to these reports as being "sacrosanct".

5.1: Exercising Independent Professional Judgement

It was agreed by all we spoke to that respect for inspectors in the exercise of their professional judgement, and assurances in relation to the independence of their assessments, is a fundamental cornerstone of integrity of the decision-making process of An Bord Pleanála in the eyes of those it serves.

Nevertheless, some of those that we spoke with felt that, with the onset of the housing crisis, the establishment of the SHD process within An Bord Pleanála was accompanied by a degree of pressure to deliver development.

While there were significant divergences between some of the inspectors and certain board members and senior planning operations staff on the matter of how the organisation responded to such pressure, it was a repeated topic of concern for several staff that procedures would be maintained to ensure that inspectors could exercise independent judgement.

From our interviews and staff engagement, some felt that in recent years there was a lack of respect for individual / independent planning judgement at some levels within the organisation, and the prevalence of these concerns underline the necessity for the application of rigorous systems and procedures to maintain the separation of the role of a planning inspector in providing independent advice to the board.

Interrelationships between the role of inspector and board members

Part 3 of this report covers the structure of An Bord Pleanála and how the two key arms (the board members and the planning inspectorate) of the organisation inter-relate. There is, of course a balance of power in these relationships. While board members do not have a direct line management relationship to inspectors, it is a fact that board members inhabit a higher tier of the organisation (having been individually appointed to their positions by the Minister). In this regard, among the inspectors we spoke with, there was some articulation that they felt their standing within the organisation depends on the regard in which board members hold them.

Mindful of that context, it is important to focus on direct inter-actions between board members and inspectors that have been allocated particular cases. In this regard a recommendation is made that there should be a stated policy of An Bord Pleanála in relation to any communications from a board member with an inspector (directly, or indirectly through another person) in relation to any case that is live before an inspector. This policy should confirm that

the relevant period for which a case is considered live would be until the end of any appeal process or the expiry of any period to challenge by judicial review or otherwise. This newly articulated formal policy should also clarify that the provisions also apply to communications with the line manager of the inspector (or any person in the line management line) in relation to live cases.

In the first instance the policy should make it clear that a board member who is not on the relevant decision-making composition of the board should have no communications with inspectors in relation to such cases. Where a board member has a decision-making role in relation to a particular case, the following exceptions could apply in relation to communications with the assigned inspector:

- a) in accordance with procedures concerning communications in relation to interim or preliminary matters as are necessary in light of such matters under consideration;
- b) in accordance with the arrangements for presentations by inspectors; and,
- c) where for any reason, the board directs the inspector to provide further information it considers necessary before determining the matter before them.

Recommendation 9

To reinforce a high degree of public confidence in the integrity of the decision-making process, An Bord Pleanála's updated Code of Conduct, and relevant staff / procedural manuals, must make explicitly clear the importance of clear and transparent lines of communication between board members and planning inspectors (including their managers) in relation to any planning cases that are live.

Board – inspector communications: preferred practice

The position above on further information could encompass circumstances where updates or amendments may be required to the inspector's report. In the course of information gathering for this part of the review, board members referenced errors they had spotted in reports that had to be referred back for correction. Although these examples were inevitably anecdotal in nature, they were informative and are to the credit of board members who spotted them. This is clearly an appropriate circumstance to return a report to an inspector. However, there are concerns in relation to this practice:

1. Responsibility for quality control and quality assurance more appropriately lies with the planning inspectorate (addressed in the subsequent section 6.4).
2. Based on what we heard there was not always evidence that corrections to casefiles have been recorded through the use of directions (nor is it formally recognised by way of a board procedure or other means as far as we can see).

In considering the above it is necessary to consider when a referral back to an inspector after discharge of a report is required. The list of such matters cannot be exhaustive but is likely to be limited to requests for clarity or explanation (as might include where an error is spotted), where further factual or evidential information is sought, where consideration or further consideration of strategic policies is required, where certain considerations are not adequately covered, where there are changes of factual or policy circumstances (normally where delay has occurred), or where conditions are under consideration of being changed.

The first fundamental requirement must be that all such requests are made formally – with immediate effect – by direction, placed on the casefile and published (supported by a procedure or other adoptive policy to that effect). Following discharge of an inspectors report these should be the only means by which communication with the reporting inspector can occur (other than in the context of an inspector presenting their report following initial discharge). The direction should conform to a prescribed format addressed to the inspector and containing the question asked, the reason for asking and the timescale for a response.

The inspector would, after due consideration of the direction do one of two things, each recorded on the casefile. These are (a) issue a reply to the direction, and (b) issue an amended discharged report or as appropriate an addendum or supplementary report. The former alone might suffice if the question posed in the direction, for any reason, does not result in the report requiring to be changed. The ‘error’ pointed out may turn out not be an error at all, once considered by the inspector.

While best practice would be to contain all such matters in one direction, this may not be possible. Or further questions may arise from the response to the first or an earlier direction. The board meeting may issue as many directions as it considers necessary, consecutively or otherwise. We understand that An Bord Pleanála has recognised this in recent times and intend to adopt a similar system.

Recommendation 10

An Bord Pleanála should put administrative systems in place to the effect that all requests from board meetings seeking additional detail, explanation, further information or other consideration should be made by direction in a prescribed format to the inspector setting out the detail of the request and timescale for response. Any such direction, and its response, including an addendum or amended discharged report, should be recorded and be publically accessible on the casefile.

Board – inspector communications: where departures are in contemplation

It is important to acknowledge that around 90% of inspectors’ recommendations to grant or refuse appeals or applications are accepted. However, in relation to circumstances where a board meeting is minded to depart from a recommendation, in whole or in part, it is considered that additional processes are needed to support consistency of decision-making.

In relation to the explanation for departing from the recommendation of the inspector, it is considered that:

1. it is essential that reasons are given publicly, as set out in a statement of reasons placed on the casefile, why the departure is being made;
2. such statement setting out the decision must be clear and legally robust and must set out all material reasons for departing, including reference to relevant policies or which paragraphs of the inspector’s report they disagree with and why and the grounds or heads of grounds for so doing;
3. where deciding the matter on a vote, there must be a record the overall votes of the board in the statement;

4. it is important that An Bord Pleanála develop and implement a protocol in relation to statements of reasons, to set out in fuller detail the content of such statements to maximise consistency of approach and reasoning;
5. the protocol should set out the practical arrangements for the drafting of the statement, including how it is to be determined who the principal drafter will be, the minimum time gap between meetings and how disputes over the wording are to be resolved;
6. regard should be had to the need, as appropriate, for seeking the clearance of the Legal Services Unit (or obtaining other legal advice, in the period prior to its establishment) in relation to the statement, prior to issue; and,
7. other than bullet 1, the foregoing should not apply where the departure comprises non-material alterations of a minor or typographical nature.

