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Pleanála

# Marine Planning ABP role in Consent

OPR Workshop 6.7.23

# An Bord Pleanála role in consenting

## Agenda



- » Background
- » Setting up new unit
- » Steps in process
  - » Pre-application meetings
  - » Application stage and role of CPA
- » Challenges



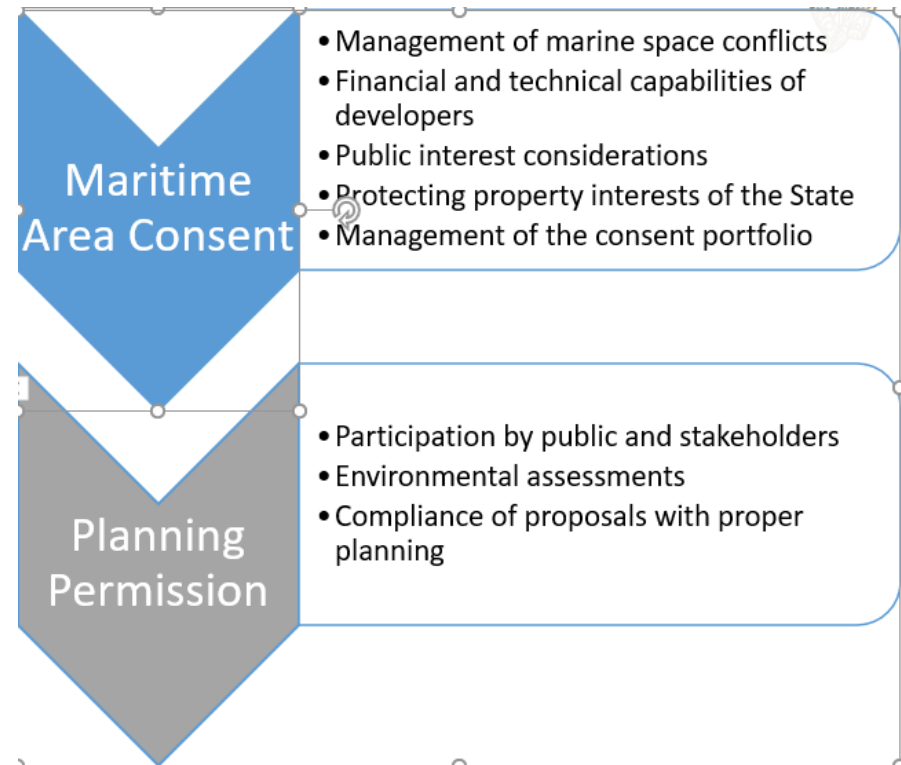
# Background - context

## MAP Act 2021



- » Enacted December, 2021. The main provisions of the Act relate to:
1. Forward planning,
  2. State consent – Maritime Area Consent (Phase 1 project - DECC, MARA from July 2023),
  3. **Development management. This is where ABP have a role as a consenting authority in the marine area.**
  4. Licencing of activities,
  5. Enforcement (via MARA who will have responsibility for MACs from July 2023).

Now Part XXI of P&D  
Act



# Background - context

## Forward Planning



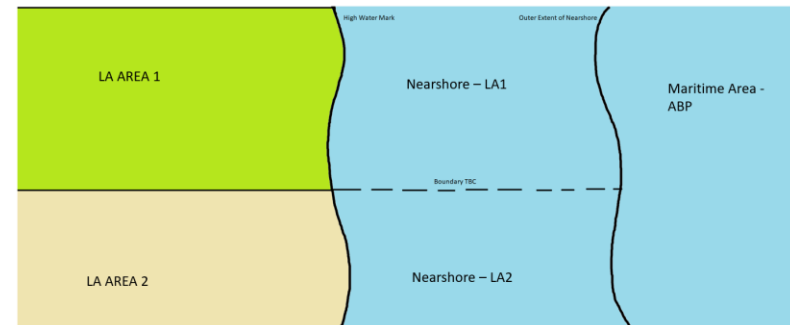
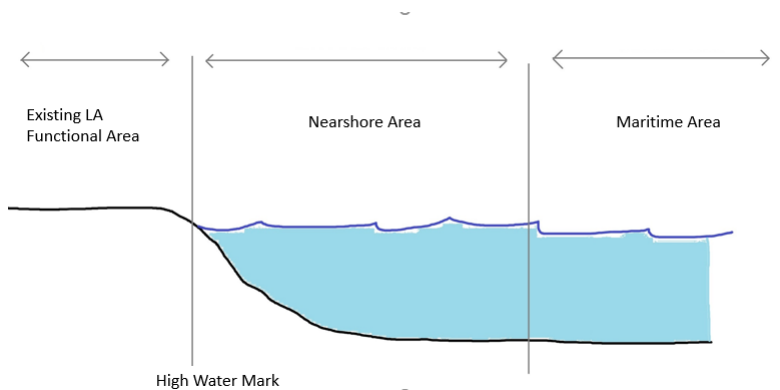
- » Act provides legal basis for the National Marine Planning Framework (NMPF) and compliance with the MSPD.
- » Provision in the legislation for Designated Marine Area Plans (DMAPs). Can be sector and / or location specific and could be used to designate areas for particular 'maritime usages'.
- » Marine Protected Areas: Legislation related to designation of these areas being progressed.
  - » Sensitivity mapping published June 2023
  - » Legislation awaited.
- » Provision for ministerial guidance to be issued
  - » ORE Guidelines due late Q3 '23.
- » Minister can issue 'policy directives' that must be complied with and can direct the Board to 'give priority' to applications for particular activities.

# Background - context

Development Management / Consent Function and Role of ABP



- » Act identifies three zones –
  - » the terrestrial area above the mean HWM,
  - » a nearshore area beyond the mean HWM (extending to 3NM / c.5km) and
  - » a Maritime Area extending out to encompass the whole of the EEZ and continental shelf.



# Background – Context

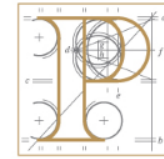
## Consenting Role of ABP - Chapter 3 of Part XXI



- » Chapter 3 of Part XXI of PDA relates to ABPs role in the assessment of development in the maritime area
- » Section 285 - ABP is responsible for:
  - » Local authority decisions in maritime area that are the subject of appeal,
  - » Development that is exclusively in the Maritime Area,
  - » Developments that overlap the “maritime” and “nearshore” areas of one or more than one PA,
  - » Development partially in the outer maritime area and partially on land,
  - » Development wholly in the nearshore area of more than one coastal PA
  - » Development of a class prescribed in Schedule to the Act (Schedule 10 inserts new Schedule 8 into PDA).

# Background - context

## Development Management / Consent – Main Provisions



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- » Legislation covers all forms of ORE, cables and interconnectors, gas storage, ports / harbours. Fisheries specifically excluded,
- » Mandatory pre application consultation for applications to ABP,
- » Process of pre applications and applications very similar to existing terrestrial Strategic Infrastructure Development applications,
- » Provision for public consultation, statutory consultees,
- » Provision for FI, revised plans, oral hearings,
- » Provision for modifications similar to s.146B/C,
- » Legislation provides for ORE projects (mainly on the east coast)  
Phase 1 / Relevant projects,
- » Criteria for Phase 2 projects being developed.

# Setting up new unit

## So how has ABP prepared for this new function

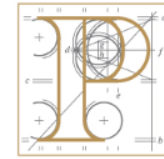


- » Government Action Plan Oct 2022 identified need for new Director of Planning for Marine & Climate
- » Position established in late February 2023
- » A 2<sup>nd</sup> Director of Planning appointed: Initial Assignment SID, Marine and Climate (All direct applications); Appeals and other matters fall under other DoP post
  - » Existing Inspectorate SID team enlarged to cater for new functions
  - » C.25 Inspectors in team currently with additional roles to be filled – mainly SPIs
  - » Processing Team – SHD team now responsible for the marine function with additional roles to be filled
  - » Flexibility of resources at all levels/grades also critical in terms of overall management workloads across An Bord Pleanála
  - » 2 new non-planning specialist roles advertised Friday 23<sup>rd</sup> June – second ecologist and an environmental/marine scientist
  - » Recently held interviews for External Specialist Consultant support
  - » Existing SID team remains in place