Recommendation 11

Where a board meeting departs from an inspector's recommendation, An Bord Pleanála must ensure that a statement of reasons is recorded on the casefile setting out the reasons why the departure is being made with reference to specific policy or policies, and section or sections, of the discharged report they disagree with and the grounds for doing so.

This enhanced procedure should be included in a new protocol that An Bord Pleanála will develop in relation to statements of reasons to ensure a consistency of approach.

Regulatory Frameworks for Case Handling and Reporting

Our analysis also indicates that the current legislative requirements in Ireland in relation to the processing steps (including the preparation of the inspector's report) between the initial lodgement of an appeal or application case and the final decision of a board composition are less prescriptive than comparable processes applying to conventional planning applications to a local authority under section 34 of the 2000 Act (or comparable UK practice for that matter).

While in particular we support the application of due flexibility and discretion for inspectors in carrying out their reporting tasks, the ongoing planning review is an opportunity to enhance the statutory clarity of board case handling processes and to ensure a high degree of transparency and proper application of fair procedures to all parties, working within prescribed deadlines or processes.

We make this as a general observation and make no detailed recommendations in these matters, which are in any event for the DHLGH and Attorney General's Office to consider.

5.2: Communications with External Parties in relation to Reports

The statutory planning framework (sections 37F, 131 and 132 of the 2000 Act) provides that An Bord Pleanála may seek additional information on certain categories of cases where required to assist the making of a decision. Separately to this, it can also be expected that parties to a case may routinely make contact seeking updates in relation to progress – such requests are dealt

with solely and entirely appropriately by the administrative staff who manage An Bord Pleanála's public interface on a day-to-day basis.

The provisions of section 113 of the 2000 Act, which makes it clear that no person shall disclose information to external parties in relation to the business of An Bord Pleanála in the performance of its functions, other than in statutorily conceived, or other specifically approved, circumstances.

More significantly, while it is recognised that a composition of the board may require additional information from the applicant or appellant party in relation to an inspector's report that is with them for decision, we became aware during the review, that the decision-making process within An Bord Pleanála can permit such information to be provided to the board without necessarily requiring that the relevant inspector plays any role in the assessment of that information before the board makes its final decision. This presents a significant operational weakness that should be addressed, as we do in our recommendations in this report.

Recognising that the relevant inspector will have detailed knowledge of file, the purpose of their role, to provide independent planning input, may be somewhat lost in circumstances where considerations arising from the receipt of further information are not brought to their attention.

This shortcoming in procedure must be overcome with arrangements to ensure that inspectors are made aware of any further information received to assist the board's decision-making in the period after the discharge of a planning report. Part 5 of the OPR's Phase 1 Report identified a range of guiding principles that would assist An Bord Pleanála in the development of a written decision-making procedure (see Recommendation 7 of that report). The matter set out here should be incorporated into that written decision-making procedure.

Recommendation 12

Given the risk that could be posed to the fairness of the planning process should communications occur with external parties (outside of the standard administrative or formal statutory channels), An Bord Pleanála should update its ethical framework, including the Code of Conduct, to make clear that any such communications would be unacceptable. With particular regard to any communication involving advance disclosure of any substantive part of a live planning case, including in advance of an inspector discharging their report, it should be made clear that such action is contrary to statutory provisions and would be a disciplinary matter and subject to significant sanctions.

Furthermore, to ensure that planning-decisions are at all times made with the benefit of having received full independent planning analysis, a procedure should be in place to ensure that inspectors are made aware of any further information received to assist the board's decision-making in the period after the discharge of a planning report. Inspectors should have the opportunity to provide analysis to the deciding board as necessary. This arrangement should be incorporated into the written decision-making procedure identified as necessary in Recommendation 7 of the OPR's Phase 1 Report.

PART 6: The Functioning of Planning Operations

In this part of the report, a number of operational aspects of the work of An Bord Pleanála's planning inspectorate staff are examined.

Before those aspects are examined, it is important to note the importance of the professional planning staff of An Bord Pleanála in undertaking detailed technical assessments of casefiles, visiting sites, conducting oral hearings and being the organisation's external presence to stakeholders. On the current model of operation, the inspectorate is the evidence gathering arm of An Bord Pleanála.

Investment in and support for this cohort of staff in An Bord Pleanála is as crucial as wider operations. In the first instance a robust inspector recruitment process must ensure that professional staff recruited are of the highest levels of ability and integrity. It is also vital to ensure a supportive and effective line management process, coupled to a strong personal and professional skills and competency development system. Further, an effective quality assurance system that preserves independence in the exercise of professional planning judgement but at the same time ensures – as far as ever is possible – that the reports discharged are of the highest quality.

In this part of the report we consider some additional aspects of effective and transparent systems and procedures necessary to ensure quality and effectiveness in the processes that lead to board decision-making.

6.1: Case Allocations

We deal with case allocation arrangements in respect of board members at 4.4 (*Case Allocations to Boards*). In principle the same considerations and the same concerns apply with regard to case allocations to inspectors.

Our general conclusion is that the systems and processes in place for allocating casefiles to inspectors are essentially sound. There are seven area co-ordinators for a set of geographical areas, plus a process for SID case allocations. These systems will no doubt be updated once marine cases start.

The difficult and challenging balance to be struck in respect of differing needs and skills applies to inspectors as it does to board members. We consider that the allocation system, mindful of these factors, should continue as rotational.

We do not consider that the role of case allocation officer requires to be statutorily embedded (because the current role, in contrast to board allocations, is not). Otherwise though we consider that the arrangements we identified in relation to board members should apply to inspectors broadly as we suggest they should apply to board members:

- An Bord Pleanála should assign (or continue to assign) duties to staff regarding case allocation to inspectors on the application of principles of fairness, equality and impartiality;
- those persons should be guided by a protocol, to be developed by An Bord Pleanála, setting out the factors informing the application of those principles (including the desirability of rotational case allocation); and,
- the protocol should be published and provision made in arrangements under the new Compliance, Governance & Ethics Unit to provide protection for the independence of the role.

Recommendation 13

To reinforce a high degree of public confidence in the probity of planning case assignment to inspectors, An Bord Pleanála should assign (or continue to assign) duties to employed members of staff as area co-ordinators to take on the duties of case allocation to inspectors on the application of principles of fairness, equality and impartiality. A protocol should also be developed to guide the assigned area co-ordinators in relation to the application of those principles (including the desirability of rotational case allocation). The protocol should be published and provision made in arrangements under the new Compliance, Governance & Ethics Unit to provide protection for the independence of that role and an escalation model if challenged.

6.2: The Preparation of Conditions

This part of the review did note the practice where (a) in recommending approval, inspectors offer proposed planning conditions to be attached to the consent if granted as opposed to (b) where inspectors recommend refusal, they typically do not offer proposed planning conditions to be attached to the consent, if granted contrary to the recommendation.