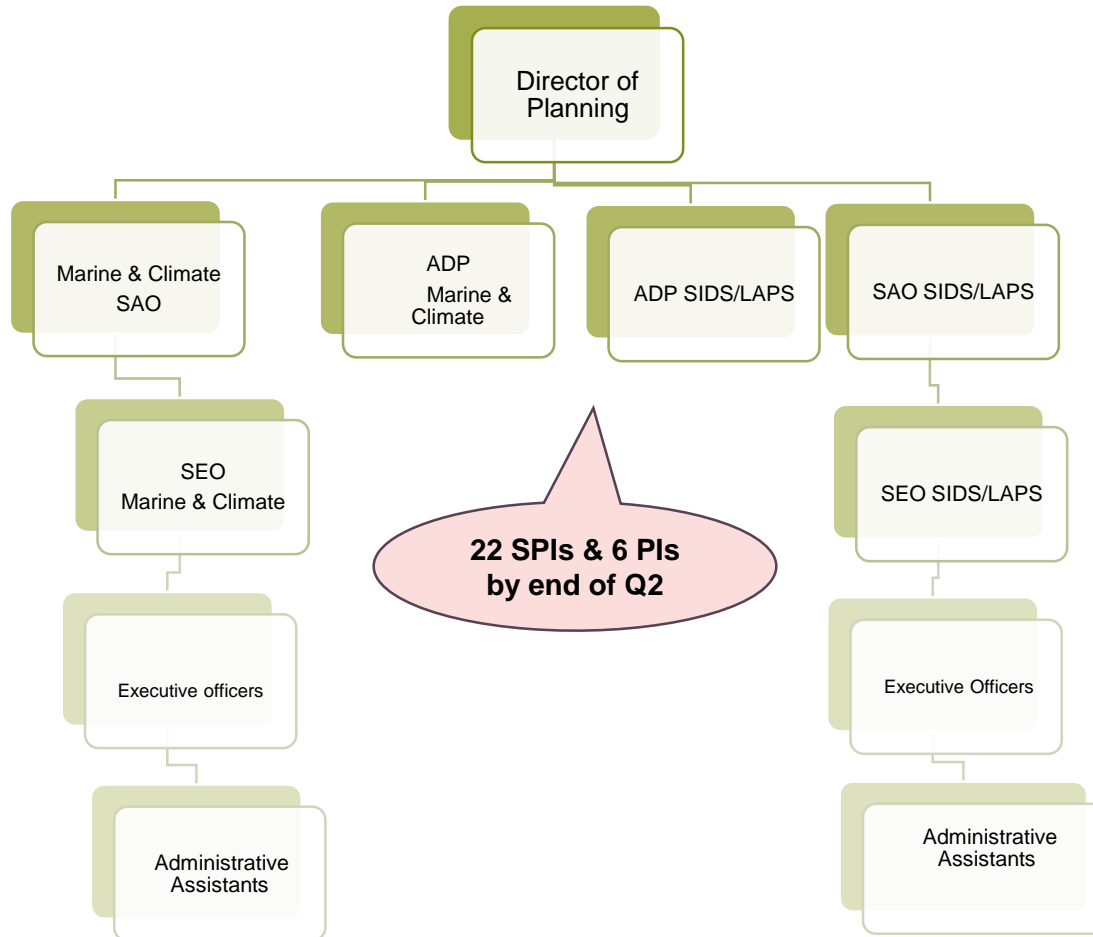


# Setting up new unit

## SID/M&C Unit

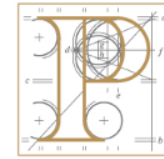


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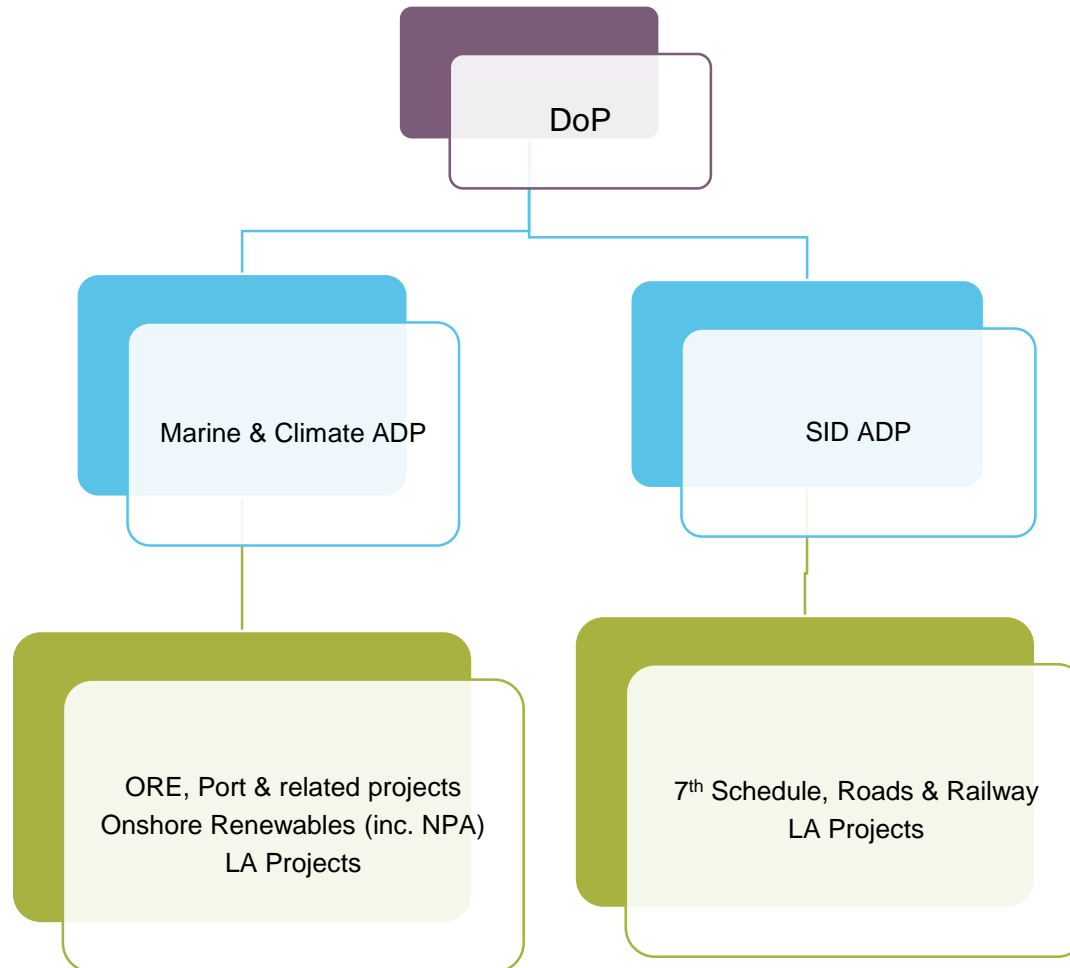


# Setting up new unit

## Direct Applications Unit - Inspectorate



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# Steps in Process

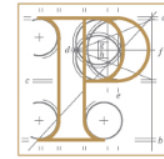
## ABP Procedures



- » Three steps in process initially
  - » Pre-application consultations (PAC)
    - » S.286(3) of the Act states that a MAC must be obtained before any PAC can commence (other means – e.g. owner of land, lessee, etc.)
  - » EIA Scoping (not mandatory)
  - » Application stage
- » Additional steps post consent include amendments to consents (similar to s.146B requests)