Instead, the board, with the assistance of their drafting section will prepare such conditions (because there are sets of model conditions that can be pulled down) and that all of the above saves time for the inspector. However, it does strike us as inconsistent with the concept of the inspector's recommending role not to prepare conditions in case the composition determine to grant consent. The 2016 Review thought the same, expressed in that report as recommendation 64, and in our view it would be worth reconsidering that.

6.3: Inspector Independence

In respect of inspectors' independence, it is recommended that a safeguard to the independence of the inspectors should be introduced by requiring them to sign a certificate in respect of each report discharged by them, along the lines of the recommendation below (provided for indicative reasons).

It is stressed that this part of the review has discerned no reason to question the propriety of inspectors but this requirement gives a safeguard to them simply to ensure public confidence.

Recommendation 14

To reinforce public confidence in the integrity of the decision-making process, it is recommended that when discharging their reports to board meetings, inspectors should include a statement confirming that the report reflects their professional judgement. The recommendation should be to the following effect:

"I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way"

6.4: Performance Management and Quality Assurance

Performance management, at the individual and team levels, is an essential corporate tool for monitoring and evaluating the ongoing delivery of responsibilities. Though the primary focus in this section is on the planning inspectorate, a key consideration is how performance management is incorporated and measured at all levels throughout the organisation. During engagements with staff, we sought to gain a better understanding of performance management and what processes were in place to support staff.

Before addressing certain specific concerns, two general observations on the performance management system as it relates to the planning inspectorate are made. Firstly, an effective and fair system of performance management is essential to the wellbeing and effectiveness of any organisation. The human resources of an organisation are its most vital assets. An Bord Pleanála is no exception. It must be taken seriously and supported. Effective staff support and policies can encourage and reward high performance and address poor performance.

These concepts are entirely compatible with the inspectors' role and duty to act independently. It is, in our view, more, rather than less, important that performance management systems are carefully applied to reinforce that independence of planning judgement. We recognise that one system does not fit across every organisation. However, particularly given the inspectors' duty to act independently, it is important that staff would have access to an escalation procedure in relation to contested aspects of their performance review. The reason for this is that checks and balances, to support fair treatment, must be built into a performance management system in order to give confidence in it, and to ensure the independence of the inspectorate.

Operation of the Performance Management System

It is often to be expected that affected staff will be critical of performance management systems. Some may tend to see such systems only from their own perspective, while – entirely correctly – not being aware of wider considerations or, for reasons of confidentiality, the application of the system to others.

From our general engagement with An Bord Pleanála staff, there were marked differences in the responses of those who responded to surveys between different areas of An Bord Pleanála's organisational structure.

It is an important finding of this review that a renewed commitment to performance management is made to support the planning inspectorate and more widely to enable staff performance and personal development. This should be progressed as a priority with effective and coherent procedures in place to deliver.

Quality Control in preparing reports

Some of those we spoke with, including board members, referred to the need for stronger quality control with regard to the reports being prepared to facilitate decision-making. As noted above in section 5.1 (in the context of appropriate board / inspectorate communications), some board members made reference to their correcting of errors contained in inspectors' reports. There does not appear to be any evidence to suggest that the appearance of errors in inspectors' reports is a matter of significant particular concern. On the basis of materials considered through the review process we would note that report writing appears to be generally to be of a very high quality. Nevertheless the key point addressed in this section is the importance of properly identifying where the role of quality assurance should be performed.

It is an inefficiency to rely on the valuable resource of board members for the correction of the work of inspectors. This is a role that would appropriately be performed within Planning Operations. Ensuring that an effective quality assurance system is in place in the inspectorate is important for allowing board members have greater focus on their decision-making responsibility (this same logic is also reflected in the scheme for allowing presentations to be made by inspectors at board meetings).

Going on to consider these issues in more detail, quality assurance here relates to the 'quality' of the technical report and recommendation (to grant or refuse permission, etc.), provided by the planning inspector, and the system by which this report and recommendation is assessed by management within the planning inspectorate team, prior to discharge and prior to reaching board members for final determination. Robust pre-discharge quality assurance procedures are crucial to ensure that recommendations issued by the planning inspectorate to the board are checked appropriately. Pre-discharge quality assurance systems nevertheless must retain at all times the right of the inspector to maintain the outcome of their professional assessment and recommendation. This must appropriately and practically be the responsibility of Planning Operations which has the professional skills to ensure quality.

We note the goal set out in An Bord Pleanála's Strategic Plan 2018-2023 (Planning Our Future, Goal 2) which relates to "*Making robust, timely, transparent, high quality decisions which support proper planning and sustainable development*" and specifically identifies "*enhancing internal quality assurance systems for reports and decisions*" as a key action to deliver on the goal.

An Bord Pleanála have a number of internal quality assurance systems in place, for example the inspectorate induction and the board member induction, which provide guidance on the

requirements of each role. The senior planning inspector induction indicates that the role of both the SAO and the SEO includes references to leading, liaising with and managing staff and monitoring output and staff performance.

Additionally, there is an inspector induction which highlights the role, decision-making timelines, advice notes and other guidance available to the inspectorate in the course of carrying out their role. The induction document refers to sign off by the assistant directors of planning however, no reference is given to the quality assurance review of the work of the assistant directors or other senior management.

We of course accept that each and every report cannot be checked in every case. However, the absence of a methodical pre-discharge system of quality control (after the initial period of six months to a year following a new inspector's induction into the organisation) in our view creates unacceptable quality assurance risks. This risks undermining any aspiration for An Bord Pleanála to become an open and learning organisation.

High quality control and quality assurance should be a core role and function of senior management to not only ensure that robust planning recommendations are made to the board, but also as a basis to pro-actively encourage a learning organisation.

In view of the significant increase in the types, levels and complexity of caseload that the inspectorate is faced with, Part 3 of this review has made wider recommendations in relation to the leadership and management structure of An Bord Pleanála. There is an opportunity for the leadership resource to be strengthened with an additional senior management post of Chief Planning Officer created to oversee a better allocation of work across a number of planning directorates and to oversee a much stronger and objective quality assurance system, the development of which is further recommended below.

Provision of Specialist Advice to Inspectors

We heard about and welcome the idea of increased and wider use of specialists in An Bord Pleanála. This raises a range of matters to be explored including:

- their case specific inter-relationship with appointed inspectors;
- whether specialists ought to be recruited as inspectors or formally appointed on a fee-per-case basis, as and when required (either as fully appointed inspectors for that case or simply technical advisors);
- what other specialisms, beyond ecology, are required;
- how to deal with circumstances where there is only one specialist available but that person has a pre-existing conflict as having for example worked for the applicant;
- how would the board deal with circumstances where an outside fee-per-case specialist is also advising an applicant in another case which might be seen to be in competition; and,
- development of job descriptions.

An Bord Pleanála should be encouraged to further consider the mechanisms for engaging specialist advice to its inspectorate both in relation to their upcoming marine functions and in other regards.

Recommendation 15

An Bord Pleanála should urgently review performance management systems, with a renewed commitment to significantly improving and strengthening the performance management system across the Planning Operations Directorate in particular.