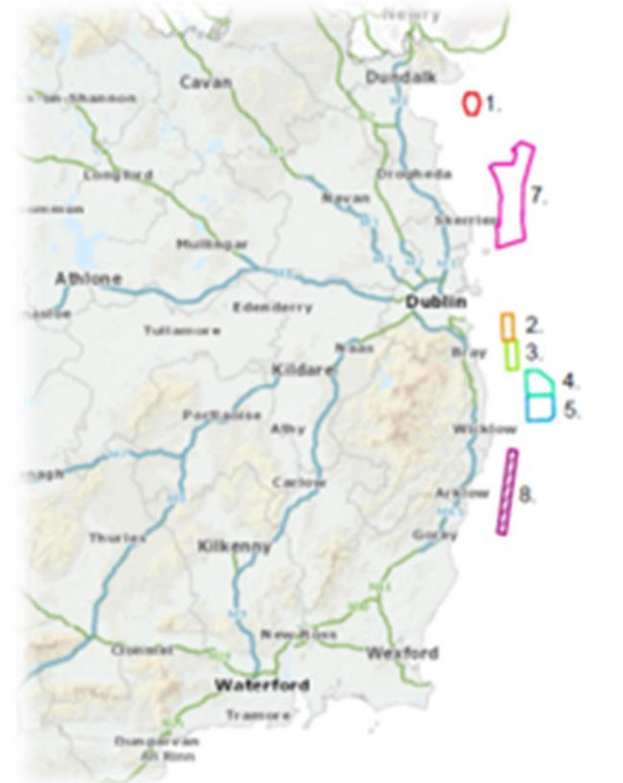
# PAC Step

## 5 PAC requests well advanced



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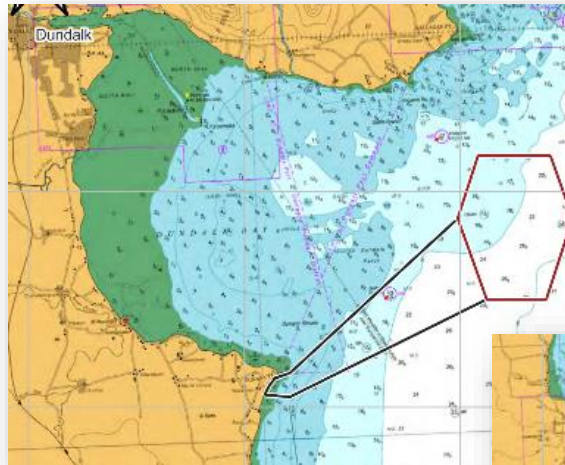
- » Pre-Application Consultation (PAC):
  - » 5 Pre-app requests received early 2023– Oriel, NISA, Dublin Array, Codling, Arklow
  - » ABP issued request for list of information – applicant’s original requests varied from 1 page to substantial information



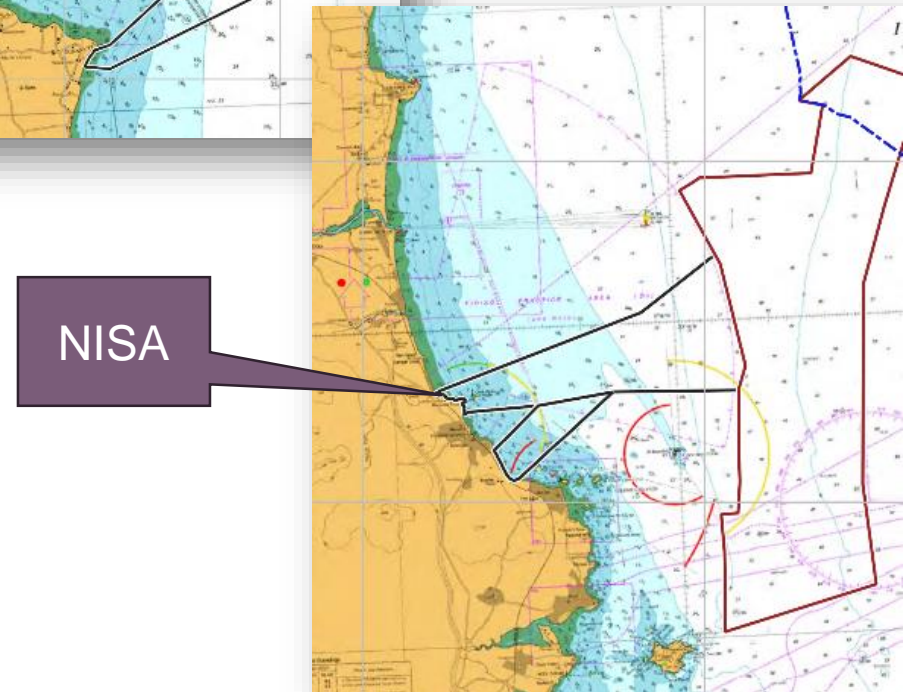
# PAC Step

## 5 PAC requests well advanced

- » **Pre-Application Consultation (PAC):**
  - » PAC procedures prepared ahead of first PAC meeting
  - » 6<sup>th</sup> MAC holder - Skerd Rock request only received **June 2023** (Galway) – no plans progressed to meet yet.



Oriel

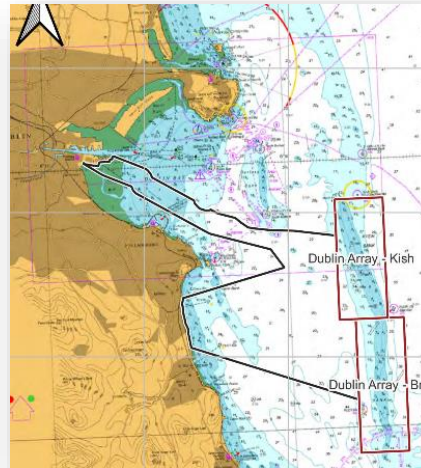


NISA

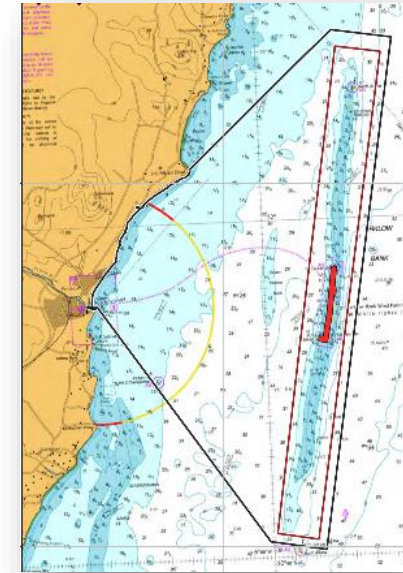
# PAC Step

## 5 PAC requests well advanced

- » Pre-Application Consultation (PAC):
  - » Intent is to close off PAC step by late Q3/early Q4
  - » Only 4 of the MAC holders successful at first ORESS Auction



Dublin Array



Arklow



Codling



# PAC Step

## What does ACT say about PAC

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- » S.287(2) of the Act, the purpose of the PAC meeting is:
  - » to give the Board an opportunity to provide its opinion on issues relating to the making of an application including in relation to procedures and documents relevant to the making of an application.
- » S.287(2)(f) of the Act
  - » the Board may provide its opinion on some or all of the matters that the Board is likely to take into consideration in making a decision on an application:
    - » the NMPF,
    - » objectives of maritime spatial planning,
    - » the principles of proper planning and sustainable development and the environment and any European site in making a decision on an application.
- » Unlike the normal SID projects, the Board closes off the PAC

# PAC Step

## What does ACT say about PAC - Flexibility



- » New section of the Act to provide for flexibility
- » **Section 287A** – A prospective applicant may request a meeting with the Board for the purposes of section 287B ie where the Board provides an opinion to the prospective applicant regarding flexibility in relation to the design options with regard to the application for permission.
- » A request under section 287A shall include, as well as standard information, the following:
  - » the details or group of details, of the proposed development owing to circumstances are unlikely to be confirmed at the time of the proposed application, and
  - » the circumstances that indicate that it is appropriate that the proposed application be made and decided before the prospective applicant has confirmed the details referred to above in particular whether the applicant may be able to avail of technology that is more efficient and effective than the technology available at the time of making the application.