In tandem (but from a quality assurance, rather than performance management perspective) a formal procedure should be put in place in relation to the finalisation of inspectors' reports prior to their discharge to the board for decision-making.

6.5: Presentation of Casefiles to Board Members

Part 5 of the report on the first phase of the OPR's review recommended significant changes to the decision-making process currently followed by An Bord Pleanála. The proposed changes included:

- *the adoption of a clear, principles-based, written decision-making procedure, and*
- *ending the existing practice of allocating casefiles to board members for presentation to board meetings and instead assigning responsibility for presenting casefiles to planning inspectors or other appropriately informed persons.*

These changes are reflected in recommendations 7 and 8 respectively of the Phase 1 report (paragraphs 121 – 125) and were highlighted for implementation in the short term (i.e. four-eight weeks from publication of the report). These recommendations on presenting aligned with an earlier recommendation from the 2016 Review that presentation of casefiles should be carried out by the inspectorate rather than board members.

The rationale for the proposed change was based on the following considerations:

- Presentations by inspectors will bring the inspectorate into a more immediate engagement and dialogue with board members which will facilitate the development of more effective working relationships within the organisation.
- The current practice reduces the capacity of board members by making them responsible for preparing technical presentations on casefiles. Inspectors are best placed to respond to any technical questions that the board may have to inform its consideration.
- A precedent for the principle is an established mechanism within the Environmental Protection Agency (EPA).
- The clearer segregation of duties and responsibilities, whereby the inspector is responsible for making recommendations, and standing over these, and the board members are the decision-makers. Each board member will now be required to give equal consideration to the casefile details ultimately ensuring that each board decision is the outcome of a balanced level of involvement across the various board members.

The Phase 1 report reflected that consideration should be given to the logistics associated with implementation of the recommendation where over 2,000 casefile reports are generated from over 60 individual inspectors. It suggested, therefore, that while it would be appropriate for the

inspector to carry out the presenting task, certainly in the case of significant developments in certain categories, that there was scope to have the task delegated to other individuals with the requisite knowledge of planning casefiles and An Bord Pleanála's overall decision-making procedure.

The 2016 Review had recommended that the main source for the board's assessment should be the inspector's report. It had concluded that preparing to present a case is inevitably a time-consuming exercise and that a great deal of time taken by the presenting board member involves traversing ground already familiar to the inspector (or other officers within Planning Operations). The 2016 Review also recognised that the presenting inspector should not participate in the making of a decision; this was reiterated in the analysis provided in the OPR's report on the first phase of this review.

In conducting this review we have probed the issue of inspectors presenting to the board with a range of board members, senior management, inspectorate and administrative staff. The issue of presentations by the inspectorate featured strongly in comments made in response to the staff survey. Comments on the issue were also received in correspondence from An Bord Pleanála, the representative trade union, professional bodies, staff members, as well as being a matter of significant discussion during the stakeholder workshop.

We heard that there is context within An Bord Pleanála for non-board members presenting, either on occasion where an inspector or specialist colleague might present on a major case or as part of a previously operated presenting scheme in recent years where inspectors would present their casework. Formal confirmation was provided that a degree of inspector presentation takes place at present in relation to larger / more complex files.

We were also provided with an assessment of an eight-month pilot of inspector presenting from 2012. This included a range of individual inspectors presenting their own cases to the board and also a general presenting scheme whereby a small number of inspectors presented a wider range of colleagues' casework on a full-time basis. The pilot was considered to have added value in reducing a backlog of smaller cases at that time and was also considered to be beneficial in determining major files, including SID casework. The pilot recognised that inspector presenting created a new interface between the inspectorate and the board and that a protocol should be in place to clearly demonstrate the different roles of the inspector and the board.

Our engagement has allowed us to reflect on a range of views. For a number of those we engaged with, including some with experience in presenting to the board, there is no objection in principle to inspector presenting. To others, inspector presenting is either opposed in principle or raises detailed concerns that would require to be addressed to gain greater support.

Key issues raised on this matter during our engagement including from the staff survey include the following:

- The lack of consultation prior to the Phase 1 recommendations being made and the importance of fully understanding the operational issues and implications for board members, the inspectorate and the decision-making process.

- The workload implications of adding presenting to the duties of an already stretched inspectorate.
- The logistics of preparing a presentation that might take place some weeks or months following discharge of the inspector's report, including access to hard copy file material.
- The degree to which presenting or handling follow-up questions from board members could draw the inspector into the decision-making process with the board or lead to pressure to alter elements of the report or recommendation.
- The adverse implications for reducing the current casework backlog which An Bord Pleanála is experiencing.
- The need to reflect on how best to prepare staff, including training, guidance and additional templates to support those presenting.
- The potential for objective bias arising from an inspector presenting their recommendation, if seen as actively advocating that recommended outcome.
- That it should be the most experienced inspectors who should present.
- There would be a need for ICT and administrative support.
- That presenting would not be legally robust if done in private session.
- That exposing inspectors to board members in this way would increase the risk of inspectors feeling pressurised in relation to articulating their independent planning judgement.
- That presenting for all casework would be impractical and unnecessary and therefore thresholds for presenting should be considered.
- That the current practice of board member presenting enables a quality check of the content of the inspectors report.
- There may be contractual or other HR issues around adding any additional duties.

In our consideration of the above, casefile presenting should not be considered in isolation. Related issues include the wider decision-making process, staff training and development, protecting the integrity of inspector recommendations, development of IT support, rigorous record keeping and administrative support, the requirement for efficient decision-making and transparency of process.

Overall, we support the approach of the Phase 1 report which is that the inspector who has processed a case is most familiar with the proposals, with the detailed policy and other material considerations which inform the recommendation to the board. It ensures the placing of the inspector at the heart of informing, rather than directing the planning decision-making process of the board. The inspector is likely to be best placed to answer technical queries on a case from board members. The expectation that a board member, even one with related professional expertise, could quickly familiarise themselves with a complex casefile as effectively as the lead inspector has done over a significant period seems unreasonably demanding upon board members.

It has been suggested to us that current practice whereby a board member familiarises themselves with the casefile provides a quality check of the inspector's report. This may well be part of the rationale for existing arrangements. However, as already addressed in section 6.4,

we are not of the view that such a checking function is an appropriate use of board member resources.

During discussions, some inspectors referred to the likely delay between discharge of their report and the need to present at a later date, potentially weeks or months later, which would require them to re-familiarise themselves with the casefile in order to make the presentation. We acknowledge that this creates potential to add to challenging workloads. Inspectors at all grades have reflected on the heavy and complex workload that they deal with daily, their recognition of the pressure to deal with a backlog of casework and their aspiration to provide a high quality and efficient service. Against that context there are understandable concerns about introduction of any changes which could add to the workload pressure they described.

One option prior to discharge of the report is for an overview presentation or case summary to be prepared by the inspector in line with an agreed template and annexed to the file for subsequent use. We recommend the adoption of that process in order that a proportionate amount of advance understanding can be obtained by board members also (complemented ahead of the presentation if needs be by the ability to consider any further documentation). Also, as the existing backlog of casework reduces over time, it can be expected that the delay between discharge and any required presentation will reduce.

Inspectors also referred to the need to access file material, some of which would be in hard copy and not necessarily available to them for preparation or delivery of presentations. Our understanding is that many files are already available electronically and our aspiration would be that An Bord Pleanála can invest in stronger IT support that would enable electronic access to all relevant material by inspectors and that presenting to the board can also be facilitated online, including removing inspectors during any board discussion on decisions.

Elsewhere we discuss transparency of operations and public involvement and consider the merit in transitioning towards the webcasting of appropriate aspects of board proceedings, including casefile presentations. As system reform and technological improvements are delivered within An Bord Pleanála the facilitation of the public with greater transparency in relation to the decision-making process through innovation such as webcasting offers significant opportunity to support the overall transparency of the planning process.

Paragraph 78 of the Phase 1 report reflects the need for all individuals associated with An Bord Pleanála to assume and maintain personal responsibility for ensuring compliance with the range of ethical and conflict of interest requirements and to avoid any perception of objective bias from arising. It is important that those presenting to board members would have the support of any additional guidance or training in the concept and avoidance of perceived bias in carrying out their roles. In this regard the recommendation 5(a) of the Phase 1 report promotes the establishment of a Governance, Ethics & Compliance Unit, to develop and oversee its ethical framework. While this was set as a medium-term implementation, specific training to support presenting inspectors could be advanced as part of a package of support so that inspectors are adequately prepared for implementation of the change in presenting.

We consider that a number of the issues reflected above require additional engagement with the inspectorate and administrative staff who would be required to support the recommended change to current practice on presenting. Supported further by union representation and representation by professional bodies, this should include agreement on relevant training, contractual issues, administrative and technical support to inspectors and the threshold in terms of the scale of casework that should be adopted for any transition into inspector presenting.

The issue of the threshold of casework that should be presented is important. We have listened carefully to concerns in this respect. In recognition of the scale of changes in any event affecting the board (and for example the need for the sake of transparency that presentations be webcast), a transitional move to presenting in the most significant cases could be adopted, with a timed roll out to other groups of casework implemented over the period to follow.

We nevertheless consider it useful to indicate the classes of cases that we consider should ultimately be included for presenting. This ties in with our other recommendations. We suggest that presented cases should include:

- all cases where they fall within the definition of requiring a minimum of five board members in a composition as set out in Recommendation 4 of the Phase 1 report (whether or not it is implemented by the date of the presentation requirement);
- where not otherwise so included in bullet 1, all priority cases as determined by the board as referenced in Part 4 of this report; and,
- subject to designating circumstances of a *de minimis* nature, all cases involving the need for an EIAR or NIS.

More generally, we do not accept that board members presenting on cases is either the best use of their time or necessarily supports an increased flow of decision-making. Inspectors are, in our view, best placed to present in relation to their recommendations. While therefore our proposal adds to a degree the burden on inspectors, (which requires to be managed and supported with care) the increased focus on key functions and the efficiencies that would follow in the operation of the board can outweigh that. All of this being said, boards may of course still operate in the way they consider best serves their role in making decisions and delivering high quality and expeditious decisions. If they have questions or spot issues needing to be addressed, nothing in these proposals inhibits that.

In our recognition that presentations will not be given by inspectors in more minor cases, we would encourage boards to re-consider the method of working described above for those cases. Sizes of compositions are likely to be smaller and the cases less complex. This should make modified board and other procedures possible to proportionately address workload pressures with adequately thorough scrutiny and decision-making. This could include preparation of summary reports by inspectors in cases not covered by the proposed presentation arrangements. Even more minor cases are important to those affected by them.

As part of our consideration in this phase, we sought views on other options such as a panel of suitably trained inspectors to cover all the presenting. There was little support for this, largely due to the need for such persons to learn the file from scratch (though it must be recognised this is the expectation that currently rests on the designated board member). We have not pursued

that idea but still recognise that any presentation system that is developed will need to factor in and provide for absences or other factors that might prevent the reporting inspector from making a required presentation.

While the Phase 1 report references the EPA in support of the proposal, in various other circumstances planners might be expected to present and stand over their work whether in regard to policy or casework. Nevertheless, given the range of concerns set out by those we have engaged with, we consider that recommendation 8 of the Phase 1 report should be implemented over a longer, phased timescale – following consultation with staff, union representation, professional bodies, board members, etc. – and should be implemented through a protocol developed in detail by An Bord Pleanála ahead of roll-out and aligning with the following guiding principles:

- The timescale for implementation be revised from short term to medium term.
- The protocol should define thresholds of case categories to be presented by inspectors, who would present on major casework, e.g. SHD and SID cases.
- Cases below the threshold will continue to be presented by board members.
- Implementation must be preceded by engagement with relevant staff groupings to ensure that adequate support is provided including in terms of training, peer review, administrative and technical support, mentoring, and that presenting templates are made available to the inspectorate.
- The above training includes understanding of the written decision-making procedure and the steps in place to protect the integrity of inspector recommendations.
- Presenting inspectors would be required to provide an overview of the case, the policy context and material considerations together with the recommendation and to respond to subsequent technical questions. In addition the protocol will make clear that inspectors would remain impartial in the presentation of the case and not act as advocates endeavouring to persuade the board towards their recommendation. Presenting inspectors will remove themselves from the board meeting once their presentation, including any questions, concludes to preserve the integrity of the board member's quasi-judicial decision-making role.
- That arrangements are set out to cover alternative arrangements in the event that a presenting inspector is unavailable.
- That inspectors should be provided with access to electronic files and enabled to deliver presentations by video conference.
- Consideration should be given to webcasting presentations to board members to support greater transparency of the decision-making process.

Recommendation 16

(Further to Recommendation 8 of the OPR Phase 1 report) To ensure an effective system is put in place to provide for the presentation of cases by inspectors at board meetings, An Bord Pleanála should develop a protocol to establish the arrangements. Drawing on the guiding principles set out in this report, the protocol will reinforce the integrity of the decision-making process by setting thresholds for the categories of cases to be included and the precise arrangements to be followed. The protocol should be implemented following appropriate consultation and training.

6.6: Delegation of Decision-Making

An Bord Pleanála is experiencing a heavy caseload which is likely to increase as functional responsibility expands into new areas. Additionally, and as already noted, there is a significant backlog of cases to be discharged. This phase of the review signals that every opportunity should be sought – within appropriate governance frameworks – for delegating work to relieve pressure at board meeting level. In this context, delegation is mainly meant to cover relatively straightforward procedural matters such as the decision whether or not to hold an oral hearing, or – perhaps in the future – small scale and straightforward casework such as appeals in relation to very minor developments.