# PAC Step

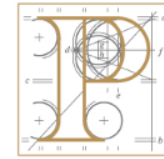
## What does ACT say about PAC



- » **Section 287B** – (Opinion of Board as to flexibility with regard to application for permission).
- » A meeting held in relation to this shall be part of the consultations held under section 287.
- » The Board shall consider the information included under section 287A and any other relevant information that is available at the meeting.
- » Board makes determination if it is satisfied that it is appropriate that the proposed application be made and decided before the prospective applicant has confirmed details of the application
- » In relation to any determination above the Board shall issue an opinion to the prospective applicant in this regard.
- » An opinion issued by the Board shall only be made public when a planning application is made under section 291.

# Application Step

What does ACT say about Application ( It is not expected that the Board will receive many EIA scoping requests)



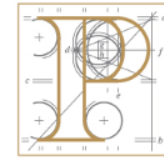
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## » Section 291

- » similar procedures to SID
- » New Prescribed Bodies e.g. MARA, Commissioner of Irish Lights
- » Applicant to send copy of application to ‘Coastal’ planning authority
  - » any coastal planning authority within— (A) whose nearshore area, or (B) any other part of whose functional area, it is proposed that the development would (in whole or in part) be situated;
  - » any coastal planning authority— (A) whose nearshore area, or (B) any other part of whose functional area, adjoins that part of the maritime area in which it is proposed that the development would (in whole or in part) be situated,
- » Transboundary – likely to be more involved here than SID

# Application Step

## Role of Coastal Planning Authority



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- » S291(4) states:
  - » A coastal planning authority..... **may**, not later than 10 weeks .... from the making of the application in respect of the proposed development, prepare and submit to the Board a report setting out the views of the coastal planning authority in relation to the proposed development, having regard in particular to the matters to which a coastal planning authority is required to have regard.
  
- » S291(5) states:
  - » The Board **may**, in addition to a report referred to in subsection (4), require a coastal planning authority to which that subsection applies or *any planning authority* on whose functional area the proposed development is, in the opinion of the Board, likely to have a significant effect to furnish to the Board such information as the Board may specify in relation to— (a) the implications of the proposed development for maritime spatial planning, (b) the implications of the proposed development for proper planning and sustainable development in the functional area concerned, and (c) the likely effects of the proposed development on the environment or any European site

# Application Step

## Role of Coastal Planning Authority

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- » Section 291(6) states:
  - » The chief executive of a coastal planning authority **shall**, before that coastal planning authority submits a report to the Board under subsection (4) in relation to a proposed development, submit the report to the members of the coastal planning authority and request their views on the proposed development.
  - » (7) The members of a coastal planning authority may, by resolution, decide to attach recommendations specified in the resolution to the report of the coastal planning authority under subsection (4) and, where those members so decide— (a) those recommendations, and (b) a record prepared by the meetings administrator (within the meaning of section 46 of the Local Government Act 2001) of the views expressed by the members on the proposed development, shall be attached to the report submitted to the Board under that subsection.

# Application Step

## Procedural Changes between SID and MAP



- » The Board closes the PAC stage – in SID this is at the discretion of the applicant
- » Decision Timelines – while 18 weeks (plus public consultation stage) is the objective, if Further Information is requested or an Oral Hearing is to be held the clock effectively stops.
  - » The 18 week timeline dates from the date the Board receives the FI or upon conclusion of the OH
- » Post consent (amendments) – an applicant may request consultations with the Board - this is not the case currently for S146B requests

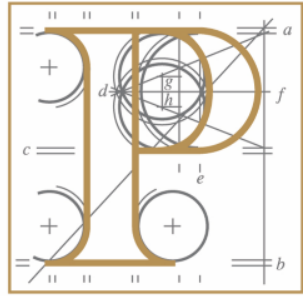
# Role of ABP

## Challenges to be addressed

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- » ABP resourcing / skills / availability of consultants / potential conflicts of interest etc. but
  - » Department has approved sanction for all resources requested
  - » Seeking two in-house specialists at Inspectorate, Board hiring – advertised 23<sup>rd</sup> June
  - » Recently interviewed numerous consultants to provide support at application stage
  - » Consultant providing support at pre-app stage
- » Policy
  - » Location specific plans available OREDP2/DMAPS, ORE Guidelines
  - » MPA legislation
- » IROPI
- » Clarity around other aspects of Act – e.g. single application option, transitional arrangements.
  - » Ports



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