There is currently no legislative or policy provision for the delegation of decision-making functions on applications or appeals. The role of the inspector is limited to assisting board members in the board's decision-making process through their board members. Given the work ahead of An Bord Pleanála in enhancing its structures around governance, quality assurance and overall staff and process management, and process documentation, we do not recommend any current change in respect of the matter of delegation of decision-making functions on casework. We do, however, highlight the potential for consideration of delegation of certain procedural matters as highlighted above or in relation to minor casework at an appropriate point in the future, including potentially on a trial basis.

In addition, our recommendations in relation to the size of board meetings generally favour larger numbers of board members and while new commissioners will support increased levels of decision taking capacity, it seems appropriate to consider whether the best use of limited resource is deployed.

Delegation was raised in the 2016 Review, key points being that:

- Delegation to inspectors on certain matters offers considerable opportunities to speed up the decision-making process, firstly, because the matter does not need to be passed to a higher tier to make a final decision and, secondly, because the process of preparing a report generally takes longer than preparing a written decision.
- Delegation to officials would require an amendment of section 111 of the 2000 Act.
- Historical and cultural differences between Ireland and other jurisdictions cannot be ignored and (at the point of the 2016 Review and still today) public expectation is that all decisions are taken by the board.

Inspectors comprise qualified professionals, often with many years' experience. They provide analysis and recommendation on a wide range of casework from small scale householder developments to major and highly complex cases of strategic importance. Given that reporting on casework can involve greater time and report writing than construction of a legally compliant written decision we consider that there is likely to be some scope for consideration of this issue afresh in the future, not least in the context of high levels of small scale and householder casework, defined as appropriate. This is because of two considerations.

Firstly, our recommendations on improving quality assurance and performance management, if implemented and effective, will reduce the risks of undue reliance on inspectors acting as

individual decision makers. Secondly, the move to presenting inspectors (and requiring summary reports from them) in major cases (and potentially requiring summary reports in important but less major cases not requiring a board composition of at least five members) is designed in part to reduce the preparation burdens for board members. However, minor cases will involve neither of these. Ironically, for the most minor of cases, the burdens on board members may therefore increase, depending on how compositions of boards organise themselves. Delegation to inspectors may be a solution for such cases.

In any consideration of delegation, views of stakeholders would be important to understand as would those of the board members and staff working within the organisation. This is linked to clarity around developing and maintaining strong public confidence in An Bord Pleanála's decision-making processes. Arrangements for appropriate support, for training, criteria, quality control and reporting amongst others would need to be considered.

Recommendation 17

To ensure efficient operational functioning and focusing of board meeting time on making planning case decisions, legislative consideration should be given to the delegation of certain decisions on technical matters (including whether an oral hearing should be held) to the planning inspectorate. The implementation of any such delegation system would be supported by published guidance on the approach to determining decisions.

PART 7: Engagement, Communication, and Implementation

The conclusions and recommendations we have made in this report are intended to assist An Bord Pleanála along the pathway to recovery and to help restore the public confidence in its work that is so vital to its future and to planning in Ireland.

Having engaged broadly with the staff and board members of An Bord Pleanála it is evident that the organisation will benefit, both in the organisational and human resources sense, from further introspection and external consultation. In this regard it is noted that there is an organisational capacity review ahead and other processes are underway. Furthermore it is acknowledged that the inter-relationships between them (including in relation to timings) are complex.

Time is needed to deepen and develop processes and procedures in the implementation of our recommendations. We hope that the process both of our work and the work to follow can help revive a culture of openness and transparency, efficiency and effectiveness and pride in the contribution An Bord Pleanála can make to the system of public administration in Ireland.

Given the evident pressures on the organisation, including those associated with supporting efforts to address the housing crisis and the climate emergency, these are important days for An Bord Pleanála. It is crucial now more than ever that An Bord Pleanála is fit for purpose and enabled to respond to the challenges it faces.

At the same time, urgent reform does not mean that measures should be rushed or ill-thought through. Some of the suggested improvements by way of recommendations will take time to properly formulate and take time to yield their full potential. It is nevertheless essential that there is transparency for all stakeholders, including staff, around what is to change and the implementation of those reforms as part of the journey of continuous improvement.

7.1: Facilitating Workforce Engagement

While reviews and examinations of different aspects of An Bord Pleanála's work are undoubtedly enormously valuable, the greatest asset of the organisation remains its people. In this review we have endeavoured to understand the culture of the organisation and the insights of its staff. However, the prevailing culture and how An Bord Pleanála's staff respond to the challenges ahead require, in our view, proactive and methodical interventions to ensure that the voices of staff – at all levels of the organisation – are heard, and heard regularly.

We consider that this can be most effectively done by the initiation of an annual people survey within An Bord Pleanála. This would be developed in conjunction with staff, applying best practice, and run on an annual basis in order that trends in experiential behaviours can be ascertained, analysed and responded to. Change and improvement in response is vital in order to maintain confidence in the survey and in senior management, and to encourage future high rates of engagement in completion of the survey.

Our suggestions regarding the content of such a survey are not absolute, beyond that it should be anonymised and could capture views related to confidence in management, strategic decision-making, staff well-being and welfare, the maintaining of the professional reputation of An Bord Pleanála, adequacy of support in the form of training and use of IT, adequacy of resource, protections against harassment and bullying, etc.

Recommendation 18

To demonstrate commitment to a continuously monitored and benchmarked process of staff engagement, listening and measuring the overall morale and sense of the organisation's staff, An Bord Pleanála should initiate an annual people survey within the organisation. The survey should be developed in conjunction with staff and, applying best practice, should ensure that trends in experiential behaviours can be ascertained, analysed and responded to.

7.2: Channels for Raising Workplace Concerns

This section relates to the facilitation of staff in An Bord Pleanála to raise workplace concerns. The focus in our work relates to inspectors, given their role, but what we say below applies to all staff. It is an important consideration in any organisation as to whether staff are confident to challenge other more powerful individuals within the organisation and if there are appropriate procedures to assist staff air concerns, including as part of a protected disclosures policy. Also relevant is the extent to which managers enable and support staff in raising concerns.

Through engagement with An Bord Pleanála staff we gained an understanding of the extent to which several planning inspectorate, and other, staff felt they could raise concerns with respect to organisational practice or to report possible wrongdoing in the workplace. These engagements revealed that staff were generally unaware how protected disclosures or grievances could be addressed within the organisation, as well as being uninformed in relation to other available external channels.

Some staff expressed significant reservations to us about the adequacy of An Bord Pleanála's systems for raising concerns about working practices, indicating a sense that challenging, or airing concerns, on any matters might create unwanted workplace stress. We raised these concerns in our engagements with a number of managers in the inspectorate, they confirmed their expectation that that staff should feel secure in raising concerns or engaging with management, however no elaboration was provided regarding more active steps being taken within the organisation to reassure staff in this regard.

Corresponding with the concerns we heard, the staff survey contained a high level of responses from planning inspectors disagreeing with the statement that their opinions are sought, heard and valued by management.

Clearly there is a need to update procedures in this regard and advise staff accordingly to ensure that they feel supported by the organisation in their roles. While it is acknowledged that An Bord Pleanála has an existing grievance procedure in place, it would appear that staff need

to be advised of the procedure's existence and also how it operates and the scenarios it applies to. There is scope to provide clarity to staff on these matters through internal guidance documents such as the Code of Conduct, employee handbook, induction material, etc.

Furthermore, staff need to be reassured that they have a working environment where concerns about possible wrongdoing can be raised and where anonymity will be protected appropriately. Staff should also be made aware of the reporting channels, including through prescribed persons where the circumstances require it. In this regard An Bord Pleanála must update its protected disclosures policy to ensure that procedures align with the national protections for whistleblowing established through the provisions of the Protected Disclosures Acts (including the updates contained in the 2022 Amendment Act). Under this legislation An Bord Pleanála is required to establish and maintain a whistleblowing policy that covers procedures for the making of protected disclosures by current and former staff and for dealing with such disclosures. The legislation also requires that employees be provided with written information relating to these procedures.

Recommendation 19

To ensure staff feel supported in their roles and in raising concerns related to possible wrongdoing in the workplace, An Bord Pleanála should ensure that an updated Protected Disclosures Policy is in place which incorporates the new legislative requirements (effective from January 2023). This policy, which will describe the circumstances in which disclosures can be made and will identify the appropriate reporting channels, must be circulated to all staff. In tandem An Bord Pleanála should ensure its grievance procedures are up-to-date and will also advise staff how these procedures operate. Ongoing consideration should be given to how staff can be kept advised and supported in raising workplace concerns through updates to internal guidance documents.

7.3: Engagement with Stakeholders

In our review, the engagement with a range of external policy stakeholders was invaluable. In the course of our review, we found that a range of inter-actions within An Bord Pleanála and between it and external bodies appear to have simply stopped. We are told that the EMT has not met since June 2022. Staff forums have ceased. Engagement with the IPI has stalled. We draw no conclusions as to why these stopped. Their purpose and perceptions of value may well have varied. However, going forward we see effective engagement with stakeholders to be crucial given the range of change and reform likely to be required.

We are aware of existing arrangements for engagement with the DHLGH. As the parent department for An Bord Pleanála, DHLGH has a crucial role in driving the reform envisaged in its action plan and investing in and supporting change that will help to restore An Bord Pleanála to a high performing organisation that commands stakeholder respect. Ongoing engagement and support, including for organisational change, promotion of good practice, the implementation of improvements in information technology, arrangements for delivering new functions such as marine and in stakeholder engagement and communication will all be important to help An Bord Pleanála move forward.

We agree with Action Point 24 of DHLGH's Action Plan relating to stakeholder engagement and the establishing or enhancing of a stakeholder group such as that described in the Action Plan as the Planning Advisory Forum. Indeed, we consider that An Bord Pleanála should go further, reaching beyond strategic engagement. Such a group should be convened on a regular basis to contribute towards development of best practice and to enhance the understanding in the sector of the organisation itself. It should become embedded in the process of continuous improvement.

The membership, remit, attendance arrangements, frequency of meeting, arrangements to encourage frank exchanges in a safe space and other matters of practical operation would be a matter for An Bord Pleanála in conjunction with interested parties. We would envisage few if any limitations on who could participate and what planning related matters could be raised, bar live planning cases.

Recommendation 20

To facilitate increased engagement with stakeholders, with consequent opportunities for information exchange and organisational learning, An Bord Pleanála should establish an External Stakeholder Group (consistent with recommendation 24 of the Government approved Action Plan). The Group should be convened on a regular basis to contribute towards development of best practice, to embed continuous improvement and to enhance the understanding in the planning sector of An Bord Pleanála's strategic responsibilities. The membership, remit, attendance arrangements, frequency of meetings and other matters of practical operation would be a matter for An Bord Pleanála to agree in conjunction with relevant parties.

7.4: Communications

In the course of this phase of the review, it was suggested to us by some that many of the difficulties An Bord Pleanála has encountered in recent times were due to not having an effective communications strategy. In effect, if an effective communications strategy had been deployed, it would have been able to close down the criticisms of their systems and the conduct of individuals concerned. However, we do not consider this to be a fair and accurate assessment.

Rather, it appears to us that certain concerns have come into the public domain because of the scrutiny undertaken by citizens and investigative journalists rather through the operation of An Bord Pleanála's own monitoring and governance systems. While the extent to which certain confidential materials have been leaked has to be questioned, the examination of these issues by such persons and bodies perhaps reflects a deeper frustration with governance failures that could have and should have been attended to. Furthermore, in this regard we welcome the intention to expand the role of the OPR to consider individual complaints about An Bord Pleanála in relation to systemic issues, as set out in DHLGH's Action Plan.

A point was also raised with us about the individual naming of inspectors in the media in respect of specific cases in which they are appointed to report. While it is understood that such planning

matters will often give rise to legitimate matters of public interest and importance and while there is no suggestion of a restriction of the media to report matters in the way they consider correct and appropriate, it appears to us to be incongruous in the normal course of events that inspectors be named when their reports contain only recommendations and where the board make the ultimate decision. That decision will either be to endorse the report or depart from it. In neither case would it appear necessary in normal circumstances for journalists to name the reporting inspector.

It was relayed to us that certain inspectors feel it is unfair and uncomfortable in being named in the media in these circumstances. There can of course be exceptional circumstances justifying the naming of individuals and it may be appropriate to name inspectors where the media coverage relates to other matters of public interest (if for example an issue over a conflict of interest more personal to the inspector concerned arises).

Without seeking to constrain editorial judgement in a particular case or constrain media freedoms, we suggest that care should be exercised on the making of public interest judgements in relation to the merits of naming individual inspectors in the exercise of their reporting functions.

7.5: Technology and Data Analytics

In our review, we have recognised the potential for increased use of IT generally in improving efficiencies. Further development of better IT and the opportunities offered for virtual meetings and virtual hearings are obvious. Government expects the wider public service to be more agile in terms of digital technology and deliver more customer-driven innovative services. Citizens also want and expect their public services to more advanced and user-centric. The better use of technology is critical to strengthening the relationship between public service providers and the people they serve.

Many parties to matters before the An Bord Pleanála are not Dublin based and neither are some inspectors; we take account of that in our recommendations on inspectors presenting files, but the opportunities are wider than this. The enhanced use of technology offer the potential for procedural hearings and meetings to be organised more easily, with much reduced travel time, providing opportunities for enhanced business efficiencies, including cost savings. Training can be offered in hybrid or on-line environments.

More specifically, we recognise too that the potential for enhanced use of webcasting of oral hearings and other procedural stages in the work of the organisation can bring advantages too. We consider this to be an essential constituent component of our recommendation of moving to the presenting role of inspectors. This, coupled with our recommendations on enhanced clarity of the reasons for any departure decisions, can bring a range of advantages.

The advantages of webcasting such proceedings are:

- transparency in giving public confidence in the probity and integrity of the presentation process in a key inter-action between the board and the presenting inspector;
- allowing focus on the issues in hand as are in discussion by attendees;
- efficiency in reducing the need for administrative detailed note taking of discussion in order to accurately capture the key issues;
- allowing easy checking at a future date (including before final decision-making) of precisely what was said and decided or agreed; and,
- encouraging respectful discourse.

This change requires an investment of time, resource and effort in training in the use of webcasting and should, in our view, be taken forward as and when resources permit, but with a key priority to have webcasting arrangements in place in time for the roll out of the recommendations we make in relation to presenting inspectors.

Lastly on the issue of IT, one person we consulted with in the course of our work suggested that improvements to the use of Geographic Information Systems (GIS) technology should be treated as a priority for An Bord Pleanála in the period ahead. We have been unable to explore the suggested deficiencies of current arrangements, to ascertain the scope or need for such work. Accordingly, we simply record the fact that the suggestion was made, for consideration by the organisation in future of the case for this, its justification, cost effectiveness and other related practical considerations.

Recommendation 21

In line with the targets of the National Digital Strategy, and with the objective of providing more efficient services to the public, An Bord Pleanála should support investment and skills development in embedding information technology throughout its business operations, including enhanced use of webcasting of oral hearings and board meeting presentations.

Data monitoring and analysis

Technological advancement and transformation in An Bord Pleanála should also permit a much more effective process for collection of data on key trends and including patterns of decision-making, by boards, in relation to categories of developments and so on to aid management in running the organisation.

An Bord Pleanála maintains a dataset of its decision-making activity using its bespoke Plean-IT system. Data is inputted into Plean-IT which can then be generated into a dataset. Whilst some data inputs are missing, this format of data collation is generally appropriate.

An important element of monitoring decision-making activity includes regular data analysis, e.g. on a monthly or quarterly basis, to ensure that any atypical patterns in decision-making are identified and highlighted to management, e.g. an abnormally high rate of overturn of or departure from, inspectors' recommendations, trends in certain board members deciding on cases in groups, etc. This exercise, carried out on a regular basis, is crucial to ensure that

decision-making trends are observed and measures put in place, where necessary, to identify any unusual patterns and to ensure a balanced representation of board members in decision-making.

We are of the view that reports in relation to decision-making activity should be prepared and presented to senior management structures covered elsewhere in this review, on a monthly or quarterly basis with any patterns highlighted. The data collation should be overseen by management, at SAO level or above, and datasets should be quality checked regularly (e.g. weekly) to ensure that no gaps in the data arise.

Recommendation 22

To facilitate governance and operational oversight, and thereby reinforce public confidence in the decision-making process, An Bord Pleanála must significantly improve the capability and quality of its data collation and monitoring processes. Regular quality checks of datasets are required to ensure that all details are inputted to the data management system correctly and to ensure the capability to identify any unusual patterns in decision-making. It is also important that regular reports are generated and communicated to senior management for consideration and action as required.

7.6: Implementation, Monitoring and Reporting

As well as responding to the recommendations in this review, many of the recommendations of the 2016 review of An Bord Pleanála are still in the implementation phase. Other internal reviews have been conducted, are ongoing or intended, including the review of its 2011 Code of Conduct and an intended organisational capacity review to be conducted in relation to workforce planning. It is important that stakeholders can understand the reforms are underway through these various processes and the progress being made towards improvement.

In our view An Bord Pleanála's annual report provides a ready-made platform to report to the public as well as the Government system in relation to general progress on the implementation of reforms. In particular reports in subsequent years should include updates on governance, ethics and compliance matters, data on decisions that depart from inspectors' recommendations, clarifying information on conceded judicial reviews, details regarding the delivery of staff learning and development, confirmation and outputs arising from stakeholder engagement, progress to deliver innovation in technology and communication, etc.

It is also important that progress in relation to the recommendations of the 2016 Organisational Review of An Bord Pleanála are fully explained. It is clear that not all of the 101 recommendations of that review have been implemented, though it is acknowledged that several were outside of An Bord Pleanála's scope to deliver being legislative in nature, etc. Nevertheless, it appears to us that public confidence in continuous improvement can only be maintained by recommendations being implemented, or through the articulation of clear and compelling reasons for not doing so. In this regard, in consultation with DHLGH (who may in turn consult with the Attorney General's Office if necessary), An Bord Pleanála should ensure the publication of a comprehensive update on implementation of the recommendations of the

2016 Review including detailed narration on each of the recommendations. Where there are recommendations that have not been implemented the narration should include clarification on the current commitment to their delivery and an appropriate rationale, including timelines where applicable.

With regard to the specific recommendations arising from this review, while many of these recommendations are considered urgent, even immediate, in terms of priority, precise timelines have not been set for their implementation on the basis that such timeframes will be agreed in an implementation plan. The implementation plan, which will incorporate a delivery schedule, will be prepared by An Bord Pleanála by the end of January 2023. The implementation plan will be finalised with the approval of both the OPR and the DHLGH. Progress on the implementation of the delivery plan will be submitted to the OPR and DHLGH on a quarterly basis thereafter.

The implementation plan should take account of legislative, regulatory and practical delivery factors and may include the identification of cross-dependencies, budgetary, recruiting or other resource implications, where relevant. The implementation plan should include a position statement to support the transition towards An Bord Pleanála's additional responsibilities in relation to marine planning.

In addition to the reporting structures outlined above (and the opportunities for improved stakeholder communication referenced earlier in this part of the report), we see an opportunity for ensuring greater confidence in An Bord Pleanála by the presentation of the annual report and implementation plan progress reports to the Oireachtas. The format this might take should be given due consideration by An Bord Pleanála in conjunction with the appropriate Oireachtas structures e.g. Committee on Housing, Local Government & Heritage. We would encourage a dialogue to develop in this regard as this as an important step towards greater accountability in relation to the outputs and functions of the organisation.

Recommendation 23

To ensure public and institutional confidence in the process of continuous improvement, An Bord Pleanála should enhance its reporting arrangements with regard to matters of public and political interest or concern. This should include the inclusion of additional detail in its annual report in relation to topical concerns as well as agreeing the publication of a comprehensive update with the DHLGH on the 2016 Organisational Review of An Bord Pleanála.

By the end of January 2023 an implementation plan on the implementation of this report's recommendations, including delivery schedule, will be prepared for the agreement of the OPR and the DHLGH. Quarterly progress reports will be submitted thereafter.

In addition An Bord Pleanála will engage with the Oireachtas to facilitate an appropriate platform to report on matters of national level concern